Marking guide.

Question 3: Partnership Law.

a) What are the advantages and disadvantages of a partnership?

b) What are the factors that determine whether a partnership exists?

c) What are the fiduciary obligations between partners?

d) What does a retiring partner need to do to avoid liability for partnership debts after he or she retires?

e) What are partner's obligations according to the partnership agreement and the common law generally?

(Each question, a, b, c, d and e is worth 2.5 marks. So that this question is worth 12.5% of the course assessment)

**a) What are the advantages and disadvantages of a partnership?**

The best starting point here is my power point.

**b) What are the factors that determine whether a partnership exists?**

1. Discuss the **definition in the *Partnership Act****.*

2. Discuss the ***ratio decidendi*** of the **common law cases** which have interpreted the **section** of the Act.

3. Discuss the **statutory rules** which the Court can have regard of as indicative of a partnership.

4. Discuss the **relevance of registering a business name**. Refer to the Business Names Registration Act 2011 (Cth)

5. Note why it is **important to determine if the parties are working in a partnership**.

**c) What are the fiduciary obligations between partners?**

1. See pages **437 to 439** of the textbook.

2. Refer to all relevant sections of the **Partnership Act 1958 (Vic)**.

3. The reason for the **fiduciary duties** is to protect the partnership business.

4. Refer to **other areas of law where fiduciary duties** exist.

i) The **contractual defence** of undue influence.

**ii) Agency.**

**iii) Company directors.**

**d) What does a retiring partner need to do to avoid liability for partnership debts after he or she retires?**

1. See pages **448 to 449** of the textbook.

2. Also refer to **relevant case law and sections of the Partnership Act**.

3. The ***Hamerhaven*** *Case* seems a good headnote case to attach and perhaps explore the judgement for a good extract to refer to.

**e) What are partner's obligations according to the partnership agreement and the common law generally?**

1. This question is designed for you to display your understanding of the **Partnership Act and the partner’s freedom to enter into their own agreement**.

2. You will need to refer to the **relevant sections of the Partnership Act.**

3. You will need to attach **all relevant sections of the Act**.

4. You could attach and discuss **a model partnership agreement**.

5. Note that there could also be **implied terms.**