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3. The sharing of gross returns does not of itself establish a partnership, whether or not the persons sharing them have a joint or common right or interest in any property from which the returns are derived.
4. The receipt by a person of a share of the profits of a business is *prima facie* evidence that he is a partner in the business, but no such inference shall be drawn if such profits were received in payment:
  - a. As a debt by installments or otherwise.
  - b. As wages of an employee or rent to a landlord.
  - c. As an annuity to a widow or representative of a deceased partner.
  - d. As interest on a loan, though the amount of payment vary with the profits of the business.
  - e. As the consideration for the sale of a goodwill of a business or other property by installments or otherwise.

In general, to establish the existence of a partnership, all of its essential features or characteristics must be shown as being present. In case of doubt, art.1769 shall apply. This article seeks to exclude from the category of partnership certain features enumerated herein which, by themselves, are not indicative of the existence of a partnership.

**Persons not partners as to each other**

Persons who are partners as between themselves are partners as to third persons. Generally, the converse is true: if they are not partners between themselves, they cannot be partners as to third persons. Partnership is a matter of intention, each partner giving his consent to become a partner. However, whether a partnership exists between the parties is a factual matter. Where parties declare they are not partners, this, as a rule, settles the question between them. But where a person misleads third persons into believing that they are partners in a non-existent

partnership, they become subject to liabilities of partners (doctrine of estoppel). Whether or not the parties call their relationship or believe it to be a partnership is immaterial. Thus, with the exception of partnership by estoppel, a partnership cannot exist as to third persons if no contract of partnership has been entered into between the parties themselves.

**Co-ownership or co-possession**

There is co-ownership whenever the ownership of an undivided thing or right belongs to different persons.

**Clear intent to derive profits from operation of business**

Co-ownership does not of itself establish the existence of a partnership, although it is one of its essential elements. This is true even if profits are derived from the joint ownership. The profits must be derived from the operation of business by the members of the association and not merely from property ownership. The law does not imply a partnership between co-owners because of the fact that they develop or operate a common property, since they may rightfully do this by virtue of their respective titles. There must be a clear intent to form a partnership.

**Existence of fiduciary relationship**

Partners have a well-defined fiduciary relationship between them. Co-owners do not. Should there be dispute; the remedy of partners is an action for dissolution, termination and accounting. For co-owners it would be one, for instance, for non-performance of contract. People can become co-owners without a contract but they cannot become partners without one.

**Persons living together without benefit of marriage**

Property acquired governed by rules on co-ownership.

**Sharing of gross returns not even presumptive evidence of partnership**

The mere sharing of gross returns alone does not even constitute *prima facie* evidence of partnership, since in a partnership, the partners share profits after satisfying all of the partnership's liabilities.





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