Chapter 31: Formation and Internal Relations of General Partnerships

Formation of General Partnerships

NATURE OF PARTNERSHIP
Definition of Partnership an association of two or more persons to carry on as co-owners a business for profit
Entity Theory
• Partnership as Legal Entity an organization having a legal existence separate from that of its members; the Revised Act considers a partnership a legal entity for nearly all purposes
• Partnership as Legal Aggregate a group of individuals not having a legal existence separate from that of its members; the Revised Act considers a partnership a legal aggregate for few purposes

FORMATION OF A PARTNERSHIP
Partnership Agreement it is preferable, although not usually required, that the partners enter into a written partnership agreement
Tests of Partnership Existence the formation of a partnership requires all of the following:
• Association two or more persons with legal capacity who agree to become partners
• Business for profit
• Co-ownership includes sharing of profits and control of the business
Partnership Capital total money and property contributed by the partners for use by the partnership
Partnership Property sum of all of the partnership’s assets, including all property acquired by the partnership

Relationships among Partners

DUTIES AMONG PARTNERS
Fiduciary Duty duty of utmost loyalty, fairness, and good faith owed by partners to each other and to the partnership; includes duty not to appropriate partnership opportunities, not to compete, not to have conflicts of interest, and not to reveal confidential information
Duty of Obedience duty to act in accordance with the partnership agreement and any business decisions properly made by the partners
Duty of Care duty owed by partners to manage the partnership affairs without gross negligence, reckless conduct, intentional misconduct, or knowing violation of law

RIGHTS AMONG PARTNERS
Rights in Specific Partnership Property partners have the right to use and possess partnership property for partnership purposes
Transferable Interest in Partnership the partner’s share of the profits and losses of the partnership and the partner’s right to receive distributions
• Assignability a partner may sell or assign his transferable interest in the partnership; the new owner becomes entitled to the assigning partner’s right to receive distributions but does not become a partner
• Creditor’s Rights a partner’s transferable interest is subject to the claims of creditors, who may obtain a charging order (judicial lien) against the partner’s transferable interest
Distributions transfer of partnership property from the partnership to a partner
• Profits each partner is entitled to an equal share of the profits unless otherwise agreed
• Capital a partner does not have a right to receive a distribution of the capital contributions in his account before his withdrawal or the liquidation of the partnership
• Indemnification if a partner makes an advance (loan) to the firm, he is entitled to repayment of the advance plus interest; a partner is entitled to reimbursement for payments made and indemnification for liabilities incurred by the partner in the ordinary course of the business
• Compensation unless otherwise agreed, no partner is entitled to payment for services rendered to the partnership
Management each partner has equal rights in management of the partnership unless otherwise agreed
Choice of Associates under the doctrine of delectus personae, no person can become a member of a partnership without the consent of all of the partners
Enforcement Rights
• **Information** each partner has the right (1) *without demand*, to any information concerning the partnership and reasonably required for the proper exercise of the partner’s rights and duties and (2) *on demand*, to any other information concerning the partnership

• **Legal Actions** a partner may maintain a direct suit against the partnership or another partner for legal or equitable relief to enforce the partner’s rights; the partnership itself may maintain an action against a partner for any breach of the partnership agreement or for the violation of any duty owed to the partnership