Chapter 32: Operation and Dissolution of General Partnerships

Relationship of Partnership and Partners with Third Parties

CONTRACTS OF PARTNERSHIP
Partners’ Liability
• **Personal Liability** if the partnership is contractually bound, each partner has joint and several unlimited personal liability
• **Joint and Several Liability** a creditor may sue the partners jointly as a group or separately as individuals

Authority to Bind Partnership a partner who has actual authority (express or implied) or apparent authority may bind the partnership
• **Actual Express Authority** authority set forth in the partnership agreement, in additional agreements among the partners, or in decisions made by a majority of the partners regarding the ordinary business of the partnership
• **Actual Implied Authority** authority that is reasonably deduced from the nature of the partnership, the terms of the partnership agreement, or the relations of the partners
• **Apparent Authority** an act of a partner for apparently carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership, so long as that third person has no knowledge or notice of the lack of actual authority

Partnership by Estoppel imposes partnership duties and liabilities on a nonpartner who has either represented himself or consented to be represented as a partner

TORTS AND CRIMES OF PARTNERSHIP
Torts the partnership is liable for loss or injury caused by any wrongful act or omission or other actionable conduct of any partner while acting within the ordinary course of the business or with the authority of her copartners; the partners are jointly and severally liable
Breach of Trust the partnership is liable if a partner in the course of the partnership’s business or while acting with authority of the partnership breaches a trust by misapplying money or property entrusted by a third person; the partners are jointly and severally liable
Crimes a partner is not criminally liable for the crimes of her partners unless she authorized or participated in them

NOTICE TO A PARTNER
Binds Partnership a partnership is bound by a partner’s knowledge, notice, or receipt of a notification of a fact relating to the partnership
Notice a person has notice of a fact if the person (1) knows of it, (2) has received a notification of it, or (3) has reason to know it exists from all of the facts known to the person at the time in question

LIABILITY OF INCOMING PARTNER
Antecedent Debts the liability of an incoming partner for antecedent debts of the partnership is limited to her capital contribution
Subsequent Debts the liability of an incoming partner for subsequent debts of the partnership is unlimited

Dissociation and Dissolution of General Partnerships under RUPA

DISSOCIATION
Definition of Dissociation change in the relation of partners caused by any partner’s ceasing to be associated in carrying on of the business
• **Term Partnership** partnership for a specific term or particular undertaking
• **Partnership at Will** partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking
Wrongful Dissociation a dissociation that breaches an express provision of the partnership agreement or in a term partnership if before the expiration of the term or the completion of the undertaking (1) the partner voluntarily withdraws by express will, (2) the partner is judicially expelled for misconduct, (3) the partner becomes a debtor in bankruptcy, or (4) the partner is an entity (other than a trust or estate) and is expelled or otherwise dissociated because its dissolution or termination was willful
Rightful Dissociation all other dissociations are rightful including the death of a partner in any partnership and
the withdrawal of a partner in a partnership at will

**Effect of Dissociation** terminates dissociating partner’s right to participate in the management of the partnership business and duties to partnership

**DISSOLUTION**

**Causes of Dissolution**

- **Dissolution by Act of the Partners** partnership at will: withdrawal of a partner; term partnership: (1) the term ends, (2) all partners expressly agree to dissolve, or (3) a partner’s dissociation is caused by a partner’s death or incapacity, bankruptcy or similar financial impairment, or wrongful dissociation if within ninety days after dissociation at least half of the remaining partners express their will to wind up the partnership business; any partnership: an event occurs that was specified in the partnership agreement as resulting in dissolution
- **Dissolution by Operation of Law** a partnership is dissolved by operation of law upon the subsequent illegality of the partnership business
- **Dissolution by Court Order** a court will order dissolution of a partnership under certain conditions

**Effects of Dissolution** upon dissolution a partnership is not terminated but continues until the winding up is completed

- **Authority** a partner’s actual authority to act for the partnership terminates, except so far as may be appropriate to wind up partnership affairs; apparent authority continues unless notice of the dissolution is given to a third party
- **Liability** dissolution does not in itself discharge the existing liability of any partner; partners are liable to the other partners for their share of partnership liabilities incurred after dissolution

**Winding Up** completing unfinished business, collecting debts, and distributing assets to creditors and partners; also called liquidation

- **Winding Up Required** A dissolved partnership must be wound up and terminated when the winding up of its business is completed unless all of the partners, including any rightfully dissociating partner, waive the right to have the partnership’s business wound up and the partnership terminated
- **Participation in Winding Up** any partner who has not wrongfully dissociated may participate in winding up the partnership’s business
- **Distribution of Assets** the assets of the partnership include all required contributions of partners; the liabilities of a partnership are to be paid out of partnership assets in the following order: (1) amounts owing to nonpartner and partner creditors and (2) amounts owing to partners on their partners’ accounts
- **Partnership Creditors** are entitled to be first satisfied out of partnership assets
- **Nonpartnership Creditors** share on equal footing with unsatisfied partnership creditors in the individually owned assets of their respective debtor-partners

**DISSOCIATION WITHOUT DISSOLUTION**

**Dissociations Not Causing Dissolution**

- **Partnership at Will** a partner’s death, bankruptcy, or incapacity; the expulsion of a partner; or the termination of an entity-partner results in a dissociation of that partner but does not result in a dissolution
- **Term Partnership** if within ninety days after any of following causes of dissolution occur, fewer than half of the remaining partners express their will to wind up the partnership business, then the partnership will not dissolve: a partner’s dissociation by death, bankruptcy, or incapacity; the distribution by a trust-partner of its entire partnership interest; the termination of an entity-partner; or a partner’s wrongful dissociation

**Continuation after Dissociation** the remaining partners have the right to continue the partnership with a mandatory buyout of the dissociating partner; the creditors of the partnership have claims against the continued partnership

**Dissociated Partner’s Power to Bind the Partnership** a dissociated partner’s actual authority to act for the partnership terminates; apparent authority continues for two years unless notice of the dissolution is given to a third party

**Dissociated Partner’s Liability to Third Persons** a partner’s dissociation does not of itself discharge the partner’s liability for a partnership obligation incurred before dissociation; a dissociated partner is liable for a partnership obligation incurred within two years after a partner dissociates unless notice of the dissolution is given to a third party