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Partnership

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1. Jones and Smith are partners in the Jones-Smith Co. The partnership purchases a lot in Roanoke upon which it conducts its business. Subsequently the partnership dissolves and Smith is found to have drawn $500 more out of the firm than Jones. Smith thereupon verbally agrees to transfer his one-half interest in the property to Jones in consideration of and Jones agrees to take it over in satisfaction of the debt. Brown, a creditor of Smith, obtains a judgment against Smith, and institutes a suit to subject Smith's one-half interest in the property to the lien of the judgment. What are the rights as between Brown and Jones? Give reason.

Jones ranks first. Partnership property is first used to pay the debts of the partnership. An individual creditor of Smith had a lien only on Smith's interest, i.e. the amount Smith is entitled to on a final accounting which, in our case is nothing. Note by V/50-40: the liabilities of the partnership rank as follows (0): Those owing to creditors other than partners (2) Those owing to partners other than for capital and profits (3) Those owing to partners in respect of capital (4) Those owing to partners in respect of profits.

2. A , B, C, D and E are partners. As such they owe Smith $10,000. Smith obtains judgment against them. A, B and C are solvent, and D and E are insolvent and the partnership has no assets. What can Smith do to collect his debt, and what are the rights of the partners among themselves.

Smith can levy on the private property of the solvent partners. If any partner is forced to pay more than his share he can in equity make the other solvent partners contribute their pro-rata share.

Note: Private creditors have a preference as to private assets. V/50-40: Where a partner has become bankrupt and his estate is insolvent the claims against his separate property shall rank in the following order: (1) Those owing to separate creditors (2) Those owing to partnership creditors (3) Those owing to partners by way of contribution.

3. Jones Brown and Charles Louis are partners in the merchandising business, under the firm name of Brown & Lewis. On June 1, 1916, William Harris is taken into the firm as a partner. What is his liability for the debts of the firm Brown & Lewis, existing prior to his entering the firm?

At common law none, but under the UPA V/50-17: A person admitted as a partner into an existing partnership is liable for all the obligations of the partnership arising before his admission as though he had been a partner when such obligations were incurred, except that this liability shall be satisfied only out of partnership property.

New partnership must sue the same.

4. Thomas Jackson is admitted to the above firm of Brown, Lewis & Harris, and in the partnership name they obtain judgment against him for the sum of $250. The judgment is rendered in favor of Brown, Lewis & Harris, and is docketed accordingly. Discuss its validity.

In partnership matters the partners, in the absence of statute (none in Va.) must sue and be sued in the partnership name, giving the Christian and surname of the individual partners comprising the firm. This defect should be taken advantage of by a plea in abatement. Hence objection comes too late after judgment where there has been an appearance to the writ. See B/41 (2nd Ed.)

5. Henry Jones agrees with his son, William, to furnish $1,000 to start him in business and son to be returned out of the profits at the rate of $250 a year without interest, and the business to be conducted under the name of Henry Jones & Son. (a) If the business proves a failure, is Henry Jones liable for the debts of Henry Jones & Son? (b) If the business proves a success, is Henry Jones entitled to any share of the profits over and above the return of his $1,000?

(a) Yes. By permitting his name to be used Henry Jones is at least a partner by estoppel. (b) No. The UPA defines a partnership as an association of two or more persons to carry on as co-owners a business for profit. Section 7(4) provides that 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 is to be drawn if such profits were received in payment as debt by instalments or otherwise (b) as wages of an employee or rent to a landlord—(a) as interest on a
loan, though the amount of payment vary with the profits of the business.

I am assuming that the son is sole manager of the business on his own account and that the firm was advanced solely to start the son in business for himself. If the facts showed that the father was regarded as a co-owner, then he would be a partner and entitled to the profits in the absence of any other agreement.

1. A and B form a partnership for the purchase and sale of real estate. Without the knowledge of B, A purchases a parcel of real estate in his own name using the money of the firm for the cash payment and giving the firm note for the deferred payment. (a) Can the seller hold the firm liable on the note, and reason? (b) What are B's rights in the premises?

(a) No. Since A took title in his own name the seller has notice that he is not authorized to pay his private debts with firm obligations. Further, this is a non-trading partnership. The one partner does not have implied authority to bind the firm. (b) B may force A to hold the land for the benefit of both A and B since the utmost good faith is required of the partners. A court of equity would force A to hold as constructive trustee and to convey to the firm (under UPA) or to convey a 1/2 interest to B. Or, could B force A to personally account for the money taken.

7. What is meant by a dormant partner; and how far, if at all, is he liable for the partnership debts?

"A partner may be unknown or concealed and yet active, in the management of the business; or he may be both concealed and passive as to the conduct of the business. In the former case he is said to be a secret partner, and in the latter case he is called a silent or dormant partner." See §5-1. Dormant partners are fully liable as undisclosed principals.

8. A employs B to run his mill for him, agreeing to pay him one-third of the profits for his services. Is this a partnership or a hiring?

A hiring on the bare facts stated. See answer to 5(b), especially (b) of section 7(4) of the UPA.

9. When is real estate held by partners treated as personalty?

Virginia follows the doctrine of cut and cut conversion, so that realty acquired by a partnership is regarded as personalty upon dissolution of the firm. In some other states it is treated as personalty only to extent necessary to pay partnership debts.

It follows from the Virginia rule that there cannot be donor or curtesy in real estate held by the partnership and the UPA expressly so provides.

10. A and B are partners, but as such are heavily indebted. C buys out A's interest in firm and then forms a new partnership with B. Is C liable for the partnership debts of the old firm composed of A and B?

C is an incoming partner, and A an outgoing one. Hence C would not be personally liable unless he assumed the debts but under UPA §17 he would be liable to the extent of his assets in the partnership. The purpose of this provision is to enable the creditors of the old firm more effectually to secure payment out of its assets notwithstanding their transfer to the succeeding firm.

11. C and F agree to form a partnership to conduct the business of wholesale grocers under the style of CAT; G goes to the bank and informs the cashier that he and T propose to form a partnership and that he wishes to borrow $5,000 to pay his part of the input of the capital of the firm; he does not inform the cashier that F is to be a partner; C makes his notes for $5,000 payable to T, and T endorses it; the note is discounted and proceeds placed to credit of C; subsequently the partnership is formed, and the proceeds of the note are checked out by C and placed to the credit of firm, under the style of CAT. T dies, and the firm is dissolved, and C sells out his interest to F; C's note to the bank not being paid, the bank sues F as a dormant partner in the firm of CAT to recover amount of note. Is F liable? If liable, why? If not liable, why? F is not liable. It is true that this is a trading partnership but the note was not given nor purported to be given as a partnership note. C borrowed the money on his own personal account so that he could pay $5,000 into the partnership. He gave as collateral T's endorsements which did not purport to be a partnership note but a means of giving the bank T's personal liability. These transactions
took place before partnership business actually started, so that F cannot be held liable on the theory that these were partnership obligations.

14. What is the test of one partner's authority to bind the partnership?

The general test is whether such an act is such a one as would be customary for such a firm to do in the ordinary course of its business.

15. There was a partnership for buying and selling horses. One of the two partners sold two of the horses to his individual creditor in satisfaction of a debt, the creditor having no notice that the partner from whom he bought was selling firm property. What title, if any, did the purchaser acquire?

UPA #25 defines a partner's title as follows: (1) A partner is a co-owner with his partners of specific partnership property holding as a tenant in partnership. (2) The incidents of this tenancy are such that:—(b) a partner's right in specific partnership property is not assignable except in connection with the assignment of the rights of all the partners in the same property. Thus, unless the other partners are estopped the purchaser acquires no title since horses are not negotiable and there was no apparent authority to bind the partnership.

16. A, B and C are partners, trading as A, B & Co. The partners owe D $5,000, evidenced by the firm's note. A, with his personal funds, buys the note of D for $2,000, and as assignee and holder of the note then seeks by proper proceedings to collect its face value. What is measure of the firm's liability on the note?

Only $2,000 as an agent cannot make a private profit at the expense of his principal in regard to the subject matter of the agency. The contract of partnership is one of the utmost good faith.

17. If A in the case last stated instituted an action at law against his co-partners what defense would you interpose?

The defense that one partner cannot sue the firm in an action at law arising out of a partnership transaction. Reasons: (1) A man cannot be both plaintiff and defendant in the same action for in such a case he can manipulate the suit to his own ends. (2) While the firm may owe A $2,000, A may owe the firm either more or less. Only a court of equity has the necessary machinery to determine the balances among partners, and to properly adjust these accounts.

18. A partnership composed of A and B, sold their firm assets to C, who assumes as part of the consideration to pay the firm debts. The debts become due and C fails and refuses to pay the same. (a) What are the rights and remedies of the partners A and B, as against C? (b) What are the rights of the partnership creditors against either or both A and B, and C?

(a) C has broken his contract and A and B may recover whatever damages they have suffered as a result. If A and B were forced to pay them the amount so paid would be the damages. (b) As to A and B, they are still liable as no one can evade the payment of his debts by getting someone else to assume them. As to C the creditors would be regarded as third party beneficiaries and as such could maintain an action against C.

19. A and B were partners in a drugstore. A dies, and his personal representative brought suit against B, and in the bill filed asked for a dissolution of the partnership, the appointment of a receiver to take charge of the business, pay the debts and wind it up. B's attorney appeared and demurred to the bill. What should be the ruling of the court on the demurrer and why?

The demurrer should be sustained. Death dissolved the partnership. The surviving partner is given the right to wind up the business, so unless some good reason is alleged why B should not act in that capacity, the bill does not state any ground for the appointment of a receiver.

20. A and B jointly purchase a tract of land under an agreement to hold it for a certain time, sell it and divide the proceeds. Is this a partnership?

Probably not. One single adventure in real estate would hardly constitute the "carrying on of a business as co-owners for profit." The partners are probably not mutual agents on the facts as stated, and if not, they did not intend to form
A court order will be granted for the transfer of the partnership assets to the successful party. The assets will be distributed among the partners in proportion to their shares in the profits of the business. Each partner will be entitled to receive their share of the profits. The partnership assets, including all property and debts, will be divided among the partners. The capital contributed by A and B will be returned to them in full. The partnership business will continue to operate under the same name and with the same premises. The partnership agreement will be terminated upon the payment of the partnership's share of the profits. The partnership will be dissolved and all business transactions will cease. The partnership will be liquidated and the surplus, if any, will be distributed among the partners in proportion to their shares in the profits. The partnership will be dissolved and all business transactions will cease. The partnership will be liquidated and the surplus, if any, will be distributed among the partners in proportion to their shares in the profits. The partnership will be dissolved and all business transactions will cease. The partnership will be liquidated and the surplus, if any, will be distributed among the partners in proportion to their shares in the profits.
PARTNERSHIP (cont.)

25. How are contracts between a surviving partner and the representative of a deceased partner, with respect to the partnership estate, regarded? How when the transaction involves the purchase by the surviving partner of interest of the deceased partner? They are regarded as prima facie fraudulent, because the surviving partner is a fiduciary and the burden is upon the fiduciary to show that the agreement was made after full disclosure, and for an adequate consideration. Redley states the rule as follows, "If he acts with a high degree of good faith, which is required both by the former partnership relationship and by the fiduciary relationship to the estate of the deceased partner which he occupies, the surviving partner may purchase the interest of the deceased partner" citing 97 Va. 234, 8635.

26. What notices must be given by a partner after dissolution of firm in order to avoid future liability for contracts of co-partner? Suppose after dissolution one partner signs notes in partnership name, what is liability of co-partner on notes thus signed, if they were given in renewal of notes made while partnership was in existence?

First part—Actual notice must be given to all those who have extended credit to the firm, and a general notice must be given to the general public—usually by publication in a newspaper. Second part #425, "But except for the closing up or completion of old transactions the authority of each partner after dissolution is ended. He cannot create new obligations, or vary the character, form, or obligation of those already existing. Hence he cannot, after dissolution, bind his partners by making, accepting, indorsing or renewing negotiable paper—provided, of course, in all cases, that due notice of the dissolution had been given."


Prior to this recent case, if people shared profits, they were partners as a matter of law. The facts of the case are: The firm of Smith & Son, becoming financially embarrassed, turned their property over to trustees appointed by their creditors. The trustees were to carry on the business under the name of "The Stanton Iron Company", and divide the net income, which was always to be considered the property of Smith & Son, among the creditors until their claims were paid, and then the property was to be restored to Smith & Son. Nickel sold goods to the trustees, and, not being paid, sued the creditors as partners.

Held: Not liable. Sharing of profits is not nor as a partnership though strong evidence thereof. The chief indicia of partnership are mutual agency and common ownership. The creditors in this case are not mutual agents and the business does not belong to them. Smith & Son have merely mortgaged the profits to pay their own bills.


A bought a race horse. He sold a one-third interest in the horse to B who was a trainer. B was to be allowed 35 shillings per week for the care of the horse. A was to pay the expenses of transportation and entries fees for the races. The winnings, if any, were to be divided equally. The horse never won anything and B sued A for 150 pounds in an action at law. Defense was that partnerships are wound up in equity.

Held: No partnership. Here there is only a contract between co-owners. Co-ownership does not constitute partnership. If two people own a horse, and it is agreed that one shall manage the horse, make repairs, secure a tenant, and divide the net profit there is no partnership. The parties are not mutual agents but merely co-owners.


Q went to C and told him he had contracts for about two carloads of hogs for the Pittsburg market, and that he needed $2500 to carry the deal, that if C would advance that sum Q would stand any loss, would give C half the profits, and that C could have the hogs as security for the advance. C furnished the money. Unknown to C, Q bought some of the hogs from P on credit. The undertaking was not successful and Q reimbursed C but failed to pay P who sued Q and C as partners. What judgment as to C?
A firm is giving a pension to its employees, as the situation clearly shows. It has not been decided yet who will be paid this pension. There is no voice from the employees on this matter, so the management feels that there are no objections.
Note: A revised March 1957

creditors on individual property; saving the rights of lien or secured creditors as heretofore." (Underlining added.) A and B were partners. They owned land only as partners. A owned land in his individual capacity. X obtained a judgment against A and B as partners. Later Y obtained a judgment against A as an individual. Does X or Y have priority as to A's private land?

Held: X has priority. A partnership debt is also a partner's debt, and judgment liens have priority on the judgment-debtor's land in the order in which they are obtained. The underlined portions of the statute above set forth clearly preserve this principle.

Note well the converse situation. Suppose Y had gotten his judgment first would he have priority over X as to partnership lands? No, because Y's judgment is only a lien on A's interest in these lands as tenant by the partnership, and that interest is subject to the claims of partnership creditors.

35. A and B are partners, and are engaged in the retail dry goods business. M, in order to give his brother, D, the benefit of wholesale prices, gives him orders on Green & Co., wholesale grocersmen, for food supplies, signing the orders with the firm name. D fails to pay for the goods, and after the dissolution of the firm of M & H, Green & Co. seek to hold H liable on this account. H had no knowledge of the orders. Can they hold him liable?

Each partner in a trading partnership is a mutual agent for the others with respect to all matters in the usual scope of the partnership business. If purchasing feed supplies was in the scope of such business H would be liable, otherwise not. If M & H deliver by truck only, the purchase of feed would not be within the scope of the retail dry goods business and H would not be liable.

36. B and C are partners in the mercantile business, D's wife contracts a bill with them, in the sum of $200,000. D refuses to pay, and the partnership sues for the debt. C, individually, owes D $100,000, which D offers as a set-off to the amount due the partnership by him. Will he be allowed to do this?

No. Private debts cannot be set off against partnership debts because of the interest of other partners in the partnership debt. The other partner has no concern in the private transactions between a third party and another member of the firm.

37. Omitted because of change in law. Answered in Corporation materials.

38. A member of a partnership stealthily enters the store, takes valuable goods and converts them to his own use. What crime, if any, does he commit?

None, since he has as much right to the possession of the property as anyone else. Of course he may be held liable civilly for the account.

Note: I give the above answer because it is the stock answer, but it seems to me that under V#50-25 (which reads, "A partner—has an equal right with his partners to possess specific partnership property for partnership purposes; but he has no right to possess such property for any other purpose without the consent of his partners") the partner would be guilty of embezzlement which our statute makes larceny, just as any other embezzling agent, bailee, or trustee. No case has yet arisen in which this section was taken into consideration.

39. B and D are partners trading under the firm name of B & Co. The firm owns and occupies as its place of business certain real estate. B dies, and the partnership is thereby dissolved. Has B's widow a right to dower in said real estate?

No. Partnership real estate in equity is regarded as personal property. In some states the widow is entitled to dower in any surplus after creditors of the firm are paid, but in Virginia there seems to be an out and out conversion into personal property so that it is treated as personal property for all purposes. V#50-25 (e) reads, "A partner's right in specific partnership property is not subject to dower, curtesy, or allowances to widows, heirs or next of kin."

40. What is the extent of the liability, if any, of the estate of a deceased partner for the partnership debts?
After private debts are paid it is liable without limit for partnership debts since partnership debts were his debts. See V/50-36. If it pays more than the share of the deceased there is a right of contribution as against other partners.

A, B, C, and D are in the mercantile business, and as such they are the owners of the building in which the business is conducted. A dies. What becomes of the legal title to this real estate?

V/50-36 reads as follows: "All property originally brought into the partnership stock or subsequently acquired by purchase or otherwise, on account of the partnership is partnership property." V/50-37 reads: "Unless otherwise agreed the partners who have not wrongfully dissolved the partnership or the legal representative of the last surviving partner, not bankrupt, has the right to wind up the partnership affairs."

It would seem that these statutes place the legal title to partnership land in the surviving partners. At common law the heirs of the deceased partner and the other partners held the legal title as trustees for the surviving partners who of course in turn held for benefit of creditors and then of all partners.

2. Brown and Smith are partners. Brown individually owes Jones $1,000.00, and thereupon, without the consent or knowledge of Smith, draws the partnership’s check for that amount in payment of his debt. Shortly afterwards the partnership becomes insolvent, and Johnson, a creditor of the partnership, brings a suit in equity to compel Jones to restore the money. What are the rights of the parties?

Restitution should be ordered. One has no apparent authority to pay private debts with partnership funds.

43. "A", "B", and "C" are partners. "A" owes the partnership $500.00, and the partnership owes "C" $300.000. How do the partnership and "C" proceed to collect their respective debts?

Not at law, but only in equity. Reason given is that same parties cannot be both plaintiff and defendant. Moreover there are generally so many mutual debts and credits that it would be difficult for a jury to reach a correct conclusion.

44. W and S, as a partnership, jointly purchase, equip and operate a flour mill in Harrisonburg, Va. S dies, leaving a widow and four infant children. The mill is sold under a deed of trust, and, after payment of the debts secured, there is a surplus belonging to W and the estate of S. To whom is S’s portion of the surplus payable?

Since partnership land is treated as personally the surplus would be used to pay other debts and then the ½ belonging to S’s estate would be paid to his executor or administrator who would distribute it as any other personal property.

45. N and F, partners, are doing a grocery business in Richmond, and use an auto truck in making deliveries, which F drives. In going up Broad Street to deliver groceries, F negligently strikes A and does him injury to the extent of $2,000. Can the partnership liable for this injury?

Yes, as partners are mutual agents while acting within the scope of their authority, and the torts of the agent while so acting, are the torts of the firm.

46. A, B, C, and D form a partnership, in which A is the general, and B, C, and D are the limited partners. The certificate of partnership sets forth that the limited partners have contributed $2,000 each to the capital stock of the company. In fact, B and C have only contributed $500 each to the capital stock, which fact was known to D when he signed the certificate of partnership. E, relying on the statements contained in the certificate, extends credit to the company. The company fails, and E seeks to hold D personally liable for his debt. Can he do so?

If the certificate (required to be filed in the case of a limited partnership) contains a false statement, one who suffers loss by reliance on such statement may hold liable any party to the certificate who knew the statement to be false. V/50-49.

47. I and S are partners. I gives a bank a deed of trust on his individual property to secure a loan of $2,000 made to the firm. Later, the firm makes a general assignment for the benefit of its creditors, the debt to the bank is put in a preferred class, and is paid out of the firm assets. Creditors of the firm whose debts have not been paid, ask to be subrogated to the bank’s rights against I’s individual
9. L's individual creditors contest this claim. What should be the decision of the court?

See Lile-Notes on Equity Jurisprudence, p.192-193. "A case for marcelling occurs where one creditor has a lien, or other claim in rem against two funds, or estates belonging to the same person, and a subsequent lienor or purchaser has such recourse against, or claim to, but one of the same funds or estates. In such a case equity will either compel the doubly-secured creditor first to exhaust the singly-charged fund, or else, if he exhausts the doubly-charged fund, will subrogate the singly-secured creditor or purchaser to the other fund.--This is an equitable doctrine, and is never enforced to the injury of the doubly secured creditor, or of third persons with superior equities." In the instant case the private creditors of L have a superior equity as to his private assets so the court should decide against the contention of the firm creditors.

Dissolution Procedure

48. The members of a partnership desire to dissolve, but cannot agree on a division of the assets, which are not susceptible of division in kind. How can it be accomplished?

\#50-22 gives each partner a right to a formal account as to partnership affairs whenever circumstances render it just. \#50-40 tells how to distribute the assets. If the partners cannot agree among themselves a court of equity will wind up the business.

General & Special Notice of Dissolution

49. Notice of dissolution of a partnership by the retirement of one partner is published in a local newspaper. Is this sufficient to release the retiring partner as to further dealings with a prior regular customer having no actual knowledge of his retirement?

117 Va.193, 83 S.E.1074.--A retiring partner is not relieved from liability to a prior customer of the firm, continuing to deal with it, unless actual knowledge of the dissolution of the firm is brought home to him. A retiring partner must (in order to escape liability for future obligations of the firm) give general notice to general public and special notice to those who have extended credit to the firm while he was a member.

Distribution of Profits of Capital

50. S and P form a partnership for the purpose of conducting a grocery business. Of the capital invested in the partnership, S contributes $10,000, and P, $5,000. Both agree to give their entire time to the business, but nothing is said as to how the profits are to be divided. At the end of the first year the partners determine to dissolve, the partnership then having on hand $4,000 of undivided profits. How much would each partner be entitled to receive from the profits and capital, respectively.

After debts are paid, the partners are entitled to their capital. Since profits and losses are shared equally (unless there is an agreement to the contrary), S is entitled to $12,000 and P to $7,000. Note: If there had been a $4,000 loss, then S would have received $8,000 and P $3,000.

Bacon’s Store in His Property

51. B and C are equal partners, under the firm name of Bacon & Co., and, as such, held title to the store house in which the business is conducted, which had been purchased with partnership funds. B dies intestate and without issue. The partnership is solvent. What interest does B's widow take in said real estate?

None in the land as such. If the partnership is dissolved and the land sold, she takes a widow's share in the personal estate of her husband. See answer to 39, supra.
A and B agreed to buy the assets of a defunct bank, on their own account. A, however, organized a corporation which he controlled, and the corporation bought the property. What are B's rights?

A and B are engaged in a joint adventure which has been aptly defined as a "special combination of two or more persons, where in some specific venture a profit is sought without any partnership or corporate designation." Each joint adventurer is agent or trustee for the other and must act with the utmost good faith. A's corporation had notice of B's rights so a court of equity regardless of the statute of frauds or of the parol evidence rule will impress the property with a constructive trust to the extent of B's interest.

John Smith, Jr., carried on a printing establishment under the name of Smith & Son. John Smith, the father, had no connection with the business, and no knowledge that he was being held out as associated therewith other than the fact that he passed his son's place of business frequently and could have seen the sign "Smith & Son", which was conspicuously displayed. No one ever asked him whether he was a partner, and he made no representations to any one to that effect. James sold certain supplies to the establishment which were ordered and billed in the name of "Smith & Son". He dealt with John Smith, Jr., and made no inquiries as to who were the principals in the business. Is John Smith, Sr., liable as partner by estoppel for the goods sold?

John Smith, Sr., under these circumstances would be a partner by estoppel as to third persons who have extended credit to the business of "Smith and Son." Section 16 of the U.P.A. reads in part, "And if he has made such representation or consented to its being made in a public manner he is liable to such person, whether the representation has or has not been made or communicated to such person so giving credit by or with the knowledge of the apparent partner." See also 1 Rowley 101.
PARTNERSHIP Joint Tort 183 Va.117,123.

Houston and Strong, a partnership, were engaged in the business of selling grain. Strong left the conduct of the business to Houston. Houston induced Slick, a confidential clerk in the employ of Jackson, a competitor in the grain business, by a bribe to give him the name of Jackson's customers and certain other confidential and secret information in order to obtain an advantage in business for the firm of Houston & Strong. Strong knew nothing of Houston's actions in this respect and would not have approved of such actions. Jackson, upon discovering that his clerk had been disclosing this information, instituted action at law against Houston & Strong to recover damages due to the acts of Houston in bribing his clerk. Can he recover against Houston & Strong?

Houston's conduct was a tort committed within the scope of the partnership business for which all partners are jointly liable. Hence a recovery will be allowed against both Houston and Strong.

PARTNERSHIP Right, not share of profit

A leased property to B to be used as a motion picture house, B to pay A 25% of the gross admissions. A assigned his rights to X. B contends that there was a partnership and that A could not assign without B's permission. Is this correct?

No. A had no voice in the management. He did not share losses. The money paid to him is rent and not A's share of any profit.

Note:V.A.55; V. The U.P.A. reads in part, "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 as wages of an employee or rent to a landlord.

PARTNERSHIP—Contracts Right to Sue as Partner

A, B, and C were partners. A alone signed a contract with X. Can A, B, and C sue for breach of contract as partners?

Held yes under V.55-22. Since the contract was made in whole or in part for the benefit of A, B, and C, V.55-22 is applicable and the partners can sue as partners. Under the above statute the beneficiary can sue whether named in the contract or not.

PARTNERSHIP Notice of Dissolution 190 Va.86.

Mr. and Mrs. Hash conducted a furniture business as partners in Pearisburg, Va., until 1946. They then incorporated the business in West Virginia. The West Virginia certificate of incorporation stated that its chief works would be located in Pearisburg, Va., but no effort was made to domesticate the corporation in Virginia. The name of the business was not changed. The manager was not even notified. After the above mentioned incorporation the manager bought various items on credit from P. The Corporation failed to pay for them, and P sued Mr. and Mrs. Hash as partners. They filed a sworn plea denying that they were partners. Are they liable as partners?

Held: Yes. P had the burden of showing that the defendants were once partners, and then they had the burden of proving that a proper notice of dissolution had been given. P has carried his burden of proof, but defendants have not carried theirs. Defendants contention that no notice was necessary after the partnership ceased to exist is not sound. They are liable unless notice of the fact of dissolution is given to be general public by general advertisement and to the previous customers (creditors) of the firm by special communication. Since this was not done they are liable as partners.
Owen and Nee were partners in the automobile-repair business. Owen did the repair work and Nee kept the accounts. Nee put a building and tools and stock into the firm and took the firm's note for $6100 therefor. Owen put no capital into the firm. Over a period of 2½ years the total results were net profits $1519.64; Reserve for depreciation on tools, stock and building $2944.42. Nothing had been paid out of the reserve. At the close of the period the appraised value of the tools was $1500 and of the building $2235. Nee had never accounted to Owen over this period, but had lent him $363.55 personally. Nee continued the business on his own after dissolution of the firm. The trial court held that on a final accounting Nee owed Owen $2618.48. It reached this result by adding the value of the tools and stock($1500), depreciation reserve($2944.42), and net profits($1519.64) which is $5964.06. He then divided this amount by 2 which gives $2982.03 and subtracted therefrom Owen's debt to Nee of $363.55. What errors, if any, were committed? Held: First the trial court failed to charge Nee with $2235 for the building which was firm property. Secondly, the trial court failed to treat the $6100 note as a liability of the firm. Proper procedure was to find the net worth of the firm, divide by 2, subtract the $363.55 from the result and order Nee to pay Owen that sum.

Final result:

<table>
<thead>
<tr>
<th>Assets</th>
<th>Liabilities</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tools and Stock</td>
<td>Note due Nee</td>
</tr>
<tr>
<td>Building</td>
<td>Net Worth</td>
</tr>
<tr>
<td>Cash:</td>
<td></td>
</tr>
<tr>
<td>Undistributed net profits</td>
<td></td>
</tr>
<tr>
<td>in bank</td>
<td></td>
</tr>
<tr>
<td>Depreciation reserve in bank</td>
<td></td>
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<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>$1500.00</td>
<td>$6100.00</td>
</tr>
<tr>
<td>2235.00</td>
<td>2099.06</td>
</tr>
<tr>
<td>1519.64</td>
<td></td>
</tr>
<tr>
<td>2944.42</td>
<td></td>
</tr>
<tr>
<td>$8199.06</td>
<td></td>
</tr>
</tbody>
</table>

So Nee owes Owen one half of $2099.06 or $1049.53 less the $363.55 Owen owes him. Final decree entered by the Supreme Court of Appeals that Owen recover $685.98 from Nee.

PARTNERSHIP.  "Utmost Good Faith."  193 Va. 350

A, B, and C agreed to form a partnership for the purpose of operating a Lincoln-Mercury agency. It was understood that the consent of X who looked after the interests of the Lincoln-Mercury branch of the Ford business in this territory would first have to be obtained. A and B got the agency for themselves. Has C any rights against them? Held: That depends on whether A and B acted in the utmost good faith. In this case X refused his consent to the inclusion of C who was kept informed of all the negotiations. When C learned of what had happened he urged that A and B try once more, and added that if they were still unsuccessful in getting X's permission for all three "to count him out". Under the circumstances a condition precedent to the formation of the partnership failed to take place through no fault of A or B, and there is no evidence that they failed to exercise the utmost good faith, so they are not liable to C.
PARTNERSHIP Gift Taxes 1403. 193 Va. 721.

A mother made a gift of some $100,000 to a partnership composed of her two sons. Under W/54-219 gifts to a spouse or to lineal ascendants or descendants come within Class A, have a $5,000 exemption, and a lower tax rate than gifts in Class B or in Class C. Gifts to firms, corporations and to grandnephews and more distant relatives come in Class C, have a $1,000 exemption, and a higher tax rate.

Held: This is a gift to a firm. A partnership is a firm. It is immaterial that the members of the firm happen to be children as that is a mere co-incidence. Statute is plain. So the gift should be taxed at the higher rate and with the lower exemption.

Note: The amounts of the Federal and State Gift taxes should not be deducted from the $100,000 in figuring the State Tax, but the value of an annuity for life which the firm agreed to pay the mother should be deducted.

PARTNERSHIP

C established a retail jewelry business in Richmond in 1870. In 1907 he sold the business to his four sons who were all registered optometrists and who continued to operate the establishment as partners. There have been other changes from time to time before and after 1938 in the partners. W/54-388 which became effective in 1938 permitted establishments then employing optometrists to continue to do so, but prohibited such a practice in any other establishment. One of the members of the firm is a registered optometrist and wishes to practice optometry in connection with the jewelry business despite the fact that the partners now are not the same ones as they were before 1938. Can he legally do so?

Held: Yes. An "establishment" can be a corporation, a partnership, or an unincorporated association. It is still the same establishment now as it was before 1938. If it had been a corporation no one would claim otherwise. It was the intention of the legislature to use a word that would not discriminate against a partnership. It was also held that a partner could be "employed" as an optometrist by the firm of which he was a partner as that word in the statute merely has the meaning of "making use of."

PARTNERSHIP Authority to borowed money 197 Va. 334

A, B, and C formed a trading partnership known as Greenwood Sales and Service. A lent the money necessary for his share of the capital. After the firm started operations it was desirable to obtain additional capital. C approached P who agreed to lend the firm $6,000. She gave C a check payable to the order of the firm and C executed the firms note signing it as follows: "Greenwood Sales & Service by C, Partner. This $6,000 was for the exact amount due by C to A for the balance due from C to A. P was told it was a partnership obligation and knew nothing of any limitation on C's authority. C turned the check over to A and B who deposited it to the credit of the firm. After maturity of the note P sued A, B, and C. A and B claimed that C had merely borrowed the balance of the amount due by him to A on his own personal account and that A and B alone had authority to borrow money for the use of the firm.

Held: Judgment for P. This was a trading partnership, and the members thereof have apparent authority to borrow for the firm and to give the firm note as evidence of the loan. The fact that the check was made to the firm rather than to A or to C tends to discredit A's theory of the case, but even if A were right the firm would still be liable as long as P had no notice that C was not authorized to borrow, and reasonably believed she was lending to the firm rather than to C personally.
PARTNERSHIP Partnership by estoppel 1401.

H and W were husband and wife. She kept the accounts of H's contracting business, read blue prints to employees on occasion, and used the expression, "we" in a few business matters. All money was deposited in the bank in her name and she paid all bills consulting her husband with reference to unusual ones. All goods had been billed to H. H's creditors had never before sought to hold W as a partner.

Held: The above evidence is not sufficient to make her a partner by estoppel. In this case we have no clear evidence that she ever held herself out as a partner, or that plaintiff had any knowledge of such holding out even if she did. Everything done by W was consistent with her acting as his wife rather than as a partner.

PARTNERSHIP Statute of limitations as between partners 198 Va.416.

The partnership of A, B, and C was formed for the purpose of buying land, cutting timber and processing timber. It ceased its active operations in 1929. At that time it owed X $10,000. A and B paid this sum from their own sources. After 1929 A managed the winding up of the firm. He received various sums for a sale of an option and for some standing timber in 1946 and 1949. Taxes were paid annually by A.

W#8-13 (statute of limitations) reads in part, "If it be (an action) upon any other contract express or implied within three years, unless it be an action by one partner against his co-partner for a settlement of the partnership account *** in *** which cases the action may be brought until the expiration of five years from the cessation of the dealings in which they are interested together, but not after, ***". A wishes to collect C's portion. C claims that the statute has long since run as 1929 is when the firm ceased its activities.

Held: C is wrong. The partnership does not cease its dealings until its business is finally wound up so far as the running of the statute of limitations between the partners is concerned. It was also held that there was no laches in this case since it was good business to hold on to the properties as their value was rising and no partner was hurt by the delay. It was also held that A and B were entitled to interest since the amounts advanced by them were loans to the firm over and above the capital they had originally promised to contribute.

PARTNERSHIP Secured C, not partner 201 Va.496.

X went into the used car business. He rented a lot, took out the required licenses, employed all help, paid all bills, and made out his income taxes as if he were sole owner. The books showed only one capital account. However, over a period of six months D attended auctions with X. D supplied the cash needed to buy used cars and took a lien on the cars as security. He shared in the profits from the sale of cars he financed, but not from the profits made on other cars. P, a creditor of X, sued D as a partner.

Held: D is not a partner. He was not a co-owner carrying on a business for profit. He was merely a secured creditor. His share of the profits made from cars he financed was in lieu of interest on the money advanced. There was no mutual agency. There was no intent to form a partnership.
PARTNERSHIP

PARTNERSHIP at will

O owned a coal loading dock. He had leased this dock to A at a rental of $1040 per month. B and C claimed that they controlled a large local coal supply, so that A had the dock but no coal, and B and C had the coal but no dock. A, B and C then formed a partnership for the purpose of buying, selling and shipping coal. The written articles of partnership did not state any period for the duration of the partnership. As events turned out the partners, after initial success, were unable to find a market for the coal and each of the partners went about other affairs. Before O's lease to A expired, A succeeded in subleasing the dock at a profit, and A accounted for this profit to B and C. Upon the expiration of the original lease in 1959 O gave A a new lease, and A was able to make a substantial profit. B and C filed a bill in equity for an accounting of these new profits on the theory that one partner cannot acquire an interest in the partnership property adverse to the other partners, and, if he does, he must account for any profits as a constructive trustee.

Held: The above principle is correct, but has no application to the above facts. The partnership of A, B and C was a partnership at will. It terminated when its purpose came to an end and the partners abandoned the enterprise. The only asset was the unexpired lease and A has accounted for the profits made from it, and this asset became non-existent on its expiration. Hence A was a free agent and within his rights in negotiating personally for a renewal of the original lease.

It was also held that parol evidence was admissible to supplement the written articles of partnership as long as such evidence did not contradict them.

PARTNERSHIP—Partners or tenants in common?

A, B and C acquired a tract of land, drew up an agreement in which the word partnership was used eight times, agreed to create a subdivision out of the land, chose C to manage the project and actually shared profits and expenses. Taxes were treated as expenses of the project. A has been thrown into bankruptcy. If the above arrangement constitutes a partnership A's bankruptcy dissolves the partnership. The trial court held that A, B and C were tenants in common of the land.

Held: Error. The parties clearly intended a partnership. They intended to carry on a business for profit and were tenants by the partnership of the land. Hence A's bankruptcy requires that the partnership be dissolved so that A's trustee in bankruptcy may have the benefit of A's interest therein. V#50-31.