

Forming a Partnership

Defintion	An association of two or more legal persons who carry on a for profit business as co-owners.
Person	Anyone or anything that has a legal capacity to contract
Intent	Only need to intend to carry on as co-owners for profit
Co-own-ership	Presumption that people who share profits are partners
Sharing control	One person cannot have all of the control

Consequences of Forming a Partnership

Separate Legal Entity	partnership is distinct from each of the partners
Partne-rship Liability	Partners are personally liable for the partnerships obliga-tions
Entity-level taxation	Does not exist in a partne-rship
Partne-rship agreement	Law of partnership; does not need to be written, provision in a partnership agreement will typically govern over state law
Mandatory State Laws	Liability to third parties; cannot deny partners access to the books or records, cannot eliminate fiduciary duties

Internal Affairs

Fiduciary Duties	Every partner owes duty of loyalty and care
Duty of Loyalty	Partners must not compete with partnership business, advance an interest adverse to partnership, usurp a partne-rship opportunity, etc
Limitation on Duty of Loyalty	cannot eliminate but can limit as long as not manifestly unreasonable

Internal Affairs (cont)

Safe Harbor	If a partner makes full disclosure of all material facts, then a certain percentage of the other partners may authorize or ratify the transa-ction
Duty of Care	Partners must not engage in grossly negligent or reckless conduct, engage in intentional misconduct, engage in a knowing violation of the law
Timing of Duties	Duty of loyalty and care apply only to partners, not prospective partners or former partners

Profits and Losses

Division	Dictated by the agreement. Losses and profits need not be the same. If no agreement, profits divided evenly and losses follow profits
Distri-bution	Default- partners do not have the right to demand distributions. Can allow in partnership agreement
Transfer of Partne-rship Interests	Default- partner sold not have a right to transfer interest. Partners may agree to require a majority vote. In past, conveying interest would dissolve partne-rship
New Partner	Default- All existing partners must consent to the new partner

Managing/ Governing Relationships

Default Rule	Every partner has an equal rights in management and control of the partnership. Can be changed by agreement (often to reflect capital contri-bution)
Ordinary Business Matters	Requires vote of the majority of partners
Extra-ordinary Business	Requires vote of all the partners
Quorums	No default rule regarding partnernship quorums for partne-rship voting
Access to the Records	Partners and agents must be provided access to the records; CANNOT be abridged by partnership agreement

Dissociation

Dissoc-iation	when a partner ceases to be associated with the partnership
Voluntary	Partner may give notice to the partnership that the partner wants to withdraw
Involu-ntary	Event triggered in the partne-rship agreement; expelled pursuant to partnership agreement; unlawful to carry on business with that partner; court order; partner goes bankrupt; partner dies; partner becomes incapacitated; one of the entities in the partnership dissolves



Dissociation (cont)

Consequences Partnership does not necessarily dissolve; former partner has no right to participate in management and no longer has duties; if partnership continues must buy out the dissociated partner's interest

Wrongful Dissociation the wrongfully dissociated partner may not be entitled to payment of the buyout price until the expiration of the term or completion of the undertaking of the partnership. Because the partner will also be liable for damages caused by the wrongful dissociation, if the partner's liability meets or exceeds the buyout value, the partner may not be entitled to receive any buyout price.

Liabilities of Partnership

Agency Every partner is an agent of the partnership

Contract Liability Partners need authority

Express Authority comes from the partnership agreement, statement of authority filing, or ad hoc authorization by the partners at a meeting

Implied Authority Exists based on partner's reasonable belief that an action is necessary to carry out express authority

Liabilities of Partnership (cont)

Apparent Authority Partnership may be bound based on the partner acting in the ordinary course of dealings; based on interactions between partnership and third-parties

Tort Liability A partnership is liable for torts that are committed by partners acting within the scope of their partnership

Consequences of the Flow of Liability Partners are personally liable for the debts or obligations of the partnership; joint and several liability; partnership creditor must exhaust the partnership's funds before going after the partners' personal assets; incoming partner not liable for prior obligations; outgoing partner may be liable for obligation that occurred after dissociation

Terminating a Partnership

Dissolution Can be brought around by partnership or operation of law; triggered by the occurrence of an event

Terminating a Partnership (cont)

Partnership at Will Open ended partnership with no fixed term tied to time period or undertaking; generally, dissolved when a partner chooses to dissociate

Partnership for a Term of Undertaking Partnership may be dissolved when the term ends or when the undertaking is completed

Three ways to dissolve partnership Any dissolving event set forth in partnership agreement; any event making it unlawful to continue if not cured within 90 days; judicial determination

Winding Up dispose of and transfer partnership property, and discharge partnership liabilities; person can also preserve partnership business to maximize value as a going concern

Who may wind up Any partner who has not wrongfully dissociated, legal representative of the last surviving partner. May seek judicial supervision of winding up



Terminating a Partnership (cont)

Statement of Dissolution	Filing that gives notice to third parties that the partnership has been dissolved after 90 days. Limits the partners apparent authority and liability
Priority of Distribution	Creditors first and then partners

Limited Liability Partnerships

Definition	Partnership in which a partner's personal liability is eliminated; must file with the state
Formation	To transform a general partnership into an LLP, you must vote to authorize transformation
Name	Must end with either: Registered Limited Liability Partnership (RLLP) or Limited Liability Partnership (LLP)
Liabilities	Limited partners are not personally liable; limited partners are personally responsible for their own personal misconduct or negligence
Terminating LLP Status	Partners can voluntarily transform and cancel LLP status; government can revoke LLP status

Limited Partnerships

Definition	A partnership formed by two or more persons that has at least one general partner and one limited partner
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Limited Partnerships (cont)

Limited partners	Have limited liability (unless serves as general partner or participates in partnership); may be admitted by agreement of all partners; default- don't vote; right to records
Things a limited partner can do without running business	Be an officer, director, or shareholder; consult general partner or partnership affairs; act as surety of the partnership without request to attend meetings; wind up the partnership; propose or approve of partnership matters
General Partners	Have personal liability; admitted upon consent of all partners; same rights as general partnership
Termination of general partner status	voluntarily withdrawal; removal if tries to assign interest; goes bankrupt or becomes insolvent; death or incapacitation; business-entity partner is terminated