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-ownership	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
Partnership Liability	Partners are personally liable for the partnerships obligations
Entity-level taxation	Does not exist in a partnership
Partnership 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 partnership 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 transaction
Duty of Care	Partnersmust 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
Distribution	Default- patterns do not have the right to demand distributions. Can allow in partnership agreement
Transfer of Partnership 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 partnership
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 contribution)
Ordinary Business Matters	Requires vote of the majority of partners
Extraordinary Business	Requires vote of all the partners
Quorums	No default rule regarding parternship quorums for partnership voting
Access to the Records	Partners and agents must be provided access to the records; CANNOT be abridged by partnership agreement

Dissociation

Dissociation	when a partner ceases to be associated with the partnership
Voluntary	Partner may give notice to the partnership that the partner wants to withdraw
Involuntary	Event triggered in the partnership 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

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Dissociation (cont)

Conseq-uences	Partnership does not necess-arily 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 Dissoc-iation	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 author-ization 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
Conseq-uences 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

Dissol ution	Can be brought around by partne-rship or operation of law; triggered by the occurrence of an event

Terminating a Partnership (cont)

Partne-rship at Will	Open ended partnership with no fixed term tied to time period or undertaking; generally, dissolved when a partner chooses to dissociate
Partne-rship for a Term of Undert-aking	Partnership may be dissolved when the term ends or when the undertaking is completed
Three ways to dissolve partne-rship	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 partne-rship 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

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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 transforma 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

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 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

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