

to exceed \$10,000, except that
mutants as defined in Title 12,
shall be assessed civil penalties
-Added June 8, 1990, No. 5507,

inter" for "section 408" in subsec. (f) to
1 of Title 1.

Commissioner has taken action of
administration or enforcement of
an appeal with the Territorial
5) days after receipt of a copy
after service of notice thereof,
a notice of appeal on the
provided, that during the fifteen
e shown extend the time for
days. In the notice of appeal
Commissioner appealed from
ing the points of law and facts
appellant or his attorney shall
original notice of appeal with
the service of the notice and
the appeal. The service of the
orcement of the Commissioner
so ordered by the Court,
red of the Virgin Islands
proceeding pertaining to

Commissioner are considered
findings were not supported
Commissioner or his designee
67, § 2, Sess. L. 1990, p. 1

ate" preceding "at the hearing"
of Title 1.

TITLE TWENTY-SIX

Partnerships

CHAPTER ANALYSIS	SECTION
1. Partnership	1
3. Limited Partnership	201

Chapter 1. Partnership

Subchapter I. Preliminary Provisions

SECTION ANALYSIS

- 1. Definition of terms
- 2. Interpretation of knowledge and notice
- 3. Rules of construction
- 4. Rules for cases not provided for

Subchapter II. Nature of Partnership

- 21. Partnership defined
- 22. Rules for determining the existence of a partnership
- 23. Partnership property

Subchapter III. Relations of Partners to Persons Dealing With the Partnership

- 41. Partner agent of partnership as to partnership business
- 42. Conveyance of real property of the partnership
- 43. Partnership bound by admission of partner
- 44. Partnership charged with knowledge of or notice to partner
- 45. Partnership bound by partner's wrongful act
- 46. Partnership bound by partner's breach of trust
- 47. Nature of partner's liability
- 48. Partner by estoppel
- 49. Liability of incoming partner

Subchapter IV. Relation of Partners to One Another

- 51. Rules determining rights and duties of partners
- 52. Partnership books
- 53. Duty of partners to render information

- 74. Partner accountable as a fiduciary
- 75. Right to an account
- 76. Continuation of partnership beyond fixed term

Subchapter V. Property Rights of a Partner

- 81. Extent of property rights of a partner
- 82. Nature of a partner's right in specific partnership property
- 83. Nature of partner's interest in the partnership
- 84. Assignment of partner's interest
- 85. Partner's interest subject to charging order

Subchapter VI. Dissolution and Winding Up

- 21. Dissolution defined
- 22. Partnership not terminated by dissolution
- 23. Causes of dissolution
- 24. Dissolution by decree of court
- 25. General effect of dissolution on authority of partner
- 26. Right of partner to contribution from co-partners after dissolution
- 27. Power of partner to bind partnership to third persons after dissolution
- 28. Effect of dissolution on partner's existing liability
- 29. Right to wind up
- 30. Rights of partners to application of partnership property
- 31. Rights where partnership is dissolved for fraud or misrepresentation
- 32. Rules for distribution
- 33. Liability of persons continuing the business in certain cases
- 34. Rights of retiring or estate of deceased partner when the business is continued
- 35. Accrual of actions

HISTORY

ision notes. Chapter is based on the 1921 Codes, Title II, ch. 25, which, in turn, was 1 from the Uniform Partnership Act. Chapter, as revised, conforms with the uniform cept in numbering and lettering of sections and subdivisions of sections. Such ring and lettering was changed to conform with the method adopted in this Code. 1 relating to the effective date of the Act and section repealing prior law have been 1.

rt title. Section 1 of chapter 25, Title II, of the 1921 Codes (Section 1 of the Uniform rship Act) provided that the Act might be cited as the "Uniform Partnership Act".

CROSS REFERENCES

Administration of partnership property following death of partner, see section 271 et seq. of Title 15.

Registration of trade names, see section 1201 et seq. of Title 11.

Subchapter I. Preliminary Provisions

ANNOTATIONS

Cited. Cited in *Llanos v. Davis Beach Co.*, D.C.VI. 1991, 26 VI. 367.

§ 1. Definition of terms

In this chapter—

"bankrupt" includes bankrupt under the Federal Bankruptcy Act or insolvent under any state or other insolvent act;

"business" includes every trade, occupation, or profession;

"conveyance" includes every assignment, lease, mortgage, or encumbrance;

"court" includes every court and judge having jurisdiction in the case;

"person" includes individuals, partnerships, corporations, and other associations; and

"real property" includes land and any interest or estate in land.

§ 2. Interpretation of knowledge and notice

(a) A person has "knowledge" of a fact within the meaning of this chapter not only when he has actual knowledge thereof, but also when he has knowledge of such other facts as in the circumstances shows bad faith.

(b) A person has "notice" of a fact within the meaning of this chapter when the person who claims the benefit of the notice—

(1) states the fact to such person, or;

(2) delivers through the mail, or by other means of communication, a written statement of the fact to such person or to a proper person at his place of business or residence.

§ 3. Rules of construction

(a) The rule that statutes in derogation of the common law are to be strictly construed shall have no application of this chapter.

(b) The law of estoppel shall apply under this chapter.

(c) The law of agency shall apply under this chapter.

(d) This chapter shall be so interpreted and construed as to effect its general purpose to make uniform the law of those jurisdictions which enact it.

(e) This chapter shall not be construed so as to impair the obligations of any contract existing when this chapter goes into effect, nor to affect any

tion or proceedings begun or right accrued before this chapter takes effect.

4. Rules for cases not provided for

In any case not provided for in this chapter the rules of law and equity, including the law merchant, shall govern.

Subchapter II. Nature of Partnership

21. Partnership defined

(a) A partnership is an association of two or more persons to carry on as co-owners a business for profit.

(b) But any association formed under any other statute of this territory, or any statute adopted by authority, other than the authority of this territory is not a partnership under this chapter, unless such association could have been a partnership in this territory prior to the adoption of this chapter; but this chapter shall apply to limited partnerships except insofar as chapter 3 of this title or another statute relating to such partnerships are consistent herewith.

ANNOTATIONS

1. **Generally.** Under Virgin Islands Uniform Partnership Act a partner is not regarded as an entity separate and apart from its members. *Virgin Islands Territorial Bd. of Realtors v. Wheatley*, D.C.VI. 1968, 6 VI. 185.

Under this section a partnership defined as an association of two or more persons to carry on as co-owners a business for profit; this was the concept at common law and the Uniform Partnership Act has not changed it in those states and territories which follow the common law. *Virgin Islands Territorial Bd. of Realtors v. Wheatley*, D.C.VI. 1968, 6 VI. 185.

A partnership is wholly different from a corporation, for a corporation is a legal entity which itself does business through its officers, employees and agents, whereas a partnership is simply an association for convenience of two or more individuals, the partners, who themselves conduct the business either individually and personally or through employees and agents. *Virgin Islands Territorial Bd. of Realtors v. Wheatley*, D.C.VI. 1968, 6 VI. 185.

Cited. Cited in *Lindquist v. Xerox Corp.*, D.C.VI. 1983, 20 VI. 227, 571 F. Supp. 470.

22. Rules for determining the existence of a partnership

In determining whether a partnership exists, these rules shall apply—

(1) except as provided by section 48 of this title, persons who are not partners as to each other are not partners as to third persons;

(2) joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not of itself establish a partnership, whether such co-owners do or do not share any profits made from the use of the property;

(3) the sharing of gross returns does not of itself establish a partnership, whether or not the persons sharing them have a joint or common right of interest in any property from which the returns are derived; and,

(4) 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 in payment—

(A) as a debt by installments or otherwise;

(B) as wages of an employee or rent to a landlord;

(C) as an annuity to a widow or representative of a deceased partner;

(D) as interest on a loan, though the amount of payment vary with the profits of the business; or

(E) as the consideration for the sale of the good-will of a business or other property by installments or otherwise.

§ 23. Partnership property

(a) All property originally brought into the partnership stock or subsequently acquired by purchase or otherwise, on account of the partnership, is partnership property.

(b) Unless the contrary intention appears, property acquired with partnership funds is partnership property.

(c) Any estate in real property may be acquired in the partnership name. Title so acquired can be conveyed only in the partnership name.

(d) A conveyance to a partnership in the partnership name, though without words of inheritance, passes the entire estate of the grantor unless a contrary intent appears.

Subchapter III. Relations of Partners to Persons Dealing With the Partnership

§ 41. Partner agent of partnership as to partnership business

(a) Every partner is an agent of the partnership for the purpose of its business, and the act of every partner, including the execution in the partnership name of any instrument, for apparently carrying on in the usual way the business of the partnership of which he is a member binds the partnership, unless the partner so acting has in fact no authority to act for the partnership, in the particular matter, and the person with whom he is dealing has knowledge of the fact that he has no such authority.

(b) An act of a partner which is not apparently for the carrying on of the business of the partnership in the usual way does not bind the partnership unless authorized by the other partners.

(c) Unless authorized by the other partners or unless they have abandoned the business, one or more but less than all the partners have no authority to—

(1) assign the partnership property in trust for creditors, or on the assignee's promise to pay the debts of the partnership;

- (2) dispose of the good-will of the business;
 - (3) do any other act which would make it impossible to carry on the ordinary business of the partnership;
 - (4) confess a judgment; or,
 - (5) submit a partnership claim or liability to arbitration or reference.
- No act of a partner in contravention of a restriction on his authority binds the partnership to persons having knowledge of the restriction.

2. Conveyance of real property of the partnership

Where title to real property is in the partnership name, any partner conveys title to such property by a conveyance executed in the partnership name; but the partnership may recover such property unless the partner's act binds the partnership under the provisions of subsection (a) of section 41 of this title, or unless such property has been conveyed by a grantee or a person claiming through such grantee to a holder for value without knowledge that the partner, in making the conveyance, has exceeded his authority.

Where title to real property is in the name of the partnership, a conveyance executed by a partner, in his own name, passes the equitable interest of the partnership, provided the act is one within the authority of the partner under the provisions of subsection (a) of section 41 of this title.

Where title to real property is in the name of one or more but not all partners, and the record does not disclose the right of the partnership, the partners in whose name the title stands may convey title to such property, but the partnership may recover such property if the partners' act does not bind the partnership under the provisions of subsection (a) of section 41 of this title, unless the purchaser or his assignee, is a holder for value, without knowledge.

Where the title to real property is in the name of one or more or all partners, or in a third person in trust for the partnership, a conveyance executed by a partner in the partnership name, or in his own name, passes the equitable interest of the partnership, provided the act is one within the authority of the partner under the provisions of subsection (a) of section 41 of this title.

Where the title to real property is in the names of all the partners a conveyance executed by all the partners passes all their rights in such property.

3. Partnership bound by admission of partner

An admission or representation made by any partner concerning partnership affairs within the scope of his authority as conferred by this title is evidence against the partnership.

§ 44. Partnership charged with knowledge of or notice to partner

Notice to any partner of any matter relating to partnership affairs, and the knowledge of the partner acting in the particular matter, acquired while a partner or then present to his mind, and the knowledge of any other partner who reasonably could and should have communicated it to the acting partner, operate as notice to or knowledge of the partnership, except in the case of a fraud on the partnership committed by or with the consent of that partner.

§ 45. Partnership bound by partner's wrongful act

Where, by any wrongful act or omission of any partner acting in the ordinary course of the business of the partnership, or with the authority of his co-partners, loss or injury is caused to any person, not being a partner in the partnership, or any penalty is incurred, the partnership is liable therefor to the same extent as the partner so acting or omitting to act.

§ 46. Partnership bound by partner's breach of trust

The partnership is bound to make good the loss—

- (1) where one partner acting within the scope of his apparent authority receives money or property of a third person and misapplies it; and
- (2) where the partnership in the course of its business receives money or property of a third person and the money or property so received is misapplied by any partner while it is in the custody of the partnership.

§ 47. Nature of partner's liability

All partners are liable—

- (1) jointly and severally for everything chargeable to the partnership under sections 45 and 46 of this title; and
- (2) jointly for all other debts and obligations of the partnership; but any partner may enter into a separate obligation to perform a partnership contract.

ANNOTATIONS

Cited. Cited in *Barclays Business Credit, Inc. v. Four Winds Plaza Partnership*, D.C.VI. 1996, 35 VI. —.

§ 48. Partner by estoppel

(a) When a person, by words spoken or written or by conduct, represents himself, or consents to another representing him to any one, as a partner in an existing partnership or with one or more persons not actual partners he is liable to any such person to whom such representation has been made, who has, on the faith of such representation, given credit to the actual or apparent partnership, and if he has made such representation or

nsented 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 making the representation or consenting to its being made.

(1) When a partnership liability results, he is liable as though he were an actual member of the partnership.

(2) When no partnership liability results, he is liable jointly with the other person, if any, so consenting to the contract or representation as to such liability, otherwise separately.

(b) When a person has been thus represented to be a partner in an existing partnership, or with one or more persons not actual partners, he is an agent of the persons consenting to such representation to bind them to the same extent and in the same manner as though he were a partner in fact, with respect to persons who rely upon the representation. Where all the members of the existing partnership consent to the representation, a partnership act or obligation results; but in all other cases it is the joint act or obligation of the person acting and the persons consenting to the representation.

49. Liability of incoming partner

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 his liability shall be satisfied only out of partnership property.

Subchapter IV. Relation of Partners to One Another

71. Rules determining rights and duties of partners

The rights and duties of the partners in relation to the partnership shall be determined, subject to any agreement between them, by the following rules—

(1) each partner shall be repaid his contributions, whether by way of capital or advances to the partnership property and share equally in the profits and surplus remaining after all liabilities, including those to partners, are satisfied; and must contribute towards the losses, whether of capital or otherwise, sustained by the partnership according to his share in the profits;

(2) the partnership must indemnify every partner in respect of payments made and personal liabilities reasonably incurred by him in the ordinary and proper conduct of its business or for the preservation of its business or property;

(3) a partner, who in aid of the partnership makes any payment or advance beyond the amount of capital which he agreed to contribute, shall be paid interest from the date of the payment or advance;

(4) a partner shall receive interest on the capital contributed by him only from the date when repayment should be made;

(5) all partners have equal rights in the management and conduct of the partnership business;

(6) no partner is entitled to remuneration for acting in the partnership business, except that a surviving partner is entitled to reasonable compensation for his services in winding up the partnership affairs;

(7) no person can become a member of a partnership without the consent of all the partners; and

(8) any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners; but no act in contravention of any agreement between the partners may be done rightfully without the consent of all the partners.

ANNOTATIONS

1. **Wages.** Partners who withdrew from partnership and brought action against others for wages due were not entitled to recover such wages on quantum meruit basis and other partners were not personally liable where partnership agreement provided that members of partnership should fix wages, but never did, and each paid himself what he considered himself entitled to and where there were no partnership profits. *Frett v. Benjamin*, (3d Cir. 1951), 2 VI. 516, 187 F.2d 898.

2. **Accounting.** Where partnership accounting was kept by unlettered workman and there was no wilful wrongdoing, or overreaching, or even negligence, strict rule of accounting was not applied and partner to blame for muddled accounts was not penalized by having discrepancies resolved against him. *Frett v. Benjamin*, (3d Cir. 1951), 2 VI. 516, 187 F.2d 898.

§ 72. Partnership books

The partnership books shall be kept, subject to any agreement between the partners, at the principal place of business of the partnership, and every partner shall at all times have access to and may inspect and copy any of them.

§ 73. Duty of partners to render information

Partners shall render on demand true and full information of all things affecting the partnership to any partner or the legal representative of any deceased partner or partner under legal disability.

§ 74. Partner accountable as a fiduciary

(a) Every partner must account to the partnership for any benefit, and hold as trustee for it any profits derived by him without the consent of the other partners from any transaction connected with the formation, conduct, or liquidation of the partnership or from any use by him of its property.

(b) This section applies also to the representatives of a deceased partner engaged in the liquidation of the affairs of the partnership as the personal representatives of the last surviving partner.

75. Right to an account

Any partner shall have the right to a formal account as to partnership affairs—

- (1) if he is wrongfully excluded from the partnership business or possession of its property by his co-partners;
- (2) if the right exists under the terms of any agreement;
- (3) as provided by section 74 of this title; or,
- (4) whenever other circumstances render it just and reasonable.

ANNOTATIONS

Cited. Cited in *Fountain Valley Corp. v. Wells*, D.C.VI. 1983, 19 VI. 607, 98 F.R.D. 679.

76. Continuation of partnership beyond fixed term

(a) When a partnership for a fixed term or particular undertaking is continued after the termination of such term or particular undertaking without any express agreement, the rights and duties of the partners remain the same as they were at such termination, so far as is consistent with a partnership at will.

(b) A continuation of the business by the partners or such of them as habitually acted herein during the term, without any settlement or liquidation of the partnership affairs, is prima facie evidence of a continuation of the partnership.

Subchapter V. Property Rights of a Partner

91. Extent of property rights of a partner

The property rights of a partner are—

- (1) his rights in a specific partnership property;
- (2) his interest in the partnership; and
- (3) his right to participate in the management.

92. Nature of a partner's right in specific partnership property

(a) A partner is a co-owner with his partners of specific partnership property holding as a tenant in partnership.

(b) The incidents of this tenancy are such that—

(1) a partner, subject to the provisions of this act and to any agreement between the partners, 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.

(2) a partner's right in specific partnership property is not assignable except in connection with the assignment of rights of all the partners in the same property.

(3) a partner's right in specific partnership property is not subject to attachment or execution except on a claim against the partnership. When partnership property is attached for a partnership debt the partners, or any of them, or the representative of a deceased partner, cannot claim any right under the homestead or exemption laws.

(4) on the death of a partner his right in specific partnership property vests in the surviving partner or partners, except where the deceased was the last surviving partner, when his right in such property vests in his legal representative. Such surviving partner or partners, or the legal representative of the last surviving partner, has no right to possess the partnership property for any but a partnership purpose.

(5) a partner's right in specific partnership property is not subject to dower, curtesy, or allowances to widows, heirs, or next of kin.

§ 93. Nature of partner's interest in the partnership

A partner's interest in the partnership is his share of the profits and surplus, and the same is personal property.

§ 94. Assignment of partner's interest

(a) A conveyance by a partner of his interest in the partnership does not of itself dissolve the partnership, nor, as against the other partners in the absence of agreement, entitle the assignee, during the continuance of the partnership, to interfere in the management or administration of the partnership business or affairs, or to require any information or account of partnership transactions, or to inspect the partnership books; but it merely entitles the assignee to receive in accordance with his contract the profits to which the assigning partner would otherwise be entitled.

(b) In case of a dissolution of the partnership, the assignee is entitled to receive his assignor's interest and may require an account from the date only of the last account agreed to by all the partners.

§ 95. Partner's interest subject to charging order

(a) On due application to a competent court by any judgment creditor of a partner, the court which entered the judgment, order, or decree, or any other court, may charge the interest of the debtor partner with payment of the unsatisfied amount of such judgment debt with interest thereon; and may then or later appoint a receiver of his share of the profits, and of any other money due or to fall due to him in respect of the partnership, and make all other orders, directions, accounts and inquiries which the debtor

artner might have made, or which the circumstances of the case may require.

(b) The interest charged may be redeemed at any time before foreclosure, or in case of a sale being directed by the court may be purchased without thereby causing a dissolution—

- (1) With separate property, by any one or more of the partners, or
- (2) With partnership property, by any one or more of the partners with the consent of all the partners whose interests are not so charged or sold.

(c) Nothing in this chapter shall be held to deprive a partner of his right, any, under the exemption laws, as regards his interest in the partnership.

Subchapter VI. Dissolution and Winding Up

121. Dissolution defined

The dissolution of a partnership is the change in the relation of the partners caused by any partner ceasing to be associated in the carrying on of the business distinguished from the winding up of the business.

ANNOTATIONS

Cited. Cited in *Fountain Valley Corp. v. Wells*, D.C.VI. 1983, 19 VI. 607, 98 FR.D. 679.

122. Partnership not terminated by dissolution

On dissolution the partnership is not terminated, but continues until the winding up of the partnership affairs is completed.

ANNOTATIONS

1. **Rights and obligations after dissolution.** Although withdrawal of partners dissolved partnership under Uniform Partnership Act in force in the Virgin Islands partnership agreement continued to define the rights, duties and obligations of partners with respect to each other. *Frett v. Benjamin*, C.A.3d 1951, 2 VI. 516, 187 F.2d 898.

123. Causes of dissolution

Dissolution is caused—

- (1) without violation of the agreement between the partners—
 - (A) by the termination of the definite term or particular undertaking specified in the agreement;
 - (B) by the express will of any partner when no definite term or particular undertaking is specified;
 - (C) by the express will of all the partners who have not assigned their interests or suffered them to be charged for their separate debts, either before or after the termination of any specified term or particular undertaking;

(D) by the expulsion of any partner from the business bona fide in accordance with such a power conferred by the agreement between the partners;

(2) in contravention of the agreement between the partners, where the circumstances do not permit a dissolution under any other provision of this section, by the express will of any partner at any time;

(3) by any event which makes it unlawful for the business of the partnership to be carried on or for the members to carry it on in partnership;

(4) by the death of any partner;

(5) by the bankruptcy of any partner or the partnership;

(6) by decree of court under section 124 of this title.

§ 124. Dissolution by decree of court

(a) On application by or for a partner the court shall decree a dissolution whenever—

(1) a partner has been declared a lunatic in any judicial proceeding or is shown to be of unsound mind;

(2) a partner becomes in any other way incapable of performing his part of the partnership contract;

(3) a partner has been guilty of such conduct as tends to affect prejudicially the carrying on of the business;

(4) a partner wilfully or persistently commits a breach of the partnership agreement, or otherwise so conducts himself in matters relating to the partnership business that it is not reasonably practicable to carry on the business in partnership with him;

(5) the business of the partnership can only be carried on at a loss; or

(6) other circumstances render a dissolution equitable.

(b) On the application of the purchaser, of a partner's interest under sections 95 and 96 of this title—

(1) after determination of the specified term or particular undertaking; or

(2) at any time if the partnership was a partnership at will when the interest was assigned or when the charging order was issued.

HISTORY

References in text. The reference to sections 95 and 96 in subsection (b) is deemed to refer to sections 94 and 95 of this title.

§ 125. General effect of dissolution on authority of partner

Except so far as may be necessary to wind up partnership affairs or to complete transactions begun but not then finished, dissolution terminates

authority of any partner to act for the partnership—

(1) With respect to the partners—

(A) when the dissolution is not by the act, bankruptcy or death of a partner; or

(B) when the dissolution is by such act, bankruptcy or death of a partner, in cases where section 126 of this title so requires.

(2) With respect to persons not partners, as declared in section 127 of title.

26. Right of partner to contribution from co-partners after dissolution

where the dissolution is caused by the act, death or bankruptcy of a partner, each partner is liable to his co-partner for his share of any liability incurred by any partner acting for the partnership as if the partnership had been dissolved unless—

(1) the dissolution being by act of any partner, the partner acting for partnership had knowledge of the dissolution; or

(2) the dissolution being by the death or bankruptcy of a partner, the partner acting for the partnership had knowledge or notice of the death or bankruptcy.

ANNOTATIONS

Share of partnership property. A party is entitled to receive from his partner his share of partnership property which is retained by that partner at dissolution. *Wise v. De Werd*, 3d 1966, 5 V.I. 493, 358 F.2d 389.

127. Power of partner to bind partnership to third persons after dissolution

(1) After dissolution a partner can bind the partnership except as provided in subsection (c) of this section—

(1) by any act appropriate for winding up partnership affairs or completing transactions unfinished at dissolution;

(2) by any transaction which would bind the partnership if dissolution not taken place, provided the other party to the transaction—

(A) had extended credit to the partnership prior to dissolution and had no knowledge or notice of the dissolution; or

(B) though he had not so extended credit, had nevertheless known of the partnership prior to dissolution, and having no knowledge or notice of dissolution, the fact of dissolution had not been advertised in a newspaper of general circulation in the place (or in each place if more than one) at which the partnership business was regularly carried on.

The liability of a partner under paragraph (2) of subsection (a) of this

section shall be satisfied out of partnership assets alone when such partner had been prior to dissolution—

(1) unknown as a partner to the person with whom the contract is made; and

(2) so far unknown and inactive in partnership affairs that the business reputation of the partnership could not be said to have been in any degree due to his connection with it.

(c) The partnership is in no case bound by any act of a partner after dissolution—

(1) where the partnership is dissolved because it is unlawful to carry on the business, unless the act is appropriate for winding up partnership affairs; or

(2) where the partner has become bankrupt; or

(3) where the partner has no authority to wind up partnership affairs; except by a transaction with one who—

(A) had extended credit to the partnership prior to dissolution and had no knowledge or notice of his want of authority; or

(B) had not extended credit to the partnership prior to dissolution, and, having no knowledge or notice of his want of authority, the fact of his want of authority has not been advertised in the manner provided for advertising the fact of dissolution in paragraph (2)(B) of subsection (a) of this section.

(d) Nothing in this section shall affect the liability under section 48 of this title of any person who after dissolution represents himself or consents to another representing him as a partner in a partnership engaged in carrying on business.

§ 128. Effect of dissolution on partner's existing liability

(a) The dissolution of the partnership does not of itself discharge the existing liability of any partner.

(b) A partner is discharged from any existing liability upon dissolution of the partnership by an agreement to that effect between himself, the partnership creditor and the person or partnership continuing the business; and such agreement may be inferred from the course of dealing between the creditor having knowledge of the dissolution and the person or partnership continuing the business.

(c) Where a person agrees to assume the existing obligations of a dissolved partnership, the partners whose obligations have been assumed shall be discharged from any liability to any creditor of the partnership who, knowing of the agreement, consents to a material alteration in the nature or time of payment of such obligations.

The individual property of a deceased partner shall be liable for all obligations of the partnership incurred while he was a partner but subject to prior payment of his separate debts.

ANNOTATIONS

Time of discharge from liability. A dissolution agreement which showed that the defendant partners provided for the services of the plaintiff and a maid, apart from the fact that it did not bind creditors who were not parties thereto, did not relieve partners from liability for the payment of wages during termination and dissolution prior to transfer to the surviving partner. *Harvey v. Webb*, Mun. Ct. St. T. and St. J. 1968, 4 VI. 371.

29. Right to wind up

Unless otherwise agreed the partners who have not wrongfully dissolved the partnership or their legal representative or the last surviving partner, if bankrupt, has the right to wind up the partnership affairs; Provided, however, That any partner, his legal representative or his assignee, upon demand shown, may obtain winding up by the court.

30. Rights of partners to application of partnership property

When dissolution is caused in any way, except in contravention of the partnership agreement, each partner, as against his co-partners and all persons claiming through them in respect of their interests in the partnership, unless otherwise agreed, may have the partnership property applied to discharge its liabilities, and the surplus applied to pay in cash the net amount owing to the respective partners. But if dissolution is caused by the expulsion of a partner, bona fide under the partnership agreement, and if the expelled partner is discharged from all partnership liabilities, either by agreement or agreement under subsection (b) of section 128 of this title, he shall receive in cash only the net amount due him from the partnership.

When dissolution is caused in contravention of the partnership agreement the rights of the partners shall be as follows—

(1) Each partner who has not caused dissolution wrongfully shall —

(A) all the rights specified in subsection (a) of this section; and

(B) the right as against each partner who has caused the dissolution wrongfully, to damages for breach of the agreement.

(2) The partners who have not caused the dissolution wrongfully, if all desire to continue the business in the same name, either by themselves or jointly with others, may do so, during the agreed term for the partnership and for that purpose may possess the partnership property, provided they secure the payment by bond approved by the court, or pay by a partner who has caused the dissolution wrongfully, the value of his interest in the partnership at the dissolution, less any damages recoverable

under paragraph (1)(B) of subsection (b) of this section, and in like manner indemnify him against all present or future partnership liabilities.

(3) A partner who has caused the dissolution wrongfully shall have —

(A) if the business is not continued under the provisions of paragraph (2) of subsection (b) of this section all the rights of a partner under subsection (a) of this section, subject to paragraph 1(B) of subsection (b) of this section;

(B) if the business is continued under paragraph (2) of subsection (b) of this section the right as against his co-partners and all claiming through them in respect of their interests in the partnership, to have the value of his interests in the partnership, less any damages caused to his co-partners by the dissolution, ascertained and paid to him in cash, or the payment secured by bond approved by the court, and to be released from all existing liabilities of the partnership; but in ascertaining the value of the partner's interest, the value of the good will of the business shall not be considered.

§ 131. Rights where partnership is dissolved for fraud or misrepresentation

Where a partnership contract is rescinded on the ground of the fraud or misrepresentation of one of the parties thereto, the party entitled to rescind is, without prejudice to any other right, entitled—

(1) to a lien on, or a right of retention of, the surplus of the partnership property after satisfying the partnership liabilities to third persons for any sum of money paid by him for the purchase of an interest in the partnership and for any capital or advances contributed by him; and

(2) to stand, after all liabilities to third persons have been satisfied, in the place of the creditors of the partnership for any payments made by him in respect of the partnership liabilities; and

(3) to be indemnified by the person guilty of the fraud or making the misrepresentation against all debts and liabilities of the partnership.

§ 132. Rules for distribution

In settling accounts between the partners after dissolution, the following rules shall be observed, subject to any agreement to the contrary—

(1) The assets of the partnership are—

(A) the partnership property;

(B) the contributions of the partners necessary for the payment of all the liabilities specified in subsection (b) of this¹ paragraph.

¹ So in original. Probably should read "paragraph (2) of this section".

(2) The liabilities of the partnership shall rank in order of payment, as follows—

- (A) those owing to creditors other than partners;
- (B) those owing to partners other than for capital and profits;
- (C) those owing to partners in respect of capital;
- (D) those owing to partners in respect of profits.

(3) The assets shall be applied in order of their declaration in paragraph (1) of this section to the satisfaction of the liabilities.

(4) The partners shall contribute, as provided by paragraph (1) of section 71 of this title the amount necessary to satisfy the liabilities; but if but not all, of the partners are insolvent, or, not being subject to process, refuse to contribute, the other partners shall contribute their share of the liabilities and, in the relative proportions in which they share profits, an additional amount necessary to pay the liabilities.

(5) An assignee for the benefit of creditors or any person appointed by court shall have the right to enforce the contributions specified in paragraph (4) of this section.

(6) Any partner or his legal representative shall have the right to receive contributions specified in paragraph (4) of this section, to the extent the amount which he has paid in excess of his share of the liabilities.

(7) The individual property of a deceased partner shall be liable for contributions specified in paragraph (4) of this section.

(8) When partnership property and the individual properties of the partners are in possession of a court for distribution, partnership creditors shall have priority on partnership property and separate creditors on individual property, saving the rights of lien or secured creditors as aforesaid.

(9) Where a partner has become bankrupt or his estate is insolvent the claims against his separate property shall rank in the following order—

- (A) those owing to separate creditors;
- (B) those owing to partnership creditors;
- (C) those owing to partners by way of contribution.

ANNOTATIONS

Repealed. Cited in *Fountain Valley Corp. v. Wells*, D.C.VI. 1983, 19 VI. 607, 98 F.R.D. 679.

33. Liability of persons continuing the business in certain cases

(a) When any new partner is admitted into an existing partnership, or when any partner retires and assigns (or the representative of the deceased partner assigns) his rights in partnership property to two or more of the

partners, or to one or more of the partners and one or more third persons, if the business is continued without liquidation of the partnership affairs, creditors of the first or dissolved partnership are also creditors of the partnership so continuing the business.

(b) When all but one partner retire and assign (or the representative of a deceased partner assigns) their rights in partnership property to the remaining partner, who continues the business without liquidation of partnership affairs, either alone or with others, creditors of the dissolved partnership are also creditors of the person or partnership so continuing the business.

(c) When any partner retires or dies and the business of the dissolved partnership is continued as set forth in subsections (a) and (b) of this section, with the consent of the retired partners or the representative of the deceased partner, but without any assignment of his right in the partnership property, rights of creditors of the dissolved partnership and of the creditors of the person or partnership continuing the business shall be as if such assignment had been made.

(d) When all the partners or their representatives assign their rights in partnership property to one or more third persons who promise to pay the debts and who continue the business of the dissolved partnership, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

(e) When any partner wrongfully causes a dissolution and the remaining partners continue the business under the provisions of paragraph (2) of subsection (b) of section 130 of this title, either alone or with others, and without liquidation of the partnership affairs, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

(f) When a partner is expelled and the remaining partners continue the business either alone or with others, without liquidation of the partnership affairs, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

(g) The liability of a third person becoming a partner in the partnership continuing the business, under this section, to the creditors of the dissolved partnership shall be satisfied out of partnership property only.

(h) When the business of a partnership after dissolution is continued under any conditions set forth in this section the creditors of the dissolved partnership, as against the separate creditors of the retiring or deceased partner or the representative of the deceased partner, have a prior right to any claim of the retired partner or the representative of the deceased partner against the person or partnership continuing the business, on

account of the retired or deceased partner's interest in the dissolved partnership or on account of any consideration promised for such interest for his right in partnership property.

(i) Nothing in this section shall be held to modify any right of creditors or set aside any assignment on the ground of fraud.

(j) The use by the person or partnership continuing the business of the partnership name, or the name of a deceased partner as part thereof, shall not of itself make the individual property of the deceased partner liable for any debts contracted by such person or partnership.

134. Rights of retiring or estate of deceased partner when the business is continued

When any partner retires or dies, and the business is continued under any of the conditions set forth in subsections (a), (b), (c), (e) or (f) of section 133 of this title, or paragraph (2) of subsection (b) of section 130 of this title, without any settlement of accounts as between him or his estate and the person or partnership continuing the business, unless otherwise agreed, he or his legal representative as against such persons or partnership may have the value of his interest at the date of dissolution ascertained, and shall receive as an ordinary creditor an amount equal to the value of his interest in the dissolved partnership with interest, or, at his option or at the option of his legal representative, in lieu of interest, the profits attributable to the use of his right in the property of the dissolved partnership; Provided, That the creditors of the dissolved partnership as against the separate creditors, or the representative of the retired or deceased partner, shall have priority in any claim arising under this section, as provided by subsection (h) of section 133 of this title.

135. Accrual of actions

The right to an account of his interest shall accrue to any partner, or his legal representative, as against the winding up partners or the surviving partners or the person or partnership continuing or partnership continuing the business, at the date of dissolution, in the absence of any agreement to the contrary.

ANNOTATIONS

Cited. Cited in *Fountain Valley Corp. v. Wells*, D.C.VI. 1983, 19 VI. 607, 98 F.R.D. 679; *Wells v. Rockefeller*, C.A.3d 1984, 728 F.2d 209, cert. denied, 471 U.S. 1107, 105 S.Ct. 2343, 85 L.Ed.2d 158 (1985).

Chapter 3. Limited Partnership

SECTION ANALYSIS

201. Limited partnership defined
202. Formation
203. Business which may be carried on
204. Character of limited partner's contribution
205. A name not to contain surname of limited partner; exceptions
206. Liability for false statements in certificate
207. Limited partner not liable to creditors
208. Admission of additional limited partners
209. Rights, powers and liabilities of a general partner
210. Rights of a limited partner
211. Status of person erroneously believing himself a limited partner
212. One person both general and limited partner
213. Loans and other business transactions with limited partner
214. Relation of limited partners inter se
215. Compensation of limited partner
216. Withdrawal or reduction of limited partner's contribution
217. Liability of limited partner to partnership
218. Nature of limited partner's interest in partnership
219. Assignment of limited partner's interest
220. Effect of retirement, death or insanity of a general partner
221. Death of limited partner
222. Right of creditors of limited partner
223. Distribution of assets
224. When certificate shall be cancelled or amended
225. Requirements for amendment and for cancellation of certificate
226. Parties to actions
227. Rules of construction
228. Rules for cases not provided for in this chapter

HISTORY

Revision notes. Chapter is based on the 1921 codes, Title II, ch. 24, which, in turn, was derived from the Uniform Limited Partnership Act. Minor changes have been made to conform chapter to the Uniform Limited Partnership Act.

Section 30 of the above-cited chapter 24 relating to the status of limited partnerships in existence at the time of adoption of the above-cited chapter 24 of the 1921 Codes, has been omitted from this Code as executed and obsolete. Said section 30 read as follows:

"(1) A limited partnership formed under any statute prior to the adoption of this act may become a limited partnership under this act by complying with the provisions of section 3 [section 202 of this title]; provided that the certificate sets forth:

"(a) the amount of the original contribution of each limited partner, and the time when the contribution was made; and