

Alphabet Soup for Partnerships

- a. Definition of a partnership: Any business entity consisting of two or more owners.
- b. Statutory Definition (UPA)
 - i. A partnership is:
 1. An associations of two or more persons
 2. That carry on as co-owners
 3. A business for profit.
- c. SS 15: Nature of a partner's liability
 - i. The obligations of a business operated as a partnership are also the obligations of its *owners*.
 - ii. All partners are liable
 1. Jointly and severally for everything chargeable to the partnership
 - a. Can go after one partner and recover everything, then that partner has to use indemnification to recover from the other partners.
 - b. Ex. A, B, C own a partnership that goes under owing \$60K. They are sued and only A has the money to pay the debt. Creditor can get all of the money from A. B and C will be liable to A for their share.
 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.
 - iii. Under RUPA everything is joint and several.

d. Taxation

- i. It's a flow-thru entity: Partnership does not pay taxes on its profits. Taxes are paid only at the personal level on the partner's share of that income.

e. CL Concepts: Four elements to determine whether two or more people have formed a partnership:

- i. Is there an agreement to share profits?
- ii. Is there an agreement to share losses?
- iii. Is there a mutual right to control or manage the business?
- iv. Is there a community of interest in the venture?

f. A partnership can exist without filing a certificate of co-partnership.

g. SS 7 of UPA: Rules for determining the existence of a partnership

- i. Rule 3: The sharing of gross returns does not in and itself establish a partnership, whether or not the persons sharing them have a joint or common right or interest in any property from which the returns are derived.
- ii. Rule 4: The receipt by a person of a share of the profits of a business is evidence that he is a partner in the business, but no such inference shall be drawn if such profits were received in payment:
 - 1. As a debt by installments or otherwise,
 - 2. As wages of an employee or rent to a Landlord,
 - 3. As interest on a loan, even though the amount of payment varies with the profits of the business.

h. SS 9: Authority of a partner

- i. Every partner is an agent of the partnership for the purpose of its business
 - 1. The scope of authority depends upon what is considered “carrying on in the usual way the business of the partnership” of which the agent is a member
 - a. Look to the nature of the business—the burden of proof is on the person trying to show it was in the nature of the business and hold the nonparticipating partners liable
 - ii. Rule: An act of a partner which is apparently for the carrying on of the partnership in the usual way binds the partnership
 - iii. Exception: A partner’s action does not bind the partnership if:
 - 1. The partner so acting has no authority to act for the partnership in the particular matter and
 - a. Partner has actual authority to enter into a contract for carrying on the business of the partnership in the usual way
 - i. Ex. If A, B, C are in a bread business, A has the right to enter into a contract to sell bread to third party without the consent of B and C
 - ii. Ex. A contracts to sell business without the consent of B and C. B and C are not bound.
 - 2. The person with whom the agent is dealing has knowledge of the fact that he has no such authority.
 - iv. If a partner is acting in the ordinary scope of the business, he has apparent authority to contract where he lacks actual authority. No act of a partner in violation of a restriction on authority shall bind the partnership to persons having knowledge of the restriction
 - 1. Ex. A, B, C own a bread business. A contracts to sell bread after B and C voted “no” to the contract. A has apparent authority even though he lacked actual authority. B and C are liable.

- a. However, if B and C notify the third party that A is not authorized to enter the contract, there is no apparent authority and B and C are not liable (second prong).
- v. Unless authorized by partners or partners abandon the business, it takes all of the partners to:
 - 1. Assign the partnership property in trust for creditors
 - 2. Dispose of the good-will
 - 3. Perform any act that would make it impossible to carry on business (i.e. sell)
 - 4. Confess a judgment
 - 5. Submit a partnership claim to arbitration or reference