

# [Law on partnerships and corporations essay sample](https://assignbuster.com/law-on-partnerships-and-corporations-essay-sample/)

Where the dissolution is caused bythe act, death or insolvency of partner, eachpartner is liable to his co-partners for his share of any liability created by any partner acting for thepartnership as if the partnership had not beendissolved unless: 1.)The dissolution being the act of anypartner, the partner acting for thepartnership had knowledge of thedissolution; or 2.)The dissolution being by the death orinsolvency of a partner, the partner actingfor the partnership had knowledge ornotice of the death or insolvency. Right of partner to contribution from co-partners

The above article speaks of dissolution caused by act, insolvency, or death of a partner. Where a partner enters into a new contract with a 3rd person after dissolution, partners generally bound. Authority of partners to act for thepartnership

The authority of a partner as it affects his co-partners(not 3rdpersons) is deemed terminated except in Nos. 1and 2 of 1833. Knowledge or notice of cause of dissolution

Dissolution by death or insolvency –   
Whenpartner dead or bankrupt and other partner did notknow it when he entered into transaction, he may call onother partners to contribute. Dissolution by court decree or resulting from unlawfulness – No problem exists in these cases. If bycourt decree, all partners have actual notice of dissolution. If due to unlawfulness, general rulesgoverning actions arising out of illegal transactionsapply. When a partner has knowledge or notice of a fact

Uniform Partnership Act:   
Knowledge:   
Not only actual but also knowledge of such other facts as in the circumstances show bad faith. Notice:   
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 factor to a proper person at his place of business orresidence.

ARTICLE1834   
After dissolution, a partner can bindthe partnership except as provided in the thirdparagraph of this article: 1.)By any act appropriate for winding uppartnership affairs or completingtransactions unfinished at dissolution; or 2.)By any transaction which would bind thepartnership if dissolution had not takenplace, provided the other party to thetransaction: a.) Had extended credit to thepartnership prior to dissolution andhad no knowledge or notice of thedissolution; or b.)Though he had not so extendedcredit, had nevertheless known of the partnership prior to dissolution, and, having no knowledge or noticeof dissolution, the fact of dissolutionhad not been advertised in anewspaper of general circulation inthe place (or in each place if morethan one) at which the partnershipbusiness was regularly carried on. The liability of a partner under the firstparagraph, No. 2, shall be satisfied out of partnership assets alone when such partner hadbeen prior to dissolution: 1.)Unknown as a partner to the person withwhom the contract is made; and 2.)So far unknown and inactive inpartnership affairs that the businessreputation of the partnership could not besaid to have been in any degree due to hisconnection with it. The partnership is in no case bound by any actof a partner after dissolution: 1.)Where the partnership is dissolvedbecause it is unlawful to carry on thebusiness, unless the act is appropriate forwinding up partnership affairs; or 2.)Where the partner has become insolvent; or

3.)Where the partner has no authority towind up partnership affairs, except by atransaction with one who – a.)Had extended credit to thepartnership prior to dissolution andhad no knowledge or notice of hiswant of authority; or b.)Had not extended credit to thepartnership prior to dissolution, and, having no knowledge or notice of hiswant of authority, the fact of hiswant of authority has not beenadvertised in the manner providedfor advertising the fact of dissolutionin the first paragraph, No. 2. Nothing in this article shall effect the liabilityunder Article 1825 of any person who afterdissolution represents himself or consents toanother representing him as a partner in apartnership engaged in carrying in business. NOT NECESSARILY CODAL BUT COMMENTARY IMPT.

Power of partners to bind dissolved partnership tothird persons Article 1834 enumerates the cases when a partnercontinues to bind the partnership even after dissolution(par. 1, Nos. 1 and 2) and the case when he cannot bindthe partnership after dissolution (par. 3, Nos. 1, 2 and3). Where there is no notice to third persons of dissolution – Upon dissolution of the partnership, asbetween themselves, the power of one partner to actand bind the others is effectively terminated. But theauthority of a partner may apparently continue asregards 3rd persons on the assumption that thepartnership is still existing. Since a partnership onceestablished is, in the absence of anything to indicate itstermination, presumed to exist, the law, for theprotection of innocent 3rd persons, imposes uponpartners the duty of giving notice of the dissolution of the partnership. Where there is actual or constructive knowledge by third persons of dissolution – Themeasure of the right of 3rd persons who continue to dealwith a dissolved partnership depends upon the questionof whether they knew or should have known of the factof dissolution. If they did, the validity of theirtransactions is governed by the question whether thosetransactions were necessary to liquidate the partnershipaffairs. Notice of dissolution to creditors

As to persons who extended credit to partnership prior to dissolution – Must haveknowledge or notice of the dissolution to relievepartnership from liability. As to persons who had not extended credit prior to dissolution but had known of partnership’s existence – Fact that dissolution had been published inthe newspaper sufficient even if they did not actuallyread the advertisement. Where acting partner has no authority to wind up partnership affairs – under the 3rd paragraph, notice of dissolution is unnecessary except in case No. 3, where the partner has no authority to wind uppartnership affairs. 3rd persons dealing with the partnerw/o such authority are protected under the samecircumstances mentioned in paragraph 1, No. 2 (a) and(b). Where acting partner has become insolvent –

Innocent partner (did not know of other partner’sinsolvency) is protected in his continued right to makebinding partnership agreements, but no similarprotection is extended to a 3rd person who innocentlycontracts with an insolvent partner because it isincumbent upon him to know the status of the insolventpartner. Where dissolution caused by death of a partner –

Death is not considered to be noticeper se whether asto surviving partner or as to 3rd persons. Character of notice required   
The character of notice required to relieve a retiringpartner or the representatives of a deceased partnerfrom subsequent liability on partnership obligationsvaries in accordance with the class of persons requiredto be notified. As to prior dealers –

Notice must be actual. meremailing of a letter is insufficient if notice never received. Furthermore, there is no duty on the part of the priordealer to inquire into the question of retirement. Thatthe retirement was mentioned in a newspaper isinsufficient. A prior or former dealer is one who has extendedcredit on the faith of the partnership. Mere dealing withthe firm on a cash basis does not constitute one as aprior dealer. As to all others –

Actual notification not necessary. Advertisement in local newspaper enough. It should benoted, however, that the requirement of newspapernotice appears to exist only where the 3rdparty knew of the partnership prior to dissolution. If not, he is entitledto no notice whatsoever. Dormant partner need not give notice

Since dormant partner never known or held out to bea partner, 3rd persons, not having dealt with thepartnership in reliance upon the membership of thedormant partner, are not entitled to notice of hiswithdrawal. Partnership by estoppel after dissolution

Article 1834 (last par.) touches upon the subject of partnership be estoppel (Art. 1825), since a partnershipis held to exist as to 3rdpersons though it does not existas a going concern so far as the partners themselves areconcerned. The situation differs from a partnership byestoppel, however, in that a partnership did once existand liability is based on its continuance as a matter of law as far as 3rd persons are concerned. A partnershipby estoppel involves a holding out by parties as partnerswhen, in fact, they are not partners.

ARTICLE 1835   
The dissolution of the partnershipdoes not of itself discharge the existing liability of any partner. A partner is discharged from any existingliability upon dissolution of the partnership by anagreement to that effect between himself, thepartnership creditor and the person or partnershipcontinuing the business; and such agreement maybe inferred from the course of dealing between thecreditor having knowledge of the dissolution andthe person or partnership continuing the business. The individual property of a deceasedpartner shall be liable for all obligations of thepartnership incurred while he was a partner, butsubject to the prior payment of his separate debts. Effect of dissolution on partner’s existing liability The dissolution of a partnership does not of itself discharge the existing liability of a partner. A partner may be relieved from all existing liabilitiesupon dissolution only by an agreement to that effectbetween himself, the partnership creditor, and the otherpartners. The consent, however, of the creditor and theother partners to the novation may be implied from theirconduct. Liability of estate of deceased partner

In accordance with Article 1816, the individualproperty of a deceased partner shall be liable for allobligations of the partnership incurred while he was apartner. Note that the individual creditors of thedeceased partner are to be preferred over partnershipcreditors with respect to the separate property of saiddeceased partner. ARTICLE 1836

Unless otherwise agreed, thepartners who have not wrongfully dissolved thepartnership or the legal representative of the lastsurviving partner, not insolvent, has the right towind up the partnership affairs, provided, however, that any partner, his legal representativeor his assignee, upon cause shown, may obtainwinding up by the court. Manner of winding up

The manner of winding up of the dissolvedpartnership may be done either: 1.)Judicially –   
Under the control and direction of the proper court upon cause shown by anypartner, his legal representative, or his assignee.

2.)Extrajudicially –   
By the partners themselvesw/o intervention of the court.   
Nature of action for liquidation   
An action for the liquidation of a partnership is apersonal one; hence, it may be brought in the place of residence of either the plaintiff or the defendant. Persons authorized to wind up   
1.)The partners designated by agreement;   
2.)In the absence of such agreement, all thepartners who have not wrongfully dissolved thepartnership; or 3.)The legal representative (executor oradministrator) of the last surviving partner (whenall the partners are already dead), not insolvent. 4.)Court-appointed receiver.

Survivor’s right and duty to liquidate   
When a member of a partnership dies, the duty of liquidating its affairs devolves upon the survivingmember(s) of the firm, not upon the legal representativeof the deceased partner. The latter has no right tointerfere so long as the surviving partner proceeds ingood faith. Powers of liquidating partner

1.)Make new contracts –   
For the purpose of winding up the partnership, a liquidating partneris sole agent of the partnership, but merely forthat one specific purpose. He cannot make newcontracts w/o express authority. 2.)Raise money to pay partnership debts –

Forthe purpose of winding up the concern, however, the liquidating partner may bind the partnershipby borrowing money to meet its accruingliabilities, and may sell its real estate to raisemoney to pay its debts. 3.)Incur obligations to complete existing contracts or preserve partnership assets – Aliquidating partner has power to incur obligationsnecessary to the completion of existing contracts, and to incur debts or other obligations necessaryfor the reasonable preservation of partnershipassets or in procuring a favorable market fortheir disposal. 4.)Incur expenses necessary in the conduct of litigation – He has power to employ an attorneywhen necessary for winding up of affairs.