

# Law on partnerships and corporations essay sample



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Where the dissolution is caused by the act, death or insolvency of partner, each partner is liable to his co-partners for his share of any liability created by any partner acting for the partnership as if the partnership had not been dissolved unless: 1.) The dissolution being the act of any partner, the partner acting for the partnership had knowledge of the dissolution; or 2.) The dissolution being by the death or insolvency of a partner, the partner acting for the partnership had knowledge or notice 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 the partnership

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

Dissolution by death or insolvency -

When partner dead or bankrupt and other partner did not know it when he entered into transaction, he may call on other partners to contribute.

Dissolution by court decree or resulting from unlawfulness - No problem exists in these cases. If by court decree, all partners have actual notice of dissolution. If due to unlawfulness, general rules governing actions arising out of illegal transactions apply. When a partner has knowledge or notice of a fact

Uniform Partnership Act:

Knowledge:

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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 fact to a proper person at his place of business or residence.

#### ARTICLE 1834

After dissolution, a partner can bind the partnership except as provided in the third paragraph of this article: 1.) By any act appropriate for winding up partnership affairs or completing transactions unfinished at dissolution; or 2.) By any transaction which would bind the partnership if dissolution had 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 the first paragraph, No. 2, 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. 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 insolvent; 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 the first paragraph, No. 2. Nothing in this article shall effect the liability under Article 1825 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. NOT NECESSARILY CODAL BUT COMMENTARY IMPT.

Power of partners to bind dissolved partnership to third persons Article 1834 enumerates the cases when a partner continues to bind the partnership even after dissolution (par. 1, Nos. 1 and 2) and the case when he cannot bind the partnership after dissolution (par. 3, Nos. 1, 2 and 3). Where there is no notice to third persons of dissolution - Upon dissolution of the partnership, as between themselves, the power of one partner to act and bind the others is effectively terminated. But the authority of a partner may apparently continue as regards 3rd persons on the assumption that the partnership is still existing. Since a partnership once established is, in the absence of anything to indicate its termination, presumed to exist, the law, for the protection of <https://assignbuster.com/law-on-partnerships-and-corporations-essay-sample/>

innocent 3rd persons, imposes upon partners the duty of giving notice of the dissolution of the partnership. Where there is actual or constructive knowledge by third persons of dissolution - The measure of the right of 3rd persons who continue to deal with a dissolved partnership depends upon the question of whether they knew or should have known of the fact of dissolution. If they did, the validity of their transactions is governed by the question whether those transactions were necessary to liquidate the partnership affairs. Notice of dissolution to creditors

As to persons who extended credit to partnership prior to dissolution - Must have knowledge or notice of the dissolution to relieve partnership 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 in the newspaper sufficient even if they did not actually read 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 up partnership affairs. 3rd persons dealing with the partner w/o such authority are protected under the same circumstances mentioned in paragraph 1, No. 2 (a) and (b).

Where acting partner has become insolvent -

Innocent partner (did not know of other partner's insolvency) is protected in his continued right to make binding partnership agreements, but no similar protection is extended to a 3rd person who innocently contracts with an insolvent partner because it is incumbent upon him to know the status of the insolvent partner. Where dissolution caused by death of a partner -

Death is not considered to be notice per se whether as to surviving partner or as to 3rd persons. Character of notice required

The character of notice required to relieve a retiring partner or the representatives of a deceased partner from subsequent liability on partnership obligations varies in accordance with the class of persons required to be notified. As to prior dealers -

Notice must be actual. Merely mailing of a letter is insufficient if notice never received. Furthermore, there is no duty on the part of the prior dealer to inquire into the question of retirement. That the retirement was mentioned in a newspaper is insufficient. A prior or former dealer is one who has extended credit on the faith of the partnership. Mere dealing with the firm on a cash basis does not constitute one as a prior dealer. As to all others -

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

Since dormant partner never known or held out to be a partner, 3rd persons, not having dealt with the partnership in reliance upon the membership of the dormant partner, are not entitled to notice of his withdrawal. Partnership by estoppel after dissolution

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

#### ARTICLE 1835

The dissolution of the partnership does not of itself discharge the existing liability of any partner. 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. 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 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 liabilities upon dissolution only by an agreement to that effect between himself, the partnership creditor, and the other partners. The consent, however, of the creditor and the other partners to the novation may be implied from their conduct. Liability of estate of deceased partner

In accordance with Article 1816, the individual property of a deceased partner shall be liable for all obligations of the partnership incurred while he was a partner. Note that the individual creditors of the deceased partner are to be <https://assignbuster.com/law-on-partnerships-and-corporations-essay-sample/>

preferred over partnership creditors with respect to the separate property of said deceased partner. ARTICLE 1836

Unless otherwise agreed, the partners who have not wrongfully dissolved the partnership or the legal representative of the last surviving partner, not insolvent, has the right to wind up the partnership affairs, provided, however, that any partner, his legal representative or his assignee, upon cause shown, may obtain winding up by the court. Manner of winding up

The manner of winding up of the dissolved partnership may be done either:

1.) Judicially -

Under the control and direction of the proper court upon cause shown by any partner, his legal representative, or his assignee.

2.) Extrajudicially -

By the partners themselves w/o intervention of the court.

Nature of action for liquidation

An action for the liquidation of a partnership is a personal 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 the partners who have not wrongfully dissolved the partnership; or 3.) The legal representative (executor or administrator) of the last surviving partner (when all 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  
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devolves upon the surviving member(s) of the firm, not upon the legal representative of the deceased partner. The latter has no right to interfere so long as the surviving partner proceeds in good faith. Powers of liquidating partner

1.) Make new contracts -

For the purpose of winding up the partnership, a liquidating partner is sole agent of the partnership, but merely for that one specific purpose. He cannot make new contracts w/o express authority. 2.) Raise money to pay partnership debts -

For the purpose of winding up the concern, however, the liquidating partner may bind the partnership by borrowing money to meet its accruing liabilities, and may sell its real estate to raise money to pay its debts. 3.) Incur obligations to complete existing contracts or preserve partnership assets - A liquidating partner has power to incur obligations necessary to the completion of existing contracts, and to incur debts or other obligations necessary for the reasonable preservation of partnership assets or in procuring a favorable market for their disposal. 4.) Incur expenses necessary in the conduct of litigation - He has power to employ an attorney when necessary for winding up of affairs.