

Dissociation & Dissolution - UPA

- Dissociation causes dissolution
 - Dissociation: A partner leaves or is expelled from the partnership
 - A partner always has the power, though not necessarily the right, to dissociate.
 - Whether the dissociation is rightful or wrongful depends largely on the partnership agreement.
 - If, for example, the partnership is at will then each partner has the right and the power to dissociate.
 - On the other hand, if the partnership is for a set term, dissociation prior to the expiration of the term is normally wrongful.

Dissociation & Dissolution - UPA

- Dissolution: The beginning of the end
 - Dissolution is the first step in the process of ending the partnership.
 - Dissolution leads to winding up – the orderly settling of accounts and business affairs. During the winding up phase, the partnership:
 - Completes its obligations
 - Collects its accounts receivables
 - Settles accounts among partners
 - Continuing business: Depending on the agreement among the partners, dissolution leads to winding up but not necessarily discontinuation of business.

Dissociation & Dissolution - UPA

- Management & Winding Up
 - Actual authority to manage during winding up: Any partner who has not wrongfully dissociated or otherwise wrongfully caused dissolution has the right to manage the partnership during winding up.
 - Dissolution divests all partners of actual authority to transact new business except what is “necessary.”
- Binding the Partnership After Dissolution
 - The power to bind, UPA §35(I)
 - Acts “appropriate” to winding up, and
 - Acts that would bind the partnership if dissolution had not occurred – a rule to protect third parties during winding without notice or knowledge

Dissociation & Dissolution - UPA

- Constraining the power to bind: Post dissolution acts are not binding if:
 - The dissolution was caused because it was unlawful to transact with the partnership
 - The partner doing the act is bankrupt
 - Extending credit to third parties: Key – whether third party had notice or knowledge
- Eliminating the power to bind - Notice
 - Actual notice (in-person, letter, email) must be given to all parties who have done business with the partnership
 - Constructive notice (filing a notice of authority, or appropriate advertisement)

Dissociation & Dissolution - UPA

- Liquidating the Business
 - Liquidation follows winding, but is not required.
 - Rather than liquidate, the partners may choose to sell the business, if a buyer can be found.
 - Rightful Dissolution: Absent an agreement to the contrary, each partner has the right to force liquidation.
 - Wrongful Dissolution: To continue the business, the remaining partners must unanimously agree.
 - Settling accounts
 - Liquidation: Business continues until collection is completed and obligations are fulfilled.

Dissociation & Dissolution - UPA

- Settling accounts
 - Continuing the business
 - Rights assigned to successor partnership
 - Obligations are delegated to successor partnership
- Impact of Dissolution
 - Fiduciary duties continue
 - Liability: Partner liability continues, unless the creditor discharges the partner by: express or implied agreement or material change in obligation.
 - Settling accounts following liquidation: Absent an agreement to the contrary, assets loaned to the partnership by a partner are returned to the partner.

Dissociation & Dissolution - UPA

- Settling accounts following liquidation – Priorities
 - Outside creditors (if there are insufficient funds then the partners must contribute)
 - Inside creditors (i.e., partner creditors)
 - Value of partner capital
 - Remaining funds, if any, are distributed to partners
 - Note: If liquidation follows wrongful dissolution then the wrongful partner's share may be reduced by actual damages
- Settling accounts when business is continued
 - Step 1: There must be an agreement to continue the business

Dissociation & Dissolution - UPA

- ◉ Settling accounts when business is continued
 - ◉ Step 2: Compensating dissociated partner(s):
absent an agreement to the contrary, the dissociated partner's share is treated as a loan to the partnership
 - ◉ Terms of the loan: Based on implied or express agreement
 - ◉ If no agreement, the partner may request immediate payment
 - ◉ If the partnership does not pay promptly then dissociated partner may bring action for accounting and sue to collect

Dissociation & Dissolution - UPA

- Settling accounts – continuing the business following a wrongful dissolution:
- Following wrongful dissolution, the business may be continued by agreement or unanimous consent
- If by agreement, the agreement should specify how wrongful partner is paid
- If by unanimous consent:
 - Step 1: Determine value of wrongful partner's share
 - Step 2: Pay wrongful partner immediately or wait until the end of the original term

Dissociation & Dissolution - UPA

- Settling accounts – continuing the business following a wrongful dissolution:
 - Step 1: Determine value of wrongful partner's account, making appropriate deduction for harm
 - Step 2: Pay the wrongful partner – either immediately, or at the end of the original term. If later, the wrongful partner has the status of creditor.
 - Step 3: Indemnify wrongful partner from future partnership liabilities.
- Agreement to Avoid UPA Dissolution
 - UPA prescribed events of dissolution: death of a partner, expulsion of a partner.
 - Agreements may not contradict

Dissociation & Dissolution - UPA

- Wrongful Dissolution Without Breach of Agreement
 - At will partnership: Normally partners may freely withdraw, but if done unfairly (egregious, substantial and unfair economic advantage accrues to withdrawing partner) the dissociation may be wrongful.
 - Expulsion: If done pursuant to the partnership agreement, such expulsions are rightful. However, it is at least possible that an expulsion could happen in bad faith.
- Judicial Dissolution: Courts are empowered to order the partnership be dissolved.
 - One or more of the partners makes it impracticable for the business to continue
 - A purchaser of a partner's transferable interest.