

General Partnerships

- General Partnership Law
 - Two Uniform Schemes: UPA, RUPA – RUPA has been adopted by the majority of states.
 - Categories of Law Within the UPA/RUPA
 - Inter se rules: These govern the relationship among partners. They are the default rules and, as such, can often vary by agreement.
 - For example, RUPA §401(b) provides that partners share profits equally.
 - Inter se exceptions – Here, deviation is normally restricted. (1) fiduciary duties among partners and partnership, (2) limitations on ability of partners to dissociate.

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- External rules: These are the mandatory rules that govern the relationship between the partnership and third parties.
 - For example, RUPA §305 provides that a partner's wrongful act in the ordinary course of business binds the partnership.
- Describing the Partnership: "A partnership is an association of two or more persons to carry on as co-owners a business for profit." UPA §6(1)
 - An association of
 - Two or more persons to
 - Carry on as co-owners a business
 - For profit

General Partnerships

- **An Association** – Consent is central to the creation of a partnership. Consent is determined by objective criteria. Accordingly, individuals can explicitly disclaim a partnership relationship but still be found to be partners based on their words and actions.
- **Two or More Persons** – There are no special forms or filings necessary to create a partnership. Accordingly, when two or more people open a business, a presumption of partnership is created.
- **Carry on Business** – Partnerships generally exist for an indefinite period of time. This does not mean that you cannot have a partnership for a term, rather, the key identifying characteristic is business carried on for a series of transactions.

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- **Co-Owners** – We assume that all partners have equal rights of management and control. While the partners can vary this presumption by agreement, they cannot eliminate it entirely.
- **Profit Sharing** – Here, we are looking at the intent of the parties – not their relative achievement. Thus, it does not matter whether the business is actually profitable, so long as the partners intended the business to be profitable.
 - Sharing profits also includes the sharing of losses. Unless otherwise agreed, partners share profits and losses equally.
 - Sharing revenues does not qualify as sharing profits. Revenue is the money the business takes in – e.g., gross receipts. Profit equals revenue minus expenses incurred in generating the revenue.

General Partnerships

- Types of Partnerships
 - Partnership at will: Each partner has the right to bring the partnership to an end at any time with or without cause.
 - Partnership for a Term: The partnership automatically ends at the expiration of the designated time (e.g., five years), normally found in the partnership agreement.
 - Partnership for a Particular Undertaking: The partnership ends once the undertaking specified in the partnership agreement (e.g., building a new apartment complex) is completed.

General Partnerships

- Joint Ventures
 - Joint venture is a confusing designation that is often difficult to distinguish from a partnership. As one court observed: “A joint adventure has been defined as follows: A special combination of two or more persons, where, in some specific venture, a profit is jointly sought, without actual partnership or corporate designation.” *Bowmaster v. Carroll*, 23 F.2d 825, 827
 - Joint ventures are traditionally distinguished from partnerships by their relative scope.
 - This difference, however, offers little practical help as the law recognizes limited-scope partnerships.
 - In addition, most joint ventures are governed by the law of partnerships.

General Partnerships

- General Partner Liability
 - Joint and Several Liability
 - Where an obligation creates joint and several liability, a creditor may pursue any of the partners individually. A creditor may release one or more partners from the obligation while pursuing one or more of the remaining creditors.
 - Where an obligation is joint, the creditor must pursue all partners. If the creditor releases one partner the creditor effectively releases all partners.
 - Exhaustion Rule: Where applicable, a partnership creditor may not pursue an individual partner without first exhausting partnership assets.

General Partnerships

- Loss Sharing – partners normally share losses among themselves according to the partnership agreement. However, their agreement has no effect on how or when a creditor pursues relief.
- General Partnership Advantages:
 - Tax Advantages: Partnerships are pass through entities. That is, they are not taxed directly. Instead, profits and losses are allocated to individual partners.
 - Flexibility: Partnerships have greater flexibility in developing their relationships than do most corporations. However, S Corporations have duplicated much of a partnership's flexibility while also providing a cloak of limited liability.

General Partnerships

- Legal Restrictions on Professionals: Historically, professionals were prevented from forming corporations. This restriction has been largely eliminated. Today, professionals organize as professional corporations, professional LLCs and professional limited liability partnerships.
- Inadvertence: Because no formalities are required, general partnerships are the default business form when two or more people organize to conduct business.
- Poor Legal Planning: Hire a qualified attorney.

General Partnerships

- Characterization Disputes: Lawsuits often arise when one or more “partner” disclaims partnership status arguing that they do/did not share profits. To help settle this matter, courts consider:
 - The degree of control exercised.
 - An agreement as to how losses are shared.
 - Property contributed by the alleged partner.
 - The extent to which distributions constitute the recipients sole source of income.
 - How the parties characterize(d) their relationship.

Purported Partnership

- A purported partnership is not an actual partnership. It is recognized to prevent injustice. Also, referred to as a partnership by estoppel.
- Elements:
 - A person purports to be or consents to being represented as a partner;
 - A third party reasonably relies on the representation; and
 - The third party transacts with the actual or purported partnership.