

Partner's Power to Bind

- Foundation to Power – Every partner is an agent of the partnership.
- Power to Bind – Contract (UPA §9)
 - Statutory Apparent Authority: To bind the partnership, a person must show:
 - At the time of the transaction,
 - A third party reasonably believed that the partner's act was for:
 - Carrying on the business of the partnership, and
 - Doing so in the usual way.

Partner's Power to Bind

- NOTE: Statutory Apparent Authority:
 - Cannot exist when the partnership is undisclosed.
 - Can bind the partnership even when the partner (agent) is the primary beneficiary of the transaction.
- Constraining Statutory Apparent Authority:
 - A partner lacks authority to bind where:
 - The partner lacks actual authority, and
 - The partner's act is not within the scope of the business, i.e., does not carry on business in the "usual" way and/or the third party knows the partner lacks actual authority.

Partner's Power to Bind

- Constraining Statutory Apparent Authority:
 - A partner must have actual authority or unanimous consent to:
 - Assign partnership property for a debt
 - Dispose partnership good will
 - Do any act that makes it impossible for partnership to carry on business
 - Confess a judgment, and
 - Submit a partnership claim to arbitration

Partner's Power to Bind

- Power to Bind – Contract (RUPA §301)
 - Useful Differences, re: UPA §9
 - Replaces “apparently/useful” with “for apparently carrying on in the ordinary course”
 - Eliminates “unanimous consent” rule
 - Burden shifting modification of “no authority” rule: third party knew or received notice of partner’s lack of authority
 - Establishes a system of recoding notices of authority and limitations to authority
 - Modification to “No Authority” Rule - Notification:
 - Receives actual notice, or
 - Notice is delivered to any authorized location

Partner's Power to Bind

- Power to Bind – Contract (RUPA §301)
 - System of Recorded Statements:
 - Recorded statements provide “constructive notice”
 - A properly recorded statement of partner authority includes:
 - Name of partnership
 - Partnership address
 - Names and addresses of partners or authorized agent
 - Names and addresses of partners authorized to transfer property

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- Power to Bind – Contract (RUPA §301)
 - System of Recorded Statements:
 - Transfers of Real Property
 - RUPA created a much needed recording system for real property
 - A properly recorded statement creates a presumption in favor of person gives value
 - Similarly, a statement limiting authority to transfer creates a presumption in favor of the partnership
 - Other Transactions: Filed statements limiting authority in other matters creates similar presumptions
 - Authority statements can be modified or withdrawn. They naturally expire five years from date of filing.

Partner's Power to Bind

- Binding Partnership for Partner's Wrongful Acts
 - Key Questions:
 - Is the type of act, done rightly, authorized?
 - Would the statement, properly made, be in the ordinary course?
- Binding Partnership for Partner's Breach of Trust
 - Attribution Rule: If a partner converts a third party's property/money, the partnership is liable if:
 - The partner acted within scope of authority, or
 - The partnership received the property/money in the ordinary course of business

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- Binding Partnership for Partner's Breach of Trust
 - Policy Changes/Rationale:
 - Focus on third person's reasonable belief
 - Act taken in the ordinary course of business
 - Heightened need to protect the public from breaches by professionals
- Binding the Partnership – Partner Information
 - Attributing to the partnership a partner's knowledge, notice or receipt of notice
 - Rule for attributing knowledge (UPA):
 - A partner acting in the matter is binding
 - A partner not acting in the matter is binding only if reasonable for partner to communicate such knowledge to partnership

Partner's Power to Bind

- Binding the Partnership – Partner Information
 - Rule for attributing knowledge (RUPA): No distinction between acting or not acting in matter
 - Remember the fraud exception
 - Rule for attributing information received or delivered
 - Subject to the fraud exception:
 - UPA attributes notice of any matter related to partnership affairs
 - RUPA attributes notice of a “fact relating to the partnership.”
 - Rule for attributing information about which a partner has reason know.

Partner's Power to Bind

- Fraud on the Partnership
 - The attribution rules do not apply if the partner knowingly committed fraud
 - Includes breach of duty of loyalty (equitable fraud)
 - Fraud blocks attribution even if third party was unaware of fraud