



บรรณานุกรม

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ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย

Partnership Act 1890

Nature of Partnership

Definition of partnership

1.-(1) Partnership is the relation which subsists between persons carrying on a business in common with a view of profit.

(2) But the relation between members of any company or association which is

(a) Registered as a company under the Companies Act 1862 or any other Act of Parliament for the time being in force and relating to the registration of joint stock companies; or

(b) Formed or incorporated by or in pursuance of any other Act of Parliament or letters patent, or Royal Charter; or

(c) A company engaged in working mines within and subject to the jurisdiction of the Stannaries:

is not a partnership within the meaning of this Act.

Rules for determining existence of partnership

2. In determining whether a partnership does or does not exist regard shall be had to the following rules.

(1) Joint tenancy, tenancy in common, joint property, common property or part ownership does not itself create a partnership as to anything so held or owned, whether the tenants or owners do or do not share any profits made by the use thereof.

(2) The sharing of gross returns does not of itself create a partnership, whether the persons sharing such returns have or have not a joint or common right or interest in

any property from which or from the use of which the returns are derived.

(3) The receipt by a person of a share of the profits of a business is prima facie evidence that he is a partner in the business, but the receipt of such a share, or of a payment contingent on or varying with the profits of a business does not of itself make him a partner in the business; and in particular-

(a) The receipt by a person of a debt or other liquidated amount by instalments or otherwise out of the accruing profits of a business does not of itself make him a partner in the business or liable as such:

(b) A contract for the remuneration of a servant or agent of a person engaged in a business by a share of the profits of the business does not of itself make the servant or agent a partner in the business or liable as such:

(c) A person being the widow or child of a deceased partner, and receiving by way of annuity a portion of the profits made in the business in which the deceased person was a partner, is not by reason only of such receipt a partner in the business or liable as such:

(d) The advance of money by way of loan to a person engaged or about to engage in any

business on a contract with that person that the lender shall received a rate of interest varying with the profits, or shall receive a share of the profit arising from carrying on the business, does not of itself make the lender a partner with the person or persons carrying on the business or liable as such. Provided that the contract is in writing, and signed by or on behalf of all the parties thereto:

- (e) A person receiving by way of annuity or otherwise a portion of the profits of a business in consideration of the sale by him of the goodwill of the business is not by reason only of such receipt a partner in the business or liable as such.

Postponement of rights of person lending or selling in consideration of share of profits in case of insolvency

3. In the event of any person to whom money has been advanced by way of loan upon such a contract as is mentioned in the last foregoing section, or of any buyer of a goodwill in consideration of a share of the profits of the business, being adjudged a bankrupt, entering into an arrangement to pay his creditors less than one hundred pence in the pound, or dying in insolvent circumstances, the lender of the loan shall not be entitled to recover anything in respect of his loan, and the seller of the goodwill shall not be entitled to recover anything in respect of the share of profits

contracted for, until the claims of the other creditors of the borrower or buyer for valuable consideration in money or money's worth have been satisfied.

Meaning of "firm"

4. -(1) Persons who have entered into partnership with one another are for the purposes of this Act called collectively a firm, and the name under which their business is carried on is called the firm-name.

(2) In Scotland a firm is a legal person distinct from the partners of whom it is composed, but an individual partner may be charged on a decree or diligence directed against the firm, and on payment of the debts is entitled to relief prorata from the firm and its other members.

Relations of Partners to Persons dealing with them

Power of partner to bind the firm

5. Every partner is an agent of the firm and his other partners for the purpose of the business of the partnership; and the acts of every partner who does any act for carrying on in the usual way business of the kind carried on by the firm of which he is a member bind the firm and his partners, unless the partner so acting has in fact no authority to act for the firm in the particular matter, and the person with whom he is dealing either knows that he has no authority, or does not know or believe him to be a partner.

Partners bound by acts on behalf of firm

6. An act or instrument relating to the business of the firm and done or executed in the firm-name, or in any other manner showing an intention to bind the firm, by any person thereto authorised, whether

a partner or not, is binding on the firm and all the partners.

Provided that this section shall not affect any general rule of law relating to the execution of deeds or negotiable instruments.

Partner using credit of firm for private purposes

7. Where one partner pledges the credit of the firm for a purpose apparently not connected with the firm's ordinary course of business, the firm is not bound, unless he is in fact specially authorised by the other partners; but this section does not affect any personal liability incurred by an individual partner.

Effect of notice that firm will not be bound by acts of partner

8. If it has been agreed between the partners that any restriction shall be placed on the power of any one or more of them to bind the firm, no act done in contravention of the agreement is binding on the firm with respect to persons having notice of the agreement.

Liability of partners

9. Every partner in a firm is liable jointly with the other partners, and in Scotland severally also, for all debts and obligations of the firm incurred while he is a partner and after his death, his estate is also severally liable in a due course of administration for such debts and obligations, so far as they remain unsatisfied, but subject in England or Ireland to the prior payment of his separated debts.

Liability of the firm for wrongs

10. Where, by any wrongful act or omission of any partner acting in the ordinary course of the business of the firm, or

Provided as follows:

- (1) This section shall not affect any liability incurred by any partner by reason of his having notice of a breach of trust; and
- (2) Nothing in this section shall prevent trust money from being followed and recovered from the firm if still in its possession or under its control.

Persons liable by "holding out"

14. -(1) Every one who by words spoken or written or by conduct represents himself, or who knowingly suffers himself to be represented, as a partner in a particular firm, is liable as a partner to any one who has on the faith of any such representation given credit to the firm, whether the representation has or has not been made or communicated to the person so giving credit by or with the knowledge of the apparent partner making the representation or suffering it to be made.

(2) Provided that where after a partner's death the partnership business is continued in the old firm-name, the continued use of that name or of the deceased partner's name as part thereof shall not of itself make his executors or administrators estate or effects liable for any partnership debts contracted after his death.

Admissions and representations of partners

15. An admission or representation made by any partner concerning the partnership affairs, and in the ordinary course of its business, is evidence against the firm.

Notice to acting partner to be notice to the firm

16. Notice to any partner who habitually acts in the partnership business of any matter relating to partnership affairs operates as notice to the firm, except in the case of a fraud on the firm committed by or with the consent of that partner.

Liabilities of incoming and outgoing partners

17. -(1) A person who is admitted as a partner into an existing firm does not thereby become liable to the creditors of the firm for anything done before he became a partner.

(2) A partner who retires from a firm does not thereby cease to be liable for partnership debts or obligations incurred before his retirement.

(3) A retiring partner may be discharged from any existing liabilities, by an agreement to that effect between himself and the members of the firm as newly constituted and the creditors, and this agreement may be either express or inferred as a fact from the course of dealing between the creditors and the firm as newly constituted.

Revocation of continuing guaranty by change in firm

18. A continuing guaranty or cautionary obligation given either to a firm or to a third person in respect of the transactions of a firm is, in the absence of agreement to the contrary, revoked as to future transactions by any change in the constitution of the firm to which, or of the firm in respect of the transaction of which, the guaranty or obligation was given.

Variation by consent of terms of partnership

19. The mutual rights and duties of partners whether ascertained by agreement or defined by this Act may be varied by the consent of all the partners and such consent may be either express or inferred from a course of dealing.

Partnership property

20. -(1) All property and rights and interests in property originally brought into the partnership stock or acquired, whether by purchase or otherwise, on account of the firm, or for the purposes and in the course of the partnership business, are called in this Act partnership property, and must be held and applied by the partners exclusively for the purposes of the partnership and in accordance with the partnership agreement.

(2) Provided that the legal estate or interest in any land, or in Scotland the title to and interest in any heritable estate, which belongs to the partnership shall devolve according to the nature and tenure thereof, and the general rules of law thereto applicable, but in trust, so far as necessary, for the persons beneficially interested in the land under this section.

(3) Where co-owners of an estate or interest in any land, or in Scotland of any heritable estate, not being itself partnership property, are partners as to profits made by the use of that land or estate, and purchase other land or estate out of the profits to be used in like manner, the land or estate so purchased belongs to them, in the absence of an agreement to the contrary, not as partners, but as co-owners for the same respective estates and

interests as are held by them in the land or estate first mentioned at the date of the purchase.

Property bought with partnership money

21. Unless the contrary intention appears, property bought with money belonging to the firm is deemed to have been bought on account of the firm.

Conversion into personal estate of land held as partnership property

22. Where land or any heritable interest therein has become partnership property, it shall, unless the contrary intention appears, be treated as between the partners (including the representatives of a deceased partner), and also as between the heirs of a deceased partner and his executors or administrators, as personal or movable and not real or heritable estate.

Procedure against partnership property for a partner's separate judgement debt

23. -(1) After the commencement of this Act a writ of execution shall not issue against any partnership property except on a judgement against the firm.

(2) The High Court, or a judge thereof, or a county court, may on the application by summons of any judgment creditor of a partner, make an order charging that partner's interest in the partnership property and profits with payment of the amount of the judgement debt and interest thereon, and may be the same or a subsequent order appoint a receiver of that partner's share of profits (whether already declared or accruing), and of any other money which may be coming to him in respect of the partnership, and direct all accounts and inquiries, and give all other orders

and directions which might have been directed or given if the charge had been made in favour of the judgment creditor by the partner, or which the circumstances of the case may require.

(3) The other partner or partners shall be at liberty at any time to redeem the interest charged, or in case of a sale being directed, to purchase the same.

(4) This section shall apply in the case of a cost-book company as if the company were a partnership within the meaning of this Act.

(5) This section shall not apply in Scotland.

Rules as to interest and duties of partners subject to special agreement

24. The interests of partners in the partnership property and their rights and duties in relation to the partnership shall be determined, subject to any agreement express or implied between the partners, by the following rules;

(1) All the partners are entitled to share equally in the capital and profits of the business, and must contribute equally towards the losses whether of capital or otherwise sustained by the firm.

(2) The firm must indemnify every partner in respect of payments made and personal liabilities incurred by him-

(a) In the ordinary and proper conduct of the business of the firm; or

(b) In or about anything necessarily done for the preservation of the business or property of the firm.

- (3) A partner making, for the purpose of the partnership, any actual payment or advance beyond the amount of capital which he has agreed to subscribe is entitled to interest at the rate of five per cent. per annum from the date of the payment or advance.
- (4) A partner is not entitled, before the ascertainment of profits, to interest on the capital subscribed by him.
- (5) Every partner may take part in the management of the partnership business.
- (6) No partner shall be entitled to remuneration for acting in the partnership business.
- (7) No person may be introduced as a partner without the consent of all existing partners.
- (8) Any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners, but no change may be made in the nature of the partnership business without the consent of all existing partners.
- (9) The partnership books are to be kept at the place of business of the partnership (or the principal place, if there is more than one), and every partner may, when he thinks fit, have access to and inspect and copy any of them.

Expulsion of partner

25. No majority of the partners can expel any partner unless a power to do so has been conferred by express agreement between the partners.

Retirement from partnership at will

26. -(1) Where no fixed term has been agreed upon for the duration of the partnership, any partner may determine the partnership at any time on giving notice of his intention so to do to all the other partners.

(2) Where the partnership has originally been constituted by deed, a notice in writing, signed by the partner giving it, shall be sufficient for this purpose.

Where partnership for term is continued over, continuance on old terms presumed

27. -(1) Where a partnership entered into for a fixed term is continued after the term has expired, and without any express new agreement, the rights and duties of the partners remain the same as they were at the expiration of the term, so far as is consistent with the incidents of a partnership at will.

(2) A continuance of the business by the partners or such of them as habitually acted therein during the term, without any settlement or liquidation of the partnership affairs, is presumed to be a continuance of the partnership.

Duty of partners to render accounts, etc.

28. Partners are bound to render true accounts and full information of all things affecting the partnership to any partner or his legal representatives.

Accountability of partners for private profits

29. -(1) Every partner must account to the firm for any benefit derived by him without the consent of the other partners from any transaction concerning the partnership, or from any use

by him of the partnership property name or business connexion.

(2) This section applies also to transactions undertaken after a partnership has been dissolved by the death of a partner, and before the affairs thereof have been completely wound up, either by any surviving partner or by the representatives of the deceased partner.

Duty of partner not to compete with firm

30. If a partner, without the consent of the other partners, carries on any business of the same nature as and competing with that of the firm, he must account for and pay over to the firm all profits made by him in that business.

Rights of assignee of share in partnership

31. -(1) An assignment by any partner of his share in the partnership, either absolute or by way of mortgage or redeemable charge, does not, as against the other partners, entitle the assignee, during the continuance of the partnership, to interfere in the management or administration of the partnership business or affairs, or to require any accounts of the partnership transactions, or to inspect the partnership books, but entitles the assignee only to receive the share of profits to which the assigning partner would otherwise be entitled, and the assignee must accept the account of profits agreed by the partners.

(2) In case of a dissolution of the partnership, whether as respects all the partners or as respects the assigning partner, the assignee is entitled to receive the share of the partnership assets to which the assigning partner is entitled as between himself and the other partners, and, for the purpose of ascertaining

that share, to an account as from the date of the dissolution.

Dissolution of Partnership, and its consequences

Dissolution by expiration or notice

32. Subject to any agreement between the partners, a partnership is dissolved-

- (a) If entered into for a fixed term, by the expiration of that term;
- (b) If entered into for a single adventure or undertaking, by the termination of that adventure or undertaking;
- (c) If entered into for an undefined time, by the partner giving notice to the other or others of his intention to dissolve the partnership.

In the last-mentioned case the partnership is dissolved as from the date mentioned in the notice as the date of dissolution, or, if no date is so mentioned, as from the date of the communication of the notice.

Dissolution by bankruptcy, death, or charge

33. -(1) Subject to any agreement between the partners, every partnership is dissolved as regards all the partners by the death or bankruptcy of any partner.

(2) A partnership may, at the option of the other partners, be dissolved if any partner suffers his share of the partnership property to be charged under this Act for his separate debt.

Dissolution by illegality of partnership

34. A partnership is in every case dissolved by the happening of any event which makes it unlawful for the business of the firm

to be carried on or for the members of the firm to carry it on in partnership.

Dissolution by the court

35. On application by a partner the Court may decree a dissolution of the partnership in any of the following cases:

- (a) (Repealed by the Mental Health Act 1959, Sched.8)
- (b) When a partner, other than the partner suing, becomes in any other way permanently incapable of performing his part of the partnership contract:
- (c) When a partner, other than the partner suing, has been guilty of such conduct as, in the opinion of the Court, regard being had to the nature of the business, is calculated to prejudicially affect the carrying on of the business :
- (d) When a partner, other than the partner suing, wilfully or persistently commits a breach of the partnership agreement, or otherwise so conducts himself in matters relating to the partnership business that it is not reasonably practicable for the other partner or partners to carry on the business in partnership with him:
- (e) When the business of the partnership can only be carried on at a loss:
- (f) Whenever in any case circumstances have arisen which, in the opinion of the Court, render it just and equitable that the partnership be dissolved.

Rights of persons dealing with firm against apparent members of firm

36. -(1) Where a person deals with a firm after a change in its constitution he is entitled to treat all apparent members of the old firm as still being members of the firm until he has notice of the change.

(2) An advertisement in the London Gazette as to a firm whose principal place of business is in England or Wales, in the Edinburgh Gazette as to a firm whose principal place of business is in Scotland, and in the Dublin Gazette as to a firm whose principal place of business is in Ireland, shall be notice as to persons, who had no dealings with the firm before the date of the dissolution or change so advertised.

(3) The estate of a partner who dies, or who becomes bankrupt, or of a partner who, not having been known to the person dealing with the firm to be a partner, retires from the firm, is not liable for partnership debts contracted after the date of the death, bankruptcy, or retirement respectively.

Right of partners to notify dissolution

37. On the dissolution of a partnership or retirement of a partner, any partner may publicly notify the same, and may require the other partner or partners to concur for that purpose in all necessary or proper acts, if any, which cannot be done without his or their concurrence.

Continuing authority of partners for purposes of winding up

38. After the dissolution of a partnership the authority of each partner to bind the firm, and the other rights and obligations

of the partners, continue notwithstanding the dissolution as far as may be necessary to wind up the affairs of the partnership, and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise.

Provided that the firm is in no case bound by the acts of a partner who has become bankrupt; but this proviso does not affect the liability of any person who has after the bankruptcy represented himself or knowingly suffered himself to be represented as a partner of the bankrupt.

Right of partners as to application of partnership property

39. On the dissolution of a partnership every partner is entitled, as against the other partners in the firm, and all persons claiming through them in respect of their interests as partners, to have to property of the partnership applied in payment of the debts and liabilities of the firm, and to have the surplus assets after such payment applied in payment of what may be due to the partners respectively after deducting what may be due from them as partners to the firm; and for that purpose any partner or his representatives may on the termination of the partnership apply to the Court to wind up the business and affairs of the firm.

Apportionment of premium where partnership prematurely dissolved

40. Where one partner has paid a premium to another on entering into a partnership for a fixed term, and the partnership is dissolved before the expiration of that term otherwise than by the death of a partner, the Court may order the repayment of the premium, or such part thereof as it thinks just, having regard to

the terms of the partnership contract and to the length of time during which the partnership has continued; unless

- (a) The dissolution is, in the judgment of the Court, wholly or chiefly due to the misconduct of the partner who paid the premium or,
- (b) The partnership has been dissolved by an agreement containing no provision for a return of any part of the premium.

Rights where partnership dissolved for fraud or misrepresentation

41. Where a partnership contract is rescinded on the ground of the fraud or misrepresentation of one of the parties thereto, the party entitled to rescind is, without prejudice to any other right, entitled-

- (a) to a lien on, or right of retention of, the surplus of the partnership assets, after satisfying the partnership liabilities, for any sum of money paid by him for the purchase of a share in the partnership and for any capital contributed by him, and is
- (b) to stand in the place of the creditors of the firm for any payments made by him in respect of the partnership liabilities, and
- (c) to be indemnified by the person guilty of the fraud or making the representation against all the debts and liabilities of the firm.

Right of outgoing partner in certain cases to share profits made after dissolution

42. -(1) Where any member of a firm has died or otherwise ceased to be a partner, and the surviving or continuing partners carry on the business of the firm with its capital or assets without any final settlement of accounts as between the firm and the outgoing partner or his estate, then, in the absence of any agreement to the contrary, the outgoing partner or his estate is entitled at the option of himself or his representatives to such share of the profits made since the dissolution as the Court may find to be attributable to the use of his share of the partnership assets, or to interest at the rate of five per cent. per annum on the amount of his share of the partnership assets.

(2) Provided that where by the partnership contract an option is given to surviving or continuing partners to purchase the interest of a deceased or outgoing partner, and that option is duly exercised, the estate of the deceased partner, or the outgoing partner or his estate, as the case may be, is not entitled to any further or other share of the profits; but if any partner assuming to act in exercise of the option does not in all material respects comply with the terms thereof, he is liable to account under the foregoing provisions of this section.

Retiring or deceased partner's share to be a debt

43. Subject to any agreement between the partners, the amount due from surviving or continuing partners to an outgoing partner or the representatives of a deceased partner in respect of the outgoing or deceased partner's share is a debt accruing at the date

of the dissolution or death.

Rule for distribution of assets on final settlement of accounts

44. In settling accounts between the partners after a dissolution of partnership the following rules shall, subject to any agreement, be observed:

- (a) Losses, including losses and deficiencies of capital, shall be paid first out of profits, next out of capital, and lastly, if necessary, by the partners individually in the proportion in which they were entitled to share profits:
- (b) The assets of the firm including the sums, if any, contributed by the partners to make up losses or deficiencies of capital, shall be applied in the following manner and order:
 1. In paying the debts and liabilities of the firm to persons who are not partners therein:
 2. In paying to each partner rateably what is due from the firm to him for advances as distinguished from capital:
 3. In paying to each partner rateably what is due from the firm to him in respect of capital:
 4. The ultimate residue, if any, shall be divided among the partners in the proportion in which profits are divisible.

Supplemental

Definitions of "court" and "business"

45. In this Act, unless the contrary intention appears,-

The expression "court" includes every court and judge having jurisdiction in the case:

The expression "business" includes every trade, occupation, or profession.

Saving for rules of equity and common law

46. The rules of equity and of common law applicable to partnership shall continue in force except so far as they are inconsistent with the express provisions of this Act.

Provision as to bankruptcy in Scotland

47. (1) In the application of this Act to Scotland the bankruptcy of a firm or of an individual shall mean sequestration under the Bankruptcy (Scotland) Acts, and also in the case of an individual the issue against him of a decree of cessio bonorum.

(2) Nothing in this Act shall alter the rules of the law of Scotland relating to the bankruptcy of a firm or of the individual partners thereof.

Repeal

48. The Acts mentioned in the schedule to this Act are hereby repealed to the extent mentioned in the third column of that schedule.

Commencement of Act

49. This Act shall come into operation on the first day of January, one thousand eight hundred and ninety-one.

Short Title

50. This Act may be cited as the Partnership Act 1890.

SCHEDULE

Section 48

ENACTMENTS REPEALED

Session and Chapter	Title or Short Title	Extent of Repeal
19 & 20 Vict.c.60	The Mercantile Law Amendment (Scotland) Act 1856.	Section seven.
19 & 20 Vict.c.97	The Mercantile Law Amendment Act 1856.	Section four.
28 & 29 Vict.c.86.	An Act to amend the law partnership.	The whole Act.

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Uniform Law of Partnership

Part I

Preliminary Provisions

Section 1.(Name of Act.) This act may be cited as Uniform Partnership act.

Section 2.(Definition of Terms.) In this act, "Court" includes every court and judge having jurisdiction in the case.

"Business" includes every trade, occupation, or profession.

"Person" includes individuals, partnerships, corporations, and other associations.

"Bankrupt" includes bankrupt under the Federal Bankruptcy Act or insolvent under any state insolvent act.

"Conveyance" includes every assignment, lease, mortgage, or encumbrance.

"Real property" includes land and any interest or estate in land.

Section 3.(Interpretation Knowledge and Notice) (1) A person has "knowledge" of a fact within the meaning of this act not only when he has actual knowledge thereof, but also when he has knowledge of such other facts as in the circumstances shows bad faith.

(2) A person has "notice" of a fact within the meaning of this act when the person who claims the benefit of the notice:

(a) States the fact to such person, or

(b) Delivers through the mail, or by other means of communication, a written statement of the fact to such person or to a proper person at his place of business or residence.

Section 4. (Rules of Construction.) (1) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this act.

(2) The law of estoppel shall apply under this act.

(3) The law of agency shall apply under this act.

(4) This act shall be so interpreted and construed as to effect its general purpose to make uniform the law of those states which enact it.

(5) This act shall not be construed so as to impair the obligations of any contract existing when the act goes into effect, nor to affect any action or proceedings begun or right accrued before this act takes effect.

Section 5. (Rules for Cases Not Provided for in this Act.) In any case not provided for in this act the rules of law and equity, including the law merchant, shall govern.

PART II

NATURE OF A PARTNERSHIP

Section 6. (Partnership Defined.) (1) A partnership is an association of two or more persons to carry on as co-owners a business for profit.

(2) But any association formed under any other statute of this state, or any statute adopted by authority, other than the authority of this state, is not a partnership under this act, unless such association would have been a partnership in this state prior to the adoption of this act; but this act shall apply to limited partnerships except in so far as the statutes relating to such partnerships are inconsistent herewith.

Section 7. (Rules for Determining the Existence of a Partnership.)

In determining whether a partnership exists, these rules shall apply:

- (1) Except as provided by section 16 persons who are not partners as to each other are not partners as to third persons.
- (2) Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not of itself establish a partnership, whether such co-owners do or do not share any profits made by the use of the property.
- (3) The sharing of gross returns does not of itself establish a partnership, whether or not the persons sharing them have a joint or common right or interest in any property from which the returns are derived.
- (4) The receipt by a person of a share of the profits of a business is prima facie evidence that he is a partner in the business, but no such inference shall be drawn if such profits were received in payment:
 - (a) As a debt by installments or otherwise,
 - (b) As wages of an employee or rent to a landlord,
 - (c) As an annuity to a widow or representative of a deceased partner,
 - (d) As interest on a loan, though the amount of payment vary with the profits of the business,
 - (e) As the consideration for the sale of a good will of a business or other property by installments or otherwise.

Section 8. (Partnership Property.) (1) All property originally brought into the partnership stock or subsequently acquired by

purchase or otherwise, on account of the partnership, is partnership property.

(2) Unless the contrary intention appears, property acquired with partnership funds is partnership property.

(3) Any estate in real property may be acquired in the partnership name. Title so acquired can be conveyed only in the partnership name.

(4) A conveyance to a partnership in the partnership name, though without words of inheritance, passes the entire estate of the grantor unless a contrary intent appears.

Part III

Relations of Partners to Persons Dealing with the Partnership

Section 9. (Partner Agent of Partnership as to Partnership Business:

(1) Every partner is an agent of the partnership for the purpose of its business, and the act of every partner, including the execution in the partnership name of any instrument, for apparently carrying on in the usual way the business of the partnership of which he is a member binds the partnership, unless the partner so acting has in fact no authority to act for the partnership in the particular matter, and the person with whom he is dealing has knowledge of the fact that he has no such authority.

(2) An act of a partner which is not apparently for the carrying on of the business of the partnership in the usual way does not bind the partnership unless authorized by the other partners.

(3) Unless authorized by the other partners or unless they have abandoned the business, one or more but less than all the partners have no authority to:

- (a) Assign the partnership property in trust for creditors or on the assignee's promise to pay the debts of the partnership,
- (b) Dispose of the good-will of the business,
- (c) Do any other act which would make it impossible to carry on the ordinary business of a partnership,
- (d) Confess a judgment,
- (e) Submit a partnership claim or liability to arbitration or reference.

(4) No act of a partner in contravention of a restriction on authority shall bind the partnership to persons having knowledge of the restrictions.

Section 10. (Conveyance of Real Property of the Partnership.) (1)
Where title to real property is in the partnership name, any partner may convey title to such property by a conveyance executed in the partnership name; but the partnership may recover such property unless the partner's act binds the partnership under the provisions of paragraph (1) of section 9, or unless such property has been conveyed by the grantee or a person claiming through such grantee to a holder for value without knowledge that the partner, in making the conveyance, has exceeded his authority.

(2) Where title to real property is in the name of the partnership, a conveyance executed by a partner, in his own name, passes the equitable interest of the partnership, provided the act

is one within the authority of the partner under the provisions of paragraph(1) of section 9.

(3) Where title to real property is in the name of one or more but not all the partners, and the record does not disclose the right of the partnership, the partners in whose name the title stands may convey title to such property, but the partnership may recover such property if the partners' act does not bind the partnership under the provisions of paragraph(1) of section 9, unless the purchaser or his assignee, is a holder for value, without knowledge.

(4) Where the title to real property is in the name of one or more or all the partners, or in a third person in trust for the partnership, a conveyance executed by a partner in the partnership name, or in his own name, passes the equitable interest of the partnership, provided the act is one within the authority of the partner under the provisions of paragraph(1) of section 9.

(5) Where the title to real property is in the names of all the partners a conveyance executed by all the partners passes all their rights in such property.

Section 11.(Partnership Bound by Admission of Partner.) An admission or representation made by any partner concerning partnership affairs within the scope of his authority as conferred by this act is evidence against the partnership.

Section 12.(Partnership Charged with Knowledge of or Notice to Partner.) Notice to any partner of any matter relating to partnership affairs, and the knowledge of the partner acting in the particular matter, acquired while a partner or then present

to his mind, and the knowledge of any other partner who reasonably could and should have communicated it to the acting partner, operate as notice to or knowledge of the partnership, except in the case of a fraud on the partnership committed by or with the consent of that partner.

Section 13. (Partnership Bound by Partner's Wrongful Act.) Where, by any wrongful act or omission of any partner acting in the ordinary course of the business of the partnership or with the authority of his co-partners, loss or injury is caused to any person, not being a partner in the partnership, or any penalty is incurred, the partnership is liable therefor to the same extent as the partner so acting or omitting to act.

Section 14. (Partnership Bound by Partner's Breach of Trust.) The partnership is bound to make good the loss:

(a) Where one partner acting within the scope of his apparent authority receives money or property of a third person and misapplies it; and

(b) Where the partnership in the course of its business receives money or property of a third person and the money or property so received is misapplied by any partner while it is in the custody of the partnership.

Section 15. (Nature of Partner's Liability.) All partners are liable

(a) Jointly and severally for everything chargeable to the partnership under sections 13 and 14.

(b) Jointly for all other debts and obligations of the partnership; but any partner may enter into a separate obligation to perform a partnership contract.

Section 16. (Partner by Estoppel. (1) When a person, by words spoken or written or by conduct, represents himself, or consents to another representing him to any one, as a partner in an existing partnership or with one or more persons not actual partners, he is liable to any such person to whom such representation has been made, who has, on the faith of such representation, given credit to the actual or apparent partnership, and if he has made such representation or consented to its being made in a public manner he is liable to such person, whether the representation has or has not been made or communicated to such person so giving credit by or with the knowledge of the apparent partner making the representation or consenting to its being made.

(a) When a partnership liability results, he is liable as though he were an actual member of the partnership.

(b) When no partnership liability results, he is liable jointly with the other persons, if any, so consenting to the contract or representation as to incur liability, otherwise separately.

(2) When a person has been thus represented to be a partner in an existing partnership, or with one or more persons not actual partners, he is an agent of the persons consenting to such representation to bind them to the same extent and in the same manner as though he were a partner in fact, with respect to persons who rely upon the representation. Where all the members of the existing partnership consent to the representation, a partnership act or obligation results; but in all other cases it

is the joint act or obligation of the person acting and the persons consenting to the representation.

Section 17. (Liability of Incoming Partner.) A person admitted as a partner into an existing partnership is liable for all the obligations of the partnership arising before his admission as though he had been a partner when such obligations were incurred, except that this liability shall be satisfied only out of partnership property.

Part IV

Relations of Partners to One Another

Section 18. (Rules Determining Rights and Duties of Partners.)

The rights and duties of the partners in relation to the partnership shall be determined, subject to any agreement between them, by the following rules:

(a) Each partner shall be repaid his contributions, whether by way of capital or advances to the partnership property and share equally in the profits and surplus remaining after all liabilities, including those to partners, are satisfied; and must contribute toward the losses, whether of capital or otherwise, sustained by the partnership according to his share in the profits.

(b) The partnership must indemnify every partner in respect of payments made and personal liabilities reasonably incurred by him in the ordinary and property conduct of its business, or for the preservation of its business or property.

(c) A partner, who in aid of the partnership makes any payment or advance beyond the amount of capital which he agreed

to contribute, shall be paid interest from the date of the payment or advance.

(d) A partner shall receive interest on the capital contributed by him only from the date when repayment should be made.

(e) All partners have equal rights in the management and conduct of the partnership business.

(f) No partner is entitled to remuneration for acting in the partnership business, except that a surviving partner is entitled to reasonable compensation for his services in winding up the partnership affairs.

(g) No person can become a member of a partnership without the consent of all the partners.

(h) Any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners; but no act in contravention of any agreement between the partners may be done rightfully without the consent of all the partners.

Section 19. (Partnership Books.) The partnership books shall be kept, subject to any agreement between the partners, at the principal place of business of the partnership, and every partner shall at all times have access to and may inspect and copy any of them.

Section 20. (Duty of Partners to Render Information.) Partners shall render on demand true and full information of all things affecting the partnership to any partner or the legal representative of any deceased partner or partner under legal disability.

Section 21. (Partner Accountable as a Fiduciary.) (1) Every partner must account to the partnership for any benefit, and hold as trustee

for it any profits derived by him without the consent of the other partners from any transaction connected with the formation, conduct, or liquidation of the partnership or from any use by him of its property.

(2) This section applies also to the representatives of a deceased partner engaged in the liquidation of the affairs of the partnership as the personal representatives of the last surviving partner.

Section 22. (Right to an Account.) Any partner shall have the right to a formal account as to partnership affairs:

- (a) If he is wrongfully excluded from the partnership business or possession of its property by his co-partners,
- (b) If the right exists under the terms of any agreement.
- (c) As provided by section 21,
- (d) Whenever other circumstances render it just and reasonable.

Section 23. (Continuation of Partnership Beyond Fixed Term.) (1)

When a partnership for a fixed term or particular undertaking is continued after the termination of such term or particular undertaking without any express agreement, the rights and duties of the partners remain the same as they were at such termination, so far as is consistent with a partnership at will.

(2) A continuation of the business by the partners or such of them as habitually acted therein during the term, without any settlement or liquidation of the partnership affairs, is prima facie evidence of a continuation of the partnership.

Part V

Property Rights of a Partner

Section 24. (Extent of Property Rights of a Partner.) The property rights of a partner are (1) his rights in specific partnership property, (2) his interest in the partnership, and (3) his right to participate in the management.

Section 25. (Nature of a Partner's Right in Specific Partnership Property.)

(1) A partner is co-owner with his partners of specific partnership property holding as a tenant in partnership.

(2) The incidents of this tenancy are such that:

(a) a partner, subject to the provisions of this act and to any agreement between the partners, has an equal right with his partners to possess specific partnership property for partnership purposes; but he has no right to possess such property for any other purpose without the consent of his partners.

(b) A partner's right in specific partnership property is not assignable except in connection with the assignment of rights of all the partners in the same property.

(c) A partner's right in specific partnership property is not subject to attachment or execution, except on a claim against the partnership. When partnership property is attached for a partnership debt the partners, or any of them, or the representatives of a deceased partner, cannot claim any right under the homestead or exemption laws.

(d) On the death of a partner his right in specific partnership property vests in the surviving partner, or partners,

except where the deceased was the last surviving partner, when his right in such property vests in his legal representative. Such surviving partner or partners, or the legal representative of the last surviving partner, has no right to possess the partnership property for any but a partnership purpose.

(e) A partner's right in specific partnership property is not subject to dower, curtesy, or allowances to widows, heirs, or next of kin.

Section 26. (Nature of Partner's Interest in the Partnership.) A partner's interest in the partnership is his share of the profits and surplus, and the same is personal property.

Section 27. (Assignment of Partner's Interest.) (1) A conveyance by a partner of his interest in the partnership does not of itself dissolve the partnership, nor, as against the other partners in the absence of agreement, entitle the assignee, during the continuance of the partnership, to interfere in the management or administration of the partnership business or affairs, or to require any information or account of partnership transactions, or to inspect the partnership books; but it merely entitles the assignee to receive in accordance with his contract the profits to which the assigning partner would otherwise be entitled.

(2) In case of a dissolution of the partnership, the assignee is entitled to receive his assignor's interest and may require an account from the date only of the last account agreed to by all the partners.

Section 28. (Partner's Interest Subject to Charging Order.) (1) On due application to a competent court by any judgment creditor of

a partner, the court which entered the judgment, order, or any other court, may charge the interest of the debtor partner with payment of the unsatisfied amount of such judgment debt with interest thereon; and may then or later appoint a receiver of his share of the profits, and of any other money due or to fall due to him in respect of the partnership, and make all other order, directions, accounts and inquiries which the debtor partner might have made, or which the circumstances of the case may require.

(2) The interest charged may be redeemed at any time before foreclosure, or in case of a sale being directed by the court may be purchased without thereby causing a dissolution:

(a) With separate property, by any one or more of the partners, or

(b) With partnership property, by any one or more of the partners with the consent of all the partners whose interests are not so charged or sold.

(3) Nothing in this act shall be held to deprive a partner of his right, if any, under the exemption laws, as regards his interest in the partnership.

Part VI

Dissolution And Winding Up

Section 29. (Dissolution Defined.) The dissolution of a partnership is the change in the relation of the partners caused by any partner ceasing to be associated in the carrying on as distinguished from the winding up of the business.

Section 30. (Partnership Not terminated by Dissolution.) On dissolution the partnership is not terminated, but continues until the winding up of partnership affairs is completed.

Section 31. (Causes of Dissolution.) Dissolution is caused:

(1) Without violation of the agreement between the partners,

(a) By the termination of the definite term or particular undertaking specified in the agreement,

(b) By the express will of any partner when no definite term or particular undertaking is specified,

(c) By the express will of all the partners who have not assigned their interests or suffered them to be charged for their separate debts, either before or after the termination of any specified term of particular undertaking,

(d) By the expulsion of any partner from the business bona fide in accordance with such a power conferred by the agreement between the partners;

(2) In contravention of the agreement between the partners, where the circumstances do not permit a dissolution under any other provision of this section, by the express will of any partner at any time;

(3) By any event which makes it unlawful for the business of the partnership to be carried on or for the members to carry it on in partnership;

(4) By the death of any partner;

(5) By the bankruptcy of any partner or the partnership;

(6) By decree of court under section 32.

Section 32.(Dissolution by Decree of Court.) (1) On application by or for a partner the court shall decree a dissolution whenever:

(a) A partner has been declared a lunatic in any judicial proceeding or is shown to be of unsound mind,

(b) A partner becomes in any other way incapable of performing his part of the partnership contract,

(c) A partner has been guilty of such conduct as tends to affect prejudicially the carrying on of the business.

(d) A partner wilfully or persistently commits a breach of the partnership agreement, or otherwise so conducts himself in matters relating to the partnership business that it is not reasonably practicable to carry on the business in partnership with him,

(e) The business of the partnership can only be carried on at a loss,

(f) Other circumstances render a dissolution equitable.

(2) On the application of the purchaser of a partner's interest under sections 27 and 28:

(a) After the termination of the specified term or particular undertaking,

(b) At any time if the partnership was a partnership at will when the interest was assigned or when the charging order was issued.

Section 33.(General Effect of Dissolution on Authority of Partner.) Except so far as may be necessary to wind up partnership affairs or to complete transactions begun but not then finished,

dissolution terminates all authority of any partner to act for the partnership,

(1) With respect to the partners,

(a) When the dissolution is not by the act, bankruptcy or death of a partner; or

(b) When the dissolution is by such act, bankruptcy or death of a partner, in cases where section 34 so requires.

(2) With respect to persons not partners, as declared in section 35.

Section 34. (Right of Partner to Contribution From Co-partners After Dissolution.) Where the dissolution is caused by the act, death or bankruptcy of a 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

(a) The dissolution being by act of any partner, the partner acting for the partnership had knowledge of the dissolution, or

(b) The dissolution being by the death or bankruptcy of a partner, the partner acting for the partnership had knowledge or notice of the death or bankruptcy.

Section 35. (Power of Partner to Bind Partnership to Third Persons After Dissolution.) (1) After dissolution a partner can bind the partnership except as provided in Paragraph (3).

(a) By any act appropriate for winding up partnership affairs or completing transactions unfinished at dissolution:

(b) By any transaction which would bind the partnership if dissolution had not taken place, provided the other party to the transaction

(I) Had extended credit to the partnership prior to dissolution and had no knowledge or notice of the dissolution; or

(II) 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.

(2) The liability of a partner under Paragraph (1b) shall be satisfied out of partnership assets alone when such partner had been prior to dissolution

(a) Unknown as a partner to the person with whom the contract is made; and

(b) 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.

(3) The partnership is in no case bound by any act of a partner after dissolution

(a) 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

(b) Where the partner has become bankrupt; or

(c) Where the partner has no authority to wind up partnership affairs; except by a transaction with one who

(I) Had an extended credit to the partnership prior to dissolution and had no knowledge or notice of his want of authority ; or

(II) 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 Paragraph(lbII).

(4) Nothing in this section shall affect the liability under Section 16 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.

Section 36.(Effect of Dissolution on Partner's Existing Liability.)

(1) The dissolution of the partnership does not of itself discharge the existing liability of any partner.

(2) 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.

(3) Where a person agrees to assume the existing obligations of a dissolved partnership, the partners whose obligations have been assumed shall be discharged from any liability

to any creditor of the partnership who, knowing of the agreement, consents to a material alteration in the nature or time of payment of such obligations.

(4) 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.

Section 37.(Right to Wind Up.) Unless otherwise agreed the partners who have not wrongfully dissolved the partnership or the legal representative of the last surviving partner, not bankrupt, 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.

Section 38.(Rights of Partners to Application of Partnership Property.)(1) When dissolution is caused in any way, except in contravention of the partnership agreement, each partners, as against his co-partners and all persons claiming through them in respect of their interests in the partnership, unless otherwise agreed, may have the partnership property applied to discharge its liabilities, and the surplus applied to pay in cash the net amount owing to the respective partners. But if dissolution is caused by expulsion of a partner, bona fide under the partnership agreement and if the expelled partner is discharged from all partnership liabilities, either by payment or agreement under section 36(2), he shall receive in cash only the net amount due him from the partnership.

(2) When dissolution is caused in contravention of the partnership agreement the rights of the partners shall be as follows:

(a) Each partner who has not caused dissolution wrongfully shall have,

(I) All the rights specified in paragraph(1) of this section, and

(II) The right, as against each partner who has caused the dissolution wrongfully, to be damaged for breach of the agreement.

(b) The partners who have not caused the dissolution wrongfully, if they all desire to continue the business in the same name, either by themselves or jointly with others, may do so, during the agreed term for the partnership and for that purpose may possess the partnership property, provided they secure the payment by bond approved by the court, or pay to any partner who has caused the dissolution wrongfully, the value of his interest in the partnership at the dissolution, less any damages recoverable under clause (2aII) of this section, and in like manner indemnify him against all present or future partnership liabilities.

(c) A partner who has caused the dissolution wrongfully shall have:

(I) If the business is not continued under the provisions of paragraph (2b) all the rights of a partner under paragraph(1), subject to clause (2aII), of this section,

(II) If the business is continued under paragraph(2b) of this section the right as against his co-partners and all claiming through them in respect of their interests in the partnership, to have the value of his interest in the partnership, less any damages caused to his co-partners by the dissolution, ascertained and paid to him in cash, or the payment secured by bond approved by the court, and to be released from all existing liabilities of the partnership; but in ascertaining the value of the partner's interest the value of the good-will of the business shall not be considered.

Section 39. (Rights Where Partnership is Dissolved for Fraud or Misrepresentation.) Where a partnership contract is rescinded on the ground of the fraud or misrepresentation of one of the parties thereto, the party entitled to rescind is, without prejudice to any other right, entitled,

(a) To a lien on, or right of retention of, the surplus of the partnership property after satisfying the partnership liabilities to third persons for any sum of money paid by him for the purchase of an interest in the partnership and for any capital or advances contributed by him; and

(b) To stand, after all liabilities to third persons have been satisfied, in the place of the creditors of the partnership for any payments made by him in respect of the partnership liabilities; and

(c) To be indemnified by the person guilty of the fraud or making the representation against all debts and liabilities of the partnership.

Section 40. (Rules for Distribution.) In settling accounts between the partners after dissolution, the following rules shall be observed, subject to any agreement to the contrary:

(a) The assets of the partnership are;

- (I) The partnership property,
- (II) The contributions of the partners necessary for the payment of all the liabilities specified in clause(b) of this paragraph

(b) The liabilities of the partnership shall rank in order of payment, as follows:

- (I) Those owing to creditors other than partners,
- (II) Those owing to partners other than for capital and profits,
- (III) Those owing to partners in respect of capital,
- (IV) Those owing to partners in respect of profits.

(c) The assets shall be applied in the order of their declaration in clause(a) of this paragraph to the satisfaction of the liabilities.

(d) The partners shall contribute, as provided by section 18(a) the amount necessary to satisfy the liabilities; but if any, but not all, of the partners are insolvent, or, not being subject to process, refuse to contribute, the other partners shall contribute their share of the liabilities, and, in the relative proportions in which they share the profits, the additional

amount necessary to pay the liabilities.

(e) An assignee for the benefit of creditors or any person appointed by the court shall have the right to enforce the contributions specified in clause (d) of this paragraph.

(f) Any partner or his legal representative shall have the right to enforce the contributions specified in clause (d) of this paragraph, to the extent of the amount which he has paid in excess of his share of the liability.

(g) The individual property of a deceased partner shall be liable for the contributions specified in clause (d) of this paragraph.

(h) When partnership property and the individual properties of the partners are in possession of a court for distribution, partnership creditors shall have priority on partnership property and separate creditors on individual property, saving the rights of lien or secured creditors as heretofore.

(i) Where a partner has become bankrupt or his estate is insolvent the claims against his separate property shall rank in the following order:

- (I) Those owing to separate creditors,
- (II) Those owing to partnership creditors,
- (III) Those owing to partners by way of contribution

Section 41. (Liability of Persons Continuing the Business in Certain Cases.)

(1) When any new partner is admitted into an existing partnership, or when any partner retires and assigns (or the representative of the deceased partner assigns) his rights in partnership property to two or more of the partners, or to one or more of the partners and one or more third persons, if the business is continued without liquidation of the partnership affairs, creditors of the first or dissolved partnership are also creditors of the partnership so continuing the business.

(2) When all but one partner retire and assign (or the representative of a deceased partner assigns) their rights in partnership property to the remaining partner, who continues the business without liquidation of partnership affairs, either alone or with others, creditors of the dissolved partnership are also creditors of the person or partnership so continuing the business.

(3) When any partner retires or dies and the business of the dissolved partnership is continued as set forth in paragraph (1) and (2) of this section, with the consent of the retired partners or the representative of the deceased partner, but without any assignment of his right in partnership property, rights of creditors of the dissolved partnership and of the creditors of the person or partnership continuing the business shall be as if such assignments had been made.

(4) When all the partners or their representatives assign their rights in partnership property to one or more third persons who promise to pay the debts and who continue the business of the dissolved partnership, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

(5) When any partner wrongfully causes a dissolution and the remaining partners continue the business under the provisions of section 38(2b), either alone or with others, and without liquidation of the partnership affairs, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

(6) When a partner is expelled and the remaining partners continue the business either alone or with others, without liquidation of the partnership affairs, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

(7) The liability of a third person becoming a partner in the partnership continuing the business, under this section, to the creditors of the dissolved partnership shall be satisfied out of partnership property only.

(8) When the business of a partnership after dissolution is continued under any conditions set forth in this section the creditors of the dissolved partnership, as against the separate creditors of the retiring or deceased partner or the representative of the deceased partner, have a prior right to any claim of the retired partner or the representative of the deceased partner

against the person or partnership continuing the business, on account of the retired or deceased partner's interest in the dissolved partnership or on account of any consideration promised for such interest or for his right in partnership property.

(9) Nothing in this section shall be held to modify any right of creditors to set aside any assignment on the ground of fraud.

(10) The use by the person or partnership continuing the business of the partnership name, or the name of a deceased partner as part thereof, shall not of itself make the individual property of the deceased partner liable for any debts contracted by such person or partnership.

Section 42. (Right of Retiring or Estate of Deceased Partner When the Business is Continued.) When any partner retires or dies, and the business is continued under any of the conditions set forth in section 41(1,2,3,5,6), or section 38(2b), without any settlement of accounts as between him or his estate and the person or partnership continuing the business, unless otherwise agreed, he or his legal representative as against such persons or partnership may have the value of his interest at the date of dissolution ascertained, and shall receive as an ordinary creditor an amount equal to the value of his interest in the dissolved partnership with interest, or, at his option or at the option of his legal representative, in lieu of interest, the profits attributable to the use of his right in the property of the dissolved partnership; provided that the creditors of the dissolved partnership as against the separate creditors, or the representative of the retired or deceased partner,

shall have priority on any claim arising under this section, as provided by section 41(8) of this act.

Section 43.(Accrual of Actions.) The right to an account of his interest shall accrue to any partner, or his legal representative, as against the winding up partners or the surviving partners or the person or partnership continuing the business, at the date of dissolution, in the absence of any agreement to the contrary.

Part VII

Miscellaneous Provisions

Section 44.(When Act Takes Effect.) This act shall take effect on the.....day ofone thousand nine hundred and.....

Section 45.(Legislation Repealed.) All acts or parts of acts inconsistent with this act are hereby repealed.

ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย

ภาคผนวก ค.

ที่ กค.0802/7882

กรมสรรพากร

2 ถนนจักรพงษ์ กรุงเทพฯ 10200

4 กรกฎาคม 2529

เรื่อง ภาษีเงินได้และภาษีการค้า การรับจ้างทางค่าน้ำศวกรที่ปรึกษาโครงการพัฒนาระบบการขนส่งทางน้ำ

เรียน ผู้จัดการโครงการ Inland Waterways

อ้างถึง หนังสือลงวันที่ 20 มิถุนายน 2528 หนังสือลงวันที่ 17 กรกฎาคม 2528 และหนังสือลงวันที่ 5 พฤศจิกายน 2528

ตามหนังสือที่อ้างถึงแจ้งว่า กลุ่มผู้รับจ้างทางค่าน้ำศวกรที่ปรึกษากับกรมเจ้าท่าในโครงการพัฒนาระบบการขนส่งทางน้ำและการทำเรือประกอบด้วย 3 ฝ่ายดังนี้

1. Bureau Central d'Etudes pour les Equipements d' Outre Mer ชื่อย่อว่า "BCEOM" เป็นองค์กรหนึ่งของรัฐบาลฝรั่งเศส

2. Compagnie Nationale du Rhone ชื่อย่อว่า "CNR" เป็นรัฐวิสาหกิจหนึ่งในประเทศฝรั่งเศส

3. บริษัท K.Engineering Consultants จำกัด ร่วมกับบริษัท Civil Design ในฐานะกิจการร่วมค้า ทั้งสองบริษัทนี้เป็นนิติบุคคลจดทะเบียนในประเทศไทย

สัญญาที่ได้กระทำเกี่ยวกับโครงการนี้มีดังนี้

สัญญาฉบับที่ 1 สัญญาที่ผู้รับจ้าง 3 ฝ่าย ร่วมกระทำกับกรมเจ้าท่าเพื่อรับงานในโครงการ ในสัญญาระบุแยกรายละเอียดของงาน และค่าตอบแทนแยกเป็นส่วนของแต่ละฝ่ายที่จะต้องรับผิดชอบ การจ่ายค่าตอบแทนนี้ทั้งกำหนดให้ธนาคารโลกจ่ายโดยตรงเข้าบัญชีของผู้รับจ้างทั้งในประเทศฝรั่งเศสและในประเทศไทย สำหรับภาษีได้มีการระบุให้สามารถเบิกชดเชยคืนได้จากทางกรมเจ้าท่า ทั้งภาษีเงินได้บุคคลธรรมดาและนิติบุคคลที่ผู้รับจ้าง ได้จ่ายออกไปสำหรับภาษีในประเทศไทย เนื่องในงานของโครงการดังกล่าว

สัญญาฉบับที่ 2 เป็นสัญญาที่ผู้รับจ้างทั้ง 3 ฝ่าย ทาระหว่างกันมีลักษณะเป็น Consortium Agreement มีการระบุถึงการรับงานในโครงการดังกล่าวร่วมกัน มีข้อความที่เป็นสาระสำคัญถึงการร่วมงานกันทั้ง 3 ฝ่ายว่า ไม่ถือเป็นนิติบุคคลต่างหาก ตามกฎหมายใด ๆ มีการกล่าวถึงการแบ่งหน้าที่รับผิดชอบและผลตอบแทนของแต่ละฝ่าย อย่างชัดเจน และสำหรับเรื่องภาษีให้แต่ละฝ่ายรับผิดชอบในส่วนของตนไป

โครงการฯ มีความเห็นว่า

1. สัญญาทั้งสองฉบับมีการแยกรายได้รายจ่าย และความรับผิดชอบของแต่ละฝ่ายไว้อย่างชัดเจน และมีคำกำหนดให้ต้องรับความเสี่ยงในผลกำไรขาดทุนร่วมกันแต่ประการใด จึงถือได้ว่ากิจกรรมดังกล่าวมิใช่เป็นกิจการร่วมค้าตามที่กำหนดในมาตรา 39 แห่งประมวลรัษฎากร เพราะฉะนั้นการปฏิบัติในการเสียภาษีจึงจำเป็นต้องแยกเป็นส่วน ๆ ของแต่ละนิติบุคคลไป ทั้งนี้หมายความว่า ส่วนภาษีการค้าและภาษีเงินได้หัก ณ ที่จ่ายในอัตราร้อยละ 4.3 ที่ทางกรมเจ้าท่าได้หักไว้แต่ละคราวเมื่อถึงกำหนดจ่ายนั้นจะต้องแยกว่าเป็นส่วนภาษีของงานฝ่ายใด เพื่อใช้ในการเครดิตภาษีของแต่ละฝ่าย
2. เพื่อความสะดวกในการติดต่อกับกรมเจ้าท่าในเรื่องการหักภาษี ณ ที่จ่าย กลุ่มผู้รับจ้างโครงการได้จดทะเบียนการค้าและขอเลขประจำตัวผู้เสียภาษีอากรต่างหากเฉพาะในกิจการร่วมกันนี้ และถึงแม้ว่าทางกรมสรรพากรจะได้มีการจดทะเบียนชื่อในกิจการนี้ว่าเป็น "กิจการร่วมค้า" "BCEOM-CNR-KECD" ก็มีได้ทั้งที่สาระสำคัญของ การปฏิบัติในการเสียภาษีตามข้อเท็จจริงดังกล่าวเปลี่ยนไป ทั้งนี้หมายความว่า ไม่จำเป็นต้อง เสียภาษีรวมแบบกิจการร่วมค้า
3. การเสียภาษีเงินได้ขององค์กรของรัฐบาลฝรั่งเศส 2 หน่วยงานเนื่องจากการคิดค่าใช้จ่ายต่าง ๆ ของงานโครงการบางส่วนได้กระทำโดยใช้ทรัพยากรร่วมกันกับกิจกรรมปกติขององค์กรทั้งสองนี้ในประเทศฝรั่งเศส การจะหาเกณฑ์ที่เหมาะสมในการเฉลี่ยค่าใช้จ่ายในส่วนนี้เพื่อที่จะใช้คำนวณกำไรขาดทุนอย่างถูกต้องย่อมกระทำได้ยาก ฉะนั้นการนำวิธีเสียภาษีเงินได้เป็นการเหมาะในอัตราร้อยละ 5 ตามมาตรา 71(1) แห่งประมวลรัษฎากร ของยอดรายรับก่อนหักรายจ่ายนั้นย่อมทำได้
4. ค่าตอบแทนบางส่วนจ่ายโดยตรงจากธนาคารโลกไปให้ผู้รับจ้างทั้งสองในประเทศฝรั่งเศส ฉะนั้นเงินบางส่วนในการจ่ายโดยตรงนี้หากมิได้มีการส่งต่อกลับเข้า

มาในประเทศไทย เงินบางส่วนที่เป็นกำไรนี้ถือว่ามีกำไรเนื่องจากกิจการในประเทศไทยไปแล้ว ซึ่งองค์กรผู้รับจ้างทั้งสองนี้จะต้องรับผิดชอบค่านายหน้าเงินกำไรในส่วนที่ส่งออกนี้ โดยผู้แทนขององค์กรทั้งสองนี้จะต้องรับผิดชอบค่านายหน้าเงินกำไรในส่วนที่ส่งออกนี้ โดยผู้แทนขององค์กรทั้งสองนี้จะต้องส่งแบบ ภ.ง.ด.54 "ในรายการจำหน่ายเงินกำไรตามมาตรา 70 ทวิ และส่งเงินหักภาษี ณ ที่จ่ายในอัตราร้อยละ 20 ของเงินกำไรที่ถือว่าส่งออกต่อกรมสรรพากรด้วย แต่เนื่องจากไม่สามารถหากำไรขาดทุนที่แท้จริงตามบัญชีได้ จึงจำเป็นต้องหาโดยใช้วิธีคำนวณกลับจากยอดเงินที่ได้คำนวณเป็นการเหมานั้น และเนื่องจากข้อตกลงระหว่างรัฐบาลไทยกับรัฐบาลฝรั่งเศส เพื่อการเว้นการเก็บภาษีซ้อนข้อ 23 เรื่อง "วิธีการจัดการเก็บภาษีซ้อน" ในข้อ 1 (ข) ได้กำหนดให้องค์กรของฝรั่งเศสทั้งสองนี้ สามารถใช้ยอดภาษีจำหน่ายเงินกำไรข้างต้นในประเทศไทยเป็นเครดิตภาษี หากจะต้องเสียสำหรับภาษีของตนในประเทศฝรั่งเศส โดยอยู่ในเงื่อนไขว่าจำนวนเงินเครดิตภาษีดังกล่าวต้องไม่เกินร้อยละ 25 ของเงินส่งกำไรออก

5. เนื่องจากการเสียภาษีประเภทต่าง ๆ ของผู้รับจ้างในโครงการดังกล่าวสามารถที่จะ เบิกคืนได้จากกรมเจ้าท่า ประโยชน์จำนวนเงินภาษีที่ขอเบิกคืนได้นี้ต้องถือเป็นส่วนเงินได้เพื่อเสียภาษีอีกของผู้รับจ้าง ฉะนั้นการคำนวณภาษีจะต้องใช้วิธีที่คิดเพื่อส่วนภาษีที่ออกให้ด้วย

6. ในการขอเบิกคืนภาษีของส่วนภาษีเงินได้บุคคลธรรมดาของวิศวกรฝ่ายบริหารที่เป็นชาวต่างประเทศ เนื่องจากกรมเจ้าท่าถือเงินคืนภาษีนี้นับเป็นรายได้ข้อกิจการอีก และได้หักภาษี ณ ที่จ่าย ทั้งประเภทภาษีเงินได้ร้อยละ 1 และภาษีการค้าร้อยละ

3.3 โดยเหตุผลที่ว่ารายการเงินคืนภาษีนี้นับเป็นรายได้เนื่องจากกิจการค้าปกติ ส่วนภาษีการค้าที่หักไว้ร้อยละ 3.3 นี้ถือว่าเป็นการเสียภาษีเกินและได้สิทธิที่จะทำเรื่องขอคืนภาษีนี้ได้

จึงหารือว่า ความเข้าใจดังกล่าวจะถูกต้องหรือไม่ ดังความแจ้งอยู่แล้วนั้น กรมสรรพากรขอเรียนว่า สัญญาควบคุมงานการก่อสร้างงานปรับปรุงแม่น้ำและสถานีขนส่งสินค้าทางน้ำ สำหรับการพัฒนาการขนส่งทางน้ำภายในประเทศระยะที่ 3 ระหว่าง BCEOM CNR และ KECD กับกรมเจ้าท่า ลงวันที่ 1 กันยายน 2525 มีสาระสำคัญสรุปว่า BCEOM CNR และ KECD จะต้องให้บริการศึกษาความเป็นไปได้และการออก

แบบขั้นสุดท้าย (ประมาณการขนส่ง การออกแบบ การปรับปรุงร่องน้ำ การออกแบบอุปกรณ์
 หมายความสะดวกสถานีขนส่งสินค้าทางน้ำ ต้นทุนและผลประโยชน์ตอบแทนทาง เศรษฐกิจ)
 งานควบคุมการก่อสร้างการฝึกอบรมทางวิชาชีพแก่วิศวกรของกรมเจ้าท่า ช่วยเหลือกรม
 เจ้าท่าในการจัดซื้อเรือชุดเป็นต้น ซึ่งการให้บริการทั้งหมดกระทำในประเทศไทย เข้า
 ลักษณะ เป็นสัญญาจ้างทำของ ตามมาตรา 587 แห่งประมวลกฎหมายแพ่งและพาณิชย์
 ดังนั้น BCEOM CNR และ KECD จะต้องเสียภาษีเงินได้ และภาษีการค้าดังนี้

1. ภาษีเงินได้ สัญญาระหว่าง BCEOM CNR และ KECD กับกรมเจ้าท่า
 มิได้ระบุแยกงานที่จะต้องรับผิดชอบทำให้กรมเจ้าท่าโดยชัดแจ้ง เพียงแต่ในการบริหาร
 โครงการได้กำหนดให้ BCEOM และ CNR จะรับผิดชอบในการให้บริการของบุคคลากร
 ต่างประเทศทั้งหมดรวมถึงการควบคุมงานออกแบบขั้นสุดท้าย งานวิศวกรรม และ เศรษฐ
 ศาสตร์ รวมถึงโครงสร้างหลักของงานด้วย โดยให้ KECD รับผิดชอบงานสนามที่จำเป็น
 เช่น การสำรวจภูมิประเทศ สวรรจลาธารอุปโภค หรือการเจาะสำรวจดินเป็นต้น การ
 จ่ายค่าตอบแทนกรมเจ้าท่าจะต้องจ่ายค่าบริการการศึกษาให้ตามล่วนของงาน (งานหลัก
 3 งานประกอบด้วย (1) งานควบคุมการก่อสร้างงานด้านแม่น้ำ (2) งานควบคุมการ
 ก่อสร้างงานด้านท่าเรือ (3) งานศึกษาความเป็นไปได้ และออกแบบงานแม่น้ำน่าน และ
 ท่าเรือตะพานหิน) มิได้กำหนดจ่ายค่าตอบแทนตามล่วนของงานที่ BCEOM CNR และ KECD
 จะต้องกระทำ ดังนั้นเมื่อคู่สัญญามีได้แยกงานที่ทำ และมีได้คำนวณค่าจ้างแยกตามงานที่จะ
 ต้องทำตามสัดส่วนเป็นการชัดแจ้ง กรณีซึ่งคงถือว่าเป็นกิจการร่วมค้า ตามมาตรา 39
 แห่งประมวลรัษฎากร ส่วนสัญญาฉบับที่ 2 ซึ่งเป็นสัญญากายในลักษณะ Consortium
 Agreement ระหว่าง BCEOM CNR และ KECD ในการแบ่งหน้าที่ความรับผิดชอบ และ
 ค่าตอบแทนที่จะได้รับนั้นคู่สัญญาจะตกลงกันอย่างเรียบร้อยมิได้ กิจการร่วมค้าจึงต้องเสียภาษี
 เงินได้นิติบุคคลตามมาตรา 65 แห่งประมวลรัษฎากร เมื่อกิจการร่วมค้าจ่ายเงินปันผล
 หรือเงินส่วนแบ่งกำไรให้ BCEOM และ CNR, BCEOM และ CNR ไม่ต้องเสียภาษีเงินได้
 ตามมาตรา 76 ทวิ แห่งประมวลรัษฎากร เพียงแต่ต้องเสียภาษีเงินได้ตามมาตรา 70 ทวิ
 แห่งประมวลรัษฎากร ทั้งนี้ตามมาตรา 5 ทวิ แห่งพระราชกฤษฎีกา (ฉบับที่ 10) พ.ศ.
 2500 โดย BCEOM และ CNR สามารถนำภาษีตามมาตรา 70 ทวิ ไปเครดิตออกจาก

ภาษีเงินได้ที่จะต้องเสียให้รัฐบาลฝรั่งเศสได้ ตามข้อ 23 วรรค 1 (ข) แห่งอนุสัญญา
ระหว่างรัฐบาลแห่งราชอาณาจักรไทยกับรัฐบาลแห่งสาธารณรัฐฝรั่งเศส เพื่อการเว้นการเก็บ
ภาษีซ้อน และการป้องกันการเลี่ยงการรัษฎากรในลำนที่เกี่ยวกับภาษีเก็บจากเงินได้

2. ภาษีการค้า การที่ BCEOM CNR และ KECD ได้ไปจดทะเบียนการค้า
และเสียภาษีการค้าในฐานะกิจการร่วมค้าตามประเภทการค้า 4 ชนิด 1 (จ) แห่งบัญชี
อัตราภาษีการค้าถูกต้องแล้ว

3. ภาษีเงินได้ ภาษีการค้า ของกิจการร่วมค้า และภาษีเงินได้ของวิศวกร
ที่ได้รับค่าจ้างจากกรมเจ้าท่า ต้องถือเป็นรายได้เพื่อเสียภาษีเงินได้ และรายรับเพื่อเสีย
ภาษีการค้าของกิจการร่วมค้าด้วย

ขอแสดงความนับถือ

วิโรจน์ เลาะห์พันธ์ุ

(นายวิโรจน์ เลาะห์พันธ์ุ)

อธิบดีกรมสรรพากร

ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย

ข้อความภาษาอังกฤษจากเชิงอรรถ

1. J.M. Barrett, Erwin Seago, Partners and Partnerships Law and Taxation, Vol.1 (Virginia: the Michie Company, 1956), p.65.

Joint adventures may be defined as an association of two or more individuals, corporations, or partnerships or some combination of these, for the purpose of carrying on a business venture. (ดูเชิงอรรถที่ 4 หน้า 11)

2. Charles F. Hemphill, Jr., Basic Business Law (New Jersey: Prentice-Hall Inc., 1984), p.307.

A joint venture or joint adventure is an association of two or more persons or companies to carry out a single business enterprise for profit. Usually a combination of this kind comes about because persons or firms do not possess the individual resources to undertake such a project. The joint relationship ends when the project is completed. (ดูเชิงอรรถที่ 5 หน้า 12)

3. Patrick R. Delaney, Irvin N. Gleim, CPA Examination Review Business Law (New York: John Wiley & sons, 1987), P.317.

Definition of joint venture--association of two or more persons (or entities) organized to carry out a single business undertaking (or series of related undertakings) for profit.
(ดูเชิงอรรถที่ 6 หน้า 12)

4. Ferdinand F. Mauser, David J. Schwartz, American Business : An Introduction (New York: Harcourt Brace Jovanovich Inc., 1982), P.49.

A joint venture..is a group of people or businAesses who combine under an agreement to carry out a particular transaction or project. (คูเชิงอรรณที่ 7 หน้า 12)

5. John R. Griffith, The Legal Environment of Business (New York: John Wiley & sons, 1984), P.119.

The joint venture...is formed when two or more individuals join together in a particular limited business activity or single transaction, agreeing to share in the profits or losses of the enterprise.

(คูเชิงอรรณที่ 8 หน้า 12)

6. Robert N. Corley, Eric M. Holmes, William J. Robert, Principles of Business Law (New Jersey: Prentice-Hall, 1983), P.692.

A joint venture, or joint adventure, occurs when two or more persons combine their efforts in a particular business enterprise and agree to share the profits or losses jointly or in proportion to their contributions. (คูเชิงอรรณที่ 9 หน้า 13)

7. Kenneth W. Clarkson, Roger Leroy Miller, Bonnie Blaire, West's Business Law Text & Cases (New York: West Publishing company, 1980) , P.591.

When two or more persons combine their interest in a particular business enterprise and agree to share in losses or profits jointly or in proportion to their contribution, they are engaged in a joint venture. (คูเชิงอรรณที่ 10 หน้า 13)

8. American Jurisprudence, Vol.46, p.22.

While originally the expression "joint adventure" was used almost exclusively, "joint venture" has become a synonym, and the courts now apparently prefer the latter term.

(คูเชิงอรรณที่ 14 หน้า 16)

9. Ibid. p.26-27.

Shook v Beals. The courts generally hold that a fundamental distinction exists: The term joint venture applies to association for mutual profit; the term joint enterprise applies to undertaking for the mutual benefit, social diversion, recreation.

Smith v. Grenadier. A joint venture is for profit while a joint enterprise is not necessarily so. (คู่มือประมวลที่ 15 หน้า 16)

10. Ibid. p.24.

A syndicate has been defined as an association of individuals formed for the purpose of conducting and carrying out some particular business transaction, ordinarily of a financial character, in which the members are mutually interested.

(คู่มือประมวลที่ 16 หน้า 17)

11. Jean L. Mckechnie, "Webster's Deluxe Unabridged dictionary", 2nd ed. (New York: New World Dictionary, 1979), P.390.

consortium

1. a partnership.

2. an agreement or association of the banking interests of two or more nations, as for giving joint financial aid to another nation. (คู่มือประมวลที่ 17 หน้า 17)

12. Henry Campbell Black, "Black's law dictionary", 5ed (Minnesota: West Publishing Co., 1979), p.280

".....In old English law the term signified company or society and in the language of pleading, as in the phrase per quod consortium amisit, it has substantially the same meaning, viz., the companionship or society of a wife. (คู่มือประมวลที่ 18 หน้า 17)

13. Maarten J. Ellis, Business Law in Europe: Legal, Tax and Labour Aspects of Business Operations in the Ten European Community Countries, (Deventer: Kluwer Law and Taxation Publishers, 1982), P.572

Joint ventures in the form of consortia may be formed, usually for a limited period or for a specific purpose. They may be formed by more than the two parties who commonly form joint venture agreements...A consortium may be formed by agreement between the parties, without the creation of a new legal person such as the private company, usually the vehicle for joint ventures. (คู่มือเรื่อง 19 หน้า 18)

14. David Milman, Terrence Flanagan, "Modern Partnership Law", p.3.

Corporate partnership or Consortia

English law allows a company to be a member of a partnership and a consortium is constituted by a partnership between companies. This medium may be exploited by companies which wish to embark on a short term project... without entering into a full merger. (คู่มือเรื่อง 20 หน้า 18)

15. อาจารย์ นารถดิถลัก, "ปัญหาภาษีอากรสำหรับกิจการร่วมค้า", หน้า 57.
"กิจการร่วมค้า ภาษาอังกฤษใช้คำว่า Joint venture หรือ Consortium" (คู่มือเรื่อง 21 หน้า 18)

16. Charles D. Drake, Law of Partnership (London: Sweet & Maxwell, 1977), P.13.

"The English cases do not single out the joint adventure for particular treatment and there is no reason in English law why a joint enterprise for some special and discontinuous object should not, in the absence of contrary indications, carry with it the attributes of an ordinary partnership." (คู่มือเรื่อง 23 หน้า 22)

17. L.C.B. Gower, Pollock on the Law of Partnership
(London: Stevens & Sons Limited, 1952), P.8.

"I do not find that the incidents of a joint adventure, as far as it extends, can be distinguished from those of partnership; but, whatever the importance of the distinction may be, it is not met with in the English authorities." (คู่มือกฎหมายที่ 24 หน้า 22)

18. Ernest H Scamell, Lindley on the Law of Partnership
(London: Sweet & Maxwell, 1984), P.73-74.

"...the main rule to be observed in determining the existence of a partnership, a rule which has been recognised ever since the case of Cox V. Hickman, is that regard must be paid to the true contract and intention of the parties as appearing from the whole facts of the case. Although this principle is not expressed in the Act it is still law. Thus, if upon a consideration of all the surrounding circumstances, the particular contract exhibits all the indications of a partnership save for the fact that the parties thereto are described otherwise than as partners, e.g. as joint venturers, then a partnership will almost inevitably be held to exist." (คู่มือกฎหมายที่ 25 หน้า 22)

19. Alfred Conard, "International Encyclopedia of Comparative Law", Volume XIII, Chapter I, (1975), P.187.

The joint venture...in England, if person share the profits and losses of one particular transaction, they become partners as to that transaction and their rights and liabilities are governed by the same principles which apply to ordinary partnerships.

-Goddard v. Mills The agreement must, however, be construed as a whole and the mere fact that the parties described themselves as partners is not conclusive...On the other hand, there may be cases in which persons agree to share profits and losses and at the same time declare that they are not to be partners..The question then arises, what do they really mean?

-Adam v. Newbigging "If a partnership in fact exists... no phrasing of it... to quote one of the letters, will avail to avert the legal consequences of the contract."

-Weiner v. Harris. Two parties enter into a transaction and say "It is hereby declared there is no partnership between us." The court pays no regard to that... It is not in the least conclusive that the parties have used a term or language intended to indicate that the transaction is not that which in law it is. (คู่มือธรรมคดี 26 หน้า 23)

20. Robert Burgess, Geoffrey Morse, Partnership Law and Practice" (London: Sweet & Maxwell, 1980), p.2-7.

Partnership is a relation resulting from a contract.
(คู่มือธรรมคดี 27 หน้า 25)

21. Ibid., p.3

David Milman, Terrence Flanagan, "Modern Partnership Law" (London: Croom Helm, 1983), p.2.

Re Abenheim (1913) it was held that a single project can be regarded as a business. (คู่มือธรรมคดี 28 หน้า 25)

22. Robert Burgess, Geoffrey Morse, "Partnership law and practice" P.4,5.

The business carried on by two or more persons must be carried on in common. The fact that two or more persons carry on a business jointly does not necessarily make them partners.

(คู่มือธรรมคดี 29 หน้า 26)

23. Ibid.

Pitreavie Golf Club v. Penman. Societies or associations for religious, charitable or other social purposes cannot be partnerships. (คูเซิ่งอรรถที่ 30 หน้า 26)

24. P.W.D. Redmond, "Miles Taylor's Partnership Law" 10 ed. (London: Macdonald & Evans Ltd., 1966) p.15.

"...persons who share the gross returns of a business may be partners, provided that they..... satisfy all aspects of the definition in P.A.s.1 (Partnership Act section 1) (คูเซิ่งอรรถที่ 32 หน้า 27)

25. Charles D. Drake, "Law of Partnership" 2nd.ed. (London Sweet & Maxwell, 1977) P.14.

"The rule concerning gross returns provided a welcome escape from the rigour of the old rule that those who shared profits were liable as partners. Now that the old rule has been modified, the rule concerning gross returns is to that extent unnecessary." (คูเซิ่งอรรถที่ 33 หน้า 28)

26. David Milman, Terrence Flanagan, "Modern Partnership Law" p.68.

"...a partner (unlike a member of a company) does not enjoy limited liability for the firm's debts. (Greenwood's case(1854) 3 De G M & G 459) Thus a partner can be pursued to the full extent of his personal assets by the firm's creditors. (Asante v.Tetteh 1968 (2) ALR Comm 172.)" (คูเซิ่งอรรถที่ 34 หน้า 28)

27. Ralph C. Hoerber, Contemporary Business Law Principles and Cases (New York: McGraw-Hill Book Company, 1982)

P.887.

A joint venture has all of the characteristics of a general partnership except that it is organized to accomplish a single or limited purpose. Since such an organization is, in effect, a temporary partnership, partnership law is applicable to it and to its member. (คู่มือทฤษฎี 35 หน้า 29)

28. John W. Collins, Business Law Text and Cases.

P.782.

A joint venture, as it is sometimes called, is a business association that is essentially a partnership with a narrow purpose. Usually, a joint venture is formed for a single undertaking or a series of related undertakings of fairly short duration that do not require the complete attention of the members. For example, an association created for the purpose of subdividing and selling lots in a real estate development has been categorized as a joint venture. Because a joint venture is a form of partnership, it and its members are subject to the UPA. (คู่มือทฤษฎี 36 หน้า 29)

29. Norman D. Lattin, The law of Corporations. (Brooklyn: The Foundation Press Inc., 1959), p.9.

It would be better for courts to discontinue the use of the term except in those rare instances where partnership law is not applicable to the factual pattern. And, even then, since much confusion has already been caused by the use of the term, it would be better to abandon its use in any case. (คู่มือทฤษฎี 37 หน้า 29)

30.....The Guide To American Law Vol.6

(New York: West Publishing Company, 1984), P.348.

Joint adventure. An association of two or more individuals engaged in a solitary business enterprise for profit without actual partnership or incorporation. (คู่มือบรรณคดี 38 หน้า 30)

31. Edmund F. Ficek. Comprehensive CPA Business Law Review (New York: McGraw-Hill Book Company, 1983), P.464.

A joint venture is a special express or implied contract in which two or more persons, jointly and severally, bind themselves to carry out a single business transaction for their mutual profit or other benefit but not as a partnership. (คู่มือบรรณคดี 39 หน้า 30)

32. Charles F. Hemphill, Jr., Phyllis D. Hemphill, The Dictionary of Practical Law (New Jersey: Prentice-Hall, Inc., 1979), P.123.

Joint adventure. An association of persons with intent, by way of contract, either express or implied, to carry out a single business venture for joint profit. Without creating a partnership or corporation, either in the legal or technical meaning. (คู่มือบรรณคดี 40 หน้า 30)

33. Ralph C. Hoerber, "Contemporary business law: principle and cases", P.819.

Stone-Fox Inc. v. Vandehey Development Co.

"...A partnership may exist for a single transaction, in which case it is called a joint venture..." (คู่มือบรรณคดี 41 หน้า 30)

34. Michael B. Metzger, "Business law and Regulatory Environment: Concepts and Cases", 6th ed. (Illinois: Irwin, 1986), P.396.

P & M Cattle Co. v. Holler "Since joint ventures are a species of and governed by the law of partnerships, we must go to the Uniform Partnership Act." (คู่มือธรรมคดี 42 หน้า 31)

35. "American Law Reports", Vol.4 (New York: The lawyers Co-operative publishing co., 1966), P.715.

Brooks v. Brooks "A joint adventure is the association of persons in a single business enterprise for profit for which purpose they combine their property, money, effects, skill, and knowledge without forming a partnership or corporation." (คู่มือธรรมคดี 43 หน้า 31)

36. Alan R. Bromberg, "Crane and Bromberg on Partnership" P.58.

Walker, Mosby & Calvert, Inc. v. Burgess "Carrying on a business is a well defined term, and means the conduct of a business for a sustained period for the purposes of livelihood or profit, and not merely the carrying on of some single transaction." (คู่มือธรรมคดี 44 หน้า 31)

37. Harold Gill Reuchlein, "Agency and Partnership", P.249.

Masterson v. Valley Nat. Bank of L.I. Whatever law applies to single isolated transactions between two or more persons associated together for profit, it is not the U.P.A.... but rather as one of joint venture, and apply the U.P.A. by analogy. (U.P.A.=Uniform Partnership Act) (คู่มือธรรมคดี 45 หน้า 31)

38. Charles E. Clark, "Cases on the Law of Partnership",
(Minnesota: West Publishing Co., 1932), P.9.

Goss v. Lanin "Although the courts in modern times do not treat a joint adventure as identical with a partnership, it is so similar in its nature and in the contractual relationships that the rights as between themselves are governed practically by the same rules that govern partnerships." (คู่มือธรรมคดี 46 หน้า 32)

39. Alan R. Bromberg, "Crane and Bromberg on Partnership",
P.192.

Whether a JV is considered a partnership or merely analogized to one, the venturers are governed by the rules applicable to partners. (Few V Few) (คู่มือธรรมคดี 47 หน้า 32)

40. Harold Gill Reuchlein, "Agency and Partnership",
P.443

Heinrich V. Wharton County Live-stock, inc. "Courts today are disposed to state rather categorically that, as a general rule, a joint venture is governed by the same rules as a partnership." (คู่มือธรรมคดี 48 หน้า 32)

41. Ibid. P.42.

Jensen V. Schreck "The law governing joint ventures is generally that applicable to partnerships." (คู่มือธรรมคดี 49 หน้า 32)

42. "American Law Reports", P.716.

McIver V. Norman "The rights and duties of coadventurers are essentially those which pertain to a partnership."

Each member of a joint adventure is both an agent for his coadventurers and a principal for himself. (Summers V. Hoffman)
(คู่มือธรรมคดี 50 หน้า 32)

43. Jeremiah J. Spires, "Doing Business in the US."

Vol.1:7.05, P.7:9.

Joseph W O'Brien Co V Highland Lake Constr Co,

"The mutual rights and liabilities of joint venturers in respect of their common enterprises are substantially those of partners and the principles of law applicable to partnerships are generally applicable to joint venturers. There is a mutual agency in which each member is the principal as well as the agent of the others."

Each venturer has the power to bind the others and to subject them to liability to third persons in matters within the scope of joint enterprises (Medak V. Cox) but not as to matters outside its scope. (Priestly V Peterson) (คู่มือธรรมที่ 51 หน้า 33)

44. Alan R. Bromberg, "Crane and Bromberg on Partnership",

P.194.

The usual narrow purpose puts constraints on actual authority and.... on apparent authority. Agreements to limit authority further are affective only among members and against third parties with notice. (Taylor V. Brindley) (คู่มือธรรมที่ 52 หน้า 33)

45. "American Jurisprudence", P.76.

As in the case of partners, joint venturers may be jointly and severally liable to third parties for the debts of the venture. (Myers V. Lillard) (คู่มือธรรมที่ 53 หน้า 33)

46. Jeremiah J. Spires, "Doing Business in the US.P.7:9",

Daily v. Scott "Joint Venturers have the Usual Fiduciary Duties of Partners."

The joint venturers are fiduciaries inter se and held to the highest standards of good faith. (Van Stee V Ransford) (คู่มือธรรมที่ 54 หน้า 33)

47. Alan R. Bromberg, "Crane and Bromberg on Partnership",
P.391.

Jones v. Jones "A partner is under a duty not
compete with the partnership within the scope of its business.
(คู่มือธรรมศาสตร์ 55 หน้า 33)

48. American Jurisprudence, P.29

Hyman v Regenstein. A joint venture is not a
status created or imposed by law but is a relationship
voluntarily assumed and arising wholly ex contractu. (คู่มือธรรมศาสตร์ 56 หน้า 35)

49. Ibid, P.30.

Holtz v United Plumbing & Heating Co. The
agreement between the parties need not be formal or definite in
every detail relating to the respective rights and duties of the
parties, but may be implied as a reasonable deduction from their
acts and declarations. (คู่มือธรรมศาสตร์ 57 หน้า 35)

50. Ibid, P.33.

Security Development & Invest. Co. V Williamson.
Joint venture exists when two or more parties combine their
property or labor, or both. (คู่มือธรรมศาสตร์ 58 หน้า 35)

51. Henry W. Nichols, "Joint Venture", Virginia Law
Review, P.438.

In re Asiatic Exploration. Contributions of money,
sharing of expenses, rendering of services, sales assistance,
participation in management, all performed jointly, have been
deemed evidence of a community of interest existing between the
participants in a joint venture. (คู่มือธรรมศาสตร์ 59 หน้า 35)

52. Ibid P.438-9.

Carboneau v. Peterson. The parties may have a common objective or purpose, and still a community of interest may be lacking. For instance, two parties may be engaged in the performance of a purpose or object, which may be for the sole interest or advantage of one, and from which the other is to derive no benefit whatever, or the interest of the one may be different and distinct from that of the other; in either of such cases there would not be a joint adventure. The term "community of interest" as applied to the relation of joint adventure, means an interest common to both parties, that is, a mixture or identity of interest in a venture in which each and all are reciprocally concerned and from which each and all derive a material benefit and sustain a mutual responsibility. (คูเชิงอรรรถที่ 60 หน้า 36)

53. American Jurisprudence, P.32.

Eubank V. Richardson. A joint venture is usually... limited to a single transaction. (คูเชิงอรรรถที่ 61 หน้า 36)

54. Ibid.

Spencer Kellogg & Sons, Inc. v Lobban. A joint venture is a more or less temporary association of persons to engage in a single business venture for joint profit. (คูเชิงอรรรถที่ 62 หน้า 36)

55. George William Miller, "Comment, the joint venture: problem child of partnership", California law review V.38,1950, P.863.

Harmon v. Martin. It was held that an agreement for a speculative purchase of real estate, to be subdivided, improved, sold, and the profits divided among the parties, created a joint venture. Although there was involved the making of many contracts and the carrying on of business over a period of several years, the court characterized it as "but a single specific enterprise for profit. (คู่มือประมวลที่ 63 หน้า 37)

56. Henry W. Nichols, "Joint Ventures", Virginia Law Review, p.436.

Commercial Lumber Co V. Nelson. A profit jointly sought in a single transaction by parties thereto is the chief characteristic of a joint venture. (คู่มือประมวลที่ 64 หน้า 37)

57. Ibid.

Binning v. Miller. Where money or labor is jointly contributed to acquire or construct property for personal use but not for profit, the courts have held no joint venture relationship. (คู่มือประมวลที่ 65 หน้า 37)

58..Ibid.437.

Sappenfield v. Mead. A joint adventure is defined as an association of two or more persons to carry out a single business enterprise for profit...the expectation of making a profit being an indispensable element thereof. (คู่มือประมวลที่ 66 หน้า 38)

59. American Jurisprudence, P.40.

Keiswetter v Rubenstein. An agreement whereby an owner of lots furnishes the money to build houses thereon, pays all bills for labor, materials, and incidental expenses, and does all office work, incidentally watching the progress of the (คู่มือประมวลที่ 67 หน้า 38)

building operations, and the other party, a building contractor, furnishes skill and labor in building the houses, and orders all material therefor, which agreement contains a provision for division of the profits upon the sale of the houses, shows clearly an intention of the parties to associate themselves together for the express purpose of combining in a joint venture.

60. Ibid. P. 41.

Myers v Lillard Where one party furnished bean seed and fertilizer, and the other made available land and labor, and the amount received from the sale of the crop was to be divided equally, a joint venture existed. (คู่มือประมวลที่ 68 หน้า 38)

61. Ibid. P. 43, 44.

Carroll v Caldwell. An agreement between adjoining landowners, as lessees and royalty owners, which had as its purpose the recovery of secondary gas and oil which was to be shared, regardless of where it was produced, in amounts proportionate to the parties' holdings in the pooled land, constituted a joint venture. (คู่มือประมวลที่ 69 หน้า 38)

62. Joseph L Franscona, "Business Law Text Cases the Legal Environment" (Iowa: Wm. C. Brown Publishers, 1984), P. 655.

The U.P.A. has been adopted by all states except Louisiana and Georgia. (คู่มือประมวลที่ 70 หน้า 39)

63. Michael Armstrong, "Can corporation be partners?", Business Lawyer 20(1965), P. 909.

Twynford v. Sonken Galamba Corp. Court stated that the agreement was called a partnership but since the corporation could not enter into a partnership it was actually a joint

adventure in which the law of partnership would apply in the settlement of the questions arising among the parties and in relation to other parties. (คู่มือธรรมศาสตร์ 71 หน้า 41)

64. Harold Gill Reuchlein, "The law of Agency and Partnership", (Minnesota: West Publishing Co., 1981), P.444.

Miller's Indemnity Underwriters v Patten. "A partnership being the result of intention based on contract, the fact... that a corporation could not legally make a partnership with [Defendant] is a strong circumstance to indicate that they did not intend to enter into such relation." (คู่มือธรรมศาสตร์ 72 หน้า 41)

65. Alan R. Bromberg, "Crane and Bromberg on Partnership", P.58.

Walker, Mosby & Calvert, Inc. v. Burgess.
"Carrying on a business is a well defined term, and means the conduct of a business for a sustained period for the purposes of livelihood or profit, and not merely the carrying on of some single transaction." (คู่มือธรรมศาสตร์ 73 หน้า 42)

66. Ralph C. Hoerber, "Contemporary business law: principle and cases", 2nd ed. (New York: McGraw-Hill Book Company, 1982) P.819.

Stone-Fox Inc. v. Vandehey Development Co.
"...A partnership may exist for a single transaction, in which case it is called a Joint venture..." (คู่มือธรรมศาสตร์ 74 หน้า 42)

67. Harold Gill Reuchlein, "The law of Agency and Partnership", P.249.

Masterson v. Valley Nat. Bank of L.I. Whatever law applies to single isolated transactions between two or more

persons associated together for profit, it is not the U.P.A..... but rather as one of joint venture, and apply the U.P.A. by analogy. (ดูเชิงอรรถที่ 75 หน้า 42)

68. Francis J. Ludes, Harold J. Gilber, Corpus Juris Secundum, Vol. 68 (Minnesota : West Publishing Co., 1950), P.441

Beecher v. Bush. It has been stated that there may be a participation in the gross receipts of a business which would make the recipient a partner therein. (ดูเชิงอรรถที่ 76 หน้า 43)

69. Ibid.

Pa-Walker v. Tupper. It has been held that the sharing by co-owners of land of the products jointly developed therefrom in specie does not necessarily negative the idea of a partnership. (ดูเชิงอรรถที่ 77 หน้า 43)

70. Harold Gill Reuchlein, "The Law of Agency and Partnership", P.248.

Some courts have defined it (co-owners) as a community of interest. (Johnson v. Plastex) (ดูเชิงอรรถที่ 78 หน้า 43)

71. Ernest H. Scamells, and I'anson Banks, "R.C. Lindley on the law of partnership", (London: Sweet & Maxwell, 1984), P.12

In accordance with the provisions of the Interpretation Act 1978 the word "persons" includes artificial as well as natural persons and there may thus be a partnership between a limited company and an individual or between two or more limited companies and, in fact, in recent years, partnerships between limited companies have become more common. (ดูเชิงอรรถที่ 80 หน้า 62)

72. Frank L. Mechem, "The law of Joint adventures",
Minnesota law review 15(1931), P.651.

Mallory V. Hanaur Oil-Works. "In a partnership each member binds the firm when acting within the scope of the business...if a corporation be a member of a partnership, it may be bound by any other member of the association... policy of the law creating and regulating corporations looks to the exclusive management of the affairs of each corporation by the officers provided for or authorized by its charter. This management must be separate and exclusive, and any arrangement by which the control of the affairs of the corporation should be taken from its stockholders and the authorized officers and agents of the corporation would be hostile to the policy of our general incorporation acts. The decided weight of authority is that a corporation has not the power to enter a partnership, either with other corporations, or with individuals." (คู่มือบรรณคดี 81 หน้า 64)

73. Michael Armstrong, "Can corporations be partners?",
Business Lawyer 20(1965), P.900.

Mr. Rowley and other secondary authorities argue that since a corporation...can make a contract with an individual giving him managerial control of a corporation, it should be allowed to make a partnership contract giving the other partner equal control over the management of the partnership, particularly since partners generally exercise joint control, while a corporate agent may have what amounts to complete control. (คู่มือบรรณคดี 82 หน้า 64)

74. Ibid., P.904.

Trivison V. Steiner." A corporation, or several corporations,...if their charters did not prevent, could go into a partnership...." (คูเชิงอรรถที่ 83 หน้า 65)

75. Ibid., P.907.

Universal Pictures Corp V. Roy Davidge Film Lab. Ltd. "A corporation may enter into a partnership if so authorized by its articles of incorporation...There is nothing in the evidence to indicate that the corporation was not so authorized. The contract was for its benefit....it will be presumed that it was made in the proper exercise of its corporate powers." (คูเชิงอรรถที่ 84 หน้า 65)

76. George William Miller, "Comment, The joint venture: problem child of partnership", California law review v.38,1950, P.866.

Memphis Natural Gas Co. V. Pope "Court states that the Uniform Partnership Act includes corporations in its definition of...persons in such a way as to indicate that a corporation may be a partner." (คูเชิงอรรถที่ 85 หน้า 65)

ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย



ประวัติการศึกษา

นายธรรมนุญ พิทยาภรณ์ เกิดวันที่ 17 กุมภาพันธ์ 2508 ที่จังหวัด กรุงเทพมหานคร สำเร็จการศึกษานิติศาสตรบัณฑิต (น.บ.) จากคณะนิติศาสตร์ มหาวิทยาลัยธรรมศาสตร์ ปีการศึกษา 2528 สำเร็จการศึกษาระดับบัณฑิตไทย (น.บ.ท.) จากสำนักอบรมศึกษากฎหมายแห่งเนติบัณฑิตยสภา สมัยที่ 40 ประจำปี การศึกษา 2530 และผ่านการอบรมตามโครงการอบรมวิชาภาษาอังกฤษ รุ่นที่ 1 จากสำนัก อบรมศึกษากฎหมายแห่งเนติบัณฑิตยสภา ในปี พ.ศ. 2532 ปัจจุบันเป็นทนายความอยู่ที่ บริษัท สำนักกฎหมาย ดร.มานะ และเพื่อน จำกัด

ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย