

Chapter 68

Uniform Partnership Law

Chapter 68

ATTY. GEN. OPINIONS: Power of three corporations and an individual to form a partnership, 1948-50, p 93.

LAW REVIEW CITATIONS: 44 OLR 58.

68.010

LAW REVIEW CITATIONS: 7 WLJ 77.

68.020

NOTES OF DECISIONS

A partnership can be a participant in a joint adventure. Fouчек v. Janicek, (1950) 190 Or 251, 225 P2d 783.

ATTY. GEN. OPINIONS: Power of three corporations and an individual to form a partnership, 1948-50, p 93; responsibility for a nonresident partner in a certified public accountants partnership, 1962-64, p 85.

LAW REVIEW CITATIONS: 7 WLJ 77.

68.030

LAW REVIEW CITATIONS: 19 OLR 190.

68.040

LAW REVIEW CITATIONS: 19 OLR 190; 42 OLR 54.

68.110

NOTES OF DECISIONS

A partnership has been defined as a contract between two or more competent persons to place their money, effects, labor and skill in a lawful business, and to divide the profits and bear the loss in certain proportions. Cogswell v. Wilson, (1884) 11 Or 371, 4 P 1130; Kelly v. Bourne, (1887) 15 Or 476, 16 P 66; Flower v. Barnekoff, (1890) 20 Or 132, 25 P 370; Wheeler v. Lack, (1900) 37 Or 238, 61 P 849; Willis v. Crawford, (1901) 38 Or 522, 63 P 866, 53 LRA 904; Whetstone v. Purdue, (1923) 107 Or 86, 213 P 1014; H.H. Worden Co. v. Beals, (1926) 120 Or 66, 250 P 375; Myers v. Olds, (1927) 121 Or 249, 252 P 842; Hansen v. Bogan, (1928) 127 Or 399, 272 P 668; First Nat. Bank v. Williams, (1933) 142 Or 648, 20 P2d 222.

It has been held that a corporation is precluded from entering into a partnership. Hackett v. Multnomah Ry., (1885) 12 Or 124, 6 P 659; Calvert v. Idaho Stage Co., (1894) 25 Or 412, 36 P 24; Salem-Fairchild Tel. Assn. v. McMahon, (1915) 78 Or 477, 153 P 788; Page-Dressier Co. v. Meader, (1926) 118 Or 359, 244 P 308; Farnrich Grocery Co. v. Paulsen, (1930) 134 Or 247, 293 P 422.

There is no one exclusive test for determining whether a partnership exists. First Nat. Bank v. Williams, (1933) 142 Or 648, 20 P2d 222; Preston v. Ind. Acc. Comm., (1944) 174 Or 553, 149 P2d 957.

A partnership can be a participant in a joint adventure. Fouчек v. Janicek, (1950) 190 Or 251, 225 P2d 783.

An agreement between partners which modifies their relationship, but does not change the profit and loss sharing characteristic of the relationship, does not terminate the partnership. Claude v. Claude, (1951) 191 Or 308, 228 P2d 776, 230 P2d 211.

A partnership may exist notwithstanding the fact that one of its members is an exclusive agent of the association for certain purposes. Id.

FURTHER CITATIONS: Eilens Music House v. Reine, (1913) 65 Or 598, 133 P 788; State v. Sunbeam Rebekah Lodge, (1942) 169 Or 265, 127 P2d 726.

ATTY. GEN. OPINIONS: Agreement of husband and wife with others as partnership, 1944-46, p 391; power of three corporations and an individual to form a partnership, 1948-50, p 93.

LAW REVIEW CITATIONS: 19 OLR 190; 20 OLR 96.

68.120

NOTES OF DECISIONS

An express stipulation to share the profit and loss is not necessary. Bloomfield v. Buchanan, (1885) 13 Or 108, 8 P 912; Willis v. Crawford, (1901) 38 Or 522, 63 P 985, 64 P 866.

An intent to be partners is essential to a partnership. Worden Co. v. Beals, (1926) 120 Or 66, 250 P 375; First Nat. Bank v. Williams, (1933) 142 Or 648, 20 P2d 222.

There is not one exclusive test for determining whether a partnership exists. First Nat. Bank v. Williams, (1933) 142 Or 648, 20 P2d 222; Preston v. State Ind. Acc. Comm., (1944) 174 Or 553, 149 P2d 957.

An agreement between partners which modifies their relationship, but does not change the profit and loss sharing characteristic of the relationship, does not terminate the partnership. Claude v. Claude, (1951) 191 Or 308, 228 P2d 776, 230 P2d 211.

FURTHER CITATIONS: Meads v. Stott, (1951) 193 Or 509, 238 P2d 256, 239 P2d 594; Eldridge v. Johnston, (1952) 195 Or 379, 245 P2d 239; Hayes v. Killinger, (1963) 235 Or 465, 385 P2d 747.

68.130

NOTES OF DECISIONS

One partner may sue another on a transaction which is isolated from the partnership business. Kelly v. Tracy, (1956) 209 Or 153, 305 P2d 411.

FURTHER CITATIONS: Elwert v. Pac. First Fed. Sav. & Loan Assn., (1956) 138 F Supp 395; Berliner v. Roberts, (1961) 226 Or 350, 349 P2d 498, 360 P2d 533, 81 ALR 2d 413.

ATTY. GEN. OPINIONS: Effect of tenants by the entirety contributing their land to a partnership, 1944-46, p 391.

LAW REVIEW CITATIONS: 20 OLR 96.

68.210

NOTES OF DECISIONS

Each partner is a coprincipal and an agent with joint authority or right in the administration, control or disposal of the partnership business or property. *First Nat. Bank v. Williams*, (1933) 142 Or 648, 20 P2d 222.

Goodwill is recognized as property which may be owned and disposed of by a partnership. *Rees v. United States*, (1960) 187 F Supp 924.

Want of legal sufficiency in a partner's waiver to bind the partnership does not deny the effect of the waiver on their own interests. *Berliner v. Roberts*, (1961) 226 Or 350, 349 P2d 498, 360 P2d 533, 81 ALR 2d 413.

A partner is not a good faith purchaser of his copartner's interest. *California Bag Co. v. State Tax Comm.*, (1967) 3 OTR 41.

Signature of one partner on note was sufficient where he was authorized to act for partnership in its execution. *Smith v. Owen*, (1956) 208 Or 154, 300 P2d 423.

Agreement made by one partner to discharge a tenant from liability under a lease was binding on copartner. *Buf-ton v. Hoseley*, (1963) 236 Or 12, 386 P2d 471.

ATTY. GEN. OPINIONS: Authority of a partner on behalf of a partnership to execute an indemnity bond for a lost warrant, 1944-46, p 334.

LAW REVIEW CITATIONS: 20 OLR 273.

68.220

CASE CITATIONS: *State v. Sunbeam Rebekah Lodge*, (1942) 169 Or 253, 127 P2d 726.

LAW REVIEW CITATIONS: 20 OLR 96.

68.230

NOTES OF DECISIONS

The declaration of a partner as to existence of the partnership, not made in presence of copartner, was not competent to prove the partnership. *Myers v. Olds*, (1927) 121 Or 249, 252 P 842.

FURTHER CITATIONS: *Wieder v. Lorenz*, (1940) 164 Or 10, 99 P2d 38.

68.240

NOTES OF DECISIONS

A partner is not a good faith purchaser of his co-partner's interest. *California Bag Co., v. State Tax Comm.*, (1967) 3 OTR 41.

ATTY. GEN. OPINIONS: Responsibility for a nonresident partner in a certified public accountants partnership, 1962-64, p 85.

68.250

ATTY. GEN. OPINIONS: Responsibility for a nonresident partner in a certified public accountants partnership, 1962-64, p 85.

68.270

NOTES OF DECISIONS

A partnership contract for the payment of money creates only a joint liability. *Wheatley v. Carl Halvorson, Inc.*, (1958) 213 Or 228, 323 P2d 49.

Entry of judgment against only one of several partners in a joint venture was reversible error. *Id.*

68.310

NOTES OF DECISIONS

When the partners are killed in a common disaster the person who carries out the liquidation of the partnership is entitled to reasonable compensation. *Jewell v. Harper*, (1955) 205 Or 1, 285 P2d 133.

An agreement to compensate a partner may be implied. *McBride v. Fitzpatrick*, (1960) 224 Or 457, 356 P2d 947.

Special compensation for unusual services is not due a law partner who excluded his ex-partner from participation in discharging professional obligations of the partnership in winding up the partnership affairs. *Platt v. Henderson*, (1961) 227 Or 212, 361 P2d 73.

Where partnership was dissolved by death of partner and one surviving partner hired an accountant a month later, compensation for winding up the partnership began at the latter date and not at the date of the desertion of the partnership by the deceased partner and the other surviving partner. *Duncan v. Bartle*, (1950) 188 Or 451, 216 P2d 1005.

Although one partner continued the business after the disappearance of the copartners, she was not entitled to additional compensation. *Id.*

Where evidence showed that two partners unexplainably left, and the third continued the business for the benefit of all, charges of constructive expulsion were unfounded. *Id.*

FURTHER CITATIONS: *Wikstrom v. Davis*, (1957) 211 Or 254, 315 P2d 597; *Clark v. Allen*, (1959) 215 Or 403, 333 P2d 1100; *Fry v. Ashley*, (1961) 228 Or 61, 363 P2d 555; *McCallum v. Asbury*, (1964) 238 Or 257, 393 P2d 774.

68.320

NOTES OF DECISIONS

Evidence that partner voluntarily undertook to keep books after copartners failed to make any provision, and that such books were at all times available to them, rebutted charges of usurpation of management and constructive expulsion. *Duncan v. Bartle*, (1950) 188 Or 451, 216 P2d 1005.

68.330

NOTES OF DECISIONS

This section requires that a partner abstain from any concealment of information affecting the partnership. *Fouchek v. Janicek*, (1950) 190 Or 251, 225 P2d 783.

FURTHER CITATIONS: *McBride v. Fitzpatrick*, (1960) 224 Or 457, 356 P2d 947.

68.340

NOTES OF DECISIONS

An offer made to a partnership to enter into a joint adventure is a transaction within the meaning of this section even though it has no market value. *Fouchek v. Janicek*, (1950) 190 Or 251, 225 P2d 783.

A partnership can be a participant in a joint adventure. *Id.*

Information concerning a business opportunity acquired

by a partnership is the property of the partnership and should not be used by one partner for his private gain. *Id.*

A partner should account for profits derived by him as the result of a breach of a fiduciary duty, even though the profit was realized after the termination of the fiduciary relationship. *Id.*

All partners share in the profits during the liquidation period. *Claude v. Claude*, (1951) 191 Or 308, 228 P2d 776, 230 P2d 211.

The rule which requires an accounting for secret profits applies to commissions and discounts obtained by a partner on purchases made by him for the firm. *Liggett v. Lester*, (1964) 237 Or 52, 390 P2d 351.

Where a secret discount is withheld, the entire discount, not the net profit, must be accounted for. *Id.*

A partner need not account for profits from outside work where the transaction was not connected with the conduct of the partnership and the partnership equipment was used with the other partner's consent. *Powell v. Powell*, (1947) 181 Or 675, 184 P2d 373.

FURTHER CITATIONS: *Roberts v. Mariner*, (1952) 195 Or 311, 245 P2d 927; *McBride v. Fitzpatrick*, (1960) 224 Or 457, 356 P2d 947.

68.410

ATTY. GEN. OPINIONS: Nature of property rights where tenants by the entirety contributed land to the partnership, 1944-46, p 391.

68.420

NOTES OF DECISIONS

Each partner holds his share in realty conveyed to the firm subject to a trust in favor of creditors, and of the other partners if a balance is due them on final accounting. *Adams v. Church*, (1902) 42 Or 270, 70 P 1037.

Where one of the alleged partners is deceased and the existence of the partnership is denied, the heirs at law are necessary and indispensable parties to the suit. *Beers v. Beers*, (1955) 204 Or 636, 283 P2d 666.

The purpose of paragraph (c) of subsection (2) is to prevent disruption of partnership affairs by the creditor of an individual partner. *Willamette Prod. Cred. Assn. v. Morley*, (1967) 248 Or 183, 433 P2d 239.

Partners cannot keep the partnership secret and later claim the protection of this section. *Id.*

A partner is not a good faith purchaser of his co-partner's interest. *California Bag Co. v. State Tax Comm.*, (1967) 3 OTR 41.

FURTHER CITATIONS: *Scott v. Platt*, (1945) 177 Or 515, 163 P2d 293; *Claude v. Claude*, (1951) 191 Or 308, 228 P2d 776, 230 P2d 211.

ATTY. GEN. OPINIONS: Nature of property rights where tenants by the entirety contributed land to the partnership, 1944-46, p 391.

LAW REVIEW CITATIONS: 42 OLR 41.

68.430

NOTES OF DECISIONS

A partner as an individual does not own any specific part of the firm property but on liquidation has a right to share in the firm assets after all partnership debts are satisfied. *Claude v. Claude*, (1951) 191 Or 308, 228 P2d 776, 230 P2d 211.

FURTHER CITATIONS: *Erickson v. Palmer*, (1957) 211 Or 342, 315 P2d 164.

ATTY. GEN. OPINIONS: Nature of property rights where tenants by the entirety contributed land to the partnership, 1944-46, p 391.

68.450

NOTES OF DECISIONS

This procedure is not in aid of execution, attachment or garnishment; nor does it constitute a means whereby a lien may be foreclosed. *Scott v. Platt*, (1945) 177 Or 515, 163 P2d 293.

LAW REVIEW CITATIONS: 30 OLR 95.

68.510

ATTY. GEN. OPINIONS: Survival of motor carrier permit upon death of a partner, 1958-60, p 349.

68.520

CASE CITATIONS: *Platt v. Henderson*, (1961) 227 Or 212, 361 P2d 73.

ATTY. GEN. OPINIONS: Surviving partner selling beer under a license issued to partnership, 1942-44, p 440; survival of motor carrier permit upon death of a partner, 1958-60, p 349.

68.530

NOTES OF DECISIONS

Partners who have not assigned their interests or suffered them to be charged for their separate debts are given the privilege of dissolving the partnership if a copartner assigns his interest or permits it to be charged with his debts. But the partnership is not dissolved by law under such provision merely because a writ of execution and garnishment is served on a partner's interest. *Scott v. Platt*, (1945) 177 Or 515, 163 P2d 293.

Where two copartners deserted the business and the third continued it for benefit of all, it was not dissolved until death. *Duncan v. Bartle*, (1950) 188 Or 451, 216 P2d 1005.

ATTY. GEN. OPINIONS: Survival of motor carrier permit upon death of a partner, 1958-60, p 349.

LAW REVIEW CITATIONS: 42 OLR 43.

68.540

LAW REVIEW CITATIONS: 42 OLR 43.

68.570

ATTY. GEN. OPINIONS: Survival of motor carrier permit upon death of a partner, 1958-60, p 349.

68.580

CASE CITATIONS: *Platt v. Henderson*, (1961) 227 Or 212, 361 P2d 73.

68.590

NOTES OF DECISIONS

All partners have an equal right to participate in winding up the partnership affairs. *Platt v. Henderson*, (1961) 227 Or 212, 361 P2d 73.

FURTHER CITATIONS: *Liggett v. Lester*, (1964) 237 Or 52, 390 P2d 351.

ATTY. GEN. OPINIONS: Surviving partner selling beer under a license issued to partnership, 1942-44, p 440.

68.600

CASE CITATIONS: *Stinson v. McDaniel*, (1959) 215 Or 274, 333 P2d 902.

68.620

NOTES OF DECISIONS

A partner as an individual does not own any specific part of the firm property but on liquidation has a right to share in the firm assets after all partnership debts are satisfied. *Claude v. Claude*, (1951) 191 Or 308, 228 P2d 776, 230 P2d 211.

FURTHER CITATIONS: *Erickson v. Palmer*, (1957) 211 Or 342, 315 P2d 164; *Berliner v. Roberts*, (1961) 226 Or 350, 349 P2d 498, 360 P2d 533, 89 ALR2d 413; *Fry v. Ashley*, (1961) 228 Or 61, 363 P2d 555.

68.630

NOTES OF DECISIONS

See also cases under ORS 68.640.

Firm creditor could recover of surviving partner without attempting to collect from estate of deceased. *Poppleton v. Jones*, (1902) 42 Or 24, 69 P 919.

68.640

NOTES OF DECISIONS

When a partner was expelled from the partnership and the business was continued without a settlement of accounts, the value of the interest of the expelled partner was determined as of the date of expulsion and the expelled partner was entitled to that amount plus interest or at his option, the profits attributable to the use of his right in the property of the dissolved partnership and the expelled partner enjoyed status of creditor and not of a partner in the distribution of the proceeds from receiver's sale. *Wikstrom v. Davis*, (1957) 211 Or 254, 315 P2d 597.

ATTY. GEN. OPINIONS: Nature of property rights where tenants by the entirety contributed land to the partnership, 1944-46, p 391.

68.650

NOTES OF DECISIONS

Even though receivables collected after dissolution are assets to be accounted for, the rights of an individual partner thereto may be waived. *Berliner v. Roberts*, (1961) 226 Or 350, 349 P2d 498, 360 P2d 533, 81 ALR2d 413.

Want of legal sufficiency in a partner's waiver to bind the partnership does not deny the effect of the waiver on their own interests. Id.

Ordinarily interest is not chargeable in an accounting. *Liggett v. Lester*, (1964) 237 Or 52, 390 P2d 351.

The trial court may add interest to the share owed by a partner guilty of a fiduciary breach. Id.

FURTHER CITATIONS: *Platt v. Henderson*, (1961) 227 Or 212, 361 P2d 73; *Fry v. Ashley*, (1961) 228 Or 61, 363 P2d 555.