

QUESTION 1

Bob Smith and Frank Smith, who are brothers, pooled their money and bought a red 1972 Mustang. They titled the car under the name "Frank Smith Classic American Cars," and spent long hours restoring it. The brothers found that many people loved the Mustang and often asked to borrow it for special occasions. Bob and Frank decided they could take advantage of this and decided to lease the Mustang. Leasing the Mustang became such a lucrative enterprise that Bob and Frank borrowed money from a bank and bought and restored a second car, a Corvette, for the same purpose. They titled the Corvette under the name "Bob Smith Classic American Cars."

Because things were going so well, Bob and Frank agreed to operate their business together for the next five years. They called the business "Classic American Cars." They also agreed that they would pay for all costs associated with the operation of the business and divide what was left equally. Three months after they made this agreement, Bob was killed in a traffic accident while driving the Corvette. The Corvette was completely destroyed in the accident.

Frank made a claim with the business's insurance company for the value of the Corvette. Shortly thereafter, a check for the loss of the car was sent to Frank. Bob's widow, however, believes that the insurance funds belong to her since the Corvette was titled in Bob's name.

QUESTIONS:

1. Describe and define what kind of business relationship Bob and Frank established.
2. As a result of Bob's death, what should happen to the Mustang, the debt to the bank, the insurance proceeds, and any cash from the operation of Classic American Cars?
3. What becomes of the business as a result of Bob's death? May Frank continue to operate the business if Bob's widow objects?

DISCUSSION FOR QUESTION 1

Bob and Frank have formed a general partnership. According to the Uniform Partnership Act ("UPA"), and Revised Uniform Partnership Act ("RUPA"), a partnership is "an association of two or more persons to carry on as co-owners a business for profit" (UPA §6) (RUPA §202(a)). A person receiving a share of the profits is generally presumed to be a partner (RUPA §202(c)(3)).

As the intention to carry on a business for profit is an essential element in forming a partnership, (UPA §6(1)) (RUPA §202(a)), the brothers did not form the partnership when the Mustang was first purchased for their own amusement. Only when they decided to go into business leasing the car was a partnership formed.

Since the Mustang purchased by the brothers before the partnership was formed there may be some question as to whether it was to be partnership property. However, the fact pattern does not indicate any intention of the part of Bob or Frank for either the Mustang or the Corvette to be the individual property of the brother named in the title. As the Corvette was apparently purchased with partnership funds, and so long as no contrary intent appears, titling the cars in the names of the individual partners with the words "Classic American Cars" on the title did not transform the cars into individual property (UPA §8(2)) (RUPA §§203 and 204). Partners are "tenants in partnership" of partnership property. Upon the death of a partner, his right in specific partnership property vests in the surviving partner, not in his surviving heirs or next of kin (UPA §25) (RUPA §501). Therefore, Bob's widow is not entitled to keep the insurance proceeds for the Corvette. The insurance proceeds continued to be partnership property.

A dissolution of a partnership can be caused by the death of a partner when the partnership is for a definite term (UPA §31(4)) and (RUPA §801(a)(2)). On dissolution, a partnership is not terminated, however, but continues until the winding up of partnership affairs is completed (UPA §30) (RUPA §802). The surviving partner has the right to wind up partnership affairs (UPA §37) (RUPA §803). Upon dissolution, each partner, as against his co-partners, and all persons claiming through a partner (such as Bob's widow) have the right to have partnership property applied first to discharge partnership liabilities, with the surplus applied to pay in cash, the net amount owing to each respective partner (UPA §38) (RUPA §807). To continue in business would have required the consent of the representative of the deceased partner (UPA §41(3)) (RUPA §802(b)). If Bob's widow objected to Frank continuing the business, she has the ability to have the partnership wound up in order to obtain a cash payment of Bob's net interest in the partnership (liquidation).

Thus, the Bank debt should be paid from partnership assets and the Mustang should be sold in order to convert it to cash. Then, the remaining cash of the partnership, including the insurance proceeds, should be divided equally between Frank and Bob's widow.

Examine # _____

Final Score _____

SCORESHEET FOR QUESTION 1
ASSIGN ONE POINT FOR EACH STATEMENT BELOW

1. A partnership is
 - 1a. An association of two or more persons; 1a. _____
 - 1b. To carry on as co-owners; 1b. _____
 - 1c. A business for profit. 1c. _____
2. Bob and Frank formed a partnership when they began to lease the car to make a profit. 2. _____
3. The death of Bob has dissolved the partnership. 3. _____
4. Upon Bob's death the process of winding up the partnership should begin. 4. _____
5. The Mustang, should be sold in the process of winding up the partnership. 5. _____
6. The debt to the Bank should be paid from partnership assets before any distribution to partners. 6. _____
7. The insurance proceeds for the Corvette are partnership property, and do not belong to Bob's widow. 7. _____
8. The cash in the Bank remaining after liquidation of assets and payment of debts should be dispensed equally to Frank and to Bob's widow. 8. _____
9. Frank may not continue the business without the express consent of Bob's widow. 9. _____

QUESTION 1

Peter, Paul, and Larry decided to go into the landscaping business. The three orally declared that they would be partners in PPL Landscapers, sharing profits and losses equally. Peter, Paul, and Larry each contributed \$2,000 to PPL to buy the equipment necessary for their business. Peter, Paul, and Larry then went to Sam's Stone Supply, told Sam about their arrangement, and convinced Sam to extend credit to PPL. They also went to Sally's Soil Store and convinced Sally to extend credit to PPL.

PPL was an immediate success and before long, Peter, Paul, and Larry were each working on separate projects. While Peter was working at Gus' Golf Course, Gus asked Peter if PPL would be the full-time landscape provider for the golf course. Gus indicated that this would require one person to be at the golf course at all times. Gus offered to pay PPL \$75,000 per year plus material expenses. Peter told Gus that he was considering quitting PPL and asked Gus if he would like to contract with him instead of PPL. Gus agreed.

Peter told Paul and Larry that he was leaving PPL and asked Paul, who kept the financial records, to provide him with a current accounting of PPL assets. Paul refused. Peter believed that PPL had net assets of \$9,000, so he went to Sam's Stone Supply and charged \$3,000 worth of material to PPL's account. Peter decided he would keep these materials for himself in lieu of his share of the business assets. Peter then decided that he would also obtain materials from Sally's Soil Store. Peter told Sally that he had quit PPL, but that PPL owed him \$2,000. He asked her to give him \$2,000 worth of materials and bill PPL. She agreed.

Two weeks before any of these events occurred, but after the partnership had been formed, Paul was working on a PPL project for Hal Homeowner. While doing so, Paul inadvertently severed a gas line and caused \$5,000 worth of damage to Homeowner's home. Paul never mentioned this to either Peter or Larry.

QUESTION:

Discuss all issues relevant to the formation of PPL Landscapers, and identify and discuss all claims which can reasonably be pursued against PPL Landscapers and Peter, Paul, and Larry individually.

DISCUSSION FOR QUESTION 1

As an initial matter, on its face the partnership formed by Peter, Paul and Larry appears to be valid and enforceable. An oral Partnership Agreement without provision for its duration creates a partnership at will. Cooper v. Saunderson-Hunt, 365 A.2d 626. PPL is a viable partnership because a partnership requires the participation of a minimum of two persons, as co-owners to operate a business for profit. Benton v. Albuquerque National Bank, 701 P.2d 1025 and Revised Uniform Partnership Act (RUPA §202).

As a member of the partnership, Peter owes a fiduciary duty to the partnership with regard to Gus' offer of employment. This fiduciary relationship imposes upon each partner the obligation of the utmost good faith and integrity in their dealings with one another in partnership affairs. Laus v. Freed, 53 Cal. 2d 512. Peter's acceptance of Gus' offer on his own behalf constitutes a breach of this fiduciary duty to the partnership and exposes Peter to liability to the partnership for that act.

Peter's oral notification to Paul and Larry that he was leaving the partnership was effective in causing a dissolution of the partnership. A partnership at will is subject to dissolution by either the mutual agreement of the parties or by the express intent of any one partner. The partnership does not exist for any period of time longer than the mutual consent allows. Yoder v. Hooper, 695 P.2d 1182.

Upon the termination of the partnership (and actually at any time during the course of the partnership), a partner is entitled to demand that he/she be provided with all information affecting the partnership. The fiduciary duty among partners is generally one of full disclosure of all relevant information. Heskin v. Deutsch, 134 Ill. App. 3d 48. Therefore, Peter is entitled to be provided with an accounting of PPL's financial records and Paul wrongfully refused to provide such information.

PPL is liable to Sam for the \$3,000 worth of materials purchased. A partnership is liable for the contracts it makes with third parties or contracts made on its behalf by a properly authorized partner. Moreover, a partner can bind the partnership for contracts in the name of the partnership if the partner is acting within the apparent scope of the partnership business. Halloway v. Smith, 88 S.E.2d 909. Despite the fact that PPL is liable to Sam for the \$3,000 worth of materials purchased, Peter is personally liable on that obligation. A partner who undertakes to bind his co-partners to a contract with third parties, but lacks the authority to do so, is personally liable on the contract. Brooke v. Glide, 39 Cal. App. 534. Peter lacked authority to bind PPL at this point because when dissolution begins a partner may only act for purposes of winding up the partnership affairs.

Although the partnership is liable to Sam for the purchase of materials, the partnership is not liable to Sally. Despite the authority set forth above, where a third party has knowledge that the person with whom he is dealing has no authority to bind the partnership, the third party cannot seek to hold the partnership liable under that contract. Stone v. First Wyoming Bank, 625 F.2d 332. For the reasons set forth above, Peter obviously is personally liable to Sally for the materials purchased.

Lastly, the partnership is jointly liable for the damage caused to Hal Homeowner's property. Each partner of a partnership is jointly and severally liable for the negligence of his co-partner. Peterson v. Brune, 273 S.W.2d 278. Because the fact pattern indicates that the damage to Hal Homeowner's property was the result of the negligent act of Paul, occurring in the course of PPL business, the partnership and each partner are responsible for such damages. The obligation will first be satisfied out of Partnership assets. If these are insufficient, then the partners' individual assets can be used to satisfy the balance (RUPA §807).



Essay1 GradeSheet

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Score

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Please use blue or black pen
and write numbers clearly

1. A partnership may be created orally by agreement and only requires: 1. _____
 - 1a. an association of two or more persons 1a. _____
 - 1b. to carry on as owners 1b. _____
 - 1c. a business for profit 1c. _____
2. Peter owes the partnership a fiduciary duty to disclose Gus' offer of employment, and he breached that duty. 2. _____
3. Peter's oral notification to Paul and Larry that he was leaving the partnership was effective in causing a dissolution of the partnership. 3. _____
4. Peter was entitled to an accounting of PPL's financial records and/or Paul wrongfully refused to provide that information. 4. _____
5. PPL is liable to Sam for the \$3,000 worth of materials purchased because Peter had apparent authority. 5. _____
6. Peter is personally liable on the contract with Sam because he exceeded his actual authority and/or if PPL pays Sam, it has a right to recover the \$3,000 from Peter. 6. _____
7. PPL is not liable to Sally because Sally was made aware that Peter had left PPL, and/or Peter can only act to wind-up PPL affairs. 7. _____
8. Peter is personally liable on the contract to Sally because he had no authority to bind PPL. 8. _____
9. PPL and its partners are jointly and severally liable for the damage caused to Hal Homeowner. 9. _____
10. Upon dissolution all PPL debts not covered by the PPL assets become debts of the individual partners. 10. _____

QUESTION 2

Andy was looking for a building suitable for an auto repair business. Bob owned such a building, and together they opened an auto repair business which they named Sunrise Auto Repair. Andy provided the tools, equipment, and expertise, and Bob provided the building. They agreed to split the revenues equally after all costs were deducted.

Sunrise Auto Repair was a success. After only one year they hired Carl, another mechanic, to help with the workload. Carl was paid 15% of the amounts charged to customers, but only on the work that he did. After Carl was hired, Sunrise accounted for its revenues in the same fashion as before except that Carl's 15% was included as one of the costs.

A year later, Sunrise was ready to expand, but needed more capital to do so. David paid Sunrise \$30,000 in exchange for 10% of the company's net profits for five years. The revenues were thus to be divided during the next five years as follows: gross revenues, less all costs including payment to Carl, to be split 10% to David, 45% to Andy, and 45% to Bob.

None of these agreements has been reduced to writing.

QUESTION:

Discuss the potential partnership issues among the parties to these agreements.

DISCUSSION FOR QUESTION 2

The Uniform Partnership Act (UPA) 6(1), and the Revised Uniform Partnership Act (RUPA) 101(4), define a partnership as an association of two or more persons to carry on as co-owners a business for profit. There are no formalities required to form a partnership. Although partnerships are often based on written agreements, there is no requirement that the agreement be in writing.

However, all commercial associations are not partnerships. The UPA and RUPA exclude commercial associations created under other statutes, such as corporations. If the commercial association was not created under another statute, then the courts look to the intent of the parties to determine whether they intended to form a partnership, i.e., to carry on as co-owners a business for profit, or whether they intended some other form of commercial association. In determining the parties intent, the UPA and RUPA provide that sharing of profits creates a presumption of partnership. However, this presumption is rebutted if the profits are paid for a non-partnership purpose, including the repayment of a debt owed to a creditor, the payment of wages for services performed by an employee, or the payment of rent to a landlord. UPA 7(4); RUPA 202(c)(3). Likewise, the sharing of gross profits, as opposed to net profits, does not, necessarily, give rise to the presumption of partnership. UPA 7(3); RUPA 202(c)(2).

Applying these principles, Sunrise Auto Repair is probably a partnership, and Andy and Bob are probably partners. Andy and Bob each contributed property to the business. Andy contributed his tools and equipment, in addition to his expertise. Bob contributed the use of the building. In exchange, they share profits, and note, they share net, not gross profits.

The issue with Carl is whether he is a partner or an employee. He is probably an employee, not a partner. Carl might argue that he is a partner because he receives a share of the profits. But, his share is a share of gross profits, not net profits. His share most resembles the payment of wages for services performed by an employee.

The issue with David is whether he is a partner or a creditor. He is probably a creditor, not a partner. David might argue that he is a partner because he also receives a share of the profits. Unlike Carl, he actually receives a share of net profits. and therefore, he might argue that a presumption of partnership exists. But, he will only receive his share for five years. After the first five years, he will receive nothing else from Sunrise Auto Repair. This arguably rebuts any presumption in his favor of being a partner and leaves his share looking more like the repayment of a loan.



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Essay 2 GradeSheet

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Score

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Please use blue or black pen
and write numbers clearly

1. A partnership is an association of two or more persons to carry on as co-owners a business for profit. 1. _____
2. There is no requirement that a partnership agreement be in writing. 2. _____
3. Generally, sharing of profits creates a presumption of partnership. 3. _____
4. Andy and Bob are partners. 4. _____
 - 4a. They share costs (losses or net profits). 4a. _____
5. Carl is not a partner. 5. _____
 - 5a. His share resembles wages for services performed, therefore he is an employee. 5a. _____
6. David is not a partner. 6. _____
 - 6a. He is a creditor who is actually being repaid for a loan. 6a. _____

QUESTION 6

Lorraine, Maureen, and Claudette entered into a verbal agreement to build a house on a piece of property owned by Lorraine. Maureen, who is a contractor, agreed to build the house. Claudette, who is a developer and realtor, agreed to arrange construction financing for the project and to market the house. (No money changed hands among the three women.) The women agreed that their respective contributions to the project were approximately equal and therefore, when the house sold, each would receive one-third of the gross proceeds.

At all times, title to the real estate was in Lorraine's name. The contracts for materials and labor for the house were executed by Maureen. Claudette obtained the financing in her name, although she did not have title to anything.

The project was begun and things went well for a while. Ultimately, the cost of construction exceeded the construction loan amount, and many of the suppliers and subcontractors were not paid.

QUESTION:

Discuss the relationship among Lorraine, Maureen, and Claudette and their legal obligations to the creditors. Do not discuss mechanic's or other liens, real property law, nor the application of the Statute of Frauds.

DISCUSSION FOR QUESTION 6

I. Partnership

A partnership is defined as an association of two or more persons to carry on, as co-owners, a business for profit. Revised Uniform Partnership Act (“RUPA”) § 101(6). No specific form of agreement is necessary to constitute a partnership and it does not need to be in writing. Nor need there be subjective intent to form a partnership, only that the parties intend to run a business as co-owners. See RUPA §202(a). The parties’ intent may be implied from their conduct. See, Yoder v. Hooper, 695 P.2d 1182, (Colo. App. 1984), Aff’d 737 P.2d 852 (Colo. 1987). Nelson v. Seaboard Sur. Co., C.A. Minn., 269 F.2d 882. (Conduct may be sufficient to form a partnership.)

Intention of the parties, agreement, splitting profits, and co-ownership are indicative, but not conclusive, of the existence of a partnership. See, In re S & D Food, Inc., 1992, 144 BR 121. A person who receives a share of the profits of a business is presumed to be a partner unless the profits were received in payment of a debt, services, or as wages, rent, retirement or health benefits, interest on a loan, or sale of goodwill of a business. RUPA § 202(c)(3). Joint ownership of property may by itself, but does not necessarily, establish partnership. RUPA §202(c)(1). Neither does sharing of gross returns necessarily of itself establish partnership whether or not the persons sharing them have a joint or common interest in any property from which the returns are derived. RUPA §202(c)(2), and Yoder v. Hooper, supra.

In general partnerships, each of the partners is jointly and severally liable for all partnership debts and obligations. RUPA § 306(a). Partners are considered agents for each other and may bind the partnership when they act within the scope of their authority. RUPA, §301(1); Black v. First Federal Sav. and Loan Ass’n of Fargo, North Dakota, F.A., App. 1992, 830 P.2d 1103, certiorari granted, affirmed 857 P.2d 410. The partnership is bound where one partner acts within the scope of her actual or apparent authority, i.e., for apparently carrying on in the ordinary course the partnership business. The partnership is not bound where the partner had no authority to act for the partnership in the particular matter **and** the person with whom the partner was dealing knew or had received notification that the partner lacked authority. RUPA §301(1) and (2).

II. Joint Ventures

Joint ventures, sometimes known as “joint adventures,” have been defined as an association of persons with intent to engage in a single business venture for joint profit; also as a special combination of two or more persons for a specific venture seeking profit jointly, but without an actual partnership existing. See, Buck v. G.W.L. Const. Co., D.C. Mo, 114 F.Supp. 448, 449. Joint ventures are a relatively recent creation of the American court system. Buck v. G.W.L. Const. Co., supra; Aiken Mills v. U.S., CCASC 144 F.2d 23.

There has been a divergence in the opinions of commentators concerning the category of the entity known as a joint venture. Some jurisdictions hold that a joint venture is governed by

partnership rules, whereas others may define it differently, if at all. See, State v. Laurendine, 196 So. 278, 283, 239 ALA. 620. The Uniform Partnership Act states that “a partnership is an association of two or more persons to carry on as co-owners of a business for profit . . . but any association formed under any other statute . . . is not a partnership under this act unless the association would have been a partnership . . . prior to the adoption of this act.” See, U.P.A. § 6. Also, comment 2 to the Revised Uniform Partnership Act § 202 provides “relationships that are called ‘joint ventures’ are partnerships if they otherwise fit the definition of a partnership. An association is not classified as a partnership, however, simply because it is called a ‘joint venture’”. See, RUPA § 202(a).

The authorities in various jurisdictions differ, and have historically differed, concerning classification of joint ventures. In some states, Colorado for instance, joint ventures have been traditionally considered to be a class of partnership. See, Yoder v. Hooper, supra. The most useful and reliable approach, however, is that of the RUPA, which requires that a partnership satisfy the specific definition in the Act to be classified as a partnership. The fact pattern indicates that although there may have been an “association” of the three persons, they were not operating a business as co-owners. The fact that they had interests in the gross revenues of this project in and of itself does not establish a partnership. The property itself was never in co-ownership, and the building was constructed and contracted for only by Maureen. Claudette specifically was stated as not having title to anything in this transaction. Because the facts do not suggest a partnership, under RUPA the arrangement is something other than a partnership. Liability therefore would be under common law, making Maureen responsible for the contracts she entered into.

It could be argued under various common law or statutory provisions that Lorraine, as the owner of property which property has presumably been improved or enhanced by the building, might have liability under a theory of unjust enrichment. That argument could equally apply to Maureen as the contractor for the project, but Maureen is liable anyway and that theory does not add new or different liability. In any case, Claudette does not appear to have unjust enrichment liability.



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Essay 6 GradeSheet

Seat

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Please use blue or black pen
and write numbers clearly

1. A partnership is defined as:
 - 1a. an association of two or more persons; 1a. _____
 - 1b. to carry on as co-owners a business; 1b. _____
 - 1c. for profit. 1c. _____
2. A partnership does not have to be evidenced by a written agreement. 2. _____
3. No requirement that the parties subjectively intend to form a partnership; their conduct may indicate a partnership. 3. _____
4. Sharing gross revenues or returns (as opposed to profits) does not of itself establish a partnership. Sharing of profits raises a presumption that a partnership exists. 4. _____
5. Joint or common interests in property do not necessarily indicate a partnership. 5. _____
6. Partners may bind the partnership when acting in the scope of their actual or apparent authority. 6. _____
7. A joint venture is an association of persons with intent to engage in a single business venture for joint profit; or as a special combination of two or more persons for a specific venture seeking profit jointly, but without an actual partnership existing. 7. _____
8. Partners in general partnerships and joint ventures have joint and several liability for all partnership or venture obligations. 8. _____
9. Because title to the property remained in Lorraine's name, it is presumed to be separate property. 9. _____
10. Maureen contracted with the contractors in her own name and thus remains liable under contract theories. 10. _____
11. Claudette contracted for financing in her own name and thus remains personally liable under contract theories. 11. _____
12. Lorraine may have liability under a theory of unjust enrichment. 12. _____

QUESTION 2

Ann owned and operated Ann's Pet Store, which sold pets and pet supplies. Ann's was having financial difficulty, so she approached her friends Bill and Claire for help. On March 1, Bill loaned \$50,000 to Ann's Pet Store and agreed to be paid 50% of the store's monthly profits until the loan and agreed upon interest were fully repaid. Also on March 1, Claire wrote a check for \$30,000 to Ann's Pet Store and agreed to be paid 25% of the monthly profits in return for her contribution.

Ann used the proceeds from the checks to purchase equipment, supplies, and a delivery truck for the store. Claire began working at the store and helping Ann with business policy decisions. Ann, Bill and Claire divided the profits from the store as they had agreed. The parties had no written agreement.

On July 1, Claire wrote a letter to her daughter, Debbie, wherein she stated that Claire was assigning to Debbie all of her interest in Ann's Pet Store. On August 1, Ann paid profits to herself, Bill, and Claire. On September 1, Debbie made a demand on Ann to inspect the business "books" and for payment of the profits. On October 1, while driving the store's delivery truck, Ann hit and seriously injured a pedestrian named Paul. Ann's Pet Store did not have the truck insured, nor did the business have liability insurance.

QUESTIONS:

Discuss the relationship among the parties, and whether:

1. Debbie has a right to see the "books" and receive payment for the monthly profits;
2. Paul may recover for his injuries against any of the parties or Ann's Pet Store.

Assume that the Uniform Partnership Act has been adopted in the jurisdiction where this dispute would be litigated.

DISCUSSION FOR QUESTION 2

What is the relationship of the parties?

A partnership is defined as "an association of two or more persons to carry on as co-owners of a business for profit" [R.U.P.A. 101(6)], which definition divides into four essential parts.

1. There must be a contractual "association." This does not require a specific written or oral contract, and may be implied from the circumstances. Here, Ann, Bill, and Claire certainly have some sort of contractual relationship (beyond their friendship), because money has been paid into the business. Claire and Ann have been working in the business, and all three have been receiving profits from the business.
2. There must be "two or more persons" who jointly own the business (to distinguish a partnership from a sole proprietorship). Ann had been sole proprietor of the pet store, but the presence of Bill and Claire opens the possibility that it now has become a partnership.
3. A partnership is co-owned by the partners. The most important factor evidencing co-ownership according to the R.U.P.A. is the sharing of profits, which is said to be "prima facie evidence that a person is a partner in the business" [RUPA, §202(c)(3)]. Ann, Bill and Claire did share in the profits of the Pet Store. Also, sharing of control, capital investment, labor, and losses tend to show co-ownership. Ann and Claire shared control or management because Claire began to help with business policy decisions and began working at the business. Bill, however, only loaned money to the pet store.
4. There must be a "business for profit," and the pet store operation was both intended to be for profit, and in actuality it earned a profit.

Here, there is a very good argument that the involvement of Ann and Claire are partners, while in Bill's case it is less likely that he is a partner.

What rights does Debbie have to see the "books" and for payment of the profit?

A person's interest in a partnership is personalty and may be assigned at any time and such assignment does not dissolve the partnership. (R.U.P.A. §503(a). It is not necessary that the other partners approve of the assignment. However, an assignee of an interest has only the right to receive distributions that the assignor would otherwise have been entitled to receive. The assignee is not entitled to participate in the management of the partnership, to require information on partnership transactions, or to inspect the partnership books. R.U.P.A. sec. 503. Therefore, Debbie is entitled to receive Claire's profit, but she is not entitled to see the company books.

Who is liable to Paul for his injuries?

Ann is personally liable because she personally caused the injury.

Bill will argue that all he did was lend money to the business. A person who receives a share of the profits of a business is presumed to be a partner unless the profits were received in payment of a debt. [R.U.P.A. §202(3)]. Here it appears that Bill will receive the profits only until his loan is repaid. There is no evidence that he participated in the operation of the business and therefore, Bill is probably not a partner. As only a creditor of the store, Bill would have no liability to Paul.

Claire will also claim she only loaned money to the store. She will argue that she is only an employee and that receipt of a portion of the profit is only for the work she does. Finally she will argue that her assignment to Debbie released any claim she may have had as a partner. However, the facts state that Claire will continue to receive profits even after the \$30,000 is repaid and typically employees do not receive their wages solely through a share of the profits. Her participation in decision making further indicates she is a partner. As for the assignment, it does not transfer her partnership interest, only her right to receive profits. Thus Claire will be considered a partner and as such, all partners are liable for any torts committed by any partner in the ordinary course of partnership business [R.U.P.A. §306]. All partners are jointly and severally liable for all obligations of the partnership [R.U.P.A. §307(b)].

Debbie only received an assignment of the right to receive profits; she did not receive a partnership interest, therefore she is not liable to Paul for his injuries.

Ann's Pet Store, which is arguably a partnership, is vicariously liable for a tort committed by one of its partners where the partner was "acting in the ordinary course of business of the partnership" [R.U.P.A. §305]. Since Ann was driving the company vehicle for business purposes at the time Paul was injured, the partnership would be liable.

ESSAY Q2

SEAT

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ISSUE

	YES	NO
1. A partnership is defined as: an association of two or more persons to carry on as co-owners of a business for profit.	1. <input type="radio"/>	<input type="radio"/>
2. The agreement does not have to be in writing.	2. <input type="radio"/>	<input type="radio"/>
3. Sharing of profits by Ann, Bill and Claire is an indicator of co-ownership and prima facie evidence of the existence of a partnership.	3. <input type="radio"/>	<input type="radio"/>
4. Claire is a partner as she contributed capital, shared in profits and made business policy decisions.	4. <input type="radio"/>	<input type="radio"/>
5. Bill is not a partner as he only loaned money to the business.	5. <input type="radio"/>	<input type="radio"/>
6. A person's interest in distribution of profits may be assigned.	6. <input type="radio"/>	<input type="radio"/>
7. Debbie is entitled to receive her assigned share of the profits.	7. <input type="radio"/>	<input type="radio"/>
8. Debbie has no right to see the company's books.	8. <input type="radio"/>	<input type="radio"/>
9. Ann is personally liable as the person who caused the injury to Paul.	9. <input type="radio"/>	<input type="radio"/>
10. Bill has no liability to Paul.	10. <input type="radio"/>	<input type="radio"/>
11. Claire is liable for any torts committed by any person acting in the ordinary course of partnership business.	11. <input type="radio"/>	<input type="radio"/>
12. Debbie, as an assignee of profits only, has no liability.	12. <input type="radio"/>	<input type="radio"/>
13. A partnership is vicariously liable for a tort committed by a person acting in the course and scope of partnership business.	13. <input type="radio"/>	<input type="radio"/>

QUESTION 4

Arnold and Benedict agreed to pool their resources and labor and open an ice cream parlor which they called Conezone. Each contributed \$50,000 to start the business, but they never entered into any written agreement. Arnold and Benedict shared duties at the shop and always split any profits or losses “right down the middle.”

During the second year of operation, Arnold used \$3,500 his mother had given him to purchase a used pick-up truck which he titled in his name. The truck was always parked at Conezone, and both Arnold and Benedict used the truck to make deliveries and get supplies.

Recently, Dreamworld, a resort in a neighboring county approached Benedict about providing \$25,000 worth of ice cream for a special event. Even though Benedict knew Conezone would be incapable of delivering such a large volume on short notice, he fraudulently accepted Dreamworld’s money and agreed to the deal. Conezone failed to provide any ice cream to Dreamworld.

Arnold learned of the Dreamworld deal only after Conezone failed to deliver the ice cream. When Benedict explained the situation, Arnold exclaimed “I’m through with this business and with you.”

QUESTIONS:

1. Discuss the legal relationship, if any, between Arnold and Benedict.
2. Discuss the ownership status of the pick-up truck.
3. Discuss whether Conezone will be liable to Dreamworld concerning the non-delivery of ice cream.
4. Discuss the legal effect, if any, of Arnold’s final exclamation to Benedict.

DISCUSSION FOR QUESTION 4

1. Legal Relationship Between Arnold and Benedict.

The facts reveal that Arnold and Benedict entered into a partnership. A partnership is defined as an association of two or more persons to carry on as co-owners of a business for profit. See Uniform Partnership Act of 1997 (UPA) § 101(6). No writing is necessary to create a partnership, and the parties' intent may be implied by conduct. See 59A Am.Jur.2d Partnership § 90. Thus, the fact that Arnold and Benedict did not enter into a written partnership agreement is not determinative. If, as here, there is no specific agreement concerning the duration of the enterprise, it is deemed a partnership at will. See 59A Am.Jur.2d Partnership § 82. In addition to reaching the correct legal conclusion that a partnership existed, the examinee should receive points for discussing the facts that tend to establish the partnership such as the joint contribution of \$50,000 in capital and splitting of profits and losses.

2. Ownership Status of the Pick-up Truck.

This calls for a discussion of whether the pick-up is partnership property or personal property belonging to Arnold. Property acquired in the name of one or more of the partners, without an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership and without use of partnership assets, is presumed to be separate property (i.e. not belonging to the partnership), even if used for partnership purposes. See UPA § 204(d). This is precisely the situation with the pick-up truck. It was purchased with Arnold's own money and titled in his own name with no reference to the partnership. Thus, despite the fact that it was used for partnership purposes, the truck presumptively belongs to Arnold.

3. Conezone's Liability to Dreamworld.

A partnership is liable for loss or injury caused as a result of a wrongful act or omission, or other actionable conduct, of a partner acting in the ordinary course of business of the partnership or with authority of the partnership. See UPA § 305(a). This covers liability for tortious conduct including fraud. See 59A Am.Jur.2d Partnership § 429. Here, Benedict's fraudulent conduct involved a promise to deliver ice cream. This conduct appears to have been committed in the "ordinary course of the partnership." Consequently, Conezone will be liable to Dreamworks for Benedict's fraud.

4. Legal Effect of Arnold's Exclamation.

This question raises the issue of the partnership's dissolution. Once again, because Arnold and Benedict did not agree as to any specific duration of the partnership, this is a partnership at will. A partnership at will is dissolved if it receives notice of a partner's express will to withdraw as a partner. See UPA § 801(1); 59A Am.Jur.2d Partnership § 552. Here, Arnold's statement that he is through with the business and with Benedict seems sufficient notice that he is withdrawing as a partner. Thus, the partnership is dissolved. However, dissolution does not entirely end the partnership because it continues to exist for the sole purpose of winding up business. See UPA § 802(a); 59A Am.Jur.2d Partnership § 584.

ESSAY Q4

SEAT

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ISSUE

POINTS
AWARDED

Legal Relationship

- 1a. A partnership is an association of two or more persons to carry on as co-owners of a business for profit (or similar language). 1a.
- 1b. No writing necessary. 1b.
- 1c. Discussion of facts supporting formation of partnership (joint contribution of capital or splitting profits and losses). 1c.
- 1d. Conclusion that A and B formed a partnership. 1d.
- 1e. Conclusion that partnership was "at will." 1e.

Pick-up Truck

- 2a. Property acquired in name of individual partner with his own funds presumed to be individual partner's property, even if used for partnership purposes. 2a.
- 2b. Purchase of pick-up satisfies above rule so it is presumed to belong to Arnold. 2b.

Conezone's Liability to Dreamworld

- 3a. Partnership is liable for tortious conduct (fraud) of partner who was acting in ordinary course of business of partnership. 3a.
- 3b. Partnership is liable for breach of contract where partner had apparent/actual authority (agency principles). 3b.
- 3c. Conclusion that Conezone is liable for fraud. 3c.
- 3d. Conclusion that Conezone is liable for breach of contact. 3d.

Arnold's Exclamation

- 4a. Partnership at will is dissolved if it receives notice of a partner's express intent to withdraw as a partner. 4a.
- 4b. Arnold's statement is sufficient notice so partnership is dissolved. 4b.
- 4c. Partnership continues after dissolution for purposes of winding up business. 4c.

QUESTION 1

Ana, Jane, and Rosa planned to open a restaurant called "The Three Amigas" and agreed to form a partnership. Each contributed \$50,000 to the partnership. They agreed to invest the money for a short time in the stock of Floogle Inc., and authorized Ana to act on their behalf to purchase the shares. Ana deposited the \$150,000 in a bank checking account under the name "Three Amigas Partnership." Ana then wrote a check on the account for \$150,000 to buy Floogle stock. Ana registered the stock shares under the name "Three Amigas Partnership."

A few days later, the partners had a meeting. Ana reported that she had purchased the Floogle stock. Rosa, who was responsible for hiring employees, discussed hiring her cousin Donny as a server. Jane objected because she thought Donny lazy; Ana had no opinion about Donny. Jane, who was charged with looking for a restaurant location, reported that she had found two suitable locations. Location 1 was a vacant building. Location 2 also had a vacant building, but the owner owned an adjacent vacant lot and wanted to lease it along with the building. Jane favored Location 2 because she thought she could develop the vacant lot for the partnership, as well as procuring a suitable building for "Three Amigas." Jane drove Ana and Rosa by both locations. Ana and Rosa voted to lease Location 1, while Jane voted for Location 2. Despite the vote, Jane signed a ten-year lease for Location 2 on behalf of the partnership.

The next day, Ana sold \$50,000 worth of Floogle stock and absconded with the money.

Rosa, that same day, hired Donny.

QUESTIONS:

Assuming that a partnership existed, discuss:

1. Ana's responsibility to the partnership with regard to the stock;
2. whether the partnership leased Location 2; and
3. whether Donny was properly hired.

Assume that the Uniform Partnership Act (1997) has been adopted in the jurisdiction where all of these events occurred.

2/07

Fill in bubble for points awarded

1. Definition of a partnership (two or more persons operating a business for profit). 1. 0
2. No writing required to form a partnership. 1. 0
3. Definition of partnership property (property acquired by the partnership). 1. 0
4. Property is partnership property if acquired/held in the name of the partnership. 1. 0
4a. Or, if originally acquired/held in another name but then transferred to the name of the partnership. 1. 0
5. Property is presumed to be partnership property if acquired with partnership assets. 1. 0
6. The Floogle stock was partnership property. 1. 0
7. Whether a partnership is bound by the acts of a partner depends, first, on whether the acts were in the ordinary course of the partnership's business. 1. 0
7a. If so, the partnership is bound, unless the partner had no (actual) authority and the third party was on notice of that. 1. 0
7b. If not, the partnership is not bound, unless the partner had (actual) authority. 1. 0
8. Arguably, the lease of the property was in the ordinary course of a business. 1. 0
8a. But, if it is, Ana was not authorized to lease it because of the vote. 1. 0
8b. However, the landlord arguably did not know/was not on notice of that, although one might argue it did since, here, it leased a restaurant a vacant lot. 1. 0
9. Therefore, if the lease was in the ordinary course of business for a restaurant, the partnership is bound to the lease. 1. 0
9a. If it was not in the ordinary course, the restaurant is not bound. 1. 0
9b. Hiring a server/Donny was in the ordinary course of business for a restaurant. 1. 0
9c. Therefore, the restaurant is bound by Donny's hire. 1. 0
10. Partners owe the partnership a duty of care. 1. 0
10a. Duty of care includes the duty not to engage in gross negligence, or, 1. 0
Reckless conduct, or,
Intentional misconduct, or,
A knowing violation of the law.
11. Ana violated her duty of care. 1. 0
12. Jane arguably also violated her duty of care. 1. 0
13. Rosa probably did not. 1. 0

14. The partnership can sue each partner individually for a violation of the duties of loyalty and care.

2/07

1. 0

ESSAY Q1

SEAT

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<u>ISSUE</u>	POINTS AWARDED
1. A partnership is defined as two or more persons operating a business for profit.	1. ○
2. No writing required to form a partnership.	2. ○
3. Partnership property is any property acquired by the partnership.	3. ○
4. Property is partnership property if acquired/held in the name of the partnership, or if originally acquired/held in another name but then transferred to the name of the partnership.	4. ○
5. Property is presumed to be partnership property if acquired with partnership assets.	5. ○
6. The Floogle stock was partnership property.	6. ○
7. If the acts of a partner were in the ordinary course, the partnership is bound, unless the partner had no (actual) authority and the third party was on notice of that.	7. ○
8. If the acts were not in the ordinary course, the partnership is not bound, unless the partner had (actual) authority.	8. ○
9. Arguably, the lease of the restaurant property was in the ordinary course of a business.	9. ○
9a. Even so, Jane was not authorized to lease it because of the vote.	9a. ○
9b. However, the landlord arguably did not know/was not on notice of that, although one might argue it did since, here, it leased a restaurant a vacant lot.	9b. ○
10. Hiring a server/Donny was in the ordinary course of business for a restaurant.	10. ○
11. Partners owe the partnership a duty of loyalty.	11. ○
12. The duty of loyalty includes a duty to account and a duty to hold partnership property in trust.	12. ○
13. Ana violated her duty of loyalty.	13. ○
14. Jane violated her duty of loyalty.	14. ○
15. Rosa probably did not violate her duty of loyalty.	15. ○
16. Partners owe the partnership a duty of care.	16. ○
17. Duty of care includes the duty not to engage in gross negligence, reckless conduct, intentional misconduct, or a knowing violation of the law.	17. ○
18. Ana violated her duty of care.	18. ○
19. Jane arguably also violated her duty of care.	19. ○
20. Rosa probably did not.	20. ○
21. The partnership can sue for a violation of the duties of loyalty and care.	21. ○

QUESTION 5

On May 1, Amy and Bill entered into an oral agreement to open a dance studio called Kickers. Kickers leased space from Dubliner, agreeing to pay Dubliner 15% of the gross fees Kickers collected from its students for the right to use the leased space. Dubliner had no involvement in the management or operation of Kickers. The lease required a deposit of \$500 which Amy paid. Amy and Bill both taught classes, and Bill handled the bookkeeping. They agreed to split the profits equally.

On May 15, Amy signed a contract with a sign fabricator to make a store-front sign for Kickers. The contract required Kickers to pay \$4,000 for the design and fabrication of the sign and a monthly fee of \$200 for a pole on which to display the sign.

Unbeknownst to Amy, on June 1, Bill started giving some of the more competitive dancers private classes in his basement, keeping the money he earned from those classes. He told the students Kickers was using his basement as an annex. On July 1, a student tripped on loose carpeting in Bill's basement and was injured.

Business was booming at Kickers, so on July 15, Amy and Bill hired another dance instructor, Maureen. Soon thereafter, they sold Maureen a 10% ownership interest in Kickers for \$10,000 and deposited the money in Kickers' business account. Maureen agreed to share equally in the profits of Kickers.

On September 1, Amy and Maureen discovered Bill's side business when the injured student sued Amy, Bill, Maureen, Kickers and Dubliner. They also discovered that Bill had failed to pay the sign fabricator.

QUESTIONS:

Discuss:

1. the nature of the relationships between Amy, Bill, Maureen, and Dubliner;
2. which of the defendants can be held liable for the student's injuries and the debt to the sign fabricator;
3. the extent of each party's liability (if any); and,
4. what claims Amy and Maureen can assert against Bill.

DISCUSSION FOR QUESTION 5

I. Relationships Between the Parties

A. Amy and Bill are General Partners

The Revised Uniform Partnership Act (RUPA) defines a partnership as an association of two or more persons to carry on as co-owners of a business for profit. The parties' agreement need not be in writing to form a valid partnership. Community Capital Bank v. Fischer & Yanowitz, ___ N.Y.S.2d ___ (N.Y.A.D. 2 Dept.,2008); Montgomery County v. Wildwood Medical Center, L.L.C., 176 Md.App. 731, 934 A.2d 484 (2007)(dissenting opinion); Cooley Inv. Co. v. Jones, 780 P.2d 29 (Colo. App. 1989); § 7-60-106(1), C.R.S. 2007.

A partnership may be formed by the conduct of the parties. Qubain v. Granberry, 181 N.C.App. 149, 639 S.E.2d 454 (2007). Partners can contribute property, money or services to the partnership and their contributions need not be equal. In re Estate of Goldstein, 293 Ill.App.3d 700, 688 N.E.2d 684 (1997); Kennedy v. Miller, 221 Ill.App.3d 513, 582 N.E.2d 200 (1991). The sharing of profits is prima facie evidence of a partnership. Mardanlou v. Ghaffarian, 135 P.3d 904 (Utah App. 2006); Yoder v. Hooper, 695 P.2d 1182 (Colo. App.1984); § 7-64-202(3)(c), C.R.S. 2006.

Here, Amy and Bill's verbal agreement and conduct establish a partnership. They agreed to share profits equally, and both contributed to the partnership. The fact that Amy contributed money and services, while Bill contributed only services, is immaterial. Kickers was a general partnership when it was formed and Amy and Bill are general partners.

B. Dubliner is a Landlord, not a Partner

Amy, Bill, Maureen, and Kickers have a landlord-tenant relationship with Dubliner. Dubliner has no involvement in the management of Kickers. The fact that Dubliner receives a share of profits as rent does not make Dubliner a partner. See Ehrhardt v. Abbate, 2002 WL 1265569 (Ohio App. 8 Dist.); § 7-64-202(3)(c)(III), C.R.S. 2007; §14-8-7(4)(c), Ga. Stat. Ann. 2007.

C. Maureen is a Partner

Maureen started out as an employee or independent contractor of Kickers, but became a partner when she bought an ownership interest.

II. Potential Liabilities of the Parties

A. Amy

Partners are jointly liable for the debts and obligations of the partnership, whether the obligations are in contract or tort. Ederer v. Gursky, ___ N.E.2d ___ (2007 WL 4438937); Shar's Cars, L.L.C. v. Elder, 97 P.3d 724 (Utah App.,2004); Zimmerman v. Dan Kamphausen Co., 971 P.2d 236 (Colo.App. 1998).

A partnership is liable for injury caused to a person as a result of a wrongful act or omission, or other actionable conduct, of a partner acting in the ordinary course of business of the partnership. Partners are liable for any torts committed by a partner in the ordinary course of partnership business or with authority of the partnership. Ederer v. Gursky, supra; Gildon v. Simon Property Group, Inc., 158 Wash.2d 483, 145 P.3d 1196 (2006).

An act of a partner that is apparently carried out in the ordinary course of partnership business binds the partnership and other partners, unless the partner has no authority to act for the partnership in the particular matter and the person with whom the partner was dealing had notice that the partner lacked authority. See Ederer v. Gursky, supra; see also § 7-64-301(1)(a), C.R.S. 2007.

Because Bill led the student to believe he was teaching classes in his basement as an extension of Kickers, the student was not on notice that Bill did not have authority to do so. Accordingly, Amy is liable for the student's injuries.

Amy is also liable for the full amount of the partnership debt to the sign fabricator.

B. Bill

As a partner Bill is liable to the sign fabricator because the contract was made by a partner in the scope of the partnership business and was authorized by the partners. (RUPA 305-306). Bill is liable as a partner for the injury to the student and is separately liable for the student's injuries, since he was the tortfeasor (the fall was caused by Bill's negligent maintenance of his carpet).

C. Maureen

A person admitted as a partner into an existing partnership is not personally liable for any partnership obligations incurred before the person's admission as a partner. Trizechahn Gateway LLC v. Titus, 930 A.2d 524 (Pa.Super. 2007); §§ 7-62-303, 7-64-306(2) and (4), C.R.S. 2007.

Maureen is personally liable only for debts incurred after she became a partner. However, the \$10,000 she contributed as capital to the partnership is at risk for satisfying existing partnership obligations. R.U.P.A. 306(b). Thus, she is not liable to the sign fabricator for the sign itself, but can be held liable for the unpaid rent for the sign pole which was incurred after she became a partner. Since the student's injury occurred prior to the date of her becoming a partner, Maureen is not liable for the student's injuries.

D. Kickers

A partnership can sue or be sued. Pennsy Corp. v. Pinter, 17 Misc.3d 1116(A) (2007 WL 3037559) (N.Y.Sup. 2007); Gravel Resources of Arizona v. Hills, 217 Ariz. 33, 170 P.3d 282 (Ariz.App. Div. 1, 2007); People ex rel. Totten v. Colonia Chiques, 156 Cal.App.4th 31, 67 Cal.Rptr.3d 70 (Cal.App. 2 Dist.,2007); § 7-64-307(1), C.R.S. 2007. As pertinent here, the partnership's liability is the same as the liability of the general partners. See §§ 7-64-301, 7-64-305, 7-64-307, C.R.S. 2007. Accordingly, the partnership is liable for the student's injuries and the debt to the sign fabricator. All assets of a partnership, including capital accounts, are subject to the claims of creditors.

E. Dubliner

Because it is not a partner, Dubliner has no liability to either the injured student or the sign fabricator.

III. Claims Amy and Maureen Can Assert Against Bill

Partners owe a fiduciary duty of loyalty and due care to the partnership and each other and they must discharge their fiduciary duties in a manner consistent with the obligation of good faith and fair dealing. See J & J Celcom v. AT & T Wireless Services Inc., 169 P.3d 823 (Wash. 2007); § 7-64-404, C.R.S. 2007.

Partners may not compete with the partnership's business, and must disclose to the partnership any benefits or profits they receive without consent of the other partners from any transaction connected with the partnership business. Jarl Investments, L.P. v. Fleck, ___ A.2d ___ (2007 WL 4180969) (Pa.Super. 2007); Yoder v. Hooper, *supra*; Tucker v. Ellbogen, 793 P.2d 592 (Colo. App. 1989); UPA §404; § 7-64-404(1)(c), C.R.S. 2007.

Every partner has a right to an accounting as to partnership affairs. Cadwalader, Wickersham & Taft v. Beasley, 728 So.2d 253 (Fla.App. 4 Dist. 1998); Braden v. Strong, (2006 WL 369274) (Tenn.Ct.App. 2006); §§7-64-403 and 7-64-404, C.R.S. 2006. The right to an accounting may be enforced by constructive trust for profits which have been wrongfully withheld from the partnership.

Bill conducted private classes in the name of the partnership, but kept the profits for himself. Amy and Maureen may demand an accounting and sue Bill for breach of his fiduciary duties.

ESSAY Q5

SEAT

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<u>ISSUE</u>	POINTS AWARDED
1. A partnership is an association of two or more persons to carry on as co-owners of a business for profit.	1. ○
2. The agreement need not be in writing to form a partnership. May be formed by words or express conduct of parties.	2. ○
3. Although Dubliner receives a share of the profit, its relationship is as landlord and not a partner.	3. ○
4. Maureen became a partner when she bought an ownership interest.	4. ○
5. Partners are liable for the debts and obligations of the partnership.	5. ○
6. A partnership is liable for injuries or claims arising out of the actions of the partners in the ordinary course of business of the partnership.	6. ○
7. Partners are liable for torts of a partner committed in the ordinary course of partnership business.	7. ○
8. A person admitted as a partner into an existing partnership is not personally liable for partnership obligations incurred before the admission as a partner.	8. ○
9. Partners are fiduciaries for the partnership and each other – they owe a duty of loyalty to the partnership and to each other.	9. ○
10. Acts of a partner apparently carried out in the ordinary course of business binds the partnership.	10. ○
11. Partners must disclose to the partnership any benefits or profits they receive in the ordinary course of the partnership business and an accounting may be demanded for profits wrongfully withheld.	11. ○
12. Amy is liable for the student's injuries and for the debt to the sign fabricator.	12. ○
13. Bill is liable for the student's injuries and for the debt to the sign fabricator.	13. ○
14. Maureen's \$10,000 contribution to the partnership may be used to satisfy partnership obligations.	14. ○
15. Maureen is not liable for the cost of the sign or the injury to the student because both obligations occurred prior to the time she became a partner.	15. ○
16. Maureen is liable for unpaid sign rent incurred after she became a partner.	16. ○
17. Kickers is liable for the student's injuries and for all of the sign company debt.	17. ○
18. Partners may sue Bill for his breach of fiduciary duties.	18. ○