

## CHAPTER 6-DISSOLUTION AND WINDING UP

### 60. 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.

### 61. PARTNERSHIP NOT TERMINATED BY DISSOLUTION

On dissolution the partnership is not terminated, but continues until the winding up of partnership affairs is completed.

### 62. CAUSES OF DISSOLUTION

Dissolution is caused:

1. Without violation of the agreement between 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 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 or 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 as 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 sixty-three.

### **63. DISSOLUTION BY DECREE OF COURT**

The court shall decree a dissolution:

1. On application by or for a partner whenever:

(a) A partner has been declared incompetent 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 willfully 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 fifty-three or fifty-four:

(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.

### **64. 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 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 sixty-five so requires.

2. With respect to persons not partners, as declared in section sixty-six.

#### **65. RIGHT OF PARTNER TO CONTRIBUTION FROM COPARTNERS AFTER DISSOLUTION**

Where the dissolution is caused by the act, death or bankruptcy of a partner, each partner is liable to his copartners for his share of any liability created by any partner acting for the partnership as if the partnership had not been dissolved unless

1. The dissolution being by act of any partner, the partner acting for the partnership had knowledge of the dissolution,
2. 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, or
3. The liability is for a debt, obligation or liability for which the partner is not liable as provided in subdivision (b) of section twenty-six of this Code.

#### **66. POWER OF PARTNER TO BIND PARTNERSHIP TO THIRD PERSONS AFTER DISSOLUTION**

(1) After dissolution a partner can bind the partnership except as provided in subdivision three

(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 the dissolution, and, having no knowledge or notice of dissolution.

2. The liability of a partner under subdivision one, paragraph (b), 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 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 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.

4. Nothing in this section shall affect the liability under section twenty-seven 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.

#### **67. 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 those obligations of the partnership incurred while he was a partner and for which he was liable under section twenty-six of this Code but subject to the prior payment of his separate debts.

## **68. 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.

## **69. RIGHTS OF PARTNERS TO APPLICATION OF PARTNERSHIP PROPERTY**

1. When dissolution is caused in any way, except in contravention of the partnership agreement, each partner, as against his copartners and all persons claiming through them in respect of their interest in 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 sixty-seven, subdivision two, 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 subdivision one of this section, and

(II) The right, as against each partner who has caused the dissolution wrongfully, to damages 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 (II) of paragraph (a) of subdivision two 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 (b) of subdivision two of this section all the rights of a partner under subdivision (1), subject to clause (II) of paragraph (a) of subdivision two, of this section.

(II) If the business is continued under paragraph (b) of subdivision two of this section the right as against his copartners and all claiming through them in respect of their interest in the

partnership, to have the value of his interest in the partnership, less any damages caused to his copartners 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 be considered.

#### **70. 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.

#### **71. 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 partnership specified in paragraph (d) of this subdivision.

(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) Except as provided in subdivision (b) of section twenty-six of this section: (1) partners shall contribute, as provided by section forty, subdivision one, the amount necessary to satisfy the liabilities; and (2) 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 paragraph (d) of this subdivision.

(f) Any partner or his legal representative shall have the right to enforce the contributions specified in paragraph (d) of this subdivision, 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 paragraph (d) of this subdivision.

(h) When partnership property and the individual properties of the partners are in the 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.

#### **71-a. PAYMENT OF WAGES BY RECEIVERS**

Upon the appointment of a receiver of a partnership the wages of the employees of such partnership shall be preferred to every other debt or claim.

## **72. 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 subdivisions one and two 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 assignment 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 sixty-nine, paragraph (b) of subdivision two, 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 of 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.

#### **73. RIGHTS 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 seventy-two, subdivisions one, two, three, five and six, or section sixty-nine, paragraph (b) of subdivision two, 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 seventy-two, subdivision eight of this Code.

#### **74. 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 agreement to the contrary.

## **75. CONTINUANCE OF PARTNERSHIP BUSINESS DURING ACTION FOR ACCOUNTING**

In an action brought to dissolve a partnership, or for an accounting between partners, or affecting the continued prosecution of the business, the court may, in its discretion, by order, authorize the partnership business to be continued, during the pendency of the action by one or more of the partners, upon their executing and filing with the clerk an undertaking, in such a sum and with such sureties as the order prescribes, to the effect that they will obey all orders of the court, in the action, and perform all things which the judgment therein requires them to perform. The court may impose such other conditions as it deems proper, and it may in its discretion at any time thereafter require a new undertaking to be given. The court may also ascertain the value of the partnership property, and of the interest of the respective partners by a reference or otherwise, and may direct an accounting between any of the partners; and the judgment may make such provision for the payment to the retiring partners, for their interest, and with respect to the rights of creditors, the title to the partnership property, and otherwise, as justice requires, with or without the appointment of a receiver, or a sale of the partnership property.