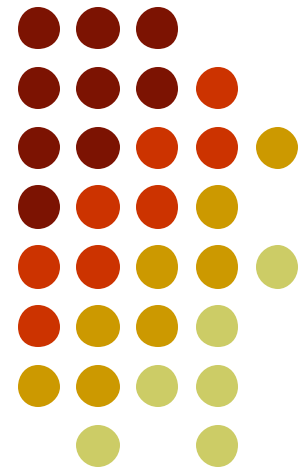
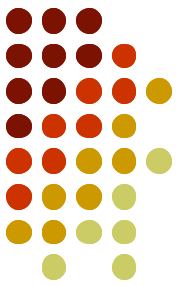


Corporations

Prof. Michael Abramowicz

Partnerships

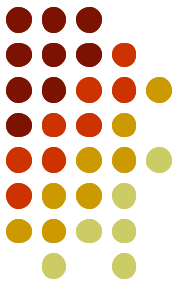




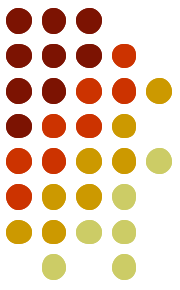
Partnership

- Governed by statutory state law.
 - Uniform Partnership Act (1914) [“UPA”]
 - Uniform Partnership Act (1997) [“RUPA”]
- Definition of Partnership [UPA §6(1); RUPA §101(6)]: “an association of two or more persons to carry on as **co-owners** a business for profit.”
- ‘Co-owners’ means:
 - Shared control of the business;
 - Shared profits of the business.
- No formal creation requirements. Doing business as co-owners results in creation of partnership by operation of law.
- UPA §7(1): Persons who are not partners to each other are not partners as to third parties, except for partnership by estoppel [UPA §16].

Fenwick v. Unemployment Compensation Commission



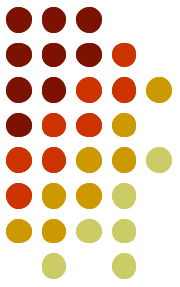
- Facts
 - Who are Fenwick and Chesire, and what did they agree to?
 - Why did they make this agreement
- Analysis
 - Who disputed the existence of a partnership? Why?
 - Is an agreement necessary to create a partnership?
 - If so, is a written agreement necessary?
 - What was Fenwick's strongest argument (UPA § 7(4))?
 - What was the weakness in Fenwick's case?
 - What factors does the court use to assess whether a partnership existed?



Liability in a General Partnership

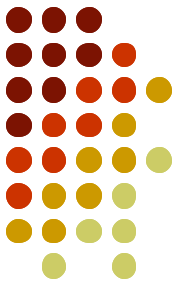
- UPA §15: All partners are liable
 - (a) Jointly and severally for everything chargeable to the partnership under sections 13 and 14 [e.g., torts and breaches of fiduciary duties]
 - (b) Jointly for all other debts and obligations of the partnership... [e.g., contracts]
- UPA §40(b): The liabilities 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...
- Due to these rules, a creditor of the partnership who becomes a partner suffers a “double whammy”: Her debt is subordinated to the debt of non-partner creditors, and worse – she is personally liable for the partnership’s debt.

The Fall of KNK: *Martin v. Peyton*



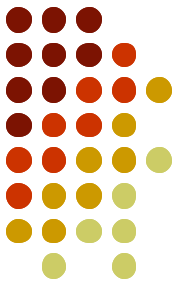
- Facts
 - KNK's problems
 - Hall goes to PPF. How does he know them? What does he want? What are PPF's incentives?
- Analysis
 - What's the issue?
 - How does this case compare with *Cargill*?
 - Holding?

Southex Exhibitions



- Facts
 - The agreement
 - Did SEM claim ownership?
 - Why does SEM's successor in interest, Southex, claim a partnership existed?
- Analysis
 - What is the relevance of shared profits in Rhode Island (which follows the UPA)?
 - What are the listed exceptions?
 - Do any of these apply?
 - Is the list exhaustive?
 - Who would bear the risk of loss, and how is that relevant?
 - Who exercised control? What kind of control does the court seem most interested in?

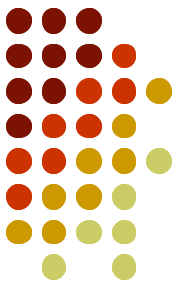
Partnership by estoppel: *Young v. Jones*



- Facts
 - What happened to the \$500,000?
 - Whom do plaintiffs sue, and why?
- Analysis
 - How did PW-Bahamas become entitled to use the PW name?
 - What is the theory that PW-US should be liable?
 - Two theories: What proof is required?
 - Partnership
 - Partnership by estoppel
- Holding?

Fiduciary Obligations of Partners

Meinhard v. Salmon



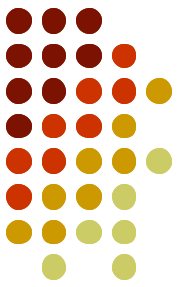
- Facts

- The 1902 agreement: How Salmon and Meinhard shared responsibilities
- The 1921 opportunity (offered by Gerry)

- Questions

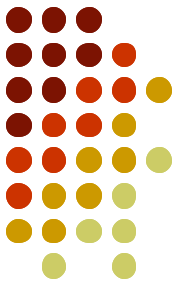
- Why is Meinhard a partner and not a lender (compare to *Martin v. Peyton*)?
- Does Cardozo conclude that Salmon has to inform Meinhard about the opportunity?
- Does Cardozo conclude that Salmon has to share the opportunity with Meinhard? What language might be relevant to this question?
- What hypothetical changes in the current or future project might have made the new project seem beyond the scope of the partnership?

RUPA § 404: General Standards of Partner's Conduct



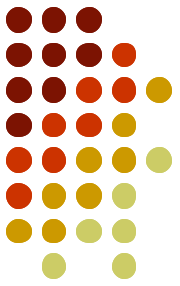
- (a) The only fiduciary duties a partner owes to the partnership and the other partners are the duty of loyalty and the duty of care set forth in subsections (b) and (c).
- (b) A partner's **duty of loyalty** to the partnership and the other partners is limited to the following:
 - (1) To account to the partnership and hold as trustee for it any property, profit or benefit derived by the partner in the conduct and winding up of the partnership business or derived from a use by the partner of partnership property, **including the appropriation of a partnership opportunity**.
 - (2) To refrain from dealing with the partnership in the conduct or winding up of the partnership business as or **on behalf of a party having an interest adverse** to the partnership and
 - (3) To **refrain from competing with the partnership in the conduct of the partnership business** before the dissolution of the partnership

Duties after dissolution: *Bane v. Ferguson*



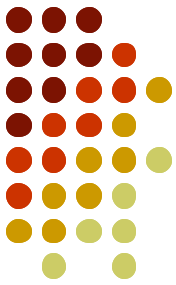
- Facts
 - What has Bane lost and why?
- Analysis
 - Was Bane still a partner in the firm?
 - What were Bane's two arguments?
 - "Impossible to carry out"
 - Violation of fiduciary duty
 - How might the interests of current and retired partners diverge?
- Holding?

Grabbing and Leaving: *Meehan v. Shaughnessy*



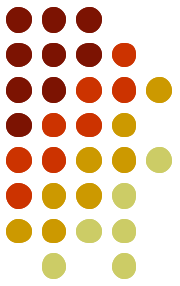
- Facts
 - What did Meehan and Boyle do without notifying their partners?
 - Why did they want to leave?
 - How did PC allocate partnership draw?
 - What breaches were alleged in management of individual cases?
- Holding
 - May fiduciaries plan to compete?
 - What, if anything, did Meehan and Boyle do wrong?
 - What was the remedy?
 - How does this case differ philosophically from *Meinhard*?

Grabbing and Leaving: Permissible v. Impermissible Conduct

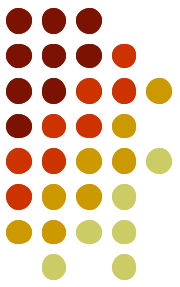


Locate office space	Negotiate merger with another firm	Negotiate with fellow partners	Negotiate with associates
Contact clients before announce departure (not ideal)	Contact clients before leaving firm	Remind clients of right to have counsel of own choice	Not inform clients of right to have counsel of own choice
	Keep plans confidential	Deny plans when asked	
	Take client files	Take desk files	

Expulsion: Lawlis v. Kightlinger & Gray

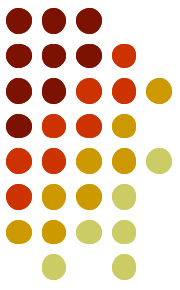


- Facts
 - What was Lawlis's problem and how did the firm respond?
 - What happened after Lawlis's return to employment?
- Lawlis's arguments
 - Voting argument
 - Fiduciary duty argument
- Holding?
- Analysis
 - How can this be squared with *Meinhard*?



Rights of a Partner

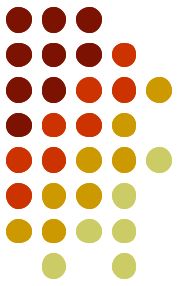
- UPA §24: The property rights of a partner are
 - (1) his rights in specific **partnership property**,
 - (2) his **interest in the partnership**, and
 - (3) his right to **participate in the management**.
- UPA §26: A partner's interest in the partnership is his share of the profits and surplus...
- Earlier, we said that the defining characteristics of a partnership were:
 - Shared profits ["interest in the partnership"];
 - Shared control ["right to participate in the managements"]
- What is the third right ["rights in specific partnership property"]?



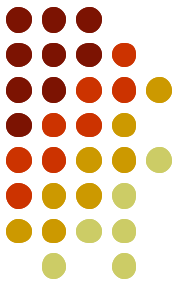
Partnership Property

- UPA §25(1): “A partner is a co-owner with his partners of specific partnership property holding as a **tenant in partnership**.”
- UPA §25(2) describes the characteristics of tenancy in partnership, including:
 - Equal right as other partners to **possess partnership property for partnership purposes**; but, no right to possess partnership property for any other purpose (unless the other partners consent);
 - Rights in specific partnership property are **not assignable** except in connection with the assignment of rights of all the partners in the same property.

Effect of Assigning Partnership Interest: *Putnam v. Shoaf*



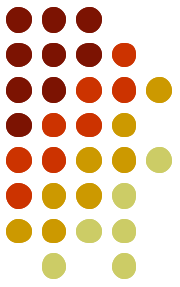
- Facts
 - Putnam's interest in partnership
 - Why did Putnam want out?
 - What did Putnam do?
 - What happened?
- Holding
- Question: Could the Shoafs have recovered from Putnam if the partnership property was less valuable than thought?



Partnership Capital

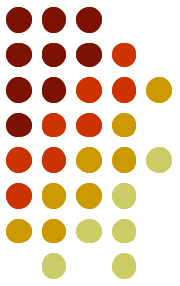
- Initial capital contribution
 - UPA silent
 - “Service partnership”: one in which one partner contributes only labor
- Capital Account:
 - A running balance reflecting each partner’s ownership equity
 - UPA (1997) § 401(a)

Partnership Capital Accounts



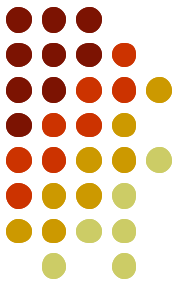
- Allocation of profits increases capital account
- Allocation of losses decreases capital account
- Taking a “draw” (distribution) decreases capital account

Partner's authority



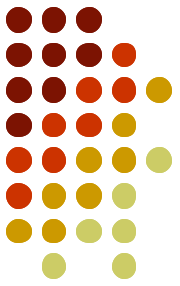
- UPA (1914) § 9(1): “Every partner is an agent of the partnership for the purpose of its business, and the act of every partner, including the execution in the partnership name of any instrument, for apparently carrying on in the usual way the business of the partnership of which he is a member binds the partnership, unless the partner so acting has in fact no authority to act for the partnership in the particular matter, and the person with whom he is dealing has knowledge of the fact that he has no such authority”

Deadlock: *National Biscuit v. Stroud*



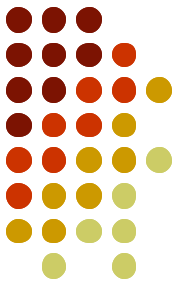
- Facts
 - Stroud-Freeman partnership
 - What did Stroud tell National Biscuit?
 - Why does Stroud care if Freeman orders bread?
- Questions
 - Isn't telling a third party that a partner doesn't have authority enough?
 - Did Freeman have authority here?

Deadlock: *Summers v. Dooley*

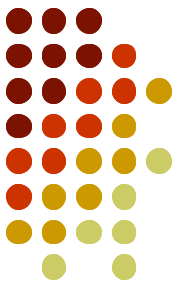


- Facts
 - Summers-Dooley partnership
 - Consequences of Dooley's inability to work
 - Disagreement between the partners
- Holding?
- Questions
 - Differences with *Stroud*
 - Bread vs. worker
 - Applicability of § 18
 - Was hiring someone in contravention of an agreement?
 - What can be done to prevent deadlock?

Moren v. Jax Restaurant



- Facts
- Issue: Indemnity right
 - What constitutes “ordinary course of business?”
 - How can we separate personal business from partnership business?
- Holding
- Questions
 - What alterations in the facts might make the case closer?
 - What if the negligent party was a substitute cook hired by the partnership?



Centralized Management of a Partnership

Day v. Sidley & Austin

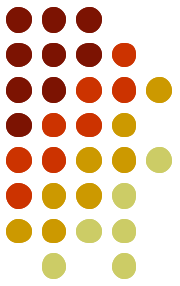
● Facts

- How does Sidley & Austin's management work? (Hint: footnote 8)
- Who was Day, and was he opposed to the merger?
- What was his gripe? And his legal argument?

● Questions

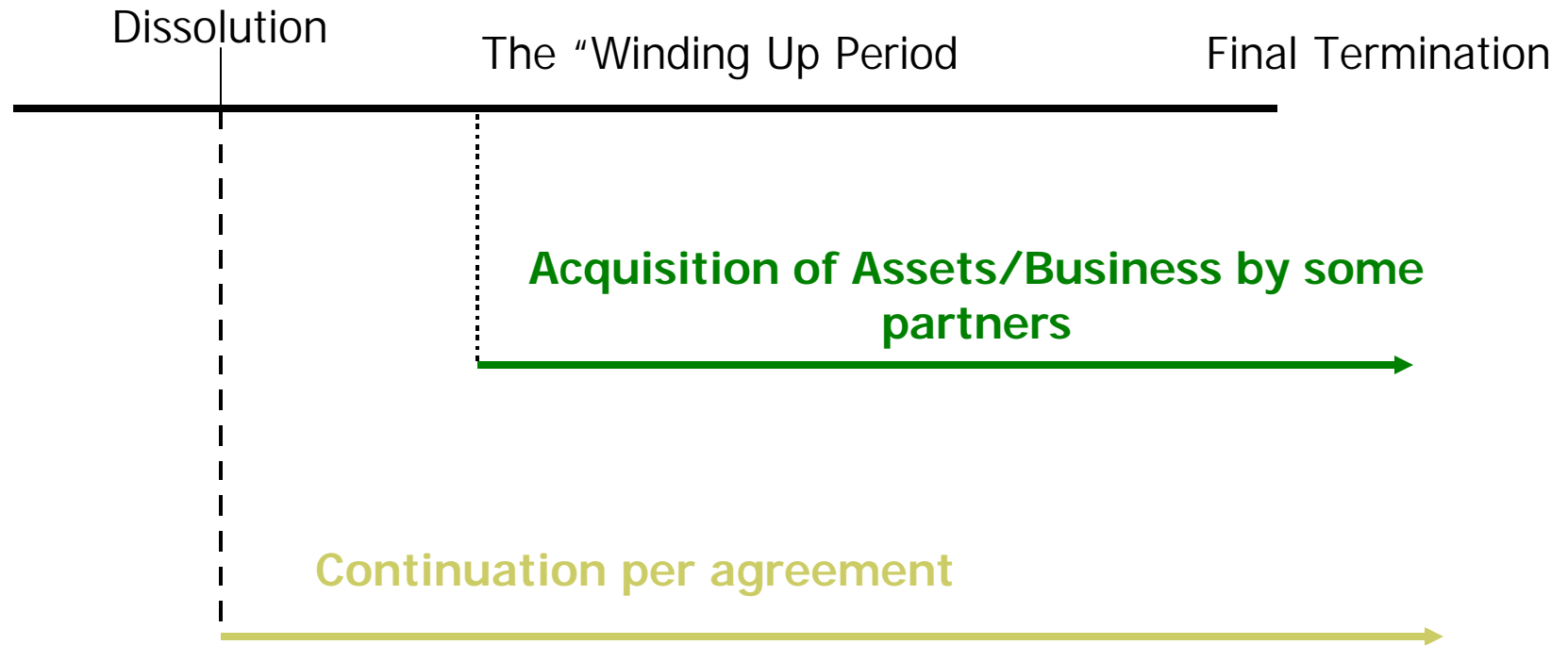
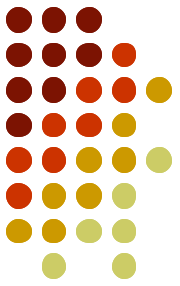
- Can someone be kicked out of a cochairmanship without some more extensive process?
- Shouldn't this decision have been made by the partnership as a whole?
- Was there a breach of fiduciary duty?
- Would there be a problem under the default partnership structure?

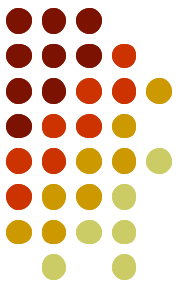
Terminating the Partnership



- The right to dissolve
- Consequences of dissolution
- Division of remaining profits/losses
- Exit Mechanism: Buy-out agreements

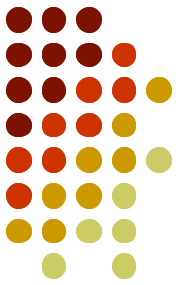
Consequences of Dissolution





The Power/Right to Dissolve

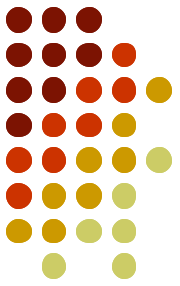
- “[T]here always exists the power, as opposed to the right, of dissolution” [*Collins v. Lewis*] **What does this mean?**
- Three types of dissolution:
 - by act of one or more partners [UPA §31(1)-(2)]; e.g.:
 - At the termination of the partnership’s term or particular undertaking, or, if it has none, at the will of any partner;
 - Wrongful dissolution: In contravention of the agreement between the partners, by the express will of any partner at any time.
 - by operation of law [UPA §31(3)-(5)]
 - Due to death or bankruptcy of a partner, or due to bankruptcy or unlawfulness of the partnership.
 - by court order [UPA §31(6); §32]



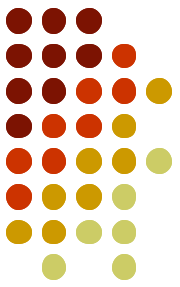
Owen v. Cohen

- Facts
 - Owen-Cohen partnership
 - How was Owen's \$6,986 investment to be repaid?
 - What kind of partner was Cohen?
- Questions
 - Why is Owen going to court rather than just dissolving?
 - What can Owen and Cohen argue about the term of the partnership?
 - Would wrongful dissolution annul the dissolution?
 - If this is a term partnership, how can Owen argue that dissolution was not wrongful?
- Holding?
 - Remedy?
 - What is the legal effect of the holding? The practical effect?

RUPA on dissolution by judicial decree



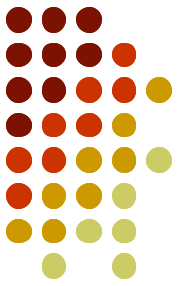
- § 801(5): A partnership is dissolved by a decree that
 - “(i) the economic purpose of the partnership is likely to be reasonably frustrated;
 - “(ii) another partner has engaged in conduct relating to the partnership business that makes it not reasonably practicable to carry on the business in partnership with that partner;
 - “or (iii) it is not otherwise reasonably practicable to carry on the partnership business in conformity with the partnership agreement”



Collins v. Lewis

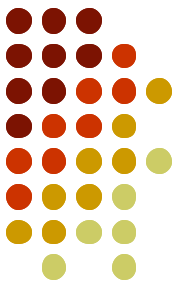
- Facts
 - Collins-Lewis partnership
 - What were their respective roles?
 - What was each to receive?
 - Did the project go well?
 - What would Collins benefit from dissolution?
- Procedural posture
- Issues
 - Term partnership?
 - What about Lewis's failure to pay notes?
 - Should bad blood be enough for dissolution?

Terminating the Partnership



- The right to dissolve
- Consequences of dissolution
 - Overview of the process [Differences between UPA & RUPA]
 - Disposing the partnership's assets/business
 - Continuation per agreement
 - Continuation following wrongful dissolution
- Division of remaining profits/losses
- Exit Mechanism: Buy-out agreements

The Process of Terminating the Partnership



Under UPA:

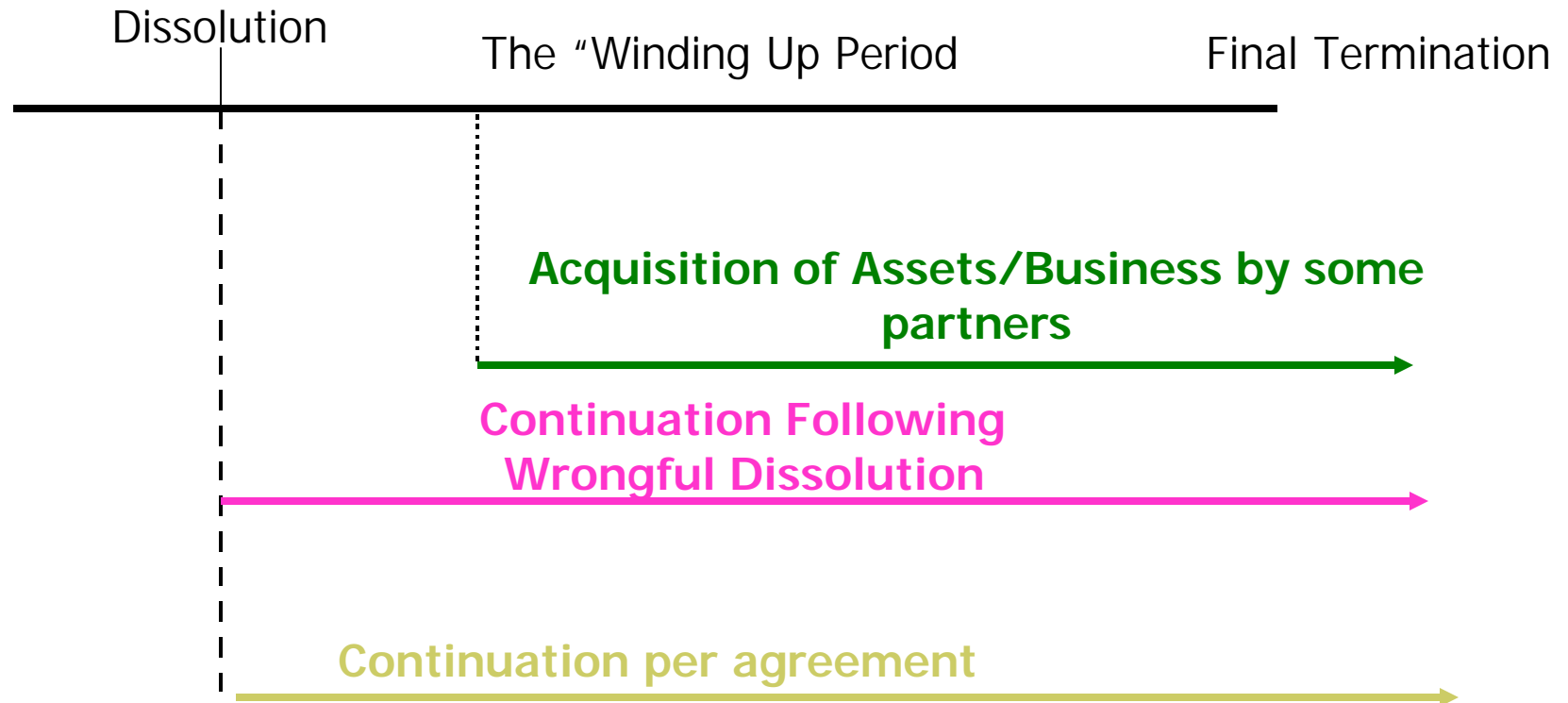
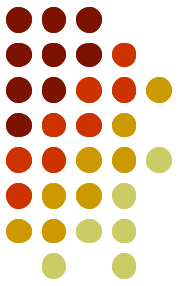
- Dissolution does not terminate the partnership [UPA §30]. Rather, it limits all partners' authority to act for the partnership [UPA §33-35], and prompts the “winding up” of the partnership.
- “Winding up” consists of disposing of the partnership’s assets/business, then dividing between the partners the remaining assets or the liability for remaining losses.
- Subject to certain limitations, some partners may pay off other partners and continue the partnership after dissolution [UPA §38(2)(b)].

Under RUPA:

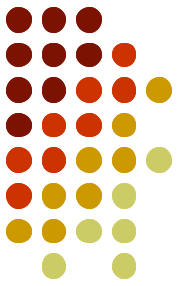
Triggering event is “disassociation” [RUPA §601]. After that:

- Business may be continued under Article 7
 - Purchase of disassociated partner’s interest [RUPA §701]
 - Disassociated partner not automatically released from liability [RUPA §703]
- Business may be dissolved (and “wound up”) under Article 8
 - Not every event allowing disassociation also allows dissolution [cf. §801 w/§601]
 - Limitation on partner’s authority to act for the partnership [RUPA §804]

Dissolution and Winding Up: UPA (1914)



Disassociation and Dissolution: UPA (1997)



Disassociation
§ 601

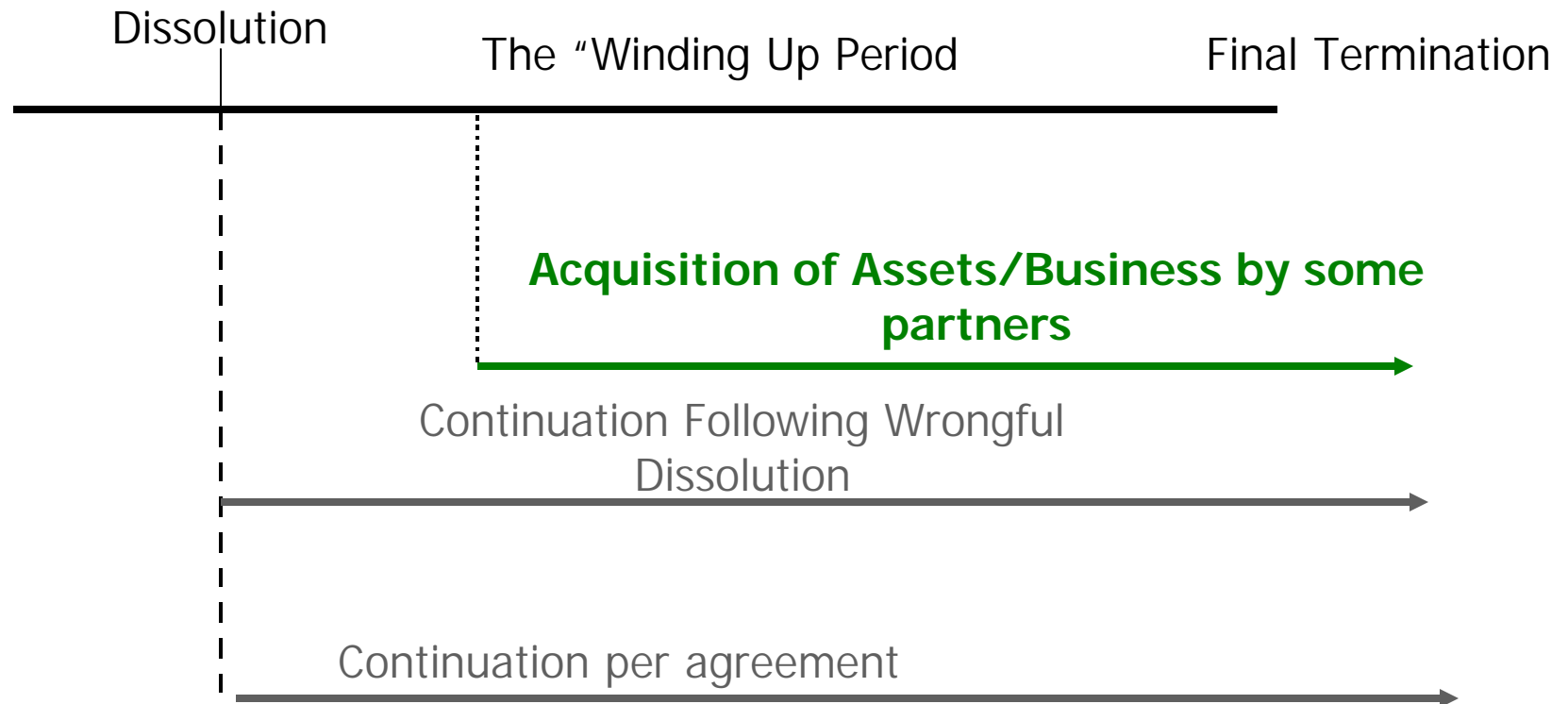
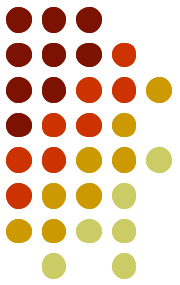
Business continued per Article 7

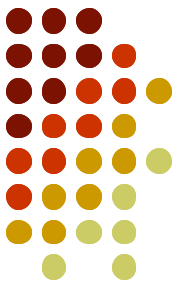
- Purchase of disassociated partner's interest (§ 701)
- Disassociated partner not automatically released (§ 703)

Business dissolved per Article 8

- Events of dissolution (§ 801; x-ref § 601(1))
- Business must be "wound up"

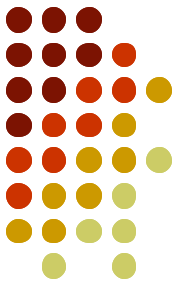
Prentiss v. Sheffel



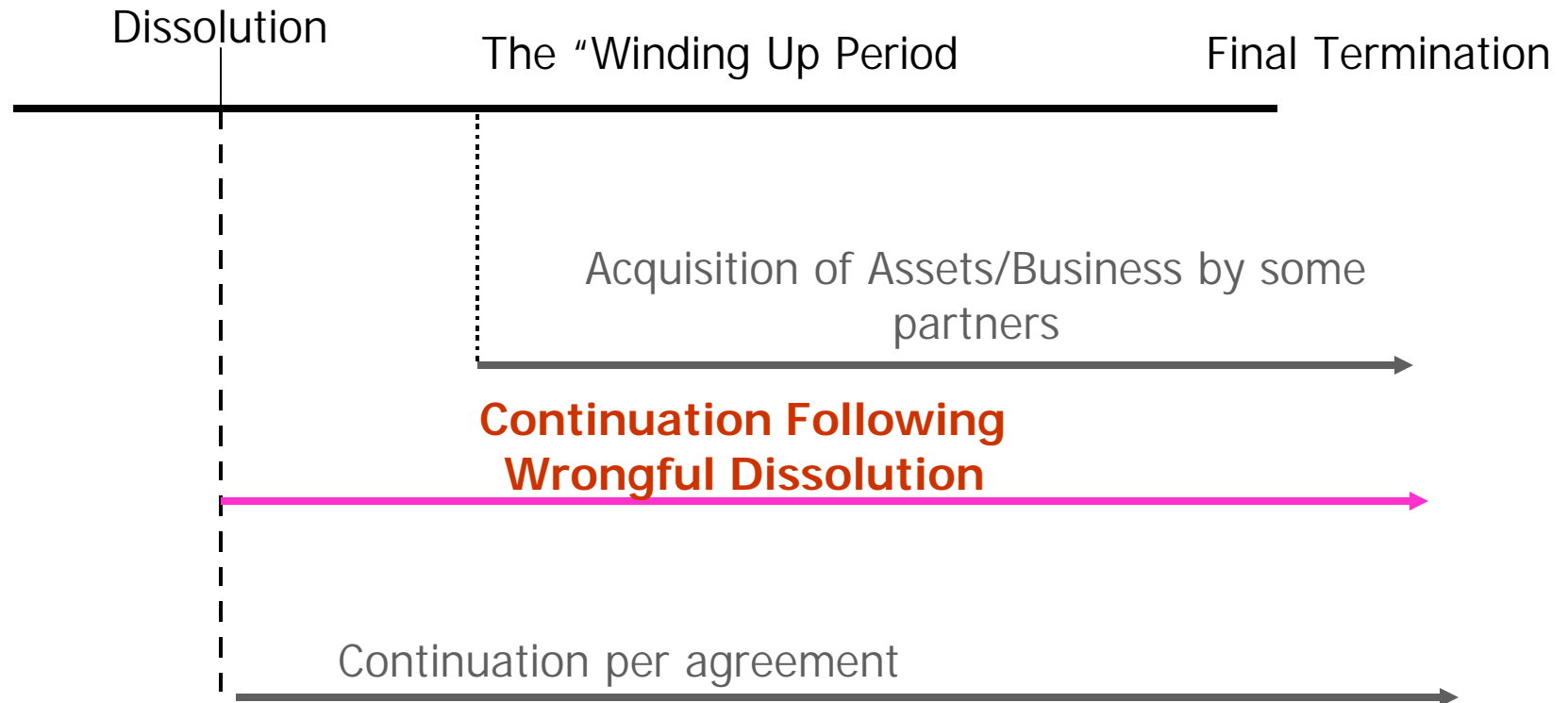


Disotell v. Stiltner

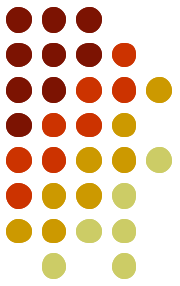
- Facts
- Main Issues:
 - Whether a partner is entitled to liquidation as a matter of law subsequent to dissolution.
 - Proper measurement of amount to be paid for a buyout.
- Holding?
- Question
 - Does the court's approach necessarily reduce economic waste?



Pav-Saver Corp. v. Vasso Corp.

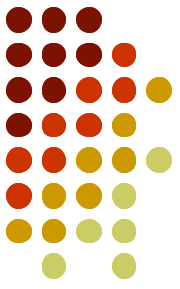


Continuation Per Agreement (After Dissolution)



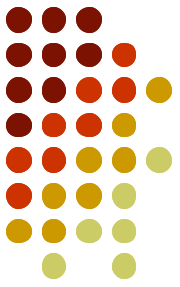
- Effect on the partnership
 - Technically, this creates a new partnership (confusing treatment in *Putnam v. Shoaf*)
 - Creditors of former partnership automatically become creditors of the new partnership [UPA §41]
- Effect on the departing partner(s)
 - Departing partner entitled to an accounting
 - Fair value of the partnership, plus interest from the date of dissolution in the event of an unreasonable delay in payment.
 - Departing partner remains liable on all firm obligations unless released by creditors [UPA §36, RUPA §703]
- Effect on a new partner
 - A new partner that joins the partnership when it continues after dissolution is liable to old debts, but his liability can only be satisfied out of the partnership assets (i.e., he has no personal liability) [UPA §41(1), RUPA §306(B)].

Continuation Following Wrongful Dissolution



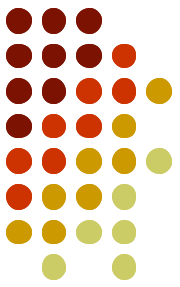
- Effects of wrongful dissolution (e.g., early termination of a term partnership):
 - Wrongful dissolver subject to damages for breach of the partnership agreement [UPA §38(2)(a)(II)];
 - Wrongful dissolver limited in participation in winding-up [UPA §37];
 - Remaining partners have the right to continue the business even absent an agreement to do so, subject to payment to the wrongful dissolver [UPA §38(2)(b)-(c)]
 - Wrongful dissolver entitled to the fair value of his interest in the partnership (not including the value of the partnership's goodwill), minus any damages caused by the breach of the partnership agreement.
 - RUPA has very similar rules, except that the fair value of the interest to which the wrongful dissolver is entitled includes the value of the partnership's goodwill.

Pav-Saver Corp. v. Vasso Corp.



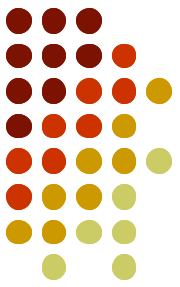
- Facts
 - Dale-Meersman agreement
 - Role of PAC and Vasso Corp.
 - What does Meersman claim after Dale takes over?
 - Why does Dale sue?
- Holding?
 - What is Dale entitled to?
 - How is the agreement arguably ambiguous?

Partnerships: Dissolution review



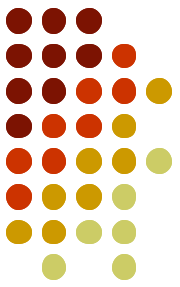
- 1. A partnership may be for a term or at will. The default rule is at will. But a term may be implied—for example, when it is contemplated that a debt will be repaid out of profits and the inference is that the term is the period of time necessary to achieve the repayment.
- 2. Partners are entitled to share in control. At a minimum this means that they must have access to information and must be consulted and allowed to vote. This rule, again, may be altered by agreement.
- 3. When a majority deprives a partner of participation in control, it violates the partnership agreement.

Partnerships: Dissolution review



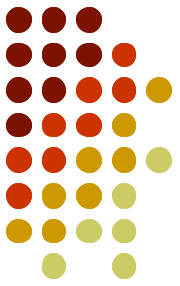
- 4. Upon dissolution there is supposed to be a winding up. The partnership continues for the purpose of winding up.
- 5. In some circumstances (e.g., where dissolution is caused by the death of a partner), the winding up will be accomplished by the partners who are still available to do so. If this is not feasible, or if there is disagreement, a court may order a sale. The court has discretion as to the appointment of a receiver and as to how the sale is to be accomplished (e.g., auction, use of a broker, or some other methods).

Partnerships: Dissolution review



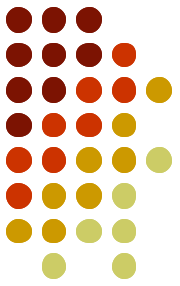
- 6. The partners may bid for the assets of the partnership, including its goodwill. That is, partners may bid to buy its assets piecemeal or as a going concern.
- 7. Partners owe each other a fiduciary obligation, so they cannot dissolve in bad faith. An example of bad faith: One partner knows that the other partner does not have and cannot raise the money to bid on the partnership, and that there will be no other bidders at a fair price (that is, a price reflecting the value of the assets to either of the partners in the absence of capital constraints on capital), and dissolves in order to be able to buy the partnership assets at an unfairly low price. In effect, then, when a partner dissolves and bids for the assets of the partnership, he or she must pay a fair price. Otherwise, a court may find bad faith and a violation of the fiduciary duty.

Terminating the Partnership



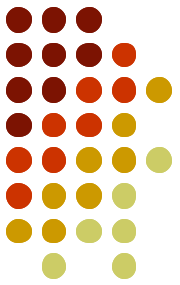
- The right to dissolve
- Consequences of dissolution
- Division of remaining profits/losses
- Exit Mechanism: Buy-out agreements

UPA (1914) § 18



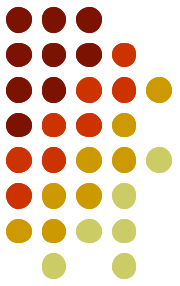
- “The rights and duties of the partners in relation to the partnership shall be determined, subject to any agreement between them, by the following rules:
- “(a) **Each partner** shall be repaid his contributions, whether by way of capital or advances to the partnership property and share equally in the profits and surplus remaining after all liabilities, including those to partners, are satisfied; **and must contribute towards the losses, whether of capital or otherwise** sustained by the partnership **according to his share in the profits.**”

UPA (1914) § 40



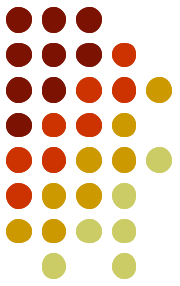
- § 40(b): subject to contrary agreement, upon dissolution partnership assets should be distributed as follows: “(I) Those owing to creditors other than partners, (II) Those owing to partners other than for capital and profits, (III) Those owing to partners in respect of capital, and (IV) Those owing to partners in respect of profits.”
- § 40(d): "partners shall contribute, as provided by [§18(a)] the amount necessary to satisfy the liabilities [set forth in § 40(b)]. . . ."

Allocation of Losses: *Kovacik v. Reed*



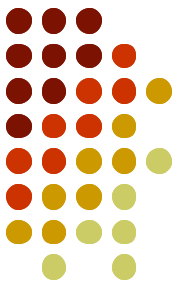
- Facts
 - Reed, Kovacik contributions
 - What was left after losses?
 - What does Kovacik demand?
- Questions
 - Does this seem consistent with the general rule?
 - Why do the parties agree that Kovacik should get the remaining capital of \$1,320?
- Holding? Rationale?
- Result under RUPA?

Buyout (buy-sell) agreements



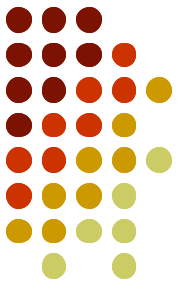
- Issues
 - What triggers?
 - Death, or voluntary opt out?
 - Who is obliged to buyout the opting out partner, and what happens if the relevant individuals refuse?
 - How do we determine the price?
 - Will payment be in cash, or over time?
 - Will the opting out partner be responsible for partnership debts?

Buyout agreements: *G&S Investments v. Belman*



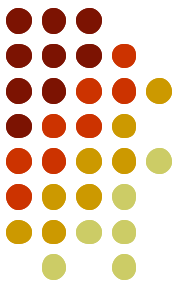
- Facts
 - Gibson-Smith-Nordale partnership
 - What happened to Nordale?
 - Why do G&S want to continue the partnership under the partnership agreement?
- Issues
 - What claims does Nordale's estate make?
 - Is filing of suit dissolution? (If not, when did partnership dissolve?)
 - Is "capital count" ambiguous?

Law firm dissolution: *Jewel v. Boxer*



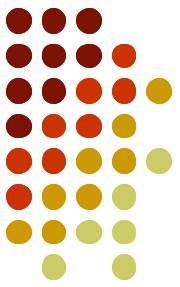
- Facts
 - Split up of partnership
 - Partnership agreement?
- Issue?
- Lower court's approach?
- Holding?
- Analysis
 - What does the court worry about the lower court's approach?
 - What might be problems with the court's approach?

Law firm dissolution: *Meehan v. Shaughnessy* revisited



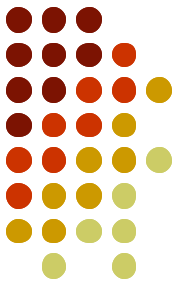
- What was Parker Coulter's formula for unresolved cases?
- How were capital accounts and current partnership income distributed?
- What is the additional penalty for improper grabbing and leaving that is imposed here?

Characteristics of Limited Partnerships



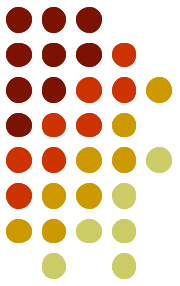
- A limited partnership is composed of at least one **general partner**, and of at least one **limited partner**. The formation of the partnership requires filing certain documents (typically with the state's Secretary of State).
- The death of a limited partner does not cause the dissolution of the partnership, and limited partnership shares are often transferable. Limited partners may have restricted voting rights.
- The general partner is personally liable to creditors. However, some states allow the general partner to be a corporation. This allows both unlimited life to the partnership, and limited liability to all the people involved.
- According to RULPA (Uniform Limited Partnership Act (1976), which replaced ULPA (1916)) §303(a), limited partners are liable only to the extent of their contributions, unless:
 - They are also general partners
 - They exercised control or had a right to exercise control – in such case, they are liable only to persons who reasonably believed, based on the limited partner's conduct, that the limited partner is a general partner).

Liability of limited partners: Holzman v. de Escamilla



- Facts
 - Who are the limited and general partners?
 - What does R&A do nonetheless?
- Holding?
- General advice? (RULPA § 303(b))

LLPs and LLLPs



- Limited Liability Limited Partnership (LLLLP)
 - Similar to a limited partnership, but grants general partner limited liability as well (somewhat similar to making a corporation the general partner).
- Limited Liability Partnership [Article 10 of RUPA]
 - Acts like a general partnership, but with limited liability.
 - Formed by filing a ‘statement of qualification’ (usually, with the state’s Secretary of State).
 - General partnership may convert to LLP. Conversion does not cause a dissolution [RUPA §201(b)]
 - Liability – RUPA §306(c): “An obligation of [a limited liability partnership]... is solely an obligation of the partnership... A partner is not personally liable... solely by reason of being... a partner.”
 - Some states restrict the liability limitation to tort actions, and leave contract liability unlimited.