January 1995

How the Uniform Partnership Act Determines Ultimate Liability for a Claim against a General Partnership and Provides for the Settling of Accounts between Partners

Russell C. Smith

Follow this and additional works at: http://scholarship.law.campbell.edu/clr
Part of the Business Organizations Law Commons

Recommended Citation
HOW THE UNIFORM PARTNERSHIP ACT DETERMINES ULTIMATE LIABILITY FOR A CLAIM AGAINST A GENERAL PARTNERSHIP AND PROVIDES FOR THE SETTLING OF ACCOUNTS BETWEEN PARTNERS

I. INTRODUCTION

When a person does business with one partner in a partnership and suffers harm that leads to a cause of action, courts are faced with three issues that often get intertwined and confused. A particular dispute may involve either one, two or all three of these issues. This comment attempts to identify and sort out these issues and show examples of how to resolve these types of cases.

A threshold issue is from which of the partners may the third party recover. This issue presents relatively few problems. Courts historically have protected the interests of third parties in their dealings with partnerships. This issue is discussed in Section II.

Another issue that a court might have to deal with is determining the responsible party. The ultimate responsibility might belong to the acting partner or the partnership itself, depending on the circumstances of the particular act that led to the liability. Although the distinction is not a bright line, this comment argues that the almost complete adoption of the Uniform Partnership Act (hereinafter "the Act")\(^1\) has led courts to hold the acting partner ultimately liable for acts only when they reach the level of recklessness. Consequently, other acts leading to liability should

---

1. The **Uniform Partnership Act** was drafted in 1914 and has since been adopted in most jurisdictions. See Appendix I for a complete list of jurisdictions that have adopted the Act and when the most recent version went into effect. Although states sometimes change uniform laws, the part of the Act discussed in this comment remains unchanged in all jurisdictions that have adopted it. Some state have changed the wording and these states are noted in Appendix I. Also, Appendix II is a collection of pertinent provisions of the Act used in this Comment.
be born by the partnership. This argument is advanced in Section III.

Often, a court must face a third issue, adjusting accounts between the partners. This may occur in an accounting action between partners, an action by the third party against all the partners, or an action by another partner after the liability has already been satisfied. This issue is a function of how ultimate liability and plaintiff's choice of defendant combine. Disputes may be classified in six different categories, which are discussed in Section IV. By regarding the partnership as an entity, and using the tools of indemnification and contribution provided by the Act, courts can shift the liability to the responsible party. A systematic approach will allow the court to untangle the issues and properly dispose of these types of cases.

II. PROTECTING THE INTERESTS OF THOSE DEALING WITH THE PARTNERSHIP

The threshold issue is from which of the partners may the third party recover. When an act or an omission by a partner gives rise to a third party claim, the courts seek to protect the interest of the third party who deals with a partnership by holding all partners liable to the third party. The courts will not allow

5. Also, there is no assurance under joinder rules that one partner will be able to join any of the others in the suit; however the test is very flexible. Jack H. FRIENDENTHAL ET AL., CIVIL PROCEDURE § 6.4, at 329-34 (1985); see, e.g., Flynn v. Reaves, 218 S.E.2d 661 (Ga. Ct. App. 1975).
6. The partnership can be viewed either as an entity within itself, or as an aggregate of partners. See discussion infra section III.A.
7. Indemnification is basically reimbursing someone for an expense they have paid that should belong to someone else. UNIFORM PARTNERSHIP ACT § 18(b) (1914). See discussion infra section III.B.
8. Contribution is basically paying someone back for the excess they have already paid. UNIFORM PARTNERSHIP ACT § 18(a) (1914). See discussion infra section III.B.
9. Without proper analysis the variables in these cases can cause inconsistent results. It is the purpose of this Comment to exemplify a process for settling these issues in accord with the Act.
10. See FDIC v. Braemoor Assocs., 686 F.2d 550 (7th Cir. 1982), cert. denied, 461 U.S. 927 (1983). Many states have now passed enabling statutes that allow firms to organize as Limited Liability Partnerships, e.g., N.C. GEN. STAT. § 59-
the other partners or joint venturers\textsuperscript{11} to escape liability, even when the acting partner acts illegally.\textsuperscript{12} An early English decision,\textit{Hamlyn v. Houston},\textsuperscript{13} illustrates this point well. In \textit{Hamlyn}, one partner of the defendant-partnership bribed the clerk of a competitor into providing him with information that would help him procure contracts for the partnership.\textsuperscript{14} When the competitor-plaintiff sued for damage to his business, the other partner claimed that since the act was illegal, the firm was not liable because it was outside the scope of the acting partner's authority.\textsuperscript{15} Using general agency principles, the court held that even if the act was illegal, if it was within the general scope of authority, the principal may be liable.\textsuperscript{16} The court reasoned "the principal is the person who has selected the agent, and must therefore be taken to have had better means of knowing what sort of a person he was than those with whom the agent deals on behalf of his principal . . . ."\textsuperscript{17}

84.2 (1993), or Limited Liability Companies, \textit{e.g.}, N.C. GEN. STAT. §§ 57C-1-01 to 57C-10-03 (1993), to escape this imputed liability. Partnerships still remain a viable business entity. In 1982 approximately 1,500,000 partnerships submitted tax information to the IRS. \textit{ALAN R. BROMBERG & LARRY E. RIBSTEIN, BROMBERG & RIBSTEIN ON PARTNERSHIP 1:26} (1988). There is also the possibility that a business formed according to some statutory guidelines will fail to meet the requirements and therefore will be handled in accordance with general partnership principles. \textit{See, e.g.}, \textit{Holzman v. De Escamilla}, 195 P.2d 833 (Cal. Dist. Ct. App. 1948). In \textit{Holzman}, two partners tried to establish a limited partnership, but since the checks issued by the business required the signature of one of the limited partners, the statutory protection was not available. \textit{Id.}

11. Many of these cases arise in joint venture situations. \textit{See, e.g.}, \textit{Woodner Co. v. Laufer}, 531 A.2d 280 (D.C. 1987). In \textit{Woodner}, the court remanded to determine whether the enterprise was a joint venture or not. \textit{Id. at} 286. If it was determined to be a joint venture, the \textit{UNIFORM PARTNERSHIP ACT} would be applied. \textit{Id.} For purposes of simplicity, only the term partner(s) and partnership(s) will be used in this comment. The reader is asked to remember that the terms joint venturer(s) and joint venture(s) could be used interchangeably and produce the same legal consequences.


13. \textit{Hamlyn v. Houston}, 1 K.B. 81 (1903). This English case was decided under the predecessor to the \textit{ACT}, the \textit{PARTNERSHIP ACT (1890)}, \textit{32 HALSBURY'S STATUTES} 635-62 (4th ed. 1987).


15. \textit{Id.}

16. \textit{Id.}

17. \textit{Id. at} 85.
In a more recent case, *FDIC v. Braemoor Associates*, Judge Posner cited *Hamlyn* and applied the same reasoning. The innocent partners were trying to escape liability, claiming illegality of the acting partner's scheme. The guilty partner constructed some complicated transactions to borrow money illegally. In protecting the interest of the third party, Judge Posner stated "[T]he law imposes greater duties on people with regard to the acts of their agents and partners than with regard to the acts of strangers, presumably to give people an incentive to choose carefully with whom to enter into ventures that may injure innocent third parties." According to the court, if the actor (Braemoor) was liable, under the principles of partnership, so were the individual defendants (partners).

Perhaps the best expression of this concept appears in a recent bankruptcy case, *Georgou v. Fritzshall*. In *Georgou*, the innocent partners tried to escape liability because the acting partner was guilty of willful misconduct. They claimed the willful misconduct was not in the ordinary course of the business, and therefore, they should not be liable. The court responded by stating that no partnership is in the business of willful misconduct and this type of interpretation would render the ordinary course of business requirement useless. The court reasoned the purpose of section 13 of the Act is not to protect innocent partners but to expose the liability of the partnership.

The courts' commitment to protecting third parties has also been applied to protect limited partners from the actions of general partners. In *Kazanjian v. Rancho Estate*, the court reasoned that in some respects, limited partners are like creditors of the partnership. A court might also use this concept to deny a claim to the partnership as well as protect the rights of the third party.

18. 686 F.2d 550 (7th Cir. 1982).
19. Id.
21. Id.
22. Id. at 555.
24. Id. at 37.
25. Id.
26. Id.
27. Id. Section 13 of the Act is reprinted in Appendix II. See infra text accompanying note 37.
29. Id. at 538.
parties. In Zemelman v. Boston Insurance Co., the court denied an insurance claim in favor of the innocent partners because one of the partners made false statements on behalf of the partnership in filing the claim. The court stated that since the partner's acts were within the scope of his authority, the partnership was bound to accept the legal consequences of his actions. This left the partnership with a building destroyed by fire and no insurance claim.

The Act has many provisions to protect the interests of third parties and bring liability upon either the partners, as an aggregate, or the partnership entity. Section 9 of the Act binds the partnership for acts of a partner in apparently carrying on the partnership business. A wrongful act or omission of the partner that brings liability to the partner while acting in the ordinary course of business will make the partnership liable to the same extent. Section 14 protects the interests of a third person when the partnership or a partner is in charge of the third person's money or other property. Partners are held jointly and severally liable for any liabilities that fall to the partnership under sections 13 and 14. Clearly, the drafters of the Act intended to protect the interests of those dealing with partnerships.

The remainder of this Comment assumes the third party has a legitimate claim against the partnership and the court will satisfy the claim, regardless of the plaintiff's choice of defendant.

III. WHO BEARS THE ULTIMATE LIABILITY—ACTING PARTNER OR ENTITY?

A. Historical View (Before the Act)

Often, a court might have to determine who is the responsible party. For the sake of illustration, Doctor Smith will provide a

31. Id. at 206. The guilty partner was convicted of five counts of filing a false and fraudulent claim. Id.
32. Id. at 207.
33. Id. at 206.
34. The ACT is silent on whether the partnership should be considered as an entity or an aggregate. See discussion infra section III.A.
35. UNIFORM PARTNERSHIP ACT § 9(1) (1914). This section also provides that every partner is an agent for the partnership. Id.
36. UNIFORM PARTNERSHIP ACT § 13 (1914).
37. UNIFORM PARTNERSHIP ACT § 14 (1914).
38. UNIFORM PARTNERSHIP ACT § 15(1) (1914).
running hypothetical throughout this comment. Doctor Smith is in a general partnership with five other doctors. One Friday afternoon, Doctor Smith saw a patient who complained of a sprained ankle. He ordered an X-ray and reported no visible injury. As a result, the patient was treated for a sprain. One week later, the patient had complications and visited another doctor. This doctor told him that he had a small, almost indistinguishable fracture. This series of events resulted in a potential claim for the patient, which he is yet to file. The nature of the plaintiff’s action will determine if all parties are before the court or whether one partner will satisfy the judgment and then try to use the court to settle accounts between the partners. In any event, the question of ultimate liability must be examined first.

A representative of the partnership trying to impose all liability on Dr. Smith would find the best arguments in cases decided before the passage of the Act. Courts historically handled these cases by distinguishing between the active and the imputed partner. The most important factor in determining who was liable as between partners was simply who was at fault. An early New York case, Kiffer v. Bienstock, illustrates this point. Kiffer and Bienstock were partners. Kiffer was involved in an accident while operating a vehicle owned by the partnership in the course of partnership business. A judgment was rendered against Kiffer in the amount of $450. Upon dissolution of the partnership, Kiffer attempted to have the judgment entered as a firm liability. Bienstock was not named as a defendant in the original suit. The court held the judgment was not a partnership liability. The court stated that “a person operating a vehicle owned by a copartnership which may be liable for the acts of such person is not discharged for any wrongful act committed by himself.” In dictum, the court further stated that if the partnership had defended the

40. See cases cited supra note 39.
41. Kiffer v. Bienstock, 218 N.Y.S. 526 (N.Y. City Mun. Ct. 1926) Actually, this case was heard more than seven years after the passage of the Act in New York (See Appendix I). However, the opinion carries no citation to the Act and is apparently decided on common law principles.
42. Id.
43. Id.
44. Id.
45. Id.
46. Id. at 528.
suit, the partnership would be able to collect from the acting partner upon showing negligence. The court made no attempt to determine any degree of negligence. The fact the partner was acting alone and was negligent placed liability solely on the partner involved in the accident.

This same principal, that ultimate liability belongs to the active partner based on the fact that he acted alone, is found in United Brokers' Co. v. Dose. One partner, while operating a vehicle in the partnership business, settled a claim that arose from an automobile accident. The partner involved in the accident wanted to charge the partnership with the cost of settling the suit. Citing many authorities on partnership law, the court rejected his claim stating that a partner has no right to charge the firm for losses caused from his own negligence. An unusual aspect of this case is the court assumed the negligence, since the suit was never brought, but merely threatened, by the third party. However, the fact that only one partner was involved was enough to place the ultimate liability squarely on him.

47. Id. This scenario is examined infra section III.C.
48. Id. Degree of negligence will be an important consideration under the analysis pursuant to the ACT. Seeinfra section II.B.
49. As stated supra note 41, this case cited no provisions of the ACT. Instead the court relies on the authority of Scott v. Curtis, 88 N.E. 794 (N.Y. 1909). However, the Scott case involved no partners at all. Rather this case was about a property owner who was held liable when a pedestrian was injured walking in front of his house. Id. Apparently, some employees of the defendant had left the cover off of a coal hole, and the plaintiff homeowner was seeking indemnification. Id. The decision in this case stood for the principle that as between themselves, an active wrongdoer stands as an indemnitor to the person who has been held legally liable. Id. The court in Kiffer applied this reasoning to the partnership situation. Kiffer, 218 N.Y.S. at 527.
50. 22 P.2d 204 (Or. 1933). The ACT was not passed in Oregon until 1939. See Appendix I.
51. Id. at 205.
52. Id.
53. Id. Among the authorities cited by the court are 2 Rowley, Modern Law of Partnership § 983 and Shumaker, The Law of Partnership 160 (2d ed.). Id.
54. United Brokers' Co., 22 P.2d at 205.
55. Id.
56. Apparently the fact that the partner who settled the suit did so without the knowledge and consent of his partner, sways the court. Id. This analysis is similar to the analysis used when the agent acts without authority. However, one could make the argument under the ACT that one's rights to participate in the management as an owner, gives a partner the power to make this decision,
A more modern case that followed the same type of reasoning is *Flynn v. Reaves*. A physician tried to bring a third party action against his partners after being accused of making a negligent diagnosis. The court ruled that a defendant whose negligence is actual cannot seek contribution from his co-partners whose negligence is only imputed. The court further stated the action in such cases belonged to the imputed party against the active party, after the imputed party had been compelled to satisfy the judgment. According to the *Flynn* court, the relevant inquiry is "whose wrong really caused the damage."

Professor Gilmore's treatise on partnerships echoes the analysis found in the early cases. He states, "if the loss or outlay for which a partner seeks indemnity or contribution was caused only through his own negligence, . . . no duty to reimburse him arises." Under this active/imputed analysis, Doctor Smith, in our original hypothetical, would be solely liable for the damages caused to the patient with the fractured foot, since he was the sole actor. Following the reasoning of *United Brokers' Co.*, if the doctor decided that settling the suit was better for the partnership than contesting it, he would still bear the sole liability. Without a trial, the issue of his negligence is left undetermined; however, he still could not be indemnified from the partnership under this type of analysis.

depending upon other factors. *Uniform Partnership Act* § 18(e) (1914). An analysis of the scope of authority of partners is outside the scope of this comment.

57. 218 S.E.2d 661 (Ga. Ct. App. 1975). The reader should note that this case, although relatively recent, was decided before the passage of the Act in Georgia. See Appendix I.

58. *Flynn*, 218 S.E.2d at 662.

59. *Id.* at 663.

60. *Id.* This scenario is examined *infra* section III.C.

61. *Id.*

62. EUGENE A. GILMORE, HANDBOOK ON THE LAW OF PARTNERSHIP § 134 (1911).

63. *Id.*

64. 22 P.2d 204 (Or. 1933).

65. Some early courts, however, recognized the relationship between partners called for a different analysis than the active/imputed analysis. See Smith v. Ayrault, 39 N.W. 724 (Mich. 1888); Snell v. De Land, 27 N.E. 183 (Ill. 1891); Farney v. Hauser, 198 P. 178 (Kan. 1921).
B. The Standard Under the Act

Since the drafting of the Act and its adoption in most jurisdictions, courts have used a different analysis for cases where one partner, by act or omission, exposed the firm to liability. The Act provides the language for different results. Section 18(b) provides: "The partnership must indemnify every partner in respect of payments made and personal liabilities reasonably incurred by him in the ordinary and proper conduct of its business, or for the preservation of its business or property."

By allowing indemnification for ordinary and proper acts reasonably incurred, the liability becomes ultimately the liability of the partnership. The provision that speaks to how this liability should be shared is section 18(a) of the Act, which states: "[e]ach partner . . . must contribute towards the losses, whether of capital or otherwise, sustained by the partnership according to his share in the profits." According to this section, once the liability is deemed to be a partnership liability, it is borne by all partners, not just the acting partner. The question that a court has to answer is whether the conduct in question is indemnifiable under the Act.

As established above in Part A, early cases tended to impose the liability for an act performed in the course of business upon the acting partner by reasoning that he was acting alone. Before the adoption of the Act, a Kansas court in Carlin v. Donegan stated simply "[a] partner is responsible for losses resulting from ordinary negligence." In Carlin, the court reversed the lower court ruling because the jury instruction said the imputed party was only allowed contribution if the active party had been grossly

66. See Appendix I.
68. The ACT is only a default provision. Partners are free to make their own agreement regarding liabilities, indemnification and contribution. Section 18 of the ACT begins, "[t]he rights and the duties of the partners in relation to the partnership shall be determined, subject to any agreement between them, by the following rules . . . ." UNIFORM PARTNERSHIP ACT § 18 (1914) (emphasis added).
69. UNIFORM PARTNERSHIP ACT § 18(b) (1914).
70. Id.
71. UNIFORM PARTNERSHIP ACT § 18(a) (1914).
72. Id.
73. See discussion supra in section II.A.
negligent. 75 Recent cases decided in jurisdictions which have adopted the Act have generally drawn a different line to determine if the liability should belong to the acting individual or the partnership. 76 Terms such as "fraud," "culpable negligence," or "bad faith" have been used. 77 Although there is no clear cut definition for an ordinary and proper act, a comparison of court decisions can help to establish whether liability belongs to the partnership or the acting partner.

A fraudulent act has been held not to be in the proper course of partnership business, and thus not eligible for indemnification, when the acting partner is found liable. 78 In Gramercy Equities Corp. v. Dumont, the trial court found the acting partner committed intentional fraud by making a promise with no intention of fulfilling it. The court indemnified the acting partner for half of the liability he incurred. 79 In overruling the indemnification, the appellate court held that fraud committed against third persons is not within the proper conduct of a partnership business. 80 The policy reason for the holding was that if liability for a fraudulent act can be shifted there is less incentive to refrain from this type of conduct. 81

On the other side of the transaction, a court has allowed an imputed partner to be indemnified for satisfying a judgment caused by another partner's fraudulent act. 82 In In re Flick, the imputed partner was allowed to maintain such an action. 83 The court held that, "the special relationship of trust as between partners entitles a partner to seek indemnity from a co-partner who commits a wrong without his knowledge and authorization." 84 Clearly, liability resulting from an act of fraud belongs solely to the acting partner and not the partnership. 85

75. Id. at 499.
76. See cases cited supra at note 67.
80. Id. at 633.
81. Id. See also Rosado v. Procter & Schwartz, 484 N.E.2d 1354 (N.Y. 1985).
82. In re Flick, 75 B.R. 204 (Bankr. S.D. Cal. 1987).
83. Id. at 204.
84. Id. at 206.
85. Although this may seem an obvious result, the New York Court of Appeals had to overturn one trial court and one intermediate appellate court to reach this
Generally, courts have denied indemnification under the Act for the expense of attorney’s fees incurred in bringing an action against a partner guilty of wrongdoing. In *Ohlendorf v. Feinstein*, the court stated that since the plaintiff partner was trying to protect personal property, the action was not within the Act. Most cases are of this nature. The court, however, did allow indemnification of attorney’s fees in *Evans v. Boggs* because the action was to protect partnership property.

Negligent acts are a little harder to fit within the “ordinary and proper” language. In *Kraemer v. Gallagher*, the court did not allow a counterclaim by the defendant, who wanted to be reimbursed for money he had put into the partnership. He claimed that his partner, the plaintiff, had failed to engage an attorney for a real estate closing which resulted in liability for the firm. The court reasoned that since the defendant was aware the plaintiff had been handling similar transactions for years, and it was a risk inherent in this practice, it was appropriately a partnership liability. Another reason stated by the court was the defendant shared the profits from sales; therefore, he should also share the liabilities. In the hypothetical, Doctor Smith can argue that one occasionally will misread an X-Ray and that this is a risk inherent in the business of a doctor, providing there is no other breach of fiduciary duty.

Another illustrative case is *Marcus v. Green*. This case involved a third party claim made by a co-defendant, Schroeder, against his partner, Green. A ten thousand dollar loss was suf-

87. *Ohlendorf*, 697 S.W.2d at 556.
88. See supra note 86.
89. 245 S.W.2d 641 (Tenn. Ct. App. 1951).
90. Under the active/imputed partner analysis, any sole act was not indemifiable, therefore the courts had no problem with the negligence question.
92. *Id.* at 874.
93. *Id.* at 875.
94. *Id.* at 876.
95. *Id.*
97. *Id.* at 513.
ferred by the partnership after an employee was hurt when the scaffolding on which he was working collapsed.\textsuperscript{98} The trial jury found, in a special interrogatory, that Schroeder was not in charge of any activities at the construction site.\textsuperscript{99} Schroeder made the argument that liability suffered by the imputed partner is indemnifiable by the active partner.\textsuperscript{100} This indemnification claim was successful at the trial level.\textsuperscript{101} While not disturbing the fact finding of the trial court, the appellate court held that absent fraud, culpable negligence, or bad faith, liability would not be shifted for losses which are inherent in the partnership business.\textsuperscript{102} The court also stated the injury which occurred could be reasonably anticipated in the construction business.\textsuperscript{103} The term culpable negligence might be problematic, but must be read in light of the findings of the court.\textsuperscript{104} The partnership was held liable for activities that were basically under the control of one partner; however, the partner's actions did not reach the level that warranted indemnification to the imputed partner.\textsuperscript{105} It is logical to conclude that the degree of negligence required to trigger liability to co-partners, either as an aggregate or an entity, is greater than that necessary to trigger partnership liability to third parties.

In a 1984 Texas case, \textit{Ferguson v. Williams},\textsuperscript{106} the court held as a matter of law that "negligence in the management of the affairs of a general partnership or joint venture does not create any right of action against that partner by other members of the

\begin{itemize}
  \item \textsuperscript{98} \textit{Id.}
  \item \textsuperscript{99} \textit{Id.} at 515. Defendant Green was the owner of the construction company. The appellate court found the partnership itself was the "person" in charge of the construction site. \textit{Id.}
  \item \textsuperscript{100} \textit{Id.} at 514. This is the same analysis that was used before the passage of the Act.
  \item \textsuperscript{101} \textit{Id.} at 514.
  \item \textsuperscript{102} \textit{Id.} at 520. The court cited \textit{Snell v. De Land}, 27 N.E. 183 (Ill. 1891), which held the partner should be indemnified unless he showed a "willful disregard of duty." \textit{Id.} at 184.
  \item \textsuperscript{103} Marcus, 300 N.E.2d at 520.
  \item \textsuperscript{104} Culpable negligence is defined differently in different jurisdictions. In some jurisdictions, it is similar to ordinary negligence, but in other jurisdictions, it means something greater than ordinary negligence. \textit{Ballentine's Law Dictionary} 296 (3d ed. 1969). These jurisdictions define culpable negligence as implying conscious disregard. \textit{Id.} Since culpable negligence does not signify a specific meaning within itself, it should be read in light of the decision.
  \item \textsuperscript{105} Marcus, 300 N.E.2d at 520.
  \item \textsuperscript{106} 670 S.W.2d 327 (Tex. Ct. App. 1984).
\end{itemize}
partnership.” The court further stated it would take a breach of trust to sustain an action. The court made this ruling despite finding the negligence of two partners was the proximate cause of the loss suffered by the other partner.

The foregoing cases, and the analysis used by the courts, tends to support the proposition that a liability incurred by an act of ordinary negligence of single partner will be a partnership liability if the act involves a risk inherent in the partnership business. Apparently, the act of a partner must reach the level of recklessness or involve some culpable mental state before the liability is solely his and not the partnership’s.

An examination of the plain meaning of the words of the statute lends support to the proposition that more than ordinary negligence is needed to hold the acting partner solely liable. The words of the statute are “ordinary and proper conduct of its business.” Since the term ordinary is not troublesome, the threshold question becomes, “What actions are proper?” Perhaps the better question to ask is, “What actions are not improper?” These actions would require indemnity from the partnership. When seeking indemnification for a liability incurred, a partner must prove that his activity was “in the ordinary and proper course of the business.” According to Black’s Law Dictionary, “proper” is defined as “fit, suitable, appropriate . . . and reasonably sufficient.” Thus, if the action that causes the liability fits this criteria of reasonable sufficiency, it should be indemnifiable by the partnership. Doctor Smith was probably negligent by a legal standard. But was his negligence improper under Section 18(b)? Black’s Law Dictionary states that negligence is chiefly characterized by “inadvertence.” According to the American Heritage Dictionary, an inadvertent act is “accidental” and/or “uninten-

107. Id. at 331.
108. Id.
109. Id.
110. UNIFORM PARTNERSHIP ACT § 18(b) (1914).
111. Id.
112. UNIFORM PARTNERSHIP ACT § 18(b) (1914).
114. According to BLACK’S LAW DICTIONARY, negligence carries many different definitions. BLACK’S LAW DICTIONARY 1032 (6th ed. 1990). The common denominator in all expressions of negligence is want of reasonable care and the duty to exercise such care in conduct which may result in injuries to others. Id.
115. UNIFORM PARTNERSHIP ACT § 18(b) (1914).
One can be acting suitably, appropriately, and reasonably sufficient and still make a mistake. Therefore, an act that is unintentional should still be considered proper under the Act and indemnifiable. If Doctor Smith’s unintentional act had resulted in a windfall, the other partners would certainly claim their respective shares of that profit. A mistaken act is not improper under section 18(b) of the Act. Liability incurred for this type of negligence should be indemnified.

Other levels of negligence, however, might be improper and not capable of indemnity. For example, a distinction is drawn between ordinary negligence and gross negligence. Gross negligence is defined as “[t]he intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of another.” An act of reckless disregard would not be proper or reasonably suitable. If Doctor Smith failed to take an X-ray, or decided not to read it, it would seem to be an act of reckless disregard under this definition. This would not be proper, as the other partners would expect Doctor Smith to act with regard. Therefore, once his conduct reaches the level of recklessness or gross negligence, then the conduct would not be proper. This means he should not be indemnified and must bear sole liability for this act. Likewise, if the suit is brought against the partnership, he should indemnify the partnership for the loss. The plain definition of the words “ordinary and proper” seems to support the idea that a partner cannot shift the liability for his acts once they reach the level of recklessness.

One may look to the Restatement of Restitution for further support for requiring a mental state of at least recklessness for

118. For the sake of argument, suppose Doctor Smith unintentionally or mistakenly took an X-ray of the wrong body part, but found another problem which resulted in more visits and thus fees, from the patient. Wouldn’t the partners argue they were entitled to a share of these profits?
119. This result would parallel the reasoning in Ferguson v. Williams, 670 S.W.2d 327 (Tex. Ct. App. 1984).
121. “Every partner is an agent of the partnership for the purpose of its business. . . .” UNIFORM PARTNERSHIP ACT § 9 (1914). An agent is a fiduciary for the principal. RESTATEMENT (SECOND) OF AGENCY § 13 (1957). These principles suggest that a partner has a right to expect that his co-partner is acting competently, not recklessly or carelessly. Id.
122. See discussion infra section III.
123. See supra notes 110-19.
holding the actor ultimately liable.\textsuperscript{124} Section 96 provides that one who has become subject to tort liability for the unauthorized and wrongful conduct of another is entitled to indemnity.\textsuperscript{125} Comment B further explains by stating that if the actor was not guilty of seriously wrongful conduct while acting in accordance with another's direction, the principal should indemnify the agent.\textsuperscript{126} Stated differently, unless the wrong is a serious wrong, the ultimate liability belongs to the principal.

The Restatement (Second) of Agency contains a similar provision stating that a principal has a duty to indemnify an agent for payments made to a third party resulting from liability for an authorized activity that constitutes a tort.\textsuperscript{127} The comments provide:

If, however, the agent, at the direction of the principal, commits an act which constitutes a tort but which the agent believes not to be tortious, he is entitled to indemnity to the amount which he is required to pay as damages. This is true both where the principal contemplates the likelihood that the directed act will constitute a tort and where he has no reason to anticipate that it will be tortious.\textsuperscript{128}

The partnership has no reason to anticipate tort liability from a mistaken or unintentional act as long as there is no breach of the fiduciary duty.

Further evidence that ordinary negligence is a partnership liability is the recent popularity of the limited liability company and the limited liability partnership. If personal assets of partners were not exposed to liability, there would be no need for these new entities. Most of these new statutes exist to protect one partner's personal assets from liability for acts of another partner.\textsuperscript{129}

\textsuperscript{124} One may wonder why principles of restitution are applicable to partnership cases. The Act contains a provision that supports the use of this authority. Section 4(1) provides: "The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this act." \textit{Uniform Partnership Act} § 4(1) (1914). Indemnity and contribution were first developed in equity for the purpose of correcting unjust enrichment, and thus are appropriate rules for examining partnership issues. \textit{George E. Palmer, The Law of Restitution} § 1.5(D) (1978).

\textsuperscript{125} \textit{Restatement of Restitution} § 96 (1936).

\textsuperscript{126} \textit{Restatement of Restitution} § 96 cmt. b (1936).

\textsuperscript{127} \textit{Restatement (Second) of Agency} § 439 (1957).

\textsuperscript{128} \textit{Restatement (Second) of Agency} § 439 cmt. g (1957).

\textsuperscript{129} An example of the statute used for this type of organization is:

A partner in a registered limited liability partnership is not individually liable for debts and obligations of the partnership arising from errors,
The use of the word "negligence" in the limited liability statutes shows that legislatures feel the Act may not protect one partner from the negligent acts of another.\textsuperscript{130}

There is a parallel to the apparent recklessness standard in the business context. The "business judgment rule" exists in some form in all jurisdictions.\textsuperscript{131} Generally, this rule protects directors, officers and other corporate personnel when suit is brought against them.\textsuperscript{132} As long as they are acting in good faith with the reasonable belief that their conduct is in the best interests of the corporation, they can be indemnified for litigation expenses.\textsuperscript{133} Professor Beveridge suggests the Revised Uniform Partnership Act should include a provision codifying the business judgment rule in the partnership context.\textsuperscript{134} He also suggests that a duty of care provision be included.\textsuperscript{135}

A recklessness standard is the correct standard in determining whether a liability should be charged to the acting partner or the partnership.\textsuperscript{136} Everyday mistakes and unintentional acts that might occur are part of the risks inherent in becoming a part-

\begin{quote}
 omitted, \textit{negligence}, incompetence, or malfeasance committed in the course of the partnership business by another partner or representative of the partnership not working under the supervision or direction of the first partner at the time the errors, omissions, \textit{negligence}, incompetence, or malfeasance occurred, unless the first partner was directly involved in the specific activity in which the errors, omissions, \textit{negligence}, incompetence, or malfeasance were committed by the other partner or representative.
\end{quote}


\textsuperscript{130} The word negligence appears in virtually all of these statutes. See Appendix I for more states that have included some of this language in their version of the Act.

\textsuperscript{131} \textsc{Harry G. Henn \& John R. Alexander}, \textsc{Laws of Corporations and Other Business Enterprises} § 380 (3rd ed. 1983).

\textsuperscript{132} \textsc{Id}.

\textsuperscript{133} \textsc{Id}.


\textsuperscript{135} \textsc{Id}.

\textsuperscript{136} Even some of the cases decided before the passage of the Act indicated the partner bearing the liability was guilty of something more than ordinary negligence. \textit{See generally} Thomas v. Atherton, 10 Ch. D. 185 (1878) ("acted with gross negligence and recklessness"); Yorks v. Tozier, 60 N.W. 846 (Minn. 1894) ("he was, to say the least, grossly negligent"); \textit{contra} Carlin v. Donegan, 15 Kan. 495 (1875) ("and a partner is responsible for losses resulting from ordinary negligence").
ner. In fact, the more one attempts to maximize profits, the more likely it becomes that one will make a mistake that would expose the firm to liability. It seems only just for the firm that shares increased profits to also share the liabilities. Doctor Smith might only see one patient a day. This would arguably increase his chances of avoiding liability for himself or the partnership; however, this would be unacceptable to his partners. Also, partnership is a voluntary act. The law will not force anyone into a partnership. If a partner believes that he is in danger of imputed liability, he can dissolve the partnership immediately by leaving. It is not equitable to accept the profits made by a partner only to sever the relationship when liabilities arise. Modern courts have appropriately recognized this and applied at least a recklessness standard under the Act.

IV. How To Use The Tools Of Indemnity And Contribution To Settle Accounts Between Partners

Often a court must adjust accounts between partners. The entity theory of partnership, contribution, and indemnification are helpful tools in this process.

A. The Entity Theory

Whether a partnership should be considered a separate legal entity or an aggregate of the partners has been historically dis-

137. "A partnership is an association of two or more persons to carry on as co-owners a business for profit." Uniform Partnership Act § 6. If the business is not to make a profit, it is not a partnership by definition, and the Act does not apply.

138. The reader is reminded that this assumes no prior agreement and the partners are relying on the Act as the default provision. Uniform Partnership Act § 18 (1914).

139. Section § 31 of the Act provides that unless the partnership is formed for a definite period of time or for a specific purpose, it may be dissolved at will by any of the partners. Uniform Partnership Act § 31 (1914). Even if there is an agreement for a specified time or a purpose, one may leave the partnership and only be responsible for the damages caused by the breach, not by any future activities of the remaining partners, since they essentially become a new entity. Uniform Partnership Act § 29 (1914).

140. Uniform Partnership Act § 29 (1914).

The original author of the Act, Dean Ames, would have defined a partnership as a legal person. Unfortunately, he died before completion of the Act and his successor, Dean Lewis, did not support the entity view. Consequently, the Act itself is silent on the question. Since the drafting of the Act, however, courts have used the entity and/or the aggregate theory whenever necessary. The trend is toward the entity theory.

Settling liabilities is a perfect time to utilize the entity theory. This will achieve two goals. First, use of the entity theory will create ease in the property transactions used to make adjustments between partners and the partnership.

Smith v. Hensley presents an interesting scenario in this respect. The plaintiff sued the partnership for damage to a truck caused by negligence of the employees of the partnership. Since the plaintiff was a one-eighth owner of the business, he was in effect suing himself. Also, since the negligence of the employees was imputed to the partnership, as part owner the plaintiff might be barred from recovery. The court used separate entity reasoning to allow the

143. Id.
144. Id.
145. Id. Although the Act itself is silent, Bromberg and Ribstein suggest that the Act has many entity provisions, most of which have to deal with the right of the partnership to possess property. BROMBERG & RIBSTEIN, supra note 142, at 1:23.
146. Id. at 1:40.
147. Many states now allow partnerships to sue and be sued at law. BROMBERG & RIBSTEIN, supra note 142, at 1:26. For an example of such a statute, see N.C. GEN. STAT. § 1-69.1 (1983).
149. See Walker v. Walker, 854 F. Supp. 1443 (D. Neb. 1994), for a good example of how a court keeps personal property and partnership property separate to reach a consistent result in a complicated situation.
150. 354 S.W.2d 744 (Ky. Ct. App. 1961).
151. Id. at 745.
152. Id.
153. Id.
action anyway. Also, some courts will exhaust partnership property first before reaching individual property.

Second, the tools of indemnity and contribution as referred to in the Act are drafted in terms of indemnity from the partnership and contribution to the partnership, not the individual partners. For the remainder of this Comment, the term "partnership" will be used to represent the entity.

B. Indemnity and Contribution

Indemnity is defined simply as "reimbursement." Contribution is defined as the "right of one who has discharged a common liability to recover of another also liable, the aliquot portion which he ought to pay or bear." Both remedies were developed in the equity courts, primarily in surety cases, to prevent unjust enrichment. This is appropriate to the hypothetical situation.

Indemnity is defined simply as "reimbursement." Contribution is defined as the "right of one who has discharged a common liability to recover of another also liable, the aliquot portion which he ought to pay or bear." Both remedies were developed in the equity courts, primarily in surety cases, to prevent unjust enrichment.

154. Id.
156. Uniform Partnership Act § 18(a)(b) (1914). For the information of the reader, the Revised Uniform Partnership Act changes little of the wording found in these two sections. The Revised Act states:

Section 401. Partner's Rights and Duties
(b) A partnership shall credit each partner's account with an equal share of the partnership profits. A partnership shall charge each partner with a share of the partnership losses, whether capital or operating, in proportion to the partner's share of the profits.
(c) A partnership shall indemnify each partner for payments reasonably made and liabilities reasonably incurred by the partner in the ordinary and proper conduct of the business of the partnership or for the preservation of its business or property.


157. In some of the cases, an entity theory is not practical. For example, in the case of the dissolved partnership, there is no partnership property and an action for indemnity becomes basically one for contribution from the copartners. See, e.g., Marcus v. Green, 300 N.E.2d 512 (Ill. App. Ct. 1973). When looking at these types of cases, however, one should always go through the process, primarily to expose any existing partnership property before reaching personal assets of the copartners. Bromberg & Ribstein, supra note 142, at 1:03.

160. George E. Palmer, The Law of Restitution 29 (1978). Professor Palmer states that when courts fail to realize that indemnity and contribution were established to prevent unjust enrichment, they tend to reach undesirable results. Id. at 30.
In the hypothetical, Doctor Smith's partners would be unjustly enriched if they were allowed to share in his profits, but not required to contribute to what should be a partnership liability. On the other hand, if Doctor Smith had failed, due to recklessness, to take an X-ray, he would be unjustly enriched if the plaintiff chose to sue the partnership, and the partnership had no action against him. The courts can use these remedies to produce desirable results, regardless of the plaintiff's choice of defendant.

Two basic, but crucial, rules apply to all indemnification and contribution actions. Courts insist that a plaintiff prove that he actually incurred the expense to maintain an action. 161 Secondly, the action is based on the amount paid, not the possible liability (assuming a difference between the two). 162

Historically, partners defending in contribution actions tried to avoid liability by claiming courts did not allow actions between joint tortfeasors. 163 In Farney v. Hauser, 164 the court explained,

"The reason why ordinary tort-feasors are refused judicial aid to enforce contribution between them is because the state does not establish and maintain courts to adjudicate between rogues or rascals who have willfully placed themselves beyond the pale of the law, nor to conduct inquiries as to their relative guilt." 165

The court then stated this did not apply to partnership cases since they were joint tortfeasors at law, not actually willfully culpable. 166 Today many states have passed the Uniform Contribution Among Tortfeasors Act to handle the problems of joint tortfeasors; 167 however, it does not apply to the partnership setting by its own terms. Section 1(f) says "[t]his Act does not impair any right of indemnity under existing law." 168 Section 1(g) states


163. See In re Ryan’s Estate, 147 N.W. 993 (Wis. 1914); Farney v. Hauser, 198 P. 178 (Kan. 1921).

164. 198 P. 178 (Kan. 1921).

165. Id. at 180.

166. Id. Apparently, this is well settled at this point, but for another view see Flynn v. Reaves, 218 S.E.2d 661 (Ga. Ct. App. 1975).


"[t]his Act shall not apply to breaches of trust or of other fiduciary obligation." Since the basis of partnership is agency and fiduciary duty, the Uniform Contribution Among Tortfeasors Act does not apply to partnership problems.

C. Solving the Different Possibilities

When a plaintiff has a claim from the actions of one partner, the plaintiff may sue either the partner, the partnership, or another partner. Depending on the facts of the situation, either the acting partner or the partnership should bear the ultimate liability for the loss. This leaves the court with a possibility of six different combinations in which these types of cases can arise.

Two of these scenarios can be disposed of easily. When the plaintiff sues the party that is ultimately liable for the act, the court should not allow any present or subsequent actions for indemnity or contribution. If the acting partner has acted in a reckless or grossly negligent manner, a later action for indemnification or contribution should be denied. This is the action in *Gra-mercy Equities Corp. v. Dumont.* Since the party defending the claim was found to have acted fraudulently, he was denied an

170. "The law of agency shall apply under this act." Uniform Partnership Act § 4(3) (1914).
171. Uniform Partnership Act § 13 (1914).
172. Uniform Partnership Act § 15(a) (1914). Although joint and several liability of all the partners is allowed by the Act, a different result was reached in Keech v. Mead Johnson & Co., 580 A.2d 1374 (Pa. Super. Ct. 1990). In this medical malpractice case, the plaintiffs brought suit against the active physician, the imputed physician, and the partnership entity. Id. at 1375. The court dismissed the claim of the plaintiff against the imputed partner in her individual capacity, saying she was still liable as a partner. Id. at 1379. The court analogizes the difference between the individual and the partnership with the difference between the stockholder and the corporation. Id. However, a major difference is that the stockholder has no rights in the management of the corporation except electing directors, whereas the individual has management rights in the partnership. Uniform Partnership Act § 18(e) (1914).
173. See discussion supra section II.
174. These cases can be resolved in one of two ways - either in an accounting action or a separate action for contribution or indemnification. The six different combinations in which these cases can occur has been reduced to a chart found in Table I. This chart represents the different situations in grid form to hopefully make the comparisons of the different situations easier.
175. 531 N.E.2d 629 (N.Y. 1988).
action for indemnification. Likewise, if the loss should ultimately fall to the partnership and the partnership is a party to the suit, the result will be just. This is the case in Marcus v. Green. The partnership was before the court, and since the act involved no bad faith, culpable negligence or fraud, no indemnity to the imputed party was allowed.

If the liability is ultimately the responsibility of the partnership, but the partner who acted is sued and pays a judgment, then the partnership should indemnify the partner according to section 18(b) of the Act. In North River Insurance Co. v. Spain Oil Co., the court allowed a partner, who had paid a judgment for injuries caused to an employee, to maintain an action for contribution against his other two partners. Citing section 18(b) of the Act, the court stated the very nature of a partnership is an undertaking to share in profits or losses. Thus, an action for contribution was allowed, even though the court reported there was some evidence the partner who paid the judgment was personally at fault for the injuries to the employee. The action, according to the court, arose from the relationship between the parties as partners. Another example of this type of action is found in an early Michigan decision, Smith v. Ayrault. The plaintiffs, Smiths, paid a judgment for a patent violation in the selling of pipe. They then sought contribution of one half of the judgment

176. Id. at 633.
178. Id. at 520.
179. Uniform Partnership Act § 18(b) (1914). Reimbursement should come from the partnership (entity) property first. Id. This protects the individual property of the partners to the extent the entity can discharge the obligation. Id. If the entity does not have sufficient resources to indemnify the partner, then each partner should contribute in the proportion of profits. Uniform Partnership Act § 18(a) (1914).
181. Id. Actually, this suit was brought by the partner's insurer, but the same basic rights applied to the subrogee. Id. at 704.
182. Id. at 706.
183. Id.
184. Id. This action occurred after the dissolution of the entity. Since there was no entity property to use for indemnification, contribution was an appropriate remedy. See infra note 188.
185. 39 N.W. 724 (Mich. 1888). This case was before the drafting of the Uniform Partnership Act and is apparently decided on principles of retribution and unjust enrichment.
186. Id. at 725.
from the defendant, Ayrault, who was one half owner of the partnership.\textsuperscript{187} Even though the defendant was not named in the original suit,\textsuperscript{188} the court held that since the Smiths had made the sales in good faith, it would be inequitable if the defendant did not share in the losses in proportion to his profits.\textsuperscript{189} Thus, contribution was allowed.\textsuperscript{190}

Another situation that can arise is when the third party sues the partnership, and the acting partner has been at least grossly negligent or reckless and should bear the cost. \textit{Eichberger v. Reid},\textsuperscript{191} is based on this scenario. One partner caused the partnership to suffer liability because of a misrepresentation in the sale of property.\textsuperscript{192} The trial court ruled the imputed partner had an action for indemnity against the acting partner because the fiduciary duty was breached.\textsuperscript{193} The court relied on equitable principles to reach this conclusion.\textsuperscript{194} The Restatement of Restitution speaks to this type of indemnity in section 96, which states: 

\begin{quote}
[a] person who, without personal fault, has become subject to tort liability for the unauthorized and wrongful conduct of another, is entitled to indemnity from the other for expenditures properly made in the discharge of such liability.
\end{quote}

\textsuperscript{195} In a partnership, the entity would be the person indemnified.\textsuperscript{196} Also, Restatement (Second) of Agency section 401 states: 

\begin{quote}
[a]n agent is subject to liability for loss caused to the principal by any breach of duty.
\end{quote}

\textsuperscript{197} As stated before, each partner is an agent of the partnership.\textsuperscript{198} It is appropriate for a partnership held liable to obtain indemnity in situations where the ultimate liability should fall upon the acting partner.

\begin{footnotes}
\item[187.] \textit{Id}.
\item[188.] The original plaintiffs were the brother-in-law and the nephew of Ayrault. \textit{Id}.
\item[189.] \textit{Id.} at 731.
\item[190.] \textit{Id.} Apparently, the court uses an aggregate theory of partnership in ordering contribution rather than indemnification. This was necessary since the partnership was dissolved at the time of the suit. Since no partnership property was discussed in the report, we can assume none existed; therefore, contribution was the proper remedy.
\item[191.] 728 S.W.2d 533 (Ky. 1987).
\item[192.] \textit{Id.} at 534.
\item[193.] \textit{Id}.
\item[194.] \textit{Id.} at 535.
\item[195.] RESTATEMENT OF RESTITUTION § 96 (1936).
\item[196.] See discussion supra section III.A.
\item[197.] RESTATEMENT (SECOND) OF AGENCY § 401 (1957).
\item[198.] UNIFORM PARTNERSHIP ACT § 9(1) (1914).
\end{footnotes}
The last type of scenario is when the third party has chosen one partner who is liable for the acts of another partner by operation of the Act. If the liability is a partnership liability, the imputed partner should be indemnified by the partnership according to section 18(b) of the Act. This is the situation in In re Flick. The plaintiff in this case was the imputed partner. The court stated that the relationship of trust between partners entitles one to seek indemnity from a wrongdoing co-partner. The Restatement (Second) of Agency also calls for indemnification in this situation. It states the principal should indemnify the agents in payments resulting in benefit to the principal, made under such circumstances that it would not be equitable to refuse indemnity. This is such a situation. If the imputed party pays a judgment that should be the ultimate liability of the acting partner, the imputed party should be indemnified from the principal (entity) and the entity should then seek indemnification from the active party, in accordance with the principles in the preceding paragraph.

V. Conclusion

When one partner acting within the partnership business does not act with, at the least, any reckless, or gross negligence, the partnership should bear the ultimate liability. After determining who should bear the ultimate liability, the court can use the tools of indemnity and contribution to fix the liability on the

199. Uniform Partnership Act § 15(a) (1914).
200. See infra Appendix II.
201. 75 B.R. 204 (Bankr. S.D. Cal. 1987).
202. Id. at 205.
203. Id. at 206.
204. Restatement (Second) of Agency § 439(c) (1957).
205. Id.
206. The reader might be wondering why the transaction should proceed through the entity to the active partner. Why not just require the active partner to indemnify the imputed partner? If the partnership and the active partner have plenty of property to satisfy the judgment, this is exactly what will happen anyway. Also, if there is no entity property, then the entity transaction will not be necessary. However, the line of reasoning should be followed to account for situations when the active party is judgment proof and the entity has property. This will best protect the rights of the imputed party. See, e.g., Schuler v. Birnbaum, 405 N.Y.S.2d 351 (N.Y. App. Div. 1978).
appropriate party. This is in accordance with the Act, and the general principles of agency and restitution.

Russell C. Smith
<table>
<thead>
<tr>
<th>Partnership held ultimately liable</th>
<th>Partnership (entity) is indemnified by the active partner</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Active party held ultimately liable</th>
<th>No action needed between partners.</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Imputed party held ultimately liable</th>
<th>Imputed partner indemnified by partnership (entity) then partnership is indemnified by the active partner</th>
</tr>
</thead>
</table>
APPENDIX I

Jurisdictions That Have Adopted the **Uniform Partnership Act** and the Effective Date (this Chart is adopted from various appendices in *Reuschlin & Gregory, Agency and Partnership* (4th ed. 1989))

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Adoption Year</th>
<th>Jurisdiction</th>
<th>Adoption Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>1972</td>
<td>Montana</td>
<td>1947</td>
</tr>
<tr>
<td>Alaska</td>
<td>1917</td>
<td>Nebraska</td>
<td>1943</td>
</tr>
<tr>
<td>Arizona</td>
<td>1954</td>
<td>Nevada</td>
<td>1931</td>
</tr>
<tr>
<td>Arkansas</td>
<td>1941</td>
<td>New Hampshire</td>
<td>1973</td>
</tr>
<tr>
<td>California</td>
<td>1949</td>
<td>New Jersey</td>
<td>1919</td>
</tr>
<tr>
<td>Colorado</td>
<td>1931*</td>
<td>New Mexico</td>
<td>1947</td>
</tr>
<tr>
<td>Connecticut</td>
<td>1961</td>
<td>New York</td>
<td>1919*</td>
</tr>
<tr>
<td>Delaware</td>
<td>1947</td>
<td>North Carolina</td>
<td>1941</td>
</tr>
<tr>
<td>District of Columbia</td>
<td>1962</td>
<td>North Dakota</td>
<td>1959</td>
</tr>
<tr>
<td>Florida</td>
<td>1973</td>
<td>Ohio</td>
<td>1949*</td>
</tr>
<tr>
<td>Georgia</td>
<td>1985</td>
<td>Oklahoma</td>
<td>1955</td>
</tr>
<tr>
<td>Guam</td>
<td>#</td>
<td>Oregon</td>
<td>1939</td>
</tr>
<tr>
<td>Hawaii</td>
<td>1973</td>
<td>Pennsylvania</td>
<td>1915</td>
</tr>
<tr>
<td>Idaho</td>
<td>1920</td>
<td>Rhode Island</td>
<td>1957</td>
</tr>
<tr>
<td>Illinois</td>
<td>1917*</td>
<td>South Carolina</td>
<td>1950*</td>
</tr>
<tr>
<td>Indiana</td>
<td>1950</td>
<td>South Dakota</td>
<td>1923</td>
</tr>
<tr>
<td>Iowa</td>
<td>1971*</td>
<td>Tennessee</td>
<td>1917</td>
</tr>
<tr>
<td>Kansas</td>
<td>1972*</td>
<td>Texas</td>
<td>1962</td>
</tr>
<tr>
<td>Kentucky</td>
<td>1954*</td>
<td>Utah</td>
<td>1921</td>
</tr>
<tr>
<td>Maine</td>
<td>1973</td>
<td>Vermont</td>
<td>1941</td>
</tr>
<tr>
<td>Maryland</td>
<td>1916</td>
<td>Virgin Islands</td>
<td>1957</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>1923</td>
<td>Virginia</td>
<td>1918*</td>
</tr>
<tr>
<td>Michigan</td>
<td>1917</td>
<td>Washington</td>
<td>1955</td>
</tr>
<tr>
<td>Minnesota</td>
<td>1921*</td>
<td>West Virginia</td>
<td>1953</td>
</tr>
<tr>
<td>Mississippi</td>
<td>1977</td>
<td>Wisconsin</td>
<td>1915+</td>
</tr>
<tr>
<td>Missouri</td>
<td>1949</td>
<td>Wyoming</td>
<td>1977</td>
</tr>
</tbody>
</table>

Note: All states are listed except Louisiana.
* Denotes states that have changed the wording of their Act to accommodate language distinguishing a limited liability partnership.
+ Wisconsin has changed the language of its statute to gender neutral terms.
# Date unavailable.
APPENDIX II

Selected Provisions of the Uniform Partnership Act

§ 4 (1) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this act.
(3) The law of agency shall apply under this act.

§ 5 In any case not provided for in this act the rules of law and equity, including the law merchant, shall govern.

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

§ 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.

§ 13 Where, by any wrongful act or omission of any partner acting in the ordinary course of the business of the partnership or with the authority of his co-partners, loss or injury is caused to any person, not being a partner in the partnership, or any penalty is incurred, the partnership is liable therefor to the same extent as the partner so acting or omitting to act.

§ 15 All partners are liable: (a) jointly and severally for everything chargeable to the partnership under sections 13 and 14. (b) Jointly for all other debts and obligations of the partnership; . . . .

§ 18 (a) Each partner . . . must contribute towards the losses, whether of capital or otherwise, sustained by the partnership according to his share in the profits.
(b) The partnership must indemnify every partner in respect of payments made and personal liabilities reasonably incurred by him in the ordinary and proper conduct of its business, or for the preservation of its business or property.

§ 31 Dissolution is caused: (1) Without violation of the agreement between partners, . . . (b) by the express will of any partner when no definite term or particular undertaking is specified, . . . .