2. *Partners* with respect to:
   a. Unpaid distributions
   b. Capital contributions
   c. The remainder of the proceeds

The partners may provide in the limited partnership agreement for a different distribution among the partners, but the creditors must retain their first priority.

Key Terms and Concepts

Action for an accounting (297)
Antecedent debt (298)
Certificate of cancellation (304)
Certificate of limited partnership (301)
Continuation agreement (299)
Contract liability (298)
d.b.a. (doing business as) (292)
Defective formation (302)
Dissolution of a general partnership (298)
Dissolution of a limited partnership (304)
Distribution of assets of a general partnership (299)
Distribution of assets of a limited partnership (304)
Entrepreneur (291)
Fictitious business name statement (certificate of trade name) (292)
Flow-through taxation (296)
General partner of a general partnership (partner) (294)
General partner of a limited partnership (301)
General partnership (ordinary partnership) (294)
General partnership agreement (articles of general partnership or articles of partnership) (296)
Incoming partner (298)
Joint and several liability (297)
Joint liability (298)
Limited liability of limited partners (303)
Limited partner (300)
Limited partnership (special partnership) (300)
Limited partnership agreement (articles of limited partnership) (302)
Outgoing partner (300)
Partnership at will (298)
Partnership for a term (298)
Personal guarantee (303)
Revised Uniform Limited Partnership Act (RULPA) (301)
Revised Uniform Partnership Act (RUPA) (295)
Right of survivorship (300)
Right to participate in management (296)
Right to share in profits (297)
Section 303 of the RULPA (304)
Sole proprietor (291)
Sole proprietorship (291)
Tenant in partnership (300)
Tort liability (298)
Trade name (292)
Uniform Limited Partnership Act (ULPA) (300)
Unlimited liability of general partners (303)
Uniform Partnership Act (UPA) (295)
Unlimited personal liability of a general partner (297)
Unlimited personal liability of a sole proprietor (292)
Winding up (299)
Wrongful dissolution (299)

Law Case with Answer

Edward A. Kemmler Memorial Foundation v. Mitchell

Facts Clifford W. Davis and Dr. William D. Mitchell formed a general partnership to purchase and operate rental properties for investment purposes. The general partnership purchased a parcel of real property from the Edward A. Kemmler Memorial Foundation (Foundation) on credit. Davis signed a $150,000 promissory note to the Foundation as "Cliff W. Davis, Partner." Prior to executing the note, Davis and Mitchell entered into an agreement between themselves that provided that only Davis, and not Mitchell, would be personally liable on the note to Foundation. They did not inform Foundation of this side agreement, however. When the partnership defaulted on the note, Foundation sued the partnership and both partners to recover on the note. Mitchell asserted in defense that the agreement with Davis relieved him of personal liability. Foundation argued that Mitchell, as a general partner, was personally liable on the note and that the Davis-Mitchell side agreement did not change Mitchell's personal liability to pay the note. Is Mitchell jointly liable on the note owed to Foundation?

Answer Yes, Mitchell is jointly liable—personally liable—on the partnership note owed to Foundation.

Every general partner is an agent of a general partnership for the purpose of carrying on its business. The act of every partner, including the execution in the partnership name of any contract or instrument, binds the partnership, unless the partner so acting has in fact no authority to act for the partnership in the particular matter. Here, Davis had the authority as a general partner and bound the partnership when he signed a $150,000 promissory note to Foundation as "Cliff W. Davis, Partner."

If a promissory note is executed in the name of the partnership, the partnership is bound, unless a contradictory agreement between the partners is known to the parties with whom they are dealing. The side agreement between Davis and Mitchell, the two general partners, which relieved Mitchell of any personal liability for the promissory note, was not effective against Foundation, which had not agreed to such restriction on Mitchell's liability. Because Foundation had no knowledge of the agreement between Davis and Mitchell regarding Mitchell's liability for the note, Mitchell cannot avoid personal liability as a general partner on the promissory note owed to Foundation. The partnership is liable to Foundation for the unpaid note, and the two general partners, Davis and Mitchell, are jointly liable—personally liable—on the note owe to Foundation. *Edward A. Kemmler Memorial Foundation v. Mitchell*, 584 N.E.2d 695, Web 1992 Ohio Lexis 205 (Supreme Court of Ohio)

Critical Legal Thinking Cases

14.1 Sole Proprietorship James Schuster was a sole proprietor doing business as (d.b.a.) "Diversity Heating and Plumbing" (Diversity Heating). Diversity Heating was in the business of selling, installing, and servicing heating and plumbing systems. George Vernon and others (Vernon) owned a building that needed a new boiler. Vernon hired Diversity Heating to install a new boiler in the building. Diversity Heating installed the boiler and gave a warranty that the boiler would not crack for ten years. Four years later, James Schuster died. On that date, James's son, Jerry Schuster, inherited his father's business and thereafter ran the business as a sole proprietorship under the d.b.a. "Diversity Heating and Plumbing." One year later, the boiler installed in Vernon's building broke and could not be repaired. Vernon demanded that Jerry Schuster honor the warranty and replace the boiler. When Jerry Schuster refused to do so, Vernon had the boiler replaced at a cost of $8,203 and sued Jerry Schuster to recover this amount for breach of warranty. Jerry Schuster argued that he was a sole proprietor and as such he was not liable for the business obligations his father had incurred while operating his own sole proprietorship. Is Jerry Schuster liable for the warranty made by his father? *Vernon v. Schuster, d/b/a/ Diversity Heating and Plumbing*, 688 N.E.2d 1172, Web 1997 Ill. Lexis 482 (Supreme Court of Illinois)

14.2 Liability of General Partners Jose Pena and Joseph Antenucci were medical doctors who were partners in a medical practice. Both doctors treated Elaine Zuckerman during her pregnancy. Her son, Daniel Zuckerman, was born with severe physical problems. Elaine, as Daniel's mother and natural guardian, brought a medical malpractice suit against both doctors. The jury found that Pena was guilty of medical malpractice but that Antenucci was not. The amount of the verdict totaled $4 million. The trial court entered judgment against Pena but not against Antenucci. Plaintiff Zuckerman made a posttrial motion for judgment against both defendants. Is Antenucci jointly and severally liable for the medical malpractice of his partner, Pena? *Zuckerman v. Antenucci*, 478 N.Y.S.2d 578, Web 1984 N.Y.Misc. Lexis 3283 (Supreme Court of New York)

14.3 Right to an Accounting Charles Fial and Roger J. Steeby entered into a partnership called Audit Consultants to perform auditing services. Pursuant to the agreement, they shared equally the equity, income, and profits of the partnership. Originally, they performed the auditing services themselves, but as business increased, they engaged independent contractors to do some of the audit work. Fial's activities generated approximately 80 percent of the partnership's revenues. Unhappy with their agreement to divide the profits equally, Fial wrote a letter to Steeby seven years later, dissolving the partnership.

Fial asserted that the clients should be assigned based on who brought them into the business. Fial formed a new business called Audit Consultants of Colorado, Inc. He then terminated the original partnership's contracts with many clients and put them under contract with his new firm. Fial also terminated the partnership's contracts with the independent-contractor auditors and signed many of these auditors with his new firm. The partnership terminated about eleven months after Fial wrote the letter to Steeby. Steeby brought an action against Fial, alleging breach of fiduciary duty and seeking a final accounting. Who wins? *Steeby v. Fial*, 765 P.2d 1081, Web 1988 Colo.App. Lexis 409 (Court of Appeals of Colorado)