DISSOLVING AND DISTRIBUTING THE ASSETS OF A SOLVENT IOWA PARTNERSHIP

Dissolution of a solvent partnership in Iowa may be brought about by action of one or more partners, or by court decree. It will result from mutual consent of all partners, voluntary withdrawal of one partner, dissension and quarreling among the partners, gross misconduct on the part of one or more partners, transfer or sale of a partner's interest, and death or bankruptcy of a partner. Upon dissolution the assets used by or belonging to the partnership must be distributed to various people in accordance with their respective interest therein. This article discusses the causes and methods for dissolving a solvent partnership under Iowa law and the distribution of its assets.

DISSOLUTION—CAUSES AND METHODS

The right of a partner to dissolve a partnership is inseparably incident to every partnership. An indissoluble partnership is an impossibility. When one partner becomes dissatisfied there is commonly no legal policy to be subserved by compelling a continuance of the relation, and the mere fact that a partnership agreement is broken by the dissolution does not preclude a partner's right to dissolve.[1] However, the partner causing dissolution may be subjected to personal liability for damages in a suit by the remaining partners for breach of contract.[2] Such contractural liability will be incurred only if the partnership agreement is to run for a specific time.[3]

Mutual Agreement

In accordance with the right to contract, persons forming a partnership may mutually agree that the partnership should only last for a certain period of time and at the end of such period cease to be a partnership.[4] The partners are also free to agree upon specific ways, means and causes for dissolving the partnership.[5]

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1 Lunt v. Van Gorden, 224 Iowa 1323, 278 N.W. 631 (1938); Swift v. Ward, 80 Iowa 700, 45 N.W. 1044, 11 L.R.A. 302 (1890); Blake v. Dorgan, 1 G. Greene 537 (Iowa 1848). See UNIFORM PARTNERSHIP ACT, § 31. This Act, hereinafter cited as U.P.A., though not adopted in Iowa, has been adopted in 28 states. In many respects it is in accord with the common law rules prevailing prior to its adoption and thus may be relevant to Iowa partnership law questions. See CRANE, PARTNERSHIP § 2 (2d ed. 1952).

2 Lunt v. Van Gorden, *supra*, note 1 (despite a provision in partnership articles that the partnership shall continue for a certain period, it may be dissolved at any time at the will of any partner, but the partner who breaks the promise is liable for damages as in other cases of breach of contract); U.P.A. § 31(2); 2 LINDLEY, TREATISE ON THE LAW OF PARTNERSHIPS 646 (5th ed. 1888).

3 Lunt v. Van Gorden, 224 Iowa 1323, 278 N.W. 631 (1938); Swift v. Ward, 80 Iowa 700, 45 N.W. 1044, 11 L.R.A. 302 (1890) (partnership agreement to last ten years, but either party could dissolve it on 60 days notice; the Court said the consideration received by one partner from the other need not be returned when he dissolved the partnership; dissolution is at will, and no cause need be shown).

4 Lunt v. Van Gorden, *supra*, note 3; U.P.A. § 31(1); 2 BARRETT & SEAGO, PARTNERS AND PARTNERSHIPS 5 (1956); CRANE, PARTNERSHIP 397 (2d ed. 1952); MECHEM, ELEMENTS OF PARTNERSHIP 306 (2d ed. 1920); 1 ROWLEY, PARTNERSHIP 589 (2d ed. 1960).

5 Owen v. Wilden Hospital, 245 Iowa 382, 62 N.W.2d 186 (1954); Swift v. Ward, 80 Iowa 700, 45 N.W. 1044, 11 L.R.A. 302 (1890). They may even provide in the agreement for expulsion of a partner, which will cause dissolution. U.P.A. § 31(1)(d).

The partners may by mutual assent dissolve their relations.[6] The agreement can be in the form of a written instrument[7] or exist solely in the minds of the partners because of prior oral communications. It may be made at the time of the original formation of the partnership or at any time subsequent while the partnership is in existence.[8] These mutual agreements providing for dissolution of a partnership are contracts, and are considered by the courts in accordance with existing contract law.

Voluntary Withdrawal

Voluntary withdrawal of one partner dissolves the partnership.[9] This may be accomplished either by an expressed intention to so do in writing or by words and acts implying such an intention.[10] If the withdrawal was not voluntary, but came about due to force, duress, coercion or because of other facts which would constitute a wrongful expulsion from the partnership, the withdrawing partner may have his withdrawal from the partnership set aside.[11]

Dissension

A court of equity has jurisdiction to decree the dissolution of a partnership if it appears that the partners are engaged in such a degree of quarreling and bickering that the profitable and practical operation of the business is impossible.[12] The Iowa Supreme Court has emphasized the fact that there was a continual recurrence of litigation arising from the difficulties of one partnership, in finding reason to dissolve it.[13]

In order for a court of equity to dissolve a partnership it is essential that several or all the partners enter into the quarreling and bickering.[14] The unreasonable behavior of one partner alone will not justify a dissolution decree unless the conduct of the partner causes strife among the other partners or adds to the impracticality of continuing the partnership. To allow

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[6] Owen v. Wilden Hospital, *supra*, note 5.

[7] Howard v. Pratt, 110 Iowa 533, 81 N.W. 722 (1900).

[8] *Ibid.*; York v. Clemens, 41 Iowa 95 (1875).

[9] Owen v. Wilden Hospital, 245 Iowa 382, 62 N.W.2d 186 (1954); Lunt v. Van Gorden, 224 Iowa 1323, 278 N.W. 631 (1938); Stockhausen v. Johnson, 173 Iowa 413, 155 N.W. 823 (1916) (Court recognizing possibility but holding it did not happen on facts before it); Blake v. Dorgan, 1 G. Greene 537 (Iowa 1848); U.P.A. § 31(1)(b) (dissolution is also caused at the express will of any partner whether in contravention of the agreement or not); 2 BARRETT & SEAGO, PARTNERS AND PARTNERSHIPS 8 (1956); CRANE, PARTNERSHIP 396 (2d ed. 1952); 2 LINDLEY, TREATISE ON THE LAW OF PARTNERSHIP 647 (5th ed. 1888); MECHEM, ELEMENTS OF PARTNERSHIP 306 (2d ed. 1920); 1 ROWLEY, PARTNERSHIP 587 (2d ed. 1960).

[10] Owen v. Wilden Hospital, *supra*, note 9; see cases collected in 40 AM. JUR. *Partnerships* § 235 (1942).

[11] Owen v. Wilden Hospital, 245 Iowa 382, N.W.2d 186 (1954) (the Court found the withdrawing partner did not meet the burden of proving his wrongful expulsion).

[12] Lunt v. Van Gorden, 224 Iowa 1323, 278 N.W. 631 (1938); Green v. Kubik, 213 Iowa 763, 239 N.W. 589 (1931); Loomis v. McKenzie, 31 Iowa 425 (1871); Levi v. Karrick, 8 Iowa 150 (1859); Blake v. Dorgan, 1 G. Greene 537 (Iowa 1848); U.P.A. § 32(c),(d),(e),(f).

[13] Lunt v. Van Gorden, *supra*, note 12.

[14] *Ibid.*; Green v. Kubik, 213 Iowa 763, 239 N.W. 589 (1931) (the supposed theory for requiring all partners to enter into the quarreling and bickering is that by doing so they all impliedly mutually consent to a dissolution of the relationship); Loomis v. McKenzie, 31 Iowa 425 (1871); Blake v. Dorgan, 1 G. Greene 537 (Iowa 1848).

dissolution in such a case would allow a partner to avoid his contractual obligations with no liability for damages.[15]

Even though all partners are participants in the quarreling and bickering a court may still refuse to dissolve the partnership if there was a partnership agreement to continue for a definite period of time and difficulties do not appear to be causing a loss to the partnership.[16] The best interests of all the partners are considered by the courts before dissolving a partnership. The interests referred to are generally financial intrests, but an interest in living a peaceable life free from continual psychological harassment has also been considered.[17] The mere fact that the business is being operated at a loss or in a non-productive manner because of the bickering and quarreling will not alone be cause for dissolution.[18] Continuation of the partnership must be impractical and injurious.[19]

Misconduct

The misconduct of a partner in carrying on partnership affairs may be grounds for dissolution,[20] but a partnership will not be dissolved for the trifling faults and misbehavior of one of the parties which do not go to the substance of the contract. However, the gross misconduct of one or more of the partners will be grounds for dissolution.[21] Just what is needed to establish gross misconduct is not clear. Gross misconduct probably means such conduct or negligence as will cause a loss to the partnership. The Court, apparently applying the reasonable man doctrine, requires the conduct to be no more than that of the average man in a similar situation.[22]

Sale of Interest

It has been held that a partner's sale to a third person of his interest in the partnership property operates ipso facto as a dissolution.[23] If the sale of

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15 *Ibid.*

16 Loomis v. McKenzie, 31 Iowa 425 (1871); U.P.A. § 32(1)(e) (allowing court to decree dissolution whenever the business can only be carried on at a loss), § 32(1)(f) (allowing decree of dissolution when other circumstances render dissolution equitable).

17 Lunt v. Van Gorden, 224 Iowa 1323, 278 N.W. 631 (1938) (this case seemed to consider an interest in being free from vexation of law suits).

18 Green v. Kubik, 213 Iowa 763, 239 N.W. 589 (1931).

19 Lunt v. Van Gorden, 224 Iowa 1323, 278 N.W. 631 (1938); Green v. Kubik, *supra*, note 18; Levi v. Karrick, 8 Iowa 150 (1859); Blake v. Dorgan, 1 G. Greene 537 (Iowa 1848); U.P.A. § 32(c),(f).

20 Green v. Kubik, 213 Iowa 763, 239 N.W. 589 (1931); Levi v. Karrick, 8 Iowa 150 (1859); 2 BARRETT & SEAGO, PARTNERS AND PARTNERSHIPS 38 (1956); CRANE, PARTNERSHIP 413 (2d ed. 1952); 2 LINDLEY, TREATISE ON THE LAW OF PARTNERSHIP 658 (5th ed. 1888); MECHEM, ELEMENTS OF PARTNERSHIP 320 (2d ed. 1920); 1 ROWLEY, PARTNERSHIP 614 (2d ed. 1960); U.P.A. § 32(1). The U.P.A. in § 31(3) also provides that dissolution is caused "by any event which makes it unlawful for the business of the partnership to be carried on or for the members to carry it on in partnership." There appear to be no Iowa cases involving this problem.

21 Levi v. Karrick, 8 Iowa 150 (1859) (no indication what constitutes gross misconduct).

22 Green v. Kubik, 213 Iowa 763, 239 N.W. 589 (1931) (the partner seeking dissolution had the burden of proving misconduct on the part of the other to the extent that the conduct was not that usually or ordinarily done by other farmers in like situations).

23 Moss v. Gottlieb, 245 Iowa 304, 60 N.W.2d 507 (1953); *In re* assignment of Cutler & Horgen, 204 Iowa 739, 212 N.W. 573, 54 A.L.R. 527 (1927); 2 BARRETT & SEAGO, PARTNERS AND PARTNERSHIPS 16 (1956); CRANE, PARTNERSHIP 415 (2d ed. 1952); 2 LINDLEY, TREATISE ON THE LAW OF PARTNERSHIPS 661 (5th ed. 1888);

the interest is not to a third person, but to another partner, the sale is only evidence of dissolution. The assignment of a partner's interest to the other partners will constitute a dissolution only if the intent to do so is clearly shown by extrinsic evidence.[24] The interest assigned must be the assignor's entire interest in the partnership.[25] A partial assignment to another partner is not sufficient for dissolution.

The form of the assignment of the interest is a determinative factor in whether or not the assignment works an ipso facto dissolution. The execution of a chattel mortgage is not an absolute sale effecting a dissolution, and does not dissolve the partnership. There has to be an out and out sale of his entire interest.[26]

Death

Generally speaking, a partnership is dissolved by the death of one partner.[27] However, death need not necessarily work a dissolution ipso facto. Precautions may be taken to prevent a partnership's dissolution upon the death of one partner.[28] The decedent may leave a will authorizing the continuation of the partnership or continuation may be provided for in the original agreement.[29] One writer has suggested, as a third method, that a partner may exact an agreement from his potential representative obligating him to carry on as a partner.[30] In all cases the surviving partners must agree to the arrangement. The same writer also suggests that none of the above methods of preventing dissolution technically do so. Rather, the methods merely obviate the necessity of winding up and termination. Unless a safeguard against dissolution of a partnership is provided for by one of the above three methods a dissolution of a partnership will result upon the death of a partner.

Bankruptcy

A partnership is also dissolved by operation of law when either the firm itself or any one of its members is adjudged insolvent or bankrupt.[31] In the case of voluntary bankruptcy, one or more of the partners will have applied

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MECHEM, ELEMENTS OF PARTNERSHIP 314 (2d ed. 1920); 1 ROWLEY, PARTNERSHIP 592 (2d ed. 1960). This result does not necessarily follow under U.P.A. §§ 27-28, 32(2), which deviate in this respect from the common law approach.

[24] Stockhausen v. Johnson, 173 Iowa 413, 155 N.W. 823 (1916); Waller v. Davis, 59 Iowa 103, 105, 12 N.W. 798, 799 (1882); Frederick v. Cooper, 3 Iowa 171 (1856).

[25] *In re* assignment of Cutler & Horgen, 204 Iowa 739, 212 N.W. 573, 54 A.L.R. 527 (1927); Waller v. Davis, *supra*, note 24.

[26] State v. Quick, 10 Iowa 451 (1860).

[27] Heiden v. Beuttler, 11 F. Supp. 290 (N.D. Iowa 1935); Williams v. Chee, 214 Iowa 1181, 243 N.W. 529 (1932); Ayres v. Chicago, R.I. & P. Ry., 52 Iowa 478, 491 (1879); 2 BARRETT & SEAGO, PARTNERS AND PARTNERSHIPS 20 (1956); CRANE, PARTNERSHIP 480 (2d ed. 1952); 2 LINDLEY, TREATISE ON THE LAW OF PARTNERSHIP 670 (5th ed. 1888); MECHEM, ELEMENTS OF PARTNERSHIP 312 (2d ed. 1920); 1 ROWLEY, PARTNERSHIP 604 (2d ed. 1960).

[28] Williams v. Chee, *supra*, note 27; CRANE, PARTNERSHIP 480 (2d ed. 1952); Polasky, *Planning for the Disposition of a Substantial Interest in a Closely Held Business*, 45 IOWA L. REV. 46, 56 (1959).

[29] *Ibid.*

[30] Polasky, *Planning for the Disposition of a Substantial Interest in a Closely Held Business*, 45 IOWA L. REV. 46, 57 (1959).

[31] 2 BARRETT & SEAGO, PARTNERS AND PARTNERSHIPS 25 (1956); CRANE, PARTNERSHIP 406 (2d ed. 1952); 2 LINDLEY, TREATISE ON THE LAW OF PARTNERSHIP 655 (5th ed. 1888); MECHEM, ELEMENTS OF PARTNERSHIP 313 (2d ed. 1920); 1 ROWLEY, PARTNERSHIP 608 (2d ed. 1960); U.P.A. § 31(5).

for the decree. Thus the bankruptcy law by its operation accomplishes the dissolution of the partnership.[32] The reason for a dissolution of the partnership is because the partner or partnership upon bankruptcy is deemed to have transferred all the interest he has to the trustees in bankruptcy. This is similar to an assignment of all his interest in the partnership to one other than a partner.[33]

Proof of Dissolution

When trying to establish as a defense, or otherwise prove, the dissolution of a partnership, the one attempting to do so has to overcome a presumption that the partnership continues in existence.[34] A partnership once shown to exist is presumed to remain in existence until the jury is convinced by extrinsic evidence that the presumption has been overcome.[35] However, where the partnership is not shown to have been in prior existence a presumption of prior existence does not have to be overcome and no such presumption is available to one attempting to prove the prior existence[36]. The amount of proof necessary to overcome the presumption has not been determined. It has been held that proof of an oral agreement to terminate, which was testified to by an interested party, was not sufficient to overcome the presumption where the partner continued doing the same duties and exercising the same degree of management over the partnership, supposedly as an employee on a salary basis, as he did prior to the alleged oral agreement to terminate.[37]

DISTRIBUTION OF THE ASSETS

The partnership assets must first be used to satisfy the creditors of the firms. Those creditors of first priority are satisfied first. The capital investment of the respective partners must then be returned. When this is done, whatever is left is distributed to each of the partners in accordance with their respective interests in the firm. The fine points and problems in accomplishing this result are discussed in this portion of the article.

Before partnership property may be distributed it is first necessary to segregate that property which one or more of the partners has allowed the firm to "use". Such assets were not intended as capital contributions and they are not distributable as partnership property.[38]

In determining what is partnership property, consideration is most strongly given to the source of the funds from which the property is acquired. It has been held in numerous cases that where property is purchased through

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32 2 BARRETT & SEAGO, PARTNERS AND PARTNERSHIPS 25 (1956).

33 *Ibid.*; 2 ROWLEY, PARTNERSHIP 77 (2d ed. 1960); see notes 23-26, *supra*, and supported text.

34 Watters v. McGreavy, 111 Iowa 538, 82 N.W. 949 (1900); Southern White-Lead Co. v. Haas, 73 Iowa 399, 33 N.W. 657, 35 N.W. 494 (1887); Byington v. Woodward & Warde, 9 Iowa 360 (1859); U.P.A. § 23(2) (a continuation of the business by the partners or such of them as habitually acted therein during the term, without any settlement or liquidation of partnership affairs, is prima facie evidence of a continuation of the partnership.

35 *Ibid.*

36 Byington v. Woodward & Warde, 9 Iowa 360 (1859).

37 Southern White-Lead Co. v. Haas, 73 Iowa 399, 33 N.W. 657, 35 N.W. 494 (1887).

38 2 BARRETT & SEAGO, PARTNERS AND PARTNERSHIPS 202 (1956); MECHEM, ELEMENTS OF PARTNERSHIP 407 (2d ed. 1920); 1 ROWLEY, PARTNERSHIP 757 (2d ed. 1960).

partnership funds, even though title is taken in the name of one partner alone, the property is that of the partnership.[39] Other consideration has been given to the general surrounding circumstances regarding the situation of the parties, the manner of keeping the accounts, how the repairs, improvements and taxes have been paid, and what has been done with the income, the use made thereof, and the like.[40] Once the property is determined to be partnership property, it is then distributed in accordance with the rules which are the subject of this portion of the article.

It is fundamental that before any assets can be distributed to the partners, as partners, the creditors of the firm must first be satisfied.[41] The real problem involved here is determining who is a firm creditor. With regard to creditors other than partners of the firm this usually isn't too difficult, but when one partner claims that his advancement to the firm was not a capital investment but a loan which made him a creditor of the firm, an issue is created. A partner is generally not a creditor as to his capital investment. He may loan money to the partnership and become a creditor of the firm for this loan, he may make additional investment of capital and not become a creditor, or, where the partners have agreed to contribute equally but have not done so and one has contributed more than he agreed to, he may become a creditor of the partnership for the excess contribution.[42] He may also become such a creditor where he alone put up the capital and profits and losses are to

[39] Todd v. Todd, 250 Iowa 1084, 96 N.W.2d 436 (1959); Smith v. Smith, 179 Iowa 1365, 160 N.W. 756 (1916); Fordyce v. Hicks, 80 Iowa 272, 45 N.W. 750 (1890); Paige v. Paige, 71 Iowa 318, 32 N.W. 360 (1887); U.P.A. § 8; see cases collected in 68 C.J.S. *Partnerships* § 74 (1950) and 40 AM. JUR. *Partnerships* § 103 (1942).

[40] Todd v. Todd, and Smith v. Smith, *supra*, note 39.

[41] Brindle v. Hiatt, 42 F.2d 212 (8th Cir. 1930); Heiden v. Buetter, 11 F. Supp. 290 (N.D. Iowa 1935) (partner's rights in partnership property are only to the extent there is property left over after satisfaction of creditors); Tacke v. Jennewein, 228 Iowa 701, 293 N.W. 23 (1940); Hart v. Smiley, 210 Iowa 1004, 229 N.W. 139 (1930); Capital Food Co. v. Globe Coal Co., 142 Iowa 134, 116 N.W. 803, 120 N.W. 704 (1909); Mayer & Lowenstein v. Garber, 53 Iowa 689, 6 N.W. 63 (1880); Hewitt v. Rankin, 41 Iowa 35 (1875); Evans v. Hawley, 35 Iowa 83 (1872); Pierce v. Wilson, 2 Iowa 20 (1856) (each partner has a lien on partnership stock, not only for the amount of his share, but also for money advanced by him beyond that amount, and also for monies taken beyond his share, but this right or lien is subordinate to the rights of creditors to be first paid out of the joint stock); 2 BARRETT & SEAGO, PARTNERS AND PARTNERSHIPS 185 (1956); CRANE, PARTNERSHIP 475 (2d ed. 1952); 2 LINDLEY, TREATISE ON THE LAW OF PARTNERSHIP 678 (5th ed. 1956); MECHEM, ELEMENTS OF PARTNERSHIP 405 (2d ed. 1920); 1 ROWLEY, PARTNERSHIP 758 (2d ed. 1960); U.P.A. § 40 (creditors other than partners in the debtor firm are to be paid prior to partner-creditors).

[42] Tacke v. Jennewein, 228 Iowa 701, 293 N.W. 23 (1940); Hart v. Smiley, 210 Iowa 1004, 229 N.W. 139 (1930) (H and S agreed each would contribute $6,000 to the firm, but H advanced $12,000 and S nothing; H was a creditor of the partnership for $6,000 and entitled to prevail as against a mortgagee of S's interest therein, all other creditors of the firm having been satisfied and the remaining assets being used first to satisfy his claim as creditor); Capital Food Co. v. Global Coal Co., 142 Iowa 134, 116 N.W. 803, 120 N.W. 704 (1909) (partner, making two separate contributions to the firm of $10,000 and $3,000, was held to be a creditor of the firm for the second contribution; the dissenter to the modifying opinion felt there was insufficient proof he intended anything more than a capital contribution); Evans v. Hawley, 35 Iowa 83 (1872); 2 BARRETT & SEAGO, PARTNERS AND PARTNERSHIPS 202 (1956). Another possible approach, in the case of the excess contribution, is to argue that the creditor is not a creditor of the firm, but of the other partners; however, he has a lien against their interests to satisfy his claim. Adoption of this approach should have led the Court to the same result as it reached on the theory of partnership debt, in *Hart v. Smiley*. See 2 BARRETT & SEAGO 203.

be shared equally. As a creditor because of excess capital contribution, he is not entitled to equal treatment with partnership creditors but apparently can assert a priority in the nature of a lien before the remaining assets are distributed to the partners as such.[43]

According to the Uniform Partnership Act, even if the partner is a creditor of the partnership on the theory that he loaned money to it, his claim as a creditor must be postponed until those of non-partner general creditors have been satisfied; and one early Iowa case is suggestive that the Iowa Court would reach the same result.[44] However, if before the dissolution the debt to the partner has been satisfied and there are not enough assets at dissolution to satisfy the outside creditors, they are not entitled to contribution from the partner-creditor for that reason alone.[45] Of course, in cases of fraud no preference would be allowed and the outside creditors would be entitled to recover the assets from the partner-creditor.[46]

After partnership creditors are paid, and any claims of partners as creditors have been satisfied, the remaining assets are distributed to the partners. The first thing to be considered is whether there is an agreement between the partners which will determine the mode of distribution.[47] A settlement agreement is a contract, and when all partners mutually enter into one without fraud or mistake it is as binding as any other type of contract.[48] Even though there is a mutual mistake of fact, such as to the amount of an existing book account, the settlement agreement may still be binding and preclude a partner from collecting on that account.[49] When a partner agrees to take a stated amount of cash as his share, the agreement will still be binding on that partner despite the fact that the value agreed to be given to certain property was erroneously computed.[50]

The first distribution to the partners after all creditors have been satisfied is the return of the respective capital investments.[51] This must be done before a partner's share can be computed and any profits distributed to respective partners.[52] There is a presumption that two or more partners have an equal interest in the assets of the firm and unless this is rebutted the total

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43 Tacke v. Jennewein, *supra,* note 42; Ward v. Chew, 189 Iowa 523, 178 N.W. 379 (1920).

44 U.P.A. § 40. See Pierce v. Wilson, 2 Iowa 20 (1856).

45 Capital Food Co. v. Globe Coal Co., 142 Iowa 134, 116 N.W. 803, 120 N.W. 704 (1909).

46 *Ibid.*

47 Slaughter v. Burgeson, 203 Iowa 913, 210 N.W. 553 (1926); Cooper v. Frederick, 4 G. Greene 403 (Iowa 1854); U.P.A. § 18; 2 BARRETT & SEAGO, PARTNERS AND PARTNERSHIPS 188 (1956).

48 Spratt v. Dwyer, 171 Iowa 363, 151 N.W. 474 (1915) (no fraud or mistake was shown to exist and the partners were bound by the agreement); Varnum v. Winslow, 106 Iowa 287, 76 N.W. 708 (1898).

49 Nystuen v. Hanson, 91 N.W. 1071 (Iowa 1902) (reformation is available as a remedy, but as it was not demanded here this was just an attempt to change a writing by parol).

50 Donahue v. McCosh, 70 Iowa 733, 30 N.W. 14 (1886).

51 Hobbs v. McLean, 117 U.S. 567 (1886) (Two members of three-man partnership contributed all the capital, and were entitled to return of their capital before any distribution of profits could be made); U.P.A. § 40 (partnership distribution should be in the following order: (1) to creditors other than partners, (2) to partners other than for capital and profits, (3) to partners in respect of capital, (4) to partners in respect of profits); 2 BARRETT & SEAGO, PARTNERS AND PARTNERSHIPS 191 (1956); CRANE, PARTNERSHIP 475 (2d ed. 1952).

52 Hobbs v. McLean, *supra,* note 51.

capital investments will be divided equally among the partners.[53] Contribution of labor rather than money or property does not give rise to the presumption so as to entitle such a partner to an equal share of the capital.[54]

After all the firm creditors have been satisfied, and the original capital investments are returned to the respective partners, the remaining assets are distributed among the partners according to their respective interests in the partnership.[55] This, of course, is still subject to control by a prior agreement.[56] Litigation may arise when one partner seeks compensation for services rendered to the firm over and above his share of the profits as provided for in the articles or some prior agreement. Generally, in the absence of an agreement contra, each partner assumes a duty of giving to the firm all of his time, skill, and ability so far at least as is necessary to the success of the enterprise.[57] This rule has even been applied when the time given by one partner has far exceeded that given by the other.[58]. The rule is also applicable in regard to money payments given to the firm in place of time and labor. In one case[59] a partner agreed to contribute money to a firm in case he became unable to furnish services. The Court held that these payments were to take the place of services rendered the firm, were not capital contributions, and were for the sole benefit of the other partners just as services rendered would have been. However, he was entitled to a share of the profits earned from the money just as he would be entitled to a share of the profits earned from services rendered.

The rule that a partner is not entitled to extra compensation for time and services rendered the firm is not always followed and a few exceptions have been recognized.[60] An exception is particularly recognized in law firms. If after dissolution one partner does a majority of the work in settling pending litigation he does not have to share the proceeds therefrom.[61] If most of the work was done before dissolution, and the settlement came about afterwards, he will still be obligated to share the proceeds.[62]

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[53] Moore v. Bare, 11 Iowa 198 (1860) (two or more partners are presumed to have equal interest in the business and property unless the contrary be shown; this applies to profits as well as capital). But see 2 BARRETT & SEAGO, PARTNERS AND PARTNERSHIPS 199 (1956).

[54] Hobbs v. McLean, 117 U.S. 567 (1886); 2 BARRETT & SEAGO, PARTNERS AND PARTNERSHIPS 199 (1956). A recent Wisconsin case has reached a contrary result, holding that the work contributed by a partner, who was a skilled carpenter and electrician, to the partnership was a capital contribution, and upon dissolution of the partnership he was entitled to have it so considered. Thompson v. Beth, 14 Wis.2d 271, 111 N.W.2d 171 (1961).

[55] Slaughter v. Burgeson, 203 Iowa 913, 210 N.W. 553 (1926); Frederick v. Cooper, 3 Iowa 171 (1856); CRANE, PARTNERSHIP 477 (2d ed. 1952); MECHEM, ELEMENTS OF PARTNERSHIP 406 (2d ed. 1920); U.P.A. § 40.

[56] See notes 47-50, *supra*, and supported text.

[57] Roth v. Boies, 139 Iowa 253, 115 N.W. 930 (1908) (the agreement can be either express or implied); McFarland v. McCormick, 114 Iowa 368, 86 N.W. 369 (1901); Young v. Scoville, 99 Iowa 177, 68 N.W. 670 (1896); Boardman v. Close, 44 Iowa 428 (unless compensation for services is specifically agreed upon none will be allowed); Levi v. &Karrick, 8 Iowa 150 (1859); 2 BARRETT & SEAGO, PARTNERS AND PARTNERSHIPS 199 (1956); MECHEM, ELEMENTS OF PARTNERSHIP 408 (2d ed. 1920)! U.P.A. § 18(f).

[58] Roth v. Boies, and McFarland v. McCormick, *supra*, note 57.

[59] Frederick v. Cooper, 3 Iowa 171 (1856).

[60] Fleming v. Fleming, 211 Iowa 1251, 230 N.W. 359 (1930); Roth v. Boies, 139 Iowa 253, 115 N.W. 930 (1908).

[61] Roth v. Boies, *supra*, note 60.

[62] *Ibid.*

If the assets as they are held by the partnership are not capable of just division they should be sold and the proceeds divided accordingly.[63] A partner who has made improvements on land will be protected and may get as his share of the assets that portion upon which he made the improvements.[64]

In case of death of a partner his heir or personal representative has a right to the deceased partner's interest in the firm's assets.[65] This right entitles him to maintain an action for the recovery of profits which were omitted from the estate through mistake or fraud.[66] The heir or personal representative is not only entitled to that share which the deceased partner was entitled to, but also to the amount of profits earned by a continuing partnership which are attributable to the use of decedent's capital investments retained by the partnership.[67] Instead of electing to take the earned profits the heir or personal representative may elect to take a reasonable amount of interest on the share owing deceased upon his death.[68] This rule is not always applied, however. Sometimes a partnership is given practical consideration and is viewed as though it continued in existence with no dissolution.[69] The personal representative is entitled only to that share the deceased would have had, had he lived and dissolved the partnership at the time the distribution is made to the personal representative.[70] This was done in a situation where the financial condition of the firm at the time of death was difficult to determine and the personal representative had done nothing to seek an accounting.[71] The heir or personal representative may also be entitled to profits earned from a continuation of the business which can be attributed to the good will of the firm if the good will is a substantial asset.[72]

A widow of a deceased partner is entitled to her dower interest in the assets which were the deceased partner's share.[73] The assets in which she can claim her dower rights are those same assets in which a personal representative or heir can claim an interest.[74] This interest does not arise until all

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63 Cooper v. Frederick, 4 G. Greene 403 (Iowa 1854).

64 *Ibid.*

65 Anderson v. Droge, 216 Iowa 159, 248 N.W. 344 (1933); Fleming v. Fleming, 211 Iowa 1251, 230 N.W. 359 (1930); Curtis v. Reilly, 188 Iowa 1217, 177 N.W. 535 (1920); Western Securities Co. v. Atlee, 168 Iowa 650, 151 N.W. 56 (1915); Young v. Scoville, 99 Iowa 177, 68 N.W. 670 (1896); Hewett v. Rankin, 41 Iowa 35 (1875); U.P.A. § 42 (when a partner retires or dies, he or his personal representative is treated as an ordinary creditor of the firm for the amount of his interest plus interest thereon at the time of retirement or death, or in lieu of interest the profits attributable to the use of his right in the property of the dissolved partnership is recoverable in addition to the value of his interest); 2 LINDLEY, TREATISE ON THE LAW OF PARTNERSHIP 674 (5th ed. 1888).

66 Anderson v. Droge, *supra*, note 65 (surviving partners became trustees of the partnership property for the legal heir and representative of deceased; they were not entitled to compensation for the efforts in continuing the firm, because they violated their fiduciary duties).

67 *Ibid.*; Young v. Scoville, 99 Iowa 177, 68 N.W. 670 (1896); 2 LINDLEY, TREATISE ON THE LAW OF PARTNERSHIP 675 (5th ed. 1888); U.P.A. §§ 25(d), 42.

68 *Ibid.*

69 Young v. Scoville, 99 Iowa 177, 68 N.W. 670 (1896).

70 *Ibid.*

71 *Ibid.*

72 Anderson v. Droge, 216 Iowa 159, 248 N.W. 344 (1933).

73 Fleming v. Fleming, 211 Iowa 1251, 230 N.W. 359 (1930); Curtis v. Reilly, 188 Iowa 1217, 177 N.W. 535 (1920).

74 Anderson v. Droge, 216 Iowa 159, 248 N.W. 344 (1933); Young v. Scoville, 99 Iowa 177, 68 N.W. 670 (1896).

of the firm creditors are first satisfied.[75] A widow is entitled to have a trust imposed upon the partnership assets for an amount equal to her ascertained dower interest.[76]

CONCLUSION

A partnership can be dissolved by mutual consent or prior agreement, voluntary withdrawal, dissention among the partners, gross misconduct of a partner, transfer of a partner's interest, and by death or bankruptcy. However, if a partnership is dissolved prior to the expiration of a term of years for which it was to run there may be a liability for damages caused another partner.

Upon dissolution the assets are first distributed to the creditors of the firm, and the creditors of first priority are satisfied first. Upon satisfaction of the creditors the capital investments are then returned to the respective partners.

The remaining assets are then distributed in accordance with the relative interests each partner has in the firm. Any interest the partner may have is subject to dower rights and is descendible to the heir or personal representative of a deceased partner.

ROY M. IRISH (January, 1964)

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[75] See notes 41-46, *supra*, and supported text.

[76] Fleming v. Fleming, 211 Iowa 1251, 230 N.W. 359 (1930) (the judgment obtained by the widow was not a personal judgment against the firm or heirs of the partners, but was an in rem judgment only).