



# Partnership

Green dates reveal when a topic was tested on the MEE.

## I. Formation

- 1) **Definition of a partnership:** “The association of two or more persons to carry on as **co-owners, a business for profit** . . . whether or not the persons intended to form the partnership.” (Feb 2021, Feb 2019, July 2010, July 2009, July 2007, July 2006, July 1997)
  - a) Profit-sharing creates a presumption that a person is a partner in a business *unless* the profits were received as payment for a debt, rent, wages, etc. (Feb 2021, July 2010)
  - b) Partners have equal rights in comanagement. They share losses like profits. Generally, there is no right to compensation for running a partnership. (Oct 2020, Feb 2019, Feb 2004, Feb 2001, Feb 1995)
- 2) **Fiduciary duties** (Feb 2018, Feb 2016, July 2012, Feb 2000, Feb 1999, Feb 1998, Feb 1995)
  - a) Partners are in a fiduciary relationship with one another and must act with honesty and in good faith. They are charged with the duty of **loyalty** (not to engage in self-dealing or compete with the partnership), the duty to **account** (to hold any profits as a trustee for the partnership) and the duty of **care** (to act with ordinary care).

## II. Liability of partners and fiduciary

- 1) **Liability of partners in a general partnership** (Feb 2021, Oct 2020, Feb 2014, July 2011, July 2009, July 2006, July 1997)
  - a) Partners are **jointly and severally** liable for all debts that are incurred by the partnership. (Oct 2020, Feb 2014, July 2009, July 2006, July 1997)
    - i) **Incoming partners:** an incoming partner is not liable for prior debts (although anything the incoming partner pays to be part of the partnership can be used to satisfy prior debts). (Feb 2014)
    - ii) **Outgoing partners** are still personally liable to creditors unless released by creditors. They retain liability on future debts until actual notice of their dissociation is given to creditors (or 90 days after filing notice of dissociation with the state).
    - iii) **All partners** are liable for obligations that occur during the *winding up* of the partnership. (July 2011)
    - iv) The claimant should go after the partnership assets prior to collecting from the partners individually.
- 2) **If a creditor has a claim against a partner, the creditor may acquire an interest in the partnership.**
  - a) Property that creditors have access to: a creditor of a partner can acquire a partner’s interest in the partnership (i.e., the profits that the partner is paid).
    - i) A creditor does not have any management or voting rights.
    - ii) A creditor of an **individual partner** cannot execute on **partnership** property.

## III. Dissolution and winding up

## Criminal Law

### I. Murder

Murder chart: intentional vs. unintentional killings (Sept 2020, July 2015, July 2012, July 2007)

# HOMICIDE CHART

Intentional    
  Unintentional    
  Sometimes intentional

## With Malice Aforethought

### First-Degree Murder

(Intentional conduct with intention to kill)

- Intentional killing with premeditation and deliberation—e.g., poisoning someone.

### Second-Degree Murder

(1) **Extreme recklessness**—e.g., defendant shoots his gun in a crowded room without intent to kill.

(2) **Intentional infliction of great bodily harm and death results**—e.g., defendant cuts someone's legs off without intent to kill them but they die.

(3) **Catchall** (defendant is not guilty of first degree but acts with malice, defendant can intend to kill)—e.g., defendant shoots and kills someone because he is enraged after being insulted by them. **Bar Exam Tip: oftentimes, this third category of second-degree murder looks like voluntary manslaughter but the defendant is not adequately provoked.**

### Felony Murder

• Defendant commits a felony and someone other than a co-felon dies. The death can occur during the commission of the felony, the attempt to commit it, or the flight from it.

• The felony must be inherently dangerous—e.g., robbery, arson, rape, kidnapping, burglary.

• There must be **causation**: Under the agency theory, a defendant or his agent (co-felon) must cause the death. Under the proximate cause theory, the felon is liable so long as he "sets in motion" the acts that cause the death.

## Without Malice Aforethought

### Voluntary Manslaughter

(Conduct and result intentional, but excused due to the circumstances)

An intentional killing of a human being in the heat of passion due to adequate provocation—e.g., defendant finds wife in bed with another or defendant is punched in the face by someone and is enraged. **Bar Exam Tip: "mere words" do not count as adequate provocation under the majority view.**

### Involuntary or Misdemeanor Manslaughter

(Neither conduct nor result intentional)

(1) A killing due to gross negligence or recklessness—e.g., a parent does not take their extremely sick infant to the free local clinic and the infant dies; or

(2) a killing during a misdemeanor or felony that does not qualify for felony murder (misdemeanor manslaughter rule).