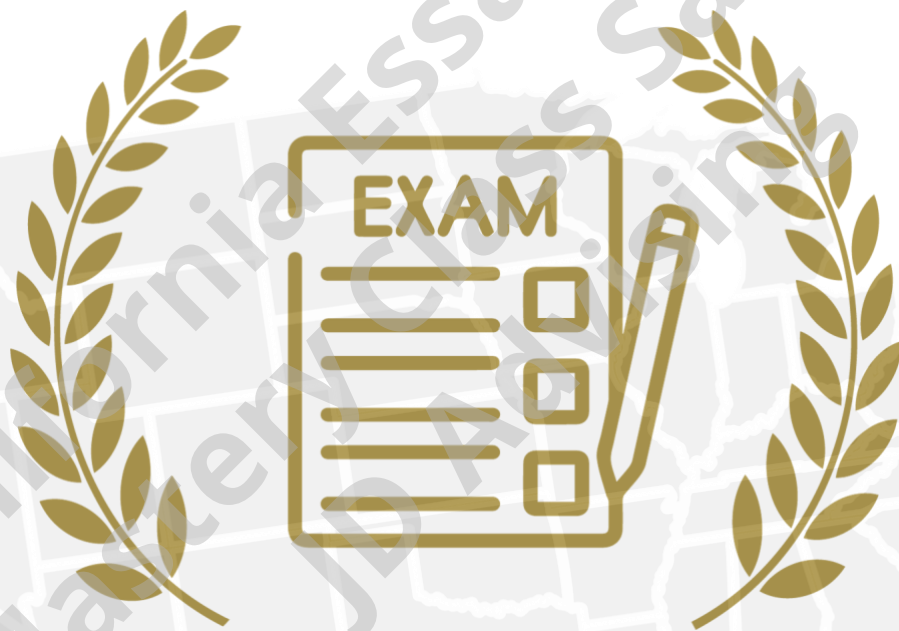


California Essay Exam Mastery Class

Highly Tested Areas of Law on the California Bar Exam Essays



JD ADVISING

Partnership

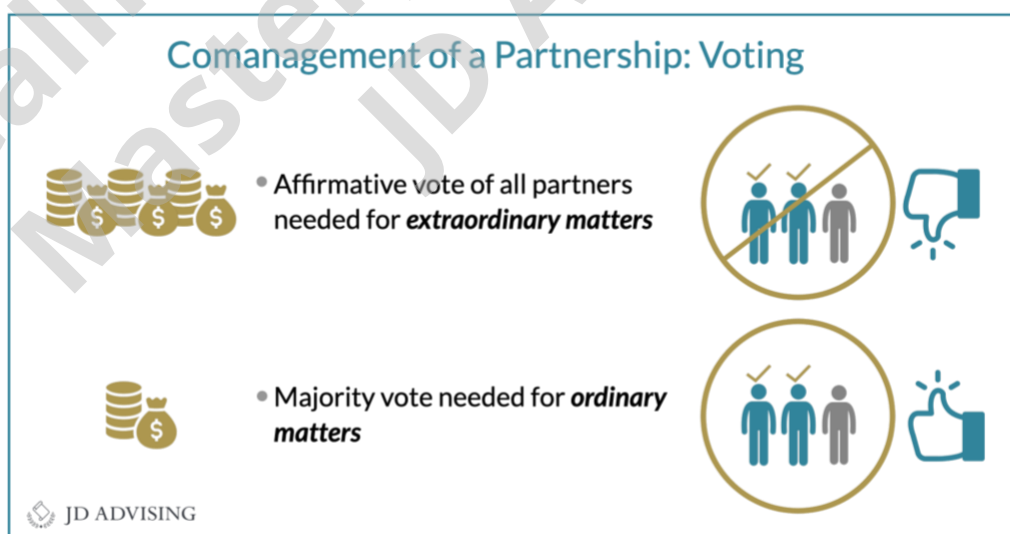
I. Formation (Feb 2020, Feb 2015, Feb 2013, July 2010, Feb 2010)

- 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 2020, Feb 2015, Feb 2013, July 2010, Feb 2010)
 - a) **Formation of a partnership does not require much.**
There are no formalities. No certificate needs to be filed. If a partner attempts to form a limited partnership but does not successfully file the paperwork, then a general partnership is formed by default. (Feb 2020, July 2010, Feb 2010)
 - b) **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 2020, July 2010, Feb 2010)
 - i) *Ex.: As part of his agreement to lease space in a law firm, David, a solo practitioner, agreed to pay a portion of his profits as rent each month. In this case, David could rebut any claim that a partnership was created because the profits were being shared as part of the rental agreement.* (Feb 2010)
 - c) **Other indicia of a partnership**, besides profit-sharing, include: contributing capital, control, a partnership agreement, how title to property is held, etc.



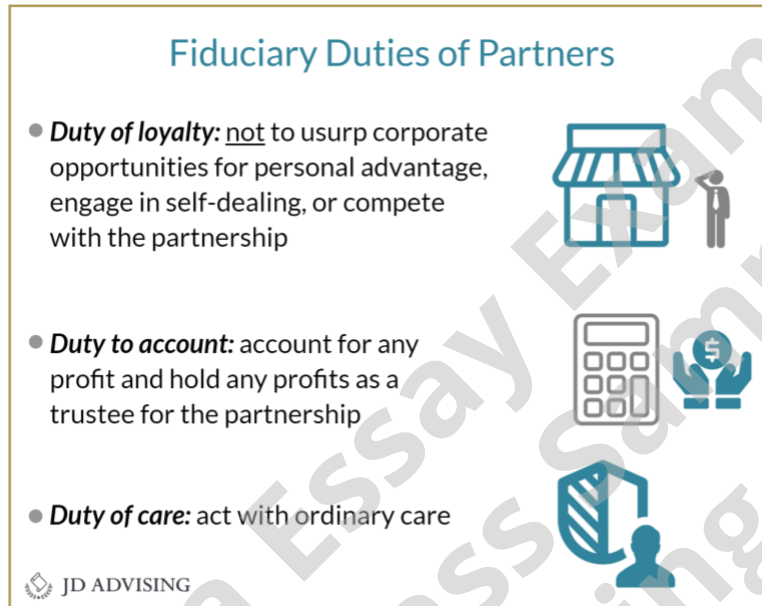
II. Rights and duties of partners in a partnership, unless stated otherwise

- 1) **Partners have equal rights to co-manage in ordinary affairs.** Extraordinary matters like admitting a new partner or selling land require a unanimous vote. Otherwise, a majority vote is needed.



IV. Fiduciary duties

- 1) 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).

**V. End of partnership: dissolution and winding up**

- 1) **Dissolution** is the change in the relation of the partners caused by any partner ceasing to be associated in the carrying on of a partnership. Some ways to dissolve a partnership include death, bankruptcy, end of a definite term, or withdrawal.
- a) **Distribution of partnership assets** after dissolution (**July 2010**) (mnemonic = **TLCP**):
- third party creditors are paid first,
 - the partners are then paid back for their loans,
 - partners are paid back for capital contributions, and, lastly
 - partners are paid any profits.

VI. Other kinds of partnerships

- 1) California generally tests **general partnerships** when it tests partnerships as part of a Business Associations question. However, on two occasions, CA tested **limited liability partnerships** (LLPs). (**July 2014, Feb 2010**)

Recommended Partnership essays for review

- ☐ Feb 2020, July 2010 (formation of a general partnership)
- ☐ Feb 2015, Feb 2013 (liability of partners in a general partnership)
- ☐ July 2014 (limited liability partnership)

Partnership Issues Checklist

- ☐ Partnership formation
- ☐ Rights and duties of partners
- ☐ Liability of partners
- ☐ Dissolution of partnership
- ☐ Partnership property
- ☐ Creditors' rights
- ☐ Other kinds of entities
 - ☐ Limited liability partnerships
 - ☐ Limited partnerships
 - ☐ Limited liability companies

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