

California Essay Exam Mastery Class

Highly Tested Areas of Law on the California Bar Exam Essays



Partnership

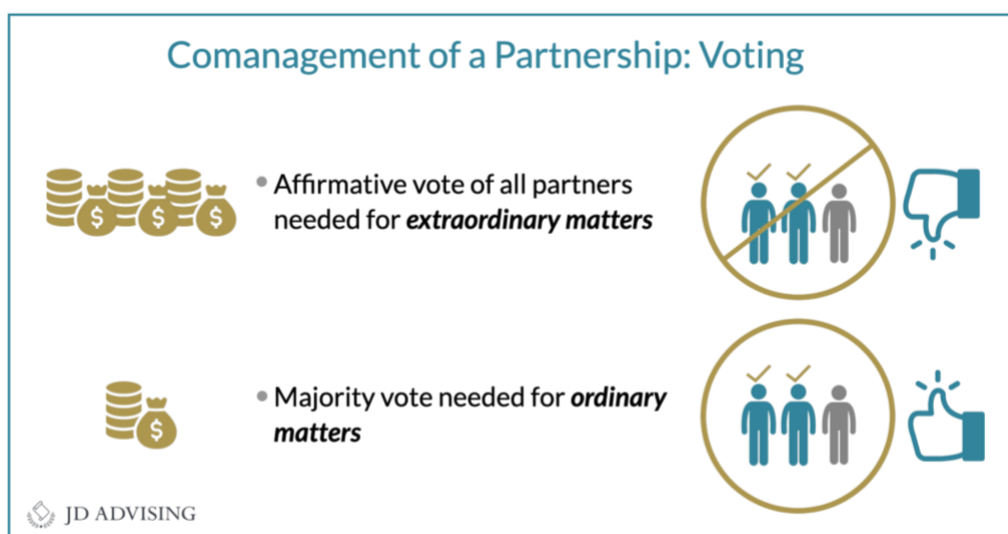
I. Formation (Feb 2020, Feb 2015, Feb 2013, July 2010, Feb 2010)

- 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).

Fiduciary Duties of Partners

- **Duty of loyalty:** not to usurp corporate opportunities for personal advantage, engage in self-dealing, or compete with the partnership 
- **Duty to account:** account for any profit and hold any profits as a trustee for the partnership 
- **Duty of care:** act with ordinary care 

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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**):
- i) third party creditors are paid first,
 - ii) the partners are then paid back for their loans,
 - iii) partners are paid back for capital contributions, and, lastly
 - iv) 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