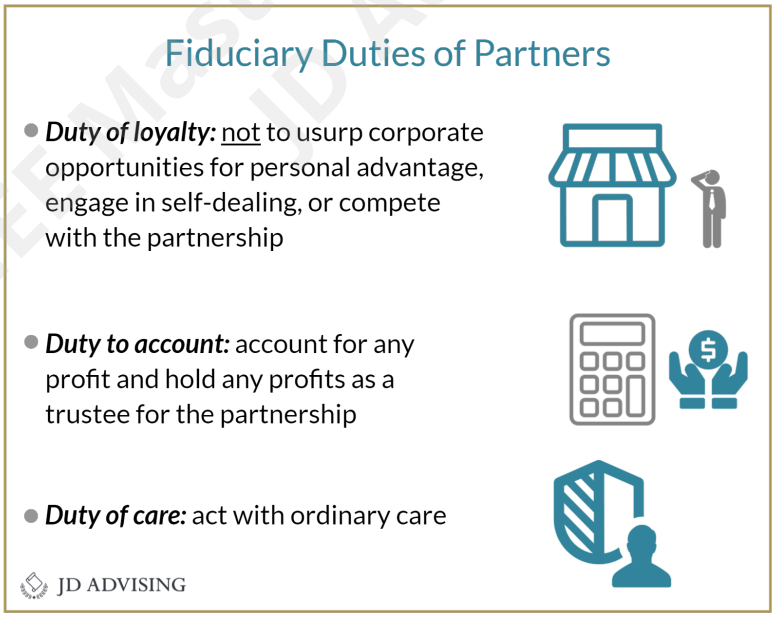
Partnership

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." **(July 2023, 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

1) **Liability of partners in a general partnership** **(Feb 2021, Oct 2020, Feb 2014, July 2011, July 2009, July 2006, July 1997)**

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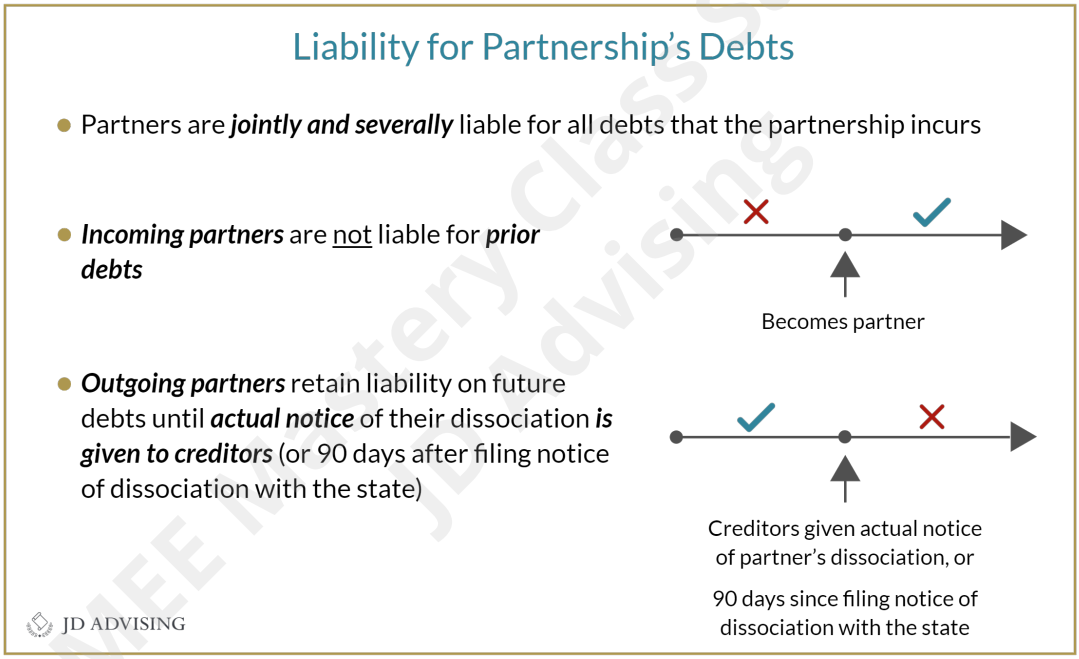
a) Partners are ***jointly and severally*** liable for all debts that are incurred by the partnership. **(Oct 2020, Feb 2014, July 2009, July 2006, July 1997)**

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

1) **Dissolution (Feb 2019, July 2011, Feb 2004, Feb 2000, July 1999, July 1998, Feb 1995)**

a) **Step one: dissolution**

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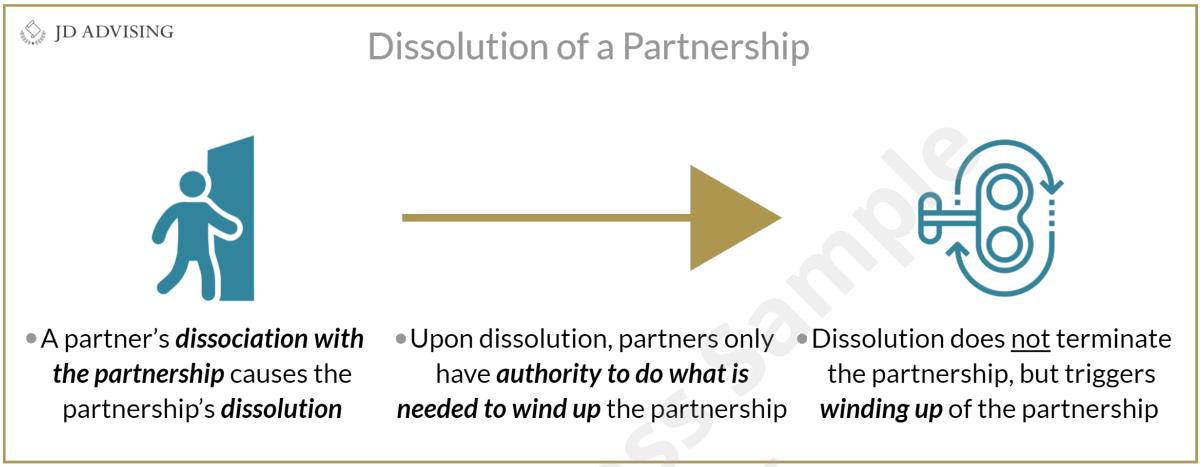
i) The dissolution of a partnership is the change in the relation of the partners caused by any partner ceasing to be associated in the carrying on of the partnership. The partnership does not end upon dissolution (it ends upon winding up). During dissolution, the partners only have authority to do what is needed to wind up the partnership.



ii) Ways to dissolve a partnership include death, end of a term, expulsion, illegality, bankruptcy, or **(most common on the MEE)** upon a partner's express will (withdrawal). **(Feb 2019, July 2011, Feb 2004, Feb 2000, July 1999, July 1998)**

(a) **Wrongful withdrawal:** One can dissolve a partnership by withdrawing from the partnership. However, if the partner's withdrawal is wrongful, the other partners can choose *not to* wind up and, instead, buy the share(s) of the partner who wrongfully withdrew. If one does wrongfully withdraw, that partner cannot participate in the dissolution/winding up.

(b) **Rightful withdrawal:** If one rightfully withdraws (e.g., if the partnership is a partnership at will or if one complies with the withdrawal requirements set forth by the partnership), winding up will occur, and the partner can participate in the winding up process but the remaining partners will be in control of the process. Further, a partner who rightfully withdraws is not liable for damages to the other partners.

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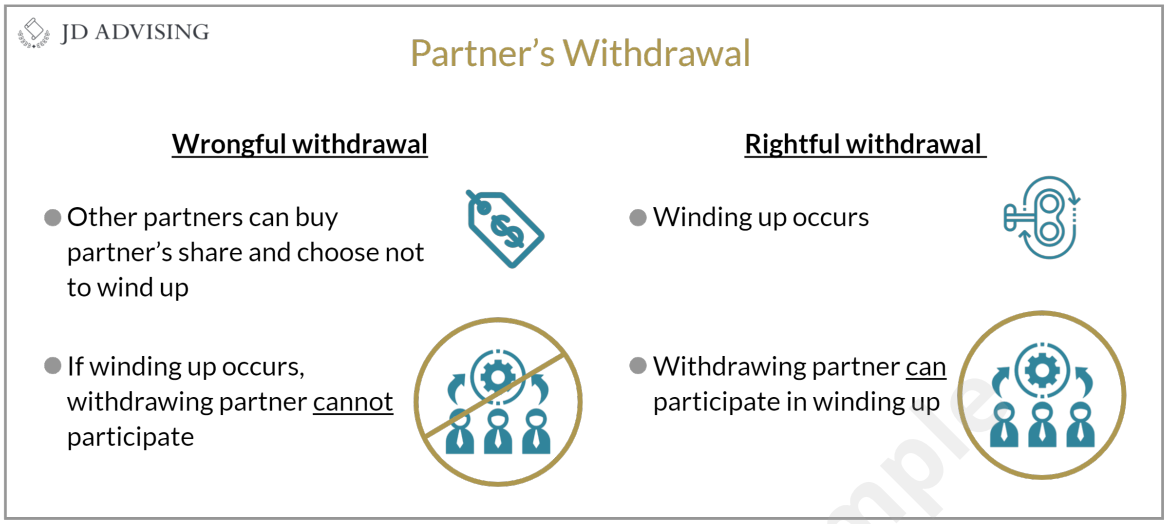

b) **Step two: winding up**

i) Winding up occurs after dissolution. This is where partnership assets are liquidated and the partnership creditors are paid. Note that partners are still liable for any liabilities that occur during the winding up phase. **(Feb 2019, Feb 2018, July 2011, Feb 2004, July 1997)**

(1) Partnership assets are distributed to creditors in the following order: **(July 1999)**

(a) Third-party creditors

(b) Partners for their loans

(c) Partners for their capital contributions

(d) Partners for profits

c) **Step three: termination**

i) This is the true end of the partnership!

IV. Overview of the kinds of partnerships

1) **General partnerships** **(tested multiple times)**

a) **Formation:** nothing formal is required to be filed to form a general partnership.

b) **Liability:** partners are jointly and severally liable for the obligations of the partnership.

2) **Limited liability partnerships (LLP)** **(Feb 2016, Feb 2014, Feb 2012)**

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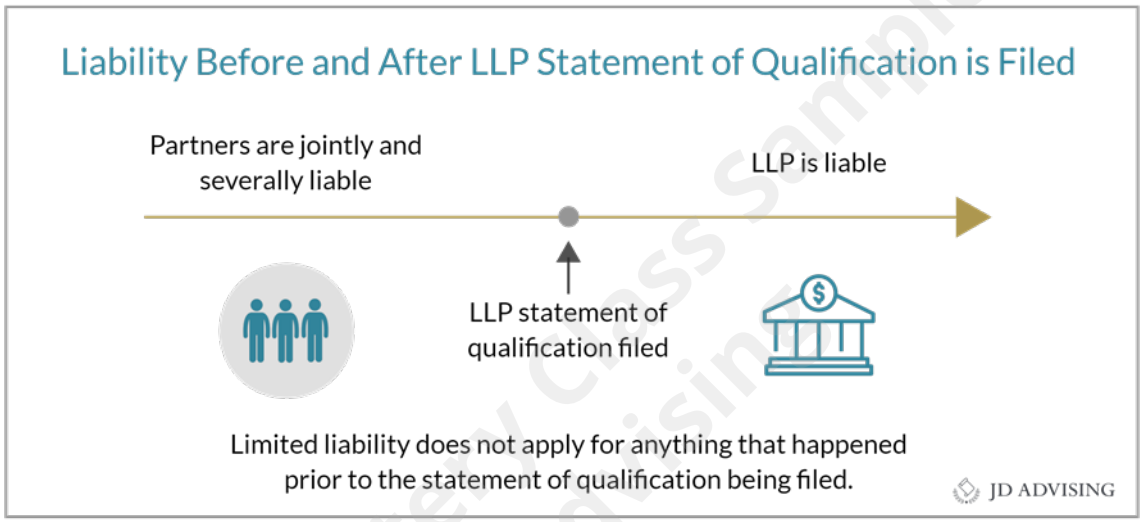
a) **Formation:** an LLP must register with the state.

b) **Liability:** Partners are not personally liable for the obligations of the partnership (although partners are still liable for their individual torts). Note: if a judgment was granted against the LLP for something that happened *before* the LLP statement of qualification was filed, then the partners are treated as "general partners" and are jointly and severally liable because limited liability does not apply for anything that happened prior to the statement of qualification being filed. Once the LLP is properly formed, the LLP is liable for actions taken by partners so long as the partner had actual authority or apparent authority.



3) **Limited partnerships (LP)** **(July 2009, July 2002, Feb 2000, July 1999, Feb 1999)**

a) **Formation:** Must file a certificate with the state and pay a fee. The certificate must also include the names of all general partners.

b) **Liability:** One or more general partners (general liability) and one or more limited partners (with limited liability). The LP is liable for actions taken by general partners so long as the partner had actual authority or apparent authority. The LP is liable for actions taken by a limited partner only if they are held out as agents of the LP with authority to bind it.

i) *Limited partners* have limited liability. Their liability is limited to capital contributions unless (in some states) they take part in control.

ii) *General partners* are liable for all partnership obligations. They may manage control of the business.

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Recommended Partnership essays for review

- Feb 2021 (definition/formation of partnership)
- Feb 2018 (fiduciary duties of partners)
- Feb 2019, Feb 2018, July 2011 (dissolution of partnership)
- Feb 2014, Feb 2012 (liability when a general partnership transforms into LLP or LP)

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Partnership Issues Checklist

- ☐ **Partnership formation**
  - ☐ Two or more persons
  - ☐ Co-owners
  - ☐ For profit
  - ☐ Profit sharing creates a presumption of a partnership
- ☐ **Rights and duties of partners**
  - ☐ Right to co-manage in ordinary affairs
  - ☐ Right to share profits
  - ☐ No right to compensation
  - ☐ Ability to bind the partnership
  - ☐ Liability of partners
    - ☐ Joint and several liability
  - ☐ Fiduciary duties
    - ☐ Duty of loyalty
    - ☐ Duty to account
    - ☐ Duty of care
- ☐ **Dissolution and winding up of a partnership**
  - ☐ Dissociation/dissolution
    - ☐ Wrongful and rightful withdrawal
    - ☐ Notice of dissolution
  - ☐ Winding up
  - ☐ Termination
- ☐ **Partnership property**
- ☐ **Creditors' rights**
  - ☐ Creditors' claim against a partner
  - ☐ Creditors' claim against the partnership
- ☐ **Other kinds of partnerships**
  - ☐ Limited liability partnerships
  - ☐ Limited partnerships

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