

CHAPTER 323

PARTNERSHIPS

NOTE: Sections 323.01 to 323.43 is a codification of L. 1921, c. 487. It is identical with the uniform partnership act approved by the national conference of commissioners on uniform state laws in 1914. In Minnesota there have been no amendments since the enactment in 1921. Prior to the enactment of chapter 487, there was no chapter in any of the compilations or revisions dealing with the subject of partnerships. The few sections relating to partnerships found in compilations prior to 1921 deal only incidentally with the subject and except as repealed by L. 1921, c. 487, s. 45, are still coded under applicable sections. G.S. 1913, ss. 7916 and 7917, particularly referred to in the repealing section, are coded in our present statutes as M.S.A. ss. 548.20 and 548.21.

States who have adopted the uniform act are as follows:- Alaska, Arkansas, California, Colorado, Idaho, Illinois, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, Nevada, New Jersey, New York, North Carolina, Oregon, Pennsylvania, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington, Wisconsin, Wyoming.

For annotations of states other than Minnesota who have adopted the uniform act, see Uniform Laws Annotated, Volume 7.

323.01 CITATION.

Conveyance of partnership property. 7 MLR 453, 537.

Power of partner to mortgage his individual interest in specific firm property. 19 MLR 252.

Right of separate creditor of partner to reach partnership assets. 23 MLR 539.

323.02 DEFINITIONS.

Subject to applicable laws the partnership relation is governed by the terms of the partnership articles. The articles constitute the contract as between the partners. There can be no modification except with the consent of all partners. *Keough v St. Paul Milk Co.* 205 M 96, 285 NW 809.

Vicarious liability was not extensive at the common law. Advent of motor vehicles and the social problems they created rendered archaic many of the common law concepts of liability. Ownership of specific partnership property is in the partners as co-owners in partnership tenancy. In an action to recover against the surviving partner for personal injuries suffered by plaintiffs, who were passengers in the truck owned by the partnership and negligently driven by one of the partners on a personal mission, the surviving partner is liable in damages since he consented to the personal use of the vehicle; and the cause of action having accrued it did not abate with the death of the driver-partner. *Kangas v Winquist*, 207 M 315, 291 NW 292.

There was no employer-employee relationship between plaintiff and the defendant, the partnership being plaintiff's employer, not defendant in his individual capacity. "Third party liability" has for its basis negligent conduct by one not the employer of the injured workman, and the amount of recovery is measured by the common law standard of damages, whereas an employer's liability under the compensation act is determined by standards fixed thereby. Accepting benefits under the compensation act from the employer does not preclude plaintiff from maintaining his action against the defendant as an individual. *Gleason v Sing*, 210 M 253, 297 NW 720.

An agreement wherein it was specifically provided that one of the parties was to assign to the other all commission to be earned by the former on the sale of certain real property was not incomplete or ambiguous so as to render it a nullity, even though the exact amount of the commission was undetermined at the time of its execution and the party to the contract could not by parol evidence modify the provision by proof that "all" meant a certain and definite sum. *Bakke v Keller*, 220 M 383, 19 NW(2d) 803.

Norris operated a speculating pool and issued three sets of certificates thus classifying his customers into three different classes, there being a different contract for each classification. Upon the bankruptcy of Norris, the relation based on the certificates did not create a partnership between Norris and the certificate-holders but did create the relation of borrower and lender, and the certificate-holders may file their claims in the insolvency proceeding. *Re Norris*, 190 F. 101.

Evidence that defendants agreed to furnish brokers free wire service and that brokers agreed to use defendants as their exclusive correspondent broker to buy and sell securities in New York stock exchange and other exchanges did not disclose a relationship of partnership or principal and agent, as respects defendant's liability to brokers' customers for selling securities purchased for customers and pledged with defendants by brokers, where there was no partnership agreement in existence and no splitting of profits or losses. *Korns v Thomson*, 22 F. Supp. 442.

Joint adventure and partnership distinguished. 6 MLR 397, 415.

Massachusetts business trust; when are shareholders liable as partners. 8 MLR 244.

Are members of a defectively organized corporation liable as partners? 8 MLR 409.

A corporate partner. 14 MLR 769.

Law of joint adventures. 15 MLR 644.

323.04 RULES OF CONSTRUCTION.

Where a lease, executed by one partner in his name only, is executed in fact for the firm and for its benefit and it actually receives the benefit, the lessor, after discovery of the true situation, may, in an action to recover unpaid rent under the lease, recover against all the partners, including an undisclosed partner, upon the theory that each partner is an agent of the copartnership for the purposes of its business. *Kavalaris v Orfan*, 219 M 442, 18 NW(2d) 137.

323.06 DETERMINATION OF WHETHER PARTNERSHIP EXISTS.

Parties are engaged in a joint enterprise where all the parties have a community of interest in the purposes and objects of the undertaking and an equal right in its control and management. *Ruth v Hutchinson Gas Co.* 209 M 248, 296 NW 136.

Evidence supports the finding of the trial court that the parties were partners. *Kavalaris v Cordalis*, 219 M 442, 18 NW(2d) 137.

A written agreement whereby plaintiff and defendant undertook to purchase certain real estate and which provided that each was to make certain contributions thereto and each was to have a one-half interest therein and any profits derived therefrom constituted a partnership to deal in land; as such, it was not within the statute of frauds and could be enforced, although the writing did not express the entire agreement. *Bakke v Keller*, 220 M 383, 19 NW(2d) 803.

Defendant's testator having purchased a quantity of wild land contracted with a sales agent for the sale thereof. The sales agent was to receive a commission but under certain circumstances was to receive one-half of the net profits. It is held that the facts show happening of certain conditions which terminated the provision relating to a part of the profits, and consequently the sales agent did not acquire any interest in or lien on the lands under the sales contract, and the arrangement did not constitute a contract of partnership between the parties. *Corvin v Holmes*, 154 F. 594.

Joint adventures; secret advantage secured by one through fraudulent collusion with vendor. 4 MLR 301.

Massachusetts business trusts; liability of shareholders as partners. 8 MLR 244.

Law of joint adventures. 15 MLR 644.

Profit-sharing as a test of existence of partnership. 16 MLR 115.

Are limited partnerships necessary? 17 MLR 356.

Liability of landlord for negligence in case of a tenancy by entirety. 27 MLR 536.

323.08 PARTNERS ARE AGENTS OF PARTNERSHIP.

A partner is not liable on a note signed in its name by one of the partners and given to the plaintiff bank in payment of the partner's individual obligation, to plaintiff's knowledge; nor does the evidence permit a finding of ratification or estoppel against one of the partners who was a director and member of the examining and discounting committees of the plaintiff bank. *First State Bank v Renz*, 202 M 350, 278 NW 523.

The expedient of adopting a corporate business structure having the same name, properties, and purposes as a former partnership or individual will not be effective to purge the organizers in their corporate capacity of an indebtedness previously incurred in some other capacity; and this doctrine applies in the instant case although the corporation was not organized but acquired by purchase. *Range Ice Co. v Barnsdall*, 209 M 265, 296 NW 407.

Where a lease, executed by one partner in his name only, is executed in fact for the firm and for its benefit, and it actually receives the benefit, the lessor, after discovery of the true situation, may, in an action to recover unpaid rent under the lease, recover against all the partners, including an undisclosed partner, upon the theory that each partner is an agent of the copartnership for the purposes of its business. *Kavalaris v Orfan*, 219 M 442, 18 NW(2d) 137.

As to the stock purchased after April 28, no matter whether the defendant Hamm actually participated personally in any of the alleged wrong doing in reference thereto, or did not, his conduct in allowing the wrongs to go on and in accepting the results thereof amounted in law to a constant adoption and ratification by him, and he is necessarily bound thereby. *Backus v Finkelstein*, 23 F. Supp. 364.

323.09 CONVEYANCE OF REAL PROPERTY OF THE PARTNERSHIP.

Prior to the enactment of L. 1921, c. 487, a partnership was not a legal entity and in law it had no existence distinct from the persons who compose it, but this rule was modified by the enactment of the uniform partnership act as respects the right to take and convey title to real estate. Prior to the enactment of the uniform partnership act title had to be taken in the names of individual partners or in the name of one of them. *Shanahan v Olmsted County Bank*, 217 M 454, 14 NW(2d) 433.

323.12 PARTNERSHIP LIABLE FOR PARTNER'S WRONGFUL ACT.

See, *Gleason v Sing*, 210 M 253, 297 NW 720.

Where in the execution of their joint enterprise one partner deposits a non-mailable circular in the mail by the authorization of another or with his knowledge and acquiescence, the latter causes the circular to be so deposited within the meaning of the federal statutes. *Burton v United States*, 142 F. 57.

Effect of non-suability of one partner for tort upon liability of other partner. 16 MLR 872; 20 MLR 566; 27 MLR 580.

Tort actions between partners. 17 MLR 225.

Release of one joint tort-feasor as a bar to right of action against others. 22 MLR 692.

323.14 NATURE OF PARTNER'S LIABILITY.

A partnership is not liable on a note given without authority or consent of his partners by one member of a firm for funds for his individual purposes where the

payee plaintiff knew that he was borrowing the money for such purposes. *Security Bank v Remington*, 201 M 472, 276 NW 743; *First State Bank v Renz*, 202 M 350, 278 NW 523.

Constructive trust raised when fiduciary takes a new interest in leased premises for his own benefits. 13 MLR 711.

Partnership; member of a partnership is not a third party under the workmen's compensation act. 31 MLR 503.

323.15 PARTNER BY ESTOPPEL.

The court's instruction that the admissions by defendants of an actual partnership and their conduct towards each other as partners with reference to the business tend to prove a contract of partnership expressed or implied was in the instant case correct. *Foot, Schulze & Co. v Porter*, 131 M 225, 154 NW 1078.

Signature by procuracy; endorsement without authority. 7 MLR 495.

Estoppel of undisclosed principal by agent's representations. 7 MLR 578.

323.17 RIGHTS AND DUTIES OF PARTNERS.

Rules determining the relations of one partner to another, and their respective rights and duties stated, illustrated, and applied to the facts in the instant case. *Standard Clothing Co. v Wolf*, 219 M 128, 17 NW(2d) 329.

While the relationship between the partners is essentially one of mutual trust and confidence and, as such, the law imposes upon them the highest standard of integrity and good faith in their dealings with each other, nevertheless, in weighing the evidence and finding the facts, it is for the trier to determine them; and where the evidence is conflicting, the findings of the triers will not be disturbed. *Venier v Forbes*, 223 M 69, 25 NW(2d) 705.

Where evidence established that in their business relationship plaintiff and defendant were really copartners in their ownership and management of the corporation, a mutual trust and confidence was required, and, because of such relationship, the law imposed upon each the highest standard of integrity and good faith in mutual dealings. *Fewell v Tappan*, 223 M 483, 27 NW(2d) 648.

Taxation of intangibles. 15 MLR 753.

323.19 PARTNERS MUST RENDER INFORMATION.

At common law an assignment made by copartners for the benefit of creditors dissolves the partnership. After dissolution copartners occupy a fiduciary relation to one another while winding up the affairs of and making distribution of partnership effects, but they are not disqualified because of their relationship from individually purchasing the assets of the firm when offered for sale by their assignee; and if there is no fraud or collusion, a sale so made to one partner cannot be questioned by the others. *Johnson v Bruzek*, 142 M 454, 172 NW 700.

323.20 PARTNER ACCOUNTABLE AS A FIDUCIARY.

Relations between partners is essentially one of mutual trust and confidence, and the law imposes upon them the highest standard of integrity and good faith in their dealings with each other. *Prince v Sonnesyn*, 222 M 528, 25 NW(2d) 469.

Constructive trusts raised when fiduciary takes a new interest in leased premises for his own benefit as relate to joint adventures or partnerships. 13 MLR 711.

Conversion by partner; tort actions between partners. 17 MLR 225.

323.21 RIGHT TO AN ACCOUNT.

Conversion action arising out of a partnership between two attorneys was properly dismissed on the pleadings by the trial court since the rights of the parties

must be determined by an action in accounting, and conversion will not lie until the termination of the partnership. *Grimes v Toensing*, 200 M 321, 273 NW 816.

Indictments for forgery in the third degree against a partner for making false entries in the partnership books for the purpose of defrauding a partner by concealing a misappropriation of partnership funds, state public offenses under section 620.13. *State v MacGregor*, 202 M 579, 279 NW 372.

Silas Lewis at the time of his death owned a half interest in the Cannon Falls Beacon, and under the decree of the probate court one-third went to the widow and two-thirds to the five children. The children transferred their two-thirds interest to the mother for life. Upon the mother's death the district court had jurisdiction to compel distributees to account to their co-distributees for property decreed them by the probate court. *Erickson*, the owner of the other half of the newspaper, was not a necessary party, the suit not being for a partnership accounting. *Lewis v Lewis*, 211 M 587, 2 NW(2d) 134.

323.23 PROPERTY RIGHTS OF A PARTNER.

See, *Windom National Bank v Klein*, 191 M 447, 254 NW 602; *Keough v St. Paul Milk Co.* 205 M 96, 285 NW 809; *Kangas v Winquist*, 207 M 315, 291 NW 292.

323.24 NATURE OF A PARTNER'S RIGHT IN SPECIFIC PARTNERSHIP-PROPERTY.

See, *State v MacGregor*, 202 M 579, 279 NW 372; *Kangas v Winquist*, 207 M 315, 291 NW 292; *Shanahan v Olmsted County Bank*, 217 M 454, 14 NW(2d) 433.

Where the court, without the consent of defendants, made an order appointing a general receiver for a partnership business in connection with an action for an accounting, which order contained an alternate provision that the receivership would be limited to the books and records and the taking of an inventory, if defendants would furnish a bond conditioned to pay plaintiff such sums as might be found due him on accounting, and the defendants furnished such bond for the purpose of thus limiting the receivership, defendants did not thereby waive the right of appeal. *Bliss v Griswold*, 222 M 494, 25 NW(2d) 303.

Law of joint adventures. 15 MLR 644.

Right of separate creditor of a partner to reach partnership assets by execution. 23 MLR 539.

323.25 PARTNER'S INTEREST IN THE PARTNERSHIP.

Power of a partner to mortgage his individual interest in specific firm property. 19 MLR 252.

323.26 ASSIGNMENT OF PARTNER'S INTEREST.

Under section 25 of the uniform partnership act a partner's interest in specific partnership property is made nonassignable. Any attempt at such assignment is void. *Windom Nat'l Bank v Klein*, 191 M 447, 254 NW 602.

323.27 PARTNER'S INTEREST CHARGEABLE AS SUCH.

Right of separate creditor of partner to reach partnership assets. 23 MLR 539.

323.28 DISSOLUTION.

An agency conferred upon a partnership is terminated by operation of law by the withdrawal of a partner from the firm because the withdrawal of a partner from the firm dissolves the partnership. Each partner is the agent of the other and authorized to transact the business of the firm, but where the firm business includes the acting as an agency, each partner has the power to act as agent and the act of the agent is the act of the firm but the members of the copartnership lose their right to act as agent upon the withdrawal of a member of the firm

or upon any other act of dissolution. *Egner v States Realty Co.* 223 M 305, 26 NW(2d) 464.

Even if defendant breached his covenant not to engage in competing business in certain territory for a period of five years after termination of the agreement, the evidence failed to establish that irreparable injury was caused to other partners as a result thereof, and hence other partners were not entitled to an injunction to enjoin the breach. *Heflebower v Sand*, 71 F. Supp. 607.

323.29 PARTNERSHIP NOT TERMINATED BY DISSOLUTION.

The death of one party during the pendency of an action of a survivable character against the copartnership does not abate as against the survivors, and they are not entitled to a continuance so the personal representative may be substituted nor in the instant case should he be substituted. *Reliable Engine Co. v Ferch*, 145 M 420, 177 NW 657.

Where a partnership agreement by its terms expires on a certain date, after such expiration the parties thereto are no longer agents of each other except as to acts required to wind up the partnership affairs as provided in section 323.34. *Shepherdson v Central Fire Insurance*, 220 M 401, 19 NW(2d) 772.

323.30 CAUSES OF DISSOLUTION.

See, *Shepherdson v Central Fire Insurance*, 220 M 401, 19 NW(2d) 772.

Nature of good faith required between partners and joint adventurers. 7 MLR 613.

323.32 DISSOLUTION TERMINATES AGENCY OF PARTNER.

When a partnership is dissolved by mutual consent, one member retiring, and the business is continued by the other members under a new firm name, and notice of these facts is received by a party with whom the old firm has contracted for the shipment to it of merchandise for sale, on account of said party, the retiring member stands in the position of surety on the contract for the new firm as to merchandise thereafter shipped, and, with the knowledge and consent of said party, going into the possession of the new firm for the purposes of sale. And he remains liable on the contract if its terms and conditions are complied with by the other party thereto; but as a surety he is released from liability if such other party fails to perform on his part, or departs from or consents to a change or modification of the original terms and conditions. *Porter v Baxter*, 71 M 195, 63 NW 856.

323.34 PARTNER'S AGENCY AFTER DISSOLUTION.

See, *First International Bank v Brown*, 130 M 210, 153 NW 522; *Lovejoy v. Stafford*, 94 US 430.

Where a partnership agreement by its terms expires on a certain date, after such expiration the parties thereto are no longer agents of each other except as to acts required to wind up the partnership affairs as provided in section 323.34; so that fraudulent acts of one former partner committed after expiration of the partnership term without the knowledge and consent of the other do not bind the latter nor destroy a mortgagor-mortgagee relationship which also existed between the partners, nor forfeit rights of such mortgagee under union-mortgage-loss-payable clauses in certain fire insurance policies taken out by the partner guilty of such fraudulent acts. *Shepherdson v Central Fire Insurance*, 220 M 401, 19 NW(2d) 773.

323.35 DISCHARGE OF EXISTING LIABILITIES ON DISSOLUTION.

In an action to recover against the surviving partner for personal injuries suffered by plaintiffs who were passengers in the truck owned by the partnership and negligently driven by one of the partners on a mission personal to himself, the surviving partner is liable since he consented to the personal use of the vehicle; and

the cause of action having accrued, it did not abate with the death of the driver-partner. *Kangas v Winquist*, 207 M 315, 291 NW 292.

323.37 ALLOCATION OF PARTNERSHIP PROPERTY ON DISSOLUTION.

A creditor of both a partnership and one of the partners individually has no right, nothing more appearing, to apply payments made by the partnership out of its own funds upon the indebtedness of the individual party. *Mastley v Moe*, 193 M 411, 258 NW 591.

323.38 ADJUSTMENT OF RIGHTS ON DISSOLUTION FOR FRAUD.

This action upon a promissory note executed by a partnership and by two of the surviving partners "payable out of funds to be received from Selover & Mansfield matters" did not give the holder of the note a preference over other creditors of the partnership, and unless these individual defendants held funds of the partnership when sued there could be no recovery. The evidence is conclusive that neither defendant had or has any such funds. *Selover v Selover*, 201 M 562, 377 NW 205.

Fraud and misrepresentation, in the instant case, was not waived by delay in rescinding agreement; and the evidence supports the findings of the trial court and its order setting aside the incorporation of a partnership business where one of the partners had received a controlling interest through fraudulent misrepresentations. *Prince v Sonnesyn*, 222 M 528, 25 NW(2d) 469.