Palmer made a valid contract with Ames under which Ames was to sell Palmer's goods on commission from January 1 to June 30. Ames made satisfactory sales up to May 15 and was then about to close an unusually large order when Palmer suddenly and without notice revoked Ames's authority to sell. Can Ames continue to sell Palmer's goods during the unexpired term of her contract?

Answer: Termination of Agency: Revocation of Authority. No. Although Palmer did not have the right to terminate the agency before June 30 he had the power. Since the authority of an agent is based upon the consent of the principal, the agency is terminated upon the withdrawal of such consent. Therefore, upon Palmer's revocation of Ames's authority to sell, Ames no longer had the actual authority to sell Palmer's goods during the unexpired term of the contract.

Ames, however, may sue Palmer and recover damages for breach of the agency contract.

Timothy retains Cynthia, an attorney, to bring a lawsuit upon a valid claim against Vincent. Cynthia fails to make herself aware of recently enacted legislation that shortens the statute of limitations for this type of legal action, and, consequently, she files the complaint after the statute of limitations has run. As a result, the lawsuit is dismissed. What rights, if any, does Timothy have against Cynthia?

Answer: Duties of Agent to Principal: Duty of Diligence. An agent is expected to act on behalf of the principal using reasonable care and skill in addition to any special skill that she may have. The standard is established based on the community or locality in which the employment takes place. Judgment would be for Timothy assuming that a lawyer acting reasonably would have had opportunity to discover the revised statutes period.

Sierra Pacific Industries purchased various areas of timber and six other pieces of real property, including a ten-acre parcel on which five duplexes and two single-family units were located. Sierra Pacific requested the assistance of Joseph Carter, a licensed real estate broker, in selling the nontimberland properties. It commissioned him to sell the property for an asking price of $35,000, of which Sierra Pacific would receive $30,000 and Carter would receive $5,000 as a commission. Unable to find a prospective buyer, Carter finally sold the property to his daughter and son-in-law for $35,000 and retained the $5,000 commission without informing Sierra Pacific of his relationship to the buyers. After learning of these facts, Sierra Pacific brought an action for breach of fiduciary duty against Carter. Decision?

Answer: Fiduciary Duty of Agent. Judgment for Sierra Pacific. An agent owes a fiduciary duty to his principal which requires the disclosure of all information in the agent's possession that is relevant to the subject matter of the agency. An agent may not compete with the principal, nor may he act as an agent for another whose interests conflict with those of the principal. A real estate agent must refrain from dual representation in a transaction unless he obtains the consent of both principals after full disclosure. Under most circumstances, then, if the agent is related to the buyer in a way that suggests a reasonable possibility that the agent himself could be acquiring an interest in the property, the relationship is a material fact that must be disclosed. Therefore, Sierra Pacific may recover the $5,000 commission paid to Carter plus any actual and proximately caused loss on the price it received for the property. Sierra Pacific Industries v. Carter, 104 Cal.App.3d 579, 163 Cal.Rptr. 764 (1980).

Murphy, while a guest at a motel operated by the Betsy Len Motor Hotel Corporation, sustained injuries from a fall allegedly caused by negligence in maintaining the premises. At that time, Betsy Len was under a license agreement with Holiday Inns, Inc. The license contained provisions permitting Holiday Inns to regulate the architectural style of the buildings as well as the type and style of the furnishings and equipment. The contract, however, did not grant Holiday Inns the power to control the day-to-day operations of Betsy Len's motel, to fix customer rates, or to demand a share of the profits. Betsy Len could hire and fire its employees, determine wages and working conditions, supervise the employee work routine, and discipline its employees. In return, Betsy Len used the trade name, "Holiday Inns," and paid a fee for use of the license and Holiday Inns' national advertising. Murphy sued Holiday Inns, claiming Betsy Len was its agent. Decision?

Answer: Creation of Agency. Decision for Holiday Inns. At issue is whether the terms of the license agreement satisfied the control best in establishing a principal-agent relationship. Held that the regulatory provisions, which included regulations on the architectural style of the buildings and the type and style of furnishings and equipment, did not give the defendant control over the day-to-day operations of Betsy Len's motel and, therefore, did not constitute control within the definition of agency. Murphy v. Holiday Inns, Inc., 219 S.E. 2d 874 (Vinc. 1975).
1. Alice was Peter's traveling salesperson and was also authorized to collect accounts. Before the agreed termination of the agency, Peter wrongfully discharged Alice. Alice then called on Tom, an old customer, and collected an account from Tom. She also called on Laura, a new prospect, as Peter's agent, secured a large order, collected the price of the order, sent the order to Peter, and disappeared with the collections. Peter delivered the goods to Laura per the order.
(a) Peter sues Tom for his account. Decision?
(b) Peter sues Laura for the agreed price of the goods. Decision?

Answer: Effect of Termination of Agency Upon Authority.

(a) Decision for Tom. Peter wrongfully terminated the agency. In such cases, the principal, in order to protect himself against possible future liability for the acts of his former agent, must give notice to third persons of the termination of the agency. Where, as here, a third person, Tom, has previously dealt on credit with Peter through his agent, Alice, Peter must give him actual notice. Since Tom did not receive notice from Peter, either oral or written, he had no reason to suspect that the agency relationship between Peter and Alice had been terminated and was justified in paying his account to Alice.

(b) Decision in favor of Laura. Although the authority of Alice to collect had been terminated before Alice dealt with Laura, and Laura had not been a customer of Peter prior to such termination, if Laura knew of the agency while it was in force Alice had continuing apparent authority until Laura received constructive notice of the termination of the agency relationship. Since Peter did not publish such notice in a newspaper of general circulation in the place where the agency is conducted, Peter is bound by Alice's acts.

If Laura had not known of the agency, then Alice was without apparent authority, but Peter's acceptance of the order and shipment of goods was a ratification of Alice's unauthorized act.

4. Green Grocery Company employed Jones as its manager. Jones was given authority by Green Company to purchase supplies and goods for resale and had conducted business for several years with Brown Distributing Company. Although her purchases previously had been limited to groceries, Jones contacted Brown Distributing Company and had it deliver a color television set to her house, informing Brown Company the set was to be used in promotional advertising to increase Green Grocery Company's business. The advertising did not develop, and Jones disappeared from the area, taking the television set with her. Brown Company sued Green Company for the purchase price of the set. Decision?

Answer: Actual Implied Authority. Judgment for Green Grocery Co. Generally, an agent has implied authority to make reasonable and necessary purchases for his principal, who is bound by the act of the agent within the scope of apparent authority. Payment of bills for merchandise sold to an agent by his principal is sufficient to establish apparent authority, especially where this practice is continued over a period of time, and the principal is estopped to deny the agent's authority. It is a generally recognized rule of law that an agent has implied or apparent authority to purchase those items required in the prosecution of the business he represents.

The burden is upon the plaintiff, Brown Company, to prove the authority of the agent, Jones, and that he had authority to make the specific purchase in question. The authority to buy one type of goods is insufficient to establish authorization to buy an entirely different type. While a general agent has authority to bind the principal as to matters within the proper scope of the business, the authority is limited to acts customary and usual in the business involved. Here the purchase was different from prior dealings. The set was delivered to the home of the agent and Brown Company is charged with the duty of determining actual authority.

The question of acceptance of benefits or ratification is not involved here.
Driver picked up Friend to accompany him on an out-of-town delivery for his employer, Speedy Service. A "No Riders" sign was prominently displayed on the windshield of the truck, and Driver violated specific instructions of his employer by permitting an unauthorized person to ride in the vehicle. While discussing a planned fishing trip with Friend, Driver ran a red light and collided with an automobile driven by Motorist. Both Friend and Motorist were injured. Is Speedy Service liable to either Friend or Motorist for the injuries they sustained?

Answer: Tort Liability of the Principal. Speedy Service is liable to Motorist, but is not liable to Friend. Driver was making a delivery within the course of his employment and his negligent act of running the red light will make his employer responsible for the injuries sustained by Motorist. The mere fact that the driver had an unauthorized passenger does not of itself render the servant outside the scope of his employment insofar as Motorist is concerned. Driver violated the employer's rule as to unauthorized passengers, but he had not abandoned the business of Speedy Service as he was making a delivery for his employer. If Driver had abandoned the business of his employer and embarked upon an adventure for himself, such as taking a trip to the lake where Friend and Driver planned to fish, then such conduct would be outside the scope of his employment and in that event Speedy Service would not be liable to Motorist. Such is not the case here as Driver was on his employer's business at the time of the collision.

Speedy Service is not liable to Driver's unauthorized invitee who was injured by the negligence of Driver. Driver's invitation of Friend was outside the scope of his employment. Driver had no apparent authority to invite Friend to take a ride as he was specifically instructed not to do so and the "No Riders" sign demonstrated his lack of authority. Friend was accompanying Driver for personal reasons unrelated to the employment of Driver by Speedy Service.

Cook's Department Store advertises that it maintains in its store a barber shop managed by Hunter. Actually, Hunter is not an employee of the store but merely rents space in it. While shaving Jordan in the barber shop, Hunter negligently puts a deep gash into one of Jordan's ears, requiring ten stitches. Jordan sues Cook's Department Store for damages. Decision?

Answer: Apparent Authority. Decision in favor of Jordan. By advertising that it maintained a barber shop in its store in charge of Hunter, Cook's Department Store has caused third persons reasonably to believe that Hunter is its employee. The store is therefore estopped from asserting the fact that Hunter is not its employee because to allow it to do so would be unfair and unjust to persons who, in good faith and in reliance upon the advertisements, engaged Hunter's services in the mistaken belief that he was an employee of the store. This problem presents a case of agency by estoppel or apparent authority.

The following contract was executed on August 22:

Ray agrees to sell and Shaw, the representative of Todd and acting on his behalf, agrees to buy 10,000 pounds of 0.32 × 1 5/8 stainless steel strip type 410.

(signed) Ray    (signed) Shaw

On August 26, Ray informs Shaw and Todd that the contract was in reality signed by him as agent for Upson. What are the rights of Ray, Shaw, Todd, and Upson in the event of a breach of the contract?

Answer: Undisclosed Principal. Ray, Todd and Upson are bound by the contract but Shaw is not.

(a) Ray, although an agent for Upson, is bound because of his failure to reveal the agency. Restatement, Agency, Second, Section 322. Since he appears in the written contract as a principal, he cannot show that he intended to sign the contract merely as an agent. Restatement, Agency, Second, Section 323(1).

(b) Since Shaw signed the contract only as the agent for Todd, Shaw is not bound by the contract but Todd is bound. Restatement, Agency, Second, Section 147. Where the name of the principal and the status of the agent appears in the written contract and the contract does not indicate an intention that the agent is personally liable, the principal is bound by the contract but the agent is not. Restatement, Agency, Second, Section 156.

(c) Upson is bound by the contract as an undisclosed principal. Restatement, Agency, 2nd, § 197.

Serge is the owner of a retail meat marketing business. His managing agent borrowed $3,500 from David on Serge's behalf, for use in Serge's business. Serge paid $200 on the alleged loan and on several other occasions told David that the full balance owed would eventually be paid. He then disclaimed liability on the debt, asserting that he had not authorized his agent to enter into the loan agreement. David brought this action to collect on the loan. Decision?

Answer: Ratification. Judgment for David. Serge's partial payment and his promise to pay off the loan constituted a ratification of his agent's action. Ratification is the principal's affirmation of a prior act by the agent that would not otherwise have been binding on the principal. Its effect is to bind the principal as if the agent's act had been authorized. David v. Serge, 373 Mich. 442, 129 N.W.2d 882 (1964).
1. Lynn and Jack jointly own shares of stock of a corporation, have a joint bank account, and have purchased and own as tenants in common a piece of real estate. They share equally the dividends paid on the stock, the interest on the bank account, and the rent from the real estate. Without Lynn's knowledge, Jack has a trip to inspect the real estate and on his way runs over Samuel. Samuel sues Lynn and Jack for his personal injuries, joining Lynn as defendant on the theory that Lynn was Jack's partner. Is Lynn liable as a partner of Jack?

Answer: **Tests of Partnership Existence.** Lynn is not liable. No partnership exists between Lynn and Jack merely by reason of their joint ownership of shares of stock of a corporation, or their joint bank account, or their ownership of real estate as tenants in common. R.U.P.A. Section 202(c)(1), U.P.A. Section 7(2). There is no association to carry on a business for profit.

2. Clark, who owned a vacant lot, and Bird, who was engaged in building houses, entered into an oral agreement by which Bird was to erect a house on the lot. Lynn the site of the house and lot. Bird was to have his money first. Clark was then to have the agreed value of the lot, and the profits were to be equally divided. Did a partnership exist?

Answer: **Business for Profit.** No partnership existed. The agreement is a joint venture. Clark and Bird were not "carrying on" a business but engaged in a single transaction involving contributions by each and an agreement to share profits.

3. Teresa, Peter, and Walker were partners under a written agreement made in January that the partnership should continue for ten years. During the same year, Walker, being indebted to Smith, sold and conveyed his interest in the partnership to Smith. Teresa and Peter paid Smith $5,000 as Walker's share of the profits for that year but refused Smith permission to inspect the books or to come into the managing office of the partnership. Smith brings an action setting forth the above facts and asks for an account of partnership transactions and an order to inspect the books and to participate in the management of the partnership business.

(a) Does Walker's action dissolve the partnership?
(b) To what is Smith entitled with respect to (1) partnership profits, (2) inspection of partnership books, (3) an account of partnership transactions, and (4) participation in the partnership management?

Answer: **Transfer of Partnership Interest.**

(a) No. Walker's action does not dissolve the partnership. R.U.P.A. Section 503(a)(2), U.P.A. Section 27(1).
(b) (1) Rebecca is entitled to receive Walker's share of the partnership profits. R.U.P.A. Section 503(b)(1), U.P.A. Section 27(1).
(2) Rebecca is not entitled to inspect the partnership books. R.U.P.A. Section 503(a)(3), U.P.A. Section 27(1).
(3) Rebecca is not entitled to an account of the partnership's transactions. R.U.P.A. Section 503(a)(3), U.P.A. Section 27(1).
(4) Rebecca is not entitled to participate in the management or administration of the partnership business or affairs. R.U.P.A. Section 503(a)(3), U.P.A. Section 27(1).

4. Anita and Duncan had been partners for many years in a mercantile business. Their relationship deteriorated to the point where Anita threatened to bring an action to an accounting and dissolution of the firm. Duncan then offered to buy Anita's interest in the partnership for $25,000. Anita refused the offer and told Duncan that she would take no less than $35,000. A short time later, James approached Duncan and informed him he had inside information that a proposed street change would greatly benefit the business and that he, James, would buy the entire business for $100,000 or buy a one-half interest for $50,000. Duncan made a final offer of $35,000 to Anita for her interest. Anita accepted this offer and the transaction was completed. Duncan then sold the one-half interest to James for $50,000. Several months later, Anita learned for the first time of the transaction between Duncan and James.

What rights, if any, does Anita have against Duncan?

Answer: **Right to an Account.** Anita has a right against Duncan for an accounting of the $15,000 difference in the sale price, and Anita may bring a suit in equity to impress a trust thereon. R.U.P.A. Section 404(b)(1) provides that a partner's duty of loyalty to the partnership and the other partners includes the duty "to account to the partnership and hold as trustee for it any property, profit, or benefit derived by the partner in the conduct and winding up of the partnership business or derived from a use by the partner of partnership property, including the appropriation of a partnership opportunity." U.P.A. Section 21 provides: (1) Every partner must account to the partnership for any benefit, and hold as trustee for it any profits derived by him without the consent of the other partners from any transaction connected with the formation, conduct, or liquidation of the partnership or from any use by him of its property.

One partner will not be permitted directly or indirectly to purchase the interest of the other or reap any benefit therefrom without making a full and fair disclosure of all facts within his knowledge relative thereto. This relationship exists until a dissolution or termination of the partnership and it is immaterial that the partners' relationship is strained or that a suit for an accounting and dissolution is threatened. Here, Duncan did not make a full disclosure, which failure resulted in a $15,000 loss to Anita, his partner.
ABC Company is a general partnership organized under the laws of the state. It consists of Dianne, Greg, Knox, and Laura, whose capital contributions were as follows: Dianne = $5,000, Greg = $7,500, Knox = $10,000, and Laura = $5,000. The partnership agreement provided that the partnership would continue for three years and that no withdrawals of capital were to be made without the consent of all the partners. The agreement also provided that all advances would be entitled to interest at 10 percent per year. Six months after the partnership was formed, Dianne advanced $10,000 to the partnership. At the end of the first year, net profits totaled $11,000 before any money had been distributed to partners. How should the $11,000 be allocated to Dianne, Greg, Knox, and Laura?

**Answer:** Rights Among Partners: Right to Share in Distributions. RUPA. Dianne would receive the entire $11,000. When a partner makes an advance to the firm above and beyond her capital contribution, she is entitled to repayment of this advance plus interest. RUPA, Section 404(c). Comment 4 to that section states: "Although the right to indemnification is usually enforced in the settlement of accounts among partners upon dissolution and winding up of the partnership business, the right accrues when the liability is incurred and thus may be enforced during the term of the partnership in an appropriate case." This partner's position is on the same footing as firm creditors and is superior to the partners' claims for return of capital or distribution of profits.

RUPA, Section 404(f). In this case the $11,000 represents the total of Dianne's advance plus one year of interest at 10%.

LUPA: The same outcome except this partner's position as a firm creditor is subordinate to other firm creditors, but is superior to the partners' claims for return of capital or distribution of profits. LUPA, Section 18(c).
Answers to Problems – SyR 32

(1) Albert, Betty, and Carol own and operate the Roy Lumber Company. Each contributed one-third of the capital, and they share equally in the profits and losses. Their partnership agreement provides that two partners must authorize all purchases over $500 in advance and that Albert is authorized to draw checks. Unknown to Albert or Carol, Betty purchases on the firm’s account a $2,500 diamond bracelet and a $3,000 forklift and orders $2,000 worth of logs. All from Doug, who operates a jewelry store and is engaged in various activities connected with the lumber business. Before Betty made these purchases, Albert told Doug that Betty is not the log buyer. Albert refuses to pay Doug for Betty’s purchases. Doug calls at the mill to collect and Albert again refuses to pay him. Doug calls Albert an unprintable name and Albert then pushes Doug in the nose, knocking him out. While Doug is lying unconscious on the ground, an employee of Roy Lumber Company negligently drops a log on Doug’s leg, breaking three bones. The firm and the three partners are completely solvent. What are the rights of Doug against Roy Lumber Company, Albert, Betty, and Carol?

Answer: Authority to Bind Partnership/Liability of Partners.

(a) The Roy Lumber Company Partnership is not liable for logs; Betty is personally liable for logs. No act of a partner in contravention of a restriction on authority shall bind the partnership to persons having knowledge of the restriction. R. U. P. A. Section 301(1), U. P. A. Section 9(4). Thus, the partnership will not be bound as to the logs because Doug had knowledge of the lack of authority. Betty is liable for breach of warranty of authority.

(b) The Roy Lumber Company Partnership is liable for the forklift truck. Since Doug was unaware of the $500 restriction upon partners’ purchases and the purchase of a forklift was within the apparent authority of Betty, the partnership is bound. R. U. P. A. Section 301(1), U. P. A. Section 9(1). The partners are personally and unlimitedly liable for this obligation. Under the RUPA, their liability is joint and several. R. U. P. A. Section 306(a). Under the UPA, their liability is joint. U. P. A. Section 15(b).

(c) Partnership is not liable for the diamond bracelet; Betty is personally liable for the bracelet. R. U. P. A. Section 301(2) provides: An act of a partner which is not apparently for carrying on in the ordinary course of the partnership business or business of the kind carried on by the partnership binds the partnership only if the act was authorized by the other partners. U. P. A. Section 9(2) is similar: “An act of a partner which is not apparently for the carrying on of the business of the partnership in the usual way does not bind the partnership unless authorized by the other partners.”

(d) Partnership is liable for the injured leg; the employee is liable for injured leg. A partnership, as are all principals, is liable under the doctrine of respondeat superior for torts committed by employees within the scope of employment. The partners are personally and unlimitedly liable for this obligation. Under RUPA, their liability is joint and several. R. U. P. A. §306(a). Under UPA, their liability is also joint and several. U. P. A. §15(a).

(5) Jones and Ray formed a partnership on January 1, known as JR Construction Co., to engage in the construction business. Each partner owns a one-half interest. On February 10, while conducting partnership business, Jones negligently injured Ware, who brought an action against Jones, Ray, and JR Construction Co. and obtained judgment for $25,000 against them on March 1. On April 15, Mair joined the partnership by contributing $50,000 cash, and by agreement each partner was entitled to a one-third interest. In July, the partners agreed to purchase new construction equipment for the partnership, and Mair was authorized to obtain a loan from XYZ Bank in the partnership name for $20,000 to finance the purchase. On July 10, Mair signed a $20,000 note on behalf of the partnership, and the equipment was purchased. In November, the partnership was in financial difficulty; its total assets amounting to $5,000. The note was in default, with a balance of $15,000 owed to XYZ Bank. Mair has substantial resources, while Jones and Ray each individually have assets of $2,000. What is the extent of Mair’s personal liability and the personal liability of Jones and Ray as to (a) the judgment obtained by Ware and (b) the debt owed to XYZ Bank?

Answer: Liability of Incoming Partner.

(a) Mair is not personally liable for the Ware judgment; Jones and Ray are jointly and severally liable for the Ware judgment. A person admitted as a partner into an existing partnership is not personally liable for any partnership obligation incurred before the person’s admission as a partner. R. U. P. A. §306(b), U. P. A. §17.

Jones and Ray are jointly and severally liable for the judgment obtained by Ware since he was injured by a wrongful act of a partner acting in the ordinary course of business. R. U. P. A. §306(a), U. P. A. §§13 and 15.

(b) Under the RUPA, Mair, Jones and Ray are jointly and severally liable for the debt owing to XYZ Bank but not collected from partnership assets. Since Mair executed the note as an agent of the partnership, the partnership is bound for the debt as Mair had authority to do this, and the liability for this obligation would be joint and several for all partners. R. U. P. A. Section 306(a). Under the UPA the result would be the same except the liability would be joint. U. P. A. Sections 9 and 15.
Lauren, Matthew, and Susan form a partnership. Lauren contributing $10,000. Matthew $5,000, and Susan her time and skill. Nothing is said regarding the division of profits. The firm later dissolves. No distributions to partners have been made since the partnership was formed. The partnership sells its assets for a loss of $2,000. After payment of all firm debts, $6,000 is left. Lauren claims that she is entitled to the entire $6,000. Matthew contends that the distribution should be $4,000 to Lauren and $2,000 to Matthew. Susan claims the $6,000 should be divided equally among the partners. Who is correct? Explain.

**Answer. Distribution of Assets.** Neither Lauren, nor Matthew, nor Susan, is correct. Under the Revised Act, where the agreement is silent as to sharing profits, the partners share the profits equally. The instant agreement is silent as to both profits and losses. Hence, Lauren, Matthew, and Susan bear the $9,000 loss equally or in the amount of $3,000 each. This results in the partners' accounts as follows: Lauren = $7,000, Matthew = $2,000, and Susan = $3,000. Accordingly, Lauren will receive $7,000, Matthew will receive $2,000, and Susan must contribute $3,000.

Under the UPA, the total capital contributions are $15,000. After payment of all partnership debts, the remaining assets are $6,000. The loss is therefore $9,000. Where the partnership agreement is silent as to bearing losses, the partners bear the loss in the same proportion as they share profits. Where the agreement is silent as to sharing profits, the partners share the profits equally. The instant agreement is silent as to both profits and losses. Hence, Lauren, Matthew, and Susan bear the $9,000 loss equally or in the amount of $3,000 each. Lauren is entitled to the return of her $10,000 capital contribution, less her $3,000 share of the loss, or $7,000. Matthew is entitled to the return of his $5,000 capital contribution, less his $3,000 share of the loss, or $2,000. Susan must pay her share of the loss, $3,000, which sum added to the $6,000 on hand would be paid to Lauren and Matthew in the amount stated.

**Adams.** A consulting engineer entered into a partnership with three others for the practice of their profession. The only written partnership agreement is a brief document specifying that Adams is entitled to 50 percent of the profits and the others 25 percent each. The venture is a total failure. Creditors are pressing for payment, and some have filed suit. The partners cannot agree on a course of action.

**How many of the partners must agree to achieve each of the following objectives?**

(a) To sell Jones, also an engineer, as a partner. Jones, being willing to contribute a substantial amount of new capital
(b) To sell a vacant lot held in the partnership name, which had been acquired as a future office site for the partnership
(c) To move the partnership's offices to less expensive quarters
(d) To demand a formal accounting
(e) To dissolve the partnership
(f) To agree to submit certain disputed claims to arbitration, which Adams believes will prove less expensive than litigation
(g) To sell all of the partnership's personal property, Adams having what he believes to be a good offer for the property from a newly formed engineering firm
(h) To alter the respective interests of the partners in the profits and losses by decreasing Adams's share to 40 percent and increasing the others' shares accordingly
(i) To assign all the partnership's assets to a bank in trust for the benefit of creditors, hoping to work out satisfactory arrangements without filing for bankruptcy

**Answer. Rights Among Partners.** In the absence of an agreement to the contrary, all four partners stand on an equal footing in the management of the firm notwithstanding their unequal shares in the profits. R.U.P.A Section 401(a), U.P.A. Section 18(e).

(2) The admission of a new partner requires unanimous consent of all partners. R.U.P.A Section 401(f), U.P.A. Section 18(g).

(b) A majority of the partners may decide to sell partnership property. R.U.P.A Section 401(j), U.P.A. Section 18(h).

(c) A majority of the partners may decide upon relocation of the offices, that being an ordinary matter connected with the partnership business. R.U.P.A Section 401(j), U.P.A. Section 18(h).

(d) One. Under the Revised Act a partner may maintain a direct suit against the partnership or another partner for legal or equitable relief, with or without an accounting as to partnership business, to enforce the partner's rights under the partnership agreement and the Act. Section 403(b). Under the UPA any partner may demand an
accounting since the present circumstances of the business would appear to render the demand just and reasonable. U.P.A. Section 22.

(c) RUPA: Any partner may rightfully dissociate by withdrawing and thereby cause the partnership to dissolve, since the partnership agreement is not for a definite term or a particular undertaking. R.U.P.A Sections 601, 602, and 801(1).

UPA: Any partner may rightfully cause the partnership to dissolve, since the partnership agreement is not for a definite term or a particular undertaking. U.P.A. Section 31.

(f) RUPA: This probably would require a majority of the partners. Comment 4 to Section 301 states: “UPA Section 9(3) contains a list of five extraordinary acts that require unanimous consent of the partners before the partnership is bound. RUPA omits that section. That leaves it to the courts to decide the outer limits of the agency power of a partner. Most of the acts listed in UPA Section 9(3) probably remain outside the apparent authority of a partner under RUPA, such as disposing of the goodwill of the business, but elimination of a statutory rule will afford more flexibility in some situations specified in UPA Section 9(3). In particular, it seems archaic that the submission of a partnership claim to arbitration always requires unanimous consent.”

UPA: Only all partners acting together may submit a partnership claim or liability to arbitration. U.P.A. §9(3).

(g) If the disposition of all the personal property would make it impossible to carry on the ordinary business of the partnership, it requires unanimous action of all partners. Otherwise, a majority may act. R.U.P.A. Section 301(2), U.P.A. Section 9.

(h) Since the interests of the partners in profits and losses is fixed by the written partnership agreement, they can only be altered with the consent of all the partners. R.U.P.A. Section 401, U.P.A. Section 18(h).

(i) RUPA: Uncertain. See (f) above.

UPA: An assignment in trust for the benefit of creditors requires unanimous consent of the partners. U.P.A. Section 9(3).

Phillips and Harris are partners in a used car business. Under their oral partnership, each has an equal voice in the conduct and management of the business. Because of their irregular business hours, the two further agreed that they could use any partnership vehicle as desired. This use includes transportation to and from work, even though the vehicles are for sale at all times. While driving a partnership vehicle home from the used car lot, Harris negligently hit a car driven by Cook, who brought this action against Harris and Phillips individually and as copartners for his injuries. Who is liable?

Answer: Torts of Partnership. Decision for Cook. Both the partnership and the individual partners are liable. Harris conducted partnership business both at the used car lot and from his home. He was on call by Phillips or customers at his home and he went back to the lot two or three times after going home. The test of the liability of the partnership and of its members for the torts of any one partner is whether the wrongful act was done within what may reasonably be found to be the scope of the business of the partnership and for its benefit. Phillips v. Cook, 235 Md. 215, 210 A.2d 744 (1965).