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Ohio Annotations to the Uniform Partnership Act

The Uniform Partnership Act became effective in Ohio September 14, 1949.¹ The purpose of this annotation is to correlate the pertinent Ohio cases decided under the case and statute law which existed before that date² with the sections of the Ohio General Code which constitute the Act. Only cases in the official reports have been noted. Citation of a case, without more, following a section number or subdivision symbol of the Code means that the law of that case is in substance that of the statutory provision referred to by the section number or subdivision symbol. Addition merely of a parenthetical statement following a citation indicates only that it was deemed necessary to call attention to a particular factor in the case. When no reference is made to a Code section or subdivision, this denotes that no cases pertinent to that section or subdivision of the Code have been found.³

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SEC. 8105-4 (2). *Morgenthaler v. Cohen*, 103 Ohio St. 328, 132 N.E. 730 (1921); *Feigley v. Whitaker*, 22 Ohio St. 606 (1872); *Main Cloak & Suit Co. v. Rosenbaum*, 42 Ohio App. 12, 181 N.E. 556 (1931); *see Aspinwall v. Williams*, 1 Ohio 84, 95 (1823).

(3). *Queen City Petroleum Products Co. v. Norwood-Hyde Park Bank & Trust Co.*, 49 Ohio App. 397, 197 N.E. 357 (1934).

SEC. 8105-6 (1). The Ohio definition is substantially similar. *Farmer's Insurance Co. v. Ross*, 29 Ohio St. 429, 431 (1876); *Aspinwall v. Williams*, 1 Ohio 84 (1823); *Herrmann v. Rohn*, 8 Ohio App. 303 (1917).

As a part of the general definition of partnerships, Ohio courts have mentioned the following elements: (1) mutual agency—*Union Savings & Loan Co. v. Cook*, 127 Ohio St. 26, 186 N.E. 728 (1933); *Goubeaux v. Krickenberg*, 126 Ohio St. 302, 185 N.E. 201 (1933); *Southern Ohio Public Service Co. v. Public Utilities Commission*, 115 Ohio St. 405, 154 N.E. 365 (1926);

¹ OHIO GEN. CODE §§ 8105-1 to 8105-43, 123 Ohio Laws 144. The following sections of the Ohio Code contain minor variations from the corresponding sections of the Uniform Partnership Act as adopted by the Commissioners on Uniform Laws: 8105-8 (3), 8105-25 (2) (e), 8105-37, 8105-25 (d).

² Research ended with page 206 of volume 152 of the Ohio Supreme Court Reports, and page 332 of volume 85 of the Ohio Appellate Reports.

³ For an excellent general discussion of the Ohio law as affected by the Act, see Mathews and Folkerth, *Ohio Partnership Law and the Uniform Partnership Act*, 9 OHIO ST. L.J. 616 (1948).

Harvey v. Childs & Potter, 28 Ohio St. 319 (1876); Beierla v. Hockenedel, 25 Ohio App. 186, 157 N.E. 573 (1927); (2) sharing profits and losses—see Harvey v. Childs & Potter, 28 Ohio St. 319, 323 (1876); (3) fiduciary relation—Yeoman v. Lasley, 40 Ohio St. 190 (1883). See also McFadden v. Leeka, 48 Ohio St. 513, 528, 28 N.E. 874, 878 (1891); Hulett v. Fairbanks, 40 Ohio St. 233, 244 (1883). The more recent cases have emphasized the mutual agency element.

Though the Act does not specifically mention oral partnerships, it has been recognized in Ohio that the partnership relation may be created by oral agreement. Furth v. Farkasch, 26 Ohio App. 258, 159 N.E. 142 (1927).

Prior to the enactment of OHIO GENERAL CODE § 8623-8, which provides that an Ohio corporation is possessed of the same *capacity* as natural persons, it had been held that a corporation could not be a member of a partnership. Merchant's National Bank v. Wehrmann, 69 Ohio St. 160, 68 N.E. 1004 (1903); Guerinck v. Alcott, 66 Ohio St. 94, 63 N.E. 714 (1902). The question has not been considered by the courts since enactment of § 8623-8. Reading § 8105-6 in conjunction with § 8105-2, wherein "person" is defined to include corporation, and with § 8623-8, it appears that a corporation can join a partnership. For a discussion of an interesting aspect of this problem, see Crawford, *May an Ohio Corporation Enter an Argentine Partnership?*, 13 U. of Cin. L. Rev. 559.

(2). Second Nat. Bank of Cincinnati v. Hall, 35 Ohio St. 158 (1878); Medill v. Collier, 16 Ohio St. 599 (1866); Wickham v. Farmer's Bank, 21 Ohio App. 182, 152 N.E. 763 (1925).

SEC. 8105-7 (1). Valentine v. Hickle, 39 Ohio St. 19 (1883); Second Nat. Bank of Cincinnati v. Hall, 35 Ohio St. 158 (1878) (shareholders in defective corporation).

(2). Union Savings & Loan Co. v. Cook, 127 Ohio St. 26, 186 N.E. 728 (1933).

(3). Southern Ohio Public Service v. Public Utilities Commission, 115 Ohio St. 405, 154 N.E. 365 (1926) (on authority of Harvey v. Childs & Potter, 28 Ohio St. 319 (1876), deemed agency relation also necessary); Coleman v. LaBounty Amusement Co., 21 Ohio App. 44, 153 N.E. 90 (1925) (gross receipts divided equally); see Wood v. Vallette, 7 Ohio St. 172, 179 (1857).

(4) No cases have been found which hold that sharing in the profits is or is not prima facie evidence of a partnership.

(a). Harvey v. Childs & Potter, 28 Ohio St. 319 (1876).

(b). For the view that receiving as wages an *interest* in the profits results in a partnership, while receiving as wages a sum of money *proportioned* to the profits does not, see *Wood v. Vallette*, 7 Ohio St. 172, 179 (1857). More recent cases (see comment under § 8105-6 (1), this annotation) have stressed the existence of the mutual agency element in determining the existence of a partnership, rather than the sharing of profits. Therefore, it is unlikely that the distinction drawn in *Wood v. Vallette* is valid today.

SEC. 8105-8 (1.) *Goepper v. Kinsinger*, 39 Ohio St. 429 (1883) (must be by way of capital contribution of a partner or by way of purchase with partnership funds). The partnership interest may be equitable. *Wade v. DeHart*, 26 Ohio App. 177, 159 N.E. 838 (1927).

(2). *Norwalk Nat. Bank v. Sawyer*, 38 Ohio St. 339 (1882).

(3). Prior to the adoption of this section, a partnership could not acquire legal title to real property in its firm name. *Rammelsberg v. Mitchell*, 29 Ohio St. 22 (1875). However, various devices were employed by the courts to effectuate the intent of the partners that real property be considered that of the partnership, or to protect the creditors of the partnership by enabling them to reach property which, although it did not stand in the partnership name, was actually partnership property: (1) partners considered as holding title in trust for partnership—*Page v. Thomas*, 43 Ohio St. 38, 1 N.E. 79 (1885); (2) third party considered as holding property in trust for partnership—*Wade v. DeHart*, 26 Ohio App. 177, 159 N.E. 838 (1927); (3) real estate considered converted into personalty—*Ludlow v. Cooper's Devises*, 4 Ohio St. 1 (1854); *Greene v. Greene*, 1 Ohio 535 (1824); see *Rammelsberg v. Mitchell*, 29 Ohio St. 22, 52 (1875); *Miller v. Proctor*, 20 Ohio St. 442, 448 (1870).

SEC. 8105-9 (1). Ohio has held that a partnership is bound by the unauthorized act of a partner if the person with whom he dealt was without knowledge of the partner's restricted authority and if the transaction was consistent with the business of the partnership. *Benninger v. Hess*, 41 Ohio St. 64 (1884); see *Harvey v. Childs & Potter*, 28 Ohio St. 319, 323 (1876); *Gano v. Samuel*, 14 Ohio 592, 601 (1846).

For cases developing generally partnership liability on principles of agency, see *Union Savings & Loan v. Cook*, 127 Ohio St. 26, 186 N.E. 728 (1933); *Southern Ohio Public Service Co.*

v. Public Utilities Commission, 115 Ohio St. 405, 154 N.E. 365 (1926); Meier & Co. v. First Nat. Bank, 55 Ohio St. 446, 45 N.E. 907 (1896); Harper v. McKinnis, 53 Ohio St. 434, 42 N.E. 251 (1895); Valentine v. Hickle, 39 Ohio St. 19 (1883); McKee v. Hamilton, 33 Ohio St. 7 (1877); Kleinhaus v. Generous, 25 Ohio St. 667 (1874); Gano v. Samuel, 14 Ohio 592 (1846).

(2). Morgenthaler v. Cohen, 103 Ohio St. 328, 132 N.E. 730 (1921) (transfer of all partnership assets); Thomas v. Pennrich, 28 Ohio St. 55 (1875); Heller v. Adelman, 50 Ohio App. 168, 197 N.E. 801 (1934) (accommodation note that was not for partnership purposes); Queen City Petroleum Products Co. v. Norwood-Hyde Park Bank & Trust Co., 49 Ohio App. 397, 197 N.E. 357 (1934); *see* Gano v. Samuel, 14 Ohio 592, 600 (1846); *see* Yeoman v. Lasley, 40 Ohio St. 190 (1883); Rianhard v. Hovey, 13 Ohio 300 (1844).

(3) (a). Holland v. Drake, 29 Ohio St. 441 (1876); qualified in Clafflin Co. v. Evans, 55 Ohio St. 183, 45 N.E. 3 (1896) (consent to assignment presumed given by non-resident partner absent from state).

(d). *See* McAlpin Co. v. Finsterwald, 57 Ohio St. 524, 543, 49 N.E. 784, 787 (1898), wherein the court recognized the rule expressed in this subsection but held it inapplicable in a collateral proceeding by one creditor to set aside the judgment in favor of a judgment creditor obtained on the confession of one partner only, and indicated that the partner who did not confess judgment must object, if he is to object at all, by way of defense in the action in which the judgment creditor receives his judgment. The court also indicated by way of dictum that consent of the other partners to confession by one partner may be presumed as in Clafflin Co. v. Evans, 55 Ohio St. 183, 45 N.E. 3 (1896). *See* McKee v. Bank of Mt. Pleasant, 7 Ohio 175 (1836).

(4). *See* Benninger v. Hess, 41 Ohio St. 64 (1884).

SEC. 8105-10 (1). *See* comment under § 8105-8 (3).

(2). *See* comment under § 8105-8 (3).

(3). Norwalk Nat. Bank v. Sawyer, 38 Ohio St. 339 (1882); Lewis v. Anderson, 20 Ohio St. 281 (1870) (holder of mortgage for pre-existing debt not entitled to protection as bona fide purchaser); Wade v. DeHart, 26 Ohio App. 177, 159 N.E. 838 (1927) (purchaser with knowledge considered trustee for benefit of partnership).

SEC. 8105-11. Benninger v. Hess, 41 Ohio St. 64 (1884); *see*

Crowell v. Western Reserve Bank, 3 Ohio St. 406, 414 (1854). The same result was reached where the admissions were made by a partner winding up the partnership after dissolution. Feigley v. Whitaker, 22 Ohio St. 606 (1872); Myers v. Standart, 11 Ohio St. 29 (1860).

SEC. 8105-12. Yoeman v. Lasley, 40 Ohio St. 190 (1883) (court ordered rescission where partner assisted in fraudulently inducing fellow partners to contract with third persons).

SEC. 8105-13. Tarlecka v. Morgan, 125 Ohio St. 319, 181 N.E. 450 (1932) (partnership liable though wrongful act not done in advancing firm's interest or producing profit for its benefit); Peekham Iron Co. v. Harper, 41 Ohio St. 100 (1884); see Beierla v. Hockenedel, 25 Ohio App. 186, 191, 157 N.E. 573, 574 (1927).

No cases have been found which considered the question of firm liability for penalties.

SEC. 8105-14 (a). Benninger v. Hess, 41 Ohio St. 64 (1884); Kleinhaus v. Generous, 25 Ohio St. 667 (1874).

(b). *In re* Liquidation of Exchange Bank of Bloomdale, 44 Ohio App. 385, 185 N.E. 848 (1933) (unincorporated bank).

SEC. 8105-15 (a). Goebel v. Hummel, 21 Ohio App. 486, 153 N.E. 223 (1926); see Tarlecka v. Morgan, 125 Ohio St. 319, 321, 181 N.E. 450, 451 (1932); Davis v. Gelhaus, 44 Ohio St. 69, 78, 4 N.E. 593, 598 (1886).

(b). Bazell v. Belcher, 31 Ohio St. 572 (1877); Simon v. Rudner, 43 Ohio App. 38, 182 N.E. 650 (1932); see First Nat. Bank v. Houtzer, 96 Ohio St. 404, 117 N.E. 383 (1917) (by contract, liability both joint and several); Moore v. Gano, 12 Ohio 301 (1843); see Choteau v. Raitt, 20 Ohio 132, 144 (1851).

SEC. 8105-16 (1) (a). Goepper v. Kinsinger, 39 Ohio St. 429 (1883); Speer v. Bishop, 24 Ohio St. 598 (1874); Reber & Kutz v. Columbus Mach. Mfg. Co., 12 Ohio St. 175 (1861); Main Cloak & Suit Co. v. Rosenbaum, 42 Ohio App. 12, 181 N.E. 556 (1931); accord, Wood v. Vallette, 7 Ohio St. 172 (1857); see Aspinwall v. Williams, 1 Ohio 84, 95 (1823); Daly v. Savage, 12 Ohio App. 471, 472 (1920). Ohio has held that a person seeking to hold another liable as a partner cannot rely on statements made to the former by persons who were complete strangers to the alleged partner, where there is no evidence that the alleged partner had authorized the making of the statements. Cook v. Slate Co., 36 Ohio St. 135 (1880); see Inglebright v. Hammond, 19 Ohio 337, 343 (1850).

SEC. 8105-18. The partners may, by agreement, determine their rights and duties as between themselves. *Doan v. Rogan*, 79 Ohio St. 372, 87 N.E. 263 (1909); *Buchwalter v. Clendenning*, 2 Ohio App. 139 (1913); *see Steigert v. Steigert*, 57 Ohio App. 255, 260, 13 N.E. 2d 583, 586 (1936).

(a). *See State ex rel. Squire v. Steck*, 132 Ohio St. 198, 204, 5 N.E. 2d 919, 922 (1937); *Wischmeyer v. Siebeneck*, 46 Ohio App. 486, 492, 189 N.E. 509, 511 (1933).

(b). *Gwin v. Sedley*, 5 Ohio St. 97, 101 (1855) (creditor may not set aside payment made to partner); *see McFadden v. Leeka*, 48 Ohio St. 513, 530, 28 N.E. 874, 879 (1891). Ohio has indicated that the partner must first seek an accounting before he may maintain an action for reimbursement. *See Kunneke v. Mapel*, 60 Ohio St. 1, 6, 53 N.E. 259, 261 (1899).

(f). Ohio cases prior to the Act have indicated in dicta that the surviving partner is not entitled to a reasonable compensation for his services in winding up partnership affairs. *See Dayton v. Bartlett*, 38 Ohio St. 357, 361 (1882); *Cameron v. Francisco*, 26 Ohio St. 190, 194 (1875). In the latter case, in which the survivor was under no obligation to continue the business, but did so at his own peril, it was held that if the representatives of the deceased partner elected to share in the profits for the period subsequent to the dissolution a reasonable allowance might be deducted as compensation to the survivor for his services. *But see Stidger v. Reynolds*, 10 Ohio 352, 354 (1841).

(g). *Channel v. Fassitt*, 16 Ohio 166 (1847).

(h). *See McFadden v. Leeka*, 48 Ohio St. 513, 529, 28 N.E. 874, 878 (1891).

SEC. 8105-20. *See Yeoman v. Lasley*, 40 Ohio St. 190, 200 (1883).

SEC. 8105-21 (1). *Reis v. Hellman*, 25 Ohio St. 180 (1874); *Eagle v. Bucher*, 6 Ohio St. 296 (1856); *Stidger v. Reynolds*, 10 Ohio 352 (1841); *see Gray v. Kerr*, 46 Ohio St. 652, 658, 23 N.E. 136, 138 (1889).

(2). *Dayton v. Bartlett*, 38 Ohio St. 357 (1882).

SEC. 8105-22 (a). *Eagle v. Bucher*, 6 Ohio St. 296 (1856).

(c). *See Oglesby v. Thompson*, 59 Ohio St. 60, 51 N.E. 878 (1898).

(d). It has been held that a partner is not entitled to an accounting when the transaction for which the accounting is sought is itself illegal. *Davis v. Gelhaus*, 44 Ohio St. 69, 4 N.E. 593

(1886); *Thatcher v. Meck*, 49 Ohio App. 92, 195 N.E. 254 (1934).

SEC. 8105-25 (1). See 7 UNIFORM LAWS ANNOTATED 144 for discussion of the term "tenant in partnership."

(2) (a). See *Nixon v. Nash*, 12 Ohio St. 647, 649 (1861); see *Alfele v. Wright*, 17 Ohio St. 238 (1867) (slander action decided on issue of partner's right to possession of partnership property).

(c). The Ohio cases do not speak of a "right in specific partnership property." A partner's interest in the firm's *tangible* property has been held liable to seizure upon execution by a creditor of an individual partner. *Nixon v. Nash*, 12 Ohio St. 647 (1861) (after levy and sale only *beneficial interest* of debtor-partner is acquired, which is partner's residuary share after partnership accounts are settled); *Sullins v. Burry*, 39 Ohio App. 556, 177 N.E. 378 (1930). *But cf.* *Myers v. Smith*, 29 Ohio St. 120 (1876) (*intangible* property); *Sutcliffe v. Dohrman*, 18 Ohio 181 (1849); *Place v. Sweetzer*, 16 Ohio 142 (1847).

Ohio has held that partners of an insolvent firm cannot claim any right under exemption laws as far as partnership property is concerned, after it has been seized in execution by partnership creditors, even though all the partners join in demanding the exemption, *Gaylord v. Imhoff*, 26 Ohio St. 317 (1875), and even though the partners are husband and wife, *Aultman v. Wilson*, 55 Ohio St. 138, 44 N.E. 1092 (1896) (vesting of partnership property in an assignee for benefit of creditors is legal equivalent of its seizure in execution).

(d). Ohio cases have reached inconsistent results as to the *rights* in real property which, on the death of a partner, vest in the surviving partner or legal representative.

One case held that on the death of a partner legal title to partnership property vested in the surviving partner for the purpose of winding up the partnership affairs. *Kreis v. Gorton*, 23 Ohio St. 468 (1872) (not stated whether personalty or realty); see *McGrath v. Cowen*, 57 Ohio St. 385, 401, 49 N.E. 338, 340 (1898); *Lockwood v. Mitchell*, 7 Ohio St. 388, 410 (1857). However, where the executor of the estate of the last surviving partner completes the winding up of the partnership, he has been held to be entitled to compensation for his services in so doing, for the reason that, on the death of a partner, partnership property is held in tenancy in common, and does not vest solely in the

surviving partner, although he does have the sole right of possession to wind up the business. *Dayton v. Bartlett*, 38 Ohio St. 357 (1882). Where the widow of a deceased partner was both his executrix and his devisee, and refused the valuation under OHIO GENERAL CODE § 8089, she was held to be entitled to partition of partnership property where rights of creditors were not involved, since the devisee and surviving partner hold as tenants in common. *Weitz v. Weitz*, 15 Ohio App. 134 (1921); *cf. Greene v. Graham*, 5 Ohio 264 (1831).

(*e*). *Ludlow v. Cooper's Devises*, 4 Ohio St. 1 (1854) (realty considered converted into personalty by specific partnership agreement, and as such, in equity, held to belong to administrators of deceased partner and not to heirs). *But cf. Rammelsberg v. Mitchell*, 29 Ohio St. 22 (1875); *Weitz v. Weitz*, 15 Ohio App. 134 (1921). *But see Sumner v. Hampson*, 8 Ohio 328, 365 (1838); *Greene v. Greene*, 1 Ohio 535, 546 (1824).

SEC. 8105-26. *See Rodgers v. Meranda*, 7 Ohio St. 179, 182 (1857).

SEC. 8105-27 (1). Ohio by dictum prior to the Act has indicated that assignment by a partner of his interest does cause a dissolution. *See Miller v. Estill*, 5 Ohio St. 508, 519 (1856).

SEC. 8105-28 (1). Prior to the enactment of this section, there was no provision in Ohio for subjecting a partner's interest to a charging order. See discussion under § 8105-25 (2) (c) for the procedure previously employed by creditors of individual partners to reach partnership property.

See comment under § 8105-41 (2), and § 8105-25 (2) (c) as to a partner's right under the exemption laws.

SEC. 8105-30. *See Dayton v. Bartlett*, 38 Ohio St. 357, 361 (1882); *Myers v. Standart*, 11 Ohio St. 29, 40 (1860); *see Bank v. Green*, 40 Ohio St. 431 (1884); *Gardner v. Conn*, 34 Ohio St. 187 (1877).

SEC. 8105-31 (1) (*a*). *Gray v. Kerr*, 46 Ohio St. 652, 23 N.E. 136 (1889); *see Horsey v. Heath*, 5 Ohio 353, 357 (1832).

(*b*). *Eagle v. Bucher*, 6 Ohio St. 295 (1856) (must be communicated to the other partner); *see Snyder Mfg. Co. v. Snyder*, 54 Ohio St. 86, 95, 43 N.E. 325, 328 (1896).

(*c*). *Scott v. Clark*, 1 Ohio St. 382 (1853); *see Bettinger v. Goebel*, 4 Ohio App. 362, 365 (1915).

(4) *McGrath v. Cowen*, 57 Ohio St. 385, 49 N.E. 338 (1898); *Pater v. Schumaker*, 21 Ohio App. 528, 153 N.E. 230

(1926); *see* Nahas v. George, 85 Ohio App. 328 (1949); *In re* Gurnea, 111 Ohio St. 715, 719, 146 N.E. 308, 309 (1924).

In addition, Ohio has held that a complete assignment of assets to firm creditors causes dissolution. *Clafflin Co. v. Evans*, 55 Ohio St. 183, 45 N.E. 3 (1896).

SEC. 8105-32 (1) (d). *Durbin v. Barber*, 14 Ohio 311 (1846).

SEC. 8105-33 (1) (a). *Bank v. Green*, 40 Ohio St. 431 (1884); *Feigley v. Whitaker*, 22 Ohio St. 606 (1872).

(b). *See* cases cited under § 8105-33 (1) (a).

SEC. 8105-34. No specific reference to this problem is made in the Ohio cases. The following cases deal generally with the right of partners to contribution from co-partners after dissolution: *Kunneke v. Mapel*, 60 Ohio St. 1, 5, 53 N.E. 259, 261 (1899) (dictum indicated accounting required before court will order contribution); *McFadden v. Leeka*, 48 Ohio St. 513, 532, 28 N.E. 874, 880 (1891) (liability must result from acts within the partner's authority); *Gardner v. Conn*, 34 Ohio St. 187, 193 (1887) (partner properly paying partnership debt in winding up entitled to contribution).

SEC. 8105-35 (1) (a). *Feigley v. Whitaker*, 22 Ohio St. 606 (1872); *see* *Gardner v. Conn*, 34 Ohio St. 187, 192 (1877); *see* *Kerper v. Wood*, 48 Ohio St. 613, 29 N.E. 501. (1891).

(b) (I). *Myers v. Standart*, 11 Ohio St. 29 (1860). *But cf.* *Middletown Lumber v. Martin*, 10 Ohio App. 188 (1918) (renewal note given after dissolution and covering both pre-dissolution and post-dissolution debts held divisible).

(II). *See* *Palmer v. Dodge*, 4 Ohio St. 21, 29 (1854).

(4). *Speer v. Bishop*, 24 Ohio St. 598 (1874)) (retiring partner, though he had listed notice of dissolution in newspaper, held liable to subsequent firm creditor where he permitted his name to be used as part of the firm's name after withdrawing from the partnership).

SEC. 8105-36 (1). *Rawson v. Taylor*, 30 Ohio St. 389 (1876); *Miller v. Estill*, 5 Ohio St. 508 (1856); *see* *Ross v. Couden*, 22 Ohio App. 330, 335, 154 N.E. 527, 528 (1926).

(2). *Reed v. Ramey*, 82 Ohio App. 171, 80 N.E.2d 250 (1947); *Schooley v. Wilker*, 33 Ohio App. 462, 169 N.E. 829 (1929); *see* *Rawson v. Taylor*, 30 Ohio St. 389, 400 (1876).

(3). The Ohio cases have dealt with the question whether

obligations accepted by a creditor from a partner continuing the business, for partnership debts owing to the creditor prior to dissolution, were accepted in discharge of the retiring partner's liability. *Chase v. Brundage*, 58 Ohio St. 517, 51 N.E. 31 (1898) (creditor's acceptance of new certificates of deposit relieved retiring partner of liability); *Bank v. Green*, 40 Ohio St. 431 (1884) (agreement to release may be implied from conduct of parties); *Leach v. Church*, 15 Ohio St. 169 (1864) (agreement to release must be clearly and affirmatively shown).

(4). *Horsey v. Heath*, 5 Ohio 353 (1832).

SEC. 8105-37 (1). *Dayton v. Bartlett*, 38 Ohio St. 357 (1882) (legal representative); see *Palmer v. Dodge*, 4 Ohio St. 21, 29 (1854). *But cf.* *Anderson v. Nat. Fire Insurance Co.*, 22 Ohio App. 209, 154 N.E. 51 (1926) (where partner does not continue the business after dissolution, the receiver of the partnership is the only proper party to bring an action on behalf of the firm).

See *Nahas v. George*, 85 Ohio App. 328 (1949) (procedure prescribed by §§ 8085 to 8097, whereby surviving partner winds up the partnership business, is mandatory).

SEC. 8105-38 (1). See *Miller v. Estill*, 5 Ohio St. 508, 516 (1856).

(2) (a) (II). See *Vance v. Blair*, 18 Ohio 532, 533 (1849). Ohio has held that where the partnership has been wrongfully dissolved by breach of the partnership contract, the innocent partner, having obtained winding up, cannot thereafter maintain an action for breach of the partnership agreement, but must include damages for the breach in his claim for settlement in the winding up action. *Cockley v. Brucker*, 54 Ohio St. 214, 44 N.E. 590 (1896).

SEC. 8105-40 (b) (1). (No cases have been found in which partnership creditors and partners competed for the assets of the partnership.) See *Page v. Thomas*, 43 Ohio St. 38, 42, 1 N.E. 79, 82 (1885); *Norwalk Nat. Bank v. Sawyer*, 38 Ohio St. 339, 343 (1882) (one who became a firm creditor after partner mortgaged his interest in partnership realty to secure a personal debt entitled to priority over mortgagee); *Nixon v. Nash*, 12 Ohio St. 647, 649 (1861); *Rodgers v. Meranda*, 7 Ohio St. 179, 181 (1857); *Miller v. Estill*, 5 Ohio St. 508, 519 (1856) (partners cannot assign firm property for benefit of individual creditors to exclusion of firm creditors); see *Second Nat. Bank v. Hyder*, 29 Ohio App. 357, 163 N.E. 587 (1928) (claim of partner for

capital and advances given priority over claim of individual creditor of co-partner).

(d). *Rianhard v. Hovey*, 13 Ohio 300 (1844). See case under (f).

(f). *Gardner v. Conn*, 34 Ohio St. 187 (1877) (effect of insolvency of some but not all partners not in issue).

(h). *Meier & Co. v. First Nat. Bank*, 55 Ohio St. 446, 45 N.E. 907 (1896) (where firm creditor recovered judgment against maker-partners on a note, this did not extinguish partnership liability nor exclude the creditor from participating in distribution of partnership property along with other firm creditors); *Norwalk Nat. Bank v. Sawyer*, 38 Ohio St. 339 (1882) (one who became firm creditor after individual partner mortgaged his interest in partnership realty, given priority over mortgagee); *Sigler v. Knox County Bank*, 8 Ohio St. 511 (1858) (firm creditors may not set aside payment by the partnership, from partnership assets, of an individual debt of one of the partners, when the payment had been agreed to in advance by all the partners in good faith); *Miller v. Estill*, 5 Ohio St. 508 (1856); *Second Nat. Bank v. Hyder*, 29 Ohio App. 357, 163 N.E. 587 (1928) (co-partner given priority over individual creditor of partner); see *Brown v. Brown*, 107 Ohio St. 228, 232, 140 N.E. 754, 755 (1923); *Miller v. Proctor & Anderson*, 20 Ohio St. 442, 446 (1870); *Rodgers v. Meranda*, 7 Ohio St. 179, 194 (1857) (creditor of individual partner shares equally with partnership creditors in that part of partnership assets which had been advanced to partnership by that partner to defeat his individual creditors). *But cf.* *State ex rel. Squire v. Steck*, 132 Ohio St. 198, 5 N.E.2d 919 (1937) (by statute, depositors of unincorporated bank share equally with personal creditors); *Brock v. Bateman*, 25 Ohio St. 609 (1874) (firm creditors compete equally with individual creditors in the personal estate of the partners where there are no partnership assets for distribution to firm creditors); *Grosvenor & Co. v. Austin*, 6 Ohio 104 (1833) (same).

SEC. 8105-41 (2). Ohio has held that the person continuing the business may assert his statutory exemptions against a creditor of the dissolved partnership. *Mortley v. Flanagan*, 38 Ohio St. 401 (1882). However, this rule was not applied where the partners did not act in good faith. *Casci v. Evans*, 21 Ohio App. 288, 152 N.E. 764 (1921); see *Pendleton v. Foley*, 21 Ohio App. 118, 123, 152 N.E. 778, 779 (1925).

SEC. 8105-42. *See* Cameron v. Francisco, 26 Ohio St. 190, 194 (1875) (representatives of deceased partner may elect to share in the profits).

SEC. 8105-43. Gray v. Kerr, 46 Ohio St. 652, 23 N.E. 136 (1889).

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* This annotation is based in part upon research by these former students of the School of Law: Jordan C. Band, Iona Caldwell, Eileen Foley, Carter Irvin, Harry Kottler and Bettyanne Meyer.