In the law of partnership the element of contract to form a partnership is fundamental and the usual test is whether the parties intended in a given transaction to become partners. A mere joint adventure does not necessarily constitute a partnership. Sander v. Newman, 174 W 331, 161 NW 622.

Persons doing business under a title that was apparently a corporate name, pursuant to a trust agreement relieving them from personal liability, but without being incorporated in fact, and not holding themselves out as operating under that agreement, were individually liable as partners. Hayes M. T. W. Co. v. Wolf, 175 W 501, 186 NW 512.

There is a distinction between a partnership and a joint adventure. Hayton v. Appleton M. Co. 179 W 597, 192 NW 188.

At common law, husband and wife could not be partners because of her lack of capacity to enter into a contract, but under 6.015, Stats. 1969, a married woman may enter into a contract of partnership with her husband. Sparks v. Kuss, 166 W 757, 216 NW 529, 216 NW 306.

A group of farmers joining in the construction of a power line to obtain electric current did not constitute a partnership and they were not liable individually on a note executed by one acting as treasurer for the group. Smith v. Starkey, 203 W 56, 233 NW 576.

A partnership or joint adventure does not usually exist between an owner of a farm and a tenant, who has undertaken to work the farm on shares and who is an independent operator compensating the owner for the use of the farm in shares of the crop instead of money rentals. Schieker v. Krier, 218 W 376, 261 NW 413.

What the parties to an agreement call themselves is not conclusive on the question of the existence of a partnership. Montello Granite Co. v. Industrial Comm. 227 W 170, 278 NW 301.

Under 123.01 et seq., a partnership is an association of 2 or more persons to carry on "as co-owners" a business for profit and all partners have "equal rights in the management" and conduct of the partnership business. That a wife does not share in the management and control of the business and contributes no additional service, where the husband acts as a partner, did not constitute a partnership and they were not liable individually on a note executed by one acting as treasurer for the group. Smith v. Starkey, 203 W 56, 233 NW 576.

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muted only such single question nor for hav­ing defined partnership to the jury according to 123.08 (1), although a series of questions to discover what agreement had been made for the plaintiff's compensation, accompanied by appropriate instructions, might have pre­­sented the real issue better than the single question submitted. Ernst v. Ernst, 259 W 495, 49 NW (2d) 427.

178.04 History: 1915 c. 358; Stats. 1915 s. 1724m-4; 1923 c. 291 s. 3; Stats. 1923 s. 123.04; 1967 c. 92 ss. 14, 22; Stats. 1967 s. 178.04.

An agreement between 2 distinct partners­­ships prescribing the functions of each and the amount of capital to be furnished by each in a joint enterprise, and providing for a divi­sion between them of the profits and losses, created a partnership under secs. 1724m-1 et seq., Stats. 1915. A partnership has no entity distinct and apart from the persons who com­­posed it. Westby v. Beckedal, 172 W 114, 178 NW 451.

178.05 History: 1915 c. 358; Stats. 1915 s. 1724m-5; 1923 c. 291 s. 3; Stats. 1923 s. 123.05; 1967 c. 92 s. 16; Stats. 1967 s. 178.05.

Title to a mill property consisting both of real estate and person­ality, belonging to a partnership, is of a different class and with characteristics quite distinct from that of title to property owned by individuals. Mate­son v. Wagstad, 188 W 565, 224 NW 737.

178.06 History: 1915 c. 358; Stats. 1915 s. 1724m-6; 1923 c. 291 s. 3; Stats. 1923 s. 123.06; 1967 c. 92 s. 16; Stats. 1967 s. 178.06.

See note to 113.06, citing Estate of Bloomer, 2 W (2d) 267, 97 NW (2d) 531.

178.07 History: 1915 c. 358; Stats. 1915 s. 1724m-7; 1923 c. 291 s. 3; Stats. 1923 s. 123.07; 1967 c. 92 ss. 16, 22; Stats. 1967 s. 178.07.

178.08 History: 1915 c. 358; Stats. 1915 s. 1724m-8; 1923 c. 291 s. 3; Stats. 1923 s. 123.08; 1967 c. 92 s. 16; Stats. 1967 s. 178.08.

178.09 History: 1915 c. 358; Stats. 1915 s. 1724m-9; 1923 c. 291 s. 3; Stats. 1923 s. 123.09; 1967 c. 92 s. 16; Stats. 1967 s. 178.09.

178.10 History: 1915 c. 358; Stats. 1915 s. 1724m-10; 1923 c. 291 s. 3; Stats. 1923 s. 123.10; 1967 c. 92 s. 16; Stats. 1967 s. 178.10.

178.11 History: 1915 c. 358; Stats. 1915 s. 1724m-11; 1923 c. 291 s. 3; Stats. 1923 s. 123.11; 1967 c. 92 s. 16; Stats. 1967 s. 178.11.

178.12 History: 1915 c. 358; Stats. 1915 s. 1724m-12; 1923 c. 291 s. 3; Stats. 1923 s. 123.12; 1967 c. 92 ss. 16, 22; Stats. 1967 s. 178.12.

The nature of a partner's liability is joint and several. Stangarone v. Jacobs, 185 W 20, 205 NW 316.

178.13 History: 1915 c. 358; Stats. 1915 s. 1724m-13; 1923 c. 291 s. 3; Stats. 1923 s. 123.13; 1967 c. 92 s. 16; Stats. 1967 s. 178.13.

An ostensible partnership, when relied on, imposes the same obligations to third persons as an actual partnership. Consequently a part­ner was bound by all the transactions of his ostensible partner with the bank up to time he notified the bank that he would no longer be responsible; such notification relieved him from liability on his copartner's new notes and renewal notes executed thereafter, but not on notes outstanding prior to such notification. Heindel v. Brazil, 369 W 373, 245 NW 679.

The liability of the nonpartner in such case being based on estoppel, it is essential to the cause of action that the party asserting the liability must have been induced by the mis­leading appearance to change his position to his det­riment. Wisconsin T. Co. v. Lehmann, 274 W 531, 60 NW (2d) 367.

In an action involving an issue of the exist­ence of a partnership and of partnership lia­bility, statements made previous to the trial by one of the alleged partners would not be admissible against one who denied that he was a member of the partnership and who was not present when the statements were made. The doctrine of estoppel does not operate against one unless he has done something to induce another to change his position to his preju­dice. Active Co. v. State, 10 W (2d) 340, 103 NW (2d) 68.
Personal property and consists of his share of the profits and surplus. Mattson v. Wagstad, 228 F 538.

A partner can recover interest on his interest from the date of sale where the selling partner refused to account. Thompson v. Beth, 14 W (2d) 271, 111 NW (2d) 794.

The concept of a "continuing partnership". 48 MLR 253.

A partnership creditor could file a claim to separate debts if the estate were insufficient to pay all partnership debts, but 123.31 (4) would give priority to separate debts if the estate were insufficient to pay both. Estate of Bloomer, 2 W (5d) 623, 97 NW (2d) 460.

Questions arising in an action for a partnership accounting are discussed in Caveney v. Caveney, 234 W 637, 291 NW 818.

A continuing partnership and his taking of the property in trust for the partnership, and the net avails of the pits belonged to the partnership, and the net avails received by the managing partner must be restored to the partnership. Cavey v. Cavey, 234 W 637, 291 NW 818.

The bankruptcy of one partner, the dissolution of the partnership by the remaining partners by their execution of a note in renewal of the original note signed by all the partners, did not operate to discharge the remaining partners from the original liability or to release the guarantor on the original note, within the provisions of 123.28 (9) and 123.31 (3) and (3). National Bank of La Crosse v. Funk, 216 W 412, 256 NW 786.

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The right to an accounting for a deceased partner’s interest as against a surviving partner accrues to the administrator, the legal representative of the deceased. Mattson v. Wagstad, 183 W 566, 206 NW 965.

A partner cannot compel an accounting where the partnership was organized for the purpose of conducting a lawful business in an unlawful manner. Moskowki v. Bitter, 7 W 367, 96 NW (2d) 449.

CHAPTER 179.

Uniform Limited Partnership Act.

Editor’s Note: For foreign decisions construing the “Uniform Limited Partnership Act,” consult Uniform Laws Annotated.