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## The Partner's Right of Dissolution

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Bureau of Labor Statistics are used as well.<sup>25</sup> Once the value of the future loss is determined, it becomes merely a matter of mathematical calculation to compute the lump sum award. One court has even used the inflation factor without allowing any reduction for present value.<sup>26</sup>

The preferable method of approaching the problem is taken by those courts which presume conclusively that the effects of future inflation will offset any present value reduction; therefore, no adjustment whatever is made in the gross amount awarded for future damages.<sup>27</sup> This method has the advantage of simplicity, and, by considering both present value and future inflation, avoids subjecting either party to the full brunt of the vagaries of economic fluctuations. However, whichever method is used, it seems that a consideration of the inflation factor is preferable to no consideration at all.

*William J. Knight*

#### THE PARTNER'S RIGHT OF DISSOLUTION

Two brothers entered into a partnership agreement which provided that the partnership would "terminate upon the death of either party." When one brother became disenchanted with the business, he petitioned for dissolution, claiming that the agreement created a partnership of unlimited duration which could be dissolved unilaterally at any time. Reversing both lower courts, the Louisiana supreme court agreed with the plaintiff's contention and *held* that in the absence of bad faith, a partnership which is terminable at death may be dissolved of right at any reasonable time. *Stone v. Stone*, 292 So.

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witness' computation of loss of future earnings including 5% yearly increase in wages because of future inflation, based on expert's computation of the past history of inflation).

25. *Gowdy v. United States*, 271 F. Supp. 733 (W.D. Mich. 1967) (expert testimony in personal injury action using data from the Bureau of Labor Statistics). *Cf. Sadler v. Wagner*, 5 Wash. App. 77, 486 P.2d 330 (1971) (dicta in personal injury suit noting that it is proper to admit "authoritative tables" into evidence, though giving no indication as to what court would consider an "authoritative table"). *But see Pierce v. New York Cent. R.R.*, 304 F. Supp. 44 (W.D. Mich. 1969) (although noting statistics from the Bureau of Labor Statistics, the court used an arbitrary 5% figure).

26. *Scruggs v. Chesapeake & Ohio Ry.*, 320 F. Supp. 1248 (W.D. Va. 1970).

27. *Beaulieu v. Elliott*, 434 P.2d 665 (Alas. 1967) (court presumed inflation was "here to stay," and felt that future inflation would offset a present value reduction); *Schnebly v. Baker*, 217 N.W.2d 708 (Iowa 1974) (evidence presented by expert witness tended to show that a present value reduction would be offset by future inflationary increases).

2d 686 (La. 1974).

French theory views partnership as a reciprocal contract of mandate<sup>1</sup> which suggests a fiduciary relationship between the partners. Likewise, at common law, a partnership has been characterized as a legal relationship which implies knowledge of and confidence in the personal character, skill and ability of the associates, with each partner entitled to rely on the personal cooperation, advice and aid of the other partners in all partnership endeavors.<sup>2</sup> Therefore, the freedom of each associate to withdraw goes to the very nature of the agreement and is the foundation of the judicial and legislative tendency to favor the partner's right to dissolve at will.<sup>3</sup> Under the Uniform Partnership Act,<sup>4</sup> a partnership may be dissolved at will by any partner without a breach of the agreement if the partnership contract is silent as to duration.<sup>5</sup> Even when a term is fixed in the articles, a partnership may still be dissolved at the will of any partner, although the partner dissolving subjects himself to liability for damages for breach of contract.<sup>6</sup>

In Louisiana, a partnership may be entered into with or without a limitation on its duration.<sup>7</sup> If there is no stipulation in the articles as to duration, it is presumed that the partnership is intended to continue until the death of one of the partners,<sup>8</sup> except that any

1. J. STORY, COMMENTARIES ON THE LAW OF PARTNERSHIP § 1, at 2 & note 1 (1841), quoting Pothier: "Contractus societatis, non secus ac contractus mandati."

2. J. STORY, COMMENTARIES ON THE LAW OF PARTNERSHIP § 195, at 291 (1841).

3. See Comment, 45 TUL. L. REV. 389, 394 (1971).

4. The Uniform Partnership Act was drafted by the Conference of Commissioners on Uniform State Laws in 1914, and has been adopted by 44 jurisdictions. *Explanation to 6 U.L.A. UNIFORM PARTNERSHIP ACT, UNIFORM LIMITED PARTNERSHIP ACT at III* (1969).

5. UNIFORM PARTNERSHIP ACT § 31(1)(b) provides in pertinent part: "Dissolution is caused without violation of the agreement between the partners, by the express will of any partner when no definite term or particular undertaking is specified. . . ."

6. *Id.* § 31(2) provides in pertinent part: "Dissolution is caused: In contravention of the agreement between the partners, where the circumstances do not permit a dissolution under any other provision of this section, by the express will of any partner at any time. . . ." The party dissolving the partnership in this manner subjects himself to damages as provided in UNIFORM PARTNERSHIP ACT § 38(2). See also *Solomon v. Kirkwood*, 55 Mich. 256, 259, 21 N.W. 336, 337 (1884): "The right of a partner to dissolve, it is said, 'is a right inseparably incident to every partnership. There can be no such thing as an indissoluble partnership'. . . ."

7. LA. CIV. CODE art. 2854: "If there has been no agreement respecting the time the partnership is to last, it is supposed to have been entered into for the whole time of the life of the partners, under the modifications mentioned in article 2884, or if the partnership be entered into for some affair the duration of which is limited, for the whole time such affair is to last."

8. LA. CIV. CODE art. 2880: "Every partnership ends of right by the death of one of the partners, unless an agreement has been made to the contrary." See also Cham-

partner may dissolve the concern by notifying his copartners that he no longer wants to continue in the enterprise.<sup>9</sup> When a term for the partnership's duration has been established, article 2887 of the Louisiana Civil Code allows dissolution before the end of the term by less than all of the partners only upon a showing of "just cause."<sup>10</sup> There is "just cause" for dissolution "when one or more of the partners fail in their obligations, or when an habitual infirmity prevents him from devoting himself to the affairs of the partnership, which require his presence or his personal attendance."<sup>11</sup> Louisiana courts have required a definitive showing of "just cause" and have refused to allow dissolution of a partnership of limited duration by the whim of a partner, as would suffice to dissolve a partnership of unlimited duration.<sup>12</sup>

Thus, the determination of whether a partnership is of limited duration not only controls the association's term of existence, but is

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*pagne v. Keen*, 189 La. 681, 80 So. 485 (1938); *Mathison v. Field*, 3 Rob. 44, 47 (La. 1842). *Accord*, UNIFORM PARTNERSHIP ACT § 31(4).

9. See LA. CIV. CODE art. 2884. The only conditions placed by article 2884 on the right to dissolve is that the renunciation be *bona fide* and seasonable. See LA. CIV. CODE art. 2885: "The renunciation is not *bona fide* when the partner renounces for the purpose of appropriating to himself the profits which the partners expected to receive from the partnership." See also LA. CIV. CODE art. 2886: "The renunciation is made unseasonably, if it be made at the time when things are no longer entire, and when the interest of the partnership requires that its dissolution be postponed. The common interest of the partnership is considered, and not the interest of the partner who opposes the renunciation."

10. If the partners agree to enter into a partnership for a limited term, the partners desiring dissolution will have the burden of showing "just cause" before dissolution will be decreed. See LA. CIV. CODE art. 2887.

11. LA. CIV. CODE art. 2888. The Code does not interpret the term "just cause" but leaves that question for the court to determine in each case. La. Civ. Code art. 58 (1808) provided: "The legitimacy of said and other like causes depends on circumstances, and in cases of controversy, ought to be left to the prudence of arbitrators and judges." See also CODE NAPOLEON art. 1871 (1804). Although the language was deleted from the corresponding article in the Codes of 1825 and 1870, there seems to have been a judicial reinstatement by the Louisiana supreme court in *Breaux v. LeBlanc*, 50 La. Ann. 228, 23 So. 281 (1898). Planiol states that the enumeration of causes for dissolution in the corresponding French article is merely illustrative. 2 PLANIOL, CIVIL LAW TREATISE pt. 2, no. 1976 at 176 (11th ed. La. St. L. Inst. transl. 1959). For examples of "just cause" see POTHIER, TREATISE ON THE CONTRACT OF PARTNERSHIP 152 (1854).

12. "Just cause" has been found where one partner proved an active violation of the contract when he was denied free access to the firm's books. *Bruce v. Ross*, 18 La. 341 (1841). See also *Hart v. McDonald*, 52 La. Ann. 1686, 28 So. 169 (1900) (gross underestimation of time and money necessary to make partnership viable); *Breaux v. LeBlanc*, 50 La. Ann. 228, 23 So. 281 (1898) (failure to furnish proportionate share of funds to partnership). *But see Novick v. Miller*, 222 La. 469, 62 So. 2d 645 (1953) (trivial departure from duty not "just cause").

also dispositive of the issue of the partners' right to dissolve at will. While the Louisiana Civil Code specifies the requisites for dissolving a partnership of limited or unlimited duration, it fails to indicate how to characterize a partnership which is to "terminate on the death of any partner."

In the instant case, the court's decision that the partnership agreement creates a partnership of unlimited duration was reached by interpreting the agreement as a confirmation of the provisions of the Civil Code that state that a partnership continues for the duration of the life of the partners;<sup>13</sup> thus, no limitation had been placed on the partnership's duration. In addition, the court stated that the stipulation for a limited duration must be a clear statement revealing the intent of the partners, with ambiguities to be construed in favor of finding a partnership of unlimited duration.<sup>14</sup> Emphasizing that partnership is founded on mutual trust and confidence, the court reasoned that when the relationship of the partners is no longer characterized by these qualities, it should be terminable at will, in the absence of a specific indication of a contrary intent.<sup>15</sup>

The court's conclusion seems to be bottomed on sound reasoning. Because the life of the partnership ordinarily ends as a matter of law at the death of either partner, it would be anomalous to hold that the partners intended to restrict the normal life span of a partnership merely by stipulating that the association will terminate upon the death of either partner. Such a clause was correctly viewed by the courts as simply a recitation of a "legal truism,"<sup>16</sup> rather than an attempt to provide a limitation of time.

The effect of *Stone* upon the immediate parties was to enable the plaintiff partner to dissolve the partnership of right and thereby to avoid an arbitration clause in the articles of partnership;<sup>17</sup> its larger

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13. See LA. CIV. CODE art. 2880, quoted at note 8 *supra*.

14. *Stone v. Stone*, 292 So. 2d 686, 691 (La. 1974).

15. *Id.*

16. *Stone v. Stone*, 281 So. 2d 177, 181 n.1 (La. App. 4th Cir. 1973) (Redmann, J., dissenting).

17. As a result of this holding, the court overruled the defendant's exception of prematurity. The defendant had based the exception on the existence of an arbitration clause in the contract which provided: "If there should ever arise any dispute between Lawrence A. Stone, II and Langdon Stone over any matter pertaining to the operation of the partnership, the dispute shall be settled under and in accordance with the provisions of the Louisiana Arbitration Act . . ." *Stone v. Stone*, 292 So. 2d 686, 689 (La. 1974). The supreme court held that the arbitration clause of the partnership agreement "did not include within its scope the right of a partner, unqualified under the present facts, to dissolve a partnership of indefinite duration." *Id.* at 692. See LA. R.S. 9:4201 (1950), which requires arbitration except when legal grounds exist to dissolve the contract. See also M. DOMEKE, *THE LAW AND PRACTICE OF COMMERCIAL*

impact will be to make the partnership a more viable form of conducting business in Louisiana in the future. In view of the solidary liability of commercial partners,<sup>18</sup> it is important that a partner have the right to dissolve at will in order to protect his investment. The court's sympathetic attitude toward the right of dissolution revealed by its construction of the articles in the instant case will encourage persons surveying possible forms of association to enter into partnership. In addition, much needed arbitration clauses will be more widely used because a partner no longer need fear losing his right to dissolve at will unless the partnership agreement clearly fixes a limited term of duration.

The court in *Stone* restricted its holding somewhat by noting that the stipulation in the agreement that the partnership would "terminate upon the death of either partner" was *not of itself* sufficient to constitute a partnership of limited duration, "at least in the absence of further language instancing such intent."<sup>19</sup> The narrow holding leaves open the possibility that a partnership of limited duration may be created even though designed to be dissolved on the death of a partner. For instance, a statement in the partnership articles that the partnership is to *endure* until the death of any partner may create a partnership of limited duration.<sup>20</sup> In contrast to the provision in the *Stone* agreement that the partnership would *terminate* at death, such an agreement would evidence the intent that the relationship continue until the death of a partner and that there be no dissolution before one of the partners died. However, in light of the strong judicial preference to allow dissolution at will, a prospective partner who wishes to protect his investment against arbitrary termination by a copartner should include in the partnership articles a provision limiting the duration of the partnership to a definite term such as a specific date.

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ARBITRATION § 13.03 (1968) (dissolution by arbitral process must be specifically provided for in the arbitration clause).

In dicta, however, the court stated that the holding in the case might have been different if the partner had pleaded bad faith or unseasonable action by the co-partner. 292 So. 2d at 622. Cf. *Prima Paint Corp. v. Flood & Conklin*, 388 U.S. 395 (1967), where the United States Supreme Court held that an arbitration clause pursuant to 9 U.S.C. §§ 1-14 (1947) would be effective unless there existed independent grounds for revoking the clause, apart from the rest of the agreement.

18. LA. CIV. CODE art. 2872.

19. *Stone v. Stone*, 292 So. 2d 686, 690 (La. 1974).

20. Perhaps another example of "further language instancing such intent" would be the stipulation that "this partnership will terminate upon the death of either partner, and *not before*" or, "this partnership shall *not terminate until* the death of either partner."