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## PARTNERSHIP-EFFECT OF PROVISION THAT EXECUTOR OF DECEASED PARTNER SHALL CONTINUE PARTNERSHIP AS PARTNER

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**PARTNERSHIP—EFFECT OF PROVISION THAT EXECUTOR OF DECEASED PARTNER SHALL CONTINUE PARTNERSHIP AS PARTNER**—In a recent decision<sup>1</sup> the Wisconsin Supreme Court upheld the validity of a provision in a partnership agreement to the effect that the personal representative of the deceased partner should continue the business as a partner,<sup>2</sup> and also stated: "There is no doubt that a partner may provide by his will that the partnership shall continue notwithstanding his death."<sup>3</sup> The deceased partner by his will gave to his executor broad discretionary powers of sale over all of his property. To his widow the deceased partner bequeathed a share of his interest in the partnership business. The executor of the deceased partner continued the business as a partner for several months at which time he changed his mind and decided to sell the deceased partner's interest to the surviving partner. The executor secured permission of the court to sell and the surviving partner to buy the deceased partner's interest in the partnership. The hearing was had without the knowledge and consent of the widow and she brought an action to set aside the sale on grounds of fraud. The trial court dismissed the petition of the widow and upheld the sale as fair and without fraud. On appeal the Wisconsin Supreme Court affirmed the holding of the trial court on the ground that the acts of the executor in continuing the business and then selling the decedent's interest were within his delegated authority.

At common law the general rule was evolved that the death of a partner worked the dissolution of the partnership.<sup>4</sup> Such a dissolution involves a forced and unexpected liquidation which generally results in substantial losses being realized on the firm's assets by the surviving partner and the decedent's estate.<sup>5</sup> It is highly desirable for all con-

<sup>1</sup> In re Friedman's Estate, (Wis. 1947) 28 N.W. (2d) 261.

<sup>2</sup> The partnership agreement contained the following clause: "Fourteenth: That it is the express intention, aim and direction of the parties hereto, that upon the death of one of the partners, the said partnership shall not be deemed dissolved thereupon, nor shall said business be stopped or ceased in any way or manner for any reason whatsoever, but the personal representative of the partner so dying, shall immediately succeed to his interest in the partnership, and shall stand in his place with respect to said deceased partner's share and profits in the business of the partnership, and such personal representative shall have the same rights and powers and shall be subject to the same duties and liabilities, as the deceased partner would have possessed and would have been subject to, but for his death." Principal case at 262 (1947).

<sup>3</sup> Principal case at 264.

<sup>4</sup> *Winget v. Grand Trunk Western Ry. Co.*, 210 Mich. 100, 177 N.W. 273 (1920); *Stem v. Warren*, 227 N.Y. 538, 125 N.E. 811 (1920); *Froess v. Froess*, 284 Pa. 369, 131 A. 276 (1925), *CRANE, PARTNERSHIP* 333 (1938); 2 ROWLEY, *MODERN LAW OF PARTNERSHIP*, §§ 579, 615 (1916). This same rule has been carried over into the Uniform Partnership Act, 7 U.L.A., § 31 (4) (1922).

<sup>5</sup> The partnership, in the absence of a provision for the continuance of the enterprise in either the partnership agreement or the deceased partner's will, may have

cerned to prevent the immediate forced sale. If the business may be continued it may be sold as a going concern and at the most propitious time. The deceased partner may also be motivated by a desire to continue a member of his family in the partnership or by consideration toward the surviving partner in providing for continuance of the partnership business after his death.<sup>6</sup> The partnership may be continued after the death of a partner if it is so directed in his will<sup>7</sup> or if it is so provided by the partnership agreement.<sup>8</sup> The prolongation of the life of the partnership is the essential element in the solution of the problems which arise upon the death of a partner.<sup>9</sup>

### 1. *Validity of Continuation Provisions*

A testamentary direction by the deceased partner that his personal representative<sup>10</sup> shall continue the partnership as a partner, while valid,<sup>11</sup> is not binding upon either the personal representative<sup>12</sup> or the surviving partner.<sup>13</sup> The personal representative has an option to decide whether he will enter the partnership which he may exercise within a reasonable time.<sup>14</sup> Also, the surviving partners are not obliged

only a limited continuance for the purpose of winding up. *Jurkowitz v. Jurkowitz*, (Pa. 1943) 44 Lack. Jur. 266; 2 ROWLEY, MODERN LAW OF PARTNERSHIP, § 615 (1916).

<sup>6</sup> STEPHENSON, WORKING PROVISIONS OF WILLS AND TRUST AGREEMENTS, Third Series, No. 1, p. 9 (1947).

<sup>7</sup> *Burwell v. Mandeville*, 2 How. (43 U.S.) 559 (1844); *Pitkin v. Pitkin*, 7 Conn. 306 (1829); *Exchange Bank v. Tracy*, 77 Mo. 594 (1883); *Wilson v. Simpson*, 89 N.Y. 619 (1882).

<sup>8</sup> *Andrews v. Stinson*, 254 Ill. 111, 98 N.E. 222 (1912); *Wild v. Davenport*, 48 N.J.L. 129, 7 A. 295 (1886); *Brew v. Hastings*, 196 Pa. St. 222, 46 A. 257 (1900); *Rand v. Wright*, 141 Ind. 226, 39 N.E. 447 (1894); *Gaess v. Gaess*, 132 Conn. 96, 42 A. (2d) 796 (1945).

<sup>9</sup> Several states have by statute provided for the continuation of the decedent's business by his executor or administrator. See Adelman, "The Power to Carry On the Business of a Decedent," 36 MICH. L. REV. 185 at 191 (1937). It has been held that such a statute did not contemplate making the personal representative a member of the partnership. *Altgelt v. Sullivan*, 9 Tex. Ct. Rep. 881, 79 S.W. 333 (1903); *Altgelt v. Alamo Nat. Bank*, 98 Tex. 252, 83 S.W. 6 (1904).

<sup>10</sup> The deceased partner may likewise provide for the introduction of his wife, son, or anyone beneficially interested in his estate as a partner. *In re Mamaux's Estate*, 274 Pa. 533, 118 A. 441 (1922); *Parnell v. Thompson*, 81 Kan. 119, 105 P. 502 (1909); *Balmain v. Shore*, 9 Ves. Jun. 500, 32 Eng. Rep. 696 (1804); *Pemberton v. Oakes*, 4 Russ. 154, 38 Eng. Rep. 763 (1827).

<sup>11</sup> *Supra*, note 7.

<sup>12</sup> *Slater v. Slater*, 208 App. Div. 567, 204 N.Y.S. 112 (1924).

<sup>13</sup> *In re Mamaux's Estate*, 274 Pa. 533, 118 A. 441 (1922); *Slater v. Slater*, 208 App. Div. 567, 204 N.Y.S. 112 (1924).

<sup>14</sup> The personal representative has the right to look into the affairs of the partnership, but he cannot require a partnership accounting. *Wild v. Davenport*, 48 N.J.L. 129, 7 A. 295 (1886); *Pigott v. Bagley*, [1825] M'Cle. and Yo. 569, 148 Eng. Rep. 539.

to accept the personal representative as a partner. They may do so or regard the partnership as dissolved and wind up the business.<sup>15</sup>

Where the partnership agreement provides for the admission of the deceased partner's personal representative as a partner in the firm, the surviving partner is bound by this agreement. If he fails to abide by his agreement he will be subject to an action for damages for breach of contract.<sup>16</sup> The personal representative of the deceased partner is not so bound. He has a right to refuse to enter the firm even though this might subject the decedent's estate to an action for damages for breach of contract.<sup>17</sup> Such agreements are valid and binding whether they form a part of the original articles of partnership or are separately drawn up, and even a parol agreement has been held valid.<sup>18</sup> However, it is not likely that any court will order the specific performance of such an agreement. The partnership relation is one of mutual trust and close coordination and it is generally recognized that equity will not specifically enforce a contract requiring the exercise of special skills and judgment.<sup>19</sup>

The partners in their agreement may provide that the firm is to be continued by the surviving partner without the intervention of a successor to the deceased partner.<sup>20</sup> Such an agreement generally entails the continuation of the capital of the deceased partner in the firm for a stated period of time.<sup>21</sup> There is a split of authority on the ques-

<sup>15</sup> See cases cited, *supra*, note 13.

<sup>16</sup> *Wild v. Davenport*, 48 N.J.L. 129 at 137, 7 A. 295 (1886); *Downs v. Collins*, 6 Hare 418, 67 Eng. Rep. 1228 (1848); *Stearns v. Brookline*, 219 Mass. 238, 107 N.E. 57 (1914).

Such agreements are valid upon ordinary contract principles. *Gerding v. Baier*, 143 Md. 520, 122 A. 675 (1923); *Leaf's Appeal*, 105 Pa. 505 (1884).

<sup>17</sup> *Wild v. Davenport*, 48 N.J.L. 129, 7 A. 295 (1886); *Stearns v. Brookline*, 219 Mass. 238, 107 N.E. 57 (1914); *Burwell v. Mandeville*, 2 How. (43 U.S.) 559 (1844); *Downs v. Collins*, 6 Hare 418, 67 Eng. Rep. 1228 (1848); *In re F.*, [1941] Vict. L.R. (Australia) 6.

<sup>18</sup> *Stearns v. Brookline*, 219 Mass. 238, 107 N.E. 57 (1914); 2 ROWLEY, MODERN LAW OF PARTNERSHIP, § 638 (1916).

<sup>19</sup> *Buck v. Smith*, 29 Mich. 166 (1874); *Clark v. Truitt*, 183 Ill. 239, 55 N.E. 683 (1899); 4 POMEROY, EQUITY JURISPRUDENCE, 5th ed., Symons, § 1402 (1941). See Fuller, "Partnership Agreements for Continuation of an Enterprise After the Death of a Partner," 50 YALE L.J. 202 at 205 et seq. (1940). The State of Washington has by statute expressly authorized the continuation of a business in which the decedent was a partner by his personal representative. Wash. Rev. Stat. (Remington, 1922) § 1460. For a discussion of the effect of this statute, see Adelman, "The Power to Carry On the Business of a Decedent," 36 MICH. L. REV. 185 at 195 (1937).

<sup>20</sup> *Gerding v. Baier*, 143 Md. 520, 122 A. 675 (1923); *Kaufmann v. Kaufmann*, 239 Pa. St. 42, 86 A. 634 (1913); *Holcombe v. Long*, 245 Mass. 353, 139 N.E. 633 (1923).

<sup>21</sup> This does not require the admission of the executor of the deceased partner in the management or control of the partnership business. *Wild v. Davenport*, 48 N.J.L. 129, 7 A. 295 (1886).

tion whether the deceased partner's estate can demand a dissolution of the partnership.<sup>22</sup> The better view would seem to favor non-intervention by the estate during the agreed period since none of the objections to the specific enforcement of partnership agreements are present in this instance.<sup>23</sup>

## 2. *Liabilities Arising from the Continuation of the Partnership*

The continuation of the partnership business results in the readjustment of the relationship of the parties and creditors involved. The three major interested parties in any change of personal liability are the estate of the deceased partner, the personal representative of the deceased partner who has entered the firm as a partner, and the surviving partner. Of prime importance in this regard is the problem whether the partnership as continued constitutes a new firm or is merely a continuation of the old firm.

There has been some disagreement by the courts as to the status of the continued partnership. The weight of authority preponderantly favors the view that the continued firm is a new firm.<sup>24</sup> There is some divergence from this view, but in general the cases which hold that the continued partnership is merely an extension of the old firm are limited to those cases in which the deceased partner has provided that his capital was to remain in the business which has to be continued by the surviving partner for an agreed period.<sup>25</sup> The cases in general seem to agree that where a new partner is added to the firm by the partnership agreement or by the deceased partner's will a new firm is created.<sup>26</sup> It

<sup>22</sup> *Wilcox v. Derickson*, 168 Pa. 331, 31 A. 1080 (1895) (the estate may not withdraw the decedent's interest); *Burwell v. Mandeville*, 2 How. (43 U.S.) 559 (1844) (accord where there was only a testamentary direction). Cf. *Wild v. Davenport*, 48 N.J.L. 129, 7 A. 295 (1886) (suggested that the estate may demand a dissolution even though it may be liable in an action for damages brought by the surviving partner).

<sup>23</sup> 2 ROWLEY, *MODERN LAW OF PARTNERSHIP*, § 778 (1916).

<sup>24</sup> *Suloway v. Rolfe*, 94 N.H. 85, 47 A. (2d) 109 (1946); *Inslay v. Shire*, 54 Kan. 793, 39 P. 713 (1895); *Andrews v. Stinson*, 254 Ill. 111, 98 N.E. 222 (1912); *Kennedy v. Porter*, 109 N.Y. 526, 17 N.E. 426 (1888); *Wilcox v. Derickson*, 168 Pa. 331, 31 A. 1080 (1895).

<sup>25</sup> *Costello v. Costello*, 209 N.Y. 252, 103 N.E. 148 (1913) (testamentary direction to allow the capital of the deceased partner to remain in the firm). In Missouri both views are followed, see *Hawkins v. Troll*, 156 Mo. App. 153, 136 S.W. 246 (1911); *Exchange Bank v. Tracy*, 77 Mo. 594 (1883) (new partnership is formed where the partnership is directed to be continued); *Edwards v. Thomas*, 66 Mo. 468 (1877); *Hax v. Burnes*, 98 Mo. App. 707, 73 S.W. 928 (1903) (old firm continues where there is a term fixed by the partnership agreement); 2 ROWLEY, *MODERN LAW OF PARTNERSHIP*, § 638, p. 864 (1916).

<sup>26</sup> 2 ROWLEY, *MODERN LAW OF PARTNERSHIP*, § 638 at p. 863 (1916). "If the business is continued by the surviving partner and the representatives of the deceased, a new firm is formed, it is held, and it is not merely a continuation of the old,

then follows that under general partnership law the creditors of the old firm have no claim against the new firm although the deceased partner's estate and the surviving partner are personally liable for such debts.<sup>27</sup> The Uniform Partnership Act<sup>28</sup> in section 41 provides for the protection of the creditors of the dissolved firm when the firm's assets are transferred to a new partnership. This section stipulates that in such a case "creditors of the first or dissolved partnership are also creditors of the partnership so continuing the business."<sup>29</sup> In determining long and short term capital gains for income tax purposes, it was held in *Commissioner of Internal Revenue v. Lehman*<sup>30</sup> that the death of a partner did not end the partnership. This was undoubtedly done so as not to penalize unduly the surviving partner who had continued the business and then sold his assets within six months.<sup>31</sup> It may be generally assumed that most courts will recognize the continued partnership as a new firm.

There is no doubt that under partnership principles the estate of the deceased partner is liable beyond its share of the assets of the old firm for the debts incurred before the decedent's death.<sup>32</sup> The deceased partner's capital which is embarked in the new firm in which his executor is a partner is subject to the hazards of the business, and may be utilized for the payment of subsequent debts.<sup>33</sup> The general estate of the

even though authorized by the partnership agreement or the deceased partner's will." 7 U.L.A., Partnership, 63 (1922). "It is universally admitted that any change in membership dissolves a partnership, and creates a new partnership. . . ." YALE L.J. 202 at 216 et seq. (1940).

<sup>27</sup> 2 ROWLEY, MODERN LAW OF PARTNERSHIP, § 638 (1916). For a good discussion of the rights of creditors against the continued enterprise, see Fuller, "Partnership Agreements for Continuation of an Enterprise After the Death of a Partner," 50

<sup>28</sup> 7 U.L.A., Partnership (1922). Through 1947 the Uniform Act had been adopted either in its entirety or with but slight revision in twenty-seven states and the Territory of Alaska. 7 U.L.A., Partnership (1947 Pocket Part) (1922).

<sup>29</sup> 7 U.L.A., Partnership, § 41 (1) (1922).

<sup>30</sup> (C.C.A. 2d, 1948) 165 F. (2d) 383.

<sup>31</sup> *Id.* at 386 (1948). It should also be remembered that this case arose in a New York district where there is authority holding the continuation to be the old enterprise, although such a holding by the state court will not be binding in a federal tax case. See note 25. See U.S. TREAS. REG. 111, sec. 29.113 (a) (13)—2, "If the partnership distributes its assets in kind and not in cash, the partner realizes no gain or loss until he disposes of the property received in liquidation. . . ." *Crawford v. Commissioner*, 39 B.T.A. 521 (1939); *Wilmot v. Commissioner*, 44 B.T.A. 1155 (1941); P-H FED. TAX SERV., ¶ 10, 845 B, ¶ 10, 850 (1948). Cf. *Woodruff v. Commissioner*, 38 B.T.A. 739 (1938) (where a limited partner was allowed to take a loss on dissolution).

<sup>32</sup> 2 ROWLEY, MODERN LAW OF PARTNERSHIP, § 639 (1916).

<sup>33</sup> *Jones v. Walker*, 103 U.S. 444 (1880); *Smith v. Ayer*, 101 U.S. 320 (1879); *Stewart v. Robinson*, 115 N.Y. 328, 22 N.E. 160 (1889); *Wilcox v. Derickson*, 168 Pa. St. 331, 31 A. 1080 (1895); *Huber v. Wood*, (Pa. Com. Pl. 1893) 14 Pa. Co. Ct. R. 13.

deceased partner is not liable in any way for the payment of subsequently incurred debts, unless it is made so liable by the clearly expressed intention of the decedent.<sup>34</sup>

Where the partnership business is continued pursuant to the will of the deceased partner or the partnership agreement, the personal representative of the deceased is not personally liable for the debts of the firm unless he consents to the direction and becomes a partner.<sup>35</sup> Since he is authorized to act by the decedent, he is entitled to indemnity from the estate to the extent of the decedent's interest in the partnership business and assets, if he acts in good faith.<sup>36</sup> Where the decedent has made his general estate liable for subsequent debts, of course, the personal representative may look to it for reimbursement.<sup>37</sup> The surviving partner continues personally liable for all debts whether incurred before or after the deceased partner's demise.<sup>38</sup>

### 3. *Who Should Continue the Interest of the Deceased Partner in the Partnership?*

Where provision is made either by will or by the partnership agreement for a successor to become a partner in the place of the deceased partner, a problem of uncertainty arises. The provision consists of an attempted projection by the deceased partner of his will into the future. It is true that any testamentary disposition represents such a projection, but in such case the decedent is giving away or dealing with something that is personal to him. In the partnership the relationship between the partners is so intimate and peculiar that the law has flatly declared that the death of a partner shall cause the dissolution of the partnership, and only with the consent of all concerned may that be changed.<sup>39</sup> No one partner has the right to project his will upon the other. The present selection of a successor who will enter the partnership at some time in the future obviously encounters the difficulty that there may be a change of circumstances, and the man once acceptable

<sup>34</sup> *Burwell v. Mandeville*, 2 How. (43 U.S.) 559 (1844); *Blodgett v. American Nat. Bank*, 49 Conn. 9 (1881); *Stewart v. Robinson*, 115 N.Y. 328, 22 N.E. 160 (1889); *Tate v. Hoover*, 345 Pa. St. 19, 26 A. (2d) 665 (1942). See Fuller, "Partnership Agreements for Continuation of an Enterprise After the Death of a Partner," 50 *YALE L.J.* 202 at 210 et seq. (1940).

<sup>35</sup> *Alsop v. Mather*, 8 Conn. 584 (1831); *Walker v. Walker's Exrs.*, 88 Ky. 615, 11 S.W. 718 (1889); *Wild v. Davenport*, 48 N.J.L. 129, 7 A. 295 (1886); *Mattison v. Farnham*, 44 Minn. 95, 46 N.W. 347 (1890); *Johnson v. Kellogg*, 44 Hun. 623, 8 N.Y. St. 413 (1887). Cf. 7 U.L.A., *Partnership*, § 17 (1922).

<sup>36</sup> *Gaess v. Gaess*, 132 Conn. 96, 42 A. (2d) 796 (1945); *Burwell v. Mandeville*, 2 How. (43 U.S.) 559 (1844); *In re Johnson*, 15 Ch. D. 548 (1880).

<sup>37</sup> *Phillips v. Blatchford*, 137 Mass. 510 (1884); *Huber v. Wood*, (Pa. Com. Pl. 1893) 14 Pa. Co. Ct. R. 13.

<sup>38</sup> 2 ROWLEY, *MODERN LAW OF PARTNERSHIP*, § 638 (1916).

<sup>39</sup> See notes 4, 7 and 8.

to the surviving partner will no longer be so. In effect, since the surviving partner need not continue the business,<sup>40</sup> the agreement may force the dissolution of the partnership, with the loss of attendant advantages,<sup>41</sup> just as certainly as if the common law rule were strictly enforced. The fact that a testamentary provision may be changed by the testator until the time of his death may or may not be helpful. Much would depend upon the personality of the decedent and his amenability to change. The selection of a successor by the surviving partner after the death of the decedent would not necessarily offer a satisfactory, usable solution because the deceased partner is not likely to agree to such a proposal. In order to protect his own interests the deceased partner will probably limit the size of the group from which the selection is to be made, to either his personal representatives<sup>42</sup> or a member of his family.

In order to arrive at a satisfactory solution to this problem it is necessary to examine closely the reasons for desiring a continuation and the molding of a result to achieve those ends. There are two basic reasons for desiring a continuation; in order of importance they are (1) to prevent a loss on liquidation and (2) to protect the surviving partner who may not be able to purchase the deceased partner's interest in the firm at the latter's death.<sup>43</sup> It may be seen that these two objectives are closely related and both may be achieved by one of the following proposed plans:<sup>44</sup>

(a) By will or by the partnership agreement giving to the surviving partner the authority to continue the business, either for a fixed period or for a reasonable time in which to sell the partnership as a going concern and liquidate its assets;<sup>45</sup>

(b) By will, where the partnership agreement provides that the business shall be continued for the mutual benefit of the decedent's estate and the surviving partner, the deceased partner may appoint the

<sup>40</sup> See notes 13, 16 and 19.

<sup>41</sup> Fuller, "Partnership Agreements for the Continuation of an Enterprise After the Death of a Partner," 50 *YALE L.J.* 202 at 203 (1940).

<sup>42</sup> It must be remembered that where an executor becomes a partner in a continued enterprise, he acts as a member of the partnership and not in his capacity as executor. *Columbus Watch Co. v. Hodenpyl*, 135 N.Y. 430, 32 N.E. 239 (1892).

<sup>43</sup> Adelman, "The Power to Carry On the Business of a Decedent," 36 *MICH. L. REV.* 185 (1937). See note 6, *supra*.

<sup>44</sup> The proposed plans are not intended to be exhaustive, but to be indicative of the type of plan which may be used to accomplish the desired ends depending upon the particular circumstances peculiar to each case.

<sup>45</sup> A time limit of some sort should be placed upon the right to continue the business since it is generally advisable and the beneficiaries have the right to have the administration completed and the estate closed within a reasonable time where they are to receive the proceeds of the decedent's share in the partnership business.



surviving partner as his executor, and the latter may then consent to the continuation of the business.<sup>46</sup>

(c) By will or by partnership agreement give the surviving partner the option to buy the business within a fixed or reasonable time with the right to continue to use the capital of the deceased partner already embarked in the business until he has paid the purchase price, which may be an agreed amount or a percentage of an appraisal value.<sup>47</sup>

It is important to keep in mind the possibilities of success of a plan of continuance. The *Friedman* case<sup>48</sup> sharply points up the fact that although the executor may at first be willing to continue the partnership business as a partner he may soon change his mind and wish to escape the heavy personal liabilities to which he is exposed.<sup>49</sup> The man in whom the decedent had sufficient trust during his lifetime to work with as a partner is the logical person to carry on the business. He may best carry out this task if he is unhampered by a new partner, although it must be remembered that he is under a duty to act in good faith and to deal fairly with the estate of the deceased partner.<sup>50</sup> A speedy and efficient administration of the decedent's interest in the partnership may be best obtained in this manner.

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<sup>46</sup> If the returns in the business are lucrative and the deceased partner wishes to gain for his family his share of the future profits, this plan could be used. The future creditors of the partnership are protected in that they may look to the deceased partner's share of the assets in the business due to the consent of the personal representative of the deceased partner to the continuation. That the personal representative has such a power to consent to the continuation at common law which was continued by § 41 (3) of the Uniform Partnership Act was held in *Blumer Brewing Corp. v. Mayer*, 223 Wis. 540, 269 N.W. 693 (1937). See 50 HARV. L. REV. 838 (1937); 25 GEO. L.J. 1048 (1937).

<sup>47</sup> A discussion of the relative merits of this scheme may be found in Fuller, "Partnership Agreements for Continuation of an Enterprise After the Death of a Partner," 50 YALE L.J. 202 at 203 (1940). See CRANE, PARTNERSHIP 379 (1938).

<sup>48</sup> Principal case.

<sup>49</sup> See principal case at 262.

<sup>50</sup> See 7 U.L.A., Partnership, §§ 25 (2) (d), 37 (1922) (on dissolution by death the surviving partner handles the liquidation and owes a fiduciary duty to the deceased partner's estate); CRANE, PARTNERSHIP, § 86 (1938).