

ANALYSIS

- Legal Problems:
- (1) Does the statement "I don't want to do this anymore. I am quitting this partnership." made by one partner dissolve an "at will" partnership?
 - (2) May a partner bind a partnership to a contract made after dissolution?
 - (3) What is a partner's liability for partnership obligations?

DISCUSSION

Summary

The effect of Randy's "quitting" is to dissolve the partnership and to put it in a "winding up" period, at the conclusion of which it terminates. As the partnership had already dissolved, Sandy lacked actual authority to enter into the contract with Barney. All the same, the partnership is bound by the contract with Barney because Sandy still had apparent authority to bind the partnership. Because they did not agree otherwise, Randy and Sandy share losses equally. Because Sandy paid the trade creditors, she is entitled to a \$15,000 contribution from Randy.

Point One: Randy's statement "I don't want to do this anymore. I am quitting this partnership." (35-40%) dissolves the "at will" partnership. This begins a period of winding up (liquidation) during which time the partnership affairs are settled. Once winding up is complete, the partnership terminates.

The facts do not indicate that the partnership had a definite term or limited undertaking. Therefore, this was an "at will" partnership. Any partner may dissolve an "at will" partnership by his or her express will.

Under the Uniform Partnership Act (UPA), dissolution occurs when the parties cease to associate in carrying on the business together. *See* UPA § 29 ("The dissolution of a partnership is the change in the relation of the partners caused by any partner ceasing to be associated in the carrying on as distinguished from the winding up of the business."). "On dissolution the partnership is not terminated but continues until the winding up of partnership affairs is completed." UPA § 30. Winding up is "the process of settling partnership affairs after dissolution." Official Comment to § 29. Once all partnership affairs have been settled, the partnership terminates.

When Randy told Sandy "I don't want to do this anymore. I am quitting this partnership," Randy dissolved the partnership. The partnership must now undergo a period of winding up (i.e., completing the remaining business and settling debts). Once this is done, the

partnership is terminated.

Under the Revised Uniform Partnership Act (RUPA), Randy's statement is an event of dissociation. Sandy has "notice of the partner's express will to withdraw as a partner." RUPA § 601(1). Therefore, under RUPA § 801(1) Randy's statement dissolves the partnership and the business must be wound up. Pursuant to RUPA § 802, "a partnership continues after dissolution only for the purpose of winding up its business. The partnership is terminated when the winding up of its business is completed."

Point Two: The partnership is probably bound by Sandy's contract with Barney, even though it
(35-40%) occurred after dissolution, because Sandy had apparent authority to enter into the contract.

Under the UPA, upon dissolution, a partner's actual authority to bind the partnership terminates except as is necessary to wind up the business. *See* UPA § 33. The contract with Barney was for new business. When Randy dissolved the partnership (see Point One *supra*), Sandy's actual authority to enter into a contract for new business ended.

Under the RUPA, upon dissolution, a "partnership is bound by a partner's act after dissolution that . . . is appropriate for winding up the partnership business." RUPA § 804. As indicated above, the contract with Barney was for new business. There is an exception under RUPA § 803(c) that permits a partner who has not wrongfully dissociated to preserve the partnership business as a going concern for a reasonable period of time. These facts do not come within this exception. To date, the business has existed for only a year and it only had short-term contracts remaining. The contract with Barney was a long-term contract (three years).

While Sandy lacked actual authority to contract with Barney, under both the UPA and the RUPA, Sandy may have apparent authority to bind the partnership after dissolution, so long as Barney was not aware of the dissolution and reasonably believed that Sandy was authorized to act. *See* UPA § 35(1) ("After dissolution a partner can bind the partnership . . . by any transaction which would bind the partnership if dissolution had not taken place, provided the other party to the transaction . . . though he had not so extended credit, had nevertheless known of the partnership prior to dissolution, and had no knowledge or notice of dissolution . . ."), RUPA § 804(2) ("a partnership is bound by a partner's act after dissolution that . . . (2) would have bound the partnership under § 301 before dissolution, if the other party to the transaction did not have notice of the dissolution.") RUPA § 301(1) provides a partner with apparent authority to carry on in the ordinary course the partnership's business unless the other party knows that there is no authority.

The facts support the conclusion that Sandy had apparent authority to enter into the contract. Even though Barney had not previously done business with the partnership, the facts state that he was familiar with the partnership. Sandy, on behalf of the partnership, had been soliciting a long-term contract from him for over a month. Sandy was acting in the ordinary course of the partnership's business when soliciting a contract for widgets. Further, Barney was not aware of the dissolution. Therefore, the partnership is probably bound by Sandy's contract with Barney.

Point Three: Because there is no agreement to the contrary, when Sandy paid \$30,000 to the trade

(15-25%) creditors, Sandy became entitled to a contribution of \$15,000 from Randy.

When Sandy paid the entire \$30,000 debt to the trade creditors, she became entitled to contribution of \$15,000 from Randy. Among partners, unless the parties agree otherwise, profits are shared equally and losses are shared in the same ratio as profits. *See* UPA § 18(a) ("Each partner shall . . . share equally in the profits . . . and must contribute towards the losses . . . according to his share in the profits."), RUPA § 401(b) ("Each partner is entitled to an equal share of the partnership profits and is chargeable with a share of the partnership losses in proportion to the partner's share of the profits."). Regardless of the fact that Randy contributed twice as much capital (\$10,000) as Sandy (\$5,000) to the partnership, the facts indicate that they shared profits equally. Because they did not agree otherwise, Randy and Sandy would share losses in the same ratio as they shared profits.

[NOTE TO GRADERS: This question is drafted so that the answer would be the same under both the UPA and the RUPA. Please note that some states (Illinois, Kentucky, Mississippi, Missouri and Utah) have not yet adopted the RUPA.]