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Reason for the rule

Partner interested in both failures and successes; it is the chance of loss or gain that characterizes a business. Where the contract requires a given portion of gross returns to be paid over, the portion is paid over as commission, wages, rent, etc.

Where there is evidence of mutual management

Where there is further evidence of mutual management and control, partnership may result.

Receipt of share in the profits strong presumptive evidence of partnership

An agreement to share both profits and losses tends strongly to establish the existence of a partnership. It is not conclusive, however, just prima facie and may be rebutted by other circumstances.

When no such inference will be drawn

Under par. 4 of art. 1769, sharing of profits is not prima facie evidence of partnership in the cases enumerated under subsections (a) – (e). In these cases, the profits are not shared as partner but in some other respects or purpose. The basic test of partnership is whether the business is carried on in behalf of the person sought to be held liable.

Sharing of profits as owner

It is not merely the sharing of profits, but the sharing of them as co-owner of the business or undertaking that makes one partner. Test: Does the recipient have an equal voice as proprietor in the conduct and control of the business? Does he own a share of the profits as proprietor of the business producing them? One must have an interest with another in the profits of a business as profits.

Burden of proof and presumption

The burden of proving the existence of a partnership rests on the party having the affirmative of that issue. The existence of a partnership must be proved and will not be presumed. The law presumes that those acting as partners have entered into a contract of partnership. Where the law presumes the existence of partnership, the burden of proof is on the party denying its existence. When a partnership is shown to exist, the presumption is that it continues and the burden of proof is on the person

asserting its termination. One who alleges partnership cannot prove it merely by evidence of an agreement using the term “partner”. Non-use of the term, however, is entitled to weight. The question of whether a partnership exists is not always dependent upon the personal arrangement or understanding of the parties. Parties intending to do a thing which in law constitutes partnership are partners.

Legal intention is the crux of partnership. Parties may call themselves partners but their contract may be adjudged something quite different. Conversely, parties may expressly state that theirs is not a partnership yet the law may determine otherwise on the basis of legal intent. However, courts will be influenced to some extent by what the parties call their contract.

Tests and incidents of partnership

In determining whether a partnership exists, it is important to distinguish between tests or indicia and incidents of partnership. Only those terms of a contract upon which the parties have reached an actual understanding, either expressly or impliedly, may afford a test by which to ascertain the legal nature of the contract. Some of the typical incidents of a partnership are:

1. The partners share in profits and losses.
2. They have equal rights in the mgt and conduct of the partnership business.
3. Every partner is an agent of the partnership, and entitled to bind the others by his acts. He may also be liable for the entire partnership obligations.
4. All partners are personally liable for the debts of the partnership with their separate property except that limited partners are not bound beyond the amount of their investment.
5. A fiduciary relation exists between the partners.
6. On dissolution, the partnership is not terminated, but continues until the winding up of partnership is completed. Such incidents may be modified by stipulation of the partners.

Similarities between a partnership and a corporation

1. Both have juridical personality separate and distinct from that of the individuals composing it;

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