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The Rights of a Wrongdoing Partner

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women, inmates of the house. The defendants paid all the expenses of the trip but no immoral acts were committed during the trip. After returning to Nebraska, the women resumed their immoral occupation. Mr. Justice Murphy in delivering the majority opinion for the United States Supreme Court stated: "To punish those who transport inmates of a house *of prostitution on an innocent vacation trip in no way related to the* practice of commercialized vice is consistent neither with the purpose nor the language of the Act."[20] Consummation of purpose is not an essential element of the crime. The offense has been completed when there has been a transportation in interstate commerce with an intent denounced by the Act.[21]

The Mann Act does not attempt to cover illicit relationship standing alone and is not punishable as such, for that is clearly within the police powers of the states and most states have criminal statutes covering adultery, fornication and seduction.[22] Under the Act it is the transportation in interstate commerce that is condemned and the courts have uniformily held it to be a valid exercise of the power of Congress to regulate commerce.[23] The Act is not an anti-seduction statute and is only incidentally concerned with the chastity or unchastity of the woman being transported.[24]

In order to constitute an offense under the White Slave Traffic Act, it is necessary to show: (1) interstate transportation; (2) that it was for an immoral purpose; (3) and that intent was formed or present before the female reached the state to which the defendant intended to transport her.

The courts have been very liberal in construing the language of the statute to cover a variety of situations concerning immorality. The existence of the Act since 1910 and the numerous convictions following its enactment, leads one to believe that it has had the dual effect of punishing violators and serving as a means of reaching organized crime where other methods have failed because of difficulty in obtaining evidence that would support convictions.

JAMES M. COX

THE RIGHTS OF A WRONGDOING PARTNER

Whether a partner who causes a wrongful dissolution of his firm, is then entitled to any benefits of the firm from the time of dissolution until there is a final accounting and winding up, is a problem not specifically covered by the Uniform Partnership Act. However, this is a problem which has recurred frequently before and after the Act.

The Act provides in section 38 (2b) that those partners who have not

20. Mortensen v. U.S., 322 U.S. 369, 64 S.Ct. 1037, 88 L.Ed. 1331 (1944).
21. Malaga v. U.S., 57 F.2d 822 (1st Cir. 1932).
22. E.g., Wyo. Comp. Stat. §§ 9-503, 9-504, 9-505 (1945).
23. Harris v. U.S., 227 U.S. 340, 33 S.Ct. 289, 57 L.Ed. 534 (1934); Wilson v. U.S., 232 U.S. 563, 34 S.Ct. 347, 58 L.Ed. 728 (1914).
24. Pine v. U.S., 135 F.2d 353 (5th Cir. 1943).

caused the wrongful dissolution may continue the business if they either: (1) pay the wrongful partner for his interest in the partnership, deducting any damages suffered because of the dissolution, or (2) secure the payment by bond approved by the court and idemnify the wrongful outgoing partner against all present and future firm liabilities.[1]

If the continuing partners pay the outgoing wrongful partner in cash or property, then there is no problem as to future profits; but if the continuing partner elects merely to secure the payment by bond the issue arises as to whether the outgoing partner is entitled to a share of the profits attributable to his capital or interest on that capital. From a broad pattern of cases, the thread of conclusions is in the affirmative.

The factual situations in the cases involving the right to profits of partners wrongfully causing dissolution are very diverse but can be placed in two categories: (1) cases in which the wrongful partner continues the business, and (2) cases in which the wrongful partner is the retiring or outgoing member of the firm. Here we are concerned mainly with the cases in which the wrongdoer is the retiring partner. It is striking to note, however, that in those cases in which the wrongdoer continues the business, every case examined allowed the wrongdoer some share of the profits.[2]

There is no uniform rule for allowing a retiring partner a share in the profits of a firm even though the continuing partners use all the property of the old firm. Probably the most oft quoted law in the subject is: "The liability to account for the profits derived from the trade carried on . . . must depend on the nature of the trade, the mode of carrying it on, the capital employed, the state of account between the parties, and the conduct of the parties afterward."[3]

A retiring partner's right to recover profits made as the firm continues without him is predicated upon the use to which his interest has been put subsequent to his retirement. If he has no capital interest or only a negligible capital interest, he is entitled to no share in the profits after dissolution.[4] When the retiring partner's chief contribution to the firm was his skill and labor he is entitled to no profits.[5] Generally, unless an outgoing partner can show that his assets or capital have been subjected to some risk in continuing, his suit for recovery will be defeated.

At this point the proposition can be deduced that although a partner has caused a dissolution wrongfully, he is entitled to subsequently earned profits in proportion to his capital which is retained in the business. This proposition is not followed, however, in cases of abandonment. If one

1. U.L.A., vol. 7, Partnership, § 38 (2b); Wyo. Comp. Stat. § 61-610 (1945).
2. Zimmerman v. Chambers, 79 Wis. 20, 47 N.W. 947 (1891); Karrick v. Hannaman, 168 U.S. 328, 18 S.Ct. 135, 42 L.Ed. 484 (1879); Walsh v. Atlantic Research Assoc., 321 Mass. 57, 71 N.E.2d 580 (1947).
3. Willett v. Blanford, 1 Hare. R. 253, 66 Ch. 1027 (1842).
4. Hall v. Watson, 73 Cal.App. 735, 167 P.2d 210 (1946).
5. Phillips v. Reeder, 18 N.J.Eq. 95, 11 Mor.Min.Rep. 419 (1866).

partner of a law firm after having become the attorney of record in a case subsequently repudiates any relation to the case and his partners carry it to a successful conclusion, that repudiating partner cannot then claim any of the fees derived from the case even though he may continue to have some capital interest in the law firm.[6] Courts usually favor the continuing partners who persist profitably in a joint venture after abandonment by a partner who later attempts to share in the profits.[7]

Until this point we have been confined to the case law for an answer to our general question as to whether an outgoing wrongful partner is entitled to profits made subsequent to dissolution during continuation of the business by the partners who have not caused the wrongful dissolution. We now take particular note of a recent California case[8] which found it unnecessary to turn to the case law in this subject, but rather took refuge in the Uniform Partnership Act for an answer to their problem. There is well established precedent for allowing an election between profits or interest when a partner's retirement is for some reason other than his wrongful dissolution.[9] There is also a convincing amount of more recent precedent for allowing a wrongful partner this election.[10] However, among those courts giving the option between interest and profits to a wrongdoer, none of them have used the Uniform Partnership Act as their authority except the California court in the case under consideration. A closer inspection of the law shows why this court stands alone in its interpretation.

The California case develops an obvious interpretation of the Act whereby section 42 is read as bearing on section 38 (2b). Section 42 provides: "When any partner retires or dies, and the business is continued under any of the conditions set forth in section 41 (1, 2, 3, 5, 6), or section 38 (2b) without any settlement of accounts . . . he or his legal representative . . . shall receive as an ordinary creditor an amount equal to the value of his interest in the dissolved partnership with interest, or, at his option . . . in lieu of interest, the profits attributable to the use of his right in the property. . . ."[11] Since sections 41 (5) and 38 (2b) both relate to wrongful partners situations it seems that this is clear authority for allowing profits after dissolution. It would also seem clear that the Act itself is authority for giving a wrongful partner an election between profits or interest on his remaining investment. The California court said that by reading section 42 with section 38 (2b) a wrongful partner is entitled to

6. Denver v. Roane, 99 U.S. 355, 25 L.Ed. 476 (1879); Kinloch v. Hamlin, 11 S.C.Eq. (2 Hill) 19, 27 Am.Dec. 441 (1834).
7. Forbes v. Becker, 150 Okla. 280, 1 P.2d 721 (1931); Durbin v. Barber, 14 Ohio 311 (1846).
8. Vangel v. Vangel, 116 Cal.App. 615, 254 P.2d 919 (1953); aff'd, 282 P.2d 967 (1955).
9. Stevenson & Sons v. Aktiengesellchaft, 2 A.C. 239 (1918), 1918D Ann. Cas. 575-H.L.; Clay v. Field, 138 U.S. 464, 11 S.Ct. 419, 34 L.Ed. 1044 (1891); Steel v. Esterbrook, 232 Mass. 432, 122 N.E. 562 (1919).
10. Klein v. Acco Products, 79 F.2d 512 (2d Cir. 1935).
11. U.L.A., vol. 7, Partnership, § 42, Wyo. Comp. Stat. § 61-614 (1945).

an option of interest on his investment or profits attributable to his interest retained in the firm.[12] As obvious as this solution seems, still it is quite a unique interpretation of the Act.

It is suggested that the majority of courts have chosen to ignore the trap set by the U. P. A. and the interrelation between section 38 (2b) and section 42. If a partner who has interrupted the business venture by his wrongful act which constitutes a dissolution is allowed the favors of both of these sections of the U. P. A. he will be in a better position than the continuing partners. In the event that the continuing partners are unable to buy his interest, he will be entitled to have his interest secured by bond immunizing it from business failure as provided by section 38 (2b). Still, by section 42, he will be allowed to share in the profits made by the continuing partners who risk their own, but idemnify the wrongful partner's capital. Section 41 (8) [13] attempts to resolve this inequity by making creditor's claims against the continuing partnership superior to the wrongful partner's. However, this section falls short of keeping the wrongful partner from a better position than the others because, regardless of creditors claims against the partnership assets, the interest of the wrongful partner is secured by bond.

CARL M. WILLIAMS

STOPPING THE CLOCK IN THE WYOMING LEGISLATURE

It was reported in various Wyoming newspapers and over the Cowboy Broadcasting Network that the thirty-third Legislature of the State of Wyoming adjourned at 2:10 a.m. on Sunday, February 20th, 1955. Article 3, section 6 of the Wyoming Constitution provides inter alia that "No session of the legislature, after the first, which may be sixty days, shall exceed forty days." The fortieth day of the 1955 session expired at midnight of February 19. It was also reported, however, that the clocks in the legislative chambers had been stopped at or before 12 p.m. midnight on February 19th; the object being, of course, to make subsequent legislative enactments valid. This practice of "stopping the clock" is frequent in states like our own in which the length of the legislative session is constitutionally limited.

Is legislation passed after the clock is stopped valid?

The point of beginning is the inquiry as to whether the constitutional provision limiting the session to forty days is mandatory or merely directory. If directory only, failure to comply with it does not affect the constitutionality of legislation passed after the clock is stopped.[1] But if the provision

12. Vangel v. Vangel, 116 Cal.App. 615, 254 P.2d 919 (1953); aff'd, 282 P.2d 967 (1955).
13. U.L.A., vol. 7, Partnership, § 41 (8); Wyo. Comp. Stat. § 61-613 (8) (1945).

1. Commonwealth v. Griest, 196 Pa. 396, 46 Atl. 505, 50 L.R.A. 568 (1900).