FEBRUARY 2025 RETEST
Annotated California Bar Questions

Study edition | Original question pages with added highlights and reading pointers.

Practice first: attempt the clean question, then use the numbered notes and online sample responses to compare your reasoning. The full source packet is preserved, including its instructions and library.

Original, ungraded instructional commentary. Not official selected answers, scored student work, or a claim of attorney review.

July corrections: where applicable, the official source retains visible post-exam revision marks. The online text uses the corrected wording and dates.

Source: State Bar of California | 31 original pages, all retained.

Bar Exam Doctor | Published November 4, 2026

FEBRUARY 2025 RETEST
ESSAY QUESTION 1 OF 5

1

California Bar Examination

Each question is designed to be answered in one (1) hour.

Your answer should demonstrate your ability to analyze the facts in the question, to tell the difference between material facts and immaterial facts, and to discern the points of law and fact upon which the situation turns. Your answer should show that you know and understand the pertinent principles and theories of law, their qualifications and limitations, and their relationships to each other.

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READING POINTERS

Official source page preserved. Use the highlighted pages and corresponding online response for added teaching commentary.

QUESTION 1

Liam is on trial for grand theft of Valerie's jewelry. The prosecution claims that on the afternoon of Friday, January 12, 2025, when Valerie was carrying groceries from her car into her house, Liam took a pearl necklace from a purse Valerie left in her car.

(1) At trial, the prosecution called Erin, Liam's wife, as a witness. Erin had earlier agreed to testify as a witness. Erin testified in support of the prosecution's case.

(2) The prosecutor asked Erin if she knew where Liam was on the afternoon of Friday, January 12, 2025. Erin responded that she did not know where Liam was that afternoon, but she knew he was home alone with her that evening because that is when he gave her a pearl necklace.

(3) The prosecutor then asked Erin if Liam had said anything to her when he gave her the pearl necklace. Erin testified that Liam told her he took it out of a lady's purse.

(4) Erin further testified on direct examination that she showed her friend, Frieda, the pearl necklace and told Frieda that Liam had taken it and given it to her.

(5) The defense attorney then asked Erin on cross-examination: "Isn't it true that you would do almost anything to get rid of Liam?" Erin answered: "Yes."

(6) The prosecution next called Frieda as a witness. Frieda testified that she was not surprised that Liam took the necklace, as it is well known that he is a thief.

The defense attorney moved to introduce into evidence certified copies of Erin's two felony perjury convictions and one misdemeanor conviction for disturbing the peace.

1. Assuming all reasonable objections were timely made, should the court have admitted the testimony in numbers (1) through (6) above? Discuss.

2. Should the court admit into evidence Erin's prior convictions? Discuss.

Answer according to California law.

READING POINTERS

1 Two spousal privileges

Erin's choice to testify does not by itself waive Liam's confidential-communication protection.

2 Count hearsay layers

An exception for Liam's original admission does not automatically cover Erin's repetition.

3 Credibility versus propensity

Felony dishonesty evidence may impeach, subject to balancing, without proving the charged theft.

FEBRUARY 2025 RETEST
ESSAY QUESTION 2 OF 5

2

California Bar Examination

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READING POINTERS

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QUESTION 2

Harry and Willa, who live in California, planned to marry. Willa is a lawyer who earns substantially more money than Harry.

Willa was willing to marry only if Harry signed a premarital agreement waiving the right to receive post-divorce spousal support upon divorce. Willa's lawyer drafted the agreement and Willa gave it to Harry to review. Willa told Harry that she would pay for him to confer with a lawyer regarding the agreement, but Harry declined to consult with a lawyer. Harry and Willa signed the agreement before the wedding.

During the marriage, Willa worked for a law firm and deposited her salary in Main Street Bank in an account in her name alone. No other funds were deposited into the account.

Harry inherited $50,000 from his grandfather during the marriage, which he used to buy stock. Harry liked to play the stock market and actively managed the stock. The stock paid cash dividends, which Harry deposited into an account he opened in his name at West Coast Bank. Sometimes Harry also deposited money he made as a handyman during the marriage into the West Coast Bank account.

Willa withdrew some money from the Main Street Bank account and bought an expensive watch for Harry, which she gave to him on his birthday.

On March 3, 2024, Harry was in an accident and was severely injured. Harry was not able to work. On March 3, 2025, Willa filed for divorce. At the time Willa filed for divorce, Harry's stock was worth $70,000.

1. What are Harry and Willa's respective rights, if any, regarding:

   a) The funds in Willa's account at Main Street Bank? Discuss.

   b) Harry's stock? Discuss.

   c) The funds in Harry's account at West Coast Bank? Discuss.

   d) Harry's watch? Discuss.

2. Is the premarital agreement enforceable? Discuss.

Answer according to California Law.

READING POINTERS

1 Start with source

Inherited principal is separate; community labor can create an allocation issue in the increase.

2 Read the exception

Personal gifts need a value comparison to the marriage's circumstances, not a label alone.

3 Offer is not representation

The support-waiver rule asks whether Harry actually had independent counsel at execution.

FEBRUARY 2025 RETEST
ESSAY QUESTION 3 OF 5

3

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READING POINTERS

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QUESTION 3

3 Eric was hired by the District on a one-year probationary contract to teach math at a public high school. After starting work at the school in the fall, Eric applied for the after-school position of the boys' spring tennis team coach. Eric played on his high school and college tennis teams, and for the last 5 years, has given private tennis lessons to teens at a nearby country club. Eric was interviewed for the position but the District later informed him that it had hired another teacher with a similar
1 tennis background. Eric believes he was passed over because he is openly gay.

2 At the next school board meeting, Eric challenged the District's alleged discriminatory treatment of gay teachers in general, and himself in particular. As an example, Eric mentioned having been denied the boys' tennis coach position. Starting the next day and for several weeks thereafter, a group of 10-20 students handed out flyers at all high school entrances before the start of school asking support for Eric and gay students.

One month after Eric spoke to the school board, he was informed that his contract would not be renewed. No reason was given, but Eric believes he is being punished for speaking out before the school board. The District has denied his request for a hearing concerning his termination.

Eric has sued the District in Federal Court for: (1) not offering him the coaching position, (2) not renewing his contract, and (3) denying him a hearing.

What arguments can Eric make under the United States Constitution and how should the Court rule? Discuss.

READING POINTERS

1 Evidence of intent

Qualification and suspicion do not establish that sexual orientation caused the hiring decision.

2 Citizen speech

Distinguish a public discrimination issue from speech made as part of teaching duties.

3 Entitlement is separate

No right to renewal may defeat procedural due process while leaving retaliation available.

FEBRUARY 2025 RETEST
ESSAY QUESTION 4 OF 5

4

California Bar Examination

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READING POINTERS

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QUESTION 4

Peter hired Ann, an attorney to bring a wrongful termination suit against Peter's former employer, Emory Electric Inc. (Emory) and Emory's CEO, Ellen. Peter and Ann executed a valid written fee agreement. Peter told Ann that he had a three-year employment contract and had been fired without cause after one year of employment at Emory. Peter gave Ann a $5,000 check as a deposit against future fees, and Ann deposited the check in her client trust account.

Larry is Emory's general counsel. Larry and Ann went to law school together and remain friends. Ann called Larry to discuss Peter's potential lawsuit against Emory and asked Larry whether Peter had a strong case. Larry confided in Ann that Ellen was likely to settle the case regardless of the strength of the case because Ellen is very conflict-averse.

After some investigation, and before filing a lawsuit, Ann determined that Peter had been fired for breach of a non-disclosure agreement, which was good cause for his termination. Ann met Peter for lunch and confronted him about the reason for his termination. Peter conceded and said he knew there was no basis for the lawsuit, but wanted to file it because everyone knows Ellen settles everything.

Before going to lunch, Ann removed $50 from her trust account to pay for her lunch with Peter, a reimbursable expense. After her lunch with Peter, Ann ran into a friend who owed her $50. Ann's friend gave her $50 and Ann deposited the money into her trust account.

Ann then returned to her office and called Peter to inform him that she was terminating her representation of Peter and would return the remainder of the $5,000 deposit. Peter asked Ann to send a demand letter to Emory to settle the case before she ended her representation, but Ann refused to do so.

1. What ethical violations, if any, has Ann committed? Discuss.

2. What ethical violations, if any, has Larry committed? Discuss.

Answer according to California and ABA authorities.

READING POINTERS

1 Knowledge changes the analysis

A reasonable initial investigation differs from knowingly asserting a baseless claim for leverage.

2 Timing controls trust funds

An anticipated expense does not authorize a premature withdrawal.

3 Confidentiality is broad

Company settlement strategy can be protected even if it is not an evidentiary privileged communication.

FEBRUARY 2025 RETEST
ESSAY QUESTION 5 OF 5

5

California Bar Examination

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READING POINTERS

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QUESTION 5

Denise plans to build an in-ground swimming pool on her property. For her ideal-sized pool to comply with regulations requiring a surrounding fence, Denise needs to build the fence five feet onto the property of her elderly neighbor, Paula. Their respective houses are separated by a large, empty grass field with nothing marking the legal boundary line.

While speaking on Paula's front porch about one hundred feet from the property line, Denise explained that the fence would be built "a couple feet onto Paula's land," pointing to six cones that accurately marked the proposed location. In fact, the cones were 10 feet onto Paula's property. Glancing toward the cones, Paula told Denise "Let me get my glasses. With my failing eyesight, it's hard for me to see that far." Denise immediately responded, "That's really not necessary. I know that everything is fine." Paula replied, "Well, I guess if that is all it is, it's ok. I have not done anything with that side lot in 30 years."

Shortly after construction of the pool and fence was completed, Paula decided to sell her house. After conducting a land survey, Paula's real estate agent informed Paula that Denise's fence was 10 feet onto Paula's property. If the fence remains where it is, the estimated fair market value of Paula's property is $480,000. The estimated fair market value of the property is $500,000 if the fence is moved to the property line. It will cost $25,000 for Denise to remove the fence, rebuild it on her side of the property line, and reduce the size of her pool.

Paula has sued Denise to have the fence removed and, alternatively, for damages. Because Paula wants to resolve this issue before selling her property, she has filed a motion for a preliminary injunction.

1. How should the court rule on Paula's preliminary injunction motion? Discuss.

2. How should the court rule on Paula's entitlement to a permanent injunction? Discuss.

3. If the court rules for Paula on liability but denies the permanent injunction, how are her damages measured? Discuss.

READING POINTERS

1 Consent has a factual limit

The owner's assent followed a misleading description of the actual encroachment.

2 Do not merge the remedies

A mandatory order before trial presents different concerns from a final injunction.

3 Use each number correctly

Removal cost informs hardship; the stated $20,000 diminution measures the permanent value loss.

February 2025 Retest

California Bar Examination

Performance Test

INSTRUCTIONS AND FILE

READING POINTERS

Official source page preserved. Use the highlighted pages and corresponding online response for added teaching commentary.

IN RE DAWES FAMILY PARTNERSHIP

Instructions .....

FILE

Memorandum to Applicant from Jada Robbins .....

Transcript of Interview with Darnell Dawes .....

Dawes Family Partnership Agreement .....

READING POINTERS

Official source page preserved. Use the highlighted pages and corresponding online response for added teaching commentary.

PERFORMANCE TEST INSTRUCTIONS

1. This performance test is designed to evaluate your ability to handle a select number of legal authorities in the context of a factual problem.

2. The problem is set in the fictional State of Columbia, one of the United States. In Columbia, the intermediate appellate court is the Court of Appeal and the highest court is the Supreme Court.

3. You will have two sets of materials with which to work: a File and a Library.

4. The File consists of source documents containing all the facts of the case. The first document in the File is a memorandum containing the directions for the task you are to complete. The other documents in the File contain information about your case and may include some facts that are not relevant. Facts are sometimes ambiguous, incomplete, or even conflicting. As in practice, a client's or supervising attorney's version of events may be incomplete or unreliable. Applicants are expected to recognize when facts are inconsistent or missing and are expected to identify sources of additional facts.

5. The Library contains the legal authorities needed to complete the task and may also include some authorities that are not relevant to the assigned lawyering task. The cases, statutes, regulations, or rules may be real, modified, or written solely for the purpose of this performance test. If any of them appear familiar to you, do not assume that they are precisely the same as you have read before. Read each thoroughly, as if it were new to you. You should assume that cases were decided in the jurisdictions and on the dates shown. In citing cases from the Library, you may use abbreviations and omit page references. Applicants are expected to extract from the Library the legal principles necessary to analyze the problem and perform the task.

6. In answering this performance test, you should concentrate on the materials in the File and Library. What you have learned in law school and elsewhere provides the general background for analyzing the problem; the File and Library provide the specific materials with which you must work.

READING POINTERS

Official source page preserved. Use the highlighted pages and corresponding online response for added teaching commentary.

7. This performance test is designed to be completed in 90 minutes. Although there are no restrictions or parameters on how you apportion that 90 minutes, you should allow yourself sufficient time to thoroughly review the materials and organize your planned response before you begin writing it.

8. Do not include your actual name or any other identifying information anywhere in the work product required by the task memorandum.

9. Your performance test answer will be graded on its responsiveness to and compliance with directions regarding the task you are to complete, as well as on its content, thoroughness, and organization.

READING POINTERS

Official source page preserved. Use the highlighted pages and corresponding online response for added teaching commentary.

Jada Robbins & Associates, LLP

43 Franklin Lane
Concord, Columbia 99909

1 **MEMORANDUM**

TO: Applicant
FROM: Jada Robbins
DATE: March 18, 2025
RE: Advice on Partnership for Darnell Dawes

Darnell Dawes has asked for our advice on a family business of which he is a partner. Darnell is a partner in the Dawes Family Partnership, which operates several convenience stores in the county in the State of Columbia. The partners in the firm include Darnell, his sister Tiffany Gordon, and his step-father Willie Poole.

Dawes and Gordon have had difficulty with Poole's participation in the business, as described in the transcript of my interview with Dawes. They want to separate Poole from the business if they can.

Dawes wants to avoid litigation. So, with Gordon's agreement, he proposed to Poole that they meet with a mediator to see if they can find a way to settle their differences. Poole agreed. The first mediation session is set for late next week.

Dawes wants to know what rights he and Gordon have to force Poole out as a partner. They are prepared to buy him out. In calculating the buyout amount, Dawes also wants to account for several additional contributions he and Gordon have made to the partnership. He wants to know the answers before he starts negotiating with Poole at the mediation session.

Prepare a memorandum that assesses the strengths and weaknesses of Dawes's and Gordon's claim to force Poole to separate from the business and that discusses the method by which a court would calculate the buyout amount.

READING POINTERS

1 **Match the requested product**

This task calls for an objective office memorandum, not a client letter or advocacy brief.

TRANSCRIPT OF INTERVIEW WITH DARNELL DAWES

Jada Robbins: Darnell, thank you for coming in today. How can I help you?

Darnell Dawes: I need to get your advice about a problem with a business I run with my sister.

Robbins: What kind of problem are you having?

Dawes: We have a partner in the business who we want to move out. We don't want to do business with him anymore.

Robbins: Tell me about the business. When did you start it? Who were the partners?

Dawes: We started it about 10 years ago, when my mother was still alive. My mother was looking for something to do after my father died. My sister, Tiffany Gordon, had kids in college and time on her hands. And I was looking to change jobs. So we decided to start a convenience store.

Robbins: How did you set up the business?

Dawes: As a partnership. We wanted flexibility to change things if we needed to. We signed a partnership agreement.

Robbins: How did you finance the business?

Dawes: The three of us put in the same amount, to cover initial inventory and operating costs. We rented a space and got started.

Robbins: How did it go?

READING POINTERS

Official source page preserved. Use the highlighted pages and corresponding online response for added teaching commentary.

Dawes: Slow at first, but better after the first six months. After a year, we were breaking even. In the second year, we got ahead.

Robbins: Don’t you have more than one store?

Dawes: Yes. We opened another store in our third year. We bought the property for the first store and purchased another for the second.

Robbins: How did you finance that?

Dawes: We borrowed and took out a mortgage on both properties. Again, the three of us split the down payment equally.

Robbins: Did things keep going well?

Dawes: Yes. In the fifth year, we opened another location, borrowing the money, purchasing the building, and splitting the down payment equally. But then my mother died.

Robbins: I am sorry to hear that. What happened with her partnership interest?

Dawes: Well, I didn’t say this before. But about four years after the business started, she got married to this man, Willie Poole. When she died, she left her partnership interest to him.

Robbins: I gather that you didn’t get along with him.

Dawes: Before my mother died, we had no problems. She was happy and that was fine with us. We’d see him at gatherings, but we never got close.

Robbins: Okay. After your mother died, what role did Poole play in the business?

READING POINTERS

Official source page preserved. Use the highlighted pages and corresponding online response for added teaching commentary.

Dawes: None at first. My sister and I did the work. When we needed to put more money in, the two of us paid it. We didn't ask for his help and he didn't offer.

Robbins: Did he take any money out?

Dawes: Yes. He got a monthly payment from the partnership. Same as my mother.

Robbins: Did you or your sister take anything out?

Dawes: No. We always left our draw in the partnership. Neither of us needed it. My sister's husband makes a good living and so does my wife.

Robbins: So it's Poole that you want to move out of the business. Why?

Dawes: The trouble started about a year ago. Poole started showing up at the stores and criticizing some of our employees. We asked him to stop, but he didn't.

Robbins: Why did he start doing this?

Dawes: I don't know. I heard he had changed jobs and was making less. Maybe he thought the stores could make more money. I never asked.

Robbins: So why are you here now?

Dawes: About six months ago, Poole got worse. He was authorized to sign checks for the partnership and started buying inventory that wouldn't sell. He tried to fire an employee that he didn't like. We persuaded the employee to stay, but we could not get Poole to stop interfering.

Robbins: What happened next?

READING POINTERS

Official source page preserved. Use the highlighted pages and corresponding online response for added teaching commentary.

Dawes: My sister heard about the chance to buy a fourth store, but we had to move quickly. We had the down payment and didn't need to ask Poole to pay in. But he refused to consent to the expansion. He wouldn't sign the loan papers. He blocked the whole thing. So we lost that chance.

Robbins: And then?

Dawes: That was it for me and Tiffany. We set up a meeting with Poole and told him we wanted to buy him out. He refused and started yelling at us that we were mismanaging the stores. He threatened to sue us. We don't know why. We got pretty angry too. It was a mess.

Robbins: What happened after that?

Dawes: When my sister and I cooled down, we realized that we couldn't let things stay the way they were. We both want to avoid a court case. So we talked with some friends, who recommended a mediation service offered by the local Better Business Bureau. Poole agreed and we are meeting next Friday. That's why I contacted you. I want to know how strong a claim we have to force him out.

Robbins: Anything else?

Dawes: Yes. We're ready to pay Poole one-third of the current value of the business; we don't want to fight about shares. But we want the contributions we've already made taken out of the total value before the shares are calculated. We think that's fair, especially since Poole never put in a dime. But it would mean paying him about $50,000 less.

Robbins: Got it. A few questions. You and your sister have paid in funds for down payments and for other reasons. Is that right?

READING POINTERS

1 Impairment versus disagreement

Use the lost expansion, but address whether refusal was a good-faith business decision.

Dawes: Correct.

Robbins: And you have taken no money out of the business, correct?

Dawes: Yes, that’s right.

Robbins: Thank you. We’ll look at the law and get back to you early next week.

READING POINTERS

Official source page preserved. Use the highlighted pages and corresponding online response for added teaching commentary.

DAWES FAMILY PARTNERHIP AGREEMENT

(Selected Paragraphs)

. . . . .

7. INITIAL CAPITAL CONTRIBUTION.

The partners hereby agree to make initial capital contributions to the Partnership to be used in the Partnership business. By unanimous agreement of all Partners, additional contributions may be made to, or withdrawals may be made from, the capital of the Partnership.

8. SUBSEQUENT CAPITAL CONTRIBUTIONS.

The partners recognize that additional capital contributions may be necessary for future Partnership purposes. The treatment of such contributions may be determined by unanimous agreement of the partners at the time of the contribution.

9. DISTRIBUTIONS.

On December 31 of each year, the accounts of the Partnership business will be closed for the year. As of that date, the Partnership income and expenses will be totaled and the difference shall be divided among the Partners on any basis that is mutually agreed upon by all Partners, giving due consideration to services rendered during the year by each Partner, drawings during the year by each Partner, and the amount of capital invested by each Partner during such year. Partners may request their drawing to be paid annually or in monthly installments.

. . . . .

READING POINTERS

1 Read the agreement first

Determine whether the partners agreed to capital treatment before applying statutory loan defaults.

February 2025 Retest

California Bar Examination

Performance Test

LIBRARY

READING POINTERS

Official source page preserved. Use the highlighted pages and corresponding online response for added teaching commentary.

IN RE DAWES FAMILY PARTNERSHIP

LIBRARY

Columbia Revised Uniform Partnership Act (Selected).....

Bates v. Bates Land Co.
Columbia Supreme Court (2009) .....

Johnson v. Samson, et al.
Columbia Court of Appeal (2018).....

READING POINTERS

Official source page preserved. Use the highlighted pages and corresponding online response for added teaching commentary.

COLUMBIA REVISED UNIFORM PARTNERSHIP ACT

(Selected)

Section 23.601. Events Causing Dissociation.

A person is dissociated as a partner when:

. . . . .

(e) on application by the partnership or another partner, the person is expelled as a partner by judicial order because the person:

. . . . .

(3) has engaged or is engaging in conduct relating to the partnership's business which makes it not reasonably practicable to carry on the business with the person as a partner

. . . . .

Section 23.701. Purchase of Interest of Person Dissociated as Partner.

(a) If a person is dissociated as a partner without the dissociation resulting in a dissolution and winding up of the partnership business, the partnership shall cause the person's interest in the partnership to be purchased for a buyout price determined pursuant to subsection (b).

(b) The buyout price of the interest of a person dissociated as a partner is the amount that would have been distributable to the person . . . if, on the date of dissociation, the assets of the partnership were sold and the partnership were wound up . . . . .

READING POINTERS

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BATES v. BATES LAND CO.

Columbia Supreme Court (2009)

This dispute centers on a family owned partnership, Bates Land Company. Kelly Bates is the second of seven children in the Bates family. The other partners include Kelly's parents and his six siblings. The partnership was formed in the mid-1990s and owns both ranchland and farmland.

On March 26, 2007, the partnership held a meeting to discuss selling a parcel of land. Kelly received notice of the meeting, but did not attend. Later, Kelly refused to sign any documents related to the sale and refused to talk with the other partners. All the other partners filed suit to dissociate Kelly from the partnership. The trial court found that Kelly had engaged in conduct "relating to the partnership's business which makes it not reasonably practicable to carry on the business" in partnership with Kelly. *Revised Uniform Partnership Act (RUPA) Section 23.601(e)(3)*. The trial court ordered dissociation and Kelly appealed.

Enacted in 1998, *RUPA* introduced the concept of "dissociation." Under prior law, if members of a partnership wanted to expel one of the partners, they had to seek dissolution of the partnership, followed by an accounting and division of shares. By contrast, dissociation permits the expulsion of one partner without completely dissolving the partnership. *RUPA Section 23.601* articulates more than ten separate grounds for dissociation, only one of which is at issue in this case.

The trial court found that Kelly did not trust the other general partners, including his parents and his other siblings, and that this distrust was mutual. It determined that the relationship between Kelly and the other family members was irreparably broken.

The trial court focused on a meeting between the partners in 2006, a year before this lawsuit began. In that meeting, Kelly turned to each of the other partners

READING POINTERS

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and said to each of them in turn that they would each die, that he would be the last man standing, and that he would then gain control of the partnership. At trial, Kelly contended that this was not a threat, but only a description of the rights of survivorship in the partnership agreement. The trial court determined that Kelly's statements constituted threats. Kelly also stated to his family that "paybacks are hell" and that he intended to get even with all of them, a statement the trial court also found be a threat. Finally, the trial court noted Kelly's refusal to sign documents related to the land sale and refusal to speak with the other partners. Kelly's father had to hire a lawyer to communicate with Kelly.

The trial court concluded that the partnership could not operate in any meaningful way with Kelly as a partner. It found that Kelly's conduct constituted "conduct relating to the partnership business which makes it not reasonably practicable to carry on the business with the person as a partner." *RUPA Section 23.601(e)(3)*.

No previous Columbia case directly addresses this subsection. Accordingly, we look to other jurisdictions for guidance on how to apply this dissociation provision.

In *Warnick v. Warnick* (Wyoming 2003), the court affirmed a trial court order of dissociation against a partner in a family business similar to the one in this case. There had been heated disputes, including physical altercations initiated by the dissociated partner. That partner had also paid personal expenses out of the partnership checking account. The Wyoming Supreme Court found these facts sufficient to support for an order of dissociation.

Similarly, in *Brennan v. Brennan Associates* (Connecticut 2008), the trial court ordered the dissociation of a partner in part because that partner had failed to disclose a prior felony conviction for tax fraud to his other partners. The trial court also noted other conduct of the dissociated partner: efforts to claim sole

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check-signing authority; disputes over the handling of complaints of tenants renting property from the partnership; and claims by the dissociated partner that the other partners had engaged in fraudulent contact – claims the trial court found to be false. The Supreme Court used a totality of the circumstances analysis to find "an irreparable deterioration of a relationship between partners" and affirmed the order of dissociation under that state's *RUPA* statute. See also*, Nuco Associates v. Jackson* (Utah 2004) (dissociation appropriate where partners could not agree on managing partnership affairs and where one partner generated a "toxic atmosphere of acrimony").

We find these authorities persuasive. We recognize that, in many cases, the relationship between partners may still be salvageable. We stress that a dissociation should not be ordered in situations where partners disagree in good faith about how to meet the inevitable challenges faced by any business. But we find that conduct similar to that in this case can serve as a basis for dissociation of a partner. A trial court should employ a totality of the circumstances analysis to assess whether the relationship between partners has deteriorated to the point where it is "not reasonably practicable to carry on the business" with one of the partners.

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Affirmed.

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1 Bates sets a limit

Conflict alone is insufficient; connect deterioration to the practical ability to operate.

JOHNSON v. SAMSON, ET AL.

Columbia Court of Appeal (2018)

Two partners in a printing business, Solomon Samson and Juanita Mason, petitioned the Columbia trial court for an order of dissociation against a third partner, Jarvis Johnson. The petition also stated their intention to buy out Johnson's interest and proposed a method for valuing that interest. Johnson contested both the dissociation request and the proposed valuation method. The trial court ruled in favor of Samson and Mason on dissociation, but agreed with Johnson on how to value his share. Samson and Mason appealed on the valuation issue alone.

The partnership, JoSamCo Printing Company, was formed in August 2012. Each partner contributed equal funds, which were used as a down payment towards the purchase of an existing print shop in Columbia City. The partnership took out a loan for the balance of the purchase price, secured by a mortgage. All three partners worked in the business and shared management responsibilities. For the first three years, the partners contributed equally to the partnership and took equal cash distributions.

About three years ago, Johnson began to withdraw from the operation of the business. He stopped contributing regularly to partnership expenses, but continued to receive cash distributions. Over the next two years, the remaining two partners continued to contribute to the business. Specifically, they paid a total of $50,000 in mortgage and operating expenses. Samson also left the amounts designated as his cash distribution in the partnership accounts, which were used to fund limited expansion efforts by the business.

Tension between the partners increased, based on Johnson's refusal to contribute additional funds and his insistence on receiving cash draws. Eventually, Johnson stopped all participation in the business and started a different job in an

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unrelated business. That led Samson and Mason to petition for dissociation. At trial, the parties stipulated to the dates and amounts of all contributions and distributions. The parties also agreed that, if the court ordered dissociation, Samson and Mason would buy out Johnson's interest. The parties disagreed about how to value that interest.

Johnson contended that his share should be calculated based on the gross value of the partnership's assets on the date of dissociation, without regard to any additional contributions by the other partners. *Revised Uniform Partnership Act (RUPA) Section 23.701*. Samson and Mason contended that Johnson's share should be calculated based on the net value of those assets, determined after deducting the value of contributions they had made. The trial court agreed with Johnson and awarded an amount of money that differed by over $90,000 from the price proposed by the other partners.

Resolution of this matter relies on application of the *Columbia Revised Uniform Partnership Act (RUPA)*, which states in pertinent part:

> [A] partnership agreement governs relations among the partners and between the partners and the partnership. To the extent the partnership agreement does not otherwise provide, this chapter governs relations among the partners and between the partners and the partnership.

RUPA Section 23.103(a).

As a preliminary matter, we note that the JoSamCo partnership agreement contains no provisions dealing with the treatment of additional contributions by the partners. We thus apply the default provisions of *RUPA*.

Under *RUPA*, during the existence of the partnership, "[a]ll partners are liable jointly and severally for all obligations of the partnership unless otherwise

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agreed by the claimant or provided by law." *RUPA Section 23.306(a)*. "A partner may lend money to and transact other business with the partnership," *RUPA Section 23.404(f)*, and "[a] partnership shall repay a partner who, in aid of the partnership, makes a payment or advance beyond the amount of capital the partner agreed to contribute." *RUPA Section 23.401(d)*. Such payments or advances constitute loans to the partnership, which accrue interest from the date of the payment or advance. *RUPA Section 23.401(e)*.

The partners in this case knew that additional cash would be needed to make the mortgage payments. However, the partners never amended their partnership agreement to address how to account for additional contributions by partners. The advances by Samson and Mason were not documented specifically, either as loans or as capital contributions. The trial court found that the lack of documentation of the advances as loans led to the conclusion that they should be treated instead as capital contributions. It thus declined to deduct them from the gross value of the partnership assets.

This conclusion was in error. Nothing in *RUPA* requires that advances to the partnership be specifically documented as a loan. To the contrary, *RUPA* evidences a presumption that any additional amounts paid by a partner, over and above initial capital contributions, are to be treated as loans, with interest payable from the date of the contribution. *RUPA* is unequivocal on this point. The drafters' comment states: "[T]he partnership must reimburse a partner for an advance of funds beyond the amount of the partner's agreed capital contribution, thereby treating the advance as a loan."

In this case, the silence of the partnership agreement on this point, combined with the statutory presumption requiring advances to be treated as loans, requires the conclusion that the advances by Samson and Mason constituted loans to the partnership. Johnson now argues that treating an advance as a loan would allow one partner to dilute the other partners' shares. That

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argument is one for the legislature, which could not have stated more clearly that a partner's share of partnership assets should be assessed only after satisfying all partnership liabilities, including those arising from partner advances.

These principles require us to treat all advances made by Samson and Mason as loans. The cash distributions that Samson chose to leave in the partnership accounts for use by the partnership also constitute loans to the partnership. His choice to leave them with the partnership was the functional equivalent of another advance to the partnership.

Reversed and remanded for recalculation of Johnson’s share as provided in this opinion.

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1 Retained draws matter

Johnson treats qualifying retained distributions as loans, but verify that the amounts were actually payable.