Many universities and schools of business offer courses that require students to start an on-campus business, write a business plan, or similar activities. This paper considers how state laws related to business organizations may have application to these different types of classroom scenarios. For instance, if a group of students are assigned to a team by a professor and asked to generate a business concept and begin to sell services or products for profit, is it possible that an unregistered general partnership is formed, with all the rights and duties implied in that relationship? Students are likely unaware of the ramifications of such an arrangement, and the question becomes what level of caution or instruction the university, business school, and/or faculty member should give students. What types of activities typically required by these courses can trigger an unregistered general partnership under applicable state laws? Are there steps universities, business schools and/or faculty members can take to either provide clarity on the implications for the students prior to the assignment or to avoid the formation of an unregistered general partnership altogether? This paper analyzes the current state of the law in several representative jurisdictions, offers scenarios that might raise difficult problems, and ends with a suggestion of best practices for universities, business schools, and individual faculty members.

I. INTRODUCTION

Entrepreneurship has grown dramatically as a field of study in higher education over the past few decades. As of 2005, the number of entrepreneurship courses offered at colleges and universities in the U.S. had grown to approximately 2,200. Similarly, the are hundreds of
entrepreneurship centers, institutes, and endowed faculty positions at American universities. Combined with an increased focus on active and experiential learning across many disciplines, the increase in the number of courses and co-curricular offerings focused on entrepreneurship has resulted in a variety of projects, assignments, and co-curricular programs designed to give students hands-on experience in the entrepreneurial process. In many cases, this requires students to develop a venture concept and take steps to investigate and actually launch the concept as well. While these opportunities can enhance a student’s learning, they also raise questions regarding whether an informal general partnership may be created among students working as a team as required by a particular assignment. The possibility of a general partnership also raises questions about the potential impact for all of the students involved in the assignment if one or more of the students continues to pursue the venture concept after the completion of the course.

This paper addresses business organization legal issues arising in the context of undergraduate business education. In one sense, it is a follow-up work to a previous paper from two of the three co-authors on intellectual property issues arising from student entrepreneurship competitions. In both papers, we attempt to highlight possible legal pitfalls associated with the undergraduate business education.

II. UNINTENTIONAL PARTNERSHIPS

Classroom entrepreneurship projects may raise several legal issues, among them questions about implied or unintended partnerships. As of the date of this writing, very little scholarship exists in relation to the legal issues contemplated in this paper—specifically, the formation of inadvertent business entities arising out of classroom assignments in universities or schools of business along with ancillary legal issues related to such business formation. Anthony Luppino touched on potential business organization issues in his 2009 article dealing with university-generated intellectual property and the potential claims of partnership status among different members of a team participating in a university sponsored competition. This article seeks to expand on Luppino’s research and provide insight to universities, schools of business, and faculty members on when an

2 Id.
unregistered general partnership may be formed and what steps, if any, the universities, schools of business, and faculty members should take to protect both their institutions and their students.

Generally speaking, partnership law is state law in a similar manner to corporations or other business organizations. The operative set of laws adopted by all states except Louisiana is some version of the Uniform Partnership Act (UPA), originally created in 1914. Over the years, the majority of states have continued to accept the revisions to the UPA promulgated from time to time by the National Conference of Commissioners on Uniform State Laws. Thus, there is a well-developed body of partnership law that is mostly consistent across the geographic spectrum.

A. Partnership Formation

The UPA sets a modest legal threshold for the formation of a general partnership. As reflected in the language of the statute, a partnership is “an association of two or more persons to carry on as co-owners a business for profit formed under Section 202” of the UPA.\(^5\) Section 202 of the UPA, in turn, merely suggests that “the association of two or more persons to carry on as co-owners a business for profit forms a partnership, whether or not the persons intend to form a partnership.”\(^6\) In this way the UPA makes abundantly clear that intent, by itself, is totally unnecessary to the formation of a legal arrangement—a general partnership—that implies fiduciary duties among co-owners and potentially joint and several liability for partnership obligations. If two or more persons intend to co-own a business and make a profit, and if they have not incorporated or formed their association under some other set of state laws, they are by definition partners—with all the rights and duties implied in that relationship. In other words, the general intent to be equal co-owners of a business enterprise with profit rights and loss obligations replaces the specific intent of forming something the parties might call a partnership. This paper suggests that the average undergraduate business student has no appreciation for the realities of the business organizations they may have formed.

Texas law is illustrative of this legal phenomenon. In at least two recent cases, Texas courts have made clear that there is no mechanical application of the five factors present in the state’s version of the UPA that indicate the existence of a partnership. Those statutory factors are: 1) the right to receive profits; 2) an expression of intent to be partners; 3) participating in or sharing


\(^6\) UPA § 202(a).
control of the business; 4) sharing in losses or liabilities; and 5) contributing money or property to the business.\(^7\) In the first case, *Ingram v. Deere* (2009), the Texas Supreme Court chose a “totality of the circumstances” test in determining the existence of a partnership, as opposed to requiring evidence of each of the five factors.\(^8\) In the second case, a Texas court of appeals buttressed the Supreme Court’s *Ingram* holding in the spring of 2012, stating that a person can be both an at-will employee of a business and a partner at the same time.\(^9\) The Supreme Court denied the petition for review in this second case. Taken together, one can make the argument that given the flexible statutory language, the Supreme Court’s totality-of-the-circumstances approach in *Ingram*, and the expansive view of who can be a partner created by intermediate courts, finding oneself a partner in Texas is exceptionally easy to do. As noted by John Ale and Buck McKinney in a 2009 article focusing on informal business relationships in the entertainment industry, the looseness of general partnership law includes the following characteristics:

- no state filing is required
- no written agreement is necessary
- the persons involved do not have to use the words “partner” or “partnership”
- all that must be present is an “intent” to carry on a business for profit, not the actual
- engagement of a business in profit-seeking activity
- no actual profits are required
- the form of control exercised by the joint venturers need not be elaborated.\(^10\)

In creating an informal, unregistered general partnership under the UPA—what Professor Barry Adler calls an accidental partnership—the

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\(^8\) 288 S.W.3d 886, 896, 904 (Tex. 2009)


partners take on the default rules for partnerships. These default rules include the sharing of partnership profits and losses on an equal basis and liability to third parties. The underlying principle of the UPA’s default rules is equality: partners have equal say in business control, own equal shares of the business net of liabilities, and are equally responsible for business losses. Common illustrations of the accidental partner scenario, as described by Adler, include the creditor-partner status illustrated in *Minute Maid v. United Foods*. In that case, Minute Maid sued a defaulting purchaser of goods (United Foods), and then discovered that one of United’s creditors was U.S. Cold Storage Corporation, who both lent money to United, controlled some aspects of the business, and stood to profit from United’s business relationship with Minute Maid. The Fifth Circuit ignored Cold Storage’s argument that it had no liability to Minute Maid based on its status as a creditor, holding instead that being a creditor did not preclude also being a partner, and because it was a partner it had liability to third parties for partnership debts. While not strictly speaking a UPA case, *Minute Maid* highlights the difficulties in implied, or accidental, partnerships.

Not every business relationship where one party claims partnership status, however, actually creates a partnership. While exceptionally easy to create accidentally, there are limits to what can be called a general partnership. In *Valero Energy Corp. v. Teco Pipeline Co.*, a Texas court of appeals held there was no partnership—despite Teco’s argument that a partnership in fact existed—when there was no agreement to share profits and losses. Teco claimed an implied partnership between the reluctant co-owners of a natural gas pipeline; Valero, in contrast, argued that the sum total of the relationship between the parties arose from an operating agreement, an ownership agreement for the pipeline, and a transportation agreement. The court held these arms-length contractual arrangements governed the parties’ relationship, that there was no agreement to split profits or losses, and therefore there were no partnership duties owing between the parties that might give rise to a claim for breach of fiduciary duty, among others. Even

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12 Id. at 67.
13 291 F.2d 577 (5th Cir. 1961).
14 Id. at 581-82.
15 Id. at 582-83.
16 2 S.W.3d 576 (Tex. App.—Houston [14th Dist.] 1999, no pet.).
17 Id. at 580.
18 Id. at 584-86.
testimony from Teco that it believed it was in a partnership with Valero did not create the implied relationship.19

The Valero case offers multiple suggestions in the implied, accidental, or putative partnership context. First, at least under Texas law, actual partners must have an agreement to split profits and losses, even if only implied. Second, the existence of formal governing documents—like an operating agreement—may actually work against an accidental partnership, as it is indicative of a different type of legal relationship. Third, the parties’ asymmetrical understandings of their relationship does not ipso facto create a partnership. And fourth, jointly owning property like a pipeline does not by itself give rise to partnership status. Needless to say, even with the ease of general partnership formation under the UPA and analogous state law, there may be situations—as indicated by Valero—where the accidental partnership does not arise.

B. Taxation

A general partnership is a “pass-through” entity for federal income tax purposes.20 “Pass-through” status means the partnership itself is generally exempt from income tax and all income and losses the partnership generates will flow through to the partners. Income and losses are required to be reported on the partners’ individual income tax returns.21 Partnership income and losses are attributed to the partners regardless of whether the income is actually distributed to partners or retained by the partnership.22 Generally speaking (with a few exceptions), state taxing authorities treat general partnerships for state income tax purposes in the same way as the Internal Revenue Service treats general partnerships for federal income tax purposes. The specifics of how each state treats partnership income are beyond the scope of this article.

As earlier suggested, the ease with which a general partnership may be formed under the UPA has definitive and substantial implications from an income tax perspective for students who may find themselves unwittingly being general partners under state law. Assuming that a general partnership is formed (meaning the class project fits within the applicable state law definition of a general partnership), the student-general partners are required to report their proportional share of any income produced by their class

19 Id. at 586. A fuller discussion of this case is found in Steven A. Waters & Jennifer Bligh, Partnerships, 54 SMU L. REV. 1547, 1548-49 (2001).
22 Id. See also U.S. v. Basye, 410 U.S. 441 (1973).
project on their individual tax return—whether or not they actually received such income. For example, if the class project produces income that is used to purchase a piece of equipment (a capital expenditure that is not an allowable expense deduction under the Internal Revenue Code), and as a result, the income is unavailable for distribution, the student-general partners will still be required to report their proportional share of partnership income on their individual tax return and pay all applicable taxes. Without proper instruction, a student in a classroom setting may lack the sophistication or access to professional advice to appreciate the income tax consequences of his or her actions, and he or she may also lack the financial wherewithal to pay any resulting income tax liability.

C. Agency

Section 301 of the UPA grants each partner the power to bind the partnership entity to third parties in contract. Section 301 specifically states that “each partner is an agent of the partnership for the purpose of partnership business.” Under this UPA provision, a student-general partner, acting as an agent for the inadvertently formed classroom general partnership, may have the ability to bind other student-general partners to contractual obligations that may not have not been anticipated by the students. The contractual obligation may occur with or without the knowledge and express consent of the team members as long as the action is in the ordinary course of partnership business. Such obligations may be enforced jointly and severally against all partners under the concepts discussed in the next section.

D. Joint and Several Liability

The UPA provides that “all partners are liable jointly and severally for all obligations of the partnership unless otherwise agreed by the claimant or provided by law.” This provision expanded the application of the principle of joint and several liability from the previous version of the UPA. Additionally, a partnership is “liable for the loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission, or other actionable conduct, of a partner acting in the ordinary course of business of the partnership or with the authority of the partnership.” In accordance with these sections, partners acting within the scope of partnership business bind

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23 UPA § 301(1).
24 Id.
25 UPA § 306(a).
26 UPA § 306, Comment 1.
27 UPA § 305(a).
the partnership as well as the other partners and may, generally speaking, subject partnership assets as well as the individual partner’s assets to satisfaction of a judgment under this concept of joint and several liability.

In the context of a classroom assignment or team project that results in the formation of unintended general partnership, it is very possible that one team member—general partner can subject the other team members—general partners to liability—either tort liability or contract liability—with none of the team members comprehending the legal implications of their actions.

III. COMMON CLASSROOM EXAMPLES

Entrepreneurship courses may include a variety of assignments designed to recreate the entrepreneurial process through experiential learning. The scenarios described below are selected examples of assignments from entrepreneurship courses that raise questions as to whether a general partnership may or may not have been formed as a result of the assignment. Following the description of each assignment, we also provide one or two hypothetical situations in which some of the students continue to pursue the venture concept after the completion of the course.

A. Developing a Business Plan

As part of a course, students work in teams of three to five and are asked to develop a business plan by the end of the semester. Students are given the option to assemble their own teams. For those who are not able to find a team, the professor will assign teams. In certain situations, the professor may also add one individual to a team of students that agreed to work together. The business plan serves as a tool for the professor to address different aspects of starting a business and requires students to apply the concepts to their own business idea. The professor typically provides an outline of the information to be covered and may provide examples from previous classes. The student team is typically formed early in the semester and works on the project together through the remainder of the course. Students are not required to generate business concepts prior to the teams being formed. Among the team members, some students develop their own suggestions for a business concept but the team discusses all of the possibilities and brainstorms together to develop an idea. During the semester, the students work on developing the concept through market research, which includes conducting interviews and surveys with potential customers. The students also talk to potential manufacturers, suppliers, etc. to help develop their financial projections and determine the feasibility of their concept. However, the students do not actually sell their product or service and generate zero
revenue during the course. At the end of the course, the student teams are required to deliver their written plan and an oral presentation to the professor and a panel of other local investors and entrepreneurs. As is the case with most team-based projects, all of the students participate at some level but there are one to two students who took the lead in developing the concept and plan.

This is a common assignment in entrepreneurship courses. The following examples are two scenarios where an actual business is started after the end of the course based on the project and involving at least one of the team members:

- A few weeks after the course is over, the two students who took the lead on the project decide to move forward with the concept. They decide to change the brand name and start by following-up with the customers and suppliers they researched during the class project. They close their first sale within three months of the end of the course.

- One of the investors who participated in the class presentations was very impressed with one of the students and the business concept. He contacts the professor a few weeks after the course and asks for the email address of one of the team members. The investor contacts the student who has now graduated and offers her the opportunity to move forward with the concept. The investor will provide the initial capital. The investor suggests that the recent graduate will need two additional team members with certain skillsets different than her own. He has some suggestions but also allows the student to recruit anyone else she believes may be a good fit. The student entrepreneur recruits two of her classmates but does not approach any of her team members from the project.

B. Developing and Selling a Product On-Campus

As part of an introductory course, students are assigned to teams of five to eight students. Students do not have the option to participate on an individual basis or to recruit their own team members. Each team is required to develop and sell a product during the semester but are limited to selling to students, faculty and staff on-campus. The grades for the assignment are based on the teams reaching certain threshold levels of profit before the end of the semester. Each of the students is required to submit at least three of their own business concepts early in the semester but each team must decide on only one to pursue. After a few initial team meetings, the team members discuss the various business concepts and decide to pursue one particular
The students are provided with a small loan from the university (e.g., $500) upon approval from the professor after a presentation of the concept. The students use the loan proceeds to purchase an initial order of their product from a supplier. Each team member then spends three to four weeks actively selling the product until the profit threshold is met. At the end of the semester, each team submits a written report summarizing their performance and learning. All of the profits generated from the course assignment are donated to local charities or used for future student scholarships.

The next semester, one of the students from the course decides to call the supplier his team used and order more of the product using his own money. He decides to continue selling it on his campus but also attempts to sell the product at three or four other local colleges and universities. This student did not have the original idea for the product but realized there was potential for success when he was asked to sell the product for his team.

C. Elevator Pitch Competitions

As part of an introductory or senior-level course, students are required to compete in a university’s elevator pitch competition towards the end of the semester. Each team consists of two to three students and is required to develop its own concept. The competition requires each contestant to give a 90-second pitch about their business to a panel of experienced investors. It is not required but there have been occasions where some of the judges will invest in a team’s concept. The winning team in the competition also receives a $5,000 prize. The student teams are required to only come up with one original concept to pitch. As a result, not all students are required to participate in the process of coming up with ideas for a team to pitch. The pitch competition evaluates the investors’ interest in the concept and the entrepreneurial team based on their presentation. Teams are not required to take actual steps in pursuing the ideas, although doing so may improve their chances of winning the competition or receiving investor interest.

One of the student teams from the course wins the entire competition and has a few judges want to set up meetings to discuss possibly investing in the company. The one student who came up with the idea and delivered the majority of the pitch takes his share of the prize money and spends the money on having a friend create a logo, basic website, and marketing materials. He also starts to prepare a business plan for the potential investors. He does not notify the other two students on his team from the class because in his mind they were freeloaders and he did not want them on the team. One of the other team members wanted to pursue the idea further after the competition but did not really know enough to move forward. The third team
member was happy with the prize money and never really gave it another thought. Six months later, the student entrepreneur who had the original idea had secured $50,000 in future business and was close to receiving $100,000 in investment capital from two interested investors. Once the other team members heard about these developments, they emailed him and asked why he failed to include them in his plans and that they wanted to continue working on the idea with him.

Each of the foregoing scenarios raises some level of concern about the formation of a general partnership. Questions that might arise include the following voluntariness, profitability, intent, and timing.

**Voluntariness:** Do the students form project groups voluntarily, or are they assigned to groups by the professor? Given that partnerships must by definition be voluntary arrangements, an assigned project team probably is evidence of something other than a partnership.

**Profitability:** Is profit or loss reasonably foreseeable? In purely class-based assignments, the students seek nothing other than a grade and course credit. In assignments with actual money involved, however, where students are rewarded financially for the real-world success of their academic project, the profitability (or losses) of the group project may be evidence supporting a partnership finding.

**Intent:** What do the students intend to be the end result of their work? Do they hope to impress actual investors who may be guest lecturers in class? Or are they merely seeking academic credit? Evidence of intent in this regard, as in many legal contexts where intent is an element of a claim or defense, may be difficult to establish with certainty.

**Timing:** When does the project transform from an academic exercise to a profit-seeking venture? If one student moves forward with the idea after the course is over or after graduating, must they inform their former classmates and invite them to participate? Answering this question necessarily requires an answer to the questions offered above.

### IV. BEST PRACTICES

Given the ambiguity in the applicable case law described above, the determination of whether a student team has formed an informal general partnership can depend on a number of factors. Most situations would need to be evaluated on a case by case basis, considering the parameters of the assignments, understanding of the arrangement by the students, action taken by the students, and more. It is difficult to foresee all possible scenarios and anticipate student behavior, but we believe the following elements of a potential classroom project will play the most important role in determining whether an informal general partnership could be formed:
• Will the student actively sell a product or service?
• Will the students earn and share in any profits?
• Will the students develop a product prototype?
• Do the students have an intent to secure investment capital?
• Are teams voluntary or assigned?

Other important factors in structuring assignments to minimize the possibility of informal general partnerships are the instructions and explanation given by the professor. If the professor indicates either that students are allowed or encouraged to pursue profits, investment, or an actual business beyond the classroom, it is more likely that students’ impressions and intent will meet the test for an informal general partnership. Professors also have an opportunity to frame the project as purely educational.

In certain circumstances, faculty may determine that attempting to eliminate all of the above factors from their assignment would significantly reduce the learning opportunity for students. In addition, even if faculty take steps to minimize these factors, situations may still occur in the course that give rise to informal partnership concerns. As a result, faculty and/or administrators should consider taking steps to (1) ensure students receive adequate and clear notice of the potential issues associated with a particular project, (2) take advantage of the opportunity to teach students about the relevant legal issues they may face as entrepreneurs, and (3) provide guidance and a process for students to negotiate the issues typically faced by a new partnership. The following are examples of tools that universities and individual faculty members may use to accomplish these goals.

A. Student Handbook / University Policy

Most schools have a student handbook that sets policies regarding a variety of issues applicable to student life, academics, and more. Students are typically provided with a copy as part of the admissions or orientation process to ensure proper notice. A policy could be adopted outlining that course projects are intended for educational value only but that students should be aware of the potential risk of establishing an informal general partnership. This may not be the most effective way to notify students in the case of course projects but could be helpful for similar situations involving competitions, clubs, or other entrepreneurial activity outside the classroom.
B. Course Syllabus

The course syllabus provides an option for individual faculty to notify students of the potential risks without the possible delay, process and bureaucracy involved in seeking approval for a new university policy. Although the student handbook ensures consistency across all courses, utilizing the course syllabus most likely has a better chance of being read by students. If the ultimate goal is student awareness, then this option should be preferable to the student handbook. A combined approach would be for faculty to cross reference the university policy in the syllabus.

C. Application

Another option available to individual faculty is to require an application that individual students or entire teams can submit at the early stages of a particular project. This tool can be helpful in providing a written record of which individual students initiated a particular concept prior to teams being formed and confirming notice of any policies included in the student handbook or course syllabus. Team applications can also be useful if instructor approval is required for enrollment in a particular course or if students have an opportunity to form their own teams. The team application can force them to discuss and reach agreement on issues related to a possible venture, including how profits and losses will be shared, control, etc.

D. Written Agreement

A more formal approach is to offer students a standard written agreement that faculty members can provide to students as part of a project. Each team can be required to submit a completed agreement that outlines the relationship among the students throughout the semester. The agreement does not need to be a complete partnership agreement but can be a simple document that outlines an understanding among team members regarding some basic issues. This approach provides notice to students of the relevant issues, serves as a tool for them to learn through the negotiation process, and can help guide them through that process.

E. Reflection Assignment / Peer Evaluations

Many professors require students to submit reflection papers and/or peer evaluations following a team project. This process could be used to capture students’ intent about whether they will continue to pursue the business
following the project. This tool can also allow students the opportunity to agree in writing about their plans to continue or dissolve the potential business opportunity at the end of the course. If proper steps were not taken earlier in the project to outline the team members’ interests in the potential venture, this provides one last opportunity to resolve issues among the team before the course is over.

V. CONCLUSION

While these tools may provide more clarity, some faculty may be hesitant to use them. The process may turn students’ focus onto negotiating the parameters of the team arrangement than other aspects of the project. Whether the negotiating process is relevant to the primary learning objectives of the course will depend on the type of course. For example, these types of solutions would likely be appropriate for upper-level courses focused on starting businesses that are expected to generate significant profits for the team, obtain investment, and/or help students start ventures that they intend to carry on beyond the course. However, these tools may not make sense for introductory courses with less experienced students where an on-campus business project is used to introduce the basic aspects of business and/or entrepreneurship.

Accordingly, determining the appropriate elements of a course project and the steps necessary to provide notice, learning, and guidance can be difficult. Depending on the type of project, the issues regarding informal partnerships and how it impacts a continuing business following the course may only apply to a small percentage of teams. While a great learning experience, many of the venture concepts are not successful or not worth students’ time outside of the course. Given the tradeoffs, we recommend entrepreneurship faculty conduct an inventory of course projects where the issue may arise and discuss the possible solutions described above (and others) with the university’s general counsel office. This process will allow for appropriate legal counsel to advise faculty and consider possible additional issues that could impact the university. It also ensures that the entrepreneurship faculty will consider the impact of different options across all applicable projects, the related learning experiences for students, and the need for preventative steps in different courses.