

## Fiduciary Duty of Partners

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The Article discusses the nature of a partner's fiduciary duty to his copartners - in particular, when he clandestinely renews or buys property leased to the partnership and when he secretly engages in business on his own. Section 21 of the Uniform Partnership Act provides the principles that should govern such fiduciary duty: every partner must account to the partnership for any benefit, and hold for it any profits derived by him without the consent of the others from any transaction connected with the formation, conduct, or liquidation of the partnership or from any use of its property. Based on jurisprudence, a partner's fiduciary duty ceases to arise yet where the parties are still in the process of negotiating the formation of a partnership. Else said, the fiduciary responsibility of a partner as such, only commences from the moment the partnership is perfected. The Article goes on to analyze the application of the fiduciary duty of partners in particular instances. It is basic that a fiduciary is disqualified from renewing in his own name a lease in which he was interested in his fiduciary capacity. One reason put forward was because the partnership-lessee's normal expectancy of a "pre-emptive opportunity" for renewal constitutes a valuable partnership right such that a partner, like any other trustee, should not acquire a personal interest likely to conflict with the trust. Neither will full disclosure of a partner of intent to renew a partnership lease in his name negative his disqualification. Quoting Justice Cardozo, the Article emphasizes that there is no standard of behavior on the part of a fiduciary less rigid than a frank disclosure. As to the duty to account for secret profits, it compares the rules developed in American and English jurisprudence and those established by the Civil Code of the Philippines. Whereas in the former a violating partner is penalized to the fullest extent, he is merely compelled to make reparation in the latter; penalty is imposed on the one hand, reparation on the other. Which better rule to apply is said to be a concern of policy. In fine, the work simplifies the fiduciary duty of a party by describing it principally as a duty of loyalty to his copartners. Thus, any breach of the said duty must be met with the corresponding sanction.