

CHAPTER 7

LEGAL RELATIONSHIPS

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A. MINORS

7:1 MINOR CHILD — DEFINED — RIGHT TO SUE OR DEFEND

A person who is younger than 18 years old is a minor child. An adult must (sue) (defend) as (insert appropriate description, e.g., “guardian,” “next friend,” “conservator,” etc.) in place of the minor.

Notes on Use

1. Use whichever word, “sue” or “defend,” is appropriate.
2. This instruction should be used in conjunction with Instructions 6:2, 6:3, and 6:4, as applicable.

Source and Authority

1. This instruction is supported by C.R.C.P. 17(c) and 317(c), and section 13-22-101(1)(c), C.R.S. *See also* § 2-4-401(6), C.R.S. (absent express statutory language to the contrary, general statutory definition of a “minor” is one who has not attained age of twenty-one years). For a discussion of the rights of a person over eighteen but not yet twenty-one as specified in the age of competence statute, §13-22-101(1)(d), C.R.S., including the right to make his or her own decisions regarding domestic matters, see **In re Marriage of Tibbetts**, 2018 COA 117, ¶ 19.

2. A minor is not competent to sue without a guardian ad litem or someone acting on his or her behalf before eighteen years of age. **Elgin v. Bartlett**, 994 P.2d 411 (Colo. 1999). However, a parent does not have a duty to litigate a minor’s personal injury claim. *Id.*; *see also* **Cintron v. City of Colo. Springs**, 886 P.2d 291 (Colo. App. 1994). For a discussion of whether a minor or the parents are entitled to sue for pre-majority expenses and damages, see **Pressey v. Children’s Hospital Colorado**, 2017 COA 28, ¶¶ 26-31.

7:2 EMANCIPATION — DEFINED

A minor child is emancipated when the child has been freed from parental care, custody, and control.

Notes on Use

This instruction should be used in conjunction with Instructions 6:2, 6:3, and 6:4, as applicable.

Source and Authority

1. This instruction is supported by **Union Pacific Ry. v. Jones**, 21 Colo. 340, 40 P. 891 (1895). See **Pawnee Farmers' Elevator & Supply Co. v. Powell**, 76 Colo. 1, 227 P. 836 (1924); **In re Application of Connolly**, 761 P.2d 224 (Colo. App. 1988), *rev'd on other grounds sub nom. Abrams v. Connolly*, 781 P.2d 651 (Colo. 1989); **Napolitano v. Napolitano**, 732 P.2d 245 (Colo. App. 1986) (significant factors in determining emancipation include child's financial independence and whether child has established a residence away from family domicile); **In re Marriage of Clay**, 670 P.2d 31 (Colo. App. 1983) (minor not emancipated where evidence undisputed that child was still dependent on parents for support and shelter); **In re Marriage of Robinson**, 43 Colo. App. 171, 601 P.2d 358 (1979) (for parental support purposes, a 19-year-old child is not emancipated while employed full-time and living away from home on a temporary basis with intention of returning to school and parental support), *aff'd*, 629 P.2d 1069 (Colo. 1981); **In re Marriage of Weisbart**, 39 Colo. App. 115, 564 P.2d 961 (1977); **Van Orman v. Van Orman**, 30 Colo. App. 177, 492 P.2d 81; *see also* § 2-4-401(6), C.R.S. (absent express statutory language to the contrary, general statutory definition of a "minor" is one who has not attained age of 21 years).

2. For purposes of determining child support, a child is considered emancipated when the child becomes nineteen, marries, enters active military service, or the court finds the child is emancipated based on other facts. § 14-10-115(13), C.R.S.

3. An emancipated minor has the right to sue for all pre-majority damages and expenses. **Pressey v. Children's Hosp. Colo.**, 2017 COA 28, ¶¶ 25-31.

B. PARTNERSHIPS AND JOINT VENTURES

7:3 GENERAL PARTNERSHIP — DEFINED

A partnership is an association of two or more persons to carry on as co-owners a business for profit.

Notes on Use

1. This instruction may require appropriate modifications where a limited partnership is involved. For the definition of limited partnerships, see Colorado Uniform Limited Partnership Act of 1981, §§ 7-62-101 to -110, C.R.S., and Uniform Limited Partnership Law of 1931, §§ 7-61-101 to -130, C.R.S. However, the liability of the general partner of a limited partnership is the same as for partners of a partnership without limited partners. **Black v. First Fed. Sav. & Loan Ass'n**, 830 P.2d 1103 (Colo. App. 1992), *aff'd sub nom. La Plata Med. Ctr. Assocs. v. United Bank*, 857 P.2d 410 (Colo. 1993); *see also* Colorado Limited Partnership Association Act, §§ 7-63-101 to -116, C.R.S.

2. This instruction may require appropriate modifications where there is a question as to whether the parties intended to form a partnership. The Colorado Uniform Partnership Act of 1997, § 7-64-101(18), C.R.S., defines a “partner” as “a person who is admitted to a partnership as a partner of the partnership.” Under section 7-64-202(1), C.R.S., “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.” For rules determining whether a partnership has been formed under specified circumstances, see section 7-64-202(3). For additional statutory rules that may be relevant in determining the existence or non-existence of a partnership, refer to section 7-60-107, C.R.S. (setting forth rules that apply to determining existence of partnership); *see also Yoder v. Hooper*, 695 P.2d 1182, 1187 (Colo. App. 1984), *aff'd*, 737 P.2d 852 (Colo. 1987) (a contract to create a partnership may be express or implied and “no express agreement is necessary; rather, a partnership may be formed by the conduct of the parties”). As to what associating “for profit” means, see **Colorado Performance Corp. v. Mariposa Assocs.**, 754 P.2d 401 (Colo. App. 1987).

Source and Authority

1. This instruction is supported by section 7-60-106(1), C.R.S. That section provides: “A partnership is an association of two or more persons to carry on, as co-owners, a business for profit and includes, without limitation, a limited liability partnership.”

2. The parties’ intent is not controlling. There may be a partnership in fact even though the parties never intended that a partnership exist. **Bond-Connell Sheep & Wool Co. v. Snyder**, 68 Colo. 238, 188 P. 740 (1920).

3. A partnership may exist for a single transaction. **Kayser v. Mongham**, 8 Colo. 232, 6 P. 803 (1885).

7:4 JOINT VENTURE — DEFINED

There is a joint venture if you find all three of the following:

1. A joint interest in the (property) (project);
2. An express or implied agreement between two or more persons to share jointly in the profits or losses of that (property) (project); and
3. Conduct showing joint cooperation in the (property) (project).

Notes on Use

1. Instruction 7:5 should be used when a joint venture in the operation of a motor vehicle or other instrumentality is alleged.
2. This instruction should be appropriately modified to reflect whether the joint venture is in a property or project.

Source and Authority

1. This instruction is supported by **Sleeping Indian Ranch v. West Ridge Group**, 119 P.3d 1062 (Colo. 2005); **Compass Insurance Co. v. City of Littleton**, 984 P.2d 606 (Colo. 1999); **People v. McCain**, 191 Colo. 229, 552 P.2d 20 (1976); **Edwards v. Price**, 191 Colo. 46, 550 P.2d 856 (1976); **Breckenridge Co. v. Swales Management Corp.**, 185 Colo. 160, 522 P.2d 737 (1974); **Transit Equipment Co. v. Dyonisio**, 154 Colo. 379, 391 P.2d 478 (1964); **Realty Development Co. v. Felt**, 154 Colo. 44, 387 P.2d 898 (1963); **Scott R. Larson, P.C. v. Grinnan**, 2017 COA 85, ¶ 45; **Freyer v. Albin**, 5 P.3d 329 (Colo. App. 1999); **A.B. Hirschfeld Press, Inc. v. Weston Group, Inc.**, 824 P.2d 44 (Colo. App. 1991), *aff'd*, 845 P.2d 1162 (Colo. 1993); **Agland, Inc. v. Koch Truck Line, Inc.**, 757 P.2d 1138 (Colo. App. 1988); **Colorado Performance Corp. v. Mariposa Assocs.**, 754 P.2d 401 (Colo. App. 1987); **Werkmeister v. Robinson Dairy, Inc.**, 669 P.2d 1042 (Colo. App. 1983) (joint venture requires parties to combine their property, money, or effects in furtherance of venture; “community of interest” alone is not sufficient); **McNeill v. Allen**, 35 Colo. App. 317, 534 P.2d 813 (1975); and **Bainbrich v. Wells**, 28 Colo. App. 432, 476 P.2d 53 (1970), *aff'd*, 176 Colo. 503, 491 P.2d 976 (1971).

2. Parties are not joint venturers if one of the parties receives a fixed sum irrespective of the venture’s profits or losses, or if one of the parties could have enjoyed an individual profit while the other might have sustained an individual loss. See **Batterman v. Wells Fargo Ag Credit Corp.**, 802 P.2d 1112 (Colo. App. 1990). A joint venture existed between lawyers for purpose of representing plaintiffs and sharing in contingent fee where lawyers were “associated,” agreed to share in the contingent fee, and cooperated in bringing plaintiffs’ case. **Scott R. Larson**, 2017 COA 85, ¶¶ 45-47.

3. The substantive law of partnerships applies to joint ventures, and the rights of a party to a joint venture are subject to the joint venture agreement. **Turkey Creek, LLC v. Rosania**,

953 P.2d 1306 (Colo. App. 1998); **Fey Concert Co. v. City & Cty. of Denver**, 940 P.2d 972 (Colo. App. 1996) (holding joint venture subject to general law of partnerships), *rev'd on other grounds*, 960 P.2d 657 (Colo. 1998); *see also* **Scott R. Larson**, 2017 COA 85, ¶ 45 (holding “substantive law of partnership must be applied in determining whether a joint venture exists”).

7:5 JOINT VENTURE IN OPERATION OF VEHICLE OR OTHER INSTRUMENTALITY — DEFINED

For a joint venture or a joint enterprise to exist regarding operation of a (vehicle) (description of other instrumentality involved), you must find that:

- 1. Two or more persons united in pursuit of a common purpose; and**
- 2. Each person must have a right to control the operation of the (vehicle) (description of any other instrumentality involved) used by the parties in pursuit of the common purpose.**

The common purpose may be for the parties' profit, pleasure, or convenience.

Notes on Use

1. This instruction should be used only when a joint venture in the operation of automobiles is alleged.
2. When two or more joint owners occupy a vehicle, or another person drives the vehicle with an owner as a passenger, Instruction 11:18 may also apply.

Source and Authority

1. This instruction is supported by **Watson v. Regional Transportation District**, 762 P.2d 133 (Colo. 1988); **Mayer v. Sampson**, 157 Colo. 278, 402 P.2d 185 (1965); **Parker v. Ullom**, 84 Colo. 433, 271 P. 187 (1928); **Boyd v. Close**, 82 Colo. 150, 257 P. 1079 (1927); **American Family Mutual Insurance Co. v. AN/CF Acquisition Corp.**, 2015 COA 129, ¶ 12, 361 P.3d 1098; and **Bainbrich v. Wells**, 28 Colo. App. 432, 476 P.2d 53 (1970), *aff'd*, 176 Colo. 503, 491 P.2d 976 (1971).
2. A joint venture does not exist when evidence of the right to control is lacking. *See Pyles-Knutzen v. Bd. of County Comm'rs*, 781 P.2d 164 (Colo. App. 1989); **Bainbrich**, 28 Colo. App. at 434, 476 P.2d at 54; *see also Seal v. Lemmel*, 140 Colo. 387, 344 P.2d 694 (1959); **Denver Tramway Co. v. Orbach**, 64 Colo. 511, 172 P. 1063 (1918); *cf.* Instruction 9:24 (negligence or fault of designated nonparty).
3. "Rights to control existing between a member of the joint venture and a third party are not relevant to a determination of the existence of the joint venture or as to rights of control as between participants in the joint venture." **Bilsten v. Porter**, 33 Colo. App. 208, 211-12, 516 P.2d 656, 658 (1973) (sufficient evidence for jury to conclude that son possessed some measure of control over the operation of a vehicle even if he drove the vehicle without his father's permission).
4. As between themselves, the negligence of one joint venturer is not imputed to the other to bar or reduce the latter's claim against the former. **Price v. Sommermeyer**, 41 Colo. App. 147, 584 P.2d 1220 (1978), *aff'd*, 198 Colo. 548, 603 P.2d 135 (1979).

5. A driver's negligence may be imputed to a defendant-owner-passenger on the theory of joint venture in order to hold the owner-passenger liable to a plaintiff third party. *See AN/CF Acquisition Corp.*, 2015 COA 129, ¶ 13 (“Colorado courts have applied the joint venture doctrine to hold defendant passengers vicariously liable for drivers’ negligence in a line of cases dating back nearly a century.”). However, a driver’s negligence is not imputable to an owner-passenger in a claim brought by the owner-passenger against a defendant third party. *See Watson*, 762 P.2d at 141 (overruling several cases that applied the imputed contributory negligence rule to a plaintiff-owner-passenger). A driver-customer and passenger-dealership salesperson were engaged in a joint venture where (a) they shared a common purpose in conducting the test drive and (b) the salesperson owned the vehicle, accompanied the customer on the test drive, and selected the route. *AN/CF Acquisition Corp.*, ¶¶ 31-41.

7:6 JOINT VENTURE — IMPUTING NEGLIGENCE AMONG JOINT VENTURERS

If a joint venture is proved, and you find by a preponderance of the evidence that one joint venturer was negligent, then all joint venturers are considered to be negligent.

Notes on Use

1. This instruction applies only when a third party sues a joint venturer or a joint venturer sues a third party. It does not apply when the suit is between the joint venturers themselves.

2. For the general definition of “joint venture,” see Instruction 7:4. For the definition of “joint venture in the operation of a vehicle or other instrumentality,” see Instruction 7:5.

3. The Notes on Use to Instruction 7:5 are also applicable to this instruction.

Source and Authority

This instruction is supported by **Bebo Construction Co. v. Mattox & O’Brien, P.C.**, 998 P.2d 475 (Colo. App. 2000). *See also* Source and Authority to Instructions 7:4 and 7:5.

C. ENTITIES

7:7 ENTITY ACTS THROUGH INDIVIDUALS

(The plaintiff) (The defendant), (entity's name), is a (insert appropriate entity designation, e.g., corporation, municipal corporation, non-profit, etc.) and can act only through its (insert appropriate individuals, e.g., officers, employees, managers, etc.). Any act or omission of (officers, employees, managers, etc.) while acting within the scope of (his) (her) employment is the act or omission of the (plaintiff) (defendant), (entity's name).

Notes on Use

1. This instruction should be given in cases involving an entity. For other agency relationships, or specific instructions applicable to respondeat superior liability, use the instructions in Chapter 8.
2. When the scope of employment is in dispute, Instruction 8:8 should be given with this instruction.
3. This instruction may be used in contract and tort cases when appropriate.
4. For an example of how this instruction was correctly used, see **Lombard v. Colo. Outdoor Educ. Ctr.**, 266 P.3d 412 (Colo. App. 2011).

Source and Authority

This instruction is supported by **Dallas Creek Water Co v. Huey**, 933 P.2d 27 (Colo. 1997); and **Colorado Coffee Bean, LLC v. Peaberry Coffee Inc.**, 251 P.3d 9 (Colo. App. 2010).