**Transcript CALI Podcast - Has a Partnership Formed?**

**CALI STAFF:** Hi, my name is Deb Quentel. I'm the Director of Curriculum Development for CALI, and today I'm sitting here with Professor Debra Cohen from Southern New England School of Law. And we're talking about her lesson, “Are you my Partner?” [Has a Partnership Formed?].

Welcome, Professor Cohen.

**PROFESSOR COHEN:** Thank you.

**CALI STAFF:** Let me ask you a couple of questions. Why is it important to know if someone is your partner in a business dealing?

**PROFESSOR COHEN:** It's important because every relationship has legal consequences. And the relationship of partnership has different legal consequences than other relationships that might be there.

Now, a partnership is just a group of people working together. But a group of people working together could also be a debtor-creditor relationships, franchisee-franchisor relationships or even lessee and lessor relationships and so you need to know because each one of those relationships has different consequences.

**CALI STAFF:** Okay, so, can you tell me how you would approach learning this material about whether someone is your partner?

**PROFESSOR COHEN:** Well, you need to know the law. So you have to start by understanding the statutes. And after you understand the statutes, then you go and you do a factual analysis applying your specific facts to the law to see whether you qualify as a partnership or something else.

And that's why this lesson is a really good lesson, I think, because it gives you a chance to not only learn some really important law, but to hone some really important legal skills – which are the statutory interpretation, how to read and interpret the statute, and the legal analysis. Because we all know that law professors don't give you the clear cut case on the exam. They don't give you the black and white case. They give you the gray case where you need to go through each of the elements you culled out of a statute and look at your facts and say, “Can these facts meet this or not?”

And so I think this lesson is a wonderful opportunity to take a particular area of law, learn that law because you need it, and also learn and practice some good legal skills.

**CALI STAFF:** How do you approach statutory reading?

**PROFESSOR COHEN:** Well, I’ll start by reading the statute and often I actually read it out loud. Because that way I hear it as well as think it and see it. And I've actually told students who have a hard time with that, or who do a lot of driving, to read it into a tape recorder and then play it back later on because then they can hear it time and time again.

I always tell the story of how when my nieces were young, I used to read them statutes because so long as you read with inflections they don't know what you're reading below the age of one. So if they all end up with lawyers then I'm in trouble with my sister!

But that's where I start them and then I go through and I ask them to parse it out and make a chart or a list of the elements.

Many of these statutes have elements. Check are they “and” are they “ors”? Do I have to meet all of these? Do I have to meet some of these? And then I'm in a position to know what elements I have to apply my test.

**CALI STAFF:** That sounds like a very good approach. What do you think is the most difficult concept for students to learn when trying to determine whether a partnership exists?

**PROFESSOR COHEN:** I think the hardest part is not having preconceived notions, when you read the facts initially. It's not looking at that and saying, “Oh, that's a partnership.” Or “Oh, that's an employer - employee relationship.

It's having an idea possibly, but being open to as you go through the factual analysis and apply the facts to the statute seeing, “Oh, this could go either way.” Because as a lawyer you're an advocate and you never know until you have a client whether you'll be advocating for it to be a partnership or for it to be some other relationship. And many relationships could be interpreted in more than one way and you have to be open to that possibility.

**CALI STAFF:** Are all partnerships covered by the same law?

**PROFESSOR COHEN:** Partnerships are covered by state law. So you are always going to your state statute. Most law school classes will focus on one of the uniform laws, either, the Uniform Partnership Act or the Revised Uniform Partnership Act.

For this particular lesson, it is substantially similar. You don't need to decipher between UPA and RUPA as they're referred to.

But for some areas of partnership law, they are different. But generally speaking, each state has adopted one of those with some minor variations.

**CALI STAFF:** I'm curious why states have continued to use an unrevised version.

**PROFESSOR COHEN:** I'm sure there are lots of reasons, one of which is the concept that getting a legislature to change a law that is effectively working and has for many, many years can be a very difficult undertaking.

There are so many issues legislatures have to address many times lobbyists, or the people who are concerned, are not willing to waste their political capital on changing something which effectively does what it needs to do. There are many states that follow the uniform commercial laws and as they revise they just adopt them.

And over time, I suspect many will go to the revised, and more and more do each year.

**CALI STAFF:** When you are working with students and trying to have them master this material, is there one aspect of the Uniform Partnership Act or Revised Uniform Partnership Act that is particularly difficult for students to understand? Maybe you could add some clarity to one section or something that comes to mind.

**PROFESSOR COHEN:** I think that law students have the most difficult time with when they're asked to do both. A lot of law classes or biz org classes that cover this material ask students to look at both and distinguish and contrast.

And I think that can be difficult for students because they're just hesitant to say, “This looks different, but why and how?”

I think it's a wonderful experience. I think law professors do that to students because it makes them start comparing and contrasting and seeing the difference in statutory interpretation.

The hardest section of both probably the UPA and the RUPA may or may not be covered in your class. A lot of them deal with the way capital is dealt with and those capital accounts and those issues.

I don't tend to do a lot of that in my class because it scares off all these people who went to law school because they didn't want to be in business school. I do some real simple partnership accounting.

And I know we have some great lessons on them too. So I mean, that's what I think the students should do when they encounter a part of partnership or biz orgs that they're not comfortable with – take a look at the list of CALI Lessons because I think we've really pretty much covered the field and they'll find something which will help them flesh out a little bit.

**CALI STAFF:** Do you have any final words of advice for students who are trying to master the rules of partnership?

**PROFESSOR COHEN:** I think the advice would be to remember that there is often not a black and white answer. That it is an area where you have to look at the law, and argue the factual situation. Remembering that you might or might not want it to be a partnership and remembering that different people will have gone into relationships with different expectations and different understandings. And so two people can form of business, one thinking I’m your employee. And the other thinking were partners. And they'll each have had that perception in their mind and the question is when it comes to an issue of litigation, how will the court, as a matter of law determine.

So it's not black and white and that's probably the most important thing to remember. That and to have read your statute carefully so that you understand what elements you're looking at when you try and do your interpretation, your analysis.

**CALI STAFF:** Professor Cohen, thank you very much for your time today.

**PROFESSOR COHEN:** Thank you.