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THE PROPOSED TEXAS UNIFORM PARTNERSHIP ACT

by

*Alan R. Bromberg**

GENERAL partnership legislation is in prospect for the first time in Texas.¹

Two years ago an Article in this *Journal*² appraised the common law of partnership in Texas, found it incomplete and defective, and recommended the adoption of the Uniform Partnership Act.³ Many attorneys expressed interest in the problem. In 1959 a Special Committee of members of the Dallas Bar⁴ was appointed to study the matter. This was one of several committees formed to make recommendations concerning various Uniform Acts in accordance with the plan of Paul Carrington, then President-Elect of the State Bar of Texas.

The Partnership Committee found itself in basic agreement with the Uniform Partnership Act and the 1958 analysis in this *Journal*. Creative efforts were directed to two tasks: harmonizing the Act

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¹ Texas adopted the Uniform Limited Partnership Act in 1955. Tex. Rev. Civ. Stat. Ann. art. 6132a (Supp. 1959). It may seem odd that the particular preceded the general, but this is easily explained by the non-existence of limited partnerships at common law. Five other states have the Uniform Limited Partnership Act without the Uniform Partnership Act (Florida, Georgia, Hawaii, Iowa, New Hampshire). Of the thirty-three jurisdictions which have both, six adopted the former before the latter (Arizona, Minnesota, Missouri, Nebraska, Rhode Island, Washington). Six have U.P.A. but not U.L.P.A. (Delaware, Guam, Kentucky, Oregon, South Carolina, Wyoming). 7 Uniform Laws Ann. 7 (Supp. 1959) and 8 Uniform Laws Ann. 7 (Supp. 1959).

² Sher and Bromberg, *Texas Partnership Law in the 20th Century—Why Texas Should Adopt the Uniform Partnership Act*, 12 Sw. L.J. 263 (1958) (hereafter cited as *Sher & Bromberg*). Similar articles have appeared in other jurisdictions, e.g., Bandy and Elkouri, *The Uniform Partnership Act*, 9 Okla. L. Rev. 377 (1956) (after Oklahoma adopted the Act); Mathews and Folkerth, *Ohio Partnership Law and the Uniform Partnership Act*, 9 Ohio St. L.J. 616 (1948) (a year before Ohio adopted the Act). By far the most exhaustive of such analyses is Karesh, *Partnership Law and the Uniform Partnership Act in South Carolina*, 3 S.C.L.Q. 193 and 366 (1951), 4 S.C.L.Q. 64 and 235 (1951). The standard treatise is Crane, *Partnership* (2d ed. 1952).

³ 7 Uniform Laws Ann. §§ 1-45 (1949), hereafter referred to as "the Act" and cited by section.

⁴ Hal M. Bateman; Alan R. Bromberg (Chairman); Henry Gilchrist; John D. Harris; John L. Hauer; William D. Powell; John W. Rutland, Jr.; Joe C. Stephens, Jr. (Vice-Chairman); Joseph M. Stuhl; Ralph Wood, Jr.

with Texas specialties (e.g., community property) and modernizing it in a few respects (e.g., recognizing continuity despite death if the agreement so provides).⁵ The result was the proposed Texas Uniform Partnership Act. The Act, and the Committee's Report⁶ which accompanied it, were approved in principle by the Board of Directors of the State Bar in April, 1960. Further action by State Bar organs has included detailed approval by the Standing Committee on Uniform State Laws (September 17, 1960), the Legislative Committee (October 1, 1960), and the Board of Directors again (October 14, 1960). Submission to the Legislature, as a principal item of the Bar's Legislative Agenda, is planned for early 1961.

The present Article sets forth the proposed Act and comments based largely on the Committee's Report. The comments deal (where appropriate) with: (1) the Committee's textual changes in the Uni-

⁵ List of sections changed or added: 1, 7(5) (added), 10(6) (added), 11, 15, 24, 26, 27, 28, 28-A (added), 28-B (added), 31(4), 35(1)(b) and (3)(c), 38(2)(c)(II). All changes and additions are discussed in the text of the Article. For the record, here are certain changes which were considered by the Committee but not made:

§ 3. Consideration was given to (a) defining knowledge more broadly in terms of a duty to inquire, (b) eliminating the requirement that the person claiming the benefit of notice must have been the person who gave it, and (c) making proper mailing sufficient notice (rather than requiring actual delivery). None of these seemed to warrant a deviation from the uniformity of the Act.

§ 6. Much time was spent trying to improve the definition of partnership (e.g., in terms of joint ultimate control) but nothing better was devised. Most members of the Committee viewed a "joint venture" as indistinguishable from a partnership. A statement to that effect in the Act was contemplated but omitted in favor of judicial determination on specific facts. The existing definition of partnership in terms of "business" provides an adequate test. Joint investments of a purely non-business character were reviewed separately but thought to be fully protected by §§ 7(2), (3).

§§ 8, 10. The Committee appreciated the difficulties that may arise in county land records when land-owning partnerships change their names or members. If these difficulties materialize, they can be more effectively dealt with in recording statutes, indexing practices, and conveyancing language than by partnership legislation.

§ 25(2)(e). The references to dower and curtesy were left intact (a) because Texas partnerships may acquire properties in jurisdictions where these rights exist, and (b) to reassure foreign lawyers that these rights do not obtain in Texas.

§ 31. Under Texas cases the marriage of a female partner effects a dissolution of the partnership. *King v. Matney*, 259 S.W.2d 606 (Tex. Civ. App. 1953) error ref. n.r.e. It was deemed unnecessary to codify this rule specifically since it is covered generally by § 31(3) providing for dissolution whenever it becomes unlawful for the members to carry on business in partnership.

§ 32(e). This provides for dissolution when the partnership business can only be carried on at a loss. Fearing that this might be abused where the partnership had undertaken a long-term venture expected to operate at an initial loss, the Committee considered defining "loss" to protect against this. No easy way was found, and complications were generated by any change. The conclusion was that a court would inquire into and weigh all the appropriate factors before decreeing a dissolution on this ground. Thus, it might find that a loss was to be defined over the life of the venture rather than a single year.

⁶ Report of Dallas Bar Association Special Committee on Uniform Partnership Act, March 25, 1960, copies on file in Headquarters, State Bar of Texas, and Law Library, Southern Methodist University.

form Act (usually referred to as the original Act), (2) the interpretation given the Act in other jurisdictions,⁷ and (3) the relationship between the Act and the Texas common law. Many cross references will be made to the prior Article to avoid repetition. Here, however, the Act (not the case law) is the frame of reference.

The purposes of this Article are: (1) to make the proposed Act more familiar to the Bar, (2) to call further attention to the need for such legislation, (3) to enlist support for its passage, and (4) to facilitate the transition when the Act becomes law.

UNIFORM PARTNERSHIP ACT

PART I—PRELIMINARY PROVISIONS

Sec.

1. Name of Act.
2. Definition of Terms.
3. Interpretation of Knowledge and Notice.
4. Rules of Construction.
5. Rules for Cases Not Provided for in This Act.

§ 1. Name of Act.—This Act shall be known and may be cited as the Texas Uniform Partnership Act.

COMMENT. A formal change in the original Act has been made to parallel the language of the Texas Uniform Limited Partnership Act.⁸ Unless otherwise noted, the proposed Texas Act is identical with the original.

§ 2. Definition of Terms.—In this Act, "Court" includes every court and judge having jurisdiction in the case.

"Business" includes every trade, occupation, or profession.

"Person" includes individuals, partnerships, corporations, and other associations.

"Bankrupt" includes bankrupt under the Federal Bankruptcy Act or insolvent under any state insolvent act.

"Conveyance" includes every assignment, lease, mortgage, or encumbrance.

"Real property" includes land and any interest or estate in land.

COMMENT. These definitions are self-explanatory and well suited to the purposes of the Act. "Business" is important in connection with the definition of partnership (§ 6) and the scope of authority of a partner to impose liability (§§ 9, 13, 14, 35). Since a partnership is, under § 6, an association of two or more "persons," a significant contribution of this section is to include a corporation as a

⁷ Readers are reminded that 7 Uniform Laws Ann. (1949) contains the Act with annotations from all jurisdictions as well as notes by the draftsmen.

⁸ Tex. Rev. Civ. Stat. Ann. art. 6132a (Supp. 1959).

person. This confirms the strong but untested implication in the corporate statute⁹ that corporations may be partners.¹⁰

§ 3. Interpretation of Knowledge and Notice.—(1) A person has "knowledge" of a fact within the meaning of this Act not only when he has actual knowledge thereof, but also when he has knowledge of such other facts as in the circumstances shows bad faith.

(2) A person has "notice" of a fact within the meaning of this Act when the person who claims the benefit of the notice:

- (a) States the fact to such person, or
- (b) Delivers through the mail, or by other means of communication, a written statement of the fact to such person or to a proper person at his place of business or residence.

COMMENT. These provisions are self-explanatory and well suited to the purposes of the Act. The underlying purpose of this section has been fully discussed elsewhere.¹¹ Its chief applications are in §§ 9, 12, 34, 35, and 36.

§ 4. Rules of Construction.—(1) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this Act.

- (2) The law of estoppel shall apply under this Act.
- (3) The law of agency shall apply under this Act.
- (4) This Act shall be so interpreted and construed as to effect its general purpose to make uniform the law of those states which enact it.
- (5) This Act shall not be construed so as to impair the obligations of any contract existing when the Act goes into effect, nor to affect any action or proceedings begun or right accrued before this Act takes effect.

COMMENT. These rules of construction are well suited to the Act and not in conflict with existing Texas law. Paragraphs (1), (4), and (5) are identical with § 28 of the Texas Uniform Limited Partnership Act.¹² Paragraph (1) parallels a provision of general applicability to Texas statutes.¹³

§ 5. Rules for Cases Not Provided for in This Act.—In any case not provided for in this Act the rules of law and equity, including the law merchant, shall govern.

COMMENT. These rules are well suited to the Act and not in conflict with existing Texas law. They are identical with § 29 of the Texas Uniform Limited Partnership Act.¹⁴

⁹ Tex. Bus. Corp. Act art. 2.02A(7) (1955).

¹⁰ Prior Texas common law is generally to the contrary. *Luling Oil & Gas Co. v. Humble Oil & Ref. Co.*, 144 Tex. 475, 191 S.W.2d 716 (1945) and cases cited at 722 of 191 S.W.2d. Cf. *Port Arthur Trust Co. v. Muldrow*, 155 Tex. 612, 291 S.W.2d 312 (1956) (corporation acting as trustee may be limited partner).

¹¹ Commissioners' Note to Uniform Partnership Act § 3, 7 Uniform Laws Ann. 6-7 (1949).

¹² Tex. Rev. Civ. Stat. Ann. art. 6132a (Supp. 1959).

¹³ Tex. Rev. Civ. Stat. Ann. art. 10(8) (1959).

¹⁴ Tex. Rev. Civ. Stat. Ann. art. 6132a (Supp. 1959).

PART II—NATURE OF A PARTNERSHIP

Sec.

6. Partnership Defined.

7. Rules for Determining the Existence of a Partnership.

8. Partnership Property.

§ 6. Partnership Defined.—(1) A partnership is an association of two or more persons to carry on as co-owners a business for profit.

(2) But any association formed under any other statute of this state, or any statute adopted by authority, other than the authority of this state, is not a partnership under this Act, unless such association would have been a partnership in this state prior to the adoption of this Act; but this Act shall apply to limited partnerships except in so far as the statutes relating to such partnerships are inconsistent herewith.

COMMENT. On paragraph (1) see Sher & Bromberg 264-69. "Person" and "business" are defined in § 2. Since Texas has no prior partnership statute, paragraph (2) will have little scope. The statutes relating to limited partnerships are in the Texas Uniform Limited Partnership Act.¹⁵ The approach of this section is extensively discussed in the Commissioners' Note.¹⁶

§ 7. Rules for Determining the Existence of a Partnership.—In determining whether a partnership exists, these rules shall apply:

(1) Except as provided by § 16 persons who are not partners as to each other are not partners as to third persons.

(2) Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not of itself establish a partnership, whether such co-owners do or do not share any profits made by the use of the property.

(3) The sharing of gross returns does not of itself establish a partnership, whether or not the persons sharing them have a joint or common right or interest in any property from which the returns are derived.

(4) The receipt by a person of a share of the profits of a business is prima facie evidence that he is a partner in the business, but no such inference shall be drawn if such profits were received in payment:

(a) As a debt by installments or otherwise,

(b) As wages of an employee or rent to a landlord,

(c) As an annuity to a widow or representative of a deceased partner,

(d) As interest on a loan, though the amount of payment vary with the profits of the business,

(e) As the consideration for the sale of good-will of a business or other property by installments or otherwise.

(5) Operation of a mineral property under a joint operating agreement does not of itself establish a partnership.

COMMENT. On paragraphs (1)-(4) see Sher & Bromberg 264-69. Paragraph (5) has been added to make it clear that a joint op-

¹⁵ Ibid.

¹⁶ 7 Uniform Laws Ann. 11 (1949).

erating agreement does not alone create a partnership. Parties to such an agreement are normally co-owners of property designating a single agent to act for them. Ordinarily they do not intend and should not be compelled to bear each other's liabilities. Similar results have been reached on other theories in some "mining partnership" cases,¹⁷ but the specific mention of joint operating agreements is more precise and understandable. The provision does not, of course, prevent partners from operating oil properties or joint operators from becoming partners if they so desire.

§ 8. Partnership Property.—(1) All property originally brought into the partnership stock or subsequently acquired by purchase or otherwise, on account of the partnership, is partnership property.

(2) Unless the contrary intention appears, property acquired with partnership funds is partnership property.

(3) Any estate in real property may be acquired in the partnership name. Title so acquired can be conveyed only in the partnership name.

(4) A conveyance to a partnership in the partnership name, though without words of inheritance, passes the entire estate of the grantor unless a contrary intent appears.

COMMENT. Sher & Bromberg 269-70, 285-87.

PART III—RELATIONS OF PARTNERS TO PERSONS DEALING WITH THE PARTNERSHIP

Sec.

9. Partner Agent of Partnership as to Partnership Business.
10. Conveyance of Real Property of the Partnership.
11. Partnership Bound by Admission of Partner.
12. Partnership Charged with Knowledge of or Notice to Partner.
13. Partnership Bound by Partner's Wrongful Act.
14. Partnership Bound by Partner's Breach of Trust.
15. Nature of Partner's Liability.
16. Partner by Estoppel.
17. Liability of Incoming Partner.

§ 9. Partner Agent of Partnership as to Partnership Business.—(1) Every partner is an agent of the partnership for the purpose of its business, and the act of every partner, including the execution in the partnership name of any instrument, for apparently carrying on in the usual way the business of the partnership of which he is a member binds the partnership, unless the partner so acting has in fact no authority to act for the partnership in the particular matter, and the person with whom he is dealing has knowledge of the fact that he has no such authority.

(2) An act of a partner which is not apparently for the carrying on of the business of the partnership in the usual way does not bind the partnership unless authorized by the other partners.

¹⁷ E.g., *Randall v. Meredith*, 76 Tex. 669, 13 S.W. 576 (1890).

- (3) Unless authorized by the other partners or unless they have abandoned the business, one or more but less than all the partners have no authority to:
- (a) Assign the partnership property in trust for creditors or on the assignee's promise to pay the debts of the partnership,
 - (b) Dispose of the good-will of the business,
 - (c) Do any other act which would make it impossible to carry on the ordinary business of a partnership,
 - (d) Confess a judgment,
 - (e) Submit a partnership claim or liability to arbitration or reference.
- (4) No act of a partner in contravention of a restriction on authority shall bind the partnership to persons having knowledge of the restriction.

COMMENT. This section formalizes the mutual agency relationship which characterizes partners at common law. Agency arises out of authority (actual or apparent). Paragraphs (1) and (2) define the scope of authority in terms of acts "for apparently carrying on in the usual way the business of the partnership." This would supersede the present artificial and irrational distinction between "trading" partnerships (which have implied power to borrow regardless of whether the loan is obtained in the usual course of business) and "non-trading" partnerships (which have no such implied power).¹⁸ Paragraph (3) makes unnecessary the present precaution of specifying such limitations in partnership agreements. Subparagraphs (c) and (d) have their analogues in the Limited Partnership Act.¹⁹ Paragraph (4) restates the common law.²⁰ "Knowledge" is defined in § 3.

§ 10. Conveyance of Real Property of the Partnership.—(1) Where title to real property is in the partnership name, any partner may convey title to such property by a conveyance executed in the partnership name; but the partnership may recover such property unless the partner's act binds the partnership under the provisions of paragraph (1) of § 9, or unless such property has been conveyed by the grantee or a person claiming through such grantee to a holder for value without knowledge that the partner, in making the conveyance, has exceeded his authority.

(2) Where title to real property is in the name of the partnership, a conveyance executed by a partner, in his own name, passes the equitable interest of the partnership, provided the act is one within the authority of the partner under the provisions of paragraph (1) of § 9.

(3) Where title to real property is in the name of one or more but not all the partners, and the record does not disclose the right of the partnership, the partners in whose name the title stands may convey title to such property, but the partnership may recover such property if the partners' act does not bind the partnership under the provisions of paragraph (1)

¹⁸ See, e.g., *Randall v. Meredith*, supra note 17; *Miller v. McCord*, 159 S.W. 159, 161-62 (Tex. Civ. App. 1913).

¹⁹ Tex. Rev. Civ. Stat. Ann. art. 6132a, § 10(a)(2), (3) (Supp. 1959).

²⁰ See, e.g., *Tinnin v. Williams*, 8 S.W.2d 757 (Tex. Civ. App. 1928).

of § 9, unless the purchaser or his assignee, is a holder for value, without knowledge.

(4) Where the title to real property is in the name of one or more or all the partners, or in a third person in trust for the partnership, a conveyance executed by a partner in the partnership name, or in his own name, passes the equitable interest of the partnership, provided the act is one within the authority of the partner under the provisions of paragraph (1) of § 9.

(5) Where the title to real property is in the names of all the partners a conveyance executed by all the partners passes all their rights in such a property.

(6) Nothing in this section shall be deemed to modify the statutes of limitations of action for lands.

COMMENT. On paragraphs (1)-(5), see *Sher & Bromberg* 285-87. Paragraph (6) has been added to make it clear that statutes of limitations will not be affected by the rules for conveyances of partnership realty.

§ 11. Partnership Bound by Admission of Partner.—An admission or representation made by any partner concerning partnership affairs within the scope of his authority as defined by this Act is evidence against the partnership.

COMMENT. The word "defined" has been substituted for the word "conferred" to make it clear that a partner's authority is not supplied by the Act but merely defined in it. As so modified, this section appears to be in accord with present Texas law.²¹ The scope of authority will depend on whether the partnership is dissolved.²²

§ 12. Partnership Charged with Knowledge of or Notice to Partner.—Notice to any partner of any matter relating to partnership affairs, and the knowledge of the partner acting in the particular matter, acquired while a partner or then present to his mind, and the knowledge of any other partner who reasonably could and should have communicated it to the acting partner, operate as notice to or knowledge of the partnership, except in the case of a fraud on the partnership committed by or with the consent of that partner.

COMMENT. The Act, like the Texas cases, generally charges a partnership with the knowledge or notice of any partner.²³ The refinements of the Act's distinctions are explained in the Commissioners' Note.²⁴ "Knowledge" and "notice" are defined in § 3.

§ 13. Partnership Bound by Partner's Wrongful Act.—Where, by any wrongful act or omission of any partner acting in the ordinary course of

²¹ *Steger v. Greer*, 228 S.W. 304 (Tex. Civ. App. 1921) error dism. Cases are collected in 32 Tex. Jur. Partnership § 79, at 341-43 (1934 and Supps.).

²² §§ 9, 33, 35. See Commissioners' Note, 7 Uniform Laws Ann. 76 (1949).

²³ Cases are collected in 32 Tex. Jur. Partnership § 80, at 343-44 (1934 and Supps.).

²⁴ 7 Uniform Laws Ann. 77 (1949).

the business of the partnership or with the authority of his co-partners, loss or injury is caused to any person, not being a partner in the partnership, or any penalty is incurred, the partnership is liable therefore to the same extent as the partner so acting or omitting to act.

COMMENT. See Comment under § 15.

§ 14. Partnership Bound by Partner's Breach of Trust.—The partnership is bound to make good the loss:

(a) Where one partner acting within the scope of his apparent authority receives money or property of a third person and misapplies it; and

(b) Where the partnership in the course of its business receives money or property of a third person and the money or property so received is misapplied by any partner while it is in the custody of the partnership.

COMMENT. See Comment under § 15.

§ 15. Nature of Partner's Liability.—All partners are liable jointly and severally for all debts and obligations of the partnership including those under §§ 13 and 14.

COMMENT. The partnership is rarely an entity under Texas law although it is for most purposes of the Act.²⁵ Section 13 makes the partnership liable for wrongful acts or omissions of a partner committed in the partnership business or with authority of his co-partners. Section 14 makes it liable for a partner's breach of trust. These are useful additions, not only conceptually but also practically, for example, where the injured party seeks to enforce liability against partnership property. Section 15 of the original Act makes the partners jointly and severally liable for partnership obligations under §§ 13 and 14 (torts and breaches of trust) but only jointly liable for other partnership obligations (contracts).²⁶ The Texas version has been modified to make all partnership obligations joint and several in accordance with Texas case law.²⁷

§ 16. Partner by Estoppel.—(1) When a person, by words spoken or written or by conduct, represents himself, or consents to another representing him to any one, as a partner in an existing partnership or with one or more persons not actual partners, he is liable to any such person to whom such

²⁵ E.g., §§ 8, 10 (partnership may hold and convey title to realty); §§ 24-26 (interest in partnership is distinct from ownership of partnership property); § 27 (partner's interest may be assigned without dissolving partnership); §§ 28, 40 (priority of partnership creditors—as against individual creditors—in partnership assets); § 41 (continuity of liability despite changes in members of partnership). For the Texas law, see *Sher & Bromberg* 269 n.31. Cf. *Superior Ins. Co. v. Kling*, — Tex. —, 327 S.W.2d 422 (1959) (partner not an employee for workmen's compensation).

²⁶ See Commissioners' Note, 7 Uniform Laws Ann. 86 (1949), for the conflict among the jurisdictions.

²⁷ See, e.g., *Wiggins v. Blackshear*, 86 Tex. 665, 26 S.W. 939 (1894); *Cothran v. Marmaduke & Brown*, 60 Tex. 370 (1883). The words "joint" and "several" were antithetical at early common law and are still somewhat contradictory. This may explain why, though they are familiarly and frequently used, their combined meaning is not altogether

representation has been made, who has, on the faith of such representation, given credit to the actual or apparent partnership, and if he has made such representation or consented to its being made in a public manner he is liable to such person, whether the representation has or has not been made or communicated to such person so giving credit by or with the knowledge of the apparent partner making the representation or consenting to its being made.

(a) When a partnership liability results, he is liable as though he were an actual member of the partnership.

(b) When no partnership liability results, he is liable jointly with the other persons, if any, so consenting to the contract or representation as to incur liability, otherwise separately.

(2) When a person has been thus represented to be a partner in an existing partnership, or with one or more persons not actual partners, he is an agent of the persons consenting to such representation to bind them to the same extent and in the same manner as though he were a partner in fact, with respect to persons who rely upon the representation. Where all the members of the existing partnership consent to the representation, a partnership act or obligation results; but in all other cases it is the joint act or obligation of the person acting and the persons consenting to the representation.

clear. Since their consequences are perhaps as much procedural as substantive, their partnership significance is best seen in specific results reached in cases of contract liability.

"*Several*" features. Any one (or more) of the partners may be sued for the entire partnership obligation. *Frank v. Tatum*, 87 Tex. 204, 25 S.W. 409 (1894); *Fowler Comm'n Co. v. Charles Land & Co.*, 248 S.W. 314 (Tex. Comm. App. 1923). His separate or individual estate is fully liable. *Roberson v. Tonn*, 76 Tex. 535, 13 S.W. 385 (1890). Other partners need not be sued, i.e., named in the petition. *Eastex Poultry Co. v. Benefield*, 268 S.W.2d 270 (Tex. Civ. App. 1954). If they are sued, they need not be continued as parties. See *Smith v. Wayman*, 148 Tex. 318, 224 S.W.2d 211 (1949); *Behannon v. Texas Ref. Co.*, 78 S.W.2d 1017 (Tex. Civ. App. 1935). A second partner may be sued if judgment against the first is unsatisfied. *Ablon v. King*, 279 S.W. 563 (Tex. Civ. App. 1926) error dism. The estate of a deceased partner may be sued. *Higgins v. Rector*, 47 Tex. 361 (1877); *Webb v. Gregory*, 108 S.W. 478 (Tex. Civ. App. 1908). So can a partner whose co-partner is the plaintiff's husband. *Shea v. Yanof*, 288 S.W.2d 575 (Tex. Civ. App. 1956) error dism. The release of one partner does not release his co-partners. *Lipe v. Webster*, 278 S.W. 246 (Tex. Civ. App. 1925).

"*Joint*" features. All the partners can be sued simultaneously. They are co-defendants for venue purposes, so that an action may be maintained against all in the county of residence of any one. *Tex. Rev. Civ. Stat. Ann. art. 1995 subd. 4, 29a* (1950); *Connor v. Texas Bank & Trust Co.*, 259 S.W.2d 901 (Tex. Civ. App. 1953); *Blackburn v. Sanders*, 258 S.W.2d 429 (Tex. Civ. App. 1953) error dism. Suit may be brought against the partnership in the firm name. *Tex. Rules Civ. Pro. Ann. rule 28*. Service on one partner is sufficient to obtain jurisdiction over the partnership (as to the interests of all partners therein) and over that partner personally. *Tex. Rev. Civ. Stat. Ann. arts. 2033, 2223* (1950); *Sugg v. Thornton*, 132 U.S. 524 (1889); *Eastex Poultry Co. v. Benefield*, supra. *Cf. Tex. Rev. Civ. Stat. Ann. art. 2033b* (1950) (binding service on partnership agent). Judgment can be rendered against the partnership even though unserved partners have not been discontinued as parties. *Burnett & Ross v. Sullivan & Drennan*, 58 Tex. 535 (1883); *Webb v. Gregory*, supra. It has been held that discontinuance of one or more partners prevents judgment against the partnership, *McManus v. Cash & Luckel*, 101 Tex. 261, 108 S.W. 800 (1908), but this is hardly consistent with article 2223, supra. Also questionable is some early authority that suit against a partner individually forfeits the plaintiff's right to have partnership property subjected to his claim. *Gaut v. Reed*, 24 Tex. 46 (1859); *Webb v. Gregory*, supra. A partner who pays more than his share of liability is entitled to contribution from his co-partners. *Fowler Comm'n Co. v. Charles Land & Co.*, supra; *Sher & Bromberg* 294-95.

COMMENT. Sher & Bromberg 268-69. This section should be read in connection with §§ 6 and 7.

§ 17. Liability of Incoming Partner.—A person admitted as a partner into an existing partnership is liable for all the obligations of the partnership arising before his admission as though he had been a partner when such obligations were incurred, except that this liability shall be satisfied only out of partnership property.

COMMENT. Sher & Bromberg 283 n.94.²⁸ The limitation of liability in the last clause is inapplicable to an incoming partner who assumes liability, either expressly or impliedly.²⁹

PART IV—RELATIONS OF PARTNERS TO ONE ANOTHER

Sec.

18. Rules Determining Rights and Duties of Partners.
19. Partnership Books.
20. Duty of Partners to Render Information.
21. Partner Accountable as a Fiduciary.
22. Right to an Account.
23. Continuation of Partnership Beyond Fixed Term.

§ 18. Rules Determining Rights and Duties of Partners.—The rights and duties of the partners in relation to the partnership shall be determined, subject to any agreement between them, by the following rules:

(a) Each partner shall be repaid his contributions, whether by way of capital or advances to the partnership property and share equally in the profits and surplus remaining after all liabilities, including those to partners, are satisfied; and must contribute towards the losses, whether of capital or otherwise, sustained by the partnership according to his share in the profits.

(b) The partnership must indemnify every partner in respect of payments made and personal liabilities reasonably incurred by him in the ordinary and proper conduct of its business, or for the preservation of its business or property.

(c) A partner, who in aid of the partnership makes any payment or advance beyond the amount of capital which he agreed to contribute, shall be paid interest from the date of the payment or advance.

(d) A partner shall receive interest on the capital contributed by him only from the date when repayment should be made.

(e) All partners have equal rights in the management and conduct of the partnership business.

(f) No partner is entitled to remuneration for acting in the partnership business, except that a surviving partner is entitled to reasonable compensation for his services in winding up the partnership affairs.

²⁸ For background, see Commissioners' Note, 7 Uniform Laws Ann. 100 (1949).

²⁹ *Magrini v. Jackson*, 17 Ill. App. 2d 346, 150 N.E.2d 387 (1958), noted, 1958 U. Ill. L.F. 661.

(g) No person can become a member of a partnership without the consent of all the partners.

(h) Any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners; but no act in contravention of any agreement between the partners may be done rightfully without the consent of all the partners.

COMMENT. Sher & Bromberg 287-300.

§ 19. Partnership Books.—The partnership books shall be kept, subject to any agreement between the partners, at the principal place of business of the partnership, and every partner shall at all times have access to and may inspect and copy any of them.

COMMENT. Sher & Bromberg 300-01.

§ 20. Duty of Partners to Render Information.—Partners shall render on demand true and full information of all things affecting the partnership to any partner or the legal representative of any deceased partner or partner under legal disability.

COMMENT. Sher & Bromberg 298-300.

§ 21. Partner Accountable as a Fiduciary.—(1) Every partner must account to the partnership for any benefit, and hold as trustee for it any profits derived by him without the consent of the other partners from any transaction connected with the formation, conduct, or liquidation of the partnership or from any use by him of its property.

(2) This section applies also to the representatives of a deceased partner engaged in the liquidation of the affairs of the partnership as the personal representatives of the last surviving partner.

COMMENT. See Sher & Bromberg 298-300.

§ 22. Right to an Account.—Any partner shall have the right to a formal account as to partnership affairs:

- (a) If he is wrongfully excluded from the partnership business or possession of its property by his co-partners,
- (b) If the right exists under the terms of any agreement,
- (c) As provided by § 21,
- (d) Whenever other circumstances render it just and reasonable.

COMMENT. Sher & Bromberg 300-01.

§ 23. Continuation of Partnership Beyond Fixed Term.—(1) When a partnership for a fixed term or particular undertaking is continued after the termination of such term or particular undertaking without any express agreement, the rights and duties of the partners remain the same as they were at such termination, so far as is consistent with a partnership at will.

(2) A continuation of the business by the partners or such of them as habitually acted therein during the term, without any settlement or liquidation of the partnership affairs, is prima facie evidence of a continuation of the partnership.

COMMENT. This section generally keeps the partnership agreement in force when business is continued after the expiration of a term fixed by the partnership agreement. There appears to be no Texas law in point, although the analogy to holdover tenancies or employment contracts suggests that Texas would rule similarly, and that the provision is desirable.

PART V—PROPERTY RIGHTS IN PARTNERSHIP

Sec.

- 24. Extent of Property Rights of a Partner.
- 25. Nature of Partner's Right in Specific Partnership Property.
- 26. Nature of Partner's Interest in the Partnership.
- 27. Assignment of Partner's Interest.
- 28. Interest in Partnership Subject to Charging Order.
- 28-A. Extent of Community Property Rights of a Partner's Spouse.
- 28-B. Effect of Death or Divorce on Interest in the Partnership.

§ 24. Extent of Property Rights of a Partner.—The property rights of a partner are (1) his rights in specific partnership property, (2) his interest in the partnership, and (3) his right to participate in the management. The community property rights of a partner's spouse are stated in § 28-A.

COMMENT. Texas law has no comparable specification of a partner's property rights. The last sentence has been added as a cross reference to the community property rights of a partner's spouse. The caption of Part V has been changed from "Property Rights of a Partner" to "Property Rights in Partnership." The latter is more descriptive of the broader class of owners of partnership interests recognized by the Texas Act.

§ 25. Nature of a Partner's Right in Specific Partnership Property.—(1) A partner is co-owner with his partners of specific partnership property holding as a tenant in partnership.

(2) The incidents of this tenancy are such that:

(a) A partner, subject to the provisions of this Act and to any agreement between the partners, has an equal right with his partners to possess specific partnership property for partnership purposes; but he has no right to possess such property for any other purpose without the consent of his partners.

(b) A partner's right in specific partnership property is not assignable except in connection with the assignment of rights of all the partners in the same property.

(c) A partner's right in specific partnership property is not subject to attachment or execution, except on a claim against the partnership. When partnership property is attached for a partnership debt the partners, or any of them, or the representatives of a deceased partner, cannot claim any right under the homestead or exemption laws.

(d) On the death of a partner his right in specific partnership property

vests in the surviving partner or partners, except where the deceased was the last surviving partner, when his right in such property vests in his legal representative. Such surviving partner or partners, or the legal representative of the last surviving partner, has no right to possess the partnership property for any but a partnership purpose.

(e) A partner's right in specific partnership property is not subject to dower, curtesy, or allowances to widows, heirs, or next of kin.

COMMENT. Sher & Bromberg 271-83, 310.

§ 26. Nature of Partner's Interest in the Partnership.—A partner's interest in the partnership is his share of the profits and surplus, and the same is personal property for all purposes.

COMMENT. This section appears to be in accord with present Texas law insofar as it states that a partner's interest in the partnership is his share of the profits and surplus.³⁰ However, it is not clear that such an interest is personal property for all purposes in Texas.³¹ Plainly, however, the personal character follows from the definition as an interest in surplus and profits³² and from the rule that specific partnership property vests in the surviving partners at death.³³ The last three words of the section ("for all purposes") have been added to eliminate any possible uncertainty on this point.³⁴

This section can have important local tax consequences. It means that a partnership interest is an intangible, subject to death taxes at the domicile of the owner³⁵ even though the partnership property is foreign realty.³⁶ Presumably ad valorem taxes on intangibles would be similarly treated.

³⁰ Sher & Bromberg 272 n.48, 288.

³¹ Cf. *Miller v. Howell*, 234 S.W.2d 925, 930 (Tex. Civ. App. 1950) (dictum: partnership realty descends as such to partner's heirs at death); *Donnell v. Talley*, 104 S.W.2d 920, 924 (Tex. Civ. App. 1937) error dismissed by agreement (dictum: on death of partner, his heirs become tenants in common with surviving partner).

³² § 26.

³³ § 25(2)(d). This conclusion is reinforced by § 38(1) giving each partner on dissolution the right to have partnership property applied to partnership debts and the surplus distributed *in cash*. A limited partner's interest is specified to be personalty. Tex. Rev. Civ. Stat. Ann. art. 6132a, § 19 (Supp. 1959).

³⁴ Compare *Wharf v. Wharf*, 306 Ill. 79, 137 N.E. 446 (1922), *Vlamis v. DeWeese*, 216 Md. 384, 140 A.2d 665 (1958), noted, 19 Md. L. Rev. 141 (1959), and *Cultra v. Cultra*, 188 Tenn. 506, 221 S.W.2d 533 (1949) with *Hannold v. Hannold*, 4 N.J. Super. 381, 67 A.2d 352 (1949). The former represent the theory of "out and out" or absolute conversion of realty to personalty. The latter follows the "pro tanto" theory that conversion is effective only so long as partnership debts are unpaid. The former is the dominant interpretation given to the Act. Cases on descent and distribution of partnership realty are collected in Annot., 25 A.L.R. 389 (1923).

³⁵ *Blodgett v. Silberman*, 277 U.S. 1 (1928) (Connecticut law).

³⁶ *Lynch v. Kentucky Tax Comm'n.*, —Ky.—, 333 S.W.2d 257 (1960). Compare *Op. Att'y Gen. Tex. WW-911* (1960) (Texas inheritance tax applies to interest of Texas resident in partnership owning foreign realty if partnership interest is intangible under the foreign law).

§ 27. Assignment of Partner's Interest.—(1) A conveyance by a partner of his interest in the partnership does not of itself dissolve the partnership, nor, as against the other partners in the absence of agreement, entitle the assignee, during the continuance of the partnership, to interfere in the management or administration of the partnership business or affairs; it merely entitles the assignee to receive in accordance with his contract the profits to which the assigning partner would otherwise be entitled and, for any proper purpose, to require reasonable information or account of partnership transactions and reasonable inspection of the partnership books.

(2) In case of a dissolution of the partnership, the assignee is entitled to receive his assignor's interest.

COMMENT. Sher & Bromberg 272-75. The frequency of assignments of interests in partnerships has probably grown since the Act was drafted. The class of assignees has been enlarged in the Texas version by including the taker of the interest of a partner or of a partner's spouse on dissolution of the marital community.³⁷ The assignee of a partner's interest is a partner for federal income tax purposes³⁸ and must have detailed financial information. Finally, corporate law has come to require greater disclosure and inspection rights.³⁹ For these reasons, the Texas version deletes the original Act's restriction on an assignee's right to information. Specific authorization has been added for reasonable inspections for proper purposes.⁴⁰

§ 28. Interest in Partnership Subject to Charging Order.—(1) On due application to a competent court by any judgment creditor of a partner (or of any other owner of an interest in the partnership), the court which entered the judgment, order, or decree, or any other court, may charge the interest of the debtor partner (or such other owner) with payment of the unsatisfied amount of such judgment debt with interest thereon; and may then or later appoint a receiver of his share of the profits, and of any other money due or to fall due to him in respect of the partnership, and make all other orders, directions, accounts and inquiries which the debtor partner (or such other owner) might have made, or which the circumstances of the case may require.

(2) The interest charged may be redeemed at any time before foreclosure, or in case of a sale being directed by the court may be purchased without thereby causing a dissolution:

- (a) With separate property, by any one or more of the partners, or
- (b) With partnership property, by any one or more of the partners

³⁷ § 28-B(1).

³⁸ See, e.g., Treas. Regs. § 1.736-1(a)(1)(ii) (1956) (deceased partner's successor treated as partner until his interest completely liquidated).

³⁹ See, in general, Loss, Securities Regulation 76-82 (1951); Comment, Shareholder Inspection Rights, 12 Sw. L.J. 61 (1958).

⁴⁰ Compare Tex. Bus. Corp. Act art. 2.44B, C (1955) (shareholder's right to examine books for proper purpose); Tex. Rev. Civ. Stat. Ann. art. 6132a, § 11(a) (Supp. 1959) (limited partner's right to inspect books and have full information). But see art. 6132a, § 20(c) (assignee of limited partner who does not become substitute has no right to information or inspection).

with the consent of all the partners whose interests are not so charged or sold.

(3) Nothing in this Act shall be held to deprive a partner (or other owner) of his right, if any, under the exemption laws, as regards his interest in the partnership.

COMMENT. Sher & Bromberg 283-85. This section differs from the original Act by making the charging order effective against any debtor (whether or not a partner) who happens to own an interest in a partnership. Since § 28-B(1) will result in more non-partners owning interests in partnerships, their creditors are granted the same remedies as the creditor of a partner, with the same protection of the partnership against premature dissolution and undue interference.

§ 28-A. Extent of Community Property Rights of a Partner's Spouse.—

(1) A partner's rights in specific partnership property are not community property.

(2) A partner's interest in the partnership may be community property.

(3) A partner's right to participate in the management is not community property.

COMMENT. This section is entirely new.

(1) *Rights in Specific Partnership Property.* Texas community property laws require an adaptation of the property concepts of the Act. Sections 24-26 are consistent with the Act's treatment of the partnership as an entity for most purposes.⁴¹ Thus, they distinguish "rights in specific partnership property" from the "interest in the partnership." The former are defined by reference to a "partner"⁴² and necessarily exclude the spouse of a partner like all other non-partners. (For example, a non-partner cannot sensibly be given a right to possess partnership property for partnership purposes.) An explicit statement has been added that a right in specific partnership property is not community property (§ 28-A(1)). California and New Mexico have done likewise.⁴³ No constitutional difficulty is envisaged in Texas, for the specific partnership property belongs (under the Act) to the partnership entity, not to the partners individually. A transfer of community property to a partnership in fraud of a wife would leave her in the same position as if the transfer were to a corporation, trust, or third person;⁴⁴ the Act in no way reduces the wife's rights in this respect.

(2) *Interest in the Partnership.* The second property right of a partner is his "interest in the partnership," defined as his share of

⁴¹ See supra note 25.

⁴² § 25.

⁴³ Cal. Corp. Code § 15025(2)(e) (1953); N.M. Stat. Ann. § 66-1-25(2)(e) (1953).

⁴⁴ Cf. *Wells v. Hiskett*, 288 S.W.2d 257 (Tex. Civ. App. 1956) error ref. n.r.e. (alleged use of corporation in fraud of wife).

partnership profits and surplus.⁴⁵ The Act recognizes that this may be held by a non-partner; thus, it can be assigned to a stranger⁴⁶ or charged by a separate creditor and sold on execution.⁴⁷ The interest in the partnership is related to specific property of the partnership entity in roughly the same way that stock in a corporation is related to specific property of the corporate entity. Under appropriate circumstances it can be community property and § 28-A(2) so states. The Act does not attempt to define the extent to which such an interest is community (e.g., when separate property has been contributed to the partnership in exchange for it, or when profits have been earned by the partnership but not distributed); nor does it specify the character of assets distributed by the partnership in liquidation of an interest in the partnership which is partly or wholly separate property. These matters are left to determination by reference to the basic entity nature of partnerships under the Act and to tracing and other Texas community property doctrines.⁴⁸

(3) *Management.* The third property right of a partner under § 24 is to participate in management. Like the rights in specific partnership property, this is peculiar to the status as partner. Accordingly, it cannot be regarded as community property, and § 28-A(3) so notes.⁴⁹

(4) *Wife as Partner.* The Act does not purport to make any change in present law concerning the capacity of a married woman to be a partner.⁵⁰

(5) *Numbering.* It is recommended that proposed §§ 28-A and 28-B be so designated in order to keep the numbers of the succeeding

⁴⁵ § 26.

⁴⁶ § 27.

⁴⁷ § 28.

⁴⁸ See, e.g., Comment, Profits and Increases in the Value of Partnerships and Corporations as Governed by Community Property Law, 36 Texas L. Rev. 187 (1957).

⁴⁹ This right of management refers to the business of the partnership, not to the interest in the partnership which is managed by the husband during the community but by the wife (as to her share) after dissolution of the marriage.

⁵⁰ In general, a married woman cannot legally be a partner. *Flint v. Culbertson*, — Tex. —, 319 S.W.2d 690 (1958) (unincorporated joint stock association treated as partnership); *Wallace v. Finberg*, 46 Tex. 35 (1876). This is equally true though only her separate property is used in the partnership. *Miller v. Marx & Kempner*, 65 Tex. 131 (1885). Her husband's joinder does not validate her participation. *King v. Matney*, 259 S.W.2d 606 (Tex. Civ. App. 1953) error ref. n.r.e. A wife may become a partner if her disabilities of coverture are removed pursuant to Tex. Rev. Civ. Stat. Ann. art. 4626 (1951). This statutory authorization impliedly excludes any other. *King v. Matney*, supra. The wife's disabilities in law are inevitably giving way as her economic activities increase in fact. Yet to be explored in this context is the effect of the 1957 amendment to Tex. Rev. Civ. Stat. Ann. art. 4614 (Supp. 1959) broadening the wife's control over her separate property. See Comment, Legal Rights of Married Women in Texas, 13 Sw. L.J. 84 (1959). An interesting consequence of *King v. Matney*, supra, was that the married woman was denied a tax deduction for her share of the partnership loss. *Harry F. Shannon*, 29 T.C. 702 (1958).

sections the same as in other jurisdictions having the Act, and in order to avoid changing the cross references within the Act.

§ 28-B. Effect of Death or Divorce on Interest in the Partnership.—

(1) (a) On the divorce of a partner, the partner's spouse shall, to the extent of such spouse's interest in the partnership, be regarded for purposes of this Act as an assignee and purchaser of such interest from such partner.

(b) On the death of a partner, such partner's surviving spouse (if any) and such partner's heirs, legatees or personal representative, shall to the extent of their respective interests in the partnership, be regarded for purposes of this Act as assignees and purchasers of such interests from such partner.

(c) On the death of a partner's spouse, such spouse's heirs, legatees or personal representative shall, to the extent of their respective interests in the partnership, be regarded for purposes of this Act as assignees and purchasers of such interests from such partner.

(2) A partnership is not dissolved by the death of a partner's spouse unless the agreement between the partners provides otherwise.

(3) Nothing in this Act shall impair any agreement for the purchase or sale of an interest in a partnership at the death of the owner thereof or at any other time.

COMMENT. This section is entirely new.

(1) Paragraph (1) is intended to solve two problems. First, the status of a partner's heirs, legatees, and personal representatives needs clarification. The necessity is even greater in the Texas version than in the original Act, because the former allows the partners by agreement to avoid the rule of the Act that death of a partner dissolves the partnership.⁵¹ Consequently, these heirs, legatees, and personal representatives logically must be classified as something less than partners and something more than strangers. Second, the spouse (typically the wife) of a partner may have a community interest in the partnership which comes under her control on divorce or death of the husband. A similar situation arises when the wife dies first and her community interest passes to her heirs, legatees, or personal representative. All these situations involve an economic interest in the partnership held by one who is not a partner. They are therefore analogous to assignees of a partner's interest as regarded in the original Act.⁵² This section makes them equivalent. The consequences are that such an owner of an interest, treated as an assignee and purchaser, may receive profits,⁵³ have reasonable information and accounting,⁵⁴ and obtain dissolution unless the partnership is for a fixed term

⁵¹ § 31(4).

⁵² § 27.

⁵³ *Ibid.*

⁵⁴ § 27.

not yet ended.⁵⁵ He does not become personally liable for partnership debts except by agreement or estoppel.⁵⁶ His interest is, however, chargeable for his individual debts.⁵⁷

(2) *Death of Spouse.* The death of a partner's spouse may create a hardship for the spouse's heirs, legatees, or personal representative if there is a valuable community interest in a partnership which cannot be realized upon. On the other hand, a hardship is possible for the partners if the partnership is dissolved and assets withdrawn merely because of the death of a partner's spouse. In an attempt to balance these equities, preference is given to the partners by this section which provides that the death of a partner's spouse does not dissolve the partnership. However, it permits the partnership agreement to provide otherwise, and planners should take this into consideration. The rights of the heirs, legatees, or personal representatives as assignees are described in the preceding paragraph of this Comment. In addition, of course, the heirs, legatees, or personal representatives are free to sell their interests or bargain with the partners for a dissolution if none is otherwise available.

(3) *Interests Covered.* These provisions should be read in connection with § 25 (2) (d) specifying that specific partnership property vests in the surviving partners on a partner's death. Since a partner's spouse has no interest in specific partnership property,⁵⁸ the spouse's death will have no effect on such property. Whether the death is that of the partner or the spouse, § 28-B deals only with the interest in the partnership.

(4) *Buy-and-Sell Agreements.* To avoid any possible contrary implication from the detailed provisions concerning disposition at death, § 28-B(3) shows that the Act does not interfere with buy-and-sell agreements of a partner, a spouse, or any other owner of an interest in a partnership.

PART VI—DISSOLUTION AND WINDING UP

Sec.

29. Dissolution Defined.
30. Partnership Not Terminated by Dissolution.
31. Causes of Dissolution.
32. Dissolution by Decree of Court.
33. General Effect of Dissolution on Authority of Partners.
34. Right of Partner to Contribution From Co-partners after Dissolution.

⁵⁵ § 32(2).

⁵⁶ § 16 (estoppel); §§ 7(1), 18(g), 17, 41(7) (agreement).

⁵⁷ § 28.

⁵⁸ § 28-A(1).

- 35. Power of Partner to Bind Partnership to Third Persons after Dissolution.
- 36. Effect of Dissolution on Partner's Existing Liability.
- 37. Right to Wind Up.
- 38. Rights of Partners to Application of Partnership Property.
- 39. Rights Where Partnership is Dissolved for Fraud or Misrepresentation.
- 40. Rules for Distribution.
- 41. Liability of Persons Continuing the Business in Certain Cases.
- 42. Rights of Retiring or Estate of Deceased Partner When the Business is Continued.
- 43. Accrual of Actions.

§ 29. Dissolution Defined.—The dissolution of a partnership is the change in the relation of the partners caused by any partner ceasing to be associated in the carrying on as distinguished from the winding up of the business.

COMMENT. Sher & Bromberg 301-02.

§ 30. Partnership Not Terminated by Dissolution.—On dissolution the partnership is not terminated, but continues until the winding up of partnership affairs is completed.

COMMENT. Sher & Bromberg 301-02.

§ 31. Causes of Dissolution.—Dissolution is caused:

- (1) Without violation of the agreement between the partners,
 - (a) By the termination of the definite term or particular undertaking specified in the agreement,
 - (b) By the express will of any partner when no definite term or particular undertaking is specified,
 - (c) By the express will of all the partners who have not assigned their interests or suffered them to be charged for their separate debts, either before or after the termination of any specified term or particular undertaking,
 - (d) By the expulsion of any partner from the business bona fide in accordance with such a power conferred by the agreement between the partners;
- (2) In contravention of the agreement between the partners, where the circumstances do not permit a dissolution under any other provision of this section, by the express will of any partner at any time;
- (3) By any event which makes it unlawful for the business of the partnership to be carried on or for the members to carry it on in partnership;
- (4) By the death of any partner unless the agreement between the partners provides otherwise;
- (5) By the bankruptcy of any partner of the partnership;
- (6) By decree of court under § 32.

COMMENT. See Comment under § 32.

§ 32. Dissolution by Decree of Court.—(1) On application by or for a partner the court shall decree a dissolution whenever:

- (a) A partner has been declared a lunatic in any judicial proceeding or is shown to be of unsound mind,

(b) A partner becomes in any other way incapable of performing his part of the partnership contract,

(c) A partner has been guilty of such conduct as tends to affect prejudicially the carrying on of the business,

(d) A partner wilfully or persistently commits a breach of the partnership agreement, or otherwise so conducts himself in matters relating to the partnership business that it is not reasonably practicable to carry on the business in partnership with him,

(e) The business of the partnership can only be carried on at a loss,

(f) Other circumstances render a dissolution equitable.

(2) On the application of the purchaser of a partner's interest under §§ 27 and 28:

(a) After the termination of the specified term or particular undertaking,

(b) At any time if the partnership was a partnership at will when the interest was assigned or when the charging order was issued.

COMMENT. *Sher & Bromberg* 302-07. Section 31(4) in the original Act states the common-law rule that a partnership is dissolved by the death of any partner. The increasing complexity of business enterprise and the concomitant value of a going concern have made such a procedure undesirable in many instances. Income tax problems may be created by an untimely dissolution. Many partnership agreements provide that death shall not work a dissolution, and no reason is seen why arrangements of this kind should not be accepted. Section 31(4) has been changed to accomplish this. North Carolina and Oklahoma have the same provision.⁵⁹ It is consistent with Texas dicta.⁶⁰ A continuity provision should be used with caution since it may possibly result in treatment of the partnership as an association taxable as a corporation.⁶¹ However, the danger is slight unless management is heavily centralized.⁶²

§ 33. General Effect of Dissolution on Authority of Partner.—Except so far as may be necessary to wind up partnership affairs or to complete transactions begun but not then finished, dissolution terminates all authority of any partner to act for the partnership,

⁵⁹ N.C. Gen. Stats. Ann. § 59-61 (1960); Okla. Stat. Ann. tit. 54, § 231 (Supp. 1959).

⁶⁰ *Alexander v. Lewis*, 47 Tex. 481 (1877). See *Bromberg, Taxable Income Without Gain on the Sale of a Deceased Partner's Interest: Code, Common Law and Community Property*, 13 Sw. L.J. 343, 344 (1959); Comment, *Partnership Agreements Disposing of Property After Death*, 7 *Baylor L. Rev.* 291 (1955); Note, *Partnership Continuation Agreements*, 72 *Harv. L. Rev.* 1302 (1959).

⁶¹ *Int. Rev. Code of 1954, § 7701(a)(3)*; cf. *Burk-Waggoner Oil Ass'n v. Hopkins*, 269 U.S. 110 (1925) (unincorporated joint stock association taxed as corporation though partnership under Texas law).

⁶² In the present view of the Internal Revenue Service, each partner's power (as distinguished from right) to dissolve is an important non-corporate feature. Such power, recognized by § 31, in the absence of excessive management centralization, indicates that no corporation will result for tax purposes. Proposed *Treas. Regs. § 301.7701-2(g), Ex. (2), (4)*, 24 *Fed. Reg.* 10450, 10452-3 (1959).

- (1) With respect to the partners,
 (a) When the dissolution is not by the act, bankruptcy or death of a partner; or
 (b) When the dissolution is by such act, bankruptcy or death of a partner, in cases where § 34 so requires.
 (2) With respect to persons not partners, as declared in § 35.

COMMENT. This section states the general rule that dissolution terminates the authority of a partner except for winding up and in special instances governed by §§ 34 and 35.

§ 34. Right of Partner to Contribution from Co-partners after Dissolution.—Where the dissolution is caused by the act, death or bankruptcy of a partner, each partner is liable to his co-partners for his share of any liability created by any partner acting for the partnership as if the partnership had not been dissolved unless

- (a) The dissolution being by act of any partner, the partner acting for the partnership had knowledge of the dissolution, or
 (b) The dissolution being by the death or bankruptcy of a partner, the partner acting for the partnership had knowledge or notice of the death or bankruptcy.

COMMENT. Sher & Bromberg 307-11. "Knowledge" and "notice" are defined in § 3.⁶³

§ 35. Power of Partner to Bind Partnership to Third Persons after Dissolution.—(1) After dissolution a partner can bind the partnership except as provided in Paragraph (3).

(a) By any act appropriate for winding up partnership affairs or completing transactions unfinished at dissolution;

(b) By any transaction which would bind the partnership if dissolution had not taken place, provided the other party to the transaction

(I) Was a creditor of the partnership at the time of dissolution or had extended credit to the partnership within two years prior to dissolution and, in either case, had no knowledge or notice of his want of authority; or

(II) Though he was not such a creditor or had not so extended credit, had nevertheless known of the partnership prior to dissolution, and, having no knowledge or notice of dissolution, the fact of dissolution had not been advertised in a newspaper of general circulation in the place (or in each place if more than one) at which the partnership business was regularly carried on.

(2) The liability of a partner under Paragraph (1b) shall be satisfied out of partnership assets alone when such partner had been prior to dissolution

(a) Unknown as a partner to the person with whom the contract is made; and

(b) So far unknown and inactive in partnership affairs that the

⁶³ See also Commissioners' Note, 7 Uniform Laws Ann. 190 (1949) describing alteration of common law as to notice of death.

business reputation of the partnership could not be said to have been in any degree due to his connection with it.

(3) The partnership is in no case bound by any act of a partner after dissolution

(a) Where the partnership is dissolved because it is unlawful to carry on the business, unless the act is appropriate for winding up partnership affairs; or

(b) Where the partner has become bankrupt; or

(c) Where the partner has no authority to wind up partnership affairs; except by a transaction with one who

(I) Was a creditor of the partnership at the time of dissolution or had extended credit to the partnership within two years prior to dissolution and, in either case, had no knowledge or notice of his want of authority; or

(II) Though he was not such a creditor or had not so extended credit to the partnership prior to dissolution, and, having no knowledge or notice of his want of authority, the fact of his want of authority has not been advertised in the manner provided for advertising the fact of dissolution in Paragraph (1bII).

(4) Nothing in this section shall affect the liability under § 16 of any person who after dissolution represents himself or consents to another representing him as a partner in a partnership engaged in carrying on business.

COMMENT. Sher & Bromberg 311-13. Taken literally, the original Act calls for notice of dissolution to *all* present and past creditors. This is not practical nor is it necessary for creditor protection. The Texas version modifies paragraphs (1)(b)(I) and (II), and (3)(c)(I) and (II) to require notice only to those who were creditors at the time of dissolution or in the preceding two years. "Knowledge" and "notice" are defined in § 3.

§ 36. Effect of Dissolution on Partner's Existing Liability.—(1) The dissolution of the partnership does not of itself discharge the existing liability of any partner.

(2) A partner is discharged from any existing liability upon dissolution of the partnership by an agreement to that effect between himself, the partnership creditor and the person or partnership continuing the business; and such agreement may be inferred from the course of dealing between the creditor having knowledge of the dissolution and the person or partnership continuing the business.

(3) Where a person agrees to assume the existing obligations of a dissolved partnership, the partners whose obligations have been assumed shall be discharged from any liability to any creditor of the partnership who, knowing of the agreement, consents to a material alteration in the nature or time of payment of such obligations.

(4) The individual property of a deceased partner shall be liable for all obligations of the partnership incurred while he was a partner but subject to the prior payment of his separate debts.

COMMENT. Paragraphs (1)-(3) parallel the common law that dissolution does not relieve a partner of liability but that novation may.⁶⁴ In giving individual creditors of a deceased partner priority (over partnership creditors) in individual assets, paragraph (4) is a departure from Texas law. It is, however, consistent with the treatment generally accorded these two classes of creditors by the Act.⁶⁵ Knowledge is defined in § 3.

§ 37. Right to Wind Up.—Unless otherwise agreed the partners who have not wrongfully dissolved the partnership or the legal representative of the last surviving partner, not bankrupt, has the right to wind up the partnership affairs; provided, however, that any partner, his legal representative or his assignee, upon cause shown, may obtain winding up by the court.

COMMENT. Sher & Bromberg 307-10. "Wrongfully" here is equivalent to "in contravention of the agreement between the partners" in § 31(2).

§ 38. Rights of Partners to Application of Partnership Property.—(1) When dissolution is caused in any way, except in contravention of the partnership agreement, each partner, as against his co-partners and all persons claiming through them in respect of their interests in the partnership, unless otherwise agreed, may have the partnership property applied to discharge its liabilities, and the surplus applied to pay in cash the net amount owing to the respective partners. But if dissolution is caused by expulsion of a partner, bona fide under the partnership agreement and if the expelled partner is discharged from all partnership liabilities, either by payment or agreement under § 36(2), he shall receive in cash only the net amount due him from the partnership.

(2) When dissolution is caused in contravention of the partnership agreement the rights of the partners shall be as follows:

- (a) Each partner who has not caused dissolution wrongfully shall have,
 - (I) All the rights specified in paragraph (1) of this section, and
 - (II) The right, as against each partner who has caused the dissolution wrongfully, to damages for breach of the agreement.

- (b) The partners who have not caused the dissolution wrongfully, if they all desire to continue the business in the same name, either by themselves or jointly with others, may do so, during the agreed term for the partnership and for that purpose may possess the partnership property, provided they secure the payment by bond approved by the court, or pay to any partner who has caused the dissolution wrongfully, the value of his interest in the partnership at the dissolution, less any damages recoverable under clause (2aII) of this section, and in like manner indemnify him against all present or future partnership liabilities.

⁶⁴ See, e.g., *Abernathy Rigby Co. v. McDougle, Cameron & Webster Co.*, 187 S.W. 503 (Tex. Civ. App. 1916) (retiring partner remained liable despite assumption by remaining partners; creditor refused to release); *Texas Drug Co. v. Coulter*, 62 S.W. 110 (Tex. Civ. App. 1901) (creditor bound by novation); *Western Brokerage & Supply Co. v. Reclamation Co.*, 127 Tex. 386, 93 S.W.2d 393 (1936) (novation ineffective because of misrepresentation by retiring partners).

⁶⁵ E.g., § 40(i).

(c) A partner who has caused the dissolution wrongfully shall have:

(I) If the business is not continued under the provisions of paragraph (2b) all the rights of a partner under paragraph (1), subject to clause (2aII), of this section,

(II) If the business is continued under paragraph (2b) of this section the right as against his co-partners and all claiming through them in respect of their interests in the partnership, to have the value of his interest in the partnership, less any damages caused to his co-partners by the dissolution, ascertained and paid to him in cash, or the payment secured by bond approved by the court, and to be indemnified against all existing liabilities of the partnership; but in ascertaining the value of the partner's interest the value of the good-will of the business shall not be considered.

COMMENT. Sher & Bromberg 307-10. The phrase "indemnified against" has been substituted for "released from" in paragraph (2) (c) (II). The language of the original Act was inaccurate since a release could not be given without the creditors' consent. The only thing that the other partners can give is indemnification. In the ordinary situation this section calls for the conversion of assets to cash and for distribution in that form. Such a process may precipitate ordinary income (e.g., where there are receivables or inventory) and subject it to higher tax rates. However, the partners may agree on distribution of the assets in kind. Texas cases, although not entirely clear, seem to be in accord.⁶⁶

§ 39. Rights Where Partnership is Dissolved for Fraud or Misrepresentation.—Where a partnership contract is rescinded on the ground of the fraud or misrepresentation of one of the parties thereto, the party entitled to rescind is, without prejudice to any other right, entitled,

(a) To a lien on, or right of retention of, the surplus of the partnership property after satisfying the partnership liabilities to third persons for any sum of money paid by him for the purchase of an interest in the partnership and for any capital or advances contributed by him; and

(b) To stand, after all liabilities to third persons have been satisfied, in the place of the creditors of the partnership for any payments made by him in respect of the partnership liabilities; and

(c) To be indemnified by the person guilty of the fraud or making the representation against all debts and liabilities of the partnership.

COMMENT. Texas has developed no comparable rules in partnership cases, but its general principles of constructive trusts and rescission for fraud seem consistent.

§ 40. Rules for Distribution.—In settling accounts between the partners after dissolution, the following rules shall be observed, subject to any agreement to the contrary:

⁶⁶ See, e.g., *Leyhe v. McNamara*, 243 S.W. 1074 (Tex. Comm. App. 1922); *Totz v. Stahl*, 314 S.W.2d 345 (Tex. Civ. App. 1958) error ref. n.r.e. (distribution of undivided interests refused); *Johnson v. Braden*, 286 S.W.2d 671 (Tex. Civ. App. 1956).

- (a) The assets of the partnership are:
- (I) The partnership property,
 - (II) The contributions of the partners necessary for the payment of all the liabilities specified in clause (b) of this paragraph.
- (b) The liabilities of the partnership shall rank in order of payment, as follows:
- (I) Those owing to creditors other than partners,
 - (II) Those owing to partners other than for capital and profits,
 - (III) Those owing to partners in respect of capital,
 - (IV) Those owing to partners in respect of profits.
- (c) The assets shall be applied in the order of their declaration in clause (a) of this paragraph to the satisfaction of the liabilities.
- (d) The partners shall contribute, as provided by § 18(a) the amount necessary to satisfy the liabilities; but if any, but not all, of the partners are insolvent, or, not being subject to process, refuse to contribute, the other partners shall contribute their share of the liabilities, and, in the relative proportions in which they share the profits, the additional amount necessary to pay the liabilities.
- (e) An assignee for the benefit of creditors or any person appointed by the court shall have the right to enforce the contributions specified in clause (d) of this paragraph.
- (f) Any partner or his legal representative shall have the right to enforce the contributions specified in clause (d) of this paragraph, to the extent of the amount which he has paid in excess of his share of the liability.
- (g) The individual property of a deceased partner shall be liable for the contributions specified in clause (d) of this paragraph.
- (h) When partnership property and the individual properties of the partners are in possession of a court for distribution, partnership creditors shall have priority on partnership property and separate creditors on individual property, saving the rights of lien or secured creditors as heretofore.
- (i) Where a partner has become bankrupt or his estate is insolvent the claims against his separate property shall rank in the following order:
- (I) Those owing to separate creditors,
 - (II) Those owing to partnership creditors,
 - (III) Those owing to partners by way of contribution.

COMMENT. Sher & Bromberg 313-17.

§ 41. Liability of Persons Continuing the Business in Certain Cases.—

(1) When any new partner is admitted into an existing partnership, or when any partner retires and assigns (or the representative of the deceased partner assigns) his rights in partnership property to two or more of the partners, or to one or more of the partners and one or more third persons, if the business is continued without liquidation of the partnership affairs, creditors of the first or dissolved partnership are also creditors of the partnership so continuing the business.

(2) When all but one partner retire and assign (or the representative of a deceased partner assigns) their rights in partnership property to the remaining partner, who continues the business without liquidation of

partnership affairs, either alone or with others, creditors of the dissolved partnership are also creditors of the person or partnership so continuing the business.

(3) When any partner retires or dies and the business of the dissolved partnership is continued as set forth in paragraphs (1) and (2) of this section, with the consent of the retired partners or the representative of the deceased partner, but without any assignment of his right in partnership property, rights of creditors of the dissolved partnership and of the creditors of the person or partnership continuing the business shall be as if such assignment had been made.

(4) When all the partners or their representatives assign their rights in partnership property to one or more third persons who promise to pay the debts and who continue the business of the dissolved partnership, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

(5) When any partner wrongfully causes a dissolution and the remaining partners continue the business under the provisions of § 38(2b), either alone or with others, and without liquidation of the partnership affairs, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

(6) When a partner is expelled and the remaining partners continue the business either alone or with others, without liquidation of the partnership affairs, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

(7) The liability of a third person becoming a partner in the partnership continuing the business, under this section, to the creditors of the dissolved partnership shall be satisfied out of partnership property only.

(8) When the business of a partnership after dissolution is continued under any conditions set forth in this section the creditors of the dissolved partnership, as against the separate creditors of the retiring or deceased partner or the representative of the deceased partner, have a prior right to any claim of the retired partner or the representative of the deceased partner against the person or partnership continuing the business, on account of the retired or deceased partner's interest in the dissolved partnership or on account of any consideration promised for such interest or for his right in partnership property.

(9) Nothing in this section shall be held to modify any right of creditors to set aside any assignment on the ground of fraud.

(10) The use by the person or partnership continuing the business of the partnership name, or the name of a deceased partner as part thereof, shall not of itself make the individual property of the deceased partner liable for any debts contracted by such person or partnership.

COMMENT. On Paragraphs (1) and (2) see Sher & Bromberg 280-83.⁶⁷ Paragraph (3) gives the same result (i.e., continuity of creditors' rights against the partnership business) where a partner dies and there is no formal assignment of his interest to another partner.

⁶⁷ For detailed consideration of § 41, see Commissioners' Note, 7 Uniform Laws Ann. 229 (1949).

Paragraph (4) provides that where all the partners assign their rights in the partnership property to third persons who promise to pay the partnership debts and who continue the business, the creditors of the old partnership share with those of the new. Under Texas law an assumption of liabilities by the assignee does not preserve the "quasi" liens of the old creditors; it merely gives them a personal claim against the new partner.⁶⁸ The Act's change appears desirable.

Paragraphs (5) and (6) similarly provide continuity of creditors' relative standings where the partnership business is continued after a wrongful dissolution or the expulsion of a partner.

Paragraph (7). *Sher & Bromberg* 283, at n.94.

Paragraph (8) provides that where a partnership is continued after dissolution, creditors of the dissolved partnership have priority over a retired or deceased partner (or his separate creditors). As noted in other respects, the Texas law generally permits no preservation of priority after dissolution.⁶⁹

Paragraph (9). This obviously appropriate provision preserves creditors' rights against fraudulent conveyances.

Paragraph (10) provides that continued use of the name of the old partnership or the name of a deceased partner does not of itself make the individual property of the deceased partner liable for debts contracted after death. This appears consistent with Texas law, for a failure to file a certificate of withdrawal from a firm carried on under an assumed name works no estoppel to deny membership in the firm.⁷⁰

§ 42. Rights of Retiring or Estate of Deceased Partner When the Business is Continued.—When any partner retires or dies, and the business is continued under any of the conditions set forth in § 41 (1, 2, 3, 5, 6) or § 38(2b), without any settlement of accounts as between him or his estate and the person or partnership continuing the business, unless otherwise agreed, he or his legal representative as against such persons or partnership may have the value of his interest at the date of dissolution ascertained, and shall receive as an ordinary creditor an amount equal to the value of his interest in the dissolved partnership with interest, or, at his option or at the option of his legal representative, in lieu of interest, the profits attribut-

⁶⁸ *Bell v. Beazley*, 45 S.W. 401 (Tex. Civ. App. 1898).

⁶⁹ See, e.g., *Willis v. Satterfield*, 85 Tex. 301, 20 S.W. 155 (1892) (firm creditor lost quasi lien on firm assets where partner sold to co-partner thereby dissolving partnership); *Bell v. Beazley*, supra, note 68 (an agreement by a purchaser of the firm interest of one partner to pay the firm debts of both the old and new firms did not give creditors of the old firm a prior lien on the firm assets so as to render void a preference given creditors of the new firm in a trust deed); *Sanchez v. Goldfrank*, 27 S.W. 204 (Tex. Civ. App. 1894) (where one partner sold his interest to co-partner thereby dissolving the firm and co-partner assigned for benefit of creditors, assets purchased were not subject to attachment in hands of assignee for firm debts).

⁷⁰ *Stevens v. Lilley*, 7 S.W.2d 883 (Tex. Civ. App. 1928) (subsequent debt).

able to the use of his right in the property of the dissolved partnership; provided that the creditors of the dissolved partnership as against the separate creditors, or the representative of the retired or deceased partner, shall have priority on any claim arising under this section, as provided by § 41(8) of this Act.

COMMENT. Going beyond present Texas law,⁷¹ this section gives the retiring or deceased partner the desirable option of leaving his property in the partnership where the rate of return may be higher. It is also consistent with § 41 in preserving the standing of the creditors of the old partnership.

§ 43. Accrual of Actions.—The right to an account of his interest shall accrue to any partner, or his legal representative, as against the winding up partners or the surviving partners or the person or partnership continuing the business, at the date of dissolution, in the absence of any agreement to the contrary.

COMMENT. This section provides that the right to an accounting accrues at "dissolution" (which is defined by § 29 as the point in time when a partner ceases to be associated in the carrying on of the business, as distinguished from the winding up). Texas cases have been vague on the timing of dissolution and on the accrual of accounting rights for limitations purposes.⁷² The relevant four year statute of limitations⁷³ states that a cause of action among partners arises on cessation of the dealings in which they were interested together. This has been vaguely construed to mean termination (as defined in the Act)⁷⁴ rather than dissolution.⁷⁵ The Act offers greater certainty.

PART VII—MISCELLANEOUS PROVISIONS

Sec.

44. Effective Date.

45. Repealer.

46. Emergency.

§ 44. Effective Date.—This Act shall take effect and be in force from and after its passage.

COMMENT. No reason is seen why the Act should not become effective as soon as possible after passage.⁷⁶ The Act will apply to existing partnerships as well as new ones. Section 4(5) keeps it from impairing any contract already in force or affecting any vested right.

⁷¹ See, e.g., *Altgelt v. Sullivan & Co.*, 79 S.W. 333 (Tex. Civ. App. 1903).

⁷² See, e.g., *Easley v. Clay*, 16 S.W.2d 888 (Tex. Civ. App. 1929) error dismissed.

⁷³ Tex. Rev. Civ. Stat. Ann. art. 5527 (1958).

⁷⁴ § 30.

⁷⁵ *Easley v. Clay*, 16 S.W.2d 888 (Tex. Civ. App. 1929) error dismissed.

⁷⁶ See note 78 *infra*.

The relative simplicity of the Act and its similarity to previous law eliminate the need for a waiting period like that of the recent corporation acts.⁷⁷ The Texas Uniform Limited Partnership Act became effective immediately.⁷⁸

§ 45. Repealer.—All acts or parts of acts inconsistent with this act are hereby repealed.

COMMENT. The only possibly inconsistent provision which has been found is article 5527, mentioned in the Comment on § 43. This inconsistency is more apparent than real, for the Act's precise definition of dissolution⁷⁹ plus its provision for accrual of actions of dissolution⁸⁰ together should cause "cessation of dealings" to be equated with "dissolution." It was the Committee's view that the repealer would be inoperative, but that it should be retained in order to avoid any conflict that might later materialize.

§ 46. Emergency.—The total absence of statutes governing general partnerships, the incompleteness and inconsistency and inadequacy of the common law in this field, the great number of partnership businesses operative in Texas, and the importance of this legislation create an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each House be suspended, and the same is hereby suspended, and this Act shall take effect and be in force from and after the effective date specified herein, and it is so enacted.

COMMENT. This section, which was not prepared by the Committee, is an "emergency" clause as well as an "imperative public necessity" clause. The two are usually combined but they serve entirely different purposes. The former is essential to make the Act effective earlier than 90 days after the adjournment of the Legislative session at which it is passed.⁸¹ The latter is necessary to dispense with the three readings of the Bill in each House which are otherwise required.⁸² To accomplish the former, a two-thirds vote in each House is required, for the latter, four-fifths; in either case, the yeas and nays must be recorded upon the journals. These provisions have become universal formalities.⁸³

⁷⁷ Tex. Bus. Corp. Act art. 9.14B, C, E. (1959). Texas Non-Profit Corp. Act art. 10.04A, B, D. (1959).

⁷⁸ Acts 1955, Ch. 173, at 478.

⁷⁹ § 29.

⁸⁰ § 43.

⁸¹ Tex. Const. art. 3, § 39.

⁸² Tex. Const. art. 3, § 32.

⁸³ For example, all 511 of the laws passed by the 55th Legislature, regular session (1957) had imperative necessity clauses and all but one (Tex. Laws 1957, Ch. 405, dealing with the Wichita County Probation Department) had emergency clauses. These included such urgent matters as the squirrel season in Jasper County (Tex. Laws 1957, Ch. 352) and changing the name of East Texas State Teachers College (Tex. Laws 1957, Ch. 361).

The number of Texas partnerships exceeds fifty thousand and is half again the number of corporations.⁸⁴

CONCLUSION

The proposed Texas Uniform Partnership Act is set forth and annotated above. In large measure it codifies the common law and therefore does little violence to present Texas law. The proposed Texas Act clarifies and modernizes the original Act in a moderate number of respects. Moreover, it makes specific provision for community property rights. Its most important features are:

(1) Authorizing partnerships to hold and convey title to real estate;

(2) Allowing individual creditors to charge or take assignments of a partner's interest without a dissolution, thus protecting the co-partners;

(3) Eliminating confusion as to the causes and consequences of dissolution, e.g., by assuring remaining partners the right to wind up, allowing innocent partners the right to buy the interest of a wrongfully dissolving partner, limiting the notice necessary to prevent the incurring of new liabilities after dissolution, and permitting the partners to agree in advance that death will not dissolve;

(4) Preserving the rights of partnership creditors despite a change in members of the firm;

(5) Altering the nature of partnership property in order to preserve prior rights of partnership creditors (e.g., by freeing them from the subrogation of their priority to the partners) and of partners (e.g., by preventing a partner from assigning individually his interest in partnership property);

(6) Specifying that the right of contribution is a partnership asset, and prescribing in detail the order of priority for distribution of partnership assets;

(7) Identifying the community property rights of a partner's spouse.

The Act, like other statutory, judicial, and scholarly views of partnership, hovers between entity and aggregate concepts.⁸⁵ While it has

Many of these laws did not receive the necessary recorded vote to make them immediately effective. Probably the same was true of the recorded vote to waive the triple reading. On this latter point, the courts have followed the "enrolled bill" rule and refused to scrutinize the procedural technicalities. *Day Land & Cattle Co. v. State*, 68 Tex. 526, 4 S.W. 865 (1887).

⁸⁴ During the year ended June 30, 1959, 55,442 partnerships in Texas filed federal income tax returns, compared to 39,585 corporations (of which many were probably organized under laws other than Texas'). Commissioner of Int. Rev. Ann. Rep. 113 (1959).

⁸⁵ See, e.g., Bromberg, *supra* note 60, at 362.

been criticized for so doing,⁸⁶ neither notion can be pursued with absolute consistency. The aggregate theory imports hopeless complications of property ownership and creditors' rights.⁸⁷ The entity theory, carried to its extreme, would shield partners from personal liability, leaving little to differentiate a partnership from a corporation.⁸⁸ The original Act compromises sensibly these and other problems. It leans toward the entity idea, which accords with business usage. The Texas Act goes a few steps further in permitting continuity beyond death and recognizing broader ownership of partnership interests by non-partners.

Adoption of the Act will bring Texas abreast of the 39 jurisdictions already having the original Act; the consequent uniformity should be advantageous to the Texas lawyer and client in their interstate dealings.

As a complement to the Texas Uniform Limited Partnership Act, the Texas Business Corporation Act, and the Texas Non-Profit Corporation Act, the Texas Uniform Partnership Act will fill out the basic statutes on forms of organization in Texas. It will afford coherent and comprehensive rules which are sorely wanted.

⁸⁶ Crane, *The Uniform Partnership Act—A Criticism*, 28 *Harv. L. Rev.* 762 (1915); Crane, *The Uniform Partnership Act and Legal Persons*, 29 *Harv. L. Rev.* 838 (1916).

⁸⁷ Lewis, *The Uniform Partnership Act—A Reply to Mr. Crane's Criticism*, 29 *Harv. L. Rev.* 158 and 291 (1916).

⁸⁸ Cf. *Thompson v. Schmitt*, 115 *Tex.* 53, 274 *S.W.* 554 (1925) (business trust, like partnership, permits no limitation of personal liability).