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MISSOURI'S "UNIFORM LIMITED PARTNERSHIP ACT"

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The Uniform Limited Partnership Act, recommended by the Commissioners on Uniform State Laws in 1916 and adopted by more than half of the states, has finally been adopted in Missouri.[1] The repealed limited partnership legislation[2] which it supersedes had little practical utility from the outset. It created no new form of business association. A limited (or special) partner was in all respects a partner in an ordinary partnership, with the privilege of limited liability if and so long as the strict statutory requirements were precisely observed.[3] The penalty of unlimited liability for even a slight deviation from the prescribed procedure had sanction both in the language and in a critical judicial view of the early statutes which purported to give a "corporate" privilege or advantage without incorporation.[4] Moreover, contemporaneous facilities for easy incorporation under rather well-

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1. Mo. Laws 1947, vol. 2, p. 311, MO. REV. STAT. ANN. c. 34 A, §§ 5576.1-5576.29 (Supp. 1948). Section references herein are to Mo. Laws 1947.

The Uniform Limited Partnership Act has been adopted in Alaska, Arizona, California, Colorado, Florida, Hawaii, Idaho, Illinois, Iowa, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Pennsylvania, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington and Wisconsin.

2. MO. REV. STAT. c. 34 (1939). A Limited Partnership Act was first enacted in 1855 (Mo. Laws 1854, p. 165). It was amended in 1857 (Mo. Laws 1857, p. 35) and again in 1909 (Mo. Laws 1909, p. 705). For an account of the background of the limited partnership and its introduction in the United States, see Ames v. Downing, 1 Bradf. 321, at 329 (N. Y. 1850); Lewis, *The Uniform Limited Partnership Act*, 65 U. of PA. L. REV. 715 (1917); POLLOCK, ESSAYS IN JURISPRUDENCE 100 (1882).

3. Jaffe v. Krum, 88 Mo. 669 (1886). See BURDICK, PARTNERSHIP 385 (3d ed. 1917); Commissioners' Note to § 1 of the UNIFORM LIMITED PARTNERSHIP ACT, 8 U.L.A. 2.

4. See Brown, *The Limited Partnership in Indiana*, 5 IND. L. J. 421 (1930); Lewis, *supra* note 2, at 720; Commissioners' Note to § 1 of the Uniform Act, 8 U.L.A. 2.

understood general incorporation laws,[5] together with timely decisions allowing an investor to participate in the profits of a business in lieu of interest without incurring risk of liability for firm obligations,[6] diminished considerably any prospect for any extensive use of the early limited partnership form.[7]

The Uniform Limited Partnership Act recently adopted in Missouri is of a different legal species. Unlike most proposed uniform laws it does not simply seek to achieve uniformity in an existing law of limited partnerships, although there is an avowal of that general purpose. A major objective is to make available to business enterprise a new and attractive form of business organization or association.[8] It is recognized that while incorporation offers distinct advantages, there are today situations when the tax costs and inconveniences of doing business by the corporate device outweigh the advantages. This is especially true in the field of small enterprise and for closely held business. It has been estimated that the taxes of closely held corporations in Illinois could be reduced as much as one-half by a change to a partnership form of organization.[9] There are, however, other advantages

5. In 1849, Missouri adopted a general corporation act authorizing any three or more persons to become incorporated for the purpose of engaging in "any kind of manufacturing, mining, mechanical or chemical business," by signing and filing in the office of the circuit clerk of the county and with the secretary of state a certificate complying in content with the requirements of the act. (Mo. Laws 1848, p. 18). The act did not, of course, prevent the legislature from continuing to grant special acts of incorporation even for businesses which could have been incorporated under that act. In 1865, the constitution was revised to provide that corporations ". . .shall not be created by special acts, except for municipal purposes." Mo. CONST. Art. VIII, § 4 (1865).

6. Waugh v. Carver, 2 H. Bl. 235 (1793), relying on Grace v. Smith, 2 W. Bl. 998 (1775), had held that two firms agreeing to share with each other profits of their separate businesses, though not partners *inter se,* were liable as partners to third persons for each other's obligations. This doctrine was later rejected, Cox v. Hickman, 8 H. L. Cas. 268 (1860), and a line of cases both in England and in the United States established the present rule that partnership liability is restricted to cases of actual partnership, except in cases of estoppel. See Campbell v. Dent, 54 Mo. 325 (1873).

7. The relative unimportance of limited partnerships in the commercial life of Missouri is indicated by the fact that the appellate courts have had to pass on limited partnership litigation only five times (involving four firms) in nearly a century since the enactment of the original act. See 22 Mo. DIGEST 578 and 1948 Supplement.

8. See Commissioners' Note to § 1 of the Act, 8 U.L.A. 2; Lewis, *supra* note 2; Comment, 2 WIS. L. REV. 301 (1923).

9. Metzdorf, *A "Pardner" or Incorporation,* 37 COMMERCE 16, at 18 (1940). See BALLANTINE, CORPORATIONS 5 (rev. ed. 1946); Note, *Taxation—Corporations—Partnerships—Comparative Tax Burden,* 23 MINN. L. REV. 506 (1939); ISRAELS AND GORMAN, CORPORATE PRACTICE 4 (1946, Practicing Law Institute Monograph), and Appendix A at 66 (comparison of estimate of tax costs to A, B and C who plan to engage in business on either the corporate basis or the partnership basis).

to be derived from a limited partnership form of organization. It is pointed out in a leading commentary on the Uniform Act that—

"Even had the modern business corporation been fully developed, as today, there would have been many cases in which *société en commendite* or limited partnership would have been better fitted to the needs of the parties. In the limited partnership the limited partner may be sure of the active interest of the general partners, who are the directors of the enterprise, because such partners are, while the directors of a corporation are not, liable without limit for the debts. On the other hand, the general partners secure the additional fund necessary for the prosecution of the business, and yet remain in control of the business; while if a corporation is formed, all the contributors to the capital stock acquire the right to take part in the management to the extent of a right to vote for the board of directors."[10]

It is indeed true, therefore, that counsel who accepts unquestioningly his clients' instructions to organize a corporation without examining the desirability of a non-corporate form of organization may be acting contrary to his clients' best interests.[11]

The formalities for the formation of a limited partnership under the recently adopted act are similar to the formalities required for the formation of a corporation. The persons undertaking to form the partnership must first prepare, sign and swear to a certificate stating in considerable detail matters similar to those stated in articles of incorporation. The certificate must set forth the name,[12] character,[13] location of the principal place of business[14] and term of existence[15] of the enterprise, the names and residences of general and limited partners,[16] the amount and character of contribu-

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10. Lewis, *supra* note 2, at 717.
11. ISRAELS AND GORMAN, *supra* note 9, at 3.
12. Sec. 2(1) (a) I. The surname of a limited partner may not appear in the firm name unless (a) it is also the surname of a general partner, or (b) prior to the time when the limited partner became such the business had been carried on under a name in which his surname appeared. Sec. 5. For the liability of a limited partner whose name appears in the firm name contrary to the provisions of § 5, see infra p. 137.
13. Sec. 2 (1) (a) II. "A limited partnership may carry on any business which a partnership without limited partners may carry on." Sec. 3.
14. Sec. 2 (1) (a) III.
15. Sec. 2 (1) (a) V.
16. Sec. 2 (1) (a) IV; general and limited partners being respectively designated.

tions[17] and the share of the profits to be received by limited partners.[18] Certain statements also are required if the partnership agreement contains clauses as to future contributions,[19] the return of those made,[20] the priority of such payment,[21] the substitution[22] and addition[23] of limited partners and the continuance of the business after the death or retirement of a general partner.[24] The certificate is then to be recorded in the office of the recorder of deeds of the county in which the partnership business is located.[25] In most of the jurisdictions that have adopted the Uniform Act, only one filing is required—either in the county in which the partnership is located or in the county in which the principal place of business is located[26]—and the limited partnership then exists, assuming substantial compliance in good faith with provisions governing the execution of the certificate. The Missouri Act,

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17. Sec. 2 (1) (a) VI. See *infra* p. 141. See also § 17 (1) (a) and (2) (a) defining the liability of a limited partner to the firm with respect to a deficient contribution.

18. Sec. 2 (1) (a) IX. "A limited partner may receive from the partnership the share of the profits or the compensation by way of income stipulated for in the certificate: *Provided,* that after such payment is made, whether from the property of the partnership or that of a general partner, the partnership assets are in excess of all liabilities of the partnership except liabilities to limited partners on account of their contribution and to general partners." Sec. 15.

19. Sec. 2 (1) (a) VII. A limited partner is liable to the firm for any unpaid contribution which he agreed in the certificate to make in the future at the time and on the conditions stated in the certificate. Sec. 17 (1) (b).

20. Sec. 2 (1) (a) VIII and XIV. For limitations on the return of his contributions, see § 16; his liabilities therefor, § 17.

21. Sec. 2 (1) (a) XII. Sec. 14 provides: "Where there are several limited partners the members may agree that one or more of the limited partners shall have a priority over other limited partners as to the return of their contributions, as to their compensation by way of income, or as to any other matter. If such an agreement is made it shall be stated in the certificate, and in the absence of such a statement all the limited partners shall stand upon equal footing."

22. Sec. 2 (1) (a) X. See *infra* p. 142.

23. Sec. 2 (1) (a) XI. Sec. 8 allows the admission of additional limited partners, after the formation of the firm, upon filing an amendment to the original certificate in accordance with the requirements of § 25.

24. Sec. 2 (1) (a) XIII. The retirement, death or insanity of a general partner dissolves the firm unless the business is continued by the remaining general partners under a right to do so stated in the certificate or with the consent of all members. Sec. 20.

25. Sec. 2 (1) (b). The prior act [Mo. REV. STAT. § 5565 (1939)] required the filing and recording of the statement (certificate) in the office of the recorder of deeds "in the county where the principal place of business of such partnership is located;" the required affidavit (§ 5566) "in the county where the business is to be transacted."

26. Statutory Notes to § 2 of the Uniform Act, 8 U.L.A. 6 and 1948 Supplement.

however, adds the requirement of publication, compliance with which precedes formation of the firm.[27]

In the view of the Commissioners on Uniform State Laws a limited partnership is an "association" having two classes of members, general partners and contributors called limited partners.[28] The contributor is in no sense a partner, nor (except in one instance[29]) does he become liable as a general partner. Failure to comply in good faith with the requirements for a certificate, while it may result in the non-formation of a limited partnership, does not impose a general liability upon the limited partner. His contribution to the capital of the business marks the limits of his liability as a limited partner for firm obligations.[30] If he erroneously believes that he has become a limited partner in a limited partnership, he does not, by reason of his exercise of the rights of a limited partner, become a general partner in the firm nor bound by its obligations, provided, upon ascertaining the mistake, he promptly renounces his interest in the profits of the business or other compensation by way of income.[31] If, contrary to the provisions of Section 5, the limited partner permits his surname to be used in the partnership name, he is liable "as a general partner to partnership creditors who extend credit to the partnership without actual knowledge that he is

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27. "Two or more persons desiring to form a limited partnership shall. . . (c) Publish a statement showing that the amount specified in the certificate to have been contributed by each of the limited partners has been actually in good faith paid, and stating that the certificate is recorded, giving the name of the county and the book and page where recorded, which shall be published at least once a week for two consecutive weeks in a newspaper of general circulation publishd in the county where the principal place of business is located." Sec. 2.

The prior act [MO. REV. STAT. § 5567 (1939)] required publication of the statement (certificate) in a newspaper printed "in each of the places where the business is to be carried on. . ."

28. Commissioners' Note to § 1 of the Uniform Act, 8 U.L.A. 2 at 4; Lewis, *supra* note 2, at 724.

29. See *infra* p. 138.

30. Sec. 1.

31. Sec. 11. "This section is an innovation introduced by the Uniform Act, being the most radical departure made from the earlier acts, which imposed a general liability on the special partner in case of any substantial deviation from the prescribed steps for the formation of a special partnership." Case Notes to § 11 of the Act, 8 U.L.A. 24.

It has been held in Illinois that under this provision limited partners were not subject to the liabilities of a general partner although the limited partnership was formed for a forbidden purpose. Giles v. Vette, 263 U.S. 553, 44 Sup. Ct. 157 (1924), *aff'g.* 281 Fed. 928 (C.A.A. 7th 1922) *sub. Nom. In re* Marcuse. In that case there was paid back all the profit received from the firm. It is doubtful whether compliance with the section requires paying back past profits; mere renunciation of the right to future profits would seem to be sufficient. See Note, 71 U. of PA. L. REV. 150 (1923).

not a general partner."[32] Again, with respect to liability for false statements contained in the certificate, Section 6 provides that one who suffers loss in reliance thereon may hold liable any party who knew (or by the exercise of reasonable diligence should have known) the statement to be false at the time he signed the certificate or subsequently, but within a sufficient time before the statement was relied on to enable him to cancel or amend the certificate, or to file a petition to that end.[33] The Act proceeds on the assumption that "no public policy requires a person who contributes to the capital of a business, acquires an interest in the profits, and some degree of control over the conduct of the business, to become bound for the obligations of the business; provided creditors have no reason to believe at the times their credits were extended that such person was so bound."[34] The former statutes made the liability by reason of a false statement absolute and not dependent on loss to the creditor by reliance thereon.[35] Moreover, a false statement by one limited partner not only made him liable as a general partner; it made all the other limited partners liable as general partners, although they may have had no reason to believe that the statement of their colleague was untrue. And a false statement by a general partner in the accompanying affidavit made all limited partners, whether innocent or not, liable as general partners.[36]

It is apparent from these sections of the new Act that so long as a contributor acts in good faith to remedy defects in the formation of the partnership as soon as he learns of them, he will not be liable beyond the amount of his contribution. His liability is not that of a general partner with exemption from unlimited liability under certain circumstances. It follows, therefore, that the phrase "limited partnership" as employed in the adopted Act differs fundamentally in meaning from that of its previous use in the repealed statutes.

In one instance, the Act operates to make a limited partner liable as a general partner, notwithstanding his good faith and the further fact that no creditor has been misled. Section 7 reads:

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32. Sec. 5. Under the earlier act, the knowledge of the firm creditor as to the status of the "special" partner was immaterial. See Mo. Rev. Stat. § 5569 (1939).

33. The procedure for cancelling or amending the certificate is set out in § 25.

34. See Commissioners' Note to § 1 of the Uniform Act, 8 U.L.A. 2, at 4.

35. Mo. Rev. Stat. § 5567 (1939).

36. Mo. Rev. Stat. §§ 5566-5567 (1939).

"A limited partner shall not become liable as a general partner unless, in addition to the exercise of his rights and powers as a limited partner, he takes part in the control of the business."

This section, despite its apparent simplicity, is likely to become a troublesome one. "Control" of the business is a vague term, neither defined in the Act nor by judicial interpretation. It may mean any participation in the control of the business in excess of the exercise of a limited partner's rights and powers as set out in Section 10 (the right of access to partnership books, full information concerning partnership affairs, and the right to dissolution and winding up by decree of court.)[37] Or it may allow a measure of participation in the management of the firm affairs greater than that expressly authorized by Section 10—limited only by the standard used to determine partnership liability apart from the Act.[38]

It was commonly provided, in the older limited partnership acts, that a limited partner who interfered in the business of the firm contrary to their provisions "shall be deemed and be liable as a general partner." Burdick says of this provision: "A single clear violation of it by the special partner forfeits forever his statutory exemption from personal liability. It is an unpardonable offence . He cannot regain in that partnership his original status. Indeed such a violation makes him liable as a general partner in that partnership from the beginning."[39] Moreover, in such a case a creditor of the firm would sue the firm as a general partnership and recover against its members as such. He would not allege the formation of a limited partnership, the violation of the statute and consequent forfeiture of his privilege of limited liability by the limited partner.[40]

The analogous provision of the English Limited Partnership Act, on the other hand, declares that if a limited partner takes part in the management of the partnership, "he shall be liable for all debts and obligations of the firm incurred while he so takes part in the management as though he

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37. Sec. 10 (1). Subsection (2) provides that the limited partner also has the right to receive a share of the profits or other compensation by way of income as provided in § 15, and to the return of his contribution as provided in § 16. The rights, powers and liabilities of a general partner are set out in § 9.

38. For a good discussion of § 7 of the Uniform Act, and possible interpretations of the phrase "control of the business," see Comment, *The Limited Partnership*, 45 YALE L. J. 895, at 902 (1936).

39. PARTNERSHIP 411 (3d ed. 1917). But see Comment, *The Limited Partnership*, 45 YALE L. J. 895, at 903 (1936).

40. Burdick, *The Limited Partnership in America and England*, 6 MICH. L. REV. 525, at 531 (1908).

were a general partner."[41] A violation, accordingly, does not forfeit the statutory exemption from liability in toto and change him to a general partner.

The status of a limited partner who takes part in the control of the business of the firm under Section 7 of the Uniform Act is, therefore, far from clear. His liability as a general partner is not restricted, as under the English Act, to firm obligations incurred during the period of his participation. He is not "deemed" a general partner as under the older acts, and presumably "is not a proper party to proceedings by or against" the partnership under Section 26.[42] Nor is he both a general and a limited partner in the same partnership at the same time as that status is recognized and permitted by Section 12.[43]

To an investor who became a limited partner under the prior act, the provision for renewal or continuation of the firm after the time originally set in the certificate for its termination was intolerably strict. There was risk of unlimited liability in the mechanics of preparing, recording and publishing the renewal statement.[44] Also, in the event of any impairment of capital, the limited partner was liable as a general partner for having failed to contribute the amount specified in the renewal certificate, whether or not he was aware of the impairment.[45] The Uniform Act, on the other hand, does not require that the capital be unimpaired as a condition precedent to a valid renewal, nor does it require reference to the then condition of the capital. It provides for renewal by mere amendment of the original certificate,[46] the procedure for which is simply and clearly detailed in Section 25.

It was the aim of those responsible for formulating the provisions of the Uniform Act to devise an act under which an investor might become a limited partner with the same measure of security from any possibility of unlimited liability as the subscribers to the shares of a corporation.[47] The sections heretofore considered, when compared with the provisions of the prior act, go far toward achieving that purpose. It is fairly discernible that a

41. The Limited Partnership Act, 1907, 7 EDW. VII, c. 24, § 6 (1). See Burdick, *supra* note 40, at 530.

42. "A contributor, unless he is a general partner, is not a proper party to proceedings by or against a partnership, except where the object is to enforce a limited partner's right against or liability to the partnership."

43. See *infra* p. 141.

44. MO. REV. STAT. § 5567 (1939).

45. *Ibid.*

46. Sec. 24 (2) (h).

47. Lewis, *The Uniform Limited Partnership Act,* 65 U. of PA. L. REV. 715, at 723 (1917).

further aim was to facilitate investment, and to establish a relationship between the limited partner and his firm not unlike that existing between a shareholder and his corporation. The field of potential investors is considerably enlarged by the provision allowing the limited partner to make his contribution either in cash or other property.[48] However, it is required that where the contribution is not in cash, the certificate shall contain "a description of and the agreed value of" property contributed by each limited partner.[49] And if the making of a part of the agreed contribution is to be deferred until a later time, the certificate is required to state the times at which or events on the happening of which it shall be made.[50] The repealed Act, in common with many of the older acts, gave immunity from unlimited liability as a general partner only if the limited partner actually and in good faith contributed "in actual cash payments a specified sum as capital to the common stock."[51]

Under the older acts, a limited partner was nevertheless a partner despite his limited liability. Accordingly, if he became a creditor of the firm, as by lending it money or endorsing its paper, he was not allowed to claim as a general creditor until the claims of all the other creditors of the firm were satisfied.[52] The Uniform Act, however, regards the limited partner as in no sense a partner, and permits loans and other transactions by the limited partner with the partnership on which he may share *pro rata* with non-member firm creditors, provided he does not, in respect to such transaction, receive from the partnership collateral security or from any partner or the partnership any payment, conveyance or release from liability, if at the time the assets of the partnership are not sufficient to discharge its obligations to non-member creditors.[53]

It has already been noted that the Act permits a person to be a general partner and a limited partner in the same partnership at the same time. A person who is a general, and also at the same time a limited partner, has all the rights and powers and is subject to all the liabilities of a general

48. Sec. 4. But "services" are specifically excluded.
49. Sec. 2 (1) (a) VI.
50. Sec. 2 (1) (a) VII.
51. Mo. Rev. Stat. § 5564 (1939).
52. Mo. Rev. Stat. § 5572 (1939); Jaffe v. Krum, 88 Mo. 669 (1886).
53. Sec. 13. Sec. 23 sets out the order of payment of liabilities of the partnership in settling accounts after dissolution. Subsection (a) recognizes the status of a limited partner as a firm creditor with respect to claims other than for his contribution, departing from the earlier act which in this respect regarded the special partner on the same footing as a general partner. See note 52, *supra*.

partner, except that in respect to his contribution, he has the rights against the other members which he would have had if he were not also a general partner.[54] The practical utility of this provision, permitting the entire capital to be divided into shares[55] and apportioned among the limited partners, all the general partners being also limited partners, has been illustrated as follows:

"If, therefore, A. B and C are limited partners, A and B being also general partners, on the winding up of the partnership after the payment of all debts due outsiders, the remaining assets, would be used first to pay back *pro rata* the contributions of A, B and C as limited partners."[56]

The privilege of withdrawal of capital by a limited partner in advance of dissolution, the assignability of his interest in the firm, and the substitution of his assignee as a limited partner, are features that, to an investor, will enhance the attractiveness of the limited partnership as a commercial association. Withdrawal of capital by a special partner was expressly prohibited by the earlier statutes.[57] The present Act permits withdrawal upon certain clearly stated conditions when made in accordance with the partnership agreement as set out in the certificate.[58] Under the prior act an attempted assignment of his interest by a special partner resulted in the dissolution of the limited partnership, as it would in the case of an ordinary partnership.[59] The Uniform Act, however, expressly makes the interest assignable and defines the rights and liabilities following an assignment, the procedure for substituting the assignee as a limited partner in place of the assigning partner, and the rights and liabilities of the substituted partner.[60]

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54. Sec. 12.

55. While a limited partner's interest is made assignable (§ 19), there is nothing in the Act making "shares" representing that interest freely transferable. It may be possible, however, to get transferable shares by making the limited partner the trustee of a business trust. See Crehan v. Megargel, 234 N. Y. 67, 136 N.E. 296 (1922), criticized in WARREN, CORPORATE ADVANTAGES WITHOUT INCORPORATION 311 (1929). See also Comment, 22 COL. L. REV. 576 (1922), and Comment, 8 CORN L. Q. 90 (1922).

56. Lewis, *supra* note 47, at 725.

57. Mo. REV. STAT. § 5571 (1939); penalty, § 5573.

58. Sec. 16.

59. Mo. REV. STAT. § 5573 (1939).

60. Sec. 19 and Sec. 2 (1) (a) X. The assignee does not acquire all the rights and privileges of the limited partner unless all the other members (except the assignor) consent to his becoming a "substituted" limited partner or unless the assignor is empowered by the certificate to make him one, and the certificate is appropriately amended in accordance with the provisions of Sec. 25. A substituted limited partner is subject to all the restrictions and liabilities of his assignor of which he is aware or which could be ascertained from the certificate. The assignor, how-

The retirement, death or insanity of a general partner dissolves the partnership unless the business is continued by the remaining partners under a right to do so stated in the certificate or with the consent of all members.[61] If the business is continued, merely an amendment of the certificate is required.[62] The death of a limited partner, however, will no longer cause the dissolution of the firm. In such event, the executor or administrator of the deceased partner has the rights of a limited partner for the purpose of settling the estate and such power as the deceased had to constitute his assignee a substituted partner.[63]

Upon making his contribution to firm capital, the interest of the limited partner in the property or cash ceases. The thing contributed becomes, like the capital of a general partnership, property owned by the firm. In the absence of any statement in the certificate to the contrary, or the consent of all members, a limited partner, irrespective of the nature of his contribution, has only the right to demand and receive cash in return for his contribution.[64] Accordingly where, as in Missouri, a separate creditor of a general partner may levy execution upon specific firm property,[65] such a creditor may levy upon the property of a limited partnership and have a sale of the debtor's interest in it. On the other hand, a limited partner's interest in the partnership is quite clearly by the Act not predicated upon any ancient theory of co-tenancy. It is always personal property, regardless of the nature of the property, whether real or personal, contributed or owned by the

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ever, is not released from liability to the partnership under §§ 6 and 17. An assignee who does not become a substituted limited partner has no right to require any information or account of partnership transactions or to inspect partnership books; he is only entitled to receive the share of the profits or other compensation by way of income, or the return of his contribution, to which his assignor would otherwise be entitled.

61. Sec. 20. As a subject, "dissolution" is virtually ignored by the Uniform Act. Compare UNIFORM PARTNERSHIP ACT, §§ 29 to 44 (7 U.L.A. 43-68) which furnishes a nearly complete code on dissolution.

62. Sec. 24 (2) (e).

63. Sec. 21. Under the prior law [MO. REV. STAT. § 5573 (1939)] the death of a limited partner dissolved the partnership, but a privilege was given to continue the business upon the purchase of the deceased's interest by the surviving members.

64. Sec. 16 (3). This, together with his right to receive a share of the profits or other compensation by way of income, to access to firm books, to information and account (§ 10), would seem to constitute his "interest" in the partnership which is defined in Sec. 18 as personal property."

65. Wiles v. Maddox, 26 Mo. 77 (1857) (resting upon an obsolete theory that a partnership is a mere co-tenancy, and perpetuating the rule of the earlier cases that execution may be levied on specific firm property, possession taken and purchaser at sale vested with legal title as co-tenant; Richardson, J. dissenting). See Note, 27 COL. L. REV. 436 (1927).

partners as partners.[66] His intangible "interest" in the partnership would seem to make both attachment and ordinary garnishment inappropriate remedies for the separate creditor.[67] The Act, therefore, gives to a separate creditor of a limited partner the right to have an order charging the interest of the indebted limited partner with payment of the unsatisfied claim and to the appointment of a receiver if the circumstances require it.[68] The interest may be redeemed with the separate property of a general partner, but may not be redeemed with partnership property.[69]

The Missouri Act, says Section 27, may be cited as "The Uniform Limited Partnership Act," and Section 28 (1) enjoins the courts to so interpret and construe the Act as to effect its general purpose to make uniform the law of those states which enact it. However, the Uniform Act proposed by the Commissioners on Uniform State Laws contains thirty-one sections, whereas the Missouri "Uniform" Act consists of twenty-nine sections. Section 29 of the Uniform Act which reads "In any case not provided for in this act the rules of law and equity, including the law merchant, shall govern," is omitted from the Missouri Act,[70] as is Section 31 which reads "Except as affecting existing limited partnerships to the extent set forth in Section 30, the act (acts) of [here designate the existing limited partnership act or acts] is (are) hereby repealed." Section 29 of the Missouri Act, dealing with existing limited partnerships, is numbered Section 30 in the Uniform Act.[71] Section 28 of the Missouri Act omits Subsection (1) of Section 28 of the Uniform Act, which states that the rule that statutes in derogation of the common law are to be strictly construed shall have no application to

66. Sec. 18. The interest of a resident of Connecticut as a special partner in a limited partnership formed under the New York Act and doing business in New York was held liable to a Connecticut succession tax on his death. Silberman v. Blodgett, 105 Conn. 192, 134 Atl. 778 (1926).

67. Ordinary garnishment process against the firm is not appropriate since the partner's interest is not a debt. Horne v. Petty, 192 Pa. 32, 43 Atl. 404 (1899).

68. Sec. 22. The Uniform Partnership Act § 28, modeled on the English Partnership Act, provides for a charging order on a partner's interest after judgment obtained by a separate creditor. 7 U.L.A. 42. On the use of a charging order as there provided, see observations of Lindley, L. J., in Brown, Janson & Co. v. Hutchinson & Co., [1895] 1 Q. B. 737, and comment by Wright, *California Partnership Law and The Uniform Partnership Act,* 9 CAL. L. REV. 117, at 224 (1921).

69. Sec. 22 (2).

70. The common law governed limited partnership recognized by the prior act, where no contrary provision was made by statute. Jaffe v. Krum, 88 Mo. 669 (1886).

71. In addition to change in section number, Subsection (1) of § 30 of the Uniform Act is omitted from the Missouri Act, and Subsection (2) becomes the whole of § 29 of the Missouri Act.

the Act, and Subsections (2) and (3) of the Uniform Act have become Subsections (1) and (2), respectively, of the Missouri Act. Fortunately, in all other instances the section numbers of the Uniform Act and the Missouri Act correspond as to subject, and to that extent the mechanical arrangement of the Uniform Act is retained, permitting the method of citation indicated in Section 27.

But there are changes in the wording of the Missouri Act which may result in a different meaning from that attributable to the wording of the Uniform Limited Partnership Act. The latter Act requires only that the certificate be "filed for record." The comparable section of the Missouri Act requires that the certificate be "recorded."[72] Is a provision that a certificate be "filed for record" the same as one that it shall be "recorded"?[73] The same section of the Missouri Act adds a subsection (c), not in the Uniform Act, prescribing the publication of a proper statement as a condition precedent to the formation of a limited partnership.[74]

Some dissatisfaction with the wording of Section 25 of the Uniform Act is indicated in the Missouri Act.[75] Subsections (3) and (4) are set out for comparison.

UNIFORM ACT	MISSOURI ACT
"(3) A person desiring the cancellation or amendment of a certificate, if any person designated in paragraphs (1) and (2) as a person who must execute the writing refuses to do so, may petition the [here designate the proper court] to direct a cancellation or amendment thereof.	"(3) If any person designated by paragraphs (1) and (2) of this section as a person who must execute the writing refuses to do so, a person desiring the cancellation or amendment of a certificate may petition the circuit court to direct a cancellation or amendment thereof.
"(4) If the court finds that the petitioner has a right to have the writing executed by a person who refuses to do so, it shall order the [here designate the responsible of-	"(4) If the court finds that the partnership [sic] is entitled to a cancellation or amendment of the certificate, it shall so order and decree, and the decree shall be re-

72. Sec. 2 (1) (b).
73. See Perkins, *Uniformity in Uniform Legislation,* 6 IOWA L. BULL. 1, at 7 (1920).
74. See *supra* note 27. In dealing with the liability of a limited partner for false statements in the certificate the Missouri Act (§ 6) adds the phrase "or by the exercise of ordinary diligence should have known," not found in the Uniform Act.
75. Sec. 25.

ficial in the office designated in Section 2] in the office where the certificate is recorded to record the cancellation of amendment of the certificate; and where the certificate is to be amended, the court shall also cause to be filed for record in said office a certified copy of its decree setting forth the amendment."

corded in the office of the recorder of deeds where the certificate is recorded and where the certificate is to be amended, the amendment shall be incorporated in the decree."

If these omissions and changes inevitably result in a meaning different from that required by the wording of the Uniform Act, then the Missouri Act is only with doubtful propriety cited "The Uniform Limited Partnership Act." In any event, it invites litigation to determine whether the meaning of the original wording of the Uniform Act is retained so that a decision under it will be of weight in deciding a case under the Missouri Act. If the changes obviously do not go to the substance, there is little reason to make them, especially in an act which asks a coordinate judiciary to so interpret and construe the act as to effect its general purpose to make uniform the law of those states which enact it.[76]

76. See Perkins, *supra* note 73.