

Missouri Law Review

Volume 15
Issue 3 *June 1950*

Article 4

1950

Masthead and Comments

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Recommended Citation

Masthead and Comments, 15 MO. L. REV. (1950)

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MISSOURI LAW REVIEW

Published in January, April, June, and November by the
School of Law, University of Missouri, Columbia, Missouri.

Volume XV

JUNE, 1950

Number 3

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Subscription Price \$2.50 per volume

85 cents per current number

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Comments

PARTY WALLS

I

Party walls and agreements concerning them have been the basis for no small amount of litigation in the United States with the result that decisions among the various states are somewhat in conflict and even within the same state such decisions sometimes appear to conflict with other settled rules of law. In reviewing the cases concerning party walls, it must always be kept in mind that frequently such

agreements are not commercial transactions as are most other agreements concerning real property, but are agreements between adjoining property owners as neighbors.

A common definition for a party wall is a division wall between two tenements which tenements belong to different persons, and such wall being for the mutual benefit of both parties.¹ It is not necessary that the wall should stand part upon each of the adjoining tenements, but it may do so, or it may stand wholly upon one.² In *Watson v. Gray*,³ four types of party walls were defined: (1) A wall of which the two adjoining owners are tenants in common;⁴ (2) a wall divided longitudinally into two strips, one strip belonging to each of the neighboring owners;⁵ (3) a wall which belongs entirely to one of the adjoining owners, but is subject to an easement or right in the other to have it maintained as a dividing wall between the two tenements and to use it to support his building;⁶ and (4) a wall divided longitudinally into two moieties, each moiety being subject to a cross easement of support in favor of the owner of the other moiety.⁷ In the United States, there is generally a presumption, in the absence of a contrary showing, that a party wall is of the fourth type.⁸ That is, each party owns that part of the wall which rests upon his land. Technically the second type is not a party wall within the definition before stated, but is merely two walls resting one against the other, neither being favored by support from the other. Here we are concerned primarily with the third and fourth types.

II

Party walls may be created by written agreements between the parties, by statute in some states, by oral agreements, or an easement may be obtained in an existing wall by adverse user. A written agreement may be in the form of a covenant between the parties, or it may be in the form of a grant of an easement in an existing wall by one party to another. An owner of land may have an existing

1. *Glover v. Mersman*, 4 Mo. App. 90 (1877); *accord*: *Lederer & Strauss v. Colonial Invest. Co.*, 130 Iowa 157, 106 N.W. 357 (1906); *Harber v. Evans*, 101 Mo. 661, 14 S.W. 750 (1890); *Dunscomb v. Randolph*, 107 Tenn. 89, 64 S.W. 21 (1901).

2. *Dorsey v. Habersack*, 84 Md. 117, 35 Atl. 96 (1896); *Glover v. Mersman*, *supra* note 1; *Carroll Blake Constr. Co. v. Boyle*, 140 Tenn. 166, 203 S.W. 945 (1918); *Dunscomb v. Randolph*, *supra* note 1.

3. 14 Ch. Div. 192 (1880).

4. *Wiltshire v. Sidford*, 1 Man. & Ry. 404 (K. B. 1827); *Cubitt v. Porter*, 8 B. & C. 257 (K.B. 1828).

5. *Matts v. Hawkins*, 5 Taunt. 20 (C.P. 1813).

6. *Tate v. Fratt*, 112 Cal. 613, 44 Pac. 1061 (1896); *Price v. McConnell*, 27 Ill. 255 (1862); *Dorsey v. Habersack*, *supra* note 2; *Dunscomb v. Randolph*, *supra* note 1; *Glover v. Mersman*, *supra* note 1; *Harber v. Evans*, *supra* note 1.

7. *Graves v. Smith*, 87 Ala. 450, 6 So. 308 (1889); *Reinhardt v. Holmes*, 143 Mo. App. 212, 127 S.W. 611 (1910); *Sanders v. Martin*, 2 Lea 213, 31 Am. Rep. 598 (Tenn. 1879).

8. *Reinhardt v. Holmes*, *supra* note 7; *Sherwood v. Cisco*, 4 Sandf. (6 N.Y.S.C.) 480 (1851); *Partridge v. Gilbert*, 15 N. Y. 601, 69 Am. Dec. 632 (1857); *Sanders v. Martin*, *supra* note 7.

wall in which he gives the adjoining owner an easement as a division wall between the two tenements and as support for a building. An agreement for a grant would require consideration, but the construction of a building using the wall as support in reliance upon the agreement should be sufficient to satisfy this requirement. An agreement may, on the other hand, be entered into before the wall is constructed, and the construction may be by both or it may be by one of the parties. It is generally held by the courts that where the agreement is that the nonbuilder may use the wall upon payment of a part of the cost of construction, the builder owns the whole wall until payment or use is made, at which time the nonbuilder becomes the owner of that part of the wall resting upon his land.⁹ Under this theory, it would appear that if the wall rests entirely upon the land of the nonbuilder, he becomes the owner of the whole wall upon payment or use even though he pays only one-half of the cost of construction. It would follow from this theory also, that if the wall is constructed by both parties upon the land of one, it would belong to the one upon whose land it rests.

A party wall may also be established by an implied grant or an implied reservation. That is, if the owner of land upon which stands a house conveys one part of the house and the land upon which it stands, the part of the building conveyed and the part retained being supported by the same wall, and the description in the conveyance divides the wall in half, the transferor retains an easement of support in the half of the wall conveyed and similarly he grants an easement of support in the half retained.¹⁰ Thus it was held in *Fleming v. Cohen*,¹¹ that the grant by the owner to another of a strip of land upon which one-half of a wall stood was a grant of one-half of the wall, and that there was an implied reservation of an easement of support in the half conveyed and an implied grant of a like easement in the half retained. The same should apply if the owner conveyed both lots to different people at the same time. In *Henry v. Koch*,¹² it was held that even though the description in one deed of conveyance included the whole of the wall and five feet beyond it, the other grantee had an easement of support in the wall since the grantees were bound by the dominant and servient uses placed upon the lots by the common grantor. But in *Cherry v. Brizzolara*,¹³ it was held that if the owner of such a building conveys one part of it so as to include the whole of the party wall, retaining the other part himself, he has no easement of support by implied reservation in the wall. Under the generally stated rule of easements by implied reservation and grant, this case was correctly settled. When a common owner grants a dominant estate, he grants therewith all appurtenances

9. *Glover v. Mersman*, 4 Mo. App. 90 (1877); *Masson and Beanson's Appeal*, 70 Pa. St. 26 (1871); *Hill v. City of Huron*, 33 S.D. 324, 145 N.W. 570 (1914).

10. *Fleming v. Cohen*, 186 Mass. 323, 71 N.E. 563 (1904); *Weadock v. Champe*, 193 Mich. 533, 160 N.W. 564 (1916); *Partridge v. Gilbert*, *supra* note 8.

11. 186 Mass. 323, 71 N.E. 563 (1904); *accord*, *Barry v. Edlavitch*, 84 Md. 95, 35 Atl. 170 (1896).

12. 80 Ky. 391, 44 Am. Rep. 484 (1882); *accord*, *Rogers v. Sinsheimer*, 50 N.Y. 646 (1873).

13. 89 Ark. 309, 116 S.W. 668 (1909).

which are continuous, apparent, and reasonably necessary for the enjoyment of the estate granted. But when he grants the servient estate, he retains only those appurtenances which are apparent, continuous and absolutely necessary for his enjoyment of the estate retained.¹⁴ But it is submitted that there is no more absolute necessity for an easement of support for part of a wall retained as in the *Fleming* case than there is for the support of a building where the whole of the wall is conveyed, but the building supported by the wall is retained as in the *Cherry* case. The courts vary as to what is absolutely necessary in the case of an implied reservation, and this perhaps accounts for the difference between the *Fleming* case and the *Cherry* case. In *Bixss v. Sabolis*,¹⁵ the court allowed an implied reservation of an easement in six and one-half inches of land conveyed, onto which the grantor's house extended. Here the Illinois Supreme Court apparently considered the rule to be the same whether dealing with an implied reservation or an implied grant, saying: ". . . the moment a severance occurs by the sale of a part, the right of the owner to redistribute the properties of the respective portions ceases and easements or servitudes are created corresponding to the benefits and burdens mutually existing at the time of the sale. This is not a rule for the benefit of purchasers, only, but is entirely reciprocal. Hence, if instead of a benefit conferred a burden has been imposed upon the portion sold, the purchaser, provided the marks of this burden are open and visible, takes the property with a servitude upon it. The parties are presumed to contract in reference to the condition of the property at the time of the sale, and neither has a right, by altering arrangements then openly existing, to change materially the relative value of the respective parts." But in *Dee v. King*,¹⁶ a less liberal rule was applied in Vermont. The court, in discussing the implied reservation of a way of necessity stated: "It is clear that mere inconvenience, however great, will not be sufficient. It is necessity, and not inconvenience, that gives the right." The court, however, posed, but did not answer, the question of whether absolute necessity is the requirement, or whether it would be sufficient if another way would require an expenditure unreasonable in relation to the value of the land. The courts generally have accepted the rule that the pre-existing quasi-easement must be apparent, continuous and necessary as inflexible rules, failing to realize that the actual rule is the presumed intention of the parties and that the three elements stated are merely factors to be considered in determining the intention of the parties. Therefore, other circumstances should be considered in determining the intention, and, even though the elements stated exist, it would be improper to imply a grant or reservation if other circumstances clearly show a contrary intention. Also there may be other circumstances which might allow such implication without the three stated elements being present. In the case of an implied grant of a pre-existing quasi-easement the courts apply a similar test. They generally require that the easement be apparent, continuous and necessary to the enjoyment of the tenement conveyed. The degree of

14. *Cherry v. Brizzolara*, *supra* note 13.

15. 322 Ill. 350, 153 N.E. 684 (1926).

16. 23 Vt. 375, 50 Atl. 1109 (1901).

necessity required in case of the implied grant is reasonable necessity as distinguished from absolute necessity.¹⁷ The reason given by the courts for the more strict construction against the grantor in implying a reservation is the warranty of title in the deed of the grantor.¹⁸ The courts seem to indicate that the covenant against encumbrances will rebut any implication of a reservation on the part of the grantor in the absence of absolute necessity.

Of course where the transferor severs the building at a wall and expressly provides in the instrument of conveyance for the grant or reservation of an easement in any part of the wall conveyed or retained, there should be no question as to the validity of such grant or reservation.¹⁹ Its effect would be to establish the wall as a party wall, and the rights and duties of the owners in respect thereto would be determined as would be done under any other express grant or reservation.

An adjoining landowner may obtain an easement of support in a wall by continued adverse user for a period of time which would bar an action against him under the statute of limitations.²⁰ Such adverse user must be open, visible, continuous and necessary.²¹ However, it is generally held that the rights obtained by adverse user cannot exceed those exercised during the period of adverse user.²² It was held in *Barry v. Edlavitich*,²³ that in the absence of a showing that the use was permissive there is a presumption of a lost grant. Apparently Missouri would follow this theory. In *Kuhlman v. Stewart*,²⁴ the Missouri Supreme Court stated: "The proof of the express parol agreement destroys all presumption of a grant." In the *Barry* case, it was also held that the user obtained an easement by adverse user to use a strip of land between the boundary line and the wall in connection with the use of the wall. But it was held in *Bright v. Bacon and Sons*,²⁵ that there could be no easement by adverse user where there is an agreement between the parties. This rule was followed in Missouri in the *Kuhlman* case. Also in *Fassold v. Schamburg*,²⁶ it was held by the Missouri Supreme Court that permissive use cannot ripen into adverse possession.²⁷ These cases should not be taken as authority for the proposition that a use which at the outset is permissive cannot turn into adverse user.

17. *Carlton v. Blake*, 152 Mass. 175, 25 N.E. 83 (1890); *Cherry v. Brizzolara*, *supra* note 13.

18. *Cherry v. Brizzolara*, *supra* note 13.

19. *Price v. McConnell*, 27 Ill. 255 (1862); *Robins v. Right*, 331 Mo. 377, 53 S.W. 2d 1046 (1932).

20. *Bright v. Bacon and Sons*, 131 Ky. 848, 116 S.W. 268 (1909); *Barry v. Edlavitich*, 84 Md. 95, 35 Atl. 170 (1896); *Fleming v. Cohen*, 186 Mass. 323, 71 N.E. 563 (1904).

21. *Bright v. Bacon and Sons*, *supra* note 20.

22. *Supra* note 20.

23. 84 Md. 95, 35 Atl. 170 (1896).

24. 282 Mo. 108, 221 S.W. 31 (1920).

25. 131 Ky. 848, 116 S.W. 268 (1909).

26. 350 Mo. 464, 166 S.W. 2d 571 (1942).

27. *Accord*: *Pitzman v. Boyce*, 111 Mo. 387, 19 S.W. 1104 (1892); *Freed v. Greathouse*, 238 Mo. App. 470, 181 S.W. 2d 41 (1944).

An assertion of a right different than that under the license or grant is adverse.²⁸ Also if the right is by oral license and that license is revoked, a continued use, although the same as that before permitted, would be adverse.

An agreement to construct or use a party wall concerns realty, and as such comes within the Statute of Frauds. But such an agreement has the effect of the granting of a license and if the wall is constructed pursuant to the agreement or a use is made of an existing wall pursuant to such a license, the license by the expenditures under it has become an interest in land and is taken out of the Statute of Frauds by the expenditures made under the license.²⁹ It is generally held that the oral license becomes an irrevocable license or an easement by estoppel.³⁰ But in the field of irrevocable licenses or easements by estoppel generally there is a diversity of decisions by the courts of this country, and even within the same state there will be found decisions which seemingly conflict. One group of cases holds that although an oral license is revocable by the licensor, if the licensee, in reasonable reliance upon the license, expends money or makes improvements to such an extent that it would impose a great hardship upon him to have the license revoked, equity will not permit the revocation.³¹ The other group of cases sets forth the rule that the making of improvements under an oral license will not make the license irrevocable,³² the basis for the rule being that the parties are presumed to know that a license, as a matter of law, is revocable. The leading case supporting the first view

28. *House v. Montgomery*, 19 Mo. App. 170 (1885): Held that since the contract was oral and void as an easement under the Statute of Frauds, the grantee's exercise of the rights of an easement under it were adverse to the landowner, and it became an easement of a roadway by adverse user.

29. *McBride Realty Co. v. Grace*, 223 Mo. App. 588, 15 S.W. 2d 957 (1928); *Rice v. Roberts*, 24 Wis. 461, 1 Am. Rep. 195 (1869).

30. *Hanson v. Beaulieu*, 145 Minn. 119, 176 N.W. 178 (1920); *McBride Realty Co. v. Grace*, *supra* note 29.

31. *Des Moines Terminal Co. v. Des Moines Union Ry. Co.*, 52 F. 2d 605 (S.D. Iowa 1929); *Dicky v. Yarbrough*, 186 Ga. 120, 197 S.E. 234 (1938); *Leininger v. Goodman*, 277 Pa. 75, 120 Atl. 772 (1923) (Consent was implied from the licensor's silence when he had knowledge of licensee's acts); *Maupin v. Chicago R.I. Ry.*, 171 Mo. 187, 71 S.W. 334 (1902); *City of Chillicothe v. Bryan*, 103 Mo. App. 409, 77 S.W. 465 (1903); *Grandstaff v. Bland*, 166 Mo. App. 41, 148 S.W. 139 (1912); *School District v. Lindsay*, 47 Mo. App. 134 (1891); *Daugherty v. Toomy*, 222 S.W. 2d 197 (Tenn. 1949) on petition for cert. from 222 S.W. 2d 195 (Tenn. App. 1949) 5 RESTATEMENT, PROPERTY §§ 514 and 519 (4), *Comments e and f* (1944).

32. *Mine La Motte Lead and Smelting Co. v. White*, 106 Mo. App. 222, 80 S.W. 356 (1904); *Pitzman v. Boyce*, *supra* note 27 (License implied from silence); *Deslodge v. Pearce and Willoughby*, 38 Mo. 588 (1886)—Now overruled by Mo. REV. STAT. sec. 14784 (1939) which provides that any person who, under a parol agreement, enters onto the land of another and sinks a shaft or opens a mine or other prospect of minerals shall thereby obtain a lease for three years for such purpose as against the licensor or any person claiming under him; *Bland v. Bergman*, 123 Conn. 61, 192 Atl. 703 (1937) (Owner of wall gave to adjoining land owner right by oral license to use the wall for a garage. The adjoining owner built the garage. The court held that the owner of the wall could revoke the license and get a court decree ordering a subsequent grantee of the license to remove the garage from the wall.).

is the Pennsylvania case of *Rerick v. Kern*,³³ in which case the plaintiff obtained an oral license without consideration from the defendant to construct a dam on a stream on the defendant's land. The plaintiff constructed the dam and a mill in reliance upon the license granted. The court held that the license was irrevocable saying: "A right under a license, when not specifically restricted, is commensurate with the thing of which the license is an accessory . . . having had in view an unlimited enjoyment of the privilege, the grantee has purchased, by the expenditure of money, a right, indefinite in point of duration, which cannot be forfeited by non-user, unless for a period sufficient to raise the presumption of a release." This case is based upon a consideration of the intention of the parties which some courts have failed to make.

A distinction should be made between the granting of a mere license, which is not the granting of an interest in land, and an attempted oral grant of an easement which fails as such because it does not meet the requirements of the Statute of Frauds. Thus it is clear that in the *Rerick* case the parties contemplated the creation of more than a mere license, revocable at the will of the licensor. The very purpose for which the privilege was granted involved the expenditure of a large sum of money and considerable labor. In granting the right to construct the dam, the licensor must have realized that the licensee did not contemplate that the license would be revoked at any time the licensor so desired. Had such been the contemplation of the licensee he would not have attempted to obtain the license, the expenditure under the license being such that the license would be a detriment and not a thing of value if the licensor could revoke it at pleasure. Therefore, it would seem to be a reasonable construction to treat the transaction as an attempted grant of an oral easement which would be taken out of the Statute of Frauds by the grantee's reasonable reliance upon it to an extent that it would be an undue hardship upon him to allow the Statute of Frauds to be invoked against the agreement. In *Hepburn v. M'Dowell*,³⁴ the Pennsylvania court applied the doctrine as expressed in the *Rerick* case that the right granted by an oral agreement is commensurate with the thing of which the license is an accessory. In the *Hepburn* case, it was held that although expenditure in reliance on the license would make the license irrevocable for the period of time required for carrying out the purpose of the license, it could not be extended beyond that time. Although the Missouri Supreme Court repudiated the doctrine set forth in the *Rerick* case in *Pitzman v. Boyce*,³⁵ in the case of *Maupin v. Chicago, R. I. & P. Ry. Co.*,³⁶ it was held that the licensor could not revoke an oral license to the railway company after the railway company had built a switch on the land in reliance upon the license. But in the latter case the court tended to treat the license as being supported by consideration since the company had refused to build a road in an alley behind the licensor's lot at the licensor's request until the licensor agreed to allow the switch to be built upon his

33. 14 S. & R. 267, 16 Am. Dec. 497 (Pa. 1826).

34. 17 S & R. 382 (Pa. 1828).

35. 111 Mo. 387, 19 S.W. 1104 (1892).

36. 171 Mo. 187, 71 S.W. 334 (1902).

land. Probably this is a valid distinction to make between the *Maupin* case and the *Rerick* case—a distinction which might be of some influence, but it is not a distinction sufficient to take the case out of the Statute of Frauds. The Statute of Frauds deals with the form of the contract and not with the terms. It was the company's reliance on the agreement which took it out of the Statute of Frauds. The license involved in this case was a railroad right-of-way which was actually an attempt to create an easement by parol and as such would come within the Statute of Frauds. It was not an oral contract for the conveyance of land. Apparently the court realized some distinction between an attempt to create an easement by parol and a mere oral license, yet the tendency in the *Pitzman* case was to treat all oral agreements concerning reality as mere licenses unless they contain the elements of a contract. Consideration cannot make the distinction between a license and an easement. Neither or both may be supported by consideration. If a landowner attempts to grant to another an easement of a roadway, or any other easement, the latter has a license to enter upon the land of the former to construct the roadway or any other appurtenance necessary for the enjoyment of the easement even though the attempted grant was by parol. The licensee does not have an easement at the time of the attempted grant because the grant does not meet the requirements of the Statute of Frauds. But once the licensee has made expenditures under the license and in innocent and reasonable reliance upon the attempted grant of the easement, which expenditures are so great that it would impose great hardship upon him if the Statute of Frauds is invoked to prevent the grant of the easement from being effective, he should have an easement by estoppel. In *The St. Louis National Stock Yards v. The Wiggens Ferry Co.*,³⁷ the Illinois Supreme Court distinguished between a contract to convey land and an oral license to use land. That court held that in the case of an oral contract to convey land, the vendee may reasonably rely on such contract in making improvements on the land, and if he does so, the contract will be taken out of the operation of the Statute of Frauds, and will be enforced against the vendor. But a mere licensee may not rely upon a parol license so as to create an interest in the land and make the license irrevocable, since he has no right to presume that the licensor agrees not to revoke the license. The validity of this distinction is somewhat doubtful. The court did not state any reason why it is less logical to impute to a vendee knowledge that a parol contract for the sale of land cannot be enforced as a matter of law than it is to impute to a licensee knowledge that a parol license is revocable as a matter of law even where the very purpose of the license is to make permanent or semi-permanent improvements, and is in fact an easement. Nor did the court discuss the possibility of the agreement in the *Stock Yards* case being an attempted oral grant of an easement rather than a mere license or whether or not such a distinction would have had any bearing on the decision, although the interest granted by the license was a railroad right-of-way, which railroad when constructed was to be for the benefit of the licensor as well as the licensee. The St. Louis Court of Appeals held in *Grandstaff v. Bland*,³⁸

37. 112 Ill. 384 (1884).

38. 166 Mo App. 41, 148 S.W. 139 (1912).

that where a landowner constructed a drainage ditch across the land of an adjoining landowner under an oral license, the licensee became a "purchaser for valuable consideration," and the license was held to be irrevocable. Compare with this case the *Kuhlman* case³⁹ where the Missouri Supreme Court held that the owner of the land across which the ditch ran and who had joined in the construction could revoke the license and dam up the ditch. Compare also the liberal view of the Minnesota court in *Munch v. Stetler*,⁴⁰ where the plaintiff successfully brought suit to enjoin an adjoining landowner from damming up a drainage ditch built from the plaintiff's land across the defendant's land and constructed by the joint expenditure of both parties under an oral agreement. Also in *Davis v. Lea*,⁴¹ the Missouri Supreme Court applied estoppel to prevent the movement of a driveway and a part of a house from the land of one party when the owner of the house had built it under a mistake as to the location of the boundary. The court held that even though the plaintiff was in no better position to know the boundary than the defendant, he was bound to object and ask for a survey at the time he saw the house being built if he intended in the future to attempt to bind the defendant by the boundary as determined by the survey. The court in this case seems to find actual fraud in the fact that the plaintiff stood by while the defendant built the house, plaintiff knowing that the boundary line could be changed under the terms of the deed. But it must be observed that the driveway could be moved only if it appeared that the center of it was not the dividing line between the two lots. Plaintiff did not know that the center of the driveway was not the dividing line. Thus where a builder did not take the necessary precautions and determine the actual boundary, the court found that it was fraud for the adjoining owner not to object to such lack of precaution on the part of the builder. Probably the actual basis for the result in the *Davis* case is the undue hardship which would be imposed upon the builder if he were required to remove a brick building, and not fraud on the part of the plaintiff.

Although Missouri has never strictly followed the broad doctrine as set out in the *Pitzman* case⁴² that an oral license cannot become irrevocable on the basis of estoppel, it has tended to follow a less liberal rule than that set forth in the *Rerick* case,⁴³ but where the licensee is engaged in serving some public interest, Missouri courts tend to be more liberal in applying estoppel to give the licensee an easement.⁴⁴

As to the incidents which would attach to a party wall when estoppel is applied to the license to make it irrevocable, it should make no difference whether

39. Note 24, *supra*.

40. 109 Minn. 403, 124 N.W. 14 (1910).

41. 293 Mo. 660, 239 S.W. 823 (1922).

42. Note 35, *supra*.

43. Note 33, *supra*.

44. *City of Chillicothe v. Bryan*, 103 Mo. App. 409, 77 S.W. 465 (1903), *supra* note 31; *Darlington v. Mo. Pac. Ry. Co.*, 99 Mo. App. 1, 72 S.W. 122 (1902); *School District v. Lindsay*, 47 Mo. App. 134 (1891).

it is called an easement⁴⁵ or whether it is called an irrevocable license.⁴⁶ In either instance the character of a party wall is such that the right becomes appurtenant to the land of the licensee and would run with it under the same conditions as a similar right expressly created by a writing.⁴⁷

Some states have adopted statutes in respect to party walls under the police power.⁴⁸ Such statutes generally provide that one of two adjoining landowners may place a wall to an extent upon the other's land, and the nonbuilder will have the right to use the wall upon payment of half the cost of construction.⁴⁹ To take advantage of such a statute, obviously the wall must be such as can be used by both owners as a party wall.⁵⁰

III

Party wall agreements will be enforced according to the terms of the agreement and the agreement will be interpreted in the light of surrounding circumstances—intended use and common usage.⁵¹ The best court discussion of the rights and duties of the owners of a party wall is contained in the *Fleming* case.⁵² As a party wall, by its very nature—it being the supporting wall for two buildings—imports a solid wall of sufficient strength to support two buildings of at least equal size, ordinarily there can be no openings in it.⁵³ Where the wall is of the type that each of the adjoining owners own that part which rests upon his land, there are reciprocal cross easements for support in favor of each owner in the part owned by the other,⁵⁴ and this easement extends to sufficient of the adjoining soil to give the wall support.⁵⁵ On the other hand, the wall may be owned entirely by one party, the other merely possessing an easement of support for his building in the wall,⁵⁶ but as a practical matter, the incidents are the same as where part of the wall is owned by each party. Missouri recognizes the rule that a wall may be a party wall for part of its height and not for the rest.⁵⁷ It was held in *Abrahams v. Krautler*,⁵⁸ that if one adjoining owner extends a wall onto the land of the other the latter is not liable for part of the construction cost because of his use of it in the absence of an agreement to that effect, but if there is any damage to the wall, the owner of

45. *Dicky v. Yarbrough*, 186, Ga. 120, 197 S.E. 234 (1938); *Pierce v. Cleveland*, 133 Pa. St. 189, 19 Atl. 352 (1890).

46. *Munch v. Stetler*, 109 Minn. 403, 124 N.W. 14 (1910).

47. CLARK, COVENANTS AND INTERESTS RUNNING WITH LAND 65 (2 ed. 1947).

48. *Jackman v. Rosenbaum Co.*, 263 Pa. 158, 106 Atl. 238 (1919).

49. *Swift v. Calnan*, 102 Iowa 206, 71 N.W. 233 (1897).

50. *Robinson v. Hillman*, 36 App. D.C. 576 (1911).

51. *Kuh v. O'Reilly*, 261 Ill. 437, 104 N.E. 5 (1913).

52. Note 11, *supra*.

53. *Supra* note 51; *Graves v. Smith*, 87 Ala. 450, 6 So. 308 (1889); *Harber v. Evans*, 101 Mo. 661, 14 S.W. 750 (1890).

54. *Partridge v. Gilbert*, 15 N.Y. 601, 69 Am. Dec. 632 (1857).

55. *Carroll Blake Constr. Co. v. Boyle*, 140 Tenn. 166, 203 S.W. 945 (1918).

56. *Tate v. Fratt*, 112 Cal. 613, 44 Pac. 1061 (1896); *Ansin v. Taylor*, 262 Mass. 159, 159 N.E. 513 (1928).

57. *McBride Realty Co. v. Grace*, 223 Mo App. 588, 15 S.W. 2d 957 (1928).

58. 24 Mo. 69 (1856).

the wall must bring an action for such damage. Except where a party wall is such by adverse user, the parties, in the absence of a contrary agreement, may increase the height or width of the wall if such is not detrimental to the strength of the wall,⁵⁹ or it may be extended in length.⁶⁰ In *Harber v. Evans*,⁶¹ it was held that where a wall is built on the dividing line under an agreement that the nonbuilder can use it upon payment of half the cost of construction, the latter could enjoin the builder from later putting openings in the wall without any allegation or showing that the nonbuilder ever intended to use the wall.

As to the duty to repair a party wall, either of the owners may make whatever repairs are necessary for the proper maintenance of the wall,⁶² but in *Beidler v. King*,⁶³ it was held that where the contract imposes a duty mutually to bear the expenses of repair, it applies only to that part of the wall which both parties use and not to that part used by only one of the parties. In *Thornton v. Royce*,⁶⁴ the court held that under an agreement to pay one-half of the cost of construction upon use of the wall, the defendant must pay that amount even though the wall had been damaged by fire for which the plaintiff had collected insurance and it had been necessary for the defendant to make repairs to the wall before he used it. The theory applied by the court was that the obligation to pay was a contract obligation and was not based upon the reasonable value of the wall at the time use was made of it.

In *Swentzel v. Holmes*,⁶⁵ the Missouri Supreme Court held that where an insecure party wall is maintained in such a manner that a third party is injured, the owners of the wall are liable therefor as joint tort-feasors since the obligation to repair is mutual. An agreement between the parties that one party is to bear all of the expenses of repair probably would not affect such joint liability of the parties because one should not be able to contract away his liability to third persons for injuries caused by the improper maintenance of his property. In *Glover v. Mersman*,⁶⁶ the court held that where the wall was constructed by one party on the dividing line between the two parcels of land pursuant to an agreement that the nonbuilder was to pay one-half the cost of construction when he used the wall, until the nonbuilder paid for or made such use of the wall, the builder was the owner and liable to the nonbuilder for damage to the latter's property caused by improper maintenance of the wall.

An easement in a party wall exists for so long as it is usable and needed for the

59. *Tate v. Fratt*, 112 Cal. 613, 44 Pac. 1061 (1896); *Dorsey v. Habersack*, 84 Md. 117, 35 Atl. 96 (1896); *Fleming v. Cohen*, 186 Mass. 323, 71 N.E. 563 (1904).

60. *Matthews v. Dixey*, 149 Mass. 595, 22 N.E. 61 (1889).

61. 101 Mo. 661, 14 S.W. 750 (1890).

62. *Fleming v. Cohen*, *supra* note 59; *Carroll Blake Constr. Co. v. Boyle*, 140 Tenn. 166, 203 S.W. 945 (1918).

63. 209 Ill. 302, 70 N.E. 763 (1904). *Hill v. City of Huron*, 33 S.D. 324, 145 N.W. 570 (1914), held that the owners are jointly liable for the repair of the wall.

64. 56 Mo. App. 179 (1894).

65. 175 S.W. 871 (Mo. 1915).

66. 4 Mo. App. 90 (1877).

purpose for which it was built.⁶⁷ In *Carroll Blake Constr. Co. v. Boyle*,⁶⁸ it was held that the easement in the wall exists as long as it is sufficient to support the building of one of the parties. But in the *Fleming* case,⁶⁹ it was held that although one party cannot destroy the wall without the permission of the other, if the wall is in a dilapidated condition and not sufficient for the use one party wishes to make of it, he may tear it down and rebuild it after giving notice to the other party, but the other party has an easement in the new wall to the same extent as that which he had in the old one.

IV

There should be no doubt that the benefit of an easement in a party wall is appurtenant to the land. The purpose of the wall is to support a building and apart from the adjacent land it cannot fulfill that purpose.⁷⁰ To convey the land is to convey all appurtenances thereto, including the easement in the wall, even without their mention.⁷¹ One who takes the servient estate with notice, actual or constructive, or knowledge of an easement takes it subject to the easement.⁷² It is well settled that easements in party walls attach to and are transferred with the land.⁷³ It is not unreasonable, in view of the common use of party walls, to impute notice to a purchaser of an easement in a party wall when the wall itself is apparent even without the instrument creating the easement being recorded. At least the wall should give the purchaser sufficient notice to put him on inquiry as to the adjoining owner's interest in the wall whether or not the latter has made use of the wall, and should bind the subsequent grantee to the terms of any agreement concerning the wall. Thus in *McBride Realty Co. v. Grace*,⁷⁴ there was an oral agreement between the predecessors in title of the plaintiff and the defendant that the predecessors of the latter would not attach a building above the first story. The wall rested inside the defendant's lot six inches. The court held that the plaintiff's possession of the six inch strip put the defendant on notice, not of the agreement, but of some interest sufficient to put the defendant on inquiry.

It is generally accepted that the benefit and burden of the easement attach not merely to the dominant and servient estates, but become appurtenant to the land itself.⁷⁵

67. *Sanders v Martin*, 2 Lea 213, 31 Am. Rep. 598 (Tenn. 1879).

68. 140 Tenn. 166, 203 S.W. 945 (1918).

69. Note 10, *supra*.

70. *Barry v. Edlavitch*, 84 Md. 95, 35 Atl. 170 (1896); *Partridge v. Gilbert*, 15 N.Y. 601, 69 Am. Dec. 632 (1857).

71. *Jarvis v. Seele Mill Co.*, 173 Ill. 192, 50 N.E. 1044 (1898).

72. *Lide v. Hadley*, 36 Ala. 627, 76 Am. Dec. 338 (1860); *Snowden v. Wilas*, 19 Ind. 10, 81 Am. Dec. 370 (1862); *McBride Realty Co. v. Grace*, 223 Mo. App. 588, 15 S.W. 2d 957 (1928).

73. *Kuh v. O'Reilly*, 261 Ill. 437, 104 N.E. 5 (1913); *Bright v. Bacon and Sons*, 131 Ky. 848, 116 S.W. 268 (1909); *Weadock v. Champe*, 193 Mich. 553, 160 N.W. 564 (1916); *Sharp v. Cheatham*, 88 Mo. 498, 57 Am. Rep. 433 (1885); *McBride Realty Co. v. Grace*, *supra* note 72.

74. 223 Mo. App. 588, 15 S.W. 2d 957 (1928).

75. *COVENANTS AND INTERESTS RUNNING WITH LAND* 65 (2 ed. 1947).

The question of whether party wall agreements run with the land as covenants has caused some conflict in the courts of this country. This phase of the problem is discussed at some length by Judge Charles E. Clark in his book.⁷⁶ *Sharp v. Cheatham*,⁷⁷ follows the rule that a purchaser with notice of the agreement is bound thereby.⁷⁸ In the *McBride Realty Co.* case,⁷⁹ the Missouri Court of Appeals enforced a restriction where the only notice to the purchaser was the use being made of the wall. In *Hawkes v. Hoffman*,⁸⁰ it was held that a grantee taking without notice of the agreement and his successors take free of the agreement, but that it is a covenant running with the land when it meets the requirements of such. In this case the wall was in existence, but apparently the court did not consider the existence of the wall as being sufficient notice to the purchaser to put him on inquiry as to an existing agreement concerning the wall. On the other hand, there are cases which say that an agreement to pay for the use of a wall is personal as between the original parties and does not run with the land. In *Mott v. Oppenheimer*,⁸¹ the New York court seems to indicate that there is a presumption that such an agreement is personal and will not run with the land, but if the agreement expressly states that it is to be a covenant running with the land and binds the "heirs, and assigns" it will run. In *Gibson v. Holden*,⁸² a distinction was made between the benefit and the burden, the Illinois Supreme Court holding that the benefit of the agreement to pay for the use of the wall is personal, while the burden attaches to the land.

No attempt will here be made to discuss in full covenants which run with the land. The purpose is merely to set forth the basic elements.⁸³ The essentials needed for a covenant concerning land to run with the land are: (1) The formalities required for the making of a covenant concerning realty, (2) the intention of the parties that the covenant should run, (3) the covenant must "touch or concern the land," and (4) there must be privity of estate.⁸⁴ The formal requirement will depend upon the laws of the various states as to seal, signing, and so forth of the agreement required by the Statute of Frauds.⁸⁵ Thus an oral executory agreement would not run with the land. Also the agreement should be in such form that it can be recorded under the recording statute of the state so as to give notice to the

76. *Id.*, pp. 144-169.

77. 88 Mo. 498, 57 Am. Rep. 433 (1885).

78. *Robins v. Right*, 331 Mo. 377, 53 S.W. 2d 1046 (1932)—The deed of conveyance contained the agreement and purported to bind heirs and assigns. The court held that it was a covenant running with the land.

79. Note 74, *supra*.

80. 56 Wash. 120, 105 Pac. (1909).

81. 135 N.Y. 312, 31 N.E. 1097 (1892).

82. 115 Ill. 199, 3 N.E. 282 (1885).

83. For an excellent and more complete discussion of the subject, the reader is referred to CLARK, COVENANTS AND INTERESTS RUNNING WITH THE LAND 92-169 (2 ed. 1947).

84. *165 Broadway Building, Inc. v. City Investing Co.*, 120 F. 2d 813 (C.A.A. 2d 1941).

85. MO. REV. STAT. sec. 3352 (1939).

grantees,⁸⁶ although the party wall itself, if constructed, should be sufficient to put a purchaser on inquiry as to any agreement concerning the wall.⁸⁷

In addition to the other requirements, the parties to the covenant must intend that it should run with the land. The parties need not expressly state such intention in the agreement, but it is construed from the tenor of the whole agreement.⁸⁸ In *Reinhardt v. Holmes*,⁸⁹ the Kansas City Court of Appeals held that a party wall agreement will run with the land if it so provides. But in *Huling v. Chester*,⁹⁰ the Kansas City Court of Appeals had held that the right to receive payment for the use of a party wall is personal and does not run with the land. In this case the agreement bound the heirs and assigns of the nonbuilder, but did not expressly bind the heirs and assigns of the builder who was to receive the pay for the use of the wall. To date this case has not been followed in Missouri.

Whether a party wall agreement touches and concerns the land has caused some conflict of opinion among the courts. Some courts have held that agreements to pay for a party wall do touch and concern the land,⁹¹ whereas other courts have held that such agreements do not touch and concern the land.⁹² It appears that there should be little difficulty in holding that the agreement to pay for the wall touches and concerns the land since it is the payment for the use of realty in connection with the land of the owner who is to pay for the use. This is in fact the purchase of an easement. The difficulty seems to be in finding that the benefit, that is the right to receive the money, touches and concerns the land. If the payment is considered to be the payment for the use of the wall and not merely reimbursement for the construction of the wall, it is logical to hold that the right to receive the payment does touch and concern the land of the party who initially owns the wall. Once built, the wall becomes realty and the property of the builder. As such it passes to the subsequent owner of the land as part of the land, and the interest which the nonbuilding adjoining owner has in the wall might be called an option to purchase an easement in the wall.⁹³ But if the payment of the money is considered to be merely reimbursement to the builder for the construction of the wall, then the right to receive the money is personal to that builder. Treating the agreement as an option to purchase an interest in realty would appear sound if the Rule against Perpetuities is not invoked against it.⁹⁴

There are at least three views as to what constitutes privity of estate. First,

86. *Id.*, sec. 13161.

87. *McBride Realty Co. v. Grace*, 223 Mo. App. 588, 15 S.W. 2d 957 (1928).

88. 5 RESTATEMENT, PROPERTY, sec. 531 (1944).

89. 143 Mo. App. 212, 127 S.W. 611 (1910).

90. 19 Mo. App. 607 (1885).

91. *Ferguson v. Warrall*, 125 Ky. 618, 101 S.W. 966 (1907); *Hawkes v. Hoffman*, 56 Wash. 120, 105 Pac. 156 (1909).

92. *Gibson v. Holden*, 115 Ill. 119, 3 N.E. 282 (1885), *supra* note 82: Held that the promise to pay does touch and concern the land, but the right to receive payment is personal to the builder.

93. *Ferguson v. Warrall*, *supra* note 91; CLARK, COVENANTS AND INTERESTS RUNNING WITH THE LAND 153-154 (2d ed. 1947).

94. CLARK, *op. cit. supra* note 93, pp. 154-155.

and the one generally accepted as sound, is the succession to the estate in the land of either of the parties. That is, as applicable here, continuous chain of title from one of the original parties to the covenant down to the present owner. Second, a transfer of an estate between the original parties to the agreement. Third is the Massachusetts doctrine that at the time of the covenant, both of the parties to the covenant must have had "mutual and simultaneous interests" in the land, "outside of the covenant" itself. Judge Clark points out that only the first theory is sound.⁹⁵ The view taken by the *Restatement of Property*⁹⁶ does not appear to conform to the general view taken by the courts of this country and is fully discussed by Judge Clark.⁹⁷ The only practical reason for the second and third rules is an attempt to limit the number of covenants which run with the land. As to covenants already made, the rules may be effective in so limiting them. But the rules can be avoided in future covenants merely by one party conveying to the other then the latter reconveying, the parties at the same time executing the covenant. Missouri follows the first rule.⁹⁸

There is authority both ways as to whether an easement in a party wall or an agreement to pay for the use of a party wall is a breach of covenant against encumbrances in a deed of conveyance, if the easement is not excepted therefrom.⁹⁹ In *Blondeau v. Sheridan*,¹⁰⁰ the owners of adjoining lots entered into a written agreement whereby the owner of one lot granted to the other an easement to construct one-half of a wall upon the former's lot. The wall was to be four feet and six inches thick at the base, and the nonbuilder was to have the right to use the wall upon payment of one-half of the cost of construction. This agreement was recorded. A subsequent grantee of the nonbuilder brought an action against the grantor for breach of covenants of title. The Missouri Supreme Court held that the action on the breach of covenant against encumbrances was barred by the statute of limitations, but allowed recovery for breach of the general covenants of warranty on the basis that the existence of the wall was in effect an eviction of the plaintiff from that portion of the land upon which the wall stood. It has also been held in Missouri that it is no defense in an action for breach of covenant of title that the grantee knew of the encumbrance¹⁰¹ or that the grantor did not know of the encumbrance.¹⁰²

95. *Id.*, pp. 146-147.

96. Sec. 534.

97. *Op. cit. supra* note 93, pp. 206-249.

98. *Reinhardt v. Holmes*, 143 Mo. App. 212, 127 S.W. 611 (1910).

99. *Burr v. Lamaster*, 30 Neb. 688, 46 N.W. 1015 (1890), held an easement in a party wall to be a breach of covenant against encumbrances; *Hendricks v. Stark*, 37 N.Y. 106, 93 Am. Dec. 549 (1867), held that a party wall is not such an easement that its existence will amount to a breach of covenant against encumbrances.

100. 81 Mo. 545 (1884).

101. *Scott v. Tanner*, 208 S.W. 264 (Mo. App. 1919).

102. *Batavia v. Leahy*, 115 S.W. 2d 78 (Mo. App. 1938).

V

As a general rule, the courts have been rather liberal in upholding and enforcing party wall agreements. No doubt one reason for this liberal view of party wall agreements is the nature of the transaction in many instances. Many of such agreements are entered into by landowners, not as business transactions so much as acts of neighborliness. Of course both parties generally expect to benefit from the agreement, but because they consider the transaction more as a neighborly act than a business transaction, they not infrequently fail to go through the necessary formalities to make the agreement conform to all rules of law. Then when a controversy arises—and such controversy is frequently between subsequent owners—it as often as not arises from, not a matter wherein one party has been greatly injured, but a minor dispute, and the action brought concerning the wall is frequently brought more for spite than to compensate one party for injuries he has sustained. In view of this it is neither unreasonable nor undesirable that the courts should follow liberal rules, always with the purpose at hand to reach a decision which will be most just for all parties concerned.

BRUCE A. RING

STATUS OF UNIFORM LAWS IN MISSOURI

For more than fifty years the National Conference of Commissioners on Uniform State Laws, aided by the American Bar Association, has worked to establish uniformity in many phases of the law. Much has been written concerning the desirability of this effort, yet the goal sought to be attained by the commissioners is little more than a dream.¹ An attempt is made in this note to point out, in brief fashion, the extent of Missouri's statutory coverage of the subject matter dealt with in the Uniform and Model Acts.

Thus, in the notes following each act the status of the act in Missouri is briefly mentioned. In those instances where Missouri has purportedly adopted the Uniform Act, notations are made of the variations between the Uniform Act and the Missouri adaptation. On the other hand, in dealing with the Uniform Act not adopted by Missouri, a group which constitutes the great majority, an effort has been made to locate Missouri statutes that deal, in whole or in part, with the subject of the Uniform Act, whether similar or contrary to its provisions.

In order to make lawyers and judges aware that they are dealing with Uniform Acts a section of each act drafted by the commissioners provides for the citing of the act as a "Uniform Act." This provision is commonly called the "short title" provision. It would seem that this provision is desirable, since uniformity of construction can hardly be expected if neither the lawyers nor judges realize they are

1. Rossman, *Uniformity of Laws: An Illusive Goal*, 36 A. B. A. J. 175 (1950); for helpful discussions of the difficulties involved in keeping the Uniform Laws uniform see Hargest, *Keeping the Uniform State Laws Uniform*, 76 U. OF PA. L. REV. 178 (1927); Hoar, *Uniformity of Uniform Laws*, 28 MARQ. L. REV. 32 (1944).

working with a Uniform Act. Yet it should be noted that the Missouri legislature has omitted this section in several instances.

Beginning with the Uniform Sales Act a provision was inserted in each Uniform Act calling for uniformity of construction and interpretation in order to further the purpose of making the law uniform in those states which enact it. Once again the desirability of such a provision would seem obvious, but it is often omitted.

The Uniform Acts, in separate sections, provide for repeal of inconsistent acts and for the time when the act shall take effect. Except as otherwise indicated, Missouri omits these provisions from the body of the statute. Usually the provision for repeal is included in the enacting clause, while the time of taking effect is covered by a separate statute having general application.²

Unless otherwise indicated, all references to section numbers in the last column of the tabulation and in the comment following the title of the uniform act are to *Missouri Revised Statutes* (1939).

Title of Uniform Act	Year of approval by Conference	Number of jurisdictions which have adopted	Year of adoption in Mo.	Mo. citation
ABSENCE AS EVIDENCE OF DEATH AND ABSENTEES' PROPERTY ACT	1939	3	*	*
<p>§ 1873 provides that seven successive years absence creates a presumption of death. § 264 repeats the presumption and provides for granting of letters of administration. The provisions are substantially contrary to § 1 of the Uniform Act which provides that death will not be presumed from mere absence. §§ 264-267 provide for administration of the estate of the presumed decedent, whereas the Uniform Act provides for administration upon a <i>finding</i> of death and for disposition of the property of an absentee unheard of after a lapse of time and after diligent search and inquiry without a finding that he is dead. In the latter case, the Uniform Act provides that a portion of the estate shall be paid into an insurance fund against which the absentee may file a claim if he later appears.</p>	1939	7	*	*
<p>ACKNOWLEDGMENT ACT</p> <p>§§ 3408-3416 contain provisions somewhat similar to the Uniform Act. However, the above Missouri provisions deal only with acknowledg-</p>	1939	7	*	*

2. Mo. REV. STAT. § 659 (1939).

Title of Uniform Act	Year of approval by Conference	Number of jurisdictions which have adopted	Year of adoption in Mo.	Mo. citation
<p>ments of conveyances or written instruments affecting real estate. On the other hand, the Uniform Act relates to any written instrument that requires acknowledgment.</p>				
<p>ACKNOWLEDGMENT ACT (AMENDMENT) §§ 3410 & 3411 provide that officers in the armed forces may take acknowledgments of members of the armed forces. These are similar to the amendment to the Uniform Act, but the Missouri provision requires that officers be of higher rank than is required by the Uniform Act.</p>	1942	18	*	*
<p>ACKNOWLEDGMENT ACT AS AMENDED The further amendments permit acknowledgment to be made before attorneys at law in those jurisdictions where attorneys are so authorized, and provide for facsimile signatures on certificates authenticating the official character of the officer taking the acknowledgment. No similar Missouri provision has been found.</p>	1949	0	*	*
<p>ACT FIXING BASIS OF PARTICIPATION BY SECURED CREDITORS IN INSOLVENT ESTATES The purpose of the Uniform Act was to adopt one of the four conflicting rules existing in the several jurisdictions which govern the basis upon which a secured creditor may participate in the general assets in a liquidation proceeding.³ Missouri has no general provisions which cover the entire subject matter of the Uniform Act. § 188 seems to provide a similar rule as does the Uniform Act, <i>i.e.</i>, the so-called "bankruptcy rule," but this section only applies to decedents' estates.</p>	1939	5	*	*
<p>ACT TO SECURE THE ATTENDANCE OF WITNESSES FROM WITHOUT THE STATE IN CRIMINAL CASES The Uniform Act was drafted and promulgated to facilitate the administration of criminal law. It makes provisions for securing the attendance of a witness from without the state in which the criminal proceeding is pending. The Uniform Act allows the summoning of a witness who will not be compelled to travel more than one thousand miles to reach the place of trial.</p>	1931	10	*	*

3. For a brief discussion of these rules, see, 9 U. L. A. 21 (1942).

The summons or subpoena shall be issued by a judge of a court of record. The witness is exempt from prosecution for crime or from any civil suit in connection with any matter which arose before the entrance of the witness into the state in response to the summons.⁴

Missouri has no similar provision.

ACT TO SECURE THE ATTENDANCE OF WITNESSES FROM WITHOUT A STATE IN A CRIMINAL PROCEEDINGS	1936	29	*	*
(being a revision of Act to Secure Attendance of Witnesses from Without the State in Criminal Cases)				

The revision of 1936 made two significant changes and several of a minor nature. The first major change extended the applicability of the act to proceedings before a grand jury. Secondly a provision was added to provide that, when expedient, a witness may be arrested, held in custody, and delivered over to an officer of the requesting state.

Missouri has no similar provision.

ANCILLARY ADMINISTRATION OF ESTATES ACT	1949	0	*	*
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The Uniform Act provides that a non-resident domiciliary executor or administrator may secure ancillary letters and shall be preferred in the appointment of such a representative, subject to his filing bond and appointing the clerk of court his agent to accept service of process. Although § 272 of the Missouri statutes, as repealed and amended by Mo. Laws 1943, p. 129, § 1, permits local creditors and custodians to pay claims and transfer certain types of personal property to the foreign domiciliary representative under the conditions set forth in the statute, §§ 10 and 254 require that the ancillary administrator of Missouri assets be a resident of this state.

§§ 254-260 dealing with distribution of assets are in general similar to §§ 9-12 of the Uniform Act.

BILLS OF LADING ACT	1909	32	1917 §§ 15,556
			to 15,607

In §§ 15,603, 15,604, 15,605, which correspond to § 48, 49, and 50 of the Uniform Act, the word "felony" is substituted for the word "crime." Missouri omits the sections calling for uniformity of interpretation and the name of the act. Otherwise the Missouri act is identical with the Uniform Act. It is interesting to note that § 31 of the Uniform Act giving full negotiability to a negotiable bill of lading is identical with § 15,586, while the same provision with respect to a negotiable warehouse receipt recommended by the commissioners

4. *Id.* at 28.

Title of Uniform Act	Year of approval by Conference	Number of jurisdictions which have adopted	Year of adoption in Mo.	Mo. citation
<p>on Uniform Laws in 1922 has never been adopted in Missouri.</p> <p>See Warehouse Receipts Amendments <i>infra</i>.</p>				
<p>COMMON TRUST FUND ACT</p> <p>The Uniform Act provides that a bank or trust company may establish common trust funds for the purpose of furnishing investments to itself as a fiduciary. The purposes of such a common investment fund are to diversify the investments of the several trusts and thus spread the risk of loss, and to expedite the investing of any amount of trust funds.⁵</p> <p>Missouri has no similar statute. § 8026 (8) requires that securities and funds held in trust are to be kept separate by trust companies; thus, it would seem to prohibit establishing a common trust fund.</p>	1938	14	*	*
<p>CONTRIBUTION AMONG TORTFEASORS ACT⁶</p> <p>§ 3658 provides for the right of contribution as between joint tortfeasors when there is a joint judgment. This section also authorizes a settlement with less than all of the tortfeasors. § 20 of the Code of Civil Procedure, Mo. Laws 1943, pp. 353, 362, contains provisions for third party practice which are similar to those of § 7 of the Uniform Law. However it does not change § 3658, and if the injured party refuses to amend his petition there will be no joint judgment, thus no right of contribution.⁷ In this respect, Missouri fails to carry out the purpose of the Uniform Act.</p>	1939	6	*	*
<p>CRIMINAL EXTRADITION ACT</p>	1926	12	*	*
<p>CRIMINAL EXTRADITION ACT AS REVISED</p> <p>§§ 3976-3998 deal with extradition and include provisions similar to many sections of the Uniform Act. The Missouri statutes, however, are not so complete and elaborate as the Uniform Act. For a comparison involving one particular problem, see <i>Comment, infra</i> p. 302.</p>	1936	23	*	*

5. *Id.* at 155.

6. Fisher, *Uniform Contribution Among Tortfeasors Act*, 9 OHIO ST. L. J. 674 (1948).

7. State *ex rel.* McClure v. Dinwiddie, 358 Mo. 15; 213 S.W. 2d 127 (1948).

1950]

CRIMINAL STATISTICS ACT	1946	0	*	*
<p>The Uniform Act is designed to facilitate the compilation of statistics concerning crime, criminals and criminal justice.</p>				
<p>The act provides for the creation of a Bureau of Criminal Statistics and makes provisions for its administration.</p>				
<p>The bureau is to collect all data necessary for its compilations and reports and serve as a central source of information to all law enforcement agencies throughout the state.</p>				
<p>Missouri has no central independent agency which is to accomplish the purpose embodied in the Uniform Act. Presumably, therefore, each law enforcement agency compiles and keeps such information as it deems advisable.</p>				
<p>However, § 8354 dealing with the duties of the Superintendent of the State Highway Patrol declares in part: ". . . The Superintendent shall collect, compile and keep available for the use of peace officers of the state such information as is deemed necessary for the detection of crime and the identification of criminals. . . ."</p>				
<p>This provision would seem to be an attempt to accomplish the purposes set forth by the Uniform Act, but, of course it falls far short of the carefully drawn, detailed provisions of the Uniform Act.</p>				
DECLARATORY JUDGMENTS ACT ⁸	1922	36	1935	§§ 1126 to 1140
<p>The provisions of the Missouri act are substantially the same as those of the Uniform Act. § 1126 which corresponds to § 1 of the Uniform Act substitutes "circuit courts and courts of common pleas" for "courts of record."</p>				
<p>§ 13 of the Uniform Act defines the word "person" as used in other sections of the act. The Missouri equivalent, § 1137, in addition to the provisions of § 13 provides that "persons" shall also be construed to include a ". . . minor represented by next friend or guardian ad litem and any other person under disability lawfully represented." Missouri omits §§ 15 and 16 of the Uniform Act. § 15 is the provision for uniformity of interpretation. § 16 is the short title provision.</p>				
DESERTION AND NON-SUPPORT ACT	1910	24	*	*
<p>§ 4420 as repealed and re-enacted by Mo. Laws, 1947, pp. 279-260, provides that desertion and non-support shall constitute a misdemeanor, and, in this respect, is similar to § 1 of the Uniform Act. It also provides that no more evidence of mar-</p>				

8. Lide, *Uniform Declaratory Judgments Act*, 1 S. C. L. Q. 58 (1948); Note, *Uniform Declaratory Judgments Act*, 5 TEMP. L. Q. 117 (1930).

Title of Uniform Act	Year of approval by Conference	Number of jurisdictions which have adopted	Year of adoption in Mo.	Mo. citation
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riage is required than in a civil action, thus corresponding to portions of the Uniform Act. Missouri has no provision as does the Uniform Act for court orders requiring, in lieu of the penalty provided in § 4420 for fine and imprisonment, that the convicted person should be required to pay a certain sum periodically for support of the wife or child.

DIVORCE RECOGNITION ACT ⁹	1948	2	*	*
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The Uniform Act was drafted in an attempt to discourage the so-called "migratory divorce." § 1 of the Uniform Act provides that a divorce obtained in another jurisdiction shall be ineffective "in this state" if both parties to the proceeding at the time it was commenced were domiciled "in this state." This provision would seem to be merely a codification of the existing common law of most jurisdictions.

§ 2 creates evidentiary presumptions of domicil "within this state" if the person obtaining a foreign divorce ". . . was domiciled in this state within twelve months prior to the commencement of the proceeding . . . and resumed residence in this state within eighteen months . . . or at all times after his departure from this state and until his return maintained a place of residence in this state. . . ."

Missouri has no comparable statute.

ENFORCEMENT OF FOREIGN JUDGMENTS ACT	1948	3	*	*
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The Uniform Act is designed to provide an effective procedure for the enforcement of judgments in those cases where the judgment debtor has removed himself and his property from the state in which the judgment was rendered. The act permits the registration of a foreign judgment in an appropriate court "of this state." A levy upon any property subject to execution may follow immediately after registration, but the property levied upon cannot be sold until a final judgment is rendered.

9. Marsh, *Uniform Divorce Recognition Act—Sections 20 and 21 of the Divorce Act of 1949*, 24 WASH. L. REV. 259 (1949).

The Uniform Act contains provisions for serving the judgment debtor personally and for service by registered mail if personal service cannot be had.

In the event of personal service the proceedings continue in the same manner as any personal action. If, on the other hand, service is by registered mail and the judgment debtor fails to appear and defend within the prescribed period, the registered judgment becomes final and is binding upon the property levied upon.¹⁰

Missouri has no similar statute.

BUSINESS RECORDS AS EVIDENCE ACT ¹¹	1936	18	1949	†
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This act was drawn to avoid the many antiquated and technical rules of common law regarding admissability of Business Records as Evidence. The Missouri act follows the Uniform Act verbatim.

JUDICIAL NOTICE OF FOREIGN LAW ACT ¹²	1936	25	1949	‡
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The principal purposes of this act were to abrogate two outmoded common law rules: (1) the rule which forbade judicial notice of the law of sister states of the United States and (2) the rule that such laws were a question of fact for the jury and not of law for the judge.¹³ The Missouri provisions are identically the same as Uniform Act although omitting § 6 which is the interpretation section.

OFFICIAL REPORTS AS EVIDENCE ACT	1936	5	*	*
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Missouri has no general statutory provisions making official reports of state officers, in so far as relevant, admissible in evidence.

FEDERAL TAX LIEN REGISTRATION ACT	1926	21	1923	§§ 3617 to 3621
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Missouri actually did not adopt the Uniform Act as §§ 3617-21 were first enacted in 1923, which was three years before the approval of the Uniform Act by the National Conference of Commissioners on Uniform State Laws. However, the principal provisions of the Uniform Act are identical with the Missouri provisions. The Missouri act does not include § 4 of the Uniform Act which provides for the state to furnish the index and file for federal tax lien notices. Of course, there is no short title provision or provision calling for uni-

†S. B. 212, Appr. 7/16/49, MO. REV. STAT. ANN., §§ 1952.1 to .4 (Supp. 1949).

‡S. B. 213, Appr. 7/16/49, MO. REV. STAT. ANN., §§ 1814.1 to .6 (Supp. 1949).

10. 9 U. L. A. 129 (Supp. 1949).

11. Metz, *An Inquiry Into the Effect of Pennsylvania's Recent Adoption of the Uniform Business Records as Evidence Act*, 6 U. OF PITT. L. REV. 9 (1939).

12. Schramm, *Uniform Judicial Notice of Foreign Law Act*, 17 ORE. L. REV. 259 (1938).

13. 9 U. L. A. 297 (1942).

Title of Uniform Act	Year of approval by Conference	Number of jurisdictions which have adopted	Year of adoption in Mo.	Mo. citation
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form interpretation since at the time of passage there was no approved Uniform Act.

FIDUCIARIES ACT ¹⁴	1922	19	*	*
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“The Uniform Act covers situations which arise where one person deals with another person whom he knows to be a fiduciary. Questions relating to actual or constructive notice of the existence of a trust or other fiduciary obligations are not within the scope of the act; it deals with questions relating to notice of the breach of a fiduciary obligation.

The liabilities of the fiduciary himself are not dealt with, but only the liabilities of the person dealing with the fiduciary.

The general purpose of the act is to establish uniform and definite rules in place of the diverse and indefinite rules now prevailing as to “constructive notice” of breaches of fiduciary obligations.
 . . .”¹⁵

The act deals generally with four classes of persons. They are: Persons paying money or transferring other property to fiduciaries; corporations and stock companies, both public and private, whose securities are registered in the names of fiduciaries; persons receiving negotiable instruments, endorsed by a fiduciary, drawn by a fiduciary, or payable to a fiduciary; and depositories of fiduciary funds.

§ 3534 provides that any person who in good faith pays money to a trustee or a fiduciary authorized to receive same shall not be responsible for the proper application of such money. This section is substantially the same as § 2 of the Uniform Act, except that § 2 includes a transfer of other property as well as money. §§ 3535 and 3536 dealing with depositories of fiduciary funds are somewhat similar to §§ 7-9 of the Uniform Act. No Missouri statutes have been found which deal with the remaining provisions of the Act.

FLAG ACT	1917	15	*	*
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The Uniform Act was designed to make neces-

14. Note, *The Uniform Fiduciaries Act*, 81 U. OF PA. L. REV. 863 (1933).
 15. 9 U. L. A. 297 (1942).

sary changes in the existing flag laws of many states which have proved defective and given rise to much litigation. The Uniform Act retains the basic purposes of the existing state laws, which was to provide punishment for the use of the flag for commercial and advertising purposes, as well as to punish for other treatment of the flag which would be considered an act of desecration.¹⁶

§§ 4805-7 contain substantially the same provisions as does the Uniform Act. However, the Uniform Act is drafted in a much more clear and concise fashion.

FOREIGN DEPOSITIONS ACT¹⁷

1920 11 * *

§ 1937 substantially embodies the provisions of the Uniform Act and also provides the methods to be used to compel attendance of witnesses.

FRAUDULENT CONVEYANCES ACT¹⁸

1918 20 * *

The Missouri provisions concerning fraudulent conveyances, §§ 3506-3516, are modeled after the Elizabethan Statute, which permits creditors to set aside conveyances which are actually fraudulent, and, in some instances, those made without consideration although no actual fraud is shown. The Uniform Act contains some similar provisions, but was drafted in a manner to avoid the confusion which has arisen from the wording and judicial construction of the Elizabethan statutes. Thus, the Missouri provisions substantially fail to accomplish the purposes sought by the Uniform Act and is even contrary to some of its provisions.

INSURERS LIQUIDATION ACT

1939 11 * *

The Uniform Act attempts to eliminate many of the serious difficulties which arise in connection with the liquidation or reorganization of insurance companies. These difficulties are especially prevalent whenever an insurance company is doing business in two or more states with both assets and liabilities widely distributed geographically. The act contains detailed provisions concerning proceedings as to both local and foreign insurance companies.¹⁹

§§ 6052-6069 provide for liquidation and dissolution or reorganization of insurance companies. Although there is, in part, some similarity between

16. *Id.* at 317.

17. Harley, *Foreign Depositions in Ohio and the Uniform Act*, 9 OHIO ST. L. J. 679 (1948).

18. Rose and Hunsinger, *Transfers in Fraud of Creditors, Ohio Law and the Uniform Act*, 9 OHIO ST. L. J. 571 (1948); Note, *Uniform Fraudulent Conveyances Act*, 20 CAL. L. REV. 339 (1920).

19. 9 U. L. A. 415 (1942).

Title of Uniform Act	Year of approval by Conference	Number of jurisdictions which have adopted	Year of adoption in Mo.	Mo. citation
<p>the Missouri provisions and the Uniform Act, the Missouri Statutes seem to be open to many of the objections which led to the drafting of the Uniform Act. This is especially true with regard to claims of non-resident creditors and ancillary proceedings, neither of which are specifically covered by the Missouri sections.</p>				
<p>INTERSTATE ARBITRATION OF DEATH TAXES ACT No statutory coverage in Missouri.</p>	1943	5	*	*
<p>INTERSTATE COMPROMISE OF DEATH TAXES ACT No statutory coverage in Missouri. The two preceding Uniform Acts were promulgated to avoid, if possible, double taxation of intangibles in case two or more states find the decedent was a domiciled resident.</p>	1943	5	*	*
<p>LIMITED PARTNERSHIP ACT Although the Missouri statute purports to be the Uniform Act, there are some differences. For a helpful discussion of the Uniform Act and the Missouri adaptation see Pittman, <i>Missouri's "Uniform Limited Partnership Act,"</i> 14 MO. LAW REV. 133 (1949).</p>	1916	32	1947	†
<p>NARCOTIC DRUG ACT²⁰ § 4 of the Uniform Act prescribes qualifications which must be met before a license to manufacture or deal in certain named drugs shall issue from the Board of Health, and also provides that the State Board of Health may revoke the license for cause. The Missouri counterpart, § 9835, is identical in effect with these provisions, but also adds provisions permitting an appeal from a refusal of State Board of Health to issue the license and from an order revoking a license. § 8 of the Uniform Act deals with preparations which are exempt from the act and the conditions which must be met before the exemption applies. The corresponding Missouri provision, § 9839, is substantially the same but permits a physician to extend the statutory limit if he deems it neces-</p>	1931	45	1937	§§ 9832 to 9854

†MO. REV. STAT. ANN., §§ 5576.1 to 5576.29 (Supp. 1949).

20. Anslinger, *Reason for Uniform State Narcotic Legislation*, 21 GEO. L. J. 52 (1932).

sary. § 17, paragraph (2), of the Uniform Act provides: "Information communicated to a physician in an effort unlawfully to procure a narcotic drug, or unlawfully to procure the administration of any such drug, shall not be deemed a privileged communication." § 9848, paragraph (2) adds immediately following the above quoted provision: ". . . Provided, however, that no physician or surgeon shall be competent to testify concerning any information which he may have acquired from any patient while attending him in a professional character and which information was necessary to enable him to prescribe for such patient as a physician, or to any act for him as a surgeon."

§ 20 of the Uniform Act provides that any person convicted of violating the act shall be punished but does not attempt to designate specifically the punishment or to classify the violation, due to the great difference in penal laws of each state. The Missouri act in § 9851 makes violation a felony and provides specific punishment.

Missouri omits § 23 of the Uniform Act calling for uniformity of interpretation and § 25 which is the short title provision. With the creation of the Department of Public Welfare, there are many sections in which "Division of Health" or "Director" should be substituted for "State Board of Health." These changes are pointed out in Mo. Laws 1945, p. 945, §§ 1, 13, 22, 23.

NEGOTIABLE INSTRUMENTS ACT²¹

1896 53 1905 §§ 3016
to
3214

§ 40 of the Uniform Act reads, in the last clause "make title through . . ." § 3055 reads, "take title through . . ." House Bill 152, Mo. Laws 1905, p. 243, § 40 (p. 248) reads as the Uniform Act reads. The 1939 Revised Statute is a misprint.

§ 350 reads "where *such* an instrument . . ." § 41 of the Uniform Act omits "such" and reads "where an instrument. . ." The presence of the word "such" might cause some confusion in trying to make a reference back, as the word seems to require—*i.e.* does § 3056 refer to "such" instrument as described in § 3055, which immediately precedes it, or to negotiable instruments in general, which the Uniform Act is supposed to regulate.

§ 3077 (2) reads ". . . existence of the payee and his capacity to endorse." § 62 (2) of the Uniform Act reads ". . . and his then capacity to endorse." In the two preceding sections of the Missouri statutes (3075, 3076), the admission of the maker

21. Guerrico, *Unification and Present Status of Negotiability Legislation in America*, 29 MINN. L. REV. 1 (1944).

Title of Uniform Act	Year of approval by Conference	Number of jurisdictions which have adopted	Year of adoption in Mo.	Mo. citation
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and the drawer is limited to ". . . the existence of the payee and his then capacity to endorse." The omission of the word "then" in § 3077 (2) might conceivably broaden the scope of the acceptor's admissions.

§ 3079 (1), the counterpart of § 64 of the Uniform Act, omits the word "person" following "third." This is probably an unintentional omission. Third was obviously intended to describe something.

§ 3093 concludes ". . . to all of them." § 78 of the Uniform Act is identical with the Missouri section with the exception of the conclusion which reads ". . . to them all."

§ 3097 reads as if there were but two subdivisions in this section. However, both § 82 of the Uniform Act and House Bill 152, Mo. Laws 1905, p. 243, § 82 (page 253) have three subdivisions. The statute should read, "(2) where the drawee is a fictitious person; (3) by waiver of presentment, express or implied." This is obviously a typographical error in the 1939 revision.

§ 3150 reads ". . . in favor of every person, who upon the *face* thereof, . . ." § 135 of the Uniform Act uses the word "faith" rather than face and faith appears to be the preferable word.

§ 3160 in the first clause used the word "drawer" when the intended word would seem to be drawee." The corresponding section of the Uniform Act is § 145.

§ 87 of the Uniform Act reads, "Where the instrument is made payable at a bank it is equivalent to an order to the bank to pay the same for the account of the principal debtor thereon." Missouri § 3102 as amended in 1090 adds at the end of the section: "But where the instrument is made payable at a fixed determinable future time, the order to the bank is limited to the day of maturity only."

§ 3135, § 120 of the Uniform Act, adds to subsection (3) "except when such discharge is had in bankruptcy proceedings."

The wording in § 3156 is identical with that of § 141 of the Uniform Act. However, § 141 has

COMMENTS

the numeral "(5)" preceding the last clause, beginning with the words "the acceptance of some one or more. . ."

§ 3025 (3) as repealed and re-enacted in Mo. Laws, 1945, p. 594, reads: "When it is payable to the order of a fictitious or non-existing person or to a living person not intended or entitled to have any interest in it and such fact was known to the person making so payable or was known to his employee or other agent who supplies or causes to be inserted the name of such persons. . . ." The corresponding uniform provision, § 9 (3), reads: "When it is payable to the order of a fictitious or nonexisting person, and such fact was known to the person making it so payable. . . ."

§§ 3151, 3152 as repealed and reenacted by Senate Bill 182, approved July 7, 1949, add the following at the end of each section: ". . . provided, that this section shall not be deemed applicable to checks on banks." §§ 136, 137 of the Uniform Act with the exception of the above provision are the same.

§ 3161, as repealed and reenacted by Mo. Laws 1947, p. 221, omits the last clause of § 146 of the Uniform Act which reads: "When Saturday is not otherwise a holiday, presentment for acceptance may be made before 12 o'clock noon on that day."

§ 3064, corresponding to § 49 of the Uniform Act, adds after "right" in the first sentence the following clauses: ". . . to enforce the instrument against one who signed for the accommodation of his transferer, if omitted by accident or mistake."

§ 3100 as repealed and reenacted by Mo. Laws 1947, Vol. 1, p. 221, differs substantially from § 85 of the Uniform Act.

§§ 3205 to 3208 dealing with the liability of banks and trust companies for non-payment of tax and liability on forged and raised checks are not included in the Uniform Act.

§ 3215 to the end of chapter 14 is not included in the Uniform Act. These provisions deal largely with damage on bills protested for nonacceptance or nonpayment. They also set out corporation and partnership liability on negotiable instruments given by an officer, agent or employee.

§ 3049 includes both §§ 33 and 34 of the Uniform Act.

PARTNERSHIP Act²²

1914 30 1949 †

§ 40 of the Uniform Act, dealing with rules for

22. Crane, *The Uniform Partnership Act*, 28 HARV. L. REV. 762 (1915); Lewis, *The Uniform Partnership Act*, 24 YALE L. J. 617 (1915); Lichtenberger, *The Uniform Partnership Act*, 63 U. OF PA. L. REV. 639 (1915); Comment, 15 MO. L. REV. 176 (1950).

Title of Uniform Act	Year of approval by Conference	Number of jurisdictions which have adopted	Year of adoption in Mo.	Mo. citation
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distribution after dissolution, reads in part: "In settling accounts between the partners after dissolution, the following rules shall be observed, subject to any agreement to the contrary:

- (a) The assets of the partnership are:
 - I. The partnership property.
 - II. The contribution of the partners necessary for the payment of all 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 profit.
 - 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 order of their declaration in clause (a) of this paragraph to the satisfaction of the liabilities. . . ."

The corresponding Missouri section reverses the order of I and II of clause (a). With the above exception the Missouri act is an exact replica of the Uniform Act.

PHOTOGRAPHIC COPIES OF BUSINESS AND PUBLIC RECORDS AS EVIDENCE ACT

1949 0 * *

The Uniform Act was drafted in order to permit microfilming of business and public records and avoid the possible application of the best evidence rule in such instances. Modern business practice makes similar provisions extremely desirable.

Missouri has statutory provisions which substantially cover the subject matter of the Uniform Act. Mo. Laws 1945, p.1425. The commissioners drafted the Uniform Law when viewing the diversity of the existing laws of various states including Missouri. The Uniform Act is drafted in a manner which is more likely to avoid technical difficulties.²³ The Missouri act also includes a provision for archival storage or destruction of public records and provides a procedure therefor.

23. HANDBOOK OF NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS, 179, 186 (1948).

POWERS OF FOREIGN REPRESENTATIVES ACT 1944 0 * *

The Uniform Act permits foreign representatives to exercise all the powers which would exist in favor of a local representative where there is no administration or application therefor pending in the state. There is no comparable Missouri provision, but see § 272 and comments following Uniform Ancillary Administration of Estates Act *supra*.

§ 416 allows suit for and removal of property by a non-resident guardian on behalf of his ward. This provision covers in part § 3 of the Uniform Act.

PRINCIPAL AND INCOME ACT²⁴ 1931 14 * *

The Uniform Act deals with the difficult problems of adjustment of principal and income between life tenants and remaindermen in trust and other estates in property. "The aim followed in the act is that of as simple and convenient administration of the estate as is consistent with fairness to all beneficiaries. . . . The act therefore sets forth convenient and workable rules of administration of estates which are believed to be consistent with the wishes of most settlors upon the subject treated."²⁵ The Uniform Act covers disposition of income and principal as to corporate dividends and share rights, premium on discount bonds, principal used in business, principal consisting of animals or natural resources, and principal subject to depletion. No Missouri statutory provisions have been found that attempt to cover this subject in respect to all types of estates in property.²⁶

PROOF OF STATUTES ACT 1920 22 1949 †

The Uniform Act was designed to obviate all difficulties and clear up all inconsistencies and differences in the existing state laws relating to proof of statutes both local and foreign. In states which have adopted the act, that which is proof in one state is proof in another.²⁷

The Missouri act omits § 2 of the Uniform Act, which is the provision providing for uniform interpretation and construction, and § 3 which is the short title provision.

†S. B. 107, Appr. 8/9/49, REV. STAT. ANN., §§ 5576.51-5576.93 (Supp. 1949).

24. Nossaman, *Uniform Principal and Income Act*, 28 CALIF. L. REV. 34 (1939); Puhl, *Uniform Principal and Income Act as Relating to Premiums and Discounts on Bonds—an Aspect*, 20 TEMP. L. Q. 472 (1947).

25. 9 U. L. A. 593 (1942).

26. *Id.* at 594.

27. *Id.* at 605.

Title of Uniform Act	Year of approval by Conference	Number of jurisdictions which have adopted	Year of adoption in Mo.	Mo. citation
PROPERTY ACT ²⁸	1938	1	*	*

The Uniform Act was drawn primarily to abolish antiquated rules of the law of property which originated during the period of early feudal law, as well as characteristics which crept into the law from improper application of the early law.²⁹

Missouri has no statutory provisions which purport to cover all of the aspects of the Uniform Act. There are, however, some scattered statutes which cover in a piecemeal fashion some of the material dealt with in the Uniform Act.

§§ 3496 and 564 are substantially the same as the Uniform Act, providing that no words of inheritance are necessary to convey a fee simple.

§ 3401 has been construed to allow conveyance of some future and contingent interests, thus giving it, at least in part, the same effect as § 7 of the Uniform Act.

§ 3405 provides for conveyance notwithstanding adverse possession. § 9 of the Uniform Act contains a similar provision.

§§ 3498 and 563 abolish the common law fee tail and provide that a limitation which would have created a fee tail at common law creates a life estate in the named transferee and a contingent remainder in his surviving issue. § 10 of the Uniform Act also abolishes the common law fee tail but provides that the named transferee takes a fee simple.

§ 3499 and § 11 of Uniform Act reach substantially the same result in provisions relating to definite failure of issue.

§§ 3500 and 563 abolish the rule in Shelly's case, as does §12 of the Uniform Act.

§ 16 of the Uniform Act provides for indestructibility of contingent interests. § 3502 covers this in part.

§§§ 3390 and 3385 have been construed to provide that a married woman may convey her

28. Foster, *Some Observations on the Uniform Property Act*, 20 NEB. L. REV. 333 (1941); Note, *The Uniform Property Act*, 52 HARV. L. REV. 993 (1939).

29. 9 U. L. A. 611 (1942).

property as if she were a femme sole, as does § 19 of the Uniform Act.

§ 3003 providing for treble damages in case of waste as well as forfeiture of the place wasted, is substantially contrary to § 21 of the Uniform Act.

RECIPROCAL TRANSFER TAX ACT 1928 17 1929 †

The Uniform Act provides that there shall be no tax transfer of intangible personal property “. . . if the transferor is a resident of a state or territory of the United States which at the time of the transfer did not impose a transfer tax or death tax of any character in respect of [intangible] personal property of residents of this state . . .” or if the laws of the state or territory of residence of the transferor at the time of transfer contained a reciprocal provision under which non-residents were exempted from such taxes.

RELATING TO REVERTER OF REALTY ACT 1944 0 * *

The Uniform Act was drawn to place a time limitation upon the effectiveness of possibilities of reverter and similar interests. The act provides that “Every condition [restrictive covenant] limitation or possibility of reverter affecting the title or use of real property shall be limited to a term not exceeding [thirty]³⁰ years after the effective date of the instrument creating it notwithstanding any provision in that instrument . . .” The limitation does not apply to existing interests in a gift or devise for charitable purposes, nor to any “. . . lease present or future, or any easement, right of way, mortgage, trust, transmission or transportation line, right to take minerals, or charge or support during the life of a person or persons. . . .”

There is no similar statutory provision in Missouri.

SALES ACT 1906 36 * *

Missouri statutes do not generally cover the subject matter dealt with in the Uniform Act.

SIMULTANEOUS DEATH ACT³¹ 1940 38 1947 ‡

With the advent of modern forms of transportation, the frequency of instances of simultaneous death was greatly increased. Thus the courts have become faced with the problem of administering estates of persons who have died under circumstances where there is no evidence of survivorship. The Uniform Act was drafted in an attempt to

†S. B. 214, Appr. 7/16/49, Mo. REV. STAT. ANN., § 1817 (Supp. 1949).

‡Repealed, Mo. Laws 1939, p. 182, § 1.

30. Brackets included in the act.

31. Perry, *Uniform Simultaneous Death Act*, 1 S. C. L. Q. 64 (1948); Comment, *The Uniform Simultaneous Death Act*, 13 Mo. L. REV. 230 (1948).

Title of Uniform Act	Year of approval by Conference	Number of jurisdictions which have adopted	Year of adoption in Mo.	Mo. citation
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alleviate the unhappy result in many jurisdictions where either by jurisprudence or legislation conclusive and unrealistic presumptions of survivorship were employed by the courts. Similarly the common law rule that survivorship must be proved was thought to be in many cases asking the impossible.

Missouri omits § 10 of the Uniform Act which declares each provision to be severable so that the finding of one provision to be invalid will not result in the entire act being declared invalid. There is no substantial difference between the Missouri act and Uniform Act.

STATUTES OF LIMITATIONS ACT §§ 1002-1041 deal with the same subject matter as does the Uniform Act. Generally speaking, the time prescribed within which various causes of action may be brought in Missouri is longer than that provided for in the Uniform Act.	1939	0	*	*
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STOCK TRANSFER ACT ³² The Uniform Act deals generally with the transfer and negotiability of stock certificates. § 1 of Missouri act adds a provision allowing for transfer by an assignment endorsed on the stock certificate or in a separate instrument signed by the trustee in bankruptcy, receiver, guardian, executor, administrator, or other person authorized by law to transfer the certificate to be the owner of the shares represented thereby. § 13 of the Missouri Act dealing with attachment and levy upon shares differs materially from the corresponding Uniform section since the remedies allowed in §§ 1345 and 1346 are incorporated in the Missouri section. § 23 of the Uniform Act provides that its provisions apply only to certificates issued after the	1909	51	1943	†
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†Mo. Laws 1947, Vol. 1, p. 13, Mo. REV. STAT. ANN., § 317.1-8 (Supp. 1949).

32. Hine, *Situs of Shares Issued Under the Uniform Stock Transfer Act*, 87 U. OF PA. L. REV. 700 (1939); Imlay, *Uniform Stock Transfer Act*, 11 J. B. A. DIST. COLUM. 339 (1944); Modesitt, *Application of the Uniform Stock Transfer Act to Gifts of Stock*, 20 ROCKY MOUNT. L. REV. 67 (1947); Note, *The Uniform Stock Transfer Act*, 32 COL. L. REV. 894 (1932).

taking effect of the act. The Missouri counterpart reads: "The provisions of the transfer act shall apply to certificates for shares whether issued before or after the taking effect of the transfer act, and also so far as applicable, to voting trust certificates and stock purchase or subscription warrants which shall be transferable in the same manner and with the same effect as certificates for shares, but said act shall not apply to certificates or shares of mutual savings and loan associations."

TRANSFER OF DEPENDENTS ACT 1939 9 * *

The Uniform Act was promulgated in an attempt to solve some of the difficulties arising due to indigent persons drifting from state to state seeking financial aid. It provides for reciprocal agreements between the appropriate agencies of two states subject to the approval of the Attorney-general, regarding interstate transportation of poor and indigent persons and also agreements for transfer, acceptance and support of such persons.³³

Missouri has no statutory provision similar to the Uniform Act.

TRUST RECEIPTS ACT³⁴ 1933 26 * *

The Uniform Act was drafted to clarify the conflict and uncertainty which had developed in the law with the advent of the "trust receipt" as a security device. The "trust receipt" was first generally employed to finance imports, but later has been rather extensively used in financing domestic transactions as well, being particularly used in the auto industry.

The validity of these transactions which resemble both a chattel mortgage and a conditional sale have been somewhat uncertain in many jurisdictions.

The Uniform Act sets out detailed provisions governing these transactions. It regulates not only the "orthodox" importing trust receipt transaction but also the analogous domestic transaction. The act attempts to afford adequate protection for trust receipt financiers, trust receipt borrowers, purchasers, and general creditors.³⁵

There are no similar statutory provisions in Missouri.

TRUSTEES' ACCOUNTING ACT 1936 4 * *

TRUSTEES' ACCOUNTING ACT AS AMENDED 1937 4 * *

The Uniform Act provides for periodic account-

33. 9 U. L. A. 662 (1942).

34. Heindl, *Trust Receipt Financing Under the Uniform Trusts Receipts Act*, 26 CHI-KENT REV. 197 (1948).

35. 9 U. L. A. 665 (1942).

Title of Uniform Act	Year of approval by Conference	Number of jurisdictions which have adopted	Year of adoption in Mo.	Mo. citation
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ing by trustees and specifies the procedure therefor and the details to be contained in such accounting. Provisions are made for both testamentary and inter vivos trusts.

The inadequacy of the Missouri provisions touching the subject matter of the Uniform Act is tellingly pointed out in Overstreet, *Appointment of Successor Trustees, Trust Administration and Settlements in Missouri*, 13 Mo. L. Rev. 255 (1948).

TRUSTS ACT³⁶

1937

6

*

*

The principal purposes of the Uniform Act as stated by the commissioners are: "(1) To do away with a few obsolete and unjust rules of trust law which have come about through unfortunate judicial decisions or are survivals of ancient property law;

(2) To clarify and tighten the rules regarding loyalty by a trustee to the interests of his beneficiary;

(3) To relax a few equity rules regarding trust administration, under careful restriction in order to facilitate convenience in the administration of trusts."³⁷

The act abolishes common law distinctions between different types of bank accounts for the payment of debts, abolishes the rule of "first in, first out," substituting a provision that the trustee be deemed to have stolen from the several trusts in equal proportion; provides in case of an oral trust of realty that the grantee-trustee holds on constructive trust for the settlor; provides that a trustee may be sued for breach of contract in his legal capacity as trustee with appropriate provisions for intervention by the beneficiaries; and also imposes tort liability on the trust estate in instances where, if imposed on the trustee as an individual, he could get reimbursement from the trust estate.

The other provisions of the act are too detailed to be included in this discussion.

36. Nylund, *Uniform Acts Relating to Trusts*, 16 CHI-KENT REV. 81 (1938); Vanneman, Rowley, *The Uniform Trusts Act*, 13 U. OF CIN. L. REV. 157 (1939).
 37. 9 U. L. A. 593 (1942).

Missouri has no statutory provisions which attempt to cover the scope of the Uniform Act.

UNAUTHORIZED INSURERS ACT 1938 5 * *

The Uniform Act was drawn to provide protection against insurance companies which are engaged in the insurance business without proper authorization from the state.

§ 6101 is similar to § 1 of the Uniform Act. Both prohibit persons from acting as agents for unauthorized insurers. The Missouri section also provides a penalty for violation as does § 8 of the Uniform Act.

§§ 6005-6008 contain provisions similar to § 5 of the Uniform Act dealing with service of process on unauthorized insurers.

VENDOR AND PURCHASER RISK ACT 1935 6 * *

The object of this act is to protect the purchaser of real estate where there is a contract of sale and the property is destroyed before the purchaser has gone into possession or has taken legal title, and to protect the vendor after transfer of possession.³⁸ Missouri has no comparable provisions.

VETERANS' GUARDIANSHIP ACT³⁹ 1927 17 * *

"The proposed Uniform Veterans Guardianship Act provides for the appointment of guardians for incompetent and minor beneficiaries entitled to receive benefits from the government, prescribes limitations regarding fees, commissions, bonds, and number of cases in which a fiduciary may act, and supplies procedure for discharge of guardian upon ward being restored to sanity or coming of age. It further provides for commitment of mentally afflicted veterans to Bureau hospitals. The act affords complete co-operation between state courts and the Bureau caring for such beneficiaries and their estates."⁴⁰

VETERANS' GUARDIANSHIP ACT (AS REVISED) 1942 23 1947 †

The revised act attempts to clarify and supplement the original act. § 4 of the Uniform Act declares that no person other than a bank or trust company shall be guardian of more than five wards unless they are in the same family. The Missouri adaptation prevents banks and trust companies

†Mo. Laws 1943, p. 495, MO. REV. STAT. ANN., §§ 5563.1-5563.24 (Supp. 1949).

38. *Id.* at 731.

39. Davis, *Application of Uniform Veterans Guardianship Act*, 7 ALA. LAWYER 304 (1946); Imlay, *Uniform Veterans Guardianship Act*, 12 J. B. A. DIST. COLUM. 378 (1945).

40. 9 U. L. A. 737 (1942).

Title of Uniform Act	Year of approval by Conference	Number of jurisdictions which have adopted	Year of adoption in Mo.	Mo. citation
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as well as individuals from being guardians for more than five wards.

§ 15 of the Uniform Act provides that the court may authorize the purchase of real estate for a home for the ward or ". . . as a home for his dependent family." The Missouri act omits the above quoted clause and substitutes ". . . as a home for his wife and minor children, or a parent if wholly dependent upon him for his or her support."

The Missouri act omits § 16 of the Uniform Act which provides that the custodian of any public record shall furnish the Veterans Administration with a copy if such is needed to determine the veteran's eligibility for any benefits. The Missouri act repeals §§ 605, 606 which were the only provisions of the original act adopted.

VITAL STATISTICS ACT

1942 10 1947 †

The Uniform Act was drawn to supply the obvious need for a uniform and comprehensive system of vital statistics throughout the entire United States.

§ 1 of the Missouri Act [Mo. REV. STAT. ANN., § 9783.1 (Supp. 1949)] which is the definition section corresponding to § 1 of the Uniform Act, adds to the definition of "live with," but it does not seem to change the meaning. The Missouri section defines "Division" to mean the Division of Health of the State Department of Public Health and Welfare and "Director" to mean the director of that "division."

Throughout the act Missouri substitutes either "the Division" or "Director" for "State Board of Health."

§ 15 of the Missouri act substitutes "National Office of Vital Statistics" for "United States Bureau of Census."

§ 18 of the Missouri act makes more elaborate provisions for the furnishing of certified copies of birth and death records than do the corresponding sections in the Uniform Act.

The remainder of the provisions are substantially the same as those in the Uniform Act.

†Mo. Laws 1947, p. 4, MO. REV. STAT. ANN., §§ 607.1-22 (Supp. 1949).

Missouri omits § 38, making each provision of the act severable, and § 39, which calls for uniformity of interpretation.

WAREHOUSE RECEIPTS ACT 1906 52 1911 †

Missouri omits § 11 of the Uniform Act dealing with cancellation of a negotiable receipt upon delivery of the goods.

Missouri also omits § 57 calling for uniformity of interpretation, § 59, which makes the provisions of the act inapplicable to receipts made and delivered prior to the taking effect of the act, and § 61, which is the short title provision.

WAREHOUSE RECEIPTS ACT AMENDMENTS 1922 16 * *

Missouri has adopted none of the amendments. It might again be noted that the amendment to § 40 made it possible for a thief or a finder to negotiate a receipt, thus conforming to the similar provision, § 31, in the Uniform Bills of Lading Act. Thus, today in Missouri, some 28 years after the commissioners attempted to give full negotiability to a negotiable warehouse receipt, as well as a negotiable bill of lading, a thief or finder may negotiate a negotiable bill of lading, but not a negotiable warehouse receipt. Compare § 15538 with § 15586.

MODEL ACTS

"Where there is a demand for an act covering the subject matter in a substantial number of states, but where in the judgment of the National Conference of Commissioners on Uniform State Laws it is not a subject upon which uniformity between the states is necessary or desirable, but where it would be helpful to have legislation which would tend toward uniformity where enacted, acts on such subjects are promulgated as Model Acts."⁴¹

ACT TO PROVIDE FOR THE APPOINTMENT OF COMMISSIONERS 1944 0 * *

The Model Act creates a commission on Uniform State Laws consisting of 3 members appointed by the Governor for 4 year terms. The commission also includes any resident who has been elected a life member of the National Conference of Commissioners on Uniform State Laws. Other provisions of the Model Act deal with functions of the commission, duties of commissioners, and method of filling vacancies.

§ 5 of the Model Act provides for appropriation of funds to pay the necessary expenses of commissioners and also for funds to contribute

†Mo. REV. STAT. ANN., §§ 9783.1-38 (Supp. 1949).
41. *Id.* at 71.

Model Act	Year of approval by Conference	Number of jurisdictions which have adopted	Year of adoption in Mo.	Mo. citation
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to the National Conference of Commissioners on Uniform State Laws.

Missouri does not cover the subject matter of the Uniform Act, except that one of the clauses of § 12896.8, Mo. REV. STAT. ANN. (Supp. 1949), authorizes payment of necessary expenses of commissioners “. . . heretofore or hereinafter designated by the Governor as Missouri’s representatives to the national conference of Commissioners on State Uniform Laws. . . .”

Mo. Laws, 1941, p. 405 § 1, Mo. REV. STAT. ANN. § 12896.4 (Supp. 1949), establishes a Commission on Interstate Cooperation. One of its functions is to encourage and support participation in the work of the National Conference of Commissioners on Uniform State Laws. The commission thus allocates, from its annual appropriation, a certain sum to pay expenses of Missouri Commissioners on Uniform State Laws, and also allocates an amount to be contributed to the National Conference of Commissioners on Uniform State Laws.

BUSINESS CORPORATION ACT	1928	4	*	*
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The General and Business Corporation Act of Missouri, Mo. Laws, 1943, p. 410, covers the general subject matter contained in the Model Business Corporation Act. However, the Missouri Act does not purport to follow the Model Act.

COMPOSITE REPORTS AS EVIDENCE ACT	1936	2	*	*
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The Model Act provides that written reports compiled by unbiased experts are, insofar as relevant, admissible as evidence, although the conclusions are based wholly or partly upon written information furnished by the cooperation of several persons acting for a common purpose. The court may exclude such reports if it feels substantial injustice will result. The act also provides that the persons who furnished information on which such report was based may be called for purposes of cross-examination. Notice of intention to offer such report, accompanied by a copy of it, must be given to the adverse party a reasonable time before the trial. Missouri has no comparable provisions.

COURT ADMINISTRATOR ACT	1948	0	*	*
<p>The Model Act provides for the establishment of a state office to be known as "Administrator for the Courts." The administrator and his assistants shall aid in directing the business affairs of the courts but shall have no power of supervision over the judicial function. Their principal duties are to gather data concerning the work of the court and make recommendations for better judicial administration to the court of last resort. Missouri has no similar statutory provision.</p>				
MODEL ACT CONCERNING THE ADMINISTRATION				
OF CHARITABLE TRUST DEVICES AND BEQUESTS	1944	3	*	*
<p>The Model Act is a statutory recognition of the <i>cy pres</i> doctrine. Missouri has no comparable statute.</p>				
EXECUTION OF WILLS ACT	1940	1	*	*
<p>§ 2 of the Model Act reads: "Any person of sound mind eighteen years of age or older may make any will."</p> <p>Missouri §§ 518-519 make the age 21 except that any male person over 18 may bequeath personalty.</p> <p>§ 520 dealing with executions is similar to § 4 of Model Act although there are slight variations. The Model Act requires that the attesting witnesses sign in the presence of each other as well as in the presence of the testator, while only the latter is required by § 520.</p> <p>§§ 542-545 providing for nuncupative wills and their limitations are, with some variation, substantially similar to § 6 of the Model Act. The Model Act limits the amount to be bequeathed to \$1000 except in the case of members of the armed forces in time of war. In the latter case the limit is \$10,000. § 542 sets the Missouri limit at \$200. However, § 543 provides that any mariner at sea or soldier in the military service may dispose of his wages and other personalty as he might if the bequest were reduced to writing. Thus, there would seem to be no monetary limit.</p> <p>§§ 555-562 should be compared with § 3 of the Model Act as to who may witness a will.</p> <p>Missouri has no statutory provision providing for a holographic will as does the Model Act.</p>				
EXPERT TESTIMONY ACT	1937	1	*	*
<p>The Model Act provides for the appointment of expert witnesses by the court when advisable and sets out the procedure therefor. Missouri has no statutory provisions similar to the Model Act.</p>				
INTERPARTY AGREEMENT ACT	1925	4	*	*
<p>The basic provision of the Model Act reads as</p>				

Model Act	Year of approval by Conference	Number of jurisdictions which have adopted	Year of adoption in Mo.	Mo. citation
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follows: "A conveyance, release or sale may be made to or by two or more persons acting jointly and one or more, but less than all, of these persons acting either by himself or themselves or with other persons; and a contract may be made between such parties."

Thus the act would seem to permit a conveyance, release or sale from A, an individual, to an unincorporated association of persons, of which A is a member. The converse of the above proposition would also be permitted as would a contract between the above mentioned parties.

The Model Act also provides that "no contract shall be discharged . . . the obligation and the right thereunder shall become vested in the same person, acting in different capacities as to the right and the obligation."

Another provision declares that nothing in the act shall be construed to validate any transaction which is fraudulent.

JOINT OBLIGATION ACT

1925

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The Model Act was drafted to prevent injustice likely to arise from the application of the technical common law rules in regard to joint obligations. The act changes common law rules as to both joint obligors and joint obligees.

Missouri does not cover the entire subject matter dealt with in the Uniform Act. § 3341 providing for survival of obligor against heirs, executor or administrator of a deceased joint obligor is similar to § 6 of the Model Act.

The Model Act, as drafted, covers liability in tort and, thus, overlaps some provisions of the Uniform Contribution among Tortfeasors Act. The commissioners therefore recommended that any state having the later Uniform Act should amend the Joint Obligations Act to exclude tort liability.

POWER OF SALE MORTGAGE FORECLOSURE ACT

1940

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§§ 3447-3464 deal partially with the subject matter of the Model Act. There is not a great deal of similarity between the Missouri provisions and the Model Act. § 3450 declares that there

may be a redemption by the mortgagor, within a year after sale, only in those instances where the holder of the obligation or his agent purchases the land, and provided notice has been given by the mortgagee of his intention to redeem. The Model Act allows a period for redemption after sale in all situations.

The Model Act precludes the mortgagee from getting a deficiency judgment when taking advantage of the provisions of the act. Missouri has no counterpart. The notice provisions of the Model Act also vary substantially from those in Missouri.⁴²

RESALE PRICE CONTROL ACT	1940	0	*	*
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Missouri is one of the few states that has not enacted some type of so-called "fair trade" law. It will be noted that the commissioners point out in their prefatory note to this Act that they do not urge it upon the states in view of continuing controversy concerning resale price control.

Thus, the measure has been designated as a Model rather than a Uniform Act, and "... made available as . . . a clear, consistent and workable measure for those states that wish to continue or to adopt the policy embodied in it."⁴³

RULE AGAINST PERPETUITIES ACT	1944	1	*	*
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The Model Act is merely a codification of the American common law Rule against Perpetuities. Missouri has no such statute.

STATE ADMINISTRATIVE PROCEDURE ACT	1946	0	*	*
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The Missouri legislature in 1946 passed an act "Providing for review of the decisions rules, and regulations of administrative officers or bodies existing under the constitution or by law."

The Act, Mo. Laws, 1945, pp. 1504-1509, is patterned after the Model Act, although the Missouri act was passed before the Model Act was officially promulgated. There are some variations, but the Missouri Act seems to have substantially accomplished the ends sought by the Model Act.

It might be pointed out that the Missouri Act gives the court somewhat wider powers to stay administrative proceedings than does the Model Act. Also it should be mentioned that powers conferred upon the courts with respect to hearing evidence and finding facts are broader under the Missouri statute than under the Model Act.

42. See generally, Comment, *Real Estate Mortgage Theory in Missouri*, 6 Mo. L. REV. 200 (1941).

43. HANDBOOK OF NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS, 247 (1940).

Model Act	Year of approval by Conference	Number of jurisdictions which have adopted	Year of adoption in Mo.	Mo. citation
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WAR SERVICE VALIDATION ACT⁴⁴

1944

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Missouri has no statutory coverage of the general subject matter, *i.e.*, validation of instruments made by members of the armed forces during the war but defectively acknowledged, attested, or witnessed. The Uniform Act also provides that no such instrument shall be denied recordation. In this connection § 1845 might be noted. It provides that defective instruments which are recorded shall constitute constructive notice. However this only applies to instruments recorded prior to the time of the passage of the statute. See also Uniform Acknowledgment Act (amendment) *supra*.

WRITTEN OBLIGATIONS ACT

1925

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The Model Written Obligations Act was promulgated to provide a method by which a release or a promise would become binding though gratuitous. This was thought necessary since many states have abolished the efficacy of the seal.

§ 3345 has partially provided that which the Model Act has sought to accomplish. However, the Missouri provision falls short in two respects. First, as to the character of the promise, it provides only for promises to pay money or property. Secondly, in the conclusiveness of the obligation, consideration is merely presumed in § 3345, whereas consideration is unnecessary under the Model Act if the other requisites are complied with.

ROBERT J. VIRDEN

ARREST AND DETENTION PRIOR TO EXTRADITION—MISSOURI PROCEDURES
AND THE UNIFORM ACT

The Federal Constitution, adopting substantially the language of the earlier Articles of Confederation between the thirteen colonies, provides in Article IV, Sec. 2, that:

"A person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand

44. Steele, *Uniform Written Obligations Act, a Criticism*, 21 ILL. L. REV. 185 (1926).

of the executive Authority of the State from which he fled, be delivered up to be removed to the State having Jurisdiction of the Crime."¹

Notwithstanding the clarity of this provision the Federal Congress, acting on an opinion of Attorney-General Randolph, decided in 1793 that the section of the Constitution was not self-executing because it provided no machinery for its execution, and passed an act for that purpose which has been brought forward to date.² The above section of the Constitution and the federal act form the basis of the interstate extradition³ of fugitive criminals in all the states. The Constitution creates the right to demand the fugitives, and the federal law creates the machinery and they thus distinguish interstate extradition from international extradition which rests entirely upon treaties and is defined by treaty limitations. In *Ex parte Roberts*,⁴ it was said that interstate rendition is a proceeding resting on federal and not on state law, and the authority, power, and duty of the state in such matters is prescribed by Federal Constitution and statutes.

But the act of Congress did not create machinery to cover all the exigencies which arise; and as the federal law of 1793 has been enlarged by Congress only to a very limited extent, it has come to be recognized that the several states may provide machinery for applying the law of extradition in respect to matters not covered by the act of Congress. However, the federal law, and not the state law, is supreme, and any state legislation which conflicts with the federal law on the subject, as embodied in the constitution and effectuating statutes, is unconstitutional and void. But, to the extent that it aids the operation of federal constitutional and statutory provisions, and is not inconsistent therewith, state legislation is proper, and must be followed.⁵

Thus, the various states have the power to legislate upon the method of arrest

1. U. S. CONST. Art. IV, § 2, cl. 2.

2. U. S. Code Cong. Service, Tit. 18, § 3182, p. A508 (1948), effective September 1, 1948, repealing 18 U.S.C. § 662 (1946). "Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State, District or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fled, the executive authority of the State, District or Territory to which such person has fled shall cause him to be arrested and secured, and notify the executive authority making such demand, or the agent of such authority appointed to receive the fugitive, and shall cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within thirty days from the time of the arrest, the prisoner may be discharged." The new law omitted the words "it shall be the duty of" in regard to the executive authority of the asylum state. It further changed the time the fugitive could be held from six months to thirty days.

3. In 35 C.J.S. *Extradition* § 1, p. 318, extradition is defined as, ". . . the surrender by one state or nation to another of an individual accused or convicted of an offense outside its own territory and within the territorial jurisdiction of the other, which, being competent to try and punish him, demands the surrender."

4. 186 Wash. 13, 56 P. 2d 703 (1936).

5. 35 C.J.S. *Extradition* § 3, p. 319.

and detention of a fugitive from justice before extradition is demanded by the executive of the state where a crime was committed. This point has been the subject of quite diversified legislation and judicial decisions in the various states, and the body of law thus built up is quite different throughout America.

The present Missouri statute⁶ is an example of the inadequacy of state legislation supplementing the United States Constitution and federal law upon this point. This statute is practically identical with Rule 29.62 of the proposed Rules of Criminal Procedure for the Courts in Missouri⁷ and is substantially the same as the one it superseded.⁸ It provides that:

"Whenever any person within this state shall be charged, on the oath or affirmation of any credible witness, before any judge or magistrate of a court of record, except judge of the probate court, with the commission of any crime in any other state or territory of the United States, and that he fled from justice, it shall be lawful for the judge or magistrate to issue his warrant for the apprehension of the party charged."⁹

It would seem that the Missouri statute was enacted to enable Missouri authorities to apprehend a fugitive from justice from another state before extradition was demanded by the executive of that state. In *State v. Swope*¹⁰ the supreme court said that in order for the magistrate to acquire jurisdiction under the statute three things are absolutely essential; first, that there is a person within this state; second, that a credible witness before such magistrate, on oath or affirmation, charge such person with the commission of a crime in another state; and third, that such person fled from justice.¹¹

6. MO. REV. STAT. ANN. § 3985 (Supp. 1948), effective January 1, 1947.

7. Rules of Criminal Procedure for Courts of Missouri for adoption by the Supreme Court of Missouri, Rule 29.62 (June 30, 1948). "When arrest warrant to issue. Whenever any person within this State shall be charged by complaint made on the oath or affirmation of a credible witness before any judge or justice of a court of record or a magistrate, with the commission of a crime in another state or territory of the United States, and that he fled from justice, such judge, justice or magistrate may issue his warrant for the arrest of the person so charged, to be brought before him for examination."

8. MO. REV. STAT. ANN. § 3985, p. 281 (1939). "Whenever any person within this state shall be charged, on the oath or affirmation of any credible witness, before any judge or justice of a court of record, or a justice of the peace, with the commission of any crime in any other state or territory of the United States, and that he fled from justice, it shall be lawful for the judge or justice to issue his warrant for the apprehension of the party charged."

9. *Supra* note 6.

10. 72 Mo. 399 (1880), decided under MO. REV. STAT. § 5706 (1879) which is identical with MO. REV. STAT. § 3985 (1939). One Lewis was arrested and brought before a justice of the peace on a charge of being fugitive from justice from the state of Iowa. His hearing was postponed and he gave recognizance, with defendant, Swope as security. He subsequently made default, and the recognizance was declared forfeited. A scire facias was issued against defendant and he appeared and demurred. The demurrer was overruled, and final judgment was entered against him. On appeal to the supreme court the judgment was reversed.

11. *Accord*: *State ex rel. Kaiser v. Miller*, 316 Mo. 372, 289 S.W. 898 (1926), decided under MO. REV. STAT. § 3939 (1919) which is identical with MO. REV. STAT. § 3985 (1939).

As a result of this case a county prosecuting attorney or sheriff cannot secure a warrant for the arrest of a fugitive unless there is a competent witness in this state to charge on oath or affirmation the commission of a crime. By requiring this competent witness the legislature has practically nullified the effectiveness of the statute, since the very nature of the fugitive's presence in this state negatives the presence of a competent witness who can sign a complaint leading to the issuance of this fugitive warrant. It is only in the very exceptional case that such a witness will be available so as to enable Missouri law enforcement officers to comply with the statute. For this reason, the statute has failed to facilitate the process of arrest and detention, and Missouri authorities are powerless to apprehend and hold such fugitives in a large number of cases. This becomes increasingly important in this day of rapid transportation, where a crime can be committed in any of the other forty-seven states and a few hours later the criminal be walking the streets of some small town in Missouri, and necessitates that a change be made in the present Missouri statute to facilitate arrest and detention before extradition is demanded. Although a fugitive could be arrested without a warrant, under a Missouri statute, to be discussed later, he must be discharged within twenty hours unless he is charged by some credible person with a criminal offense.

Independent of any state statute, a majority of cases sustain the proposition that a person charged with a felony or other crime in one state, fleeing to another, may, before demand is made on the governor of the latter state by the governor of the former, be arrested in the state in which he is found and detained in custody a reasonable time in order to give the executive of the state whence he has fled an opportunity to issue a requisition for his extradition. The arrest may be made either by virtue of a warrant from a magistrate, or by an officer or private person without warrant, who may justify the arrest by showing that prima facie a felony or other crime has been committed by the prisoner in another state, or that he stands charged therewith. These decisions rest on the principle that a fugitive from justice in one state may, under the Federal Constitution, be arrested and detained in the state in which he is found before requisition is actually made by the executive of the state where the crime was committed.¹²

Thus, it would seem that the Missouri statute would not be necessary to enable authorities to apprehend a fugitive from justice before extradition was demanded, and that the present dilemma is caused not by any attempt to comply with the Federal Constitution and statutes but by the particular construction of the Missouri statute, requiring the presence of a credible witness, coupled with the statute limiting arrest and detention without warrant.

One of the most apparent needs in modernizing the administration of criminal justice is that of facilitating the arrest and detention of fugitives from justice before extradition is demanded, so that one state may not become, unintentionally, a sanctuary for criminals who are engaged in the commission of crimes in neighboring states. The Uniform Criminal Extradition Act¹³ presents a solution for this problem.

12. 22 AM. JUR., *Extradition* § 11, p. 251.

13. 9 U.L.A. 186.

In reference to the problem raised by the Missouri statute¹⁴ the Uniform Criminal Extradition Act, which has now been enacted in thirty-four states and Hawaii,¹⁵ provides for the issuance of a warrant for the arrest of a fugitive from justice prior to the time the requisition is received not only when the charge is made upon oath of a credible person but also when complaint is made upon the affidavit of any credible person in another state that a crime has been committed in that state.¹⁶ The act further provides for the arrest by either an officer or a private citizen without warrant, if the fugitive is charged with a crime punishable by death or imprisonment for a term exceeding one year.¹⁷ Thus, a fugitive may be arrested without warrant and held until a warrant is issued on a complaint based upon the

14. *Supra* note 6.

15. 9 U.L.A. 30 (Supp. 1948). The following jurisdictions have adopted the Uniform Criminal Extradition Act: Alabama, Arizona, Arkansas, California, Delaware, Florida, Idaho, Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Utah, Vermont, Virginia, West Virginia, Wisconsin, Wyoming and Hawaii.

16. Uniform Criminal Extradition Act, § 13, 9 U.L.A. 186. "Arrest Prior to Requisition.—Whenever any person within this state shall be charged on the oath of any credible person before any judge or magistrate of this state with the commission of any crime in any other state and, except in cases arising under Section 6, with having fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his bail, probation or parole, or *whenever complaint shall have been made before any judge or magistrate in this state setting forth on the affidavit of any credible person in another state* that a crime has been committed in such other state and that the accused has been charged in such state with the commission of the crime, and, except in cases arising under Section 6, has fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his bail, probation or parole and is believed to be in this state, the judge or magistrate shall issue a warrant directed to any peace officer commanding him to apprehend the person named therein, wherever he may be found in this state, and to bring him before the same or any other judge, magistrate or court who or which may be available in or convenient of access to the place where the arrest may be made, to answer the charge or complaint and affidavit, and a certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to the warrant." (Italics added.) Under Section 13 it was held in *In re Mitchell*, 205 N. C. 788, 172 S.E. 350 (1934) that a prisoner was entitled to a hearing before the judge issuing the warrant of arrest, before he could be committed to await the issuance of an extradition warrant by the Governor, and that the warrant under which prisoner was arrested prior to requisition was regular and valid in all respects.

17. Uniform Criminal Extradition Act, § 14, 9 U.L.A. 188. "Arrest Without a Warrant.—The arrest of a person may be lawfully made also by any peace officer or a private person, without a warrant upon reasonable information that the accused stands charged in the courts of a state with a crime punishable by death or imprisonment for a term exceeding one year, but when so arrested the accused must be taken before a judge or magistrate with all practicable speed and complaint must be made against him under oath setting forth the ground for the arrest as in the preceding section; and thereafter his answer shall be heard as if he had been arrested on warrant." In *Picking v. Pennsylvania R. R.*, 151 F. 2d 240 (C.C.A. 3d 1945), it was held under Section 14 that the arrest of a fugitive from justice not charged with a crime for which he might be imprisoned for more than a year on a detainer telegram is a violation of the statute.

affidavit of a person in the state where the crime was committed. The ability of officers to arrest and detain the fugitive from justice without warrant would, in most situations, provide sufficient time for an affidavit to arrive from authorities of another state, so that a warrant may be issued further detaining such fugitive until extradition is demanded. This type of statutory provision avoids the problem raised by the inadequate Missouri statute, which requires the presence of a competent witness and would seem to provide a more than adequate method of arrest and detention before extradition is demanded.

The problem is further complicated in Missouri, however, by a statute which provides that all persons confined in jail without warrant shall be discharged within twenty hours unless they shall be charged with a criminal offense by the oath of some credible person and held by warrant to answer such charge.¹⁸ This statute would conflict with any statute Missouri might enact to permit authorities to arrest fugitives where there is no credible witness present in this state to charge the commission of a crime. So, the mere enactment by the Missouri legislature of a statute of the Uniform Criminal Extradition Act type would not necessarily remove the present dilemma unless such statute were made a specific exception to the "twenty hour rule." If such a statute were not made a specific exception a problem would arise as to whether it was an automatic exception to the "twenty hour rule."

The enactment of the Uniform Extradition Law and a modification of the "twenty hour rule" permitting a fugitive to be arrested on a complaint containing an affidavit of a credible witness in another state would seem to cure the defects of the present Missouri statute. It then would be no longer necessary for the credible witness to be present in the state of Missouri to enable authorities to issue a warrant for the fugitive's arrest.¹⁹ This would aid in the speedy apprehension of criminals

18. MO. REV. STAT. § 4346 (1939). "All persons arrested and confined in any jail, calaboose or other place of confinement by any peace officer, without warrant or other process, for any alleged breach of the peace or other criminal offense, or on suspicion thereof, shall be discharged from said custody within twenty hours from the time of such arrest, unless they shall be charged with a criminal offense by the oath of some credible person, and be held by warrant to answer to such offense; and every such person shall, while so confined, be permitted at all reasonable hours during the day to consult with counsel or other persons in his behalf; and any person or officer who shall violate the provisions of this section, . . . by refusing to permit him to see and consult with counsel or other persons, or who shall transfer any such prisoner . . . to another place, or prefer against such person a false charge, with intent to avoid the provisions of this section, shall be deemed guilty of a misdemeanor."

19. Note, 10 ST. JOHN'S L. REV. 272, 277 (1936): "The Uniform Extradition Act provides for an arrest before requisition where a person in this state swears to, or a complaint on the affidavit of a person in another state sets forth, the necessary elements for extradition. And an arrest may be made by an officer or private person without a warrant upon reasonable information that the accused stands charged in the courts of another state for a crime punishable by a prison term exceeding one year." Legis., 5 FORD. L. REV. 484, 488 (1936): "A person charged with a crime in another state may be arrested prior to a requisition. A warrant for his arrest may be issued on the strength of an oath or affidavit of any credible person to the effect that he has committed a crime in another state, and has fled from justice, or that he has been convicted of a crime in another state and has escaped from

who cross state boundaries after committing a crime, yet would give adequate protection to the constitutional rights of the person apprehended, since reasonable information that a crime has been committed in another state, that the accused has been charged in that state with that crime, and that he has fled from justice and is within the state where the arrest is made are all necessary before such arrest may be made and the warrant issued.

The value of the Uniform Act to Missouri and other states as an instrumentality of law enforcement will be enhanced to the extent that it is universally adopted and uniformly interpreted. As to the former, there has been substantial progress. Missouri should not hinder speedy apprehension of criminals and should provide statutory regulations that will facilitate the arrest and detention of fugitives from justice before extradition is demanded by the governors of sister states.

R. DWIGHT CRADER

confinement, or has broken the terms of his probation, bail, or parole. Such a person may also be arrested . . . upon reasonable information that he has been charged with having committed a felony in another state. The prisoner may be held for a limited period pending formal requisition."