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Report
of the
Committee on Commercial Law
to the
**Twenty-Fifth Annual Conference of
Commissioners on Uniform State Laws**
to be held at
Hotel Utah, Salt Lake City, Utah
August 10-16, 1915

**First Tentative Draft of an Act to Make Uniform
the Law Relating to Partnerships
with Contributing Members**

REPORT
OF THE
COMMITTEE ON COMMERCIAL LAW.

To the Conference of Commissioners on Uniform State Laws:

At the meeting of the Conference held in Milwaukee, Wis., on August 26, 1912, the following resolution was adopted:

“*Resolved*, That the proposed draft of a Uniform Partnership Act be re-committed to the Committee on Commercial Law with direction to report the recommendation thereon at the next meeting of the Conference, and that the committee be further authorized in its discretion to prepare and report a Uniform Partnership Act, and to incur such expense for expert assistance as may be approved by the Executive Committee.”

The Partnership Act having been approved at the last session of the Conference, the committee has directed its attention to the preparation of a Uniform Limited Partnership Act, the first tentative draft of which is hereto appended. The draftsman of this act, Dr. William Draper Lewis, the expert to whom the committee is indebted for the Uniform Partnership Act (acting for the New York Legislative Drafting Association), has submitted his work in the form of a supplement or addition to the Uniform Partnership Act, rather than in the form of a separate statute. As submitted, the members of the Conference will be able to see without reference to notes exactly how far the rights and powers of partners are modified by adding contributory members under the provisions of this draft. The committee, however, will ask the Conference, should they direct the submission of a second draft, to express its wish as to the ultimate form in which the act shall be submitted, whether as a supplement to the general Uniform Partnership Act or as a separate statute.

No other matter has been before the committee for consideration.

Respectfully submitted,

WALTER GEORGE SMITH, *Chairman.*

PRELIMINARY NOTE.

The business reason for the adoption of acts making provisions for limited or special partners is that men in business often desire to secure capital from others. There are at least three classes of contracts which can be made with those from whom the capital is secured: One, the ordinary loan on interest; another, the loan, the lender, in lieu of interest, taking a share in the profits of the business; third, those cases in which the person advancing the capital secures, besides a share in the profits, some measure of control over the business.

At first, in the absence of statutes the courts both in this country and in England, assumed that one who is interested in a business is bound by its obligations, carrying the application of this principle so far, that a contract where the only evidence of interest was a share in the profits, made one who supposed himself a lender, and who was probably unknown to the creditors at the times they extended their credits, unlimitedly liable as a partner for the obligations of those actually conducting the business.

Later decisions have much modified the earlier cases. The lender who takes a share in the profits, except possibly in one or two of our jurisdictions, does not by reason of that fact run a risk of being held as a partner. If, however, his contract falls within the third class mentioned, and he has any measure of control over the business, he at once runs serious risk of being held liable for the debts of the business as a partner; the risk increasing as he increases the amount of his control.

The first Limited Partnership Act was adopted by New York in 1822; the other commercial states, during the ensuing 30 years, followed her example. Most of the statutes follow the language of the New York statute with little material alteration. These statutes were adopted, and to a considerable degree interpreted by

the courts, during that period when it was generally held that any interest in a business should make the person holding the interest liable for its obligations. As a result the courts assumed in the interpretation of the statute two principles as fundamental.

First: That a limited (or as he is also called a special) partner is a partner in all respects like any other partner, except, that to obtain the privilege of a limitation on his liability, he has conformed to the statutory requirements in respect to filing a certificate, and refraining from participation in the conduct of the business.

Second: The limited partner on any failure to follow the requirements in regard to the certificate, or any participation in the conduct of the business loses his privilege of limited liability and becomes, as far as those dealing with the business are concerned, in all respects a partner.

The courts in thus interpreting the statutes, although they made an American partnership with limited members, something very different from the French *Société en Commandite* from which the idea for the original statutes was derived, unquestionably carried out the intent of those responsible for their adoption. This is shown by the very wording of the statutes themselves. For instance, all the statutes require that all partners, limited and general, shall sign the certificate, and nearly all state that: "If any false statement be made in such certificate all the persons interested in such partnership shall be liable for all the engagements thereof as general partners."

The practical result of the spirit shown in the language and in the interpretation of existing statutes, coupled with the fact that a man may now lend money to a partnership and take a share in the profits in lieu of interest without running serious danger of becoming bound for partnership obligations, has, to a very great extent, prevented the existing statutory provisions for limited partners having any practical usefulness. Indeed, apparently their use is largely confined to associations in which those who conduct the business have not more than one limited partner.

One of the causes forcing business into the corporate form, in spite of the fact that the corporate form is ill suited to many business conditions, is the failure of the existing limited partnership acts to meet the desire of the owners of a business to secure necessary capital under the existing limited partnership form.

The draft herewith submitted, as was the case with the preliminary draft submitted to the committee earlier in the year, proceeds on the *assumption* that

First: No public policy requires a person who contributes to the capital of a business, acquires an interest in the profits, and some degree of control over the conduct of the business, to become bound for the obligations of the business; provided creditors have no reason to believe at the time credit was extended that such person was so bound.

Second: That persons in business should be able, while remaining themselves liable without limit for the obligations contracted in its conduct, to associate with themselves, others who contribute to the capital and acquire rights of ownership, provided that such contributors do not compete with creditors for the assets of the partnership.

The attempt to carry out these ideas has led to the incorporation into the draft submitted of certain features, not found in, or differing from, existing limited partnership acts.

First: In the draft the person who contributed the capital is not in any sense a partner. He is, however, a member of the association. (See Sec. 44.)

To call him a special or limited partner, would, therefore, be inaccurate. He is called that which in fact he is, a contributor, and the act becomes an Act Relating to Partnerships with Contributing Members.

Second: The contributor, not being in any sense a partner, failure to comply with the requirements of the act in respect to the certificate, while it may result in the non-formation of the association, does not make him a partner or liable as such. The exact nature of his liability in such cases is set forth in Sec. 53.

Third: The contributor, while not as contributor in any sense a partner, may become a partner as any person not a member of the association may become a partner; and, becoming a partner, may nevertheless retain his rights as contributor; this last provision enabling the entire capital embraced in the business to be divided between contributors, all the partners being also contributors. (Sec. 54.)

Fourth: The contributor may be employed as agent or employee of the partnership without becoming liable for partnership obligations. (See Sec. 55.)

Fifth: The contributor is not debarred from loaning money or transacting other business with the partnership as any other non-member; provided he does not become in respect to such transactions a preferred creditor, or accept from the partnership or any partner collateral security. (Sec. 56.)

Sixth: The general direction of partnership affairs can be by agreement given to a meeting of contributors, or contributors and partners, without the contributors who take part in such meetings becoming liable for partnership obligations. (Sec. 57.)

Seventh: The substitution of a person as contributor in place of an existing contributor, or the withdrawal of a contribution, or the addition of new contributors, does not necessarily dissolve the association (Secs. 50, 66, 67); no contributor, however, can withdraw his contribution until all liabilities to creditors are paid. (Sec. 59.)

Eighth: As contributors are not principals in transactions of the partnership, their liability, except for known false statements in the certificate (Sec. 61), is to the partnership, not to creditors of the partnership. (Sec. 62.) The partners cannot, however, waive any liability of the contributors to the prejudice of such creditors (*Ibid.*).

Ninth: As contributors are not partners securing limited liability by filing a certificate, the association is formed when substantial compliance is had with the requirements for a certificate (Sec. 44 (2)). This provision eliminates the difficulties which arise from the recognition of *de facto* associations, made necessary by the assumption that the association is not formed unless a strict compliance with the requirements of the act is had.

The draft has been prepared as an additional part of the Uniform Partnership Act. One of the difficulties of existing limited partnership acts is their failure to provide any solution for the great majority of questions actually arising in the conduct of the association. If persons in business are to be benefited by the adoption of the act it is essential that the investor asked to become a contributor should be able to obtain a clear statement of his rights and obligations. To do this adequately in a separate act would require a repetition, in many cases with only slight modifications, of the Uniform Partnership Act, as legislation by refer-

ence to particular sections of other statutes is, we understand, generally against established practice.

It seemed, therefore, best, in drafting the first tentative draft, to shorten the text by making it an additional part of the Uniform Partnership Act. Should the Conference ultimately adopt the act in this form, states wishing to adopt the Partnership Act, but not wishing to adopt this addition, could do so without violating the principle of uniformity. How far the sections of the Partnership Act apply to associations formed under this act is set forth in Sec. 52.

Respectfully submitted,

NEW YORK LEGISLATIVE DRAFTING ASSOCIATION, BY

WM. DRAPER LEWIS, *Draftsman.*

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FIRST TENTATIVE DRAFT OF AN ACT TO MAKE
UNIFORM THE LAW RELATING TO PARTNER-
SHIPS WITH CONTRIBUTING MEMBERS.

BEING AN ADDITIONAL PART.

PART VII

OF

THE UNIFORM PARTNERSHIP ACT

SUBMITTED TO THE

CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS BY
THEIR COMMITTEE ON COMMERCIAL LAW, AT SALT LAKE
CITY, UTAH, AUGUST 10, 1915.

PART VII.

PARTNERSHIP WITH CONTRIBUTING MEMBERS.

- 1 SEC. 44. [Partnership with Contributing Members Defined.]
2 A partnership with contributing members is a partnership formed
3 under the provisions of Section 45, having two classes of mem-
4 bers, partners and contributors.¹

NOTE TO SEC. 44.

1. For explanation of reason for using word "contributor," and not "limited" or "special" partner, see Preliminary Note.
In re possible designation of businesses which the partnership is prohibited from carrying on, see Sec. 45, Note 1.

1 SEC. 45. [Formation of Partnership with Contributing Mem-
2 bers.] (1) A partnership with contributing members is formed
3 when

4 (a) Certificate signed by one or more persons as partners
5 and one or more persons as contributors to the capital of the
6 partnership sets forth

7 I. The name of the partnership.

8 II. The character of the business.¹

9 III. The location of the principal place of business.

10 IV. The Christian names, surnames, and postoffice ad-
11 dresses of the members designating partners and contributors
12 respectively.

13 V. The specific date when the partnership is to be dis-
14 solved, or the particular undertaking if it is so limited, unless
15 it is a partnership at will.²

16 VI. The respective dates, if agreed upon, when the contri-
17 bution of each contributor is to be returned.³

18 VII. The amount in cash and the character and value of
19 the specific property which has been contributed by each
20 contributor.

21 VIII. The amounts, if any, of additional contributions
22 agreed to be contributed by each contributor respectively and
23 the dates or events on which such contributions shall be
24 made.⁴

25 IX. The respective shares in the profits or other return to
26 which each contributor respectively is entitled on account
27 of his contribution.⁵

28 X. If the assignee of the interest of a contributor (or
29 the representative of a deceased contributor) will have a
30 right to be substituted as contributor, a statement of that
31 fact, and the conditions under which the right can be exer-
32 cised.⁶

NOTE TO SEC. 45.

1. Existing limited partnership statutes usually prohibit the partnership engaging in designated businesses, as, for instance, banking and insurance. It is submitted that the proper place for such restrictions is in acts regulating the particular businesses; that there is no more reason for inserting such prohibitions in an Act regulating partnerships with contributing members than for inserting them in a Partnership Act. If, however, any state desires to insert such prohibitions in this act, the principle of uniformity would not be violated by adding to this section as paragraph (4) the following:

A partnership with contributing members shall not carry on the business of (Here designate the businesses to be prohibited).

A violation of the provisions of the paragraph would cause a dissolution of the partnership under Sec. 31 (3). To declare that a partnership with contributing members cannot be formed for certain designated purposes would be unfortunate as it would prevent the orderly winding up under the act of a partnership to which cash or property had been contributed, and which may in part carry on a business not prohibited. For similar reasons the Uniform Partnership Act does not use the words "lawful business" in defining a partnership. See Sec. 6 (1) and note.

2. Existing limited partnership acts apparently prohibit the formation of such partnerships except for a definite period. It is submitted that there is no apparent reason why a partnership at will with contributing members should not be formed, provided the rights and liabilities of a contributor in such partnership are clear. For special provisions in this act where the partnership with contributing members is a partnership at will. See Sec. 59 (2) clauses (b) and (c).

3. A distinctive feature of this draft is the fact that a contribution may be withdrawn without necessarily dissolving the partnership, the rights of creditors being protected. See Sec. 59 for the withdrawal and reduction of contributions, and Sec. 62 (2) for protection of creditors in case of wrongful withdrawal. Sec. 59 (2) clauses (b) and (c) also deals with the rights of the contributor when a date for the withdrawal of his certificate is not set forth in the certificate.

4. Except in Missouri (Rev. Stat. 1889, under Sec. 7197) existing limited partnership acts do not provide for postponing any part of the contribution. Why a contract to contribute should be against public policy is not clear. Under this draft to become a contributor some part of the total agreed to be contributed must be paid in. The liability of the contributor for additional contributions is the subject of Sec. 62 (1b), *infra*.

5. This provision is inserted to protect purchasers of contributor's interests. "Other returns" include an agreement to pay "interest" or a "lump sum" in lieu of or in addition to a share in the profits. Agreements for such other returns should not be regarded as against public policy, provided no payment on account thereof is made except out of profits. For a provision extending this protection to creditors, see Sec. 59 (1a), *infra*.

6. Under Sec. 66 (3b) an assignee of the interest of a contributor does not have the right to be substituted as contributor without the consent of parties to the certificate. (For a definition of the term "parties to a certificate" see Sec. 51, *infra*.) It may be, however, thought desirable by those forming the partnership, to make the transfer of the rights of contributors and the substitution of new contributors as easy as possible. Under these conditions if the pro-

33 (b) The certificate has attached thereto the report of ap-
34 praisers made under the provisions of Section 46 when specific
35 property is contributed.

36 (c) An affidavit is made by the persons signing the certif-
37 icate stating that the facts set forth in the certificate are true
38 to the best of their knowledge and belief.

39 (d) The certificate and affidavit are filed in the (here
40 designate the most convenient county office) in the county
41 where the principal place of business is to be located.

42 (2) A partnership with contributing members is also formed
43 when in good faith an attempt to comply and a substantial com-
44 pliance with paragraph (1) is had; but any member of the
45 partnership, judgment creditor, or person extending credit to the
46 partnership, has a right to have all the requirements of paragraph
47 (1) satisfied.⁷

48 (3) A person to become a contributor on the formation of the
49 partnership must sign and swear to the certificate⁸; but if one
50 partner so signs and swears, the omission of other partners to do
51 so does not of itself prevent the formation of the partnership.⁹

visions of this clause are complied with an amendment substituting as contributor an assignee (or representative of a deceased contributor) can be had without requiring all parties to the certificate to sign. See Sec. 66 (3a).

7. For a discussion of the provisions of this paragraph see the Preliminary Note, p. 5.

8. For provisions relating to the admission of a contributor after formation, see Sec. 49.

9. Existing limited partnership acts make the formation of the association depend on all partners signing. This requirement is a fruitful source of complicated questions. For example: If one partner neglects to sign, has a partnership with partners of limited liability of which the signers are partners been formed? The chief difficulty arising from the requirement, however, is due to the fact that in many cases from the very nature of the partnership whether a person is or is not a partner is a question of real doubt. Suppose A and B are partners. D regards himself as a creditor, but because of the control over the business which his contract with the partnership gives him he is in fact a partner. With the consent of D, A and B secure C as a contributor. D does not sign the certificate. Shall we say that no partnership is formed, or that there are two partnerships, one a common law partnership composed of A, B and D and the other a partnership with contributing members composed of A and B, partners, and D contributor? In either case the resulting confusion, especially as to the rights of creditors and the ownership of the fund devoted to the conduct of the business, is almost inextricable.

Under the paragraph as drawn none of these difficulties arise. The reason why it is desirable that partners should sign is procedural. In this draft while the formation of the partnership with contributing members does not depend on all the partners signing, a partner who does not sign, not being a party to the certificate (see Sec. 51), is deprived of the following rights given to parties to the certificate:

Under Sec. 49 an amendment admitting an additional contributor can be filed without his being a party to the amendment.

Under Sec. 59 (1c) his consent is not necessary, where if he were a party to the certificate it would be necessary, to the return of the contribution of a contributor.

Under Sec. 66 (2b) his consent is not necessary to the admission of an assignee of a contributor as a substituted contributor.

Under Sec. 67 his consent is not necessary to the right of an executor or administrator of a deceased contributor to have the rights of a contributor, or to the admission of the assignee of such executor or administrator as a substitute contributor.

Under Sec. 71 the certificate can be cancelled or amended without his consent. (This does not, however, mean that he could not show that he had an equity to prevent the cancellation or amendment.)

Under Sec. 72 (2), in a suit against the partnership no objection can be made to his non-joinder.

Provision is made for a partner, omitting to sign, becoming a party to the certificate. See Sec. 70 (2d).

1 SEC. 46. [Report of Appraisers.] (1) Where the contribu-
2 tion of a contributor is in property other than cash the court
3 of (here designate the principal trial court of the state) the
4 county (or judicial district, the county not being a judicial dis-
5 trict) in which the principal place of business of the partnership
6 with contributing members is to be located, on petition of a con-
7 tributor making such contribution, shall appoint two disinterested
8 persons as appraisers to examine the property and report to the
9 court.

10 (2) The report of the appraisers shall be made in duplicate,
11 shall describe and value the property in detail, and shall be accom-
12 panied by the sworn statement of the appraisers that they have
13 examined the property and that the statements in the report are
14 correct to the best of their knowledge and belief.

15 (3) If the court finds the report is correct in form it shall
16 cause one original to be filed with the records of the court and one
17 original to be delivered to the contributor.

18 (4) The appraisers shall be paid by the partnership an amount
19 fixed by the court.

20 (5) If the appraisers are unable to agree the court shall dis-
21 charge them and appoint two other persons as appraisers.

1 SEC. 47. [Character of Contributor's Contribution.] The
2 contribution of a contributor may be cash or other property, but
3 may not be the performance of services.

1 SEC. 48. [Partnership Name not to Contain Name of Con-
2 tributor; Exception.] (1) The name of a contributor shall not
3 appear in the partnership name unless it is also the name of a
4 partner.

5 (2) A contributor whose name appears in a partnership name
6 contrary to the provisions of paragraph (1) is liable as a partner
7 to partnership creditors who extend credit to the partnership
8 without knowledge that he is not a partner.

The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that every entry should be supported by a valid receipt or invoice. The second part outlines the procedures for handling discrepancies and errors, including the steps to be taken when a mistake is identified. The third part provides a detailed breakdown of the financial data for the period covered, including a summary of income and expenses. The final part concludes with a statement of the total balance and a declaration of the accuracy of the information provided.

1 SEC. 49. [Admission of Additional Contributors.] After the
2 formation of a partnership with contributing members additional
3 contributors are admitted upon

4 (a) Filing in the office where the first certificate is filed
5 a certificate and affidavit conforming, or substantially con-
6 forming, to the provisions of Sec. 45 (1); provided that such
7 certificate is signed and sworn to by the partners, parties to the
8 first certificate filed, and by the contributors to be admitted, or

9 (b) Filing an amendment to a certificate.¹

1 SEC. 50. [The Term Substituted Contributor Defined.] A
2 substituted contributor is a contributor admitted to all the rights
3 of a contributor who has died or assigned his interest in the
4 partnership.¹

1 SEC. 51. [The Term Parties to the Same Certificate Defined.]
2 The parties to a certificate are the partners and contributors
3 signing and swearing to the certificate (unless deceased or
4 retired), and the partners and additional and substituted contrib-
5 utors admitted by an amendment to the certificate.

NOTE TO SEC. 49.

1. For provisions in regard to amendments, see Sec. 70.

In existing limited partnership acts, a limited partner, being a partner, the admission of an additional partner, whether the liability of such additional partner is limited or unlimited, logically invokes the formation of a new partnership. The advantage of permitting parties to secure additional contributors and additional partners is, it is submitted, evident. Under the provisions of this section there may be several successive certificates, each certificate representing a distinct group of contributors (a group may be composed of one contributor). If any existing group of contributors are willing to admit the additional contributor to equal rights with themselves he is admitted by an amendment to their certificate, and under Sec. 51 becomes a party to their certificate. If no group of existing contributors are willing to admit the additional contributor to equal rights with themselves he is admitted by the filing of a new certificate. For the respective rights of contributors parties to different certificates, see Sec. 69 (b II).

NOTE TO SEC. 50.

1. See Sec. 65 for the nature of a contributor's interest in the partnership; Sec. 66 for the rights of the assignee, and Sec. 67 for the rights of the executor of the deceased contributor.

1 SEC. 52. [Provisions Regulating Partnerships—How Far Ap-
2 plicable to Partnerships with Contributing Members.] In addi-
3 tion to the sections of this act which expressly relate to partner-
4 ships with contributing members the following sections apply to
5 such partnerships and to partners therein, but do not apply to
6 contributors except where expressly made applicable.

7 (a) Sec. 8 pertaining to partnership property.

8 (b) Secs. 9 to 17 inclusive pertaining to the relations of
9 partners to persons dealing with the partnership; except that

10 I. Partners, without the consent of contributors parties
11 to the first certificate filed have no authority to do any act
12 set forth in Sec. 9 (3) clauses (a) (b) or (d).¹

13 II. Partners, without the consent of contributors, have no
14 authority to do any act set forth in Sec. 9 (3) clause (c).²

15 III. A person represented by a partner, under conditions
16 set forth in Sec. 16, to be a partner in an existing partner-
17 ship with contributing members can do no act by which a
18 partnership liability or obligation results unless all partners
19 and contributors consent to the representation.³

20 (c) Secs. 18 to 25 inclusive pertaining to the relations of
21 partners to one another; except that

22 I. Subject to any agreement to the contrary, the consent
23 of all contributors (as well as that of partners under Sec. 18)
24 is necessary to the admission of a partner.

25 II. Subject to any agreement to the contrary, the consent
26 of all contributors (as well as that of partners under Sec.
27 19) is necessary to keep the books at a place other than the
28 principal place of business.

29 III. Contributors have the right to information as to
30 things affecting the partnership given partners by Sec. 20.

31 IV. Contributors have the right to an account as to
32 partnership affairs given partners by Sec. 22.

33 (d) Secs 24 to 28 inclusive pertaining to the property rights
34 of a partner; except that the consent of all contributors as

NOTE TO SEC. 52.

1. The acts referred to are

- (a) Assign the partnership property in trust for creditors or on the assignees' promise to pay the debts of the partnership.
- (b) Dispose of the good will of the business.
- (d) Confers a judgment.

The necessity for the consent of contributors has been restricted to contributors parties to the first certificate filed because the acts detailed pertain to the conduct of the business. This much control over the conduct of the business should, it is submitted, be given to the original contributors and those whom they admit to equal rights with themselves. But additional contributors, admitted without authority of the original contributors, should have no right as contributors to so far take part in the conduct of the business. If they had it would be to this extent admitting a partner without the consent of the first contributor.

2. The acts referred to are

- (c) Do any act which would make it impossible to carry on the ordinary business of the partnership.

It is submitted that this much control should be given to a contributor even though he has been admitted without the consent of prior contributors. He has made an advance to the capital and is entitled to have the business conducted in accordance with the partnership articles.

3. Sec. 16 (2) makes a partner by estoppel an agent of the partnership with respect to persons who rely on the representation. In this draft all contributors must consent to the admission of a partner and therefore should consent to the representation that a person not a partner is a partner in order to enable that person to bind the partnership.

35 well as partners is necessary to give a partner, for other than a
36 partnership purpose

37 I. Under Sec. 25 (2a) the right to possess partnership
38 property.

39 II. Under Sec 25 (2b) the power to assign his right in
40 specific partnership property.⁴

41 (e) Secs. 29 to 43 inclusive pertaining to dissolution and
42 winding up; except that

43 I. A contributor shall have the right of a partner under
44 Sec. 32 to apply for and obtain the dissolution of the partner-
45 ship.⁵

46 II. A contributor shall have the right of a partner upon
47 cause shown under Sec. 37 to obtain the winding up of part-
48 nership affairs by the court.

49 III. Subject to any agreement to the contrary, when the
50 partnership is dissolved in contravention of the partnership
51 agreement, the partners who have not caused the dissolution
52 wrongfully shall have no right to continue the business as
53 provided in Sec. 38 without the consent of all contributors.

54 IV. In the distribution of partnership assets under Sec.
55 40 liabilities to contributors rank as provided in Sec. 69.

56 V. The right to continue the business under conditions
57 set forth in Sec. 41 is subject to the provisions of Sec. 63.⁶

4. A contributor is co-owner of the property, and his consent to its assignment for other than a partnership purpose should be necessary.

5. Sec. 32 (1) On application by or for a partner the court shall decree a dissolution whenever:

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

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

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

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

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

(f) Other circumstances render a dissolution equitable.

6. The conditions referred to are the continuation of the business with partnership property after the admission of a partner, or by the remaining partners (by themselves or with others) on the retirement or death of a partner, or by persons not partners on the promise to pay partnership debts.

1 SEC. 53. [Contributor by Estoppel.] (1) A person is liable
2 as if he were a contributor, who by words spoken or written or by
3 conduct, represents himself or consents to another representing
4 him to any one as a contributor in an existing partnership, of with
5 one or more persons not actual partners, in case the assets of
6 such partnership or persons are not sufficient to pay their lia-
7 bilities to those who have extended credit to them on the faith
8 of such representations.

9 (2) Any amount paid in discharge of the liability set forth
10 in paragraph (1) shall be divided, in accordance with the respec-
11 tive amounts of their claims, among those who have extended
12 credit on the faith of such representations.

13 (3) When the representation that a person is a contributor
14 has been made in a public manner by or with the consent of such
15 person, those who have extended credit on the faith of such repre-
16 sentations within the meaning of this section shall include those
17 to whom the representation has been made without his knowl-
18 edge.¹

19 (4) A person who has contributed to the capital of a business
20 conducted by a person or partnership and who in good faith
21 regards himself as a contributor, no partnership with contribut-
22 ing members of which he is a member having been formed, is not
23 by reason of his contribution to the capital of the business,
24 or his interest in the profits, a partner with the person or in the
25 partnership carrying on the business, or bound by the obligations
26 of such person or partnership; provided that on his knowing that
27 no partnership with contributing members of which he is a
28 member is formed, he either forms such partnership or cancels
29 his interest in the future profits of the business.

1 SEC. 54. [One Person Both Contributor and Partner.] A
2 person may be at one time both contributor and partner.¹

NOTE TO SEC. 53.

1. The language of this paragraph and of paragraph (1) follows that employed in Sec. 16 relating to "Partner by Estoppel."

NOTE TO SEC. 54.

1. Under existing limited partnership acts as a limited partner is already a partner he remains a partner when he ceases to have any limitations on his liability. What effect this has on his rights against the partnership after the claims of persons not partners are disposed of, existing acts do not make clear. Under this act, as the contributor is not a partner, it is necessary to expressly provide whether he can become a partner and what effect his becoming a partner has on his status as a contributor. It is submitted that there is no incompatibility between the two positions. Rights of creditors are not affected by one person being both contributor and partner. The section as drafted enables the members if they so desire to divide the entire capital of the business into shares, the partners holding some shares, while others are held by persons not partners.

1 SEC. 55. [Contributor may be Agent or Employee of Partner-
2 ship.] A contributor may be appointed to act as agent or be em-
3 ployed in any other capacity by the partnership, and a contributor
4 so appointed or employed does not thereby become bound by the
5 obligations of the partnership, unless his appointment or acts are
6 such as would bind a non-member.¹

1 SEC. 56. [Loans by and Other Business Transactions with
2 Contributor.] (1) A contributor, not also a partner, may before
3 or after becoming a contributor loan money to and transact other
4 business with the partnership, and receive, on account of resulting
5 claims against the partnership, with other creditors not claiming
6 as partners or contributors, a pro rata share of the assets; but
7 no contributor shall in respect to any such claim

8 (a) Be a preferred creditor.

9 (b) Receive or hold as collateral any partnership property
10 or the property of a partner, unless such property was received
11 as collateral before he became a contributor.

12 (c) Receive from a partner or the partnership property any
13 payment or conveyance, if at the time of payment or conveyance
14 the assets of the partnership are insufficient to discharge part-
15 nership obligations to persons not claiming as partners or
16 contributors.

17 (d) Have a set off against any liability to the partnership
18 arising out of his position as contributor.

19 (2) Any payment or conveyance in violation of the provisions
20 of paragraph (1) is a fraud on the creditors of the partnership,
21 and the contributor holds as trustee for such creditors any
22 money or other property so paid or conveyed.¹

1 SEC. 57. [Meetings of Contributors for the Direction of Part-
2 nership Business.] (1) By agreement with partners a meeting
3 of contributors or contributors and partners may direct the
4 manner in which the business of the partnership shall be carried
5 on, and a contributor participating in such meeting does not
6 thereby become bound by the obligations of the partnership.¹

NOTE TO SEC. 55.

Under Sec. 44 the term members includes partners and contributors.

NOTE TO SEC. 56.

1. Under the prevailing theory of existing limited partnership acts a limited partner, being a partner, cannot loan money to or transact business with the partnership other than as a partner. Under this draft a contributor may either be confined to making additional contributions, or given the right conferred by this section to deal with the partnership, with the limitations stated, as any non-member. It is submitted that as a contributor where he is not a partner, he is not one of the group by which the business is conducted, and there is no necessity of limiting his power to contract with the partnership, except where he would exercise the power to obtain an advantage over other creditors. Again to prohibit a contributor lending money on ordinary terms to a partnership reduces the partnership's opportunity to obtain money when needed. A contributor is in the position of a postponed creditor. He might be unwilling to contribute more money on similar terms, but willing to do so if he has an equal chance with other unsecured creditors for its return.

NOTE TO SEC. 57.

1. In this act a contributor may become against his intent bound for partnership obligations, in the same way as a non-member may be bound, if he takes part in the direction of partnership business. This section has been inserted because it is believed that it would be often desirable from the point of view of those asked to become contributors, to have a general right of control of partnership business lodged in a regularly called meeting of contributors, and it is submitted that there is no reason why such contributors should not so exercise such power without becoming unlimitedly liable for partnership obligations.

1 SEC. 58. [Contributor's Return for His Contribution.] (1)
2 In consideration of his contribution a contributor may receive
3 from a partner or out of partnership property a share in the
4 profits, or interest not exceeding the legal rate or both; if on such
5 payment the partnership property is in excess of all the liabilities
6 of the partnership, except liabilities to contributors under the
7 same or subsequent certificate on account of their contributions
8 and to partners.

9 (2) Subject to any agreement with the partners, a contributor
10 if he has stipulated for a share in the profits, shall receive interest
11 on his contribution only from the date on which repayment
12 should be made; if he has not so stipulated he shall receive
13 interest from the date the contribution is made.

1 SEC. 59. [Withdrawal or Reduction of Contributor's Con-
2 tribution.] (1) A contributor shall not receive from a partner
3 or out of partnership property any part of his contribution until

4 (a) All liabilities of the partnership have been paid, except
5 liabilities to contributors under the same or subsequent cer-
6 tificate on account of their contributions and to partners.

7 (b) The certificate is cancelled or so amended as to set
8 forth the withdrawal or reduction.

9 (c) The consent of all parties to the certificate is had, unless
10 the return of the contribution may be rightfully demanded
11 under the provisions of paragraph (2).

12 (2) Subject to the provisions of paragraph (1) a contributor
13 may rightfully demand the return of his contribution

14 (a) When the date specified in the certificate for its return
15 has arrived; or

16 (b) On dissolution of the partnership, and only on dissolu-
17 tion when a date is specified in the certificate for dissolution
18 but none for the return of the contribution; or

19 (c) At any time on six months' notice to the partnership
20 when no date is specified in the certificate either for the return
21 of the contribution or for the dissolution of the partnership.

22 (3) A contributor may have the partnership dissolved and its
23 affairs wound up when

24 (a) He rightfully but unsuccessfully demands the return
25 of his contribution; or

26 (b) The other liabilities of the partnership have not been
27 paid as required by paragraph (1a) and the contributor is
28 otherwise entitled to the return of his contribution.¹

1 SEC. 60. [Contributor not Bound by Obligations of Partner-
2 ship.] A contributor as such is not bound for the obligations of
3 the partnership.¹

1 SEC. 61. [Liability of Contributor for False Statements in
2 Certificate.] If any false statement is made in a certificate or in
3 the report of appraisers attached to a certificate any contributor
4 signing or swearing to the certificate is liable for any loss result-
5 ing from the false statement to anyone who relied thereon, pro-
6 vided that the contributor knew the statement was false

7 (a) At the time he signed or swore to the certificate, or

8 (b) Within a sufficient time before the statement was relied
9 upon to have enabled him to have cancelled or amended the
10 certificate, or filed a petition for its cancellation or amend-
11 ment as provided in Sec. 71.¹

1 SEC. 62. [Liability of Contributor to Partnership.] (1) A
2 contributor is liable to the partnership

3 (a) For the difference between his cash contribution as
4 made and the amount stated in the certificate as having been
5 made.

6 (b) For any contribution he agrees to make in addition to
7 his original contribution

8 I. On the arrival of the day (or the happening of the
9 event) set forth in the certificate for its payment; or

10 II. On the dissolution of the partnership; or

11 III. On the demand of any partner, when no specific date
12 (or event) for its payment is set forth in the certificate.

NOTE TO SEC. 59.

1. This section permits the return of a contributor's contribution, or its reduction prior to dissolution, under two circumstances; first where a date is given in the certificate for its return, and no date or a later date is given in the certificate for the return of the dissolution of the partnership, and, second, where no date is given in the certificate either for the return of the contribution or for dissolution. It is submitted that it is important, in order to eliminate litigable questions, to set forth in the act exactly when, under different given statements in the certificate, the return of his contribution may be demanded by a contributor. It is also submitted, that it would be an unnecessary hardship to require the dissolution of the partnership and the complete winding up of partnership affairs, on every return of a contributor's contribution; though, of course, as provided in the section, no return of any part of such contribution should be made until the liabilities to all persons having claims on the assets of the partnership superior to the contributor are paid.

NOTE TO SEC. 60.

1. This section carries out the conception that a contributor, although a member of the association, is not in any sense a partner. See Preliminary Note, for defense of the conception.

NOTE TO SEC. 61.

At first all limited partnership acts contained the provision that if any false statement be made in the certificate or affidavit all persons interested in the partnership should be liable for all its engagements as limited partners. This is still the provision in many states, though in some the statement must be intentional, and in others the penalty is that of perjury. (See Bates, pp. 38, 39.) These provisions are impediments to the practical usefulness of existing statutes, as well as a frequent cause of injustice to special partners. For a further discussion of the subject see Preliminary Note.

- 13 (2) A contributor holds as trustee for the partnership
14 (a) Any property stated in the certificate as contributed by
15 him not contributed or wrongfully returned.
16 (b) Any money or other property wrongfully paid or con-
17 veyed to him on account of his contribution.
18 (3) The liability of a contributor under this section for
19 property wrongfully withheld or received is for its actual value
20 or for its value as reported by the appraisers whichever is the
21 highest.
22 (4) The liabilities of a contributor as set forth in this section
23 can be waived or compromised only by the consent of all parties
24 to the same certificate; but such waiver or compromise does not
25 affect the right of a creditor of a partnership, whose claim arose
26 after the filing and before the cancellation or amendment of the
27 certificate, to enforce such liabilities, or the right of a partnership
28 receiver, trustee in bankruptcy, assignee for the benefit of
29 creditors, or similar representative, to enforce such liabilities,
30 where this enforcement is necessary for the prompt payment of
31 such creditors.¹

1 SEC. 63. [Continuation of the Business by Other Persons or
2 Partnerships.] (1) Partners without the consent of contrib-
3 utors have no right to permit the business to be carried on under
4 any of the conditions set forth in Sec. 41.
5 (2) When with the consent of contributors the business is
6 continued under the conditions set forth in Sec. 41
7 (a) Contributors parties to the same certificate may become
8 contributors of the succeeding partnership (or form a partner-
9 ship with contributing members with the person continuing the
10 business) by filing an amendment to the certificate, and so
11 doing they cease to be contributors of the original partnership,
12 and their claims as contributors cease to be claims against such
13 partnership and become claims against the partnership or
14 person continuing the business.

NOTE TO SEC. 62.

This section carries out the principle, explained in the preliminary note, that in this Act the contributors are not principals in partnership transactions, and, therefore, their obligations are to the partnership not to the creditors of the partnership.

NOTE TO SEC. 63.

Sec. 41 deals with the situation which arises when a partner is admitted or a partner retires or dies, and with or without a formal assignment of his interest in partnership property the business is continued with such property by the remaining partners, by themselves or with others, but without liquidation of the liabilities of the dissolved partnership. Sec. 41 provides that the creditors of the dissolved partnership become creditors of the partnership continuing the business. Sec. 63 deals with additional complications which arise when the dissolved partnership is a partnership with contributing members. It is drafted on the principle, that the business should not be continued with partnership property without the consent of all contributors, that if rightly continued, as the business is in effect, the same business, the contributors can by merely amending their certificate, become contributors of the succeeding partnership, but that in no event can they compete on equal terms with the creditors of the succeeding partnership.

15 (b) The claims of contributors not becoming contributors
16 of the succeeding partnership (or forming a partnership with
17 contributing members with the person continuing the business)
18 against such partnership (or person) shall be postponed to the
19 claims of persons other than partners or contributors of the
20 succeeding partnership.¹

1 SEC. 64. [Continuation of Business by Partnership after Dis-
2 solution in Certain Cases.] Where a partnership with contribut-
3 ing members is dissolved by the express will of the partners, a con-
4 tributor has no right to object to the resumption of business by
5 all the partners unless prior thereto the certificate has been can-
6 celled or he has brought a petition under Sec. 71 for its cancella-
7 tion.¹

1 SEC. 65. [Nature of Contributor's Interest in the Partner-
2 ship.] A contributor's interest in the partnership is his share
3 in the profits and surplus, and the same is personal property.¹

NOTE TO SEC. 64.

1. Under Sec. 31 (1b) dissolution by the express will of a partner without violation of the agreement between the partners may take place at any time when the partnership is a partnership at will. The right given the partners by this Sec. 64 to resume the business, so dissolved by the express will of one of the partners, would not prevent the contributor demanding the return of his contribution under Sec. 59 (2), or the dissolution and winding up of the partnership under Sec. 59 (3).

Under Sec. 31 (2) a partner at any time by his expressed will may dissolve the partnership in contravention of the partnership agreement. If a partner does so, this Sec. 64 enables him to do that which he could do if the partnership had not contributing members; namely, change his mind, and join with the other partners in the resumption of the business under the partnership agreement, unless a contributor, prior thereto, has exercised the right which is his on dissolution under Sec. 70 (1a) to have the certificate cancelled.

NOTE TO SEC. 65.

1. This section follows the definition of "partner's interest" in Sec. 26.

1 SEC. 66. [Assignment of Contributor's Interest.] (1) A con-
2 tributor's interest is assignable.

3 (2) The assignee, not⁴ becoming a substituted contributor,¹
4 has no right to require any information or account of partnership
5 transactions or to inspect the partnership books; he is merely
6 entitled to receive, in accordance with his contract, the profits to
7 which his assignor would otherwise be entitled.²

8 (3) The assignee has a right to become a substituted contrib-
9 utor when the right is set forth in the certificate or all parties to
10 this certificate consent.³

11 (4) The assignee becomes a substituted contributor on filing
12 an amendment to the certificate.

13 (5) The substituted contributor has all the rights of his
14 assignor, and is liable

15 (a) Under Sec. 61 for any false statement in the certificate
16 to the same manner and extent as if he had signed and sworn
17 to the certificate if the facts on which such liability rests arose
18 after he became a contributor.

19 (b) For any liability of his assignor arising under Sec. 62,
20 unless the facts on which such liability rests were unknown to
21 him at the time of assignment.

22 (6) The substitution of the assignee as contributor does not
23 release the assignor (or his separate estate) from any liability
24 to the partnership arising under Secs. 61 and 62.

NOTES TO SEC. 66.

1. For definition of term substituted contributor, see Sec. 50.
2. This paragraph confers on the assignee of a contributor's interest rights identical with those conferred on the assignee of a partner's interest under Sec. 27.
3. See Sec. 45 (1a) sub clause X and note.

1 SEC. 67. [Death of Contributor.] (1) On the death of a con-
2 tributor, subject to any agreement to the contrary between the
3 deceased and a party to the certificate, his executor or ad-
4 ministrator has all the rights of a contributor.

5 (2) The assignee of the executor or administrator, or other
6 person entitled to the deceased's interest in the partnership on the
7 settlement of his estate, has the rights of an assignee under Sec.
8 66, and if he becomes a substituted contributor all the rights and
9 liabilities of such contributor under that section.

10 (3). The separate estate of a deceased contributor is liable for
11 all his liabilities as contributor.¹

1 SEC. 68. [Contributor's Interest Subject to Charging Order.]

2 (1) A judgment creditor of a contributor has all the rights of a
3 judgment creditor of a partner under Sec. 28.¹

4 (2) The interest may be redeemed with the separate property
5 of any partner, but may not be redeemed with partnership prop-
6 erty.

7 (3) In case of sale the assignee has all the rights of an assignee
8 under Sec. 66.

9 (4) Nothing in this act shall be held to deprive a contributor
10 of his rights, if any, under the exemption laws, as regards his
11 interest in the partnership.

NOTE TO SEC. 67.

1. It will be noted that paragraph (1), read in connection with paragraph (2), does not give the executor or administrator the right to become a substituted contributor. On the other hand it does give to such administrator or executor all rights of a contributor. Temporarily, therefore, he has much greater rights than the assignee who does not become a contributor has under Sec. 66 (2).

NOTE TO SEC. 68.

1. Sec. 28 (1) provides that a separate judgment creditor of a partner may obtain from the court an order charging the interest of the debtor with payment of the judgment, and that the court may appoint a receiver of the debtor's share in the profits, and make all other orders, directions, inquiries, and accounts which the debtor might have made, or which the circumstances of the case may require.

1 SEC. 69. [Rules for Distribution of Assets of Partnership
2 with Contributing Members.] In settling accounts after dissolu-
3 tion of a partnership with contributing members

4 (a) The provisions of Sec. 40 shall apply, except that the
5 liabilities of the partnership shall rank in order of payment as
6 follows:

7 I. Those owing to creditors, except those owing to contrib-
8 utors on account of their contributions, and to partners.

9 II. Those owing to contributors in respect to capital.

10 III. Those owing to contributors in respect to profits, or
11 for interest on their contributions.

12 IV. Those owing to partners other than for capital and
13 profits.

14 V. Those owing to partners in respect to capital.

15 VI. Those owing to partners in respect to profits.

16 (b) Subject to any agreement

17 I. Contributors parties to the same certificate share in
18 the partnership assets in respect to their claims for capital,
19 and in respect to their claims for profits or for interest on
20 their contributions, in proportion to the respective amounts
21 of such claims.

22 II. The liabilities of the partnership to contributors
23 parties to different certificates rank in the order of the filing
24 of their certificates; all claims of contributors parties to a
25 prior certificate on account of their contributions being paid
26 in full before any of the claims of contributors parties to a
27 subsequent certificate on account of their contributions are
28 paid.

NOTE TO SEC. 69.

The last clause of this section carries out the principle referred to in the preliminary note, that while a contributor should not have the right to prevent partners securing other contributors, the claims of any contributor admitted without the consent of existing contributors should be postponed to the claims of those contributors who were already contributors at the time of his admission.

1 SEC. 70. [When Certificate shall be Cancelled or Amended.]

2 (1) A certificate shall be cancelled in the following cases :

3 (a) The partnership is dissolved, unless

4 I. With the consent of contributors the business is con-
5 tinued under Sec. 38 ; or

6 II. The business is continued under Sec. 41 as provided
7 in Sec. 63 (2a) ; or

8 III. The partners have resumed the carrying on of the
9 business as provided in Sec. 64.

10 (b) All contributors parties to the certificate cease to be
11 contributors and no other contributors are substituted.

12 (c) The date fixed in the certificate for the return of the
13 contributions has arrived, or, if the contributions are to be
14 returned at different dates, the date for the return of the last
15 contribution has arrived.

16 (2) A certificate shall be amended in the following cases :

17 (a) There is a change in the amount of the contribution of
18 any contributor party to the certificate.

19 (b) A person is substituted as contributor for a contributor
20 party to the certificate.

21 (c) An additional contributor is admitted as party to the
22 certificate.

23 (d) A partner who has not signed the certificate desires to
24 become a party thereto, unless his becoming a party is contrary
25 to his agreement with one or more of the parties to the certifi-
26 cate.¹

27 (e) A person is admitted as partner.

28 (f) With the consent of contributors the business is con-
29 tinued under Sec. 38.

30 (g) The business is continued under Sec. 41 as provided in
31 Sec. 63 (2a).

32 (h) There is a change in the character of the business of
33 the partnership.

NOTE TO SEC. 70.

1. As a partner who has not signed and sworn to the certificate is deprived of many rights which he would otherwise have (see note 9 to Sec. 45), he should be allowed to become a party whether his not being a party is wilful or merely a neglect, unless his becoming a party is contrary to his agreement. Practically this last would only take place when a person who was in fact a partner believed himself a creditor. See also note 9 to Sec. 45.

34 (i) There is a false statement in the certificate.

35 (j) There is a change in the date as stated in the certificate
36 for the dissolution of the partnership or for the return of a
37 contribution.

38 (k) A date is fixed for the dissolution of the partnership, or
39 the return of a contribution, no date having been specified in
40 the certificate.

41 (l) The parties to the certificate desire to make a change in
42 any other statement in the certificate in order that it shall
43 accurately represent the agreement between them.

1 SEC. 71. [Requirements for Amendment and for Cancellation
2 of Certificate.] (1) The writing filed to amend a certificate shall

3 (a) Set forth clearly the change in the certificate which it
4 is desired to make.

5 (b) Have attached thereto a report of viewers as provided
6 in Sec. 46, where additional property other than cash is con-
7 tributed.

8 (c) Be signed by all parties to the certificate, and by the
9 partner or contributor, if any, to be added or substituted as a
10 party to the certificate; except, that if a person is to be sub-
11 stituted for an existing (or deceased) contributor, only such
12 existing contributor (or his executor or administrator) and the
13 person to be substituted, need sign, if the certificate sets forth
14 that the consent of other parties to the certificate is not neces-
15 sary to an assignee of a contributor's interest becoming a con-
16 tributor.

17 (2) The writing filed to cancel a certificate shall be signed by
18 all parties.

19 (3) A person desiring the cancellation or amendment of a
20 certificate, if any person designated in paragraphs (1) or (2)
21 as a person who must sign the writing to be filed refuses to sign,
22 may petition the court (here designate the principal trial court
23 of the state) having jurisdiction in the county where the certifi-
24 cate is filed to direct a cancellation or amendment thereof.

25 (4) If the court approves the petition filed in accordance with
26 the provisions of paragraph (3), it shall order the (here designate
27 the responsible official in the office designated in Sec. 45) in the
28 office where the certificate is filed to cancel or amend the certifi-
29 cate as the case may be; and where the certificate is to be amended,
30 the court shall cause to be filed in said office a writing in ac-
31 cordance with the provisions of paragraph (1) clauses (a) and
32 (b).

33 (5) A certificate is amended or cancelled as the case may be
34 when the (here designate the responsible official in the office
35 designated in Sec. 45) or his deputy, in the office where the
36 certificate is filed, places on the certificate the word "Amended,"
37 or the word "Cancelled," and the date; provided he acts on the
38 direction of

39 (a) A writing in accordance with the provisions of para-
40 graph (1), or (2); or

41 (b) An order of court in accordance with the provisions of
42 paragraph (4).

1 SEC. 72. [Parties to Actions by or Against Partnerships with
2 Contributing Members.] (1) A contributor, not also a partner,
3 is not a proper party to legal proceedings by or against a partner-
4 ship, except where the object of such proceedings is to enforce a
5 right or liability of the contributor against or to the partnership.

6 (2) In case of a suit against the partnership no objection can
7 be made to the non-joinder of any partner who is not a party to
8 the first certificate filed.

9 (3) A judgment obtained against the partners parties to the
10 first certificate filed is not a bar to a judgment on the same cause
11 of action against a partner not a party to such certificate.

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