

1988

# Joseph Brozda, Warren T. Christensen v. Houston Investors Limited, Donald Houston, H. Clark Houston, and Linford Orton : Brief of Appellant

Utah Court of Appeals

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DOCKET NO. 880044-CA

IN THE UTAH COURT OF APPEALS

JOSEPH BROZDA and WARREN T. )  
CHRISTENSEN, )  
 )  
Plaintiffs-Respondents, )  
 )  
vs. )  
 )  
HOUSTON INVESTORS LIMITED, )  
a Utah limited partnership, )  
DONALD HOUSTON, H. CLARK )  
HOUSTON, and LINFORD ORTON, )  
 )  
Defendants-Appellants. )

Case No. 880044-CA

BRIEF OF APPELLANT

APPEAL FROM PARTIAL SUMMARY JUDGMENT OF THE FIFTH  
JUDICIAL DISTRICT COURT IN AND FOR IRON COUNTY, STATE OF UTAH  
THE HONORABLE ROBERT F. OWENS, DISTRICT JUDGE PRO-TEM

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COURT OF APPEALS

JOSEPH BROZDA and WARREN T.  
CHRISTENSEN,  
  
Plaintiffs-Respondents,  
  
vs.  
  
HOUSTON INVESTORS LIMITED,  
a Utah limited partnership,  
DONALD HOUSTON, H. CLARK  
HOUSTON, and LINFORD ORTON,  
  
Defendants-Appellants.

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JOSEPH BROZDA and WARREN T.  
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vs.

HOUSTON INVESTORS LIMITED,  
a Utah limited partnership,  
DONALD HOUSTON, H. CLARK  
HOUSTON, and LINFORD ORTON,

STATEMENT OF JURISDICTION

STATEMENT OF THE NATURE OF PROCEEDINGS

## STATEMENT OF THE ISSUES

Should the Plaintiffs be required to make additional contributions to the limited partnership or should they be allowed to dissolve the partnership and receive a return of the contributions previously made.

#### STATUTES

The Utah Limited Partnership Act, Sections 48-2-1 through 48-2-27 and particularly Sections 48-2-1, 48-2-10, 48-2-16, 48-2-17, 48-2-18, 48-2-22 and 48-2-23. The Act is set forth in the Addendum.

#### STATEMENT OF THE NATURE OF THE CASE

This was an action brought by Plaintiffs to dissolve the partnership known as Houston Investors Limited, a Utah limited partnership, and receive a return of contributions made to the partnership. The Defendants claim that the Plaintiffs had not made their assessments as required by the partnership and were not entitled to a return of their capital contributions and were not entitled to a dissolution of the partnership.

#### COURSE OF PROCEEDINGS

The Plaintiffs filed a complaint in the District Court of Iron County, State of Utah against the Defendants requesting a dissolution of the Partnership known as Houston Investors Limited and a return of their capital contributions. The Defendants counterclaimed stating that the partnership was formed for the

purpose of buying a certain piece of property and that the Plaintiffs committed themselves to a long term investment by joining the partnership and requested that the court determine the Plaintiffs had not made payments as agreed and were not entitled to a dissolution of the partnership or a return of their contribution.

#### DISPOSITION AT TRIAL COURT

The Plaintiffs filed a Motion for Summary Judgment and the trial court admitted depositions into evidence and reviewed affidavits and the file in this matter and determined as a matter of law that the Plaintiffs were not required to make additional capital contributions to the partnership and that the Plaintiffs were entitled to a dissolution of the partnership and that the Plaintiffs were entitled to a return of their contribution.

#### STATEMENT OF THE FACTS

On the 20th day of December, 1973, Houston Investors Limited, a Utah limited partnership (hereafter Houston Investors), purchased certain property from Herbert D. White, Larue O. White, H.D. White, Shirley White and Jeanne W. Pryor (hereafter the "White Property"). The real estate contract provided that Houston Investors would purchase the property together with water rights and certain grazing rights. The agreement was signed by Don Houston on behalf of Houston Investors. The agreement provided a total purchase price of

\$339,350.00 and required the buyer to pay \$20,000.00 on or before December 30, 1973 and a \$15,000.00 payment prior to June 1, 1974 and \$15,000.00 on November 1, 1974 and a payment was due in the sum of \$15,000.00 each November thereafter for a period of fifteen (15) years.

The main purpose for Houston Investors was the purchase of the "White Property" and Houston Investors partnership was formed sometime in 1974 and filed with the Clerk of the Court of Iron County on November 13, 1974 (see affidavit of Donald Houston and Certificate of Limited Partnership). Warren Christensen paid \$10,000.00 and became a partner on the 7th day of July, 1974. Joseph Brozda paid \$10,500.00 and became a partner on the 26th day of July, 1974. The other partners are Patrick Quigley, Preston Adams, John Redd, Mervyn Cox, Harry Randall, A.J. Flood, Lin Orton, Merle Errett, Clark Houston and Donald Houston. Each partner knew that the partnership was formed with its main purpose to purchase the "White Property" and that assessments for the "White Property" would be made over a fifteen (15) year period of time and that the partnership would last at least that long (See affidavits of Donald Houston, Lin Orton and Clark Houston). Payments made by each of the Plaintiffs and the losses they took for the years they paid are set forth hereafter (see deposition of Joseph Gubler, page 27 and Exhibit 2, attached to said deposition, see also the capital contribution sheet set forth in the addendum).

**JOSEPH BROZDA:**

1974	-	payment	\$10,000.00	/	income tax	loss	\$4,277.00
1975	-	payment	\$ 2,000.00	/	income tax	loss	\$1,378.90
1976	-	payment	\$ 1,660.08	/	income tax	loss	\$1,725.46
1977	-	payment	\$10,000.00	/	income tax	loss	\$5,884.88
1978	-	payment	\$ 2,000.00	/	income tax	loss	\$4,527.34
1978	-	payment	\$ 6,100.00	/	income tax	loss	\$3,623.58
1980	-	payment	\$ 5,000.00	/	income tax	loss	\$1,891.75
1981	-	payment	\$ 4,542.54	/	income tax	loss	\$2,708.36
1982	-	payment	\$ 2,000.00	/	income tax	loss	\$5,821.70
1983	-	payment	\$ ---	/	income tax	loss	\$1,637.04

**WARREN CHRISTENSEN:**

1974	-	payment	\$10,000.00	/	income tax	loss	\$4,277.00
1975	-	payment	\$ 2,000.00	/	income tax	loss	\$1,378.90
1976	-	payment	\$ 1,600.00	/	income tax	loss	\$1,725.46
1977	-	payment	\$10,000.00	/	income tax	loss	\$5,884.88
1978	-	payment	\$ 2,000.00	/	income tax	loss	\$4,527.34
1979	-	payment	\$ 6,100.00	/	income tax	loss	\$3,623.58
1980	-	payment	\$ 5,000.00	/	income tax	loss	\$1,981.75
1981	-	payment	\$ 2,500.00	/	income tax	loss	\$2,708.36
1982	-	payment	\$ ---	/	income tax	loss	\$1,637.04

The partnership was signed and filed after the purchase of the "White Property" and all partners knew that additional assessments had to be made and all partners made additional assessments until 1982. The 1983 assessment and the assessments through 1987 have not been paid by the Plaintiffs and the other

partners have been assessed equally to make up the payments so that the agreement on the "White Property" could be kept and properly paid. The partnership has made the payments as agreed to November of 1987.

#### SUMMARY OF ARGUMENT

Houston Investors Limited, was organized with its main purpose to purchase a piece of property known as the "White Property". The Plaintiffs knew that Houston Investors Limited had purchased the "White Property" at the time they became partners and knew that said purchase was for an extended period of time. The Plaintiffs, the general partner Don Houston, and the other limited partners paid annual assessments from 1974 until 1982. The Plaintiffs discontinued making payments in 1982 and the general partner, Don Houston, and the other limited partners made up the assessment of the Plaintiffs and continued making the payments on the "White Property". The Plaintiffs made an agreement to enter a limited partnership for a term of at least fifteen (15) years and further agreed to annual assessments to pay for the "White Property" and the Plaintiffs made annual assessments for a period of seven (7) years and should not be allowed to dissolve the partnership and request a return of their capital contribution until they have completed their side of the agreement.

## ARGUMENT

### POINT I.

THE TRIAL COURT ERRED IN DETERMINING AS A MATTER OF LAW THAT THE PLAINTIFFS WERE NOT REQUIRED TO MAKE ADDITIONAL CAPITAL CONTRIBUTIONS AND THAT PLAINTIFFS WERE ENTITLED TO A DISSOLUTION OF THE PARTNERSHIP AND A RETURN OF THE CONTRIBUTION MADE.

The courts ruling was made on the Plaintiffs Motion for Summary Judgment. The general rule relating to Summary Judgment is that a Summary Judgment is proper only if the pleadings, depositions, affidavits and admissions show that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law. In re Williams' Estates, 348 P.2d 683 (Utah 1960). It only takes one sworn statement to dispute facts on the other side of the controversy and create an issue of fact. Holbrook Company v. Adams, 542 P.2d 191 (Utah 1975). Where a Summary Judgment is granted, the adverse party, on appeal, is entitled to have the court survey the evidence in the light most favorable to the party appealing. Thompson v. Ford Motor Company, 395 P.2d 62 (Utah 1964). In the instant case the Plaintiffs claim that they are not required to make additional contributions because payment of additional contributions must be set forth in the certificate of limited partnership. This claim arises pursuant to the Utah Limited Partnership Act, Section 48-2-2 (7) which provides, in part, that the certificate of limited partnership must set forth the additional contributions, if any, agreed to be made by each

limited partner and the times at which, or events on the happening of which, they shall be made.

Defendants contend that the Utah Limited Partnership Act was passed for the purpose of limiting the liability of limited partners to third-parties. The Defendants contend that the Plaintiffs can agree with the other partners to make additional contributions and that such contributions do not necessarily have to be set out in the certificate of limited partnership. In the instant case the certificate of limited partnership sets forth the name and address of the general partner, Don Houston, and seven (7) limited partners. The partnership specifically sets forth in paragraph 18 that the interest being purchased is for a long term investment and without current intention of resale. The certificate does not set forth the duration of the partnership and the Defendants contend that that duration should be at least fifteen (15) years to conclude the payment of the White contract. Limited partnerships were not recognized at common law and are a creation of statute Evans v. Galardi, 546 P.2d 313 (Cal. 1976). The main purpose of the statute is to limit the liability of the limited partners to third parties. Hoefer v. Hall, 411 P.2d 230 (N.M. 1965). The liability of the limited partner is limited to the amount of his capital contribution 60 Am Jur 2d Section 370. The Plaintiffs contention that the partners cannot agree to make additional contributions if said contributions are not set forth in the certificate would require all partners of a limited

partnership to amend the certificate whenever additional assessments are made. This rational could be construed to mean that the Plaintiffs would not be entitled to any contributions which they did make that are not set forth in the certificate. This rational is obviously unreasonable because the partners are entitled to agree to make additional contributions and entitled to have those contributions become a part of their personal property. The Plaintiffs are also entitled to agree with the other partners to make additional contributions over a long period of time and if this agreement is made and all of the partners rely on the agreement then Plaintiffs should be responsible to the other partners for the agreement and for their actions.

This writer has not found a case in the State of Utah which specifically addresses this point. In the case of Rond v. Yeaman-Yordan-Hale Productions, 681 P.2d 1240 (1984), the court determined the following:

"We conclude that the failure to file the certificate of limited partnership does not effect the existence of the limited partnership as an entity, in a controversy between the partners themselves, where neither the interest of third-parties nor a partners claim of limited liability is involved."

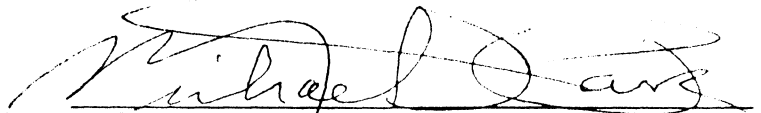
In the instant case the lawsuit is between the partners. Two (2) of the partners refuse to make payments which were agreed to when the limited partnership was formed. The failure to include the provisions of the White contract into the limited partnership certificate does not involve the interests of third-parties nor the claim of limited liability of a partner to

third-parties. The instant case is similar, however, to an agreement for the purchase or sale of real estate which is not in writing and which is violative of the statute of frauds. Section 25-5-1, Utah Code Ann (as amended 1953), provides in effect that no estate or interest in real property shall be created unless it is in writing. That statute has been modified by case law which states the general rule that a verbal agreement to convey land is within the statute of frauds and a nullity, however, a verbal agreement, if partly performed, can be enforced by the court. Price v. Lloyd, 86 P. 767 (1906). This general rule has long been followed in the State of Utah since 1906 and has never been rejected by the Supreme Court of the State of Utah.

#### CONCLUSION

The Plaintiffs made an agreement with the remaining partners in Houston Investors Limited to pay annual assessments until the debt on the "White Property" was retired. Their failure to properly perform this agreement should preclude them from dissolving the partnership and receiving their contributions at this time.

DATED this 26th day of April, 1988.



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P.O. Box 765  
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Telephone: (801) 586-6532

MAILING CERTIFICATE

I do hereby certify that on the 26th day of April, 1988, four (4) copies of the within and foregoing were served on to Dale R. Chamberlain, JONES, WALDO, HOLBROOK & McDONOUGH, attorneys for Respondents, 249 East Tabernacle, Suite 200, St. George, UT 84770; by first class mail, postage fully prepaid, on this 26th day of April, 1988.

\_\_\_\_\_  
Secretary

ADDENDUM

Account A

# Capital Accounts

12/31/83

		Total	A.J. Flood	Lin. Orton	Clark Houston	Donald Houston	Joseph Brown
1	Original Investment	11651000	741000000	741000000	741000000	741000000	741000000
2	1974 Cont	200000	-	-	-	-	-
3	1974 Loss	(3849300)	(427700)	(427700)	(427700)	(427700)	(427700)
4							
5	1975 Cont	2000000	75200000	75200000	75200000	75200000	75200000
6	1975 Loss	(1516795)	(137890)	(137890)	(137890)	(137890)	(137890)
7							
8	1976 Cont	1992072	76166008	76166008	76166008	76166008	76166008
9	✓ 1976 Loss	(1604648)	(172546)	(172546)	(172545)	(172546)	(172546)
10			(627872)			627872	
11	1977 Cont	32600000	-	771000000	771000000	2000000	771000000
12	✓ 1977 Loss	(17061860)	-	(588482)	(588482)	(1176976)	(588482)
13	1978 Cont	2200000		78200000	78200000	78400000	78200000
14	1978 Loss	(5432804)		(452734)	(452734)	(95164)	(452734)
15	Transfer 1/2 sh	-		(393325)			
16	1979 Cont	6130000		79305000	79510000	-	79610000
17	1979 Loss	(4348291)		(118178)	(322358)	(724713)	(522358)
18	1980 Cont	3970000		250000	600000	500000	
19	✓ 1980 Loss	(2081008)		(94589)	(189174)	(189259)	(189174)
20	Purch of 1 sh from Don	(5194027)		(207987)	(415973)	(1450270)	(415973)
21	Assessment Chgd against notes	2220000				1220000	500000
22							
23	12/56 1981 Cont	4099584		81327128	81654254	-	81454254
24	1981 Loss	(2979192)		(135416)	(270836)	(270836)	(270836)
25							
26	12/56 1982 Cont	6765620		400000	600000	-	200000
27	✓ 1982 Loss	(403873)		(291086)	(582170)	(582171)	(582170)
28							
29	12/56 1983 Cont	5650000		225000	650000	452000	-
30	✓ 1983 Loss	(800739)		(81850)	(163704)	(163704)	(163704)
31	Assessment Chgd against notes					(91)1454256	
32				908347	1817297	1816599	616681
33							
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1982 Assets  
800000  
1983 Assets  
450000

		Patrick Owens	Warren Christensen	Freston Adams	John Redd	Mervyn Cain	Harold Sumner
1	Original Investment	1/4 10000.00	1/4 10000.00	1/4 10000.00	1/5 10000.00	1/6 6000.00	1/5 10000.00
2	1974 Cont	1/4 2000.00					
3	1974 Loss	(4277.00)	(4277.00)	(4277.00)	-	-	-
4							
5	1975 Cont	-	1/4 2000.00	1/5 2000.00	1/6 2000.00	-	1/5 2000.00
6	1975 Loss	(1378.90)	(1378.90)	(1378.90)	(1378.90)	-	(1378.90)
7							
8	1976 Cont	1/4 1460.00	1/4 1460.00	1/4 1460.00	1/6 1460.00	1/6 1460.00	1/5 1460.00
9	1976 Loss	(1725.46)	(1725.46)	(1725.46)	(1725.45)	(1725.45)	(1725.45)
10							
11	1977 Cont	1/4 10000.00	1/4 10000.00	1/4 10000.00	1/5 10000.00	1/6 2000.00	1/5 10000.00
12	1977 Loss	(5884.29)	(5884.28)	(5884.28)	(5884.28)	(5884.28)	(5884.28)
13							
14	1978 Cont	1/4 20000.00	1/4 20000.00	1/4 20000.00	-	1/6 20000.00	1/5 20000.00
15	1978 Loss	(4527.34)	(4527.34)	(4527.34)	(4527.34)	(4527.34)	(4527.34)
16	Transfer 1/2 sh						
17							
18	1979 Cont	1/4 6100.00	1/4 6100.00	1/4 7100.00	6100.00	7100.00	5400.00
19	1979 Loss	(3623.58)	(3623.58)	(3623.58)	(3623.58)	(3623.58)	(3623.58)
20							
21	1980 Cont	5000.00	5000.00	4000.00	-	4000.00	700.00
22	1980 Loss	(1891.74)	(1891.75)	(1891.75)	(1891.75)	(1891.74)	(1891.74)
23	Purchase of 1 sh from Do	(4159.73)	(4159.73)	(4159.73)	(4159.73)	(4159.73)	(4159.73)
24	Assessment Chgd again				5000.00		
25	Notes						
26	1981 Cont	1/4 2507.47	1/4 2500.00	1/4 6542.54	1/4 2272.73	1/4 2272.73	1/4 727.2
27	1981 Loss	(2708.36)	(2708.36)	(2708.36)	(2708.36)	(2708.36)	(2708.36)
28							
29	1982 Cont	12042.54	4002.54	8000.00	4260.81	8219.21	4700.00
30	1982 Loss	(5821.70)	(5821.70)	(5821.70)	(5821.70)	(5821.70)	(5821.70)
31							
32	1983 Cont	4500.00	-	4500.00	6500.00	8500.00	12500.00
33	1983 Loss	(16370.4)	(16370.4)	(16370.4)	(16370.4)	(16370.4)	(16370.4)
34	Assessment Chgd again				(1/4) 6000.00		
35	Notes	18174.27	5660.88	18160.88	22443.98	23827.90	22945.00
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part in the control of the business. 1953

#### 48-2-8. Admission of additional limited partners.

After the formation of a limited partnership additional limited partners may be admitted upon filing an amendment to the original certificate in accordance with the requirements of section 48-2-25. 1953

#### 48-2-9. Rights, powers and liabilities of a general partner.

A general partner shall have all the rights and powers, and be subject to all the restrictions and liabilities, of a partner in a partnership without limited partners, except that without the written consent or ratification of the specific act by all the limited partners, a general partner or all of the general partners have no authority to:

(1) Do any act in contravention of the certificate.

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

(3) Confess a judgment against the partnership.

(4) Possess partnership property, or assign their rights in specific partnership property, for other than a partnership purpose.

(5) Admit a person as a general partner.

(6) Admit a person as a limited partner, unless the right so to do is given in the certificate.

(7) Continue the business with partnership property on the death, retirement or insanity of a general partner, unless the right so to do is given in the certificate. 1953

#### 48-2-10. Rights of a limited partner.

(1) A limited partner shall have the same rights as a general partner to:

(a) Have the partnership books kept at the principal place of business of the partnership, and at all times to inspect and copy any of them;

(b) Have on demand true and full information of all things affecting the partnership, and a formal account of partnership affairs whenever circumstances render it just and reasonable; and,

(c) Have dissolution and winding up by decree of court.

(2) A limited partner shall have the right to receive a share of the profits or other compensation by way of income, and to the return of his contribution as provided in sections 48-2-15 and 48-2-16. 1953

#### 48-2-11. Status of person erroneously believing himself a limited partner.

A person who has contributed to the capital of a business conducted by a person or partnership erroneously believing that he has become a limited partner in a limited partnership is not, by reason of his exercise of the rights of a limited partner, a general partner with the person or in the partnership carrying on the business, or bound by the obligations of such person or partnership; provided, that on ascertaining the mistake he promptly renounces his interest in the profits of the business or other compensation by way of income. 1953

#### 48-2-12. One person both general and limited partner.

A person may be a general partner and a limited partner in the same partnership at the same time.

A person who is a general and also at the same time a limited partner shall have all the rights and powers and be subject to all the restrictions of a general partner, except that in respect to his contribution he shall have the rights against the other members which he would have had if he were not

also a general partner. 1953

#### 48-2-13. Loans and other business transactions between partnership and limited partner.

(1) A limited partner also may lend money to, and transact other business with the partnership, and, unless he is also a general partner, receive on account of resulting claims against the partnership, with general creditors, a prorata share of the assets. If, at the time of receipt, the assets of the partnership are not sufficient to discharge partnership liabilities to persons not claiming as general or limited partners, no limited partner shall in respect to any such claim:

(a) Receive as collateral security any partnership property or,

(b) Receive from a general partner or the partnership any payment, conveyance, or release from liability.

(2) Without prior written full disclosure to all limited partners of the terms and the collateral involved in a proposed loan by a limited partner, no limited partner shall make a loan upon the security of partnership property if, at the time such loan is made, the assets of the partnership are not sufficient to discharge partnership liabilities to persons not claiming as general or limited partners.

(3) The making of a secured loan, or the receiving of collateral security, or a payment, conveyance or release in violation of the provisions of subsection (1) or (2) is a fraud on the creditors of the partnership. 1975

#### 48-2-14. Relation of limited partners inter se.

Where there are several limited partners the members may agree that one or more of the limited partners shall have a priority over other limited partners as to the return of their contributions, as to their compensation by way of income, or as to any other matter. If such an agreement is made, it shall be stated in the certificate, and in the absence of such a statement all the limited partners shall stand upon equal footing. 1953

#### 48-2-15. Compensation of limited partner.

A limited partner may receive from the partnership the share of the profits, or the compensation by way of income, stipulated for in the certificate; provided, that after such payment is made, whether from the property of the partnership or that of a general partner, the partnership assets are in excess of all liabilities of the partnership, except liabilities to limited partners on account of their contributions and to general partners. 1953

#### 48-2-16. Withdrawal or reduction of limited partner's contribution.

(1) A limited partner shall not receive from a general partner or out of partnership property any part of his contribution until:

(a) All liabilities of the partnership, except liabilities to general partners and to limited partners on account of their contributions, have been paid or there remains property of the partnership sufficient to pay them;

(b) The consent of all members is had, unless the return of the contribution may be rightfully demanded under the provisions of paragraph (2); and,

(c) The certificate is canceled or so amended as to set forth the withdrawal or reduction.

(2) Subject to the provisions of paragraph (1) a limited partner may rightfully demand the return of his contribution:

(a) On the dissolution of a partnership; or,  
(b) When the date specified in the certificate for its return has arrived; or,

(c) After he has given six months' notice in writing to all other members, if no time is specified in the certificate either for the return of the contribution or for the dissolution of the partnership.

(3) In the absence of any statement in the certificate to the contrary, or of the consent of all members, a limited partner, irrespective of the nature of his contribution, has only the right to demand and receive cash in return for his contribution.

(4) A limited partner may have the partnership dissolved and its affairs wound up when:

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

(b) The other liabilities of the partnership have not been paid, or the partnership property is insufficient for their payment as required by paragraph (1)(a) and the limited partner would otherwise be entitled to the return of his contribution. 1953

**48-2-17. Liability of limited partner to partnership.**

(1) A limited partner is liable to the partnership:

(a) For the difference between his contribution as actually made and that stated in the certificate as having been made; and,

(b) For any unpaid contribution which he agreed in the certificate to make in the future at the time and on the conditions stated in the certificate.

(2) A limited partner holds as trustee for the partnership:

(a) Specific property stated in the certificate as contributed by him, but which was not contributed or which has been wrongfully returned; and,

(b) Money or other property wrongfully paid or conveyed to him on account of his contribution.

(3) The liabilities of a limited partner as set forth in this section can be waived or compromised only by the consent of all members; but a waiver or compromise shall not affect the right of a creditor of a partnership, who extended credit or whose claim arose after the filing and before a cancellation or amendment of the certificate, to enforce such liabilities.

(4) When a contributor has rightfully received the return in whole or in part of the capital of his contribution he is nevertheless liable to the partnership for any sum, not in excess of such return with interest, necessary to discharge its liabilities to all creditors or who extended credit or whose claims arose before such return. 1953

**48-2-18. Nature of limited partner's interest in partnership.**

A limited partner's interest in the partnership is personal property. 1953

**48-2-19. Assignment of limited partner's interest.**

A limited partner's interest is assignable.

A substituted limited partner is a person admitted to all the rights of a limited partner who has died or has assigned his interest in a partnership.

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

An assignee shall have the right to become a substituted limited partner, if all the members (except the assignor) consent thereto, or if the assignor, being thereunto empowered by the certificate, gives the assignee that right.

An assignee becomes a substituted limited partner when the certificate is appropriately amended in accordance with section 48-2-25.

The substituted limited partner has all the rights and powers, and is subject to all the restrictions and liabilities, of his assignor, except those liabilities of which he was ignorant at the time he became a limited partner and which could not be ascertained from the certificate.

The substitution of the assignee as a limited partner does not release the assignor from liability to the partnership under sections 48-2-6 and 48-2-17. 1953

**48-2-20. Effect of retirement, death or insanity of a general partner.**

The retirement, death or insanity of a general partner dissolves the partnership, unless the business is continued by the remaining general partners:

(a) Under a right so to do stated in the certificate; or,

(b) With the consent of all members. 1953

**48-2-21. Death of limited partner.**

On the death of a limited partner his executor or administrator shall have all the rights of a limited partner for the purpose of settling his estate, and such power as the deceased had to constitute his assignee a substituted limited partner.

The estate of a deceased limited partner shall be liable for all his liabilities as a limited partner. 1953

**48-2-22. Rights of creditors of limited partner.**

(1) On due application to a court of competent jurisdiction by any creditor of a limited partner the court may charge the interest of the indebted limited partner with payment of the unsatisfied amount of such claim, and may appoint a receiver, and make all other orders, directions and inquiries which the circumstances of the case may require.

(2) The interest may be redeemed with the separate property of any general partner, but may not be redeemed with partnership property.

(3) The remedies conferred by paragraph (1) shall not be deemed exclusive of others which may exist.

(4) Nothing in this chapter shall be held to deprive a limited partner of his statutory exemptions. 1953

**48-2-23. Distribution of assets.**

(1) In settling accounts after dissolution the liabilities of the partnership shall be entitled to payment in the following order:

(a) Those to creditors, in the order of priority as provided by law, except those to limited partners on account of their contributions, and to general partners.

(b) Those to limited partners, in respect to their share of the profits and other compensation by way of incomes on their contributions.

(c) Those to limited partners, in respect to the capital of their contributions.

(d) Those to general partners, other than for capital and profits.

(e) Those to general partners, in respect to profits.

(f) Those to general partners, in respect to

capital

(2) Subject to any statement in the certificate, or to subsequent agreement, limited partners share in the partnership assets in respect to their claims for capital and in respect to their claims for profits or for compensation by way of income on their contributions respectively in proportion to the respective amounts of such claims 1953

**48-2-24. When certificate shall be canceled or amended.**

(1) The certificate shall be canceled when the partnership is dissolved or all limited partners cease to be such

(2) A certificate shall be amended when

(a) There is a change in the name of the partnership or in the amount or character of the contribution of any limited partner

(b) A person is substituted as a limited partner,

(c) An additional limited partner is admitted,

(d) A person is admitted as a general partner,

(e) A general partner retires, dies or becomes insane, and the business is continued under section 48-2-20,

(f) There is a change in the character of the business of the partnership

(g) There is a false or erroneous statement in the certificate,

(h) There is a change in the time as stated in the certificate for the dissolution of the partnership or for the return of a contribution

(i) A time is fixed for the dissolution of the partnership or the return of a contribution, no time having been specified in the certificate or,

(j) The members desire to make a change in any other statement in the certificate in order that it shall accurately represent the agreement between them 1953

**48-2-25. Requirements for amendment and for cancellation of certificates**

(1) The writing to amend a certificate shall

(a) Conform to the requirements of section 48-2-2(1)(a) as far as necessary to set forth clearly the change in the certificate which it is desired to make, and,

(b) Be signed and sworn to by all members, and an amendment substituting a limited partner or adding a limited or general partner shall be signed also by the member to be substituted or added, and when a limited partner is to be substituted, the amendment shall also be signed by the assigning limited partner

(2) The writing to cancel a certificate shall be signed by all members

(3) A person desiring the cancellation or amendment of a certificate, if any person designated in paragraphs (1) and (2) as a person who must execute the writing refuses to do so, may petition the district court to direct a cancellation or amendment thereof

(4) If the court finds that the petitioner has a right to have the writing executed by a person who refuses to do so, it shall order the county clerk in the office where the certificate is recorded to record the cancellation or amendment of the certificate and where the certificate is to be amended the court shall also cause to be filed for record in said office a certified copy of its decree setting forth the amendment

(5) A certificate is amended or canceled when

there is filed for record in the office of the county clerk where the certificate is recorded

(a) A writing in accordance with the provisions of paragraph (1), or (2) or,

(b) A certified copy of the order of court in accordance with the provisions of paragraph (4)

(6) After the certificate is duly amended in accordance with this section the amended certificate shall thereafter be for all purposes the certificate provided for by this chapter 1953

**48-2-26. Parties to actions**

A contributor, unless he is a general partner, is not a proper party to proceedings by or against a partnership, except where the object is to enforce a limited partner's right against or liability to the partnership 1953

**48-2-27. Provisions for existing limited partnerships.**

(1) A limited partnership formed under any statute of this state prior to May 10, 1921, may become a limited partnership under this chapter by complying with the provisions of section 48-2-2, provided the certificate sets forth

(a) The amount of the original contribution of each limited partner, and the time when the contribution was made, and,

(b) That the property of the partnership exceeds the amount sufficient to discharge its liabilities to persons not claiming as general or limited partners by an amount greater than the sum of the contributions of its limited partners

(2) A limited partnership formed under any statute of this state prior to May 10, 1921 until or unless it becomes a limited partnership under this chapter, shall continue to be governed by the provisions of Title 80, Compiled Laws of Utah, 1917 except that such partnership shall not be renewed unless so provided in the original agreement 1953