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**Partnership Realty And Its Treatment Under The
Uniform Partnership Act**

*Vlamis v. De Weese*¹

In 1921 Malin bought certain real property in Elkton and erected a building thereon. In 1921 he conveyed a half interest in said property to Deibert as a tenant in common, and the two parties thereafter held the property and operated the premises as a garage and new car dealership. Deibert died late in 1922 and left all his property, personal and real, to his wife for life, remainder to his daughter.

¹216 Md. 384, 140 A. 2d 665 (1958).

Malin continued to operate the firm business until 1931, when Deibert's widow and her sister as executrices, and Mrs. Deibert individually, executed a release of all their interest in the property for consideration of \$5,000 and assumption of all firm liabilities by Malin. Malin died in 1946 and his son as devisee sold the property to appellant Vlamis who in turn conveyed to appellant Freng, who executed a purchase money mortgage to appellant Elkton Banking and Trust Company. In 1957, Deibert's daughter, for the first time aware that she might have an interest in the garage and property, brought this suit in ejectment contending that an undivided half interest in the partnership realty passed to her as remainderman under the will of her father.

Reversing a trial court holding, the Court of Appeals ruled that the realty in question was definitely partnership property of the firm of "Malin and Deibert", and that as such it was treated as personalty under the Uniform Partnership Act.² Accordingly, it had not passed as realty under Deibert's will, but to the personal representatives of his estate, who had transferred it to the surviving partner in 1931.³

Before the adoption of the Uniform Partnership Act, the courts were slow to recognize the partnership as a legal entity and partnerships could not take property in a firm or artificial name. A transfer to the partnership was regarded as being to the partners as tenants in common.⁴ Upon the death of one partner, the surviving partner could prevail upon a court of equity to treat the real estate as personalty for the purpose of winding up the business and paying firm debts. This process was called "equitable conversion".⁵ The problem then arose as to whether the excess above what was needed to wind up the firm's affairs passed as personalty or realty. The English cases adopted the theory of "*out and out conversion*" whereby the real estate, upon the death of a partner, becomes personalty for all

² 6 MD. CODE (1957) Art. 73A, § 26:

"(Nature of Partner's Interest in the Partnership.) — A partner's interest in the partnership is his share of the profits and surplus, and the same is personal property."

³ 2 AMERICAN LAW OF PROPERTY (1952) 44, § 6.9.

⁴ Williams v. Dovell, 202 Md. 351, 354, 96 A. 2d 484 (1953); CRANE, PARTNERSHIP (2nd ed. 1952) 189, § 38. This is no longer true under the Uniform Partnership Act, 6 MD. CODE (1957) Art. 73A, § 8(3).

⁵ 37 L.R.A. (N.S.) 900; Fooks v. Williams, 120 Md. 436, 443, 87 A. 692 (1913); CRANE, *op. cit. supra* n. 4, 218, § 45; 15 WORDS AND PHRASES, Equitable Conversion, 41.

purposes.⁶ Some American courts adopted the English rule⁷ but the great weight of authority at common law was that only so much of the proceeds of real estate as were needed to wind up the business affairs and pay firm debts were converted to personalty, and that the excess passed to the heirs and devisees of the deceased partner as real property.⁸ This is known as the "*pro tanto*" theory of equitable conversion and was the rule adopted by the Maryland courts prior to the enactment of the Uniform Partnership Act in 1916.⁹

The subject case, however, clearly and decisively changes the common law rule of *pro tanto* conversion in Maryland and states emphatically that in the absence of an agreement to the contrary, Section 25 of the Uniform Partnership Act is, in effect, a codification of the English rule set out in the previous paragraph.¹⁰

The Court of Appeals in the subject case cites with approval the Maryland case of *Williams v. Dovel*¹¹ which was decided in 1953. The *Williams* case discussed Sections 25 and 26 of the Uniform Partnership Act and stated that its effect was, in the absence of an intent to the contrary, to change the common law and treat real property as personalty for all purposes. However, the court found that the partners in the *Williams* case intended to be treated as tenants in common and the court gave effect to that intention in holding that the property in question passed as real property to the heir of the deceased partner. Thus while the *Williams* case did correctly state the law under the Uniform Partnership Act, the subject case is the first in Maryland to decide that the property in question did not pass as real property, but as personalty under Sections 25 and 26 of the act. It differs from the *Williams* case on its facts, but the cases are in accord as to the effect of the Uniform Partnership Act on partnership property. The partner's interest in the partnership is his right to share in the profits and surplus, which is personal property and a mere chose in action, and is not subject to dower, curtesy or allowances to widows, heirs or next of kin.¹² Each partner

⁶ CRANE, *op. cit. supra* n. 4, 219, § 45; 68 C.J.S. 512, Partnership, *fn.* 59.

⁷ Miller v. Ferguson, 107 Va. 249, 57 S.E. 649 (1907).

⁸ 68 C.J.S. 512, Partnership, § 73; 25 A.L.R. 389.

⁹ Goodburn v. Stevens, 5 Gill 1, 27 (Md. 1847); Fooks v. Williams, 120 Md. 436, 443, 87 A. 692 (1913). Note that this latter case was decided three years prior to the adoption of the Uniform Partnership Act in Maryland.

¹⁰ 216 Md. 384, 394-5, 140 A. 2d 665 (1958).

¹¹ 202 Md. 351, 96 A. 2d 484 (1953).

¹² 6 MD. CODE (1957) Art. 73A, §§ 25, 26.

upon dissolution of the partnership, may have the partnership property applied to discharge its liabilities, and the surplus applied to pay in cash the net amount owing the respective partners.¹³ Also it has been held in Illinois that under the Uniform Partnership Act the surviving partner has a right to sell and convey, and distribute the proceeds without the aid of equity.¹⁴

The effect of the *De Weese* case in interpreting the Uniform Partnership Act, is to clear up any confusion that might previously have existed in this State. Under the Act a firm may purchase partnership realty in the firm name, and the laws which govern the powers and liabilities of partners in their relations with each other and with third parties as to personal property apply to such realty. In other words, on the death of a partner, partnership realty is treated as personalty for *all* purposes unless the partners intended otherwise.

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¹³ *Ibid.*, § 38(1).

¹⁴ *Wharf v. Wharf*, 306 Ill. 79, 137 N.E. 446 (1922).