THE FARM OPERATION AGREEMENT—PARTNERSHIP OR LEASE

The Social Security Act became applicable to self-employed farmers in 1954.[1] Owners of farms being operated by others under agreement soon discovered that if that agreement created a partnership relation between themselves and the operator, certain consequences would follow which usually were advantageous to themselves, under the Act, but if it created the relationship of landlord and tenant other consequences followed, often but not always to their disadvantage.[2] The Act was further amended in 1956, apparently to alter some of these consequences to landlords, but it may not have been changed in any significant respect.[3]

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[1] Social Security Act § 211, 64 STAT. 677 (1950), 42 U.S.C. § 411 (1952), amending 49 STAT. 620 (1935), as amended by 68 STAT. 1052 (1954), 42 U.S.C.A. § 411 (Supp. 1955).

[2] The 1950 amendments referred to in note 1 extended social security coverage to farm employees. As a result of the 1954 amendments, prior to amendments adopted in 1956 (see note 3, *infra*), the farm owner who did not operate his own farm had to be either an employee or a partner if he wished to receive self-employment income and to obtain social security coverage based on farming income. The farm owner's adult children working for him on the farm could be his "employees" for social security purposes, but minor children, spouse and parents could not, and the share of farm income received by the latter group of relatives would qualify for coverage only if they were partners of the owner-operator (or tenant-operator). But farm owners fully qualified for purposes of social security (by virtue of covered income from other sources, or covered farm income), from the time they began drawing social security (usually at age 65) until they were 72 had their payments reduced if they had more than $1200 self-employment income—and partnership income was of this type, but rentals were not. See HOW SOCIAL SECURITY COVERS FARMERS (1955).

The extension of coverage to farm owners produced some strange results. In order to get maximum coverage for social security, some owners had to find ways to increase taxable income rather than ways to minimize it. Where partnerships were considered desirable, it became necessary for those who otherwise would have been landlords to subject themselves to liability for acts performed during operation of the farm.

[3] The 1956 Amendments, Pub. L. No. 880, 84th Cong., 2d Sess., § 104(c), make it possible for some rentals or portions of rentals from farm operations to be self-employment income without finding a partnership to exist, if the arrangement provides for "material participation by the owner . . . in the production or the management of the production of such agricultural commodities, and . . . there is material participation by the owner . . . with respect to any such agricultural or horticultural commodity." It is now unnecessary, therefore, to determine whether the farm-operation agreement amounts to a partnership or to a crop-share or other type of lease. But, if the features required by the amendment are present, it is possible that state courts would deem the agreement to create a partnership. See, as bearing on the new statutory requirements, S. REP. No. 2133, 84th Cong., 2d Sess., 1946 U. S. CODE CONG. & ADM. NEWS 5353, at 5359 and 5390; 1956 FARMER'S TAX GUIDE—INCOME AND SELF-EMPLOYMENT TAXES 41; Sayre, *1956 Changes in Social Security Coverage for Landlords, Farm Operators and Partners*, Outline for Seventeenth Annual Tax School of the Iowa State Bar Ass'n 85 (1956).

Between 1954 and 1956 the emphasis seemed to be whether the arrangement created a partnership, which ordinarily was determined by applying local law.[4] Now the emphasis is whether it possesses certain features. Each of the changes in the law has increased interest in the interpretation given by state courts as to the consequences of various farm-operation agreements.[5]

When the Iowa Court determines whether an agreement is for a lease or is for a partnership, what test or tests will it consider? It has stated that there is no exclusive test to be applied, and that no one fact or circumstance is conclusive.[6] Among the factors it has discussed have been: intent of the parties; use of firm name; use of a firm bank account; use of the label "partnership" in the agreement; communities of interest (community of interest in profits and losses, community of interest in the capital employed, and community of power in administration); co-ownership; control; sharing of profits; and sharing of losses.

The crucial test, at least as between the parties to the agreement,[7] is said to be whether they intended to form a partnership.[8] However, as is true in other aspects of contract law, the intent

[4] The 1950 amendments to the Social Security Act, *supra*, note 1, included the following definition, now 42 U.S.C. § 411(d) (1952): "The term 'partnership' and the term 'partner' shall have the same meaning as when used in supplement F of Chapter 1 of Title 26." This refers to the definition of partnership and partner for income tax purposes prior to the adoption of the 1954 Internal Revenue Code. Although no change in § 411(d) has been made directly, since 1954, § 7852(b) of the Internal Revenue Code of 1954 provides that references in other laws to any provision of the Internal Revenue Code of 1939 shall, "where not otherwise distinctly expressed or manifestly incompatible with the intent thereof," be deemed to refer to the corresponding provision of the new Code.

In most instances the rules of contract and partnership of the state where the "partnership" is organized will govern in determining the existence of the partnership for federal income tax purposes. These rules may be rejected to some extent in "family partnership" situations. 2 P-H 1956 FED. TAX SERV. ¶ 15,525.

[5] The subject was discussed at several institutes held in Iowa, and a very useful paper by Professor Boyd, of the University of Iowa College of Law, appears in the Outlines for the Sixteenth Annual Tax School of the Iowa State Bar Association (1955). An early discussion of this subject appears in Note, *Share Tenancies and Partnerships*, 8 IOWA L. BULL. 95 (1923).

[6] Malvern Nat. Bank v. Halliday, 195 Iowa 734, 736, 192 N.W. 843, 845 (1923).

[7] Several early nineteenth century English decisions suggested that a profit-sharing arrangement would be a partnership as to third persons, though there was no holding out that the sharers were partners nor any other grounds for estoppel, in instances where as between the sharers themselves there was no partnership. Some American decisions took this view, but it was rejected in a later English decision and by most American courts. CRANE, PARTNERSHIP §§ 4, 14 (2d ed. 1952); Note, *Share Tenancies and Partnerships*, 8 IOWA L. BULL. 95 (1923). Several early Iowa decisions reflect the influence of that view. Reed v. Murphy, 2 G.Greene 574 (Iowa 1850); Price & Co. v. Alexander & Co., 2 G.Greene 427 (Iowa 1850).

[8] Malvern Nat. Bank v. Halliday, 195 Iowa 734, 192 N.W. 843 (1923).

test turns not on subjective but on objective factors.[9] Therefore, the agreement requires analysis, and if it contains only a part of the elements of a partnership,[10] the terms therein, the circumstances under which it was entered into, and the subsequent conduct of the parties thereto become of great significance.[11] What factors does the Court look for, in its search for intent?

Do the parties, or some of them, describe themselves as partners? Has a firm name been adopted? In some instances, use of the terms "partnership" and "partners", or reference to the enterprise as "the firm" has been considered of much significance.[12]

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[9] CRANE, PARTNERSHIP § 5 (2d ed. 1952); Note, *Share Tenancies and Partnerships*, 8 IOWA L. BULL. 95, 99 (1923). *Fleming v. Fleming*, 194 Iowa 71, 174 N.W. 946, 180 N.W. 206, 184 N.W. 296 (1922), involved an attempt by the wife of a deceased alleged partner to assert a dower claim to his interest in the firm. It was contended that the agreement between the co-owners of the business, to enter into a joint enterprise, share profits, and permit the surviving co-owners to take the property of the firm, was a joint tenancy rather than a partnership. The Court held that despite the subjective intent not to create a partnership, apparent in the written agreements, it would be presumed from the facts, and the provisions of the agreement, that a partnership was intended. There are several other cases in which the parties thought, or subsequently state that they thought they were not creating a partnership, and the court held they did not do so. Smith, Landeryou & Co. v. Hollingsworth, 218 Iowa 920, 251 N.W. 749 (1934) (a loan was intended); Kinney v. Bank of Plymouth, 213 Iowa 267, 236 N.W. 31 (1931) (a corporation was intended but never organized; the investment of those intending shareholders who were inactive in the business was treated as a loan); Taylor v. Successful Farmer Publishing Co., 197 Iowa 618, 196 N.W. 77 (1924) (the third party, plaintiff, may have had some information indicating that defendants were not partners). On the other hand, in *Munson v. Sears*, 12 Iowa 172 (1861), despite the claim of plaintiff that he thought his agreement with defendant created a partnership, and that he had made payments to defendant on that belief, the Court held there was no partnership intended.

[10] Section 6 of the Uniform Partnership Act defines a partnership as "an association of two or more persons to carry on as co-owners a business for profit." Although the Act has not been adopted by the Iowa legislature, it is believed that the definition would meet with approval by the Court. A possible explanation for the result of *Munson v. Sears*, 12 Iowa 172 (1861), may be that the Court felt there was no agreement to carry on a business. In that case defendant, the owner of a large tract of land, allegedly promised to convey a half-interest in portions of it to plaintiff if plaintiff paid one-half its cost plus cost of improvements already made and any improvements subsequently to be made, and to sell other portions of the tract and divide the profits. *Loetscher v. Dillon*, 119 Iowa 202, 93 N.W. 98 (1903), where several stockholders jointly purchased the stock of another and were held not thereby to be partners, may have a similar explanation. See CRANE, PARTNERSHIP §§ 12, 13, 14 (2d ed. 1952).

[11] The partnership contract need not be in writing. Daniel v. Best, 224 Iowa 1348, 279 N.W. 374 (1938); York v. Clemens, 41 Iowa 95 (1875). However, the person claiming a partnership was created "has the burden of establishing the existence of the alleged partnership by proof that was clear, satisfactory and convincing." Butler v. Lloyd, 230 Iowa 422, 426, 297 N.W. 871, 873 (1941). To reduce the difficulty of determining intent, the agreement should be reduced to writing.

[12] Nelson v. Barnick, 245 Iowa 982, 63 N.W.2d 911 (1954) (letters between the parties referred to "partnership"; in addition federal partnership income tax returns were filed, defendant "partner", however, claiming he wasn't aware of the returns and denied his signature there-

But, on other occasions, despite reference to "partnership" and "partners", the agreement was held not to create a partnership,[13]

on); Miller v. Merritt, 233 Iowa 230, 8 N.W.2d 726 (1943) (see page 48, *infra*); Danico v. Ford, 230 Iowa 1237, 300 N.W. 547 (1941) (written agreement drawn by attorney called the parties co-partners; federal and state partnership income tax returns were filed for many years); Lutz v. Billick, 172 Iowa 543, 154 N.W. 884 (1915) (frequent statements by deceased owner of farm to neighbors that he and his brother, who worked together on the farm, were partners); Duff v. Baker, 78 Iowa 642, 43 N.W. 463 (1889) (farm owner and operator who also carried on the business of buying and selling hay executed a written agreement reciting that their "firm" was dissolved by mutual consent).

In one instance the Court observed that there was no reference to "partnership" or "partner" but concluded that the arrangement was a partnership. Fleming v. Fleming, 194 Iowa 71, 174 N.W. 946, 180 N.W. 206, 184 N.W. 296 (1922). In several instances, in which it was held that no partnership was created, the Court commented on the failure to refer to "partnership" or "partners". *In re* Estate of Hewitt, 245 Iowa 369, 62 N.W.2d 198 (1954) (claim by two brothers that property in the name of another brother, the deceased, was partnership property; no claim that a partnership existed was shown to have been made prior to his death); Butz v. Hahn Paint & Varnish Co., 220 Iowa 995, 263 N.W. 257 (1936) (the parties did not use the term "partnership" in making their oral contract, and the Court concluded from this and other factors that their relation was that of employer and employee); Smith, Landeryou & Co. v. Hollingsworth, 218 Iowa 920, 251 N.W. 749 (1934) (no such reference in the agreement executed by the two admitted partners and by a lender of collateral; the two partners also testified that the lender was not a partner—had he been, he would have shared their liability to certain claimants); Winter v. John Pipher & Co., 96 Iowa 17, 64 N.W. 663 (1895) (held to be an employment contract).

Criswell v. Criswell, 225 Iowa 1219, 282 N.W. 337 (1938), was an unsuccessful attempt by one brother to establish that he and the defendant brother were partners in a farming operation on defendant's land. At one time they owned the land jointly and admittedly were partners, but plaintiff had sold out to defendant in 1930 and moved away. Three years later he returned, moved onto a part of the land and farmed it. He claimed this was under an oral agreement amounting to a partnership. The Court's opinion does not indicate that the parties referred to their arrangement as a partnership, and the federal corn-hog contracts in 1934 and 1935 were signed by each brother as an individual for his own part of the farm.

[13] Butler v. Lloyd, 230 Iowa 422, 297 N.W. 871 (1941) (majority held no partnership between husband and wife, despite evidence of statements by both to disinterested persons that they were partners in a business in part of lending money on notes and mortgages, because in suits on notes held in the name of one or the other it was alleged that the holder was the owner, in deeds given by them she only released dower, she often referred persons inquiring about property in his name to him, there were no partnership income tax returns, no firm name, no firm bank account; two judges dissented); DeLong v. Whitlock, 204 Iowa 701, 215 N.W. 954 (1927) (plaintiff sued five defendants as partners, three of them including his father admitted that all five were partners but the other two denied this, and no other evidence of partnership was introduced); *In re* Estate of Schultz, 196 Iowa 125, 194 N. W. 242 (1923) (declarations by son who was operating the family farm that he and his father were partners, as a result of which claimant loaned money on notes signed only by the son, held excludible because not shown to have been made in the presence of or with the father's knowledge; as an alternative theory, if there was a partnership it was non-trading and there was no showing the son was authorized to or did borrow for the partnership); Francis v. Francis, 180 Iowa 1191,

and although an arrangement in a lease between a farm-owner and his farm-operator with respect to hogs was admittedly that of partnership, the agreement as to the balance of the farm operation was considered a lease.[14] Where a firm name has been used, this usually has proved helpful to those claiming a partnership was formed.[15] However, as the Court has commented, "The use of

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162 N.W. 839 (1917) (sister of decedent farm owner, who kept house for him and worked with him, held not to be partner despite evidence that each had referred to themselves as partners; but Court held there was a contract to convey the farm to the sister for services rendered during brother's lifetime); Miller v. Baker, 161 Iowa 136, 140 N.W. 407 (1913) (testimony during trial of suit between parties to agreement); Doyle v. Burns, 123 Iowa 488, 99 N.W. 195 (1904) (reference to each other as partners in agreement to operate Colorado mining claims); Munson v. Sears, 12 Iowa 172 (1861) (see description of facts in notes 9 and 10, *supra*).

[14] Vosges v. Clark, 240 Iowa 1108, 38 N.W.2d 611 (1949) (landlord-plaintiff suing tenant-defendant pleaded that they were partners as to certain animals, this was admitted in the answer and it was also claimed therein that the entire arrangement was a partnership).

[15] Miller v. Merritt, 233 Iowa 230, 8 N.W.2d 726 (1943); Danico v. Ford, 230 Iowa 1237, 300 N.W. 547 (1941) (trade name statement filed, showing the two parties as interested in the business; also partnership income tax returns filed); Malvern Nat. Bank v. Halliday, 195 Iowa 734, 192 N.W. 843 (1923); Lutz v. Billick, 172 Iowa 543, 154 N.W. 884 (1915) (deceased farm owner, referring to operating arrangement with his brother, told an outsider "it shall be known as the Billick Bros."); Johnson Brothers v. Carter & Co., 120 Iowa 355, 94 N.W. 850 (1903); Duff v. Baker, 78 Iowa 642, 43 N.W. 463 (1889).

In several instances there was use of a trade name but the Court found no partnership. Butz v. Hahn Paint & Varnish Co., 220 Iowa 995, 263 N.W. 257 (1936) (workmen's compensation proceedings, defense that "employee" was a partner in refrigerator sales agency, a showing that the trade name used covered the employer's paint and wallpaper enterprise as well and the "employee" had no interest in those other activities); Citizens Bank of Milo v. C. F. Scott & Son, 217 Iowa 584, 250 N.W. 626 (1934) (father, owning farm and operating it with his son, borrowed money from bank in name of C. F. Scott & Son, and opened an account with the bank in that name; but there is no other evidence of partnership, no statements by the son to the bank, and no evidence he knew of father's use of a firm name or of the bank account); Miles v. Miles, 168 Iowa 153, 150 N.W. 21 (1914) (mother claimed father left his business to son on condition son pay mother $30 per month; son claimed he and father were partners, and showed they used the firm name "J. M. Miles & Son"; but the only written agreement made the son an employee in the business, and no subsequent change was proved); In re Estate of McDonald, 167 Iowa 582, 149 N.W. 897 (1914) (Son, apparently in business, had bank account in name of Finley McDonald & Son, which he overdrew; Finley, his father, was a farmer and was not shown to have any connection with the son's activities); McBride v. Ricketts, 98 Iowa 539, 67 N.W. 410 (1896) (action for receivership of alleged partnership and accounting, defendant having transferred assets to his wife to satisfy a valid claim owed her, where the Court held that under the agreement plaintiff was only an employee; the business had operated under the firm name of Ricketts and McBride, but the principal creditor, a bank, had a copy of the agreement); Winter v. John Pipher & Co., 96 Iowa 17, 64 N.W. 663 (1895) (Court says the firm name was used to differentiate the business from other businesses carried on by the employer).

In several instances where no partnership was found the Court commented on the absence of a firm name. DeLong v. Whitlock, 204 Iowa 701, 215 N.W. 954 (1927); Munson v. Sears, 12 Iowa 172 (1861) ("there

the term 'partnership' is not essential, and the adoption of a firm name may be dispensed with."[16] "It will be observed that nowhere in this lease do the parties refer to the arrangement as a partnership. This of itself is not necessarily controlling."[17]

Does the "firm" have a partnership bank account? This is not a requisite, but in at least one instance where the Court deemed the relation created to be that of partnership, it noted there was a bank account in the name of the firm, to which both parties had access.[18]

Is there a community of interest between the parties? In *Malvern National Bank v. Halliday,* the Court says:

> "A partnership has its origin in contract either express or implied. It is the result of contract creating a relation or status, and in the solution of the problem presented a court necessarily attempts to find the legal elements essential to the creation of that status. The salient features of an ordinary partnership are (1) a community of interest in profits and losses (2) a community of interest in the capital employed and (3) a community of power in administration. These are the primary tests and constitute the indicia of the existence of a partnership."[19]

These three "communities" will be considered in reverse order.

Community of power in administration may involve the same factors as tests of "control" or "management." In family partnership cases, where one partner has contributed neither capital nor services, his management rights become a significant element.[20] While the Iowa Court has at times stressed management

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was no investment of a partnership fund, no agreement that any business should be carried on in a firm name."). However, in one case where a defendant had supplied cash to an inventor, to enable him to develop and test a corn planter, defendant to furnish more funds if the test successful, the inventor to supply talent and run the business and profits to be divided 60% to defendant and 40% to the inventor, the defendant being entitled to treat the contract as null and void if the tests were unsuccessful and to recover as much of his contribution as sale of the planters would bring, the fact that no firm name was used did not prevent a finding that defendant was a partner. Illinois Malleable Iron Co. v. Reed, 102 Iowa 538, 71 N.W. 423 (1897).

[16] Johnson Brothers v. Carter & Co., 120 Iowa 355, 361, 94 N.W. 850, 852 (1903).

[17] Florence v. Fox, 193 Iowa 1174, 1178, 188 N.W. 966, 967 (1922), discussed *infra* at page 47.

[18] Miller v. Merritt, 233 Iowa 230, 8 N.W.2d 726 (1943). In two instances in which partnerships were not found, the Court noted there was no firm bank account. DeLong v. Whitlock, 204 Iowa 701, 215 N.W. 954 (1927); *In re* Estate of Schultz, 196 Iowa 125, 194 N.W. 242 (1923). In another case it was held that use of a bank account in what apparently was a firm name was not enough to establish a partnership, where there was no evidence the alleged partner (the son) knew of the account or had used it; the Court also commented that it could be simply a bookkeeping device. Citizens Bank of Milo v. C. F. Scott & Son, 217 Iowa 584, 250 N.W. 626 (1934).

[19] 195 Iowa 734, 739, 192 N.W. 843, 846 (1923).

[20] Commissioner v. Tower, 327 U.S. 280, 290 (1946); Note, 35 IOWA L. REV. 98, 100-102 (1949); 1 P-H 1956 FED. TAX SERV. ¶ 15,520.

rights (whether exercised or not),[21] it has also recognized that a partnership may exist even though the agreement limits the management rights of some or all the partners.[22] It would also appear that the farm-operation agreement may contain restrictions as to the manner in which the operator will perform, yet constitute a lease.[23]

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[21]Johanik v. Des Moines Drug Co., 235 Iowa 679, 17 N.W.2d 385 (1945) (both parties entitled to possession of farm, owner to keep books —a joint venture); Miller v. Merritt, 233 Iowa 230, 8 N.W.2d 726 (1943) (both to cooperate fully in management—partnership); Butz v. Hahn Paint & Varnish Co., 220 Iowa 995, 263 N.W. 257 (1936) (owner handled all receipts and disbursements, hired an assistant without consulting his alleged partner, and told the assistant he was going to fire the alleged partner—no partnership); Kinney v. Bank of Plymouth, 213 Iowa 267, 236 N.W. 31 (1931) (money invested in proposed incorporation of an existing private bank, which was never incorporated but continued to operate, the investors never met and never participated in the business —no partnership); Malvern Nat. Bank v. Halliday, 195 Iowa 734, 192 N.W. 843 (1923) (see page 48, *infra);* Florence v. Fox, 193 Iowa 1174, 188 N.W. 966 (1922) (see page 47, *infra); Lutz v. Billick,* 172 Iowa 543, 154 N.W. 884 (1915) (in finding partnership, Court considered evidence of the manner in which the farm was operated and how each brother participated in the work and control); Johnson Brothers v. Carter & Co., 120 Iowa 355, 94 N.W. 850 (1903) (defendant, who claimed he was only a creditor, supplied a bookkeeper to oversee the work; the bookkeeper did all the purchasing and handling of funds; and defendant told a banker that anything the bookkeeper did was with his consent—a partnership); Clark v. Barnes & Sons, 72 Iowa 563, 34 N.W. 419 (1887) (creditor, who agreed to extend further credit for share of profits, was not shown to have any control—not partnership); Reed v. Murphy, 2 G.Greene 574 (Iowa 1850) (owner of building leased it to firm for $1 plus one-fourth the profits after expenses, and agreed to devote his full time to the firm's business; some evidence that others did all purchasing and treated owner as an employee; an instruction to the jury that the owner was not a partner was upheld, with the comment that he had no interest or control in the business such as a partner has); Price & Co. v. Alexander & Co., 2 G.Greene 427 (Iowa 1850) (owner of wharf and warehouse agreed to let owner of boat and storage business use some of his facilities; Court found there was no right of control or management by one over the other's business—no partnership).

Occasionally the Court has found that, although the alleged partner was the manager of the business, he was in fact an employee or an agent. Williams v. Herring, 183 Iowa 127, 165 N.W. 342, L.R.A. 1918F 798 (1918) (contract to manage for five years, at fixed wage plus 30% of profits, with right to purchase 30% of business at any time); Winter v. John Pipher & Co., 96 Iowa 17, 64 N.W. 663 (1895) (contract for operation of drug store, which stated that owner was to have control at all times, and limited the amount either party could draw monthly from his share of the profits).

[22] Florence v. Fox, 193 Iowa 1174, 1180, 188 N.W. 966, 968 (1922); Illinois Malleable Iron Co. v. Reed, 102 Iowa 538, 71 N.W. 404 (1897) (agreement that one party would supply capital, the other an invention, his talent, and he would operate the business, sharing profits—held a partnership). See CRANE, PARTNERSHIP §§ 5, 53 (2d ed. 1952).

[23] O. W. Richardson & Co. v. Carlton, 109 Iowa 515, 80 N.W. 532 (1899) (defendant invested in T's business, T agreeing to operate it for five years, to devote full time, to maintain a minimum stock, not to move his location except with defendant's consent; defendant was to get "an annual dividend" of 10% per year on his investment; Court refused to imply an agreement to share losses and held defendant not a partner in T's business); CRANE, PARTNERSHIP § 17 (2d ed. 1952).

The requirement of community of interest in capital employed is readily satisfied if each associate has contributed assets to the firm. It is also satisfied if one contributes assets and another services,[24] or if one contributes only the use of his property rather than the property itself.[25] On the other hand, co-ownership of property which is used or operated in a joint quest for profits does not necessarily meet this requirement and may not result in a partnership.[26] This fact indicates that there may be a partnership to which one partner has contributed no tangible property, or in which one has no interest in tangible property other than in the firm's right to use, and that there may be no partnership even though all parties have an interest in the assets involved.

The remaining community of interest is that "in profits and losses." This may be similar to or identical with the tests of profit sharing and loss sharing. An agreement which provides expressly for sharing of profits and losses is without question one of partnership (or joint venture).[27] If the agreement fails to

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[24] Illinois Malleable Iron Co. v. Reed, 102 Iowa 538, 71 N.W. 404 (1897); Kuhn v. Newman, 49 Iowa 424 (1878). In one instance one partner contributed most of the capital and both contributed services. Danico v. Ford, 230 Iowa 1237, 300 N.W. 547 (1941). In another instance the Court held a partnership was created, under an agreement to acquire and resell land, where one party contributed $5 which was used as a down payment on the land, the land was then resold by him at a profit, and neither party made further contribution. Heard v. Wilder, 81 Iowa 421, 46 N.W. 1075 (1890). In several instances, one party contributed capital, the other rendered services, but the Court determined that their arrangement was one of employment rather than partnership. Butz v. Hahn Paint & Varnish Co., 220 Iowa 995, 263 N.W. 257 (1936); Williams v. Herring, 183 Iowa 127, 165 N.W. 342, L.R.A. 1918F 798 (1917); Winter v. John Pipher & Co., 96 Iowa 17, 64 N.W. 663 (1895).

[25] Dieter v. Coyne, 201 Iowa 823, 825, 208 N.W. 359, 360 (1926); Kuhn v. Newman, 49 Iowa 424 (1878); CRANE, PARTNERSHIP § 14 (2d ed. 1952); Note, *Share Tenancies and Partnerships*, 8 IOWA L. BULL. 95, 98 (1923).

[26] Myers v. Blinks, 232 Iowa 1238, 7 N.W.2d 819 (1943); (dicta); Farmers & Merchants Nat. Bank v. Anderson, 216 Iowa 988, 250 N.W. 214 (1933) (holder of interest in business trust organized in Texas is not a partner, under Iowa law, even though under Texas law he would be considered a partner); Johnson v. Watland, 208 Iowa 1370, 227 N.W. 410 (1929) (farm owner and operator sold out at joint sale; though they had joint ownership of what was sold, they were not partners); McCarney v. Lightner, 188 Iowa 1271, 1279, 175 N.W. 751, 754 (1920); Doyle v. Burns, 123 Iowa 488, 99 N.W. 195 (1904) (mining claim); Loetscher v. Dillon, 119 Iowa 202, 93 N.W. 98 (1903) (corporate stock); Iliff v. Brazill, 27 Iowa 131 (1869) (threshing machine). Cf. Richards v. Grinnell, 63 Iowa 44, 18 N.W. 668 (1884) (permitting implication of loss sharing because of co-ownership) *with* Ruddick v. Otis & Snow, 33 Iowa 402 (1871) (denying implication of loss sharing, where no co-ownership). See also CRANE, PARTNERSHIP § 12 (2d ed. 1952); Note, *Share Tenancies and Partnerships*, 8 IOWA L. BULL. 95, 98 (1923).

[27] Myers v. Blinks, 232 Iowa 1238, 7 N.W.2d 819 (1943) (by implication); Malvern Nat. Bank v. Halliday, 195 Iowa 734, 192 N.W. 843 (1923) (by implication).

provide for profit-sharing, there is no partnership.[28] The Iowa Court has indicated that an express denial of loss-sharing also means no partnership,[29] although it is believed that an agreement which otherwise appeared to create a partnership would be considered to have done so even though one party thereto may have the equivalent of a "hold harmless" guarantee from the others.[30] Sharing of losses is said to be essential.[31]

In its emphasis on sharing of losses, the Iowa Court's approach on the surface appears to differ with that found in section 7(4) of the Uniform Partnership Act. That subsection provides:

> "The receipt by a person of a share of the profits of a business is prima facie evidence that he is a partner in the business, but no such inference shall be drawn if such profits were received in payment:
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> (a) As a debt by installments or otherwise.
> (b) As wages of an employee or rent to a landlord.
> (c) As an annuity to a widow or representative of a deceased partner.
> (d) As interest on a loan, though the amount of payment vary with the profits of the business.
> (e) As the consideration for the sale of the good will of a business or other property by installments or otherwise."

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[28] In re Estate of Hewitt, 245 Iowa 369, 62 N.W.2d 198 (1954); Kinney v. Bank of Plymouth, 213 Iowa 267, 236 N.W. 31 (1931); DeLong v. Whitlock, 240 Iowa 701, 215 N.W. 954 (1927); Marshalltown Mut. Plate Glass Ins. Assn. v. Bendlage, 195 Iowa 1200, 191 N.W. 97, 193 N.W. 448 (1922) (mutual insurance association, formed to share losses, was not entitled to sue in its common name, a privilege restricted to corporations and partnerships); Francis v. Francis, 180 Iowa 1191, 1209, 162 N.W. 839, 846 (1917); Miles v. Miles, 168 Iowa 153, 150 N.W. 21 (1914); O. W. Richardson & Co. v. Carlton, 109 Iowa 515, 80 N.W. 532 (1899).

[29] Farmers & Merchants Nat. Bank v. Anderson, 216 Iowa 988, 250 N.W. 214 (1933); Veenstra v. Mathews, 194 Iowa 792, 190 N.W. 382 (1922); O. W. Richardson & Co. v. Carlton, 109 Iowa 515, 80 N.W. 532 (1899). In one instance, because one of the parties testified "nothing was said about losses", and "Q. There wasn't any agreement you should share losses if there should be any? A. No, Sir.", the Court said no agreement to share losses could be implied. From the quoted testimony it might instead have been inferred only that the subject was never discussed. Richman v. Richman, 190 Iowa 462, 180 N.W. 182 (1920).

[30] In Note, *Share Tenancies and Partnerships*, 8 IOWA L. BULL. 95, at 98 (1923), it is stated that many states so hold, but the writer of the Note believes the Iowa Court disagrees. While the Court has emphasized the necessity of loss sharing (see cases in note 31, *infra*) it is arguable that a "hold harmless" clause does not necessarily prevent loss-sharing. The beneficiary of the clause would be entitled to reimbursement to the extent held liable for losses of the firm, but could be subjected to liability by a third party having claims against the firm, and if the "sureties" were unable to perform as they had guaranteed, he would not receive full reimbursement.

[31] Farmers & Merchants Nat. Bank v. Anderson, 216 Iowa 988, 250 N.W. 214 (1933); Malvern Nat. Bank v. Halliday, 195 Iowa 734, 192 N.W. 843 (1923); Veenstra v. Mathews, 194 Iowa 792, 190 N.W. 382 (1922); Florence v. Fox, 193 Iowa 1174, 188 N.W. 966 (1922); Miller v. Baker, 161 Iowa 136, 140 N.W. 407 (1913); Haswell v. Standring, 152 Iowa 291, 132 N.W. 417 (1911).

However, although the Iowa Court requires the showing of profits to be indicated clearly,[32] from the fact that profits are shared, and from other facts, the Court in many instances has permitted an inference that losses were to be shared though there was no provision expressly relating to losses.[33] But, the Court has said, loss sharing will not be implied where profit sharing was intended as compensation for services,[34] or as return for lending of money,[35] or extending of credit,[36] or for rent to a landlord.[37] This last

[32] Kinney v. Bank of Plymouth, 213 Iowa 267, 236 N.W. 31 (1931); Marshalltown Mut. Plate Glass Ins. Assn. v. Bendlage, 195 Iowa 1200, 191 N.W. 97, 193 N.W. 448 (1922).

[33] Nelson v. Barnick, 245 Iowa 982, 63 N.W.2d 911 (1954) (letters referring to "partnership", and partnership tax returns filed); Miller v. Merritt, 233 Iowa 230, 8 N.W.2d 726 (1943) (firm name, references to firm and partnership, firm bank account, cooperation in management); Danico v. Ford, 230 Iowa 1237, 300 N.W. 547 (1941) (trade name statement, partnership tax returns, reference to the parties as copartners in agreement drawn for them by attorney); Malvern Nat. Bank v. Halliday, 195 Iowa 734, 192 N.W. 843 (1923) (firm name); Veenstra v. Mathews, 194 Iowa 792, 190 N.W. 382 (1922) (investor in auto supply business was a farm woman ignorant of that business, she never supervised it or its accounts; *but*, the Court noted she would be entitled to an accounting whether the arrangement was partnership or principal-agent); Fleming v. Fleming, 194 Iowa 71, 174 N.W. 946, 180 N.W. 206, 184 N.W. 296 (1922) (business carried on by joint efforts); Lutz v. Billick, 172 Iowa 543, 154 N.W. 884 (1915) (references to partners and firm name, in discussion with outsiders; mutual efforts and management); Johnson Brothers v. Carter & Co., 120 Iowa 355, 94 N.W. 850 (1903) (control by, and statements of, investor); Richards v. Grinnell, 63 Iowa 44, 18 N.W. 668 (1884) (joint ownership of land, the subject of the business).

[34] Butz v. Hahn Paint & Varnish Co., 220 Iowa 995, 263 N.W. 257 (1936); McCarney v. Lightner, 188 Iowa 1271, 175 N.W. 751 (1920); Williams v. Herring, 183 Iowa 127, 165 N.W. 342, L.R.A. 1918F 798 (1918); Miller v. Baker, 161 Iowa 136, 140 N.W. 407 (1913); Johnson Brothers v. Carter & Co., 120 Iowa 355, 94 N.W. 850 (1903) (dicta); McBride v. Ricketts, 98 Iowa 539, 67 N.W. 410 (1896) (despite use of firm name); Porter v. Curtis, Morris & Diver, 96 Iowa 539, 65 N.W. 824 (1896); Winter v. John Pipher & Co., 96 Iowa 17, 64 N.W. 663 (1895) (despite use of firm name); Holbrook & Co. v. Oberne, McDanield & Co., 56 Iowa 324, 9 N.W. 291 (1881); Ruddick v. Otis & Snow, 33 Iowa 402 (1871); Reed v. Murphy, 2 G.Greene 574 (Iowa 1850). See CRANE, PARTNERSHIP § 16 (2d ed. 1952); Note, *Share Tenancies and Partnerships*, 8 IOWA L. BULL. 95, 96 (1923).

[35] Smith, Landeryou & Co. v. Hollingsworth, 218 Iowa 920, 251 N.W. 749 (1934); Kinney v. Bank of Plymouth, 213 Iowa 267, 236 N.W. 31 (1931); Johnson Brothers v. Carter & Co., 120 Iowa 355, 94 N.W. 850 (1903) (dicta); O. W. Richardson & Co. v. Carlton, 109 Iowa 515, 80 N.W. 532 (1899); Clark v. Barnes & Sons, 72 Iowa 563, 34 N.W. 419 (1887); Williams v. Soutter, 7 Iowa 435 (1859). See CRANE, PARTNERSHIP §§ 15, 19 (2d ed. 1952), Note, *Share Tenancies and Partnerships*, 8 IOWA L. BULL. 95, 96 (1923).

[36] Smith, Landeryou & Co. v. Hollingsworth, 218 Iowa 920, 251 N.W. 749 (1934); Clark v. Barnes & Sons, 72 Iowa 563, 34 N.W. 419 (1887).

[37] *Farm operation arrangements*: Wilson v. Fleming, 239 Iowa 718, 31 N.W.2d 393 (1948); Criswell v. Criswell, 225 Iowa 1219, 282 N.W. 337 (1938) (brothers, each operating portions of farm owned by one, signed individual federal corn-hog contracts); Taylor v. Successful Farmer Publishing Company, 197 Iowa 618, 196 N.W. 77 (1924); *In re* Estate of Schultz, 196 Iowa 125, 194 N.W. 242 (1923) (alternative theory, that if partnership, it was non-trading, and one partner had no author-

qualification is of especial significance in determining the effect of a farm-operation agreement.

In an early case it was said that, where two parties entered into an oral contract under which one party, owning a farm, permitted the other

> "to have the use of the land, teams and implements, including the machinery for pressing hay, and to furnish all seed for planting crops, and do all the labor, and each one of the parties was to have one-half of the net proceeds of the enterprise",

the result was "merely the relation of landlord and tenant". For, if the Court were to hold otherwise, "it would be a great surprise to thousands of landlords and tenants in this state."[38] Later, in *Florence v. Fox,* in dealing with a written agreement the Court commented:

> "The courts hold quite generally that there are obvious reasons for holding that farm contracts or agricultural agreements, by which the owner of land contracts with another that such land shall be occupied and cultivated by the latter, each party furnishing a certain portion of the seed, implements and stock, and that the products shall be divided at the end of a given term, or sold and the proceeds divided, shall not be construed as creating a partnership between the parties. Such agreements are common in this country, and are usually very informal in their character, often resting in parol. In the absence of stipulations or evidence clearly manifesting a contrary purpose, it will not be presumed that the parties to such an agreement intended to assume the important and intricate responsibility of partners, or to incur the inconveniences and dangers frequently incident to that relation."[39]

And in *Wilson v. Fleming,* construing an agreement to be an oral stock share lease, the Court said:

> "Courts are reluctant to construe an arrangement such as this between a farm owner and occupant as a partnership unless such relation is cleary shown."[40]

Florence v. Fox[41] is, probably, the leading case in which a farm-operation agreement was construed as a lease. The agree-

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ity to issue notes binding the firm); Florence v. Fox, 193 Iowa 1174, 188 N.W. 966 (1922); Duff v. Baker, 78 Iowa 642, 43 N.W. 463 (1889).

(b) *Other types of arrangements:* Richman v. Richman, 190 Iowa 462, 180 N.W. 182 (1920) (uncle having new car agency also permitted nephew to share his business building; nephew had garage and agency for another line of cars); Price & Co. v. Alexander & Co., 2 G.Greene 427 (Iowa 1850) (owner of wharf and warehouse allowed their use by owner of boat and storage business).

[38] Duff v. Baker, 78 Iowa 642, 643, 43 N.W. 463, 464 (1899). The Court decided, however, that the parties were not landlord and tenant but were partners, as they appeared primarily to be engaged in buying and selling hay under a firm name, rather than in operating the farm, and they had executed an agreement dissolving their firm.

[39] 193 Iowa 1174, 1178, 188 N.W. 966, 968 (1922).

[40] 239 Iowa 718, 733, 31 N.W.2d 393, 401 (1948).

[41] 193 Iowa 1174, 188 N.W. 966 (1922).

ment, in writing, related primarily to livestock and grain operations. Under it the farm owner furnished land, some grain, stock and machinery, the operator furnished his labor, some grain, stock and machinery, and each shared in the produce. In addition the owner furnished a gasoline engine, the operator a cane mill, each was to pay one-half the expenses of operation of the mill, and to share equally in the profits. Plaintiff, hired by the operator to work in the mill, was injured, and sued both as partners. While the Court commented that the owner had no control over profits while undivided, and no rights in management, and that there was no well defined business in manufacturing sorghum—it was incidental to farming, the Court said—the major point stressed was that no agreement for sharing of losses could be implied. It was argued that loss-sharing could be implied from the agreement that each would pay one-half the expenses, but the Court held that expenses were not sufficiently equivalent to losses to justify that implication.[42] There are several other instances involving farm-operation agreements which were held to contain no implication of sharing of losses.[43]

Malvern National Bank v. Halliday,[44] *Miller v. Merritt*,[45] and *Johanik v. Des Moines Drug Company*,[46] are the principal decisions construing farm-operation agreements as partnerships. In the *Malvern Bank* case, after discussing intent of the parties, communities of interest, and profit sharing alone, the Court stated that liability for losses (or loss-sharing) could be implied "where the fact of partnership is established by other evidence."[47] Among the evidence establishing that fact were the provisions in the agreement for a firm name, and that if, on final settlement the parties could not agree as to division of property, either would purchase the other's interest in the *firm* property, or it would be sold on the market and the proceeds divided. The effect of this decision was to prevent plaintiff bank from claiming certain sheep

[42] On first blush it would seem that if expenses were shared, the result would be to share losses. The Court, however, thought otherwise, and in explaining its position asked whether the landlord would be responsible for half the losses, if the tenant purchased cane to manufacture and it became frozen or worthless, or if by the tenant's carelessness or otherwise some of the manufactured sorghum was destroyed, and inferred that the landlord would not. Query. Also query whether, if the arrangement had been considered to be a partnership, losses due to the negligence of the "tenant" would have ultimately been saddled upon the "landlord".

[43] Cases cited in note 37(a), *supra;* Vosges v. Clark, 240 Iowa 1108, 38 N.W.2d 611 (1949).

[44] 195 Iowa 734, 192 N.W. 843 (1923).

[45] 233 Iowa 230, 8 N.W.2d 726 (1943).

[46] 235 Iowa 679, 17 N.W.2d 385 (1945).

[47] 195 Iowa 734, 738, 192 N.W. 843, 846 (1923). Although the Court was sitting in divisions when it heard the *Malvern Bank* case and *Florence v. Fox, supra* note 41, both cases were decided by the same four judges. The comment quoted in the text above can be found in other cases, *e.g.*, Nelson v. Barnick, 245 Iowa 982, 991, 63 N.W.2d 911, 916 (1954).

under a chattel mortgage given only by and in the name of the operator.

In *Miller v. Merritt* the operator was suing the owner of the farm, and the question of proper venue turned on whether their agreement had created a partnership. The written agreement provided for operations under the firm name of Miller & Merritt Bros., it referred to "firm property", "partnership property", and contained at least thirty references to "firm", and in addition it referred to their enterprise as "a joint venture in the nature of a partnership." There were provisions that all expenses incurred in connection with property owned by the firm were to be borne by the respective members, that all were to cooperate fully in management, that profits were to be shared equally, and that all receipts and disbursements were to be through a certain bank. A bank account was maintained in the firm's name in that bank, and checks seem to have been drawn on it by both owner and operator. The Court felt that all the communities were satisfied, in the instrument and the conduct of the parties thereunder.

The *Johanik* case, an accounting action between operator and owner, involved a written agreement for operation of a farm for five years. It provided that both parties were to have possession, both to agree as to what crops would be planted, the owner to handle purchases, the operator to furnish his labor and most of the machinery and work animals and some of the other livestock. The owner could also furnish other livestock, and each was entitled to 4½ percent interest on the value of the livestock he furnished. If the owner furnished machinery and work animals (as agreed on) he would receive 4½ percent interest until reimbursed. Expenses were to be divided equally. Operator was entitled to a drawing account of $350 per month. Owner kept the books. In view of these facts, the Court commented that the arrangement went far beyond the usual share-rent situation, was not a mere lease, and was a joint venture.

In one other instance a farm-operation agreement was interpreted as a partnership agreement.[48]

The foregoing is suggestive that the Iowa Court could abandon

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[48] See discussion of the theory of communities of interest in Note, *Sharing Tenancies and Partnerships,* 8 IOWA L. BULL. 95, 97 (1923). Reference to this test can be found in several Iowa decisions, including: Miller v. Merritt, 233 Iowa 230, 8 N.W.2d 726 (1943); Butler v. Lloyd, 230 Iowa 422, 297 N.W. 871 (1941); Citizens Bank of Milo v. C. F. Scott & Son, 217 Iowa 584, 250 N.W. 626 (1934); Farmers & Merchants Nat. Bank v. Anderson, 216 Iowa 988, 250 N.W. 214 (1933); and Florence v. Fox, 193 Iowa 1174, 188 N.W. 966 (1922). In an early case the Court said: "As a general rule, a partnership creates a community of interest, of duty, and of responsibility among the members of the firm." Price & Co. v. Alexander & Co., 2 G.Greene 427, 429 (Iowa 1850). A possible implication from this comment is that the fact of partnership is determinative of community of interest, rather than that the fact of community of interest is determinative of partnership.

reference to the community of interests tests,[49] and apply the views expressed in the Uniform Partnership Act, without affecting the results in cases it decides. Whether it does so, or not, there are certain conclusions which can be drawn, applicable to the drafting of farm-operation arrangements.

If a partnership is intended, the agreement should be in writing, and should clearly manifest that intent. Provision should be made for contribution of capital (or services in lieu thereof) by both parties. Each should have some power of control or administration over the operation. Each should share in profits and in losses. It is desirable to operate under a firm name, to have a firm bank account, and, wherever possible in the agreement, to refer to the parties as partners and to the operation as a firm or a partnership. If this is done, the result should be to create a partnership, and to make the owner of the farm responsible for debts incurred in and injuries resulting from its operation.[50] Even though express reference to sharing of losses is omitted, if the other factors indicated above as desirable are included, it is probable that the Iowa Court would infer an agreement to share losses, and would construe the arrangement to create a partnership.

If the farm-owner does not want to be a partner with the operator, for liability reasons, but does want to receive share-rent which will qualify as self-employment income, the drafting problem is more difficult. The agreement must provide for his material participation in production or management of production.[51] As he will be entitled to a share in profits, and he has an interest in the assets used, giving him participation rights may be enough to cause the agreement to satisfy the community of interests test. Certainly the drafter must go all out to avoid appearance of a partnership intent. It is imperative to avoid use of a firm name, a firm bank account, and reference in the agreement or elsewhere to "firm", "partnership", and "partner". In addition, it may be advisable to include in the agreement a statement to the effect that the parties do not intend that the landlord share in losses; it may also be advisable to provide for a minimum rent in the event there are no profits. Doing these things may persuade the Iowa courts not to imply that loss-sharing was intended, and therefore that the arrangement is no more than a lease.

GENE L. NEEDLES (January 1957)
EDWARD R. HAYES

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[49] Duff v. Baker, 78 Iowa 642, 43 N.W. 463 (1889).

[50] "If it appears to have been their purpose to enter into the relation of partners, all subterfuges of either, resorted to in order to evade liability for possible losses, while securing certainty of the advantages to be derived from the relation, must be disregarded." Johnson Brothers v. Carter & Co., 120 Iowa 355, 361, 94 N.W. 850, 852 (1903).

[51] See note 3, *supra; and* the statement by the Iowa State Bar Association's Committee on Legal Forms, under the heading: *Caveat: Farm Lease, Official Form No. 14, and Social Security,* in the October 1956 NEWS BULLETIN OF THE IOWA STATE BAR ASSOCIATION, page 3.