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Limited Liability for General Partnerships: Another Louisiana Anomaly?

*A foolish consistency is the hobgoblin of little minds, adored by little statesmen and philosophers and divines.*¹

I. INTRODUCTION

Dating as far back as the early 1800s, our legislature has resisted the pressure to conform with the rest of the common law jurisdictions in the United States for the sole sake of consistency.² Rather than converting to a common law system, Louisiana legislators drew from both the French and Spanish legal traditions to arrive at a Digest of Civil Law that governed legal relationships and situations in Louisiana.³ Despite the deliberate rejection of a complete common law system by the early Louisiana legislators, common law principles still greatly influenced law in Louisiana, especially in areas where the civil law did not provide guidance.⁴ Thus, Louisiana is a jurisdiction that displays both civil and common law characteristics.⁵

As senseless and undesirable as foolish consistency seemed to be to the early legislators, foolish *inconsistency* in relation to the way we make law in Louisiana is much worse. Louisiana appears to be the only jurisdiction in the world, including both civil and common law jurisdictions, that provides for limited liability for its general partnerships.⁶ According to Louisiana Civil Code article 2817, each partner is bound only for his virile share of the

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1. Ralph Waldo Emerson, *Self Reliance and Other Essays* (Dover 1993).

2. James L. Dennis, *Louisiana Bicentenary: A Fusion of Legal Culture 1803–2003, A Symposium Article*, 63 La. L. Rev. 1003 (2003).

3. *Id.*

4. *Id.* at 1004; Eric Valley, *Louisiana's Class Action: Judge-made Law in a Mixed Civil—and Common—Law Jurisdiction*, 61 Tul. L. Rev. 1205, 1206 (1987).

5. Valley, *supra* note 4, at 1206; Paul C. Reyes, *Napoleon Code or Complex*, 15 Tul. Eur. Civ. L.F. 97, 99 (2000–2001), referring to the idea that people from out-of-state incorrectly assume Louisiana law is based on the Napoleonic Code.

6. See discussion *infra* Section II, Section III.

partnership debts.⁷ In every other jurisdiction, partners are jointly and severally liable for debts or obligations incurred by the partnership. Because there are few general partnerships in Louisiana today, the fact that Louisiana departs from the mainstream in this particular aspect of business law is economically insignificant. However, this anomaly in our law is significant from a jurisprudential standpoint because it misleads as to the nature of Louisiana business law by incorrectly implying that there may be many other inconsistencies in our law compared to other jurisdictions throughout the United States.

For the most part, Louisiana business law is consistent with other jurisdictions throughout the United States, thus reflecting the strong need for certainty and consistency in modern commercial law.⁸ Certainty in business law is especially important to Louisiana for practical reasons, such as helping to achieve one of Governor Kathleen Blanco's main initiatives for her administration—economic development.⁹ Uniform commercial law from state to state leads to cost reductions for both consumers and businesses, which enhances economic development throughout the United States.¹⁰ Furthermore, uniformity facilitates interstate commerce¹¹ and helps minimize any risks involved with doing business in foreign states.¹² Louisiana Civil Code article 2817, however, is grossly inconsistent with all other jurisdictions for no apparent reason.¹³ Since the purpose of the civil law is to provide

7. La. Civ. Code art. 2817 (“A partnership as principal obligor is primarily liable for its debts. A partner is bound for his virile share of the debts of the partnership but may plead discussion of the assets of the partnership.”).

8. A. Brooke Overby, *Our New Commercial Law Federalism*, 76 Temp. L. Rev. 297, 311; William Woodward, *Contractual Choice of Law: Legislative Choice in an Era of Party Autonomy*, 54 SMU L. Rev. 697, 735 (2001).

9. Ned Randolph, *DED Chief Says State Has Much to Cheer*, The Advocate, October 5, 2004, at 1C (“It [economic development] is ‘the top plank’ of Gov. Kathleen Blanco’s administration . . .”).

10. Overby, *supra* note 8, at 311.

11. Walter P. Armstrong, *A Century of Service: A Centennial History of the National Conference of Commissioners on Uniform State Law 13* (West Pub. Co. 1991).

12. Kai Schadbach, *The Benefits of Comparative Law: A Continental European View*, 16 B.U. Int’l L.J. 331, 406 (1998).

13. See discussion *infra* Section III.

a coherent, logical system of law to govern all legal relationships,¹⁴ the Louisiana Legislature should strive to amend all unsubstantiated “foolish *inconsistencies*” in our law that are neither coherent nor logical. Specifically, the legislature should address the unexplained limited liability of general partners and amend Louisiana Civil Code article 2817 to conform with every other jurisdiction in the world by changing the limited liability to solidary or joint and several liability.

In Part II, this paper analyzes both the civil and common law antecedents concerning partnership law. It compares the provisions in Louisiana Civil Code article 2817 to the partnership law of a number of economically advanced countries from both the civil law and common law traditions in order to note the key difference regarding liability. It also examines the law in every jurisdiction throughout the United States outside of Louisiana in order to understand their provisions on partnership law.

Part III seeks to ascertain why our law is different from other states and other countries—even the countries from which much of our civil law developed. To do this, the article traces the legislative history of partnership law in Louisiana. It also briefly examines general obligations law regarding the similarities between the liability of obligors to an obligation and general partners to a third party creditor to point out internal inconsistency within the Louisiana Civil Code. The purpose of these analyses is to identify whether this peculiarity in general partnership law was simply an oversight by the legislature or whether there actually is logic behind the anomaly, thus giving Louisiana a reason to be inconsistent.

Finally, this paper synthesizes the comparative and historical analyses and calls for legislative consistency with respect to this particular aspect of Louisiana business law. This article suggests a revision for Louisiana Civil Code article 2817 that replaces the limited liability provision with joint and several liability. Most importantly, this article represents the need for consistency in legislation that departs from every other jurisdiction in the Western world for apparently no logical reason.

14. John H. Merryman, *The Civil Law Tradition* (2d ed. 1969).

II. COMPARATIVE ANALYSIS: CIVIL AND COMMON LAW ANTECEDENTS AND AMERICAN LAW

A. *Civil Law Tradition: History of General Partnership Liability and the Current Law in France, Germany, Italy, Belgium, the Netherlands, and Spain*

A chain of views across history is needed to attempt to arrive at the reasoning behind the Louisiana rule. France, a civil law giant, served as a model for law in Louisiana.¹⁵ A glance at the history of partnership law in France depicts the evolution of partnership law from the rule in antiquity to the current law. Early French law distinguished between two types of partnerships, namely, civil partnerships and commercial partnerships.¹⁶ This distinction was important primarily because of the difference in liability with each type of partnership.¹⁷ Partners in a civil partnership were fractionally liable in equal measure for the debts and obligations of the partnership;¹⁸ whereas, partners belonging to a commercial partnership were liable jointly and without limit for the debts of the partnership.¹⁹

Today, French law no longer distinguishes between the two different types of partnerships. A general partnership in France, *societa en nom collectif* (SNC), is considered to be a commercial form of business regardless of whether the partnership's activity consists of commercial or civil affairs.²⁰ French law considers each partner in a general partnership to be a merchant who is jointly and severally liable for the partnership's liabilities.²¹ The term "joint and several" in this context refers to the situation where each partner in a general partnership binds himself for the entire obligation, and the performance by one partner would release the

15. Dennis, *supra* note 2.

16. Edgar M. Church, *Business Associations under French Law*, § 102, at 75 (1960).

17. *Id.* § 126, at 109.

18. *Id.* § 102, at 75.

19. *Id.* § 116, at 97.

20. France: *Business Law, Taxation, Social Law* 90 (3d ed. 2000).

21. *Id.*

other partner(s) from liability.²² In other words, general partners receive unlimited liability in France today.²³

Germany is another prominent civil law country. Similar to former French law, German partnership law distinguishes between two types of partnerships—civil and commercial partnerships.²⁴ Rather than using the type of liability as a basis for the distinction between the two types of partnership, German law distinguishes between the two types based on the purpose for which the partnership is created.²⁵ The German codes confer joint and several liability on both civil partnerships and general commercial partnerships.²⁶ In other words, each partner is liable for the entire obligation regardless of his proportional interest in the partnership,²⁷ a provision similar to French partnership law.

Not only does Louisiana Civil Code article 2817 differ from the two most prominent civil law countries previously discussed, but it also differs from the partnership laws in many other civil law jurisdictions seen throughout the Western world. Countries such as Italy,²⁸ Belgium,²⁹ the Netherlands,³⁰ and Spain³¹ consistently

22. *Solidary Obligations*, 25 Tul. L. Rev. 217, 218, 223 (1950–1951).

23. France: Business Law, Taxation, Social Law, *supra* note 20.

24. Key Aspects of German Business Law: A Manual for Practical Orientation 23–25 (Bernd Tremml & Bernard Buecker eds. 1999). The German Civil Code (BGB) governs civil-law partnerships and imposes joint and several liability on all partners. The Commercial Code (HGB) governs general commercial partnerships and imposes mandatory unlimited liability on partners.

25. Droste Killius Triebel, *Business Law Guide to Germany* 122 (3d ed. 1991).

26. *Id.* at 123–25.

27. *Id.* at 123, 125; Key Aspects of German Business Law: A Manual for Practical Orientation, *supra* note 24, at 23, 24.

28. Price Waterhouse, *Doing Business in Italy* 57 (1992). *Societa in nome collettivo* is a “[g]eneral partnership in which the liability of partners is not limited.” *Id.*

29. Koen Geens & Bart Servaes, *Corporations and Partnerships in Belgium* 32 (1997). Belgium has maintained the distinction between commercial and civil partnerships. “[P]artners of the commercial partnership will be jointly and severally liable for the debts and liabilities that were entered into by one of the partners on behalf of the partnership: in civil partnerships, on the contrary, each partner’s liability will not exceed its ‘share’ in the partnership.” See Code Civil [Civ. Code] art. 1863 (Belg.).

confer unlimited liability on general partners for the debts and obligations of the partnership.

B. Current South American Law: Chile, Argentina, Bolivia, Uruguay, Paraguay, and Ecuador

In order to obtain an accurate reflection of the partnership law throughout the Western world, a few South American countries deserve a glance. Chile is one of the most economically advanced countries in South America. Both the French and Spanish legal systems served as models for Chilean law.³² Many other countries in Central and South America look to the Chilean Civil Code for guidance.³³ Partnership law in Chile reflects the law in France in that the liability of the partners in a general partnership is unlimited.³⁴

In addition to Chile, Argentina was also greatly influenced by continental law, more specifically the French Civil Code, when drafting its own civil code that dates back to 1869.³⁵ Because of this French influence, it follows that Argentina would also impose joint and several liability on partners for the debts of the partnership.³⁶

Chile and Argentina are two of many South American countries that provide for unlimited liability for general partners. Other countries, such as Bolivia,³⁷ Uruguay,³⁸ Paraguay,³⁹ and

30. Price Waterhouse, *Doing Business in the Netherlands* 79 (1990). "In the general partnership (*Vennotschap onder Firma—VoF*) each partner is individually liable without limitation for all partnership acts." *Id.*

31. *Business Law in Spain* 106 (Bernardo M. Cremades ed., 2d ed. 1992). "[A]ll partners in general partnerships are jointly and severally liable to the full extent of their personal assets for partnership debts." *Id.*

32. Price Waterhouse, *Doing Business in Chile* 3 (1994).

33. *Id.* at 3.

34. *Id.* at 51.

35. Estudio de los Dres. O'Farrell, *Doing Business in Argentina* 1-7 (1998).

36. *Id.* at 2-2.

37. Carlos Walter Urquidi, *A Statement of the Laws of Bolivia in Matters Affecting Business* 41 (3d ed. 1962). "Two or more persons, jointly and individually liable without limit, may join to do business in this type of association." *Id.*

Ecuador⁴⁰ consistently render unlimited liability upon general partners. The previous recitations of partnership law throughout the world, although seemingly redundant, further illustrate the anomaly of general partnership law in Louisiana.

C. Common Law Tradition: History of General Partnership Liability and Current Law in England and Canada

In conjunction with French and Spanish influence, Louisiana law has also been greatly influenced by the common law of its sister states. Louisiana has therefore become a quintessential mixed jurisdiction of both civil and common law.⁴¹ A look at key countries representative of the common law sheds light on whether Louisiana is borrowing from a common law principle regarding the limited liability of general partners.

The main common law country from which the majority of the law in America originates is England. The framework of business organizations in England, including partnerships, developed over several centuries starting in the late middle ages.⁴² In 1890, the British Parliament adopted the Partnership Act (the Act) with the purpose of alleviating the uncertainty and complexity of the case law surrounding partnerships.⁴³ The Act has become the foundation of partnership law in England today. Under Section 9

38. Price Waterhouse, *Doing Business in Uruguay* 50 (1988). "A general partnership is constituted by two or more partners, jointly and severally liable without limit, for the obligations of the partnership." *Id.*

39. Gustavo Gatti & Jorge H. Escobar, *A Statement of the Laws of Paraguay in Matters Affecting Business* 47 (3d ed. 1973). "A general partnership is a company formed by two or more persons, with unlimited and joint and several liability, who join together to do business in common, under a firm name Any stipulation to the contrary, limiting or excluding a partner from liability, is invalid." *See* Para. Commercial Code [C. Com.] art. 301.

40. Price Waterhouse, *Doing Business in Ecuador* 69 (1992). "The partners have unlimited and joint liability." *Id.*

41. Dennis, *supra* note 2.

42. Ron Harris, *Industrializing English Law: Entrepreneurship and Business Organization, 1720–1844* 1, 19 (2000).

43. Stanley M. Beck et. al., *Partnerships and Business Corporations: Cases and Materials on Partnerships and Canadian Business Corporations* 3 (1983).

of the Act, each and every partner is liable jointly⁴⁴ for all obligations incurred by the partnership; therefore, each partner's liability is unlimited.⁴⁵

Canada, a common law descendant of England, similarly provides for unlimited liability for each partner concerning all debts and obligations of the general partnership.⁴⁶ Every Canadian common law province has adopted the Partnership Act passed by the English Parliament in 1890. Therefore, Canada's partnership law is identical to the partnership law of England.

D. American Law: Discussion of Uniform Partnership Act and Revised Uniform Partnership Act

The law of England served as a foundation for law in most jurisdictions throughout the United States except Louisiana. Due to its national union with common law sister states, Louisiana often reflects some of the other states' common law characteristics. This similarity is especially true with business law since there is such a great need for uniformity throughout all jurisdictions in the country in order to promote economic interaction between the states.⁴⁷ However, Louisiana is not only completely different from the continental law that served as a model for most areas of Louisiana law, it is also different from every other jurisdiction in the United States with regard to its general partnership provision.

44. The meaning of joint liability in the common law is vastly different from the meaning of joint liability in Louisiana. In the common law, joint liability is only procedurally different from joint and several liability, but the idea is the same. A partner who is jointly liable for partnership debts may be called upon to satisfy the *entire* debt or obligation. On the other hand, in Louisiana, a joint obligation on the part of the obligor exists when different obligors owe one performance to one obligee, yet neither obligor is responsible for the entire obligation. Therefore, when the law in England refers to joint liability for partnerships, it essentially means that the partners are jointly and severally liable for the partnership's debts or obligations. See Gina S. Montgomery, *Liability for Partnership Debts in Louisiana: Is There a More Equitable Solution?*, 35 Loy. L. Rev. 467, 474-475; La. Civ. Code art. 1788.

45. Geoffrey Morse, *Partnership Law* 105 (2d ed. 1991).

46. Beck, *supra* note 43, at 2.

47. Overby, *supra* note 8, at 311.

Two uniform acts form the basis of general partnership law in the United States: the Uniform Partnership Act (UPA) and the Revised Uniform Partnership Act (RUPA).⁴⁸ Every state except Louisiana adopted the UPA, which was promulgated in 1914. Thus, with the exception of Louisiana, partnership law was uniform from state to state.⁴⁹ In 1992, the National Conference of Commissioners on Uniform State Laws promulgated RUPA, and then amended the act in 1993, 1994, 1996, and 1997. RUPA is now the basis for general partnership statutes in a majority of the states.⁵⁰ Due to the number of amendments, RUPA has not been adopted verbatim by every state; however, with respect to general partnership liability, the law has not changed. Partners are jointly and severally bound for partnership obligations under both the UPA and the RUPA.⁵¹ This imposition of unlimited liability flows from the nature of general partnerships and protects creditors who contract with the partnership by placing the risk of loss of one partner's insolvency on the other partners rather than upon the creditors.⁵² All jurisdictions throughout the country subscribe to this creditor protection policy, as did Louisiana prior to the 1980 revisions.⁵³

48. Michael K. Pierce & Jill E. Fisch, *Overview of Substantive Law Governing General Partnerships, Limited Partnerships, and Limited Liability Companies*, SJ029 A.L.I.-A.B.A. 1, 5 (2004).

49. *Id.* & n.1.

50. Robert W. Hillman et.al., *The Revised Uniform Partnership Act Appendix B*, 467-68 (2002). State Adoptions of the Revised Uniform Partnership Act: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Hawaii, Idaho, Illinois, Iowa, Kansas, Maryland, Minnesota, Montana, Nebraska, New Jersey, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Tennessee, Texas, Vermont, Virginia, Washington, West Virginia, Wyoming.

51. Unif. P'ship Act § 15 (1914); Rev. Unif. P'ship Act § 306(c) (amended 1996).

52. Mark C. Schroeder, *Louisiana's New Partnership Provisions: A Review of the Changes and Some Continuing Problem Areas*, 42 La. L. Rev. 1429, 1446 (1982); see generally *Solidary Obligations*, *supra* note 22, at 218.

53. La. Civ. Code art. 2872 (1972) ("Commercial partners are bound *in solido* for the debts of the partnership.").

III. HISTORICAL ANALYSIS: LEGISLATIVE HISTORY OF GENERAL PARTNERSHIP ARTICLES

A. *Ordinary and Commercial Partnerships*

Before the 1980 revision of the Louisiana Civil Code, and dating as far back as the earliest Louisiana Civil Code, Louisiana law recognized two different kinds of partnerships divided as to their objects, namely ordinary and commercial partnerships.⁵⁴ Louisiana obtained this distinction from the then-existing partnership law of France.⁵⁵ The pre-revision Louisiana Civil Code defined ordinary partnerships as everything not commercial.⁵⁶ "Ordinary" partners were not bound *in solido* for the debts of the partnership. In other words, "ordinary" partners enjoyed limited liability with respect to the debts and obligations of the partnership.⁵⁷ Pre-revision Civil Code article 2825 listed activities that indicated whether a partnership was a commercial partnership.⁵⁸ If a partnership engaged in any of the enumerated activities, then it was deemed to be a commercial partnership with different legal consequences than an ordinary partnership—the most important of which was solidary liability among the commercial partners.⁵⁹ Solidary liability means that each partner

54. See La. Civ. Code art. 2824 (1972) and La. Civ. Code art. 2795 (1825).

55. See *Projet du Gouvernement* (1800). See also Pothier, *A Treatise on the Contract of Partnership* 60–67 & n.96 (photo. reprint 1994) (1854) (includes notes from the Civil and Commercial Code of France that relate to the subject of partnership).

56. Pre-revision distinction derived from *Projet du Gouvernement* (1800), Book III, Title XIV, art. 14.

57. La. Civ. Code art. 2872 (1972).

58. Louisiana Civil Code Article 2825 (1972) states:

Commercial partnerships are such as are formed:

1. For the purchase of any personal property and the sale thereof, either in the same state or changed by manufacture.
2. For buying or selling any personal property whatever, as factors or brokers.
3. For carrying personal property or passengers for hire, in ships, vessels or in any other vehicle of transportation.

59. La. Civ. Code art. 2872 (1972).

would be bound for the entire debt or obligation of the partnership.⁶⁰

B. 1980 Revision-Act 150

Louisiana's distinction between ordinary and commercial partnerships was similar to the distinctions formerly seen in France with regards to civil and commercial partnerships. France deleted the antiquated distinction between the two types and created one general partnership with unlimited liability. Louisiana, on the other hand, chose not to harmonize its partner liability rule with its parent country, the other forty-nine states, or its own prior law. Instead, it stepped “. . . further away from the other states by elevating the historically less important ordinary-partnership rule to a position of prominence.”⁶¹

Act 150 of the 1980 revision created one general partnership with characteristics extracted from both the ordinary and commercial partnerships.⁶² Although general partners today act like former commercial partners, the legislature grants them limited liability formerly possessed by ordinary partners in the earlier regime.⁶³ Given that Louisiana partnership law historically favored the creditor,⁶⁴ it does not make sense that Louisiana has chosen to limit the liability of general partners without requiring the partners to take steps themselves to limit their own liability.⁶⁵ The 1980 revision was a step in the right direction because it eliminated the archaic distinction between ordinary and commercial partnerships; however, it left us with a very sub-optimal solution because of the inconsistency it created. If we

60. See La. Civ. Code art. 1794.

61. Glenn G. Morris and Wendell H. Holmes, Business Organizations § 2.09, in 7 Louisiana Civil Law Treatise 74, 76 (1999) [hereinafter “Morris & Holmes”].

62. 1980 La. Acts No. 150.

63. La. Civ. Code art. 2817.

64. La. Civ. Code art. 2872 (1972).

65. Morris & Holmes, *supra* note 61, at 81 & n.6, noting that with a corporation, limited liability company, or a partnership in commendam, “the law imposes rules concerning the owner’s obligation to make ‘at risk’ contributions of capital, and prohibiting distributions to owners that either cause insolvency or occur at a time when the entity is insolvent.”

looked to the French for direction before regarding partnership law, why did we not look to them again when making the revision decision?

If the Louisiana Legislature is going to be so bold as to choose a different partner liability rule than every jurisdiction in the Western world, surely the revisionists have a valid, logical reason supporting their decision, especially considering the idea that law should be applied in a way that achieves a socially sensible outcome.⁶⁶ The problem is there are no documented reasons for the strange liability choice in either the comments to Civil Code article 2817 or Act 150 of the 1980 revisions that created the anomaly. Today, partnerships engaged in the same commercial activity that pre-revision commercial partnerships were involved in enjoy limited liability rather than solidary liability for no apparent reason.

C. Louisiana Civil Code Comparison

Often, a glance at analogous sections in the Louisiana Civil Code provides guidance for ascertaining the reasoning of the law in another section. Looking to general obligations law, the liability of two partners for a general partnership's obligation should be similar to the liability of two obligors for a particular obligation; however, this is not the case. The idea of imposing solidary liability on two or more obligors who have done nothing to limit their liability is not foreign to current Louisiana law. In Book III, Title III of the Louisiana Civil Code, a solidary obligation may be imposed when an obligation binds obligors (debtors) to obligees (creditors).⁶⁷ According to Louisiana Civil Code article 1794, "An obligation is solidary for the obligors when each obligor is liable for the whole performance. A performance rendered by one of the

66. La. R.S. 24:204(A) (1989) ("The general purposes for which the Louisiana State Law Institute is formed are to promote and encourage the clarification and simplification of the law of Louisiana and its better adaptation to present social needs . . .").

67. La. Civ. Code art. 1786 ("When an obligation binds more than one obligor to one obligee, or binds one obligor to more than one obligee, or binds more than one obligor to more than one obligee, the obligation may be several, joint, or solidary.").

solidary obligors relieves the others of liability toward the obligee.”⁶⁸ Similarly, partners belonging to a general partnership should each be liable for the whole debt or obligation of the partnership as a matter of law. As with Louisiana Civil Code article 1794, performance by one of the partners should relieve the other partners of liability toward the creditor. As seen with this example in Obligations Law, Louisiana’s limited liability partnership rule is internally inconsistent with analogous areas of Louisiana law. Partnerships are one species of Obligations law; therefore, it stands to reason that the same liability rule seen with multiple obligors should apply to partners.

D. Discussion of Problems Resulting from Inconsistency

The revised partner liability rule has been the subject of scholarly analysis and debate,⁶⁹ however, it appears that no one has looked past the trivial economic impact into the much more significant problem the revision caused—“foolish inconsistency.” Inconsistency in the law often has negative collateral effects, particularly inconsistency in business law. People who are unfamiliar with Louisiana’s law often think our law is more dissimilar from other states than it really is.⁷⁰ For this reason, the general partner liability rule is dangerous because it enforces this incorrect assumption about Louisiana law. It is vital for out-of-state actors to believe that our business law is consistent with law they are familiar with in order to encourage economic interaction with Louisiana.

Although general partnerships are not the most popular choice of business organization,⁷¹ the potential for even one creditor to

68. La. Civ. Code art. 1794.

69. Schroeder, *supra* note 52, at 1446.

70. Reyes, *supra* note 5.

71. Morris & Holmes, *supra* note 61, at 74 n.2, referring to the idea that giving general partnerships automatic limited liability is not as significant a departure anymore because it is easy to obtain limited liability through the formation of a registered limited liability partnership or a limited liability company. It would be nearly impossible to arrive at an accurate number of general partnerships in Louisiana because of the possibility of inadvertent partnerships. Furthermore, general partnerships can live and die without ever being entered into the public records.

suffer because he did not know enough about Louisiana business law to contract⁷² out of this anomalous provision of limited liability is worth mending the problem. This potential loss is especially important considering that one creditor's business could have resulted in a large increase in economic development in Louisiana. For this reason, it is important for Governor Kathleen Blanco, in her efforts to heighten economic development in the state, to be able to rely confidently on the idea that Louisiana law harbors no surprises for potential businesses. Unfortunately, the provisions of Louisiana Civil Code article 2817 undermine both the governor's efforts and Louisiana business law as a whole.

IV. OPTIMAL SOLUTION FOR CONSISTENCY

The Louisiana Legislature should address the unexplained limited liability of general partners and amend Louisiana Civil Code article 2817 to conform with every other jurisdiction in the world by changing the limited liability of partners to joint and several liability for the partnership obligations. The amended version of Louisiana Civil Code article 2817 should read: "A partnership as principal obligor is primarily liable for its debts. A partner is liable *in solido* for the debts of the partnership but may plead discussion of the assets of the partnership."⁷³ Revising Louisiana Civil Code article 2817 would solve this particular problem of needless inconsistency in this area of Louisiana business law. It would bring Louisiana one step closer to uniformity with the other states with respect to business law—a step that would help to achieve the certainty and consistency needed to encourage further economic interaction between the many jurisdictions.

72. La. Civ. Code art. 2817 cmt. c ("Except where solidary liability may arise in other contexts, such as in delictual matters in which solidary liability is imposed by operation of law, if a creditor of the partnership wants solidary liability, he is now required to obtain express agreement from the partners to the effect that they are solidarily liable for the debt.").

73. Using La. Civ. Code art. 2817 and changing the liability provision. *See also* Schroeder, *supra* note 52, at 1447. Schroeder suggests a revision similar to UPA section 40(d), which would place the risk of insolvency on the solvent partners in proportion to each solvent partner's relative share of his percentage of profits.

V. CONCLUSION

The Louisiana general partner liability rule is a Louisiana civil law anomaly unworthy of civilian inconsistency because there are no valid reasons supporting the blazing difference. Thus, Louisiana law appears to be inferior to other jurisdictions with respect to the provisions of article 2817. This article's liability is different from the most significant civil and common law antecedents, the rest of the United States, and even from analogous areas of Louisiana law.

Irrational inconsistencies have collateral effects. If people were to believe our law to be more different than it is because of this quirky provision, then it would undermine trust in Louisiana law and could discourage out-of-state businesses from doing business in Louisiana. Therefore, Louisiana Civil Code article 2817 should be revised not only to maintain internal consistency within the Louisiana Civil Code, but also to maintain external consistency with all of the other states in the country. For, the only thing worse than foolish consistency is foolish *in*consistency.

*Magan Causey**

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