

Joint Adventures

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JOINT ADVENTURES

By JAMES MORFIT MULLEN*

I.

This subject is entirely of modern origin. It does not exist in England except as a topic in the law of Partnership. Its best definition comes out of Harvard: "An association of two or more persons to carry out a single business enterprise for profit".¹

Much of the discussion about joint adventures might be termed *nomenclatural*; the authorities devote many pages to classification of the cases deciding what are and what are not Joint Adventures. It is in reality a branch of the law of Partnership, from which it must be distinguished. Also, it is closely related to the subjects of Principal and Agent, Vendor and Vendee, Joint Owners, Borrower and Lender, Landlord and Tenant, Employer and Employee, Bailor and Bailee, Author and Publisher, and some others.² This subject also includes some more familiarly known descriptive phrases, such as Syndicates, Pooling Agreements, Grubstakers and Share-croppers, instances of which will be later cited.

The Maryland law of Joint Adventures is anomalous because of two features; first, that all of the law of this topic, declared as such, is in a few cases later to be discussed, in all of which it was decided that no case of a joint adventure was before the Court.³ Second, the Maryland Court of Appeals has in some cases considered facts and decided principles of Joint Adventure law without mentioning this subject, except remotely in one instance.⁴

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¹ Note, *A Partnership and a Joint Adventure Distinguished* (1920) 33 Harv. L. Rev. 852. See also 30 Am. Jur. 675; 33 C. J. 840.

² As to what amounts to a joint adventure, see the following annotations: 48 A. L. R. 1055, 63 A. L. R. 909, 138 A. L. R. 968. See also 33 C. J. 841-845.

³ *Powers v. State*, 178 Md. 23, 11 A. (2d) 909 (1940); *Atlas Realty Co. v. Gault*, 153 Md. 586, 139 A. 285 (1927); *Brenner v. Plitt*, 34 A. (2d) 853 (Md., 1943).

⁴ *Redue v. Hofferbert*, 161 Md. 296, 157 A. 294 (1931).

II.

THE ESSENTIALS OF A PARTNERSHIP.

A Joint Adventure is sometimes defined as a partnership for a single transaction. It is important, therefore, to determine the constituent elements of a partnership; but in the language of Hamlet: "Ay, there's the rub!" There is a long list of Maryland decisions dealing with many kinds of supposed partnership relations, but we have found no apt phrase defining a partnership. In a leading case, we are told that one prominent author on partnership law quotes 15 different definitions, and that a partnership is difficult to define.⁵

Just as Hendrik Van Loon in his book on THE ARTS defines genius as "perfection of technique, plus something else,"⁶ so the Maryland Court of Appeals says that a partnership results from a participation in the profits "unless there be other facts and circumstances which indicate that some other relation existed".⁷ So we shall not pause here to be exact about a definition of a general partnership and we shall postpone discussing those "other facts and circumstances" until we deal with joint adventures created by implied contracts.

We do, however, cite here the principal Maryland decisions on what constitutes a partnership, with some comments on some particular instances. Some of these cases could be regarded as Joint Adventures. There are three leading cases in Maryland determining what a partnership is.⁸ The last one considered the facts before it in the light of the Uniform Partnership Law, adopted in Maryland as Article 73A of the Code of Public General Laws.

In *Douglas v. Safe Deposit Co.*,⁹ the Court considered whether or not the business of R. G. Dun and Co., conducted as a "Massachusetts Trust" was a partnership. Decisions in other jurisdictions were cited holding it to be

⁵ *Thillman v. Benton*, 82 Md. 64, 33 A. 485 (1895).

⁶ Page 13.

⁷ *Ibid.*, 82 Md. 73.

⁸ *Rowland v. Long*, 45 Md. 439 (1876); *Thillman v. Benton*, 82 Md. 64, 33 A. 485 (1895); *Southern Can Co. v. Saylor*, 152 Md. 303, 136 A. 624 (1927).

⁹ 159 Md. 81, 92-93, 150 A. 37 (1930).

a partnership; but the Maryland Court refused to decide the issue. In *Bryant v. Fitzsimmons*,¹⁰ a receivership and an accounting were held proper in equity for a partnership as to a racehorse. This situation might have been regarded as a Joint Adventure, but there are no consequences to follow making this distinction. Similarly, in *Bruns v. Spalding*,¹¹ an agreement by two persons to improve a piece of real estate and to sell and divide the profits was subjected to a bill in equity for discovery and accounting. In *Tomlinson v. Dille*,¹² farming on shares was held not a partnership.¹³

In an early case, *Benson v. Ketchum*,¹⁴ Chief Judge Le Grand makes the finest distinction the author has ever seen in any adjudicated case. Here K. was seeking to assert in a court of equity rights growing out of certain transactions in guano to be secured from a South American island. Some of the facts in the case indicate a need for some "good neighbor" salve. K. was to be paid for services on a percentage basis in connection with which he claimed the rights of a partner. In denying these rights, the opinion recited:¹⁵

"He was *not* to receive one-fourth of the net profits, which would have made him a partner, but a sum of money 'equal to the quarter part of the net profits', which did not constitute him one. He was in nowise liable for any losses or engagements of the concern".

While we do not question the soundness of the ultimate conclusion, the author confesses difficulty in following such weighty differences between being paid "one-fourth of the net profits", and receiving "a sum of money equal to the quarter part of the net profits". But in a later case, *Southern Can Co. v. Saylor*,¹⁶ this idea has been extended.

¹⁰ 106 Md. 421, 67 A. 356 (1907).

¹¹ 90 Md. 349, 45 A. 194 (1900).

¹² 147 Md. 161, 127 A. 746 (1925).

¹³ Other decisions, dealing with partnership cases, but calling for no particular comment, are: *Townsend v. Appel*, 164 Md. 255, 164 A. 679 (1933); *Abbott v. Hibbits*, 142 Md. 7, 119 A. 650 (1922); *Morgart v. Smouse*, 112 Md. 615, 77 A. 137 (1910); and *Porter v. Connolly*, 112 Md. 250, 75 A. 510 (1910).

¹⁴ 14 Md. 331 (1859).

¹⁵ *Ibid.*, 14 Md. 355.

¹⁶ 152 Md. 303, 314, 136 A. 624 (1927).

III.

SOME DISTINCTIONS BETWEEN A JOINT ADVENTURE
AND A PARTNERSHIP.

Regarding a joint adventure as a partnership for a single transaction (which may, however, be extended over a period of years), there are a number of distinctions which logically follow their essential differences.

1. *Suits at Law*. A joint adventurer can sue a co-adventurer at law but a partner cannot sue another partner until their mutual accounts have been liquidated by some kind of an accounting. In *Berg v. Plitt*,¹⁷ a suit was sustained at law by one member of what was in effect a joint adventure, though not so designated by the Court. The action was to recover balances owed by one member to the other two participants.¹⁸ In *Morgart v. Smouse*,¹⁹ it was held that partners could not sue each other at law. On the same facts, a suit was later sustained in equity.²⁰

2. *Corporate Members of a Joint Adventure*. It seems to be definitely established by general authorities outside of Maryland that a corporation may engage in a joint adventure where the nature of the enterprise is within its chartered powers, though it can not become a member of a partnership.²¹

As an instance, we suggest that two local corporations, such as a Street Railway Company and a Gas Company might build, lease or operate a joint head office building, but they could not form a partnership for the general real estate business.

We are aware of no Maryland case which outlines the principles just stated, but the author participated in a case in which two corporations, more or less closely con-

¹⁷ 178 Md. 155, 13 A. (2d) 364 (1940).

¹⁸ See also, *Guth v. Elliott*, 158 Md. 243, 148 A. 216 (1930).

¹⁹ 103 Md. 463, 63 A. 1070 (1906).

²⁰ 112 Md. 615, 77 A. 137 (1910). See also Note, *A Partnership and a Joint Adventure Distinguished* (1920) 33 Harv. L. Rev. 852; Note, *Joint Adventure—Actions at Law for Share of Profits* (1943) 41 Mich. L. Rev. 982; 30 Am. Jur. 707-8; 33 C. J. 866; 47 C. J. 802. But see *Redue v. Hofferbert*, 161 Md. 296, 157 A. 294 (1931), discussed below, *circa*, n. 38.

²¹ 13 Am. Jur. 831; 14A C. J. 291.

nected, but incorporated in different states, were held liable jointly for the cost of erecting a warehouse for them²²

3. *Insolvency of Joint Adventure.* In a law review essay another distinction is pointed out.²³ Upon the insolvency of a partnership, firm creditors have priority against firm property over obligations of the separate partners. This should not be true in the case of a joint adventure, for the reason assigned by the author of this note, that no credit would be given to the joint debtors upon the strength of the joint property.

4. *Agency Questions.* There are some marked differences here; they are discussed below under the head of obligations of the joint adventure to third persons.

IV.

FIDUCIARY RELATIONS OF JOINT ADVENTURES.

Based upon the same fundamental affiliations as those of a partnership, the relationship of the participants in a joint adventure *inter se*, is fiduciary in character and the utmost good faith is required.²⁴

In *Hambleton v. Rhind*, a member of a syndicate formed to acquire and sell some South Carolina State bonds, was required to account to the syndicate for some profits he had made through a private transaction. Judge McSherry, who wrote the opinion said:²⁵

“Scrupulous good faith is naturally, if not necessarily, implied from the very nature and character of the relation of partnership; and consequently intrigues by one member for a private benefit to himself are clearly offenses against the partnership at large, and as such are relievable in a Court of Equity”.

In *Meinhard v. Salmon*, the New York Court of Appeals held a member of a joint adventure to the responsibility of a trustee. Justice Cardozo of the Supreme Court, then

²² *Iron Clad Co. v. Stanfield*, 112 Md. 360, 76 A. 854 (1910).

²³ Note, *A Partnership and a Joint Adventure Distinguished* (1920) 33 *Harv. L. Rev.* 852, 854.

²⁴ *Hambleton v. Rhind*, 84 Md. 456, 36 A. 597 (1896), and 86 Md. 305, 38 A. 40 (1897). See generally, on the duties of a fiduciary, Clapp, *A Fiduciary's Duty of Loyalty* (1939) 3 *Md. L. Rev.* 221.

²⁵ 84 Md. 456, 487.

Chief Judge of the New York Court of Appeals, outlined the ethical duties of such a fiduciary in pungent phrases, which are usually quoted in every case in which a trustee fails in his duty. Said he:

"Many forms of conduct permissible in a workaday world for those acting at arm's length, are forbidden to those bound by fiduciary ties. A trustee is held to something stricter than the morals of the market place. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior. As to this there has developed a tradition that is unbending and inveterate. Uncompromising rigidity has been the attitude of courts of equity when petitioned to undermine the rule of undivided loyalty by the 'disintegrating erosion' of particular exceptions. Only thus has the level of conduct for fiduciaries been kept at a level higher than that trodden by the crowd. It will not consciously be lowered by any judgment of this court".²⁶

V.

COMMENCEMENT AND TERMINATION OF JOINT ADVENTURES.

1. *Commencement.* Joint adventures must always start with some form of contract. They do not arise by operation of law.²⁷ Much of the law of the commencement of joint adventures is merely the application of contract principles to the particular circumstances involved. For instance, the contract creating the joint adventure may be challenged on the ground of being contrary to public policy; if there is no invalidity, the contract will of course be enforced.²⁸

In *Guth v. Elliott*,²⁹ one member of a syndicate to distribute corporate stock sued at law for his share of the profits. The question there involved was whether or not he was a member of the syndicate. A judgment for the plaintiff was sustained on appeal.

²⁶ *Meinhard v. Salmon*, 249 N. Y. 458, 164 N. E. 545, 62 A. L. R. 1 (1928); 15 R. C. L. 501; 33 C. J. 851.

²⁷ See 30 Am. Jur. 681, to the effect that the contract may either be express or inferred from the facts and circumstances. See also 33 C. J. 847, and *Powers v. State*, 178 Md. 23, 11 A. (2d) 909 (1940).

²⁸ *Berg v. Plitt*, 178 Md. 155, 12 A. (2d) 609 (1940).

²⁹ 158 Md. 243, 148 A. 216 (1930).

There is nothing in the law of this subject which provides that contracts creating joint adventures must be in writing *per se*.³⁰ And while there is nothing to require a contract for a joint adventure, as such, to be in writing, we can conceive of some forms of undertaking, which cannot be performed within a year, and hence are within the Statute of Frauds.

2. *Termination.* The nature of the agreement creating the joint adventure will, of course, control the term of its existence. While an essential feature of a joint adventure is that it pertains to a single transaction, there is nothing that limits its duration to any particular period. Some of them may run for many years.

So, in most cases, the completion of the enterprise contracted for will end the joint relations of the participants. Other things, of course, may terminate the enterprise; and then the court may be called upon to decide the rights of the parties which are changed by such circumstances.

In *Cover v. Taliaferro*,³¹ three persons executed a contract to make and exploit machinery, and to form a corporation to manufacture and sell the machinery. Here a suit was brought in equity by one member to declare a forfeiture of the rights of the other two on the ground that they had defaulted in their performances. The equitable doctrines of forfeitures were considered. A decree for the defendants was affirmed on appeal.

In a law review note there is some interesting comment on a situation in which a joint adventure to sell cotton to Austrians was abruptly terminated by the First World War, and the Trading with the Enemy Act. The defendants sold the cotton to the Spaniards at a profit. The Supreme Court held that the joint adventure was terminated by the War and the plaintiff was not entitled to any of the profits.³²

³⁰ *Berg v. Plitt*, 178 Md. 155, 12 A. (2d) 609 (1940); 33 C. J. 848.

³¹ 142 Md. 586, 122 A. 2 (1923).

³² Note, *Joint Adventures—Division of Profits as Result of Impossibility of Accomplishment* (1924) 37 Harv. L. Rev. 773. Other situations in which joint adventures have been terminated by unexpected events will be found discussed in 33 C. J. 848.

VI.

CLASSIFICATION OF JOINT ADVENTURES.

As we have seen above, all joint adventures have their origins in some form of agreement, but many of the cases decided by courts outside of Maryland seem to justify a classification of joint adventures into topics comparable to those into which cases of subrogation are divided, *Conventional*, created by agreement, and *Legal*, arising by operation of law.³³

Under the accepted law of joint adventures, such a classification is not possible. We believe, however, that if we class them as created by *express* and *implied* contracts, the same results will be accomplished; and all the legal fictions of the settled law of joint adventures will be respected.

VII.

JOINT ADVENTURES CREATED BY EXPRESS CONTRACTS.

It is obvious that a joint adventure created by an express contract in which all the rights of the parties have been clearly stipulated, creates no problem, or at least none that is not solved by the ordinary laws of contract. As instances, several Maryland cases might here be cited.³⁴

The cases just cited call for no special comment, except that in the opinions deciding the rights of the parties, they are not classed as joint adventures. There are some other decisions which present facts which indubitably are joint adventures. The two cases to which special attention is directed are cases involving "syndicate agreements".³⁵

In *Hambleton v. Rhind*,³⁶ the Court was called upon to enforce rights of the syndicate members against one of them who tried to make a secret profit on the side.

³³ See Mullen, *The Equitable Doctrine of Subrogation* (1939) 3 Md. L. Rev. 201.

³⁴ *Berg v. Plitt*, 178 Md. 155, 12 A. (2d) 609 (1940); *Kahn v. Schleisner*, 165 Md. 106, 166 A. 435 (1933); *Peoples v. Ault*, 128 Md. 401, 97 A. 711 (1916); and *Larkin v. Maclellan*, 140 Md. 570, 118 A. 181 (1922).

³⁵ *Hambleton v. Rhind*, 84 Md. 456, 36 A. 597 (1896); *Redue v. Hofferbert*, 161 Md. 296, 157 A. 294 (1931).

³⁶ *Ibid.*

These gains were held a part of the syndicate assets; that particular member could not retain them. Judge McSherry said, in defining the agreement sued on:³⁷

“Now, a syndicate, according to the undisputed evidence, is an association of individuals, formed for the purpose of conducting and carrying out some particular business transaction, ordinarily of a financial character, in which the members are mutually interested. It is as respects the persons composing it, a partnership, and in so far as these same persons are concerned the legal obligations assumed by them are, as between themselves, substantially the same as those which the law imposes on the members of an ordinary copartnership”.

In *Redue v. Hofferbert*,³⁸ eight persons entered into a syndicate pertaining to an issuance of capital stock of a bank. The successive transactions were complicated and a loss resulted. Five members paid up; three refused. The Court described the transaction:³⁹

“The association, which the members formed, was a joint undertaking for their common benefit, although some of their obligations were, in form, made several. It was an enterprise in which the associates assumed the chance of profit or of loss. In the event the shares of stock were sold at a loss, the ultimate amount of liability of a member, who would be able to pay as bound, depended, not only upon his obligation to pay as principal, but also upon his obligation as a surety for such others of the syndicate who might fail to fulfill their obligations because of insolvency or inability to pay”.

The action was brought in equity by the syndicate trustee and the five members who paid up, against the three in default. The Court held equity had jurisdiction:⁴⁰

“The situation, therefore, was not where an action lay for the undisputed balance of an account or as a result of an account stated, nor could the plaintiffs

³⁷ *Ibid.*, 84 Md. 465.

³⁸ 161 Md. 296, 157 A. 294 (1931).

³⁹ *Ibid.*, 161 Md. 301.

⁴⁰ *Ibid.*, 302.

bring an action at law on the theory of contribution, because the plaintiffs had not made any payment as sureties of a debt of the defendants nor as jointly liable with them *ex contractu*. 1 *Poe, Pl. & Pr.*, secs. 113, 114, and *Williston on Contracts*, secs. 1278, 1277, 345. The affairs of the syndicate have, however, reached a juncture where it becomes necessary to discover the solvency and ability of every one of the three defendants to pay in whole or in part. Not only does the final amount of the liability of the obligors as principals and sureties for one another depend upon the undetermined question of the solvency or ability of one, two or three of the defendants, but also upon the solvency and ability of the other obligors, who are plaintiffs, to pay the additional sums for which they would be bound as sureties in the event of the insolvency or inability of one or more of the defendants to pay the obligations of a principal or surety."

There are other forms of such joint adventures, created by express contracts, among which might be mentioned Pooling Agreements, Farming on Shares and some others appearing in partnership cases referred to above. Also, we would regard the usual type of Lloyds Insurance contracts as coming in this category. Such contracts are specifically authorized by Maryland statutory law for all kinds of insurance except life, health and accident.⁴¹ And, too, many Maryland citizens discovered in 1941 that the automobile liability insurance policies issued by Reciprocal Exchanges and Inter-insurers entailed some partnership responsibilities.⁴²

VIII.

JOINT ADVENTURES CREATED BY IMPLIED CONTRACTS.

It is in this class of cases that real difficulties arise. Here we have for adjudication situations in which two or more persons initiate a joint enterprise with some form of contract, express or implied, but in which they fail to make any stipulation as to their rights in important

⁴¹ Md. Code (1939) Art. 48A, Sec. 81.

⁴² Md. Code (1939) Art. 48A, Secs. 135-145; *Taggart v. Wachter*, 179 Md. 608, 21 A. (2d) 141 (1941).

particulars. Such cases may arise in states of fact involving both contract and tort liability. In a later topic, we shall discuss the rights of members of such joint enterprises, as well as those of third persons. But, first, we desire to isolate and identify the particular species, which we call joint adventures created by implied contracts.

In these cases, the issues presented are mixed questions of law and fact; and it is very difficult, if not impossible, to outline a formula which will cover the situation adequately. It is also impossible to be dogmatic on this score in Maryland, because, in several cases, our Court of Appeals has indulged in some general views as to what constitutes joint adventures in such cases, but it has in no instance adjudicated any such state of facts as a joint adventure.

We therefore begin with a leading case without Maryland, which as we later point out, has been cited with approval by our Maryland Court. This was *Dolan v. Dolan*.⁴³ A husband turned over to his wife from time to time considerable sums of money. She mingled these sums with sums she received from the sale of dairy products. After deducting household expenses, she purchased a home in her name, with the husband's consent, in order to keep peace in the family. They quarreled and separated. There was never any agreement between these parties as to these moneys which were saved. She refused to recognize his rights and he sued for an accounting, etc. He was held entitled to this. The opinion of the Court outlined the applicable principles of law:⁴⁴

"In the present case, the facts disclosed strongly indicate that each originally understood that they were engaging in a joint enterprise, but they had no understanding as to the sharing of the results of their joint action.

"It thus appears that their relation was what at Common Law was looked upon as a sort of informal partnership. It would probably still be so considered in the British Dominion, but in this country it is com-

⁴³ 107 Conn. 342, 140 A. 745 (1928).

⁴⁴ *Ibid.*, 107 Conn. 348-9.

monly defined as a joint enterprise or adventure. While the distinction between a partnership and a joint adventure is often slight, it is commonly considered that, as respects the character of the enterprise, a partnership is formed for the purpose of carrying on a general business of one sort or another, and a joint adventure is more commonly limited to a single transaction or course of transactions. 33 Corpus Juris, p. 842. 'To constitute a joint adventure two parties must combine their property, money, efforts, skill or knowledge in some common undertaking'. *Wilson v. Maryland*, 152 Minn. 506-510, 189 N. W. 437. There is not the relation of principal and agent in joint adventure which we find in a partnership. *Keys v. Hims*, 43 Cal. App. 1, 184 Pac. 695.

"Here was a joint fund in the hands of the defendant wife, placed there with the mutual understanding that she was to handle it for their mutual advantage, the first requirement being that she pay the family obligations and there was no express understanding or agreement beyond this. In a joint adventure it is not necessary that there be an express agreement, for the conduct of the parties and other circumstances will often justify the inference that such an agreement existed; and the contract is not avoided for indefiniteness because the minor details are not fully established".

There are many other cases throughout the United States with analogous facts and similar conclusions.⁴⁵

In the case of *Atlas Realty Co. v. Galt*,⁴⁶ the Maryland Court refused to apply the doctrines of joint adventures to the real estate transaction there involved, and it determined that the relations there presented, involved the law of principal and agent. But the Court outlined some

⁴⁵ *Wiley v. Wirbelauer*, 116 N. J. Eq. 391, 174 A. 20 (1934); *Clinchfield Fuel Co. v. Henderson Iron Works*, 254 F. 411 (1918); *In re Kessler and Co.*, 174 F. 906 (1909); *Leake v. Venice*, 50 Cal. App. 462, 195 P. 440 (1920); *Ali Leong v. Ali Leong*, 28 Haw. 581; *Gehlhar v. Konoske*, 50 N. D. 256, 195 N. W. 558 (1923); *Dulac Cypress Co. v. Houma Co.*, 158 La. 804, 104 So. 722 (1925); *Hey v. Duncan*, 13 F. (2d) 794 (1926); *Ellingson v. Amusement Assoc.*, 175 Minn. 563, 222 N. W. 335 (1928); *Beierla v. Hockenedel*, 25 Ohio App. 186, 157 N. E. 573 (1927); *Williams v. Riddlesperger*, 217 Ala. 62, 114 So. 796 (1927); *Kent v. Costin*, 130 Minn. 450, 153 N. W. 874 (1915).

⁴⁶ 153 Md. 586, 139 A. 285 (1927).

of the principles of the law of joint adventures, in these words:⁴⁷

“The first and most important question presented by the record is whether there is in the case any evidence legally sufficient to support the plaintiff’s contention. He apparently relies to some extent upon the theory that Miller and the Company were engaged in a joint adventure, but there is no evidence in the case legally sufficient to support that contention. In a sense they were engaged in a joint adventure, because each of them expected to profit through the sale of the same property, but in that sense nearly every principal and agent, where a sale of real estate is sold by the agent, are engaged in a joint adventure. But something more than mere profit sharing is required to establish the fact that both were engaged in a joint adventure in the technical sense of that phrase. *Nat. Surety Co. vs. Winslow*, 143 Minn. 66; 33 C. J. 847. While a joint adventure may be distinguished from a partnership, nevertheless they are both so much alike that it is often very difficult to differentiate them. And to establish either it is necessary to do more than show that the persons said to be so associated are to share in the profits of a transaction. *Clark v. Muir*, 298 Ill. 548; *Manker v. Tough*, 79 Kan. 46; 33 C. J. 844. But it is essential to show that they have a joint proprietary interest, or that they are to share losses as well as profits, or that they have a joint control over the subject matter of the adventure or the manner in which it is to be carried out. In fine, there seems to be no ‘real distinction between a joint adventure, and what is termed a partnership for a single transaction’. *Rowley on Partnership*, par. 975.”

In a case recently decided by the Maryland Court of Appeals it was held that a series of transactions in the nature of loans by one party to the other, was not a joint adventure.⁴⁸ The Court said:

“To constitute a ‘joint venture’, or ‘joint adventure’, as it is sometimes called, it is not sufficient that parties share in profits and losses, but they must intend to be associated as partners, either as general partners,

⁴⁷ *Ibid.*, 153 Md. 589.

⁴⁸ *Brenner v. Plitt*, 34 A. (2d) 853 (Md., 1943).

or merely for the duration of the joint adventure. *Hutchinson v. Birdsong*, 207 N. Y. S. 273, 275, 211 App. Div. 316. Mere agreement to share profits, of itself, constitutes neither a partnership nor a joint adventure. *Palmer v. Maney*, 266 P. 424, 428, 45 Idaho 731. It has been held that a 'joint adventure' exists when two or more persons combine in joint business enterprise for their mutual benefit with the understanding that they are to share in profits or losses and that each is to have voice in its management. *Chisholm v. Gilmer*, C. C. A. Va. 81 F. 2d 120, 124."

In *Powers v. State*,⁴⁹ the Maryland Court in an alleged tort liability case, decided there was no joint adventure, but on page 29 the case of *Dolan v. Dolan*,⁵⁰ was cited with approval, and the general law on the subject was stated at length. In *Kemp v. Kemp*,⁵¹ the appellant claimed the benefits of the law of joint adventures in the transaction there involved; upon an issue of fact, without mention of any aspect of the law of joint adventures, this claim was rejected. In *Warner v. Markoe*,⁵² the Court decided that when a passenger in an automobile goes on "a drinking cruise" with the owner of the automobile, there is no joint adventure so as to charge acts of the driver ("defendant's employee") to the plaintiff, though "It is true there was a common purpose in seeking the pleasure of the two". Since this article was written, the Maryland Court of Appeals has decided the case of *Home News, Inc., v. Goodman*, in which the Court made this statement, quoted from a current law encyclopedia:^{52a}

"Where two or more persons are jointly interested to have certain services performed, they may be presumed to be jointly obligated unless there is something to indicate a different intention".

⁴⁹ 178 Md. 23, 11 A. (2d) 909 (1940).

⁵⁰ 107 Conn. 342, 140 A. 745 (1928).

⁵¹ 178 Md. 645, 16 A. (2d) 888 (1940).

⁵² 171 Md. 351, 358-91, 189 A. 260 (1937).

^{52a} 35 A. (2d) 442 (Md., 1944), quoting 17 C. J. S. 1228-9, Sec. 587.

IX.

LIABILITIES OF JOINT ADVENTURERS INTER SE.⁵³

1. *Contract Liability.* In cases of express contracts, where the parties have stipulated their rights, there is no difficulty except possibly as to the proper remedy and the forum. We have cited cases above in which, in appropriate instances, both equity and law courts have been resorted to. To these might be added the cases in the footnote, in which Equity has granted affirmative relief in situations at least analogous to joint adventures.^{53a}

Outside of Maryland, it is generally held that if a joint adventure is established but without any agreement as to the division of profits and losses, the division is presumed to be equal.⁵⁴

2. *Property.* Sometimes in a joint adventure, property is acquired in the name of one member who refuses to appropriate it to the joint cause.⁵⁵

3. *Tort Liability.* There have been four cases before the Maryland Court of Appeals involving tort liability arising from joint adventures, but in no one of the four cases did the Court deem that the circumstances amounted to a joint adventure.⁵⁶

In *Powers v. State*, though the Court held that on the facts there was no joint enterprise, a very full outline of the applicable joint adventure law was furnished by way of dictum.⁵⁷ We shall refer to this case below in connec-

⁵³ The general subject of the rights and liabilities of joint adventurers inter se is discussed extensively in 33 C. J. 851-71, and 30 Am. Jur. 690-9.

^{53a} *Noel v. Noel*, 173 Md. 152, 195 A. 315 (1937); *Bryant v. Fitzsimmons*, 106 Md. 421, 67 A. 356 (1907).

⁵⁴ 33 C. J. 861. In *Dolan v. Dolan*, 107 Conn. 342, 350, 140 A. 745 (1928), it was said: "Until the contrary is shown, the law will presume that the parties intended an equal division of the results of their joint efforts, and the court will enter a decree accordingly." See, in this connection, *Berg v. Plitt*, 178 Md. 155, 12 A. (2d) 609 (1940), and 30 Am. Jur. 693.

⁵⁵ The law generally on this subject is well summarized in 33 C. J. 858. Analogous circumstances are dealt with in Maryland as resulting trusts, *Byer v. Szandrowski*, 160 Md. 212, 153 A. 49 (1931); *Dixon v. Dixon*, 123 Md. 44, 90 A. 846 (1914); and see 65 C. J. 303-5.

⁵⁶ *Powers v. State*, 178 Md. 23, 11 A. (2d) 909 (1940); *Warner v. Markoe*, 171 Md. 351, 189 A. 260 (1937); *Vacek v. State*, 155 Md. 400, 142 A. 491 (1928); *State v. N. & W. Ry.*, 151 Md. 679, 135 A. 827 (1926).

⁵⁷ *Supra*, 178 Md. 29-31.

tion with the tort liability affecting third persons. But, the opinion recited:⁵⁸

“But the rule (doctrine of imputed negligence in third party cases) does not apply when one member of the enterprise brings the action against another member who owns or operates the vehicle, for the doctrine of imputed negligence is inapplicable as between the parties”.

The Court then referred to an Arizona case in which one “joy rider” was allowed to recover from another. The Arizona Court defines “joy riders” as two or more persons “enjoying the exhilarating and pleasurable sensations incident to the swirl and dash of rapid transit”.

We take this case to be an affirmation of the postulate that one member of a joint adventure has a good cause of action against another member for the latter’s personal negligence. This is undoubtedly the rule asserted by the great weight of authority outside of Maryland.⁵⁹

X.

RIGHTS AND LIABILITIES OF THIRD PERSONS IN CONNECTION WITH JOINT ADVENTURES.

1. *Contract Cases.* In cases of Joint Adventures created by express contracts, when all contingencies are provided for, there will be no difficulties encountered. But in those instances which we class as growing out of implied contracts, there will be many situations in which the solution will be troublesome; and the problems will be mostly about agency questions.⁶⁰

There are no Maryland decisions in point, and the only light we can throw on this phase of our subject is to outline some general agency principles from which a start can be made when specific instances are to be considered.

⁵⁸ *Ibid.*, 31.

⁵⁹ *McCombs v. Ellsberry*, 337 Mo. 491, 85 S. W. (2d) 135 (1935); Note, *The Concept of “Joint Enterprise” in Automobile Injury Cases* (1941) 26 *Marq. L. Rev.* 33; Note, *The Doctrine of Joint Enterprise* (1940) 14 *Temp. L. Q.* 535; Note, *Automobiles—Negligence—Joint Enterprise* (1936) 20 *Minn. L. Rev.* 401. In this last article some authorities are cited which are not in accord with the prevailing rule.

⁶⁰ This general topic is dealt with in 33 *C. J.* 871-74, 30 *Am. Jur.* 699-700.

The general principles of Partnership and Agency Law are definitely outlined in the Maryland law; they have been expressed by judicial decisions, and crystallized in statute by the Uniform Partnership Law. Each member of a partnership is an authorized agent for other members to the extent of the business of the partnership.⁶¹ In adapting these principles to Joint Adventures, the authorities express gradations of views amounting almost to conflict. Our Court of Appeals has expressed the general view that Partnerships and Joint Adventures are essentially the same thing.⁶² A leading authority without Maryland says: "There is not the relation of principal and agent in joint adventure which we find in a partnership".⁶³

In discussing this subject, a learned annotator writing in the Harvard Law Review, says that in a partnership, each member is a co-owner of the business, and there mutual agency is "an established necessary ingredient". But in the case of a joint adventure, there is not the same co-ownership of a business. There is no distinct entity. Hence the question of agency is one of authority by agreement, express or implied.⁶⁴

Perhaps the best statement is that a member of a joint adventure can bind his associates as to the business of the joint adventure in connection with such contracts as are reasonably necessary to carry out the purposes of the enterprise.⁶⁵ While it is only remotely connected with the subject, we might call attention to the thought that in connection with corporate agency questions, our Court of Appeals often inclines to the view that corporate agents have limited powers.⁶⁶

On the whole, the best general observation we can make is that in each case there will probably be some circumstances in the transaction being examined which will define the authority of individual members of the

⁶¹ *Bradford v. Harford Bank*, 148 Md. 1, 22-3, 128 A. 899 (1925); *Maltby v. R. R. Co.*, 16 Md. 422 (1860); Md. Code (1939) Art. 73A, Sec. 9.

⁶² *Atlas Realty Co. v. Galt*, 153 Md. 586, 139 A. 285 (1927).

⁶³ *Dolan v. Doland*, 107 Conn. 342, 140 A. 745 (1928).

⁶⁴ Note, *supra*, n. 1, 33 Harv. L. Rev. 852, 854.

⁶⁵ 33 C. J. 871; 30 Am. Jur. 699.

⁶⁶ *Kennedy v. Insurance Co.*, 162 Md. 340, 159 A. 780 (1932); *Liggett v. Rose*, 152 Md. 146, 136 A. 651 (1927).

enterprise, to bind the other participants. In brief, each case depends on its own particular facts.

2. *Tort Cases.* We have cited above the four Maryland decisions, in which in tort cases the issue of joint adventure was raised. In one of these cases the issue was between members of the alleged joint enterprise. In the other three cases, the issue was between a passenger in the automobile and a third party claimed to be responsible for the accident. In them an effort was made to charge the alleged negligence of the owner of the car against the plaintiff, upon the ground that the plaintiff and the owner of the car were engaged in a joint adventure and hence the negligence of the driver (whether the owner of the car or his chauffeur) is chargeable to the plaintiff who is thus debarred of recovery by reason of the imputed contributory negligence.

The Court decided that none of these cases was a joint adventure, but, in *Powers v. State*,⁶⁷ the prevailing opinion outlined at considerable length the essentials and consequences of a joint adventure in automobile accident cases. Three judges concurred in the majority opinion; two dissented.

The general requisites of a Joint Adventure are outlined in the opinion:⁶⁸

“The question whether occupants of an automobile were engaged in a joint enterprise is often a question for the jury (citing a Kansas case). It is generally held that the common purpose of riding together for pleasure is insufficient to establish a joint enterprise. Although the purpose of a pleasure journey is a common one, the courts usually hold that such a purpose is not sufficiently joint to have the effect of imputing the negligence of the driver to the others, unless the parties had entered into an actual or implied contract giving common possession of the vehicle and joint control of its operation”.

⁶⁷ 178 Md. 23, 11 A. (2d) 909 (1940); noted with criticism of the conclusion in Note, *Auto Owner's Liability for Injury Caused by Guest Permitted to Drive* (1940) 5 Md. L. Rev. 104.

⁶⁸ *Ibid.*, 178 Md. 29.

And, further, the Court said that the doctrine of imputed negligence would not apply in that suit, which was not one between alleged joint adventurers, but then on the same page the opinion stated the law applicable under the present topic:⁶⁹

“The general rule is that where the occupants of a vehicle are engaged in a joint enterprise, the negligence of one member of the enterprise will be imputed to another when the action is brought against a third party”.

XI.

CONCLUSION.

In the case of *Beardsley v. Beardsley*,⁷⁰ the Supreme Court looked through stock registration and corporate form to adjudicate individual rights of brothers in an adventure which the Court defined as one in which the two brothers were “joint owners in a common enterprise”. The Court said the exact form of the transaction was not important, nor the name they chose to give it. “It is the legal effect of the whole which is sought for”.

This decision reveals a common sense view of this whole subject. The merits of the particular transaction will probably indicate some appropriate disposition of the rights of the parties to the joint transaction. While the remedy applied may be derived as well from the law of Partnership, or Agency, or Torts, as from Joint Adventures, this latter title is a convenient one under which to classify litigation, which in strictness does not belong to the other longer established subjects, from which the applicable principles may be borrowed.

So, after all, we might conclude with those familiar lines in Shakespeare's *Romeo and Juliet*:

“What's in a name? That which we call a rose
By any other name would smell as sweet”.

⁶⁹ *Ibid.*, 31.

⁷⁰ 138 U. S. 262 (1891).