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PARTNERS WITHOUT PARTNERS: THE LEGAL STATUS OF SINGLE PERSON PARTNERSHIPS[†]

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ABSTRACT

Is it possible to have a partnership consisting of one person, a partner without a partner? The question will arise when all but one of the members leaves a partnership. The Revised Uniform Partnership Act attempts to give greater stability to partnerships by narrowing the circumstances under which dissolutions occur, but it also fails to address the fundamental and important question of whether a partnership may be continued by a sole surviving partner.

In this Article, we explore the issues raised by a single person partnership. In particular, we address the central issue of whether the departure of the penultimate partner from a term partnership triggers a winding up of the business or whether the statutory buyout is called into play. We have structured much of the discussion as a dialog between the authors. This allows us both to focus on the precise issues under RUPA presented by a single person partnership and to probe the competing arguments on whether such a partnership may exist. Although we have differing views on whether a single person partnership is possible under RUPA, we conclude on common ground that the buyout is appropriate. We also unite in a call for statutory clarification.

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INTRODUCTION

The labels “partner” and “partnership” enjoy a special place in our culture and in our law.¹ Literature is replete with usages of the terms, almost always in a positive light.² In recent years, the terminology of partnerships has been used in a wide variety of settings to describe relationships of equality, including domestic partnerships, community partnerships, government-industry partnerships, and virtually any relationship in which goals are shared and at least some measure of mutual participation is the norm. As *Webster’s* puts it, “partner” is “one who shares in the possession or enjoyment of something with another,” or, more broadly, “one of two or more persons who play together in a game against an opposing side.”³

In law, although “partnership” is a specific term defined in the partnership statutes, the appeal of “partner” and “partnership” classifications are sufficiently strong that individuals associated in firms that clearly are not partnerships nevertheless describe their firms as partnerships and their colleagues as partners.⁴ Members of professional associations such as law firms commonly refer to colleagues as “partners” even though “shareholders” or “members” would be more accurate terminology for the large number of firms organized as professional corporations or limited liability companies, organizational

1. See generally Robert W. Hillman, *Law, Culture and the Lore of Partnership: Of Entrepreneurs, Accountability, and the Evolving Status of Partners*, 40 WAKE FOREST L. REV. 793 (2005) (exploring the special status of “partner” in law and literature).

2. A prime example is Mark Twain’s *Poor Little Stephen Girard*, which describes the unsuccessful attempts of a boy to become a partner to “the bank man.” See MARK TWAIN, *POOR LITTLE STEPHEN GIRARD* (1879), reprinted in CARLETON’S POPULAR READINGS, 183-84 (Anna Randall-Diehl ed. 1883).

3. *Ingram v. Deere*, 288 S.W.3d 886, 900 (Tex. 2009) (citing WEBSTER’S NEW UNIVERSAL UNABRIDGED DICTIONARY (1st ed. 1996)).

4. Cf. Jeffrey M. Lipshaw, *The Bewitchment of Intelligence: Language and Ex Post Illusions of Intention*, 78 TEMP. L. REV. 99, 121 n.95 (2005) (“Business people regularly use the words partner or partnership to describe a close business relationship regardless of the nature of the underlying contract. Purchasing people regularly refer to their supplier-partners, for example. In that language game, partner has no legal significance. Lawyers, using the word in the legal language game, choke every time they see this, understanding that calling someone a partner may mean that someone else may rely on that characterization, and later invoke the law that says partners are mutual agents of one another.”).

forms quite distinct from partnerships. Moreover, a simple Google search will reveal that countless corporations use the term “partners” in their names⁵ even though the presentation of a corporate entity as “XYZ Partners, Inc.,” for example, signals a certain confusion of identity. LLCs are no less attracted than corporations to the appeal of partnership terminology.⁶

Indeed, considering the years of experience the law has had to refine concepts underlying partnerships, it is somewhat surprising to encounter a rather straightforward question on which the contemporary law provides no clear answer: Is it possible to have a partnership consisting of one person—a partner without a partner? The question will arise for any two person partnership when one of the partners leaves the partnership. It will also arise whenever a number of partners leave with only one partner remaining. When only one partner remains, can the resulting business or firm be described as an “association” or a “partnership?” On the most fundamental level, is it not the case that a partnership is a relationship between or among individuals?

Traditional partnership law rendered the partnership a very fragile relationship, with the consequence that any change in the membership dissolved the partnership.⁷ Whether the partnership consisted of two or two hundred partners, the departure of a single partner caused the dissolution of the partnership. Though potentially disruptive, this approach was consistent with the view of partnership as a unique association of individuals combining their efforts in a quest for profits. Highly personal and specific in its composition, the association could not survive a change in its membership. Thus, the law firm with two hundred partners necessarily re-formed as a *new* partnership each time a partner joined or left the firm.⁸

5. For example, a Google search for “partners, inc.” reveals a number of corporations that have identified themselves in this way. See <http://www.google.com> (search “partners, inc.” then follow “search” hyperlink) (last visited Mar. 22, 2012).

6. Likewise, a Google search for “partners, LLC” produces a number of such instances, including JP Morgan Partners, LLC, Berkshire Partners, LLC, Graystone Partners, LLC, Triton Partners, LLC, and so forth. See <http://www.google.com> (search “partners, LLC” then follow “search” hyperlink) (last visited Mar. 22, 2012).

7. See UNIF. P’SHIP ACT § 29 (1997), 6 U.L.A. 349 (1914) (defining dissolution as a change in the relationship among partners caused by a partner ceasing to be associated in the carrying on of the business). See generally Robert W. Hillman, *The Dissatisfied Participant in the Solvent Business Venture: A Consideration of the Relative Permanence of Partnerships and Close Corporations*, 67 MINN. L. REV. 1, 8-9 (1982).

8. See Robert W. Hillman, *Law Firms and Their Partners: The Law and Ethics of Grabbing and Leaving*, 67 TEX. L. REV. 1, 30-58 (1988). See generally Donald J.

The fragility of partnerships was thought to be a major disadvantage of the partnership form of organization.⁹ In an effort to provide greater stability for partnerships, the Revised Uniform Partnership Act (“RUPA”) adopts an entity approach to partnerships that allows many of them to survive the withdrawal or other dissociation of a member.¹⁰ In particular, the goal is to implement the intent of partners who have contracted for stability. For example, the death of a partner and the withdrawal of a partner from a partnership that was formed for a fixed term are not events that, standing alone, trigger a dissolution and winding up of a partnership.

But what if the death or withdrawal of a partner represented the departure of one partner from a two person partnership? This raises the issue that is the focus of this Article: May a two person partnership that loses a partner continue to operate as a partnership? More specifically, must the business be liquidated or may the survivor buyout the recently departed partners and continue the business? The question is fundamental and important. It also is one to which RUPA does not provide a clear answer. In this article, we explore the issue and suggest a framework that may be helpful in resolving issues that arise when the penultimate partner leaves a two person partnership.

We have structured much of the discussion as a dialog between the authors. This allows us both to focus on the precise issues under RUPA presented by a single person partnership and to probe the competing arguments concerning whether such a partnership may exist. We conclude the article on common ground with a suggested resolution for the single person partnership buyout issue raised by RUPA.

Weidner, *Cadwalader, RUPA & Fiduciary Duty*, 54 WASH. & LEE L. REV. 877, 885-97 (1997). See ROBERT W. HILLMAN, HILLMAN ON LAWYER MOBILITY § 4.3.2 (2008 Supp.), for a discussion of ways that law firms have attempted to avoid harsh dissolution consequences.

9. See generally Donald J. Weidner, *Pitfalls in Partnership Law Reform: Some United States Experience*, 26 J. CORP. L. 1031, 1031-33 (2001) (discussing RUPA and early attempts to eliminate altogether the term dissolution).

10. See REVISED UNIF. P'SHIP ACT § 801, 6 U.L.A. 189-90 (1997) (listing events that cause a partnership dissolution). See generally ROBERT W. HILLMAN, ALLAN W. VESTAL & DONALD J. WEIDNER, THE REVISED UNIFORM PARTNERSHIP ACT 443-51 (2010-11 ed.).

A DIALOG

Hillman: Perhaps we should start with RUPA's definition of a partnership because this bears on the question of what remains following the withdrawal of a partner from a two person partnership. The core of RUPA's definition is that a partnership is "an *association* of two or more persons to carry on as co-owners a business for profit"¹¹ If one partner leaves, the association of two or more persons no longer exists, which means a partnership is constituted only for the limited purpose of winding up the business.¹² In other words, the partnership that existed prior to the dissociation is no more.

The status of the partnership following the withdrawal is a point of practical, as well as theoretical significance. To conclude that the partnership ceases to exist may negate the RUPA buyout, which is triggered only by a dissociation that does not result in a partnership dissolution and winding up.¹³ Is it not a de facto dissolution when the partnership ceases to exist because there is only a single partner? If so,

11. REVISED UNIF. P'SHIP ACT § 101(6), 6 U.L.A. 61 (emphasis added). The full definition provides: "'Partnership' means an association of two or more persons to carry on as co-owners a business for profit formed under Section 202, predecessor law, or comparable law of another jurisdiction." *Id.*

12. This is exactly the conclusion reached in the small but growing number of cases concluding that the dissociation of a partner from a two person partnership necessarily triggers dissolution of the partnership. *See Corrales v. Corrales*, 2011 WL 3484470 (Cal. App. 4th Dist. 2011) (responding to the suggestion of a single-person partnership by saying "no such animal exists."); *Wheatley v. Fink*, No. C048328, 2006 WL 3071451, at *4 (Cal. Ct. App. Oct. 31, 2006) (holding that buyout provisions do not apply when one partner leaves a two-person partnership because the partnership could not be continued by a single partner); *Vesco v. San Diego Cmty. Corr. Ctr.*, No. D049266, 2008 WL 2547890, at *7 (Cal. App. Mar. 25, 2008); *Kuist v. Hodge*, No. B193863, 2008 WL 510075, at *11 (Cal. Ct. App. Mar. 25, 2008); *Pemstein v. Pemstein*, No. G030217, 2004 WL 1260034, at *1 (Cal. Ct. App. June 9, 2004); *Costa v. Borges*, 79 P.3d 316, 320 (Idaho 2008) (holding that "because it takes at least two persons to have a partnership" a two person partnership does not survive the withdrawal of a partner, but concluding a joint venture cannot survive the withdrawal of a member even if it has more than two participants). *See also Eschweiler v. Eschweiler*, No. A05-1435, 2006 WL 1890646, at *2 (Minn. Ct. App. July 11, 2006) (holding that partner who has given notice of dissociation under an agreement that includes a buyout provision is not barred by the election of remedies doctrine from subsequently demanding judicial dissolution and winding up); Rules of the State Bar of Cal., R. 3.179 (2010) ("The State Bar must terminate certification of a limited liability partnership if there is only one partner in the limited liability partnership").

13. *See* REVISED UNIF. P'SHIP ACT § 701, 6 U.L.A. 175-76 (1997). *See generally* HILLMAN, VESTAL & WEIDNER, *supra* note 10, at 413-27.

then perhaps the withdrawal of the partner should not result in a RUPA buyout, with the consequence that the partnership instead should proceed down the dissolution track, wind up and liquidate its assets. To be sure, the concept of de facto dissolution is novel in partnership law, but no mechanism exists to accomplish the end of a partnership other than dissolution of the partnership. If dissolution and winding up are the consequences of a withdrawal, then by definition the statutory buyout is not applicable.

Weidner: I agree that it is a good idea to begin with the text of RUPA's definitions of partnership. We also should consider the purpose and limitations of those definitions.

RUPA has two definitions of "partnership." One is a short version and the other is a long version. The short version expressly refers to the long version because the short version is incomplete without it.¹⁴ The short version is Section 101(6), which provides that "'Partnership' means an association . . . *formed* under Section 202 . . ." (emphasis added).¹⁵ The short version's reference to Section 202 is to the longer version of the definition, which has two principal parts. First, Section 202(a) provides that "the association of two or more persons to carry on as co-owners a business for profit *forms* a partnership, whether or not the persons intend to *form* a partnership (emphasis added)."¹⁶ Second, Section 202(b) provides that "[a]n association *formed* under a statute other than this [Act] . . . is not a partnership under this [Act] (emphasis added)."¹⁷ In particular, "[a] limited partnership is not a partnership under this definition."¹⁸ Thus, the short version of the definition in

14. See REVISED UNIF. P'SHIP ACT § 101(6), 6 U.L.A. 61 (1997). Section 101(6) is one of three of RUPA's fourteen definitions that refer to other provisions of RUPA and are incomplete without them. This is a technique perhaps most familiar to tax lawyers. See I.R.C. § 61(a) (2006) (stating that "gross income means all income from whatever source derived . . .") No one would look to § 61 alone as a dispositive definition of what constitutes income.

15. REVISED UNIF. P'SHIP ACT § 101(6).

16. REVISED UNIF. P'SHIP ACT § 202(a), 6 U.L.A. 91 (1997). The Official Comments to Section 202 make clear that the drafters considered it the long form definition of partnership. Official Comment 1 discusses what 202 adds to the UPA "definition" of partnership and notes in particular the language "whether or not the persons intend to form a partnership." REVISED UNIF. P'SHIP ACT § 202 cmt. 1, 6 U.L.A. 93 (1997).

17. REVISED UNIF. P'SHIP ACT § 202(b).

18. *Id.* § 202 cmt. 2, 6 U.L.A. 93. This is a major change from the UPA definition, which expressly applied the UPA "to limited partnerships except insofar as the statutes

Section 101(6) is incomplete without the Section 202 language excluding limited partnerships and all other associations organized under other formation statutes. This reflects the partnership statute's modest but historic role of serving as a residual category. If a business relationship is not formalized under any other statute—if there is nowhere else to turn—the partnership statute controls.

Consequently, the statutory definition of “partnership” exists only to describe the broad catchment area of the relationships that will be brought within the ambit of the partnership statute. Stated differently, the definition simply describes in general terms the relationships that will trigger the application of the statute's mandatory and default rules. Both the short and the long versions of the definition build off the term “relationship,” which in this context has always meant a voluntary coming together to co-own a business.¹⁹ Neither definition states anything about the consequences of the relationship. With one important exception, other sections define the consequences that follow if the relationship falls within the statutory catchment.

The exception is that both definitions refer to something being “formed.”²⁰ The work of telling us what has been formed, and the consequences from the moment of formation to the extinguishment of the relationship are left to other sections. Perhaps the broadest and most powerful consequence of the formation is the creation of a legal entity. Section 201(a) declares that the formation of a partnership results in the creation of a business entity, stating that “[a] partnership is an entity distinct from its partners.”²¹ The question then becomes: what are the rules that govern entities that are formed by the relationships that fall under and are subject to RUPA? More specifically, the question becomes: what are the rules that wind down or extinguish the existence

relating to such partnerships are inconsistent.” UNIF. P'SHIP ACT § 6(b) (1997), 6 U.L.A. 393 (1914). This major departure from the UPA was intended to lay the foundation for free-standing limited partnership acts. *See* REVISED UNIF. P'SHIP ACT § 202 cmt. 2, 6 U.L.A. 93 (1997).

19. UNIF. P'SHIP ACT § 6(1), cmt. 1 (“In the domain of private law the term association necessarily involves the idea that the association is voluntary.”).

20. REVISED UNIF. P'SHIP ACT §§ 101(6), 202(a); *see also* REVISED UNIF. P'SHIP ACT § 202(c). *Cf.* UNIF. P'SHIP ACT § 7 (discussing when a partnership “exists” rather than when a partnership is “formed.”).

21. REVISED UNIF. PARTNERSHIP ACT § 201(a). Professors Hansmann and Kraakman argue that the law should recognize the partnership with only a single partner, citing but not discussing RUPA and conceding that historically a partnership must have at least two partners. *See* Henry Hansmann & Reinier Kraakman, *The Essential Role of Organizational Law*, 110 YALE L. J. 387, 413-14 (2000).

of those entities? As a preliminary matter, I have no problem saying that the entity resulting from the relationship continues until the business is liquidated or the penultimate partner is bought out.

Hillman: You know you have a problem when a statute defines the same term twice, especially when the definitions are not identical. In determining when a partnership exists, referencing Section 202 is helpful but not dispositive because the section deals exclusively with formation of a partnership. Section 101(6) defines “partnership” and is not so limited. Note the definition employs both present and past tenses, providing that “[p]artnership *means* as association of two or more persons to carry on as co-owners a business for profit *formed* under Section 202, predecessor law, or comparable law of another jurisdiction.”

We see the present tense used to describe what currently is (or is not) a partnership and the past tense used to set forth the circumstances of creation. Whether a partnership was ever formed is tested under Section 202, but the section offers no help in post-formation issues relating to the continuing status of a business as a partnership. Section 101(f), on the other hand, is relevant to post-formation inquiries because it defines the status of what exists today. I think you go too far in limiting the definitional section to formation of a partnership.

To apply this to our problem of a single person partnership, we may have a partnership properly formed by two individuals (Sections 101(f) and 202) who intend the partnership to exist for a defined term, but at some subsequent point prior to the expiration of the term one of the two partners has left the partnership (i.e., has dissociated). Since we have only one remaining partner, can we say that presently we have an association of two or more persons to carry on as co-owners a business for profit? I think the question answers itself, but we obviously disagree on this point.

Let’s move beyond the definition to the ramifications of concluding a single person partnership is, or is not, a partnership. One of the practical implications of the rather theoretical point we are addressing is whether the innovative buyout provisions of RUPA Section 701 will apply when one partner dissociates from a two person partnership that is for a fixed term. Section 801’s events of dissolution for a fixed term partnership do not include dropping below a minimum of two partners or otherwise failing to meet the definition of a partnership, so it would seem that the precondition for the Section 701 buyout (a dissociation that does not result in dissolution and winding up) applies.

Weidner: I obviously think you are asking the definition of “partnership” to do too much by effectively operating as a special dissolution rule whenever partnerships no longer meet the language of the definition. RUPA contains three separate articles on partnership breakups, defining when and how liquidations versus buyouts are to take place. To attach to the definition substantive breakup consequences would create yet another set of dissolution rules and certainly was not considered in the drafting of the RUPA.²²

Thanks in part to your scholarship,²³ the RUPA drafters were well aware that a partnership statute must address carefully four main points about partnership breakups. First, it must define how to wind down the authority of a departing partner to bind the partnership.²⁴ Second, it must wind down the departing partner’s fiduciary duties and obligations.²⁵ Third, it must wind down the liability of a departing partner for continuing partnership obligations.²⁶ Fourth, it must “cash out” the equity of the departing partner, or of all of the partners. In particular, it must decide whether the cashing out is accomplished by a liquidation of the partners or by a buyout of the departing partner.²⁷

RUPA’s breakup provisions are much more detailed than the UPA on how a departing partner is to be cashed out. Articles 6 (“Partner’s Dissociation”), 7 (“Partner’s Dissociation When Business Not Wound Up”) and 8 (“Winding Up Partnership Business”) define two different routes and when they are to be taken.²⁸ Article 6 introduces the new term “dissociation,” which it fails to define but which might best be thought

22. See generally Donald J. Weidner & John W. Larson, *The Revised Uniform Partnership Act: The Reporters’ Overview*, 49 BUS. LAW. 1, 27 (1993); Edward S. Merrill, *Partnership Property and Partnership Authority Under the Revised Uniform Partnership Act*, 49 BUS. LAW. 83 (1993) (Merrill was intimately involved with the drafting project and his article makes no mention of attaching substantive breakup consequences to the definition of partnership).

23. See generally Robert W. Hillman, *Private Ordering Within Partnerships*, 41 U. MIAMI L. REV. 425 (1987); Robert W. Hillman, *The Dissatisfied Participant in the Solvent Business Venture: A Consideration of the Relative Permanency of Partnerships and Close Corporations*, 67 MINN. L. REV. 1 (1982).

24. See REVISED UNIF. P’SHP ACT §§ 702, 704 (in the case of a buyout) and §§ 804, 805 (in the case of a winding up).

25. See *id.* § 603(b)(2)-(3).

26. See *id.* §§ 703-704 (in the case of a buyout) and §§ 805 and 806 (in the case of a winding up).

27. See *id.* § 701 (in the case of a buyout) and § 807 (in the case of a winding up).

28. Article 6 includes §§ 601-603, Article 7 includes §§ 701-705 and Article 8 includes §§ 801-807.

of as a departure.²⁹ Most simply, a partner dissociates from a partnership either by giving it notice of his express will to withdraw³⁰ or by dying.³¹ Section 603(a) is a “switching” provision that tells us that either one of two sets of rules will apply to cash out a departing partner.³² If a partner’s dissociation results in “dissolution and winding up of the business, [Article] 8 applies, otherwise, [Article] 7 applies.”³³ As stated perhaps more helpfully in the Official Comments, “after a partner’s dissociation, the partner’s interest in the partnership *must* be purchased pursuant to the buyout rules in Article 7 unless there is a dissolution and winding up of the partnership business under Article 8.”³⁴

The departure of the penultimate partner in a term partnership does not result in a dissolution and winding up under Article 8.³⁵ Section 801, by its terms, lists the “only” events that cause dissolution and winding up,³⁶ and a departure from a term “partnership” is not on the list. Both Sections 603(a) and 801, therefore, require a buyout in this situation.

Hillman: I share your discomfort with converting the definitional provision into yet another set of breakup rules. We face a gap in the statute, however, and I am also uncomfortable with allowing a business

29. See REVISED UNIF. P'SHIP ACT § 601 cmt. 1, 6 U.L.A. 164 (1997).

RUPA dramatically changes the law governing partnership breakups and dissolution. An entirely new concept, “dissociation,” is used in lieu of the UPA term “dissolution” to denote the change in the relationship caused by a partner’s ceasing to be associated in the carrying on of the business. “Dissolution” is retained but with a different meaning. The entity theory of partnership provides a conceptual basis for continuing the firm itself despite a partner’s withdrawal from the firm. See *id.* § 601 cmt. 1, 6 U.L.A. 164.

Interestingly, RUPA itself does not define either “dissociation” or “dissolution.” The Official Comments, however, state that dissolution “is merely the commencement of the winding up process.” *Id.* § 801 cmt. 2, 6 U.L.A. 190.

30. See *id.* § 601(1), 6 U.L.A. 163. A partner has the power to dissociate by express will at any time, even if the dissociation is wrongful. *Id.* § 602(a), 6 U.L.A. 169.

31. See *id.* § 601(7), 6 U.L.A. 164. Section 601 lists ten different events that cause the dissociation of a partner.

32. REVISED UNIF. P'SHIP ACT § 603(a).

33. *Id.* § 603(a), 6 U.L.A. 172. Official Comment (1) states that “Section 603(a) is a ‘switching’ provision.” *Id.*

34. *Id.* § 603 cmt. 1, 6 U.L.A. 172 (emphasis added).

35. REVISED UNIF. P'SHIP ACT § 801.

36. See *id.* § 801, 6 U.L.A. 189. Section 801 of RUPA prefaces a list of six events by stating that “[a] partnership is dissolved, and its business must be wound up, *only* upon the occurrence of any of the following events . . .” (emphasis added). *Id.*

to continue to operate with the status of a partnership when it no longer meets the fundamental characteristics of the partnership so succinctly outlined in the definition.

On a more practical note, it seems we agree that the buyout provisions of RUPA should apply when a partner in a fixed term partnership dissociates and leaves a single, surviving partner. This puts us at odds with the small but growing number of recent cases that have concluded that the buyout provisions should not apply because the partnership no longer exists.³⁷

Let's move beyond the buyout question and consider whether the business that is continued by the single "partner" may be a partnership. I am not arguing for a "special dissolution rule" but merely pointing out that whatever remains after the dissociation of a partner from a two person partnership does not fit the definition of a "partnership." Again, the question has important practical ramifications. Suppose, for example, that one partner withdraws from a limited liability partnership. May the surviving partner continue the business as an LLP and thereby continue the limited liability benefits of this associational form? More broadly, if the partnership does not continue with only a single partner, by what means is the original partnership brought to a conclusion?

We have noted that Section 801 provides an exclusive list of events that cause a dissolution and winding up of partnership business. The problem is that RUPA does not define the term "dissolution" or otherwise provide a context for its use. I know you gave a great deal of thought to dissolution issues as you were drafting RUPA and ultimately concluded the term dissolution caused more mischief than good and should not be used in the statute. You made a very thoughtful and persuasive argument to advance this view.³⁸ Unfortunately, your view did not carry the day with the consequence that the term dissolution was inserted into RUPA after the basic structure of the act had been settled.

We need to determine how and whether dissolution bears on our single person partnership issue, but before going too far down that road it would be helpful if you could provide a little background on how dissolution was incorporated into RUPA and what the term might mean.

37. See *supra* text accompanying note 12.

38. See Donald J. Weidner, *Three Policy Decisions Animate Revision of Uniform Partnership Act*, 46 BUS. LAW. 427,435-36 (1991).

Weidner: Even prior to the UPA, the term “dissolution” had caused confusion in the law of partnerships.³⁹ The UPA tried unsuccessfully to resolve the confusion both by defining what dissolution was and by defining what dissolution was not. Dissolution was “the change in the relation of the partners caused by any partner ceasing to be associated in the carrying on as distinguished from the winding up of the business.”⁴⁰ “Dissolution” was distinguished from “termination,” which did not take place until the winding up of the business was complete.⁴¹ In short, under the UPA, “dissolution” was a contraction in scope of the relationship during which authority, liability and fiduciary duties were wound down and proper payment was made. Despite the concept’s simple elegance, it continued to cause confusion. In particular, the “change in the relation” caused by “any partner ceasing to be associated” suggested more instability than many partners had contracted for in the continuation provisions of their partnership agreements. Essentially, the UPA failed to outline the consequences of different kinds of dissolutions. It failed to distinguish departures that would result in a buyout of a departing partner from those that would result in a liquidation of the business.⁴²

More than a century had been spent trying in vain to make the term “dissolution” work, and it seemed like a terrible failure of the legal imagination to insist that the law could not proceed without it. For the

39. See William Draper Lewis, *The Uniform Partnership Act*, 24 YALE L.J. 617, 626-27 (1915). According to Dean William Draper Lewis, the Reporter who saw the UPA to completion, “[t]he subject of the dissolution and winding up of a partnership is involved in considerable confusion principally because of the various ways in which the word ‘dissolution’ is employed.” *Id.*

40. UNIF. P’SHP ACT § 29, 6 U.L.A. 349 (1914).

41. *Id.* § 30, 6 U.L.A. 354.

42. Donald J. Weidner, *Three Policy Decisions Animate Revision of Uniform Partnership Act*, 46 BUS. LAW. 427, 437-38 (1991) states:

The problem with the UPA’s use of the term “dissolution” is clearly much more fundamental than the absence of explicit definitions. The problem is with the way dissolution is defined and the role it is given in the statute. The basic problem with dissolution under the UPA is that it reflects an aggregate conception of partnership that fails to recognize the stability of partnerships as business organizations. The UPA actually destabilizes many partnerships, particularly those that have continuation agreements. The UPA suggests that the partnership business is coming to a close when it may not be. All that may be coming to a close is one person’s participation. In short, the UPA does not adequately distinguish between a departure that triggers a winding up of the business from a departure that does not.

Id.

bulk of the RUPA project, drafts of RUPA simply eliminated the term “dissolution.” Indeed, the State of Texas adopted as its new partnership act a close-to-final version of RUPA that made no mention of “dissolution.” That close-to-final version reflected RUPA’s basic and ultimate approach, which begins with the broad concept of a “departure,” referred to as a “dissociation.” It then distinguishes departures that would cause a winding up of the business from departures that result only in a buyout of the departing partner. By making this clear and sharp distinction, RUPA was designed to provide stability to partnerships, especially to those partnerships that had contracted for stability. In the language of RUPA, a partner is “disassociated” when the partner expresses a will to withdraw or when the partner is removed by death or otherwise.⁴³ If a dissociation is on the list of events that will trigger a winding up of the business, Article 8’s winding up rules apply. If no event takes place that will cause a winding up, most simply because the partnership has a continuation agreement that governs the situation, the buyout rules in Article 7 apply.⁴⁴

For most of the RUPA project, Article 8 simply listed the events that would “cause a winding up.” As Reporter, I was asked, near the very end of the project, to reinstate the term “dissolution” because the statute sounded to some members of the Drafting Committee too much like a radical change in the law without it (even though the Texas drafters and legislature had not thought so). I was asked, “How can you possibly have a partnership statute that doesn’t provide for ‘dissolution?’” So, I reinstated the word in a way I thought would show that it was not necessary. Whenever an earlier draft had said that an event caused a “winding up,” I caused the new draft to say that the event caused a “dissolution and winding up.” As thus deployed, the term “dissolution” is a redundancy that refers to the occurrence of an event that triggers the beginning of the winding up of the business.⁴⁵ If there is no triggering of a winding up, there is no dissolution and vice versa. To emphasize, unlike under the UPA, a departure that triggers a buyout rather than a winding up is a dissociation that does not entail a dissolution. Unfortunately, the Drafting Committee liked the way I reinstated the term dissolution and directed that I make the reinstatement

43. See REVISED UNIF. P[’]SHIP ACT § 601, 6 U.L.A. 163 (1997).

44. See *id.* § 603(a), 6 U.L.A. 172.

45. See *id.* § 801 cmt. 2, 6 U.L.A. 190. (“Under RUPA, ‘dissolution’ is merely the commencement of the winding up process.”).

permanent.⁴⁶ Instead of deleting the historically troubled concept, RUPA gave it a more restrictive meaning and left both it and the new term dissociation undefined.

Hillman: I don't share your view that dissolution is a "historically troubled concept." To the contrary, its use in the UPA nicely captured the essence of a partnership as a relationship among individuals that does not survive the departure of any of the partners.⁴⁷ This reflected a contractual view of partnerships that for centuries has been a core and settled feature of partnership law.⁴⁸

That said, I appreciate that the traditional view of dissolution has caused mischief in some extreme cases,⁴⁹ and for this reason I can understand the appeal of enhancing stability by emphasizing the partnership as an entity rather than a relationship of individuals, particularly when there are many partners.⁵⁰ The greater emphasis on entity over relationship required that RUPA either discard the term "dissolution" or offer an entirely new definition. For reasons you explain, RUPA did neither and leaves us in an unsatisfactory position by retaining the term but using it in a new, ambiguous and confusing way.

In any event, the key point is that dissolution is not an independent concept under RUPA but instead is intertwined with winding up. With this in mind, in Section 801 we see a fairly straightforward list of events that trigger the "dissolution and winding up" of the partnership. If there is no agreement as to term, the withdrawal (dissociation) of a partner initiates the winding up of the partnership, and this result occurs regardless of the number of partners in the original partnership. If there

46. See Donald J. Weidner, *Pitfalls in Partnership Law Reform: Some United States Experience*, 26 J. CORP. L. 1031, 1031-33 (2001).

47. See Robert W. Hillman, *RUPA and Former Partners: Cutting the Gordian Knot with Continuing Partnership Entities*, 58 LAW & CONTEMP. PROBS. 7, 7-10 (1995).

48. See, e.g., JOSEPH STORY, COMMENTARIES ON THE LAW OF PARTNERSHIP AS A BRANCH OF COMMERCIAL AND MARITIME JURISPRUDENCE WITH OCCASIONAL ILLUSTRATIONS FROM CIVIL LAW AND FOREIGN LAW § 2 (1841).

49. See, e.g., *Fairway Dev. Co. v. Title Ins. Co.*, 621 F. Supp. 120 (N.D. Ohio 1985) (holding that a "new" partnership resulting from the death of a partner did not have standing to enforce a title insurance policy issued to the "old" partnership because the old partnership had dissolved).

50. See generally Daniel S. Kleinberger, *The Closely-Held Business Through the Entity-Aggregate Prism*, 40 WAKE FOREST L. REV. 827 (2005); Gary S. Rosin, *The Entity-Aggregate Dispute: Conceptualism and Functionalism in Partnership Law*, 42 ARK. L. REV. 395 (1989).

is an agreement for a term for the partnership, however, the withdrawal of a partner normally will not trigger dissolution and winding up of the partnership.

Let's get specific. Suppose our two person partnership operated under an agreement establishing a partnership term of ten years. In the third year, one of the partners dissociates, leaving a single partner. There does not appear to be a Section 801 event that requires a winding up of the partnership, which would suggest that the original partnership may continue with a single partner. In this case, I take it that you believe the original partnership continues with a single partner until the expiration of the agreed term (ten years).

Weidner: Yes, at least if the buyout takes ten years.⁵¹

We have already established that a departure from a term “partnership” does not cause a “dissolution and winding up”⁵² that would conclude with a termination of the partnership.⁵³ What we have is simply a dissociation that does not trigger the beginning of a winding up. Rather, the dissociation of a partner triggers the beginning of the winding up of the relationship of the dissociated partner to the continuing partnership. The Official Comments to RUPA state that the dissociated partner “has a continuing relationship with the partnership and third parties as provided in Sections 603(b) [dealing with the dissociated partner’s right to participate in management and fiduciary duties], 702 [dealing with the dissociated partner’s power to bind the partnership for two years] and 703 [dealing with the dissociated partner’s continuing liability for partnership obligations and exposure to liability for new transactions for up to two years].”⁵⁴ The Comment also notes Section 403(b), under which the dissociated partner has a continuing right of access to books and records.⁵⁵ I am quite comfortable treating the dissociated partner as a partner for limited purposes.

51. See REVISED UNIF P'SHIP ACT § 701(h), 6 U.L.A. 176 (1997). In general, a partner who leaves early has no right to be paid any portion of the buyout price until the agreed term ends. *Id.* However, the partner could receive an earlier payment if “the partner establishes to the satisfaction of the court that earlier payment will not cause undue hardship to the business of the partnership.” *Id.*

52. *Id.* § 801, 6 U.L.A. 189.

53. *Id.* § 802(a), 6 U.L.A. 197 (“The partnership is terminated when the winding up of its business is completed.”).

54. *Id.* § 701 cmt. 1, 6 U.L.A. 176.

55. See *id.* § 403(b), 6 U.L.A. 140. RUPA talks of “former partners,” with no special rule for dissociated partners. *Id.*

Treating the single-person term partnership as continuing until the completion of the buyout of the penultimate partner is consistent with one of the fundamental policy decisions behind RUPA. RUPA was designed to provide greater stability to partnerships, particularly to partnerships that have contracted for stability. Section 103(a) states the general rule of the supremacy of the partnership agreement.⁵⁶ The major purpose of the distinction between the buyout and the winding up was to make sure that agreed-upon terms would be honored. Thus, even though a partner may dissociate at will from a term partnership, the partner has no right to be paid the buyout price “until the expiration of the term or undertaking, unless the partner establishes to the satisfaction of the court that earlier payment will not cause undue hardship to the business of the partnership.”⁵⁷

Treating the single-person term partnership as a continuing entity has ample precedent in federal income tax law. The general tax rule is that “an existing partnership shall be considered as continuing if it is not terminated.”⁵⁸ The situation is somewhat complicated because a continuing partnership may either liquidate the interest of the departing partner or a continuing partner may purchase it.⁵⁹ Suffice it to say for present purposes that tax law has long provided for the tax treatment of payments to liquidate the interest of a retiring or deceased partner.⁶⁰ The Regulations on liquidating distributions provide that although “[a] partner retires when he “ceases to be a partner under local law,” the partner “will be treated as a partner until his interest in the partnership

56. See *id.* § 103(a), 6 U.L.A. 73. RUPA provides that, in almost every situation, “relations among the partners and between the partners and the partnership are governed by the partnership agreement.” *Id.* The only exceptional situations are in subsection (b)’s list of mandatory rules, none of which apply here. *Id.*

57. *Id.* § 701(h). The deferred payment “must be adequately secured and bear interest.” *Id.*

58. I.R.C. § 708(a) (2006). I.R.C. § 708(b)(1) provides:

a partnership shall be considered as terminated only if—

(A) no part of any business, financial operation, or venture of the partnership is carried on by any of its partners in a partnership, or

(B) within a 12-month period there is a sale or exchange of 50% or more of the total interest in the partnership capital and profits.

Id.

A liquidating distribution is not a sale or exchange within the meaning of Section 708(b)(1)(B) of the Internal Revenue Code. Treas. Reg. § 1.708-1(b)(1)(ii).

59. See Treas. Reg. § 1.708-1(b)(1).

60. I.R.C. § 736.

has been completely liquidated.”⁶¹ Similarly, the partnership, too, will be seen as continuing and its taxable year will be held open.⁶² The regulations explicitly provide that the partnership continues even if one member of a two-person partnership either retires or dies.⁶³ The partnership terminates only when the interest of the retiring or deceased partner is liquidated. The Code’s definition of partnership in the plural, as a “syndicate, group, pool, joint venture, or other unincorporated association”⁶⁴ is not seen as a bar to the pragmatic solution.

Hillman: You emphasize the importance of an uncompleted buyout in assessing the status of the partnership following the penultimate partner’s dissociation. I disagree. Whether the partnership continues for purposes of keeping the fiction of the partnership alive should not depend on whether the buyout has been completed.

In essence, you argue that until the buyout is complete there is not a single person partnership because of the ongoing relationship between the surviving partner and the dissociated partner awaiting additional payments. Admittedly, a dissociated partner is a partner for some limited purposes but not for others. This point is discussed in the Official Comments, which note that the “consequences of the partner’s dissociation do not all occur at the same time.”⁶⁵ The key limited rights and obligations of the dissociated partner that you cite, however, are not dependent on whether the buyout has been completed or is pending. Without regard to the status of the buyout, the partner upon dissociation loses the power to bind a partnership that is not being dissolved,⁶⁶ has

61. Treas. Reg. § 1-736-1(a)(1)(ii).

62. *Id.* § 1-736-1(a)(6).

63. *Id.*

A retiring partner or a deceased partner’s successor in interest receiving payments under section 736 is regarded as a partner until the entire interest of the retiring or deceased partner is liquidated. Therefore, if one of the members of a 2-man partnership retires [and] is to receive payments under section 736, the partnership will not be considered terminated Similarly, if a partner in a 2-man partnership dies, and his estate . . . receives payments under section 736, the partnership shall not be considered to have terminated upon the death of the partner

Id.

64. I.R.C. § 7701(a)(2).

65. REVISED UNIF. P’SHIP ACT § 601 cmt. 1, 6 U.L.A. 164.

66. *See id.* § 702 cmt. 1, 6 U.L.A. 181 (except under limited circumstances as to third parties not knowing of the dissociation).

sharply limited rights to inspect books and records,⁶⁷ and is not liable for new claims arising in the course of the partnership business.⁶⁸

Importantly, the buyout price is tied to the value of the partner's interest as of the date of dissociation, which fixes the claim of the former partner and eliminates profit sharing, a key element of partnerships.⁶⁹ This is buttressed by RUPA's requirement that the former partner be indemnified "against all partnership liabilities" regardless of whether the buyout has been completed.⁷⁰ To be blunt, the dissociated partner is not much of a partner at all and certainly is not enough of a partner to support a view of the resulting entity as anything other than a business in which there is only one owner.

A significant shortcoming of RUPA is the gap it creates between the definition of a partnership (something that is an association of two or more persons) and the dissolution and winding up provisions that fail to address a dissociation that results in a single surviving partner. I agree that a policy objective of RUPA is to enhance the stability of partnerships, but I question whether the goal of stability is paramount to a degree that we should recognize as a "partnership" a business that is best described as a sole proprietorship. We may call a banana an apple, but it is still a banana.

Of course, there would have been a happy marriage between the policy you favor and the statutory language if the definition of "partnership" provided something along the following lines: "Partnership" means *an entity formed by the* association of two or more persons to carry on as co-owners a business for profit" If RUPA had so provided, we would not be having this discussion.

Weidner: I think we both agree that the key issue is what RUPA says about the departure of the penultimate partner from a term partnership. More precisely, the issue is RUPA's default rule when the parties have agreed upon the term but have not agreed upon what is to happen when there is only one partner who wants to honor it. The departure from a term partnership is not on the exclusive list of events that cause a winding up of the business. Therefore, both Section 801 and

67. See *id.* § 403(b), 6 U.L.A. 140 (allowing "former partners" access to books and records pertaining to the period in which they were partners).

68. See *id.* § 703(b), 6 U.L.A. 183 (indicating that this occurs only under limited circumstances and when third parties were unaware of the dissociation).

69. See *id.* § 701(b), 6 U.L.A. 175.

70. *Id.* § 701(d), 6 U.L.A. 175.

Section 603(a) state that there will be a buyout.⁷¹ I would not resort to either definition of “partnership” to answer the question.

You insist that the definition is an obstacle that must be set aside. If I am forced to address it in this situation to reach the result I think is compelled by other statutory language and by good policy, I am perfectly comfortable doing so by saying that the partnership, albeit attenuated, continues at least for the limited purpose of completing the buyout. Other personal liabilities, rights, duties, or obligations may be extinguished before or after the completion of the buyout.

Your comments, of course, force me to answer the much more fundamental question: is there still a partnership after the buyout is complete? My answer is yes. The partnership entity continues the business. This is easier to see now that Section 201(a) states that “[a] partnership is an entity distinct from its partners.”⁷² When the penultimate partner leaves, the survivor becomes the sole occupant of the entity. Even without statutory support, this was the result reached at common law in the case of the survivor in a joint tenancy.⁷³ The last remaining joint tenant’s “right of survivorship” was conceptualized as the result of becoming the sole remaining occupant of the joint tenancy entity.⁷⁴ However, there is no doubt that this result would be clearer if RUPA defined partnership as you have suggested.

In fairness to your point, RUPA provides a way for the sole remaining partner to get title out of the partnership and into a sole proprietorship. In so doing, it arguably deems a transfer of equitable title to a sole proprietorship. Section 302(d) provides: “[i]f a person holds all of the partners’ interests in the partnership, all of the partnership property vests in that person.”⁷⁵ Accordingly, that person “may execute a document in the name of the partnership to evidence vesting of the property in that person and may file or record the document.”⁷⁶ On the one hand, this seems to be an enabling provision that is not listed in

71. REVISED UNIF. P[’]SHIP ACT §§ 801, 603(a).

72. *Id.* § 201(a), 6 U.L.A. 92.

73. *See* II AMERICAN LAW OF PROPERTY § 6.1, 6-7 (1952).

The right of survivorship is not considered to be a type of future interest. It is based on the concept that the estate is held by a fictitious entity made up of the cotenants collectively and that the entity continues so long as any of the joint tenants survive. The last survivor, of course, owns the whole estate in severalty because he no longer shares the estate with his former cotenants.

Id.

74. *Id.*

75. REVISED UNIF. P[’]SHIP ACT § 302(d), 6 U.L.A. 104 (1997).

76. *Id.* § 302 cmt. 6, 6 U.L.A. 105.

Section 103(b)'s mandatory rules. On the other hand, the Official Comments state that, when one person holds everything, "the partnership no longer exists as a technical matter."⁷⁷ Indeed, "[w]hen a partnership becomes a sole proprietorship by reason of the dissociation of all but one of the partners, title vests in the remaining 'partner,' although there is no 'transfer' of the property."⁷⁸

Hillman: Section 302(d) certainly supports my view that single person partnerships cannot exist under RUPA, but it does not clinch the argument. As you point out, the section is not mandatory in application and is subject to a contrary agreement among the partners. My view is that such a contrary agreement cannot validate the continuation of a partnership that has only one partner.

The key issue in our discussion is how much emphasis should be placed on RUPA's definition of a "partnership." I place more emphasis than you do on the definition, but I also feel the definition ties in nicely with the policy underpinnings of RUPA and supports the conclusion that a partnership must have at least two partners. Unquestionably, RUPA gives greater stability to partnerships, and one of the means to accomplish this objective is by granting entity status to the partnership. A five, twenty, or four hundred person partnership that dissolves with the departure of a single partner creates conceptual problems and, in some cases, practical difficulties. The two person partnership, however, presents a distinct problem and requires special treatment.

Suppose we have a single person partnership and the sole partner dies. Now, we have no partners, but we do have an entity. Are we to conclude the entity may continue the business and need not dissolve? What is it in RUPA that dictates the conclusion that there must be one but not necessarily two partners? If we draw an analogy to corporations, every corporation must have at least one shareholder. There are reasons to support applying the corporate analogy and to require someone to own the entity, and further given the history of partnerships and their fundamental and definitional characters as businesses owned by more than one person, it makes greater sense to require a partnership to have a minimum of two partners. Such an interpretation in no way undermines the entity status of partnerships or the efforts of the RUPA drafters in giving greater stability to partnerships generally. The two person partnership is a special case and distinct from a partnership with more

77. *Id.*

78. *Id.*

than two owners. When a partner dissociates from a two person partnership and the surviving partner becomes, in your words, “the sole occupant of the entity,” we have a sole proprietorship, not a partnership.

Let’s consider the limited liability partnership and whether it raises additional concerns. Assume there is a two person LLP, with an agreed term and no remedy in the event of a premature departure. In the third year, one partner dissociates, leaving a single partner. I take it you would allow the surviving partner to continue the business as a limited liability partnership.

Weidner: Yes I would, although I acknowledge there is an added level of complication. As between the last remaining partner and the penultimate partner, I think the issue of the buyout versus the winding up is the same. On the other hand, LLP status obviously affects the rights of third parties. Statutory language describes the “shield” of the LLP without ever using the term. The core provision is Section 306(c), which takes a belt-and-suspenders approach to state when a limited liability partner is not liable. First, it states that an obligation of an LLP, “whether arising in contract, tort, or otherwise, is solely the obligation of the partnership.”⁷⁹ Second, it states that a partner in an LLP “is not personally liable, directly or indirectly, by way of contribution or otherwise, for such a partnership obligation solely by reason of being or so acting as a partner.”⁸⁰ In short, RUPA grants a corporate-type liability protection⁸¹ provided that there is registration and at least pro-forma notice of LLP status in the name of the firm.⁸² Section 1001(d) explicitly provides that the “status of a partnership as a limited liability partnership remains effective, regardless of changes in the partnership, until [the statement of qualification] is canceled pursuant to Section 105(d) or revoked pursuant to Section 1003.”⁸³

With one possible exception, there is no policy reason why the shield should disappear because only one partner remains. Stated

79. *Id.* § 306(c), 6 U.L.A. 117.

80. *Id.* RUPA leaves it to the Official Comments to state when the partner is liable, providing that “[a]s with shareholders of a corporation and members of a limited liability company, partners remain personally liable for their own personal misconduct.” *Id.* § 306(c) cmt. 3, 6 U.L.A. 118.

81. *See* HILLMAN, VESTAL & WEIDNER, *supra* note 10, at 513.

82. REVISED UNIF. P’SHIP ACT § 1002, 6 U.L.A. 245 (1997) (“The name of a limited liability partnership must end with ‘Registered Limited Liability Partnership,’ ‘Limited Liability Partnership,’ ‘R.L.L.P.,’ ‘L.L.P.,’ ‘RLLP,’ or ‘LLP.’”).

83. *Id.* § 1001(d), 6 U.L.A. 239. A partnership becomes a limited liability partnership by filing a statement of qualification. *See id.* § 1001(c), 6 U.L.A. 239.

differently, why should the sole surviving partner be subjected to a penalty of the loss of the shield simply because the penultimate partner has breached his agreement and left prematurely? Conversely, why should the partnership creditors get a windfall in the form of unbargained-for personal liability of the surviving partner who has suffered a breach at the hands of the penultimate partner? The only policy reason I can think of assumes that the use of the LLP form is itself a representation that there is more than one person inside the entity. Since the entity is created to limit liability, that does not seem to matter. A corporate shield does not disappear when only one shareholder remains.

Hillman. We agree that dissociation of a partner from a two person partnership does not trigger a dissolution and winding up unless it is an at-will partnership. We differ, however, on whether the partnership continues following the dissociation. I believe the partnership ends without dissolution because there no longer is an association that meets the definition of partnership.

You seek to prove too much with your citation of Section 1001(d) statement that the LLP survives changes in its membership. If you extend that to a partnership reduced to a single partner, why not also continue the partnership when the single partner dissociates? A partnership without a partner makes about as much sense as a single person partnership, and I don't believe Section 1001(d) addresses either of these circumstances.

Yes, the policy issue of limited liability is important, and we need to consider the larger picture here. Individuals who conduct businesses as sole proprietors do not enjoy limited liability. The sole proprietor who incorporates may secure the benefit of limited liability, but the liability shield is not unconditional. Corporate law allows "veil piercing" on a number of grounds, including the shareholder's disregard of formalities, co-mingling of personal and corporate assets, and (in some cases) significant undercapitalization of the business.⁸⁴ The limited liability company is a much newer organizational option, but it would appear that as with the corporation the benefit of limited liability for LLC members is not unconditional and may be withdrawn on grounds similar to those present in corporate law.⁸⁵

84. See generally Peter B. Oh, *Veil-Piercing*, 89 TEX. L. REV. 81 (2010).

85. See, e.g., *Kaycee Land & Livestock v. Flahive*, 46 P.3d 323, 325 (Wyo. 2002). For the case against LLC veil-piercing, see Stephen M. Bainbridge, *Abolishing LLC*

Allowing business to be conducted through a single person limited liability partnership potentially would make the partnership a more effective shield against liability than either the corporation or the limited liability company ever could be. Of course, one could argue limited liability partnerships should be subject to veil piercing to the same extent as corporations and limited liability companies. That presents an interesting and broad question that will have to await development in another article. For present purposes, it should be enough to observe that veil piercing is an undeveloped idea in partnership law. That being the case, the conditions under which limited liability protections will be disregarded on equitable grounds should not turn on whether the partnership has a single partner or multiple partners.

Perhaps, we have sufficiently developed our differences on the status of single person partnerships. Let's turn our attention to developing a framework that accommodates our differing views but offers a coherent and practical approach to dealing with single person partnerships.

CONCLUSION: THE BUYOUT AND BEYOND

A partnership is formed whenever two or more persons voluntarily associate in the carrying on of a business without forming some other business organization. If they do not by agreement establish a term or undertaking, the partnership is at will and must dissolve and liquidate its assets upon the dissociation of a partner. If they have agreed to a term or undertaking, the partner leaving early may not demand that the business be wound up. Instead, the partnership has the right to continue without him, provided it buys him out.

All of that seems straightforward enough, but what if there are only two partners and one leaves. Or, what if there are multiple partners and all but one leave. RUPA does not specifically address whether the

Veil Piercing, 2005 U. ILL. L. REV. 77, 83-84; *see also* REVISED UNIF. LTD. LIAB. CO. ACT § 304(b), 6B U.L.A. 475 (2006) (disregard of formalities is not a ground for holding members personally liable); *id.* § 304 cmt. (b) (“This subsection pertains to the equitable doctrine of ‘piercing the veil’ – i.e., conflating an entity and its owners to hold one liable for the obligations of the other. The doctrine of ‘piercing the corporate veil’ is well-established, and courts regularly (and sometimes almost reflexively) apply that doctrine to limited liability companies. In the corporate realm, ‘disregard of corporate formalities’ is a key factor in the piercing analysis. In the realm of LLCs, that factor is inappropriate, because informality of organization and operation is both common and desired.”).

buyout is available when only one partner remains. A small but growing number of courts have concluded that the buyout is not available when a single “partner” remains because the buyout is a partnership right and the partnership no longer exists.⁸⁶ These decisions key in on RUPA’s definition of a partnership as an association of two or more persons and effectively conclude that a two person partnership is dissolved when one partner dissociates.

We agree that the results of these decisions are incorrect. When the penultimate partner leaves a term partnership, RUPA’s buyout provisions should apply so that the surviving partner gets the benefit of the original agreement establishing a term or undertaking for the partnership. The means for enforcing the original bargain is the statutory buyout. The result we advocate is consistent with the goal of RUPA to provide greater business stability to partners who have contracted for it. Avoiding mandatory dissolution and winding up is also consistent with Section 801, which purports to be an exclusive list of situations that trigger a dissolution and winding up.

Beyond the important point that the buyout is appropriate, we disagree on whether the business may continue as a partnership when there is only one partner. One of us believes that RUPA’s definition of “partnership” makes a partnership with only one member an oxymoron. The other believes that a partnership entity can continue with only one remaining member.

In any event, the prospect of a partnership with only one member presents interesting questions under RUPA. For example, if the partnership was formed as an LLP, could the sole surviving partner continue to enjoy the liability shield not available to those who conduct businesses as sole proprietors?⁸⁷ Difficult questions such as this will arise if courts reverse recent trends and recognize single person partnerships.

The ambiguous status of single person partnerships under RUPA increasingly is the subject of litigation. Courts are likely to continue to struggle with the issues deploying both doctrinal and policy analysis. They face a daunting task because the statute simply leaves too many unanswered questions. Future iterations should address the issue, by

86. See *supra* note 11.

87. Perhaps because of questions like this, the California Bar has recently taken the position that an LLP with only one member is not possible. See *supra* note 11.

providing either greater definition of the entity, a clear path to sole proprietorship or both.⁸⁸

88. The Harmonized Uniform Partnership Act was approved by the National Conference of Commissioners on Uniform State Laws in 2011. It adds to RUPA § 801's list of events that cause a dissolution and winding up "(6) the passage of 90 consecutive days during which the partnership does not have at least two partners."

Notes & Observations