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DONALD WEIDNER AND THE MODERN LAW OF PARTNERSHIPS

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It is my great pleasure to offer some thoughts on the contributions of Don Weidner to partnership law. I can summarize my conclusion on his contributions in one sentence: No person has contributed more than Don Weidner to the shape and content of modern partnership law. In fact, there is not even a close second.

But before discussing his legacy, I must offer a disclaimer: Don Weidner is a friend. Actually, he is a close, dear friend. And we have been friends for a very long time. Perhaps this colors my judgment, but I think not. One of Don's wonderful personal qualities is that he does not call attention to himself or his accomplishments. This is endearing but quite unique in an age in which self-promotion is the norm in academic and professional communities. Although Don refuses to highlight his own impressive accomplishments, there is nothing to stop this friend from doing so and discussing the impact Don has had on modern partnership law.

There is another of Don's personal qualities that is important to recognize when putting his work into perspective: Don loves the law. And in particular, Don loves statutory law. To him, codified law is not a tool for use in achieving a political or social objective, or a mere means to any other end. Don believes a body of law must not only express the desired policy objectives, but also must be concise, coherent and, whenever possible, elegant. In other words, Don sees beauty in law.

So it is unsurprising that Don is a scholar in the classic sense. He believes the academic is charged with responsibility of making his or her area of law substantively better. In his advice to young academics, captured in an article he wrote shortly after he became a dean, Don made this point quite nicely:

> Being a scholar is part of the job. You will not be a complete person as an academic unless you produce, on a regular basis, scholarship that is read and relied on by people who work in your area. Most basically, each academic lawyer should become a guardian of some area of the law. This means that you should be involved in the accurate statement and analysis of the development of the law, whether the development process be one that takes place primarily through judges, legislators, or administrators, or in the private sector. Involvement as a productive scholar will enable you to better serve your students, your colleagues, and the public.[1]

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1. Donald J. Weidner, *A Dean's Letter to New Faculty About Scholarship*, 44 J. LEGAL EDUC. 440, 441 (1994).

On more than one occasion, I have heard Don describe the role of a scholar as that of a trustee. The scholar is entrusted with an area of law and expected to devote his or her energies to making it as close to perfect as is possible. This is nothing short, in Don's view, of a fiduciary duty borne by the scholar to improve a body of law. To make it coherent. To make it better. To make it beautiful.

And now, it is time to be more specific on how Don has shaped modern partnership law.

To begin, Don authored the first major statutory revision of partnership law in seventy years. I speak of the Revised Uniform Partnership Act (RUPA). The earlier Uniform Partnership Act (UPA), promulgated in 1914, was crafted by two scholars who also served as deans. James Barr Ames, dean of the Harvard Law School, produced early drafts of the uniform act advancing an "entity view" of the partnership. Upon his death, William Draper Lewis, the first dean of the University of Pennsylvania Law School, undertook drafting responsibilities and advocated a view of partnership as aggregations of partners (the so-called "aggregate view") rather than entities distinct from the partners who populate them. It should be no surprise that the view of the last Reporter, Dean Lewis, prevailed and the first uniform act advanced the aggregate rather than entity view of partnerships.[2]

The UPA was a concise, elegant, and enduring statutory model for partnership law that stood the test of time quite nicely. Indeed, this first codification of partnership law remained unaltered for seven decades. One measure of the UPA's success can be seen in its adoption by forty-nine states, almost all of which adopted the uniform act without modifications.

But the changing shape of business relationships and the growth in the size of firms ultimately rendered the UPA's aggregate view of partnerships unsuitable for the circumstances of modern firms. Many partnerships had grown from small firms consisting of two or three partners to mega-firms with hundreds of partners in multiple offices. Partners sought the type of stability for their firms that only a view of partnerships as entities could provide.

The first major break with the UPA came in 1984 with Georgia's adoption of a highly customized UPA.[3] Then, in 1986, an American Bar Association subcommittee published a report urging a new partnership uniform act that embraces an entity rather than aggregate view of part-

2. For an account of the key issues facing the drafters, including the entity versus aggregate debate, see generally William Draper Lewis, *The Uniform Partnership Act*, 24 YALE L.J. 617 (1915).

3. *See* GA. CODE ANN. §§ 14-8-1, 1-43 (1984). On the Georgia changes, see generally Larry E. Ribstein, *An Analysis of Georgia's New Partnership Law*, 36 MERCER L. REV. 443 (1985).

nerships.[4] The next year, the National Conference of Commissioners on Uniform State Laws (NCCUSL) launched the revision process that five years later would produce the first version of RUPA. And the key player in moving from the concept of reform to a complete uniform act was Don Weidner, who served as Reporter (i.e., drafter) for the RUPA project.

Don always has been "old school" in that he values the work of the great scholars of past generations. He approached the revision of the Uniform Partnership Act with eagerness tempered by respect for the contributions of the great scholars whose work is reflected in its provisions. Deans Ames and Lewis were two such scholars. There were others, of course, including Judson Crane and Alan Bromberg. And not to be forgotten is Justice Joseph Story, who significantly influenced so many areas of law including the common law of partnerships.[5] As he undertook his work on RUPA, Don was ever mindful of these great scholars and the heavy burden that he, as a new trustee of partnership law, was assuming.

To digress just a bit, the choice of Don to be the principal drafter of the new uniform act may have seemed a bit curious to some observers. At the time, Don's very considerable and influential scholarship focused on federal tax law, not partnership state law.[6] Indeed, there were contemporary scholars of partnership law whose pedigrees may have made them more obvious choices to lead a major revision of the partnership statute. But here, the leaders of NCCUSL showed great wisdom. They did not want a drafter with an agenda who would view the project as an opportunity to advance idiosyncratic policy predilections. But they did want a drafter who combined scholarly instincts with good practical judgment, did not look at the project as a means of achieving glory in the academic community, and who had the patience, discipline, and character to work the endless hours needed to draft a statute worthy of replacing the 1914 UPA.

They wanted Don Weidner.

And a wise choice it was. Although Don may have lacked substantive partnership law experience, his reputation as a tax law scholar left no doubt about his abilities to tackle a major revision of the UPA. He also did not have a preconceived agenda for reform, unless a desire to produce a worthy successor to the UPA is considered an "agenda." As time would prove, Don was the perfect choice as Reporter for the RUPA project.

Not long after he was asked to be the Reporter, Don wrote an engaging thought piece offering his perspective on partnership law reform. In

4. *See* UPA Revision Subcommittee of the Committee on Partnerships and Unincorporated Business Organizations, *Should the Uniform Partnership Act Be Revised?*, 43 BUS. LAW. 121 (1987).

5. *See* Joseph Story, COMMENTARIES ON THE LAW OF PARTNERSHIP (R.H. Helmholz et al. eds., 2d. ed. 1846).

6. He had published no fewer than twelve law review articles on federal and state tax issues.

this article, Don's first published writing on substantive partnership law, he showed the breadth of vision that was the very reason NCCUSL asked him to take the lead on reforming RUPA:

> There are two basic ways the Conference of Commissioners might proceed. First, the Commissioners could proceed directly to the Uniform Partnership Act, compare it with the new Georgia statute and the American Bar Association Report, and quickly edit it to incorporate the most obviously appealing features of these recent and credible efforts. Second, the Commissioners could begin their consideration, not with the details of the latest statute and the recently proposed amendments, but with a broad review of the purposes of partnership law and the conceptual and practical tensions that cause a reconsideration in the first place. The purpose of this article is to explore the latter approach. It asks the basic question: What is the continuing need, if any, for a separate form of business organization called a partnership? In particular, given developments in the law of corporations and limited partnerships, what role remains for a partnership statute?[7]

Don went on in this sweeping yet concise article to address the big issues of partnership, including the aggregate versus entity view of partnerships, continuity versus free dissolvability of partnerships, the role of fiduciary duties (care and loyalty) in ordering the relations of partners, and the desirability of limited liability. He concluded the article with an analysis of the lessons of tax law for partnerships. If there had been any doubts as to whether Don was up to the challenges of drafting a new partnership statute, this article addressed those concerns, and more. With this writing, which I regard as a classic in the field, Don cemented his credentials as a trustee of partnership law.

But it is his work on RUPA that placed Don at the top of the small, but growing list of practitioners and scholars focused on partnership law. To be sure, the process of drafting and finalizing a uniform act is a collective endeavor, and one in which many voices are heard. No single person writes a uniform act. There is a drafting committee, a review committee, ABA advisors, and of course the Commissioners who entertain multiple readings of drafts of the act before promulgating it for adoption by the states. But there is only one drafter. The Drafting Committee met infrequently. Between those meetings, the real work of statutory reform fell on Don's shoulders.

Don and I became friends not long after he assumed his duties as Reporter. We talked often and about many things. We debated formation of partnerships, dissolution of partnerships, and everything that came between the beginning and the end of a partnership. Because Don was relatively new to partnerships, the advantage in these exchanges should have been mine. That most decidedly was not the case. Don is as smart,

7. Donald J. Weidner, *A Perspective to Reconsider Partnership Law*, 16 FLA. ST. U. L. REV. 1, 2-3 (1988).

and as quick, as any academic I have met. His ability to dissect and critically evaluate a substantive legal principle is unparalleled in the academy and in practice. Our substantive conversations were the most enriching and satisfying I have had as an academic.

To take the measure of the quality of Don Weidner's thinking, and his impact on the shape of the partnership statute, one need look no further than RUPA's Official Comments offering a section-by-section analysis of the uniform act. Compare the comments accompanying the 1994 version of RUPA, authored by Don, with those accompanying other modern uniform acts, including more recent versions of RUPA. It is in these comments, free of many (though not all) of the review layers and restrictions imposed by the NCCUSL, that Don's contributions to the advancement of partnership law become apparent. In these comments, Don shines.[8]

RUPA and the Official Comments are there for all to see. But what may not be evident to those who are not close to Don is the enormous effort it took to develop a uniform act worthy of replacing the UPA. RUPA is not terribly long, and a less conscientious Reporter could have cobbled together a draft in fairly short order and simply awaited instructions from the Drafting Committee and Reviewers as to the changes to be made. Not Don. Whether it was the first draft of RUPA or a revision after consultation with others, Don agonized over every section, every subsection, every word, and even every comma. I cannot begin to count the times that Don worked well into the night or over an entire weekend trying to improve, invariably on his own initiative, one sentence in the statute. Most people in his position would have been content simply to produce a credible product. Don sought perfection in the statute, which is exactly what we hope that a trustee of this area of law would do.

Don did have a setback on the RUPA project. Like Dean Lewis (but unlike Dean Ames), Don favored giving partnerships greater entity-like characteristics. And RUPA largely reflects a new entity-bias of partnership law. Don also believed that the UPA's aggregate view of partnerships was especially troublesome when it came to dissolution of the partnership. Under the UPA, dissolution means a change in the legal relationship among partners as opposed to an event affecting the partnership as an entity.[9] With RUPA's greater acceptance of the view of partnerships as entities, dissolution could be used in a different but less confusing way to mean a fundamental change in the partnership as an entity. Don argued, however, that the confusion surrounding the term under the UPA would inevitably continue under RUPA even if the revised act defined and used the term in a more sensible fashion. His view, which he

8. Sadly, the 2013 harmonized version of RUPA includes a new set of Official Comments that displace the comments drafted by Don to accompany earlier iterations of RUPA.

9. *See* Uniform Partnership Act §29 (1914).

incorporated in early drafts, was to eliminate "dissolution" entirely from the act.[10]

Ultimately, Don's view did not carry the day, and the word dissolution was re-inserted in later RUPA drafts. To be sure, RUPA's use of dissolution to reference a change in the partnership entity is more sensible and less confusing than the UPA's much broader use of the term to cover a change in the relationship among partners. Don was not on board with this change, however, and he commented midway through the reform project that "an examination of RUPA's breakup provisions indicates that the word as reinstated is surplusage."[11] Time did not moderate his view on this point, and years after the completion of RUPA he described with aplomb the re-insertion of the term dissolution as a failure to learn from history. He did nothing to mute his unhappiness with the outcome:

> I was asked to add the word "dissolution" to the subsequent draft so the Committee could "see what it looks like." I added the word in such a way as to make clear that it was unnecessary. Thus, wherever the previous drafts had stated that an event caused a winding up, the next draft said that the event caused a "dissolution and winding up." I added the word "dissolution" as [an] obvious redundancy, so that it could easily be edited out, I thought, as soon as the scales fell from the eyes of the members of the Drafting Committee.
>
> Not a single scale could be heard to fall. The Drafting Committee loved the new language, even though, as my fifteen-year-old daughter might say, it came from The Department of Redundancy and Needless Repetition Department. The Drafting Committee thought the final product was a wonderful compromise.[12]

But this lone setback aside, RUPA stands as a testament to law reform at its best, and Don Weidner was the very heart of this reform effort. Here is statutory reform that blends the cautious with the ambitious, that articulates change not for the sake of change, but with the aim of making law better, and that respects the lessons of the past. Don put it well:

> Far from implementing an agenda for the radical change of partnership law, RUPA endorses most of the major policy underpinnings of the UPA. It also seeks to refine, clarify, and adapt the precepts of partnership law to the demands of a society far more complex than that existing when the UPA was adopted. The UPA has served remarkably well in its eight decades as a framework for regulating the affairs of partners. Informed by the UPA and the vast body of case law interpreting its provisions, RUPA reflects rather than repudiates the

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10. *See* Donald J. Weidner, *Three Policy Decisions Animate Revision of the Uniform Partnership Act*, 46 Bus. Law. 427, 435-48 (1991).

11. *Id.* at 448.

12. Donald J. Weidner, *Pitfalls in Partnership Law Reform: Some United States Experience*, 27 J. Corp. L. 1031, 1033-34 (2001).

> experience of the past and provides for the future a statutory framework well equipped to facilitate the ordering of the wide range of relationships now called partnerships.[13]

RUPA was promulgated in 1992, and Don stayed on as Reporter until 1994 to handle some relatively minor amendments to the new uniform act. But in 1991, Don had become dean of the FSU College of Law, and the demands of that position required substantially all of Don's time. In his seven years as Reporter, Don had drafted and re-drafted RUPA countless times, seen the act ultimately adopted by NCCUSL in 1992, and handled revisions resulting in the 1994 iteration of RUPA. Not bad work for a fellow who began this endeavor as a novice in substantive partnership law. Not since William Draper Lewis has any single scholar or practitioner had such a significant impact in partnership law.[14] Indeed, Don's influence continues to be felt, and the more recent iteration of RUPA as part of the harmonization project retains much of Don's original RUPA work.[15]

For all the above reasons, the thesis I stated in the second sentence of these comments is unassailable: No person has contributed more than Don Weidner to the shape and content of modern partnership law. Don wrote the law. And he was no mere scrivener. Without Don, RUPA would have been a very different uniform act. And a much weaker one than the act Don crafted.

As Don turned his attention to building FSU into a top tier law school, he no longer had the time accorded an academic to ponder great issues in law. But he still made highly important contributions to the scholarship of partnership law. Most notable is the RUPA treatise we co-authored (together with Allan Vestal initially and, more recently, Allan Donn).[16] This offers a section-by-section analysis of RUPA and the cases that have interpreted the statute. As I demonstrate below, Don is tireless, and sometime a bit of a pain (as partners often are), in his constant efforts to improve the treatise. The intellect, energy, and tenacity that went into developing the uniform act are evident in his efforts here, and the chapters for which he has assumed responsibility are the best in the book.

I must confess that I do miss the wonderful conversations evolving into debates that Don and I had in the early years of our friendship as

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13. Weidner, *supra* note 10, at 470.

14. RUPA has undergone continuing revisions since Don's involvement, the most recent being the harmonized version of the act promulgated in 2013. UNIF. P'SHIP ACT (UNIF. LAW COMM'N 1997) (last amended 2013), http://www.uniformlaws.org/Act.aspx?title=Partnership%20Act%20(1997)%20(Last%20Amended%202013). But the revisions are mere tweaks (many of them unnecessary or even ill-advised) of the act that Don drafted.

15. Which makes the decision not to carry forward the original Official Comments all the more inexplicable. *See supra* note 8.

16. *See* Robert W. Hillman, Donald J. Weidner & Allan G. Donn, THE REVISED UNIFORM PARTNERSHIP ACT (2015-16).

Don was first immersing himself in partnership law. After he completed his work on RUPA and focused ever more of his attention to being dean, these conversations waned, to the regret of each of us. But now and then, a new issue to debate would emerge, Don would engage, and off we would go. One such issue was whether it is possible to have a partnership with a single partner. This would seem to be a basic, fundamental question that should have been answered long ago. Not true, and in fact the answer is far from clear, sufficiently so that Don and I reached opposite conclusions on whether a single person partnership may exist. Because neither of us could convince the other of the rightness of his position, we decided four years ago to publish our differences in the form of a debate between the two of us.[17] As always, working through issues of partnership law with Don was a sheer delight, and although I may have gotten the better of him in the debate, I once again learned a great deal from Don.

More recently, Mark Loewenstein and I agreed to co-edit a book for Edward Elgar Publishing on alternatives to the corporate form of organization.[18] Early on in this project, Mark and I had to assemble a distinguished group of contributing authors. Don was the very first person I solicited to contribute a chapter. At this particular time, Don had a very full plate and had little time to undertake an additional project. I pressed Don hard because I did not think the book would have credibility if a leading scholar such as Don was not participating. Eventually, he agreed to contribute and produced a superb chapter on capital accounts.[19] As is true with everything he writes, this wonderful work of scholarship will have a lasting impact and will be read long after much of contemporary scholarship is forgotten.

Don is a young seventy-one-year-old who can outpace academics half his age. And now that he is finally being liberated from the burdens of being a dean, we will get the benefit of a rejuvenated scholar who again will turn his full attention to partnership law. As I was composing these comments, Don sent a series of emails offering suggestions for improvement in our RUPA treatise. He was particularly interested in the issues that arise with the death of a partner. From one such email,

> I wonder whether it is worth saying in one place what happens in the case of a term partnership versus an at-will partnership. I was also

17. *See* Robert W. Hillman & Donald J. Weidner, *Partners Without Partners: The Legal Status of Single Person Partnerships*, 17 FORDHAM J. CORP. FIN. & L. 449 (2012).

18. *See* RESEARCH HANDBOOK ON PARTNERSHIPS, LLCS AND ALTERNATIVE FORMS OF BUSINESS ORGANIZATIONS (Robert W. Hillman & Mark J. Loewenstein eds., 2015).

19. *See* Donald J. Weidner, *Capital Accounts in LLCs and in Partnerships*, *in* RESEARCH HANDBOOK ON PARTNERSHIPS, LLCS AND ALTERNATIVE FORMS OF BUSINESS ORGANIZATIONS, *supra* note 18, at 168. A modified version of this chapter was published as a journal article. *See* Donald J. Weidner, *Capital Accounts in LLCs and in Partnerships: Powerful Default Rules and Potential Tax Significance*, 14 FLA. ST. U. BUS. REV. 1 (2015).

> surprised to read at page 519 that "those who take" from [a] deceased partner are not transferees. That does not seem obvious to me and I forgot that it was there or where it comes from. Perhaps at 445 you could say what they are and at one place or the other can tease out a bit more the significance (again, I confess, I do not understand this-I recall only that I was uncomfortable with this area during the drafting). I know that at p. 393, the Official Comments say: "A divorced spouse of a partner who is awarded rights in the partner's partnership interest as part of a property settlement is entitled only to the rights of a transferee." Does a transferee on death take more? How much more? Or, are you saying that the spouse who takes on death is not a transferee? Does it matter testate/intestate? You see my confusion. It may be that I need to amend my discussion of 503. Sorry if I haven't thought this through, but perhaps I have at least identified where the book might be made better by one or both of us.

This is classic Don Weidner. Never-ending, insightful (and often unanswerable) questions and constantly striving to make whatever he is working on—be it a uniform act, a law school, or a treatise—better. I have been so fortunate to have had Don as a friend and as a partner in much of my scholarship. And we all have been so fortunate in having this gifted scholar make such huge sacrifices and contributions, all for the purpose of making partnership law better.

Well done, Don Weidner, and we look forward to more to come.