

The Uniform Limited Partnership Act (2001)

What is it and why . . .

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why?

- *was it adopted by NCCUSL?*
 - *should practitioners care?*
 - *should law teachers care?*
 - *should law scholars care?*

but first, antecedents

- 1916 Act
- 1976 Act
- 1985 Act
- 2001 Act (f/n/a “Re-RULPA”)

“The ‘shelf life’ on uniform entity acts
seems to be decreasing.”

Kleinberger, “A User’s Guide to the New Uniform Limited Partnership Act,” 37 SUFFOLK L. REV. 583 (2004)

Why was it adopted by NCCUSL?

~ not due to a groundswell of demand

~ rather, due to RUPA and linkage

** never completely satisfactory b/c
consequence not always clear*

** “In any event, the promulgation of RUPA
unsettled matters. RUPA differs
substantially from the UPA, and the drafters
of RUPA expressly declined to decide
whether RUPA provides a suitable base and
link for the limited partnership statute.”*

*result: ULPA (2001) is a stand-
alone act*

Once a state enacts RUPA, *stare decisis et non quieta movere* is not a viable approach. There are four basic alternatives:

- repeal the UPA and link RULPA to RUPA,

a result which the drafters of RUPA expressly declined to recommend and which would make sense only after replicating the careful study which NCCUSL conducted while developing ULPA (2001);

preserve the UPA for pre-existing general partnerships and as a linked foundation to RULPA,

a result which frustrates RUPA's express objective of applying (after a suitable transition period) to all general partnerships and assumes that none of RUPA's innovations make sense for either existing or new limited partnerships;

*preserve the UPA only as a linked
foundation to RULPA,*

a result which makes sense only on the assumption that, although the UPA is no longer the best law for general partnerships, it somehow remains good law for limited partnerships;

enact ULPA (2001)

(which is slowly beginning to happen)

should practitioners care?

- *IACA figures indicate that the limited partnership is still a significant entity choice*
 - *63,000 new limited partnerships filings in 2000*
 - *more than 55,000 in 2001*
 - *more than 63,000 in 2002*
- *IRS figures show that the number of limited partnerships filing federal tax returns actually increased from 1996 to 2001*
 - *from slightly over 300,000 annually to slightly below 400,000 annually*

used for what?

evidence is mostly anecdotal
real estate deals
investment deals
development deals
family limited partnerships

*drafters of ULPA (2001) thought they had
a “target audience” – a niche*

according to the Prefatory Note

ULPA (2001)

was drafted for a world in which limited liability partnerships and limited liability companies can meet many of the needs formerly met by limited partnerships

targets two types of enterprises that seem largely beyond the scope of LLPs and LLCs: (i) sophisticated, manager-entrenched commercial deals whose participants commit for the long term, and (ii) estate planning arrangements (family limited partnerships)

assumes that, more often than not, people utilizing the Act will want:

- strong centralized management, strongly entrenched, and
- passive investors with little control over or right to exit the entity

enactment initially slow, but now developing

- *2002 budget crunch*
- *2003 NCCUSL focus on UCC*
- *initially only Hawaii*
- *enactments last year in Iowa, Illinois, Minnesota*
- *a “targeted” act for 2005*

11 salient differences between ULPA (2001) and RULPA (1985). The new Act:

- **is a stand alone act . . . incorporating essentially verbatim many important provisions from RUPA;**
- **provides constructive notice, 90 days after appropriate filing, of general partner dissociation and of limited partnership dissolution, termination, merger, and conversion;**
- **has a perpetual duration, subject to change by the partnership agreement (and to earlier dissolution following the dissociation of a general partner and otherwise by partner consent);**
- **expressly delineates the permissible scope and effect of the partnership agreement;**
- **provides a complete, corporate-like liability shield for limited partners "even if the limited partner participates in the management and control of the limited partnership";**
- **permits a limited partnership to be a limited liability limited partnership (LLLP), and thereby makes a complete, corporate-like liability shield available to general partners;**
- **gives limited partners the power but not the right to dissociate before the limited partnership's termination and allows the partnership agreement to eliminate even the power;**
- **eliminates any pre-termination pay out to dissociated partners, unless the partnership agreement provides otherwise;**
- **eschews the UPA's open-ended approach to general partner fiduciary duties and incorporates essentially verbatim RUPA's provision on fiduciary duty and the obligation of good faith and fair dealing;**
- **provides for judicial expulsion of a general partner, although the partnership agreement can negate this provision;**
- **makes dissolution following a general partner's dissociation less likely, by replacing RULPA's unanimous consent rule with a two pronged, anti-fragility approach; and**
- **authorizes a limited partnership to participate in mergers and conversions.**

why should law teachers care?

*~ isn't the basic Business Associations
course overfull already? ~*

*never be a major player, but there are
some useful roles*

- *tracing the history of the liability shield for unincorporated entities*
 - *from disfavor of the corporate general partner*
 - *to the ubiquitous corporate general partner*
 - *to the partial shield LLP*
 - *to the full shield LLP*
 - *to the LLP and the end of the “control rule” for limited partners*

a bit of agency law in statutory guise . . .

- *Lingering power to bind and lingering exposure to personal liability treated in direct, accessible fashion*
 - *statutory language appears in RUPA, but much more difficult to follow there (and even more difficult in the UPA)*
 - *these areas (lingering power and exposure)*
 - *increase in importance as entity fragility decreases,*
and, moreover,

- *comprise THE MOST SALIENT (PERHAPS THE ONLY) NOVEL ASPECTS of statutory provisions permitting unincorporated organizations to merge, convert, etc.*

- *Constructive notice through public documents*
 - *a quiet revolution effected in many LLC statutes and in RUPA's statements of dissociation and dissolution*
 - *centralized in ULPA (2001) and therefore easier to study*
- *the role of the certificate in identifying vel non the general partners*

why should law scholars care?

- *the “constructive notice” issue is begging for scholarly critique*
- *the “formed by agreement” or “formed by filing” issue presents a conceptual challenge that has very practical ramifications (e.g., shelf LLCs, status inter se the owners upon defective formation)*
- *for “history of law” types, two types of evolution:*
 - *evolution of the tax classification regs (with the limited partnership bias before “check the box”)*
 - *evolution of the shield*