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PARTNER V. PARTNER: ACTIONS AT LAW FOR WRONGDOING IN A PARTNERSHIP

INTRODUCTION

A partnership is defined as “an association of two or more persons to carry on as co-owners of a business for profit.”¹ Primarily because of its tax advantages, partnership is a popular form of business. While it is widely recognized that a disadvantage to partnership is personal liability to third parties, a lesser known consequence of partnership is confusion over remedies for liability between partners.

As in any business relationship, disputes may develop within a partnership. On occasion, a wronged partner may seek redress through the courts. At common law, partners who had reached an impasse regarding partnership matters were expected to dissolve their partnership and demand an accounting in a court of equity.² Common law barred actions at law between partners to resolve partnership matters, requiring that wrongs be addressed in the single accounting action.³ Practical and policy reasons supporting the restriction on actions at law included: the superiority of the courts of equity in addressing complex issues; the procedural anomaly of a partner in effect suing himself; the idea that partners should not expect the courts to resolve their differences; the concept that one partner’s claim could not be determined without balancing it against other partnership claims and liabilities; and, finally, the judicial economy achieved by consolidating potential claims in a single proceeding.⁴

Not every controversy invoked the practical and policy concerns for limiting legal actions between partners. As appropriate cases arose, and spurred by the cost and inconvenience of an equity action for an accounting, numerous

1. UNIF. PARTNERSHIP ACT § 6(1) (1914).

2. *See, e.g.*, ALAN R. BROMBERG & LARRY E. RIBSTEIN, BROMBERG AND RIBSTEIN ON PARTNERSHIP § 6.08(b) (1988); HAROLD GILL REUSCHLEIN & WILLIAM A. GREGORY, THE LAW OF AGENCY AND PARTNERSHIP 287 (2d ed. 1990).

3. BROMBERG & RIBSTEIN, *supra* note 2, § 6.08(c); REUSCHLEIN & GREGORY, *supra* note 2, at 286-87.

4. BROMBERG & RIBSTEIN, *supra* note 2, § 6.08(c).

exceptions developed to the restriction against actions at law between partners.⁵

As in many areas of law, the law of partnership has been codified. The Uniform Partnership Act (UPA),⁶ promulgated in 1914, has been adopted in all states except Louisiana.⁷ The UPA provides little detail governing the relationship between partners,⁸ and is silent on the issue of whether or not a partner can sue a copartner at law. The UPA does expressly grant partners the right to an accounting.⁹ Following adoption of the UPA, most courts assumed that the common-law restriction on actions at law was still viable.¹⁰

In 1984, Georgia was the last of forty-nine states to adopt the UPA.¹¹ Modifications in Georgia's version of the UPA were hailed as progressive,¹² but continued the silence regarding whether and how actions at law between partners are restricted.¹³ In Georgia, as in other states, there is confusion about how a wronged partner can pursue remedies against another partner.¹⁴

In August 1992, the National Conference of Commissioners on Uniform State Laws approved a revision¹⁵ of the 1914 UPA. The

5. *Id.*; REUSCHLEIN & GREGORY, *supra* note 2, at 286-87.

6. UNIF. PARTNERSHIP ACT (1914).

7. 6 U.L.A. 1 (Supp. 1992) (Uniform Partnership Act, Table of Adopting Jurisdictions).

8. REUSCHLEIN & GREGORY, *supra* note 2, at 263.

9. UNIF. PARTNERSHIP ACT § 22 (1914).

10. *See, e.g.*, BROMBERG & RIBSTEIN, *supra* note 2, § 6.08.

11. 6 U.L.A. 1 (Supp. 1992) (Uniform Partnership Act, Table of Adopting Jurisdictions).

12. Donald J. Weidner, *The Revised Uniform Partnership Act Midstream: Major Policy Decisions*, 21 U. TOL. L. REV. 825, 826 (1990). Despite major changes in the nature of partnerships and related law, the UPA required remarkably few updates. Many of Georgia's changes were incorporated in a 1986 American Bar Association report. *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). The report spurred revision of the Uniform Partnership Act. Weidner, *supra*, at 826.

13. O.C.G.A. § 14-8-22 (1990).

14. *See, e.g.*, *Campbell v. Emory Clinic*, 1:90-CV-1403-HTW (N.D. Ga. 1992), *reprinted in* FULTON COUNTY DAILY REP., Sept. 2, 1992, at 11-13 (Applying Georgia law, the court was confronted with the issue of whether a partner could sue a partnership on partnership matters. The court dismissed the partner's at law actions against a copartner.).

15. UNIF. PARTNERSHIP ACT (Oct. 28, 1992, Text Without Prefatory Note and Comments). The Act is unpublished. A copy of the Act can be obtained for a nominal charge from the Headquarters Office of the National Conference of Commissioners on

Revised Uniform Partnership Act (RUPA) expressly states that a partner has remedies at equity *or at law*, including the right to an accounting.¹⁶ Given the large number of exceptions to the common-law restriction on interpartner actions at law, the committee position may seem to be more realistic. However, RUPA continues to ignore the question of whether it is appropriate to restrict suits in some situations. This Note will focus on the common-law rule restricting actions at law between partners, policies underlying that rule prior to promulgation of the UPA, and whether those policies remain viable today.¹⁷ Additional focus will be placed on the law in Georgia, as the most recent state to adopt the UPA, and whether or not the statutory changes proposed in RUPA¹⁸ should be adopted.

I. OVERVIEW OF THE COMMON-LAW RULE RESTRICTING DIRECT ACTIONS AT LAW BETWEEN PARTNERS

A. *Description of the Rule*

The equitable remedy of accounting was traditionally available to a wronged partner only after the partnership had ended.¹⁹ An accounting is a broad proceeding, encompassing a complete review of the financial affairs of the partnership as well as a review of claims by partners.²⁰ Courts developed a rule barring direct actions at law between partners, for partnership business, unless an accounting or other final settlement had taken place.²¹ Claims that would have ordinarily proceeded as actions at law were folded into the equitable proceeding of final accounting.²² This general rule was described by one 1922

Uniform State Laws, 676 North St. Clair Street, Suite 1700, Chicago, IL 60611, (312) 915-0195.

16. UNIF. PARTNERSHIP ACT, *supra* note 15, § 406(b) (1992).

17. Since this Note compares common law as it stood before the UPA was promulgated in 1914 to the law as it stands today, it does not include a discussion of cases in the middle of the century. For a collection and discussion of cases in this missing period describing the general rule restricting partner actions and exceptions to the rule, see K. A. Dreschesler, Annotation, *Actions at Law Between Partners and Partnerships*, 168 A.L.R. 1088 (1947).

18. UNIF. PARTNERSHIP ACT, *supra* note 15, § 406(b) (1992).

19. BROMBERG & RIBSTEIN, *supra* note 2, § 6.08(b); REUSCHLEIN & GREGORY, *supra* note 2, at 287.

20. BROMBERG & RIBSTEIN, *supra* note 2, § 6.08(d).

21. *See, e.g., id.* § 6.08(c).

22. *Id.* § 6.08(d).

commentator as “[t]he almost, if not universally, accepted general rule.”²³ Today, this rule remains widely accepted.²⁴ Some statements of the rule incorporate widely recognized exceptions to it, but in simplest form, the general rule is, “[a]n action at law will not lie against a partner upon a demand arising out of the partnership relationship until a settlement of account and balance is struck.”²⁵

B. Policies Underlying the General Rule Restricting Actions at Law Between Partners

Many practical and policy reasons, some still viable, supported the pre-UPA restriction on actions at law between partners.

1. Courts of Equity

One reason for the restriction, a reason with no current validity, was that a single proceeding for all disputes could only be adjudicated in a court of equity.²⁶ Courts of equity were historically separate from courts of law. Unlike juries in courts of law, judges in courts of equity were thought to be capable of resolving the complex issues of partnership business.²⁷ Of course, courts of law and equity are no longer separate. Still, folding all related claims arising from a partnership into the equitable action of accounting might simplify the resolution of issues about when and whether to submit questions to a jury.²⁸

23. Annotation, *Actions at Law Between Partners and Partnerships*, 21 A.L.R. 21 (1922), at 34. The quoted statement is followed by a comprehensive list of citations for almost all United States jurisdictions.

24. See, e.g., *Dalton v. Austin*, 432 A.2d 774 (Me. 1981); *Bright v. Angle*, 833 S.W.2d 12 (Mo. Ct. App. 1992); *Giblin v. Anesthesiology Assocs.*, 567 N.Y.S.2d 775 (App. Div. 1991); *Moffatt v. Harden*, 648 P.2d 1311 (Or. Ct. App.), *cert. denied*, 653 P.2d 998 (Or. 1982); *Mitchell Resort Enters. v. C&S Builders*, 570 S.W.2d 463 (Tex. Civ. App. 1978). *But see Sertich v. Moorman*, 783 P.2d 1199 (Ariz. 1989) (expressly abolishing the general rule, but reserving the right for courts to require an accounting); *Yenglin v. Mazur*, 328 N.W.2d 624 (Mich. Ct. App. 1982) (stating that the general rule restricting actions is no longer necessary).

25. *Moffatt v. Harden*, 648 P.2d at 1312.

26. See BROMBERG & RIBSTEIN, *supra* note 2, § 6.08(c).

27. *Id.* § 6.08(d).

28. See *Williams v. Tritt*, 415 S.E.2d 285 (Ga. 1992) (postponing potential jury decisions until end of the partnership accounting). *But see REUSCHLEIN & GREGORY*, *supra* note 2, at 288, noting that when it is necessary to determine whether or not there is a partnership, a jury trial will be necessary prior to a partnership accounting (discussing *Galvin v. Suchomel*, 186 N.W.2d 622 (Iowa 1971)).

2. *Entity-Aggregate Theory*

The restriction on actions at law between partners arose for a second reason which also has little current validity. Early partnerships were considered aggregates of individuals.²⁹ Partnerships were traditionally small and personal forms of business. In order for a partnership to sue³⁰ or be sued³¹ by a third party, each individual partner had to be joined. In disputes involving partnership business, an action at law between partners would result in a partner suing himself as well as his copartner. Barring such actions was grounded on the "principle that one cannot be both a plaintiff and a defendant in the same suit, either singly or with others."³²

Common name statutes in most jurisdictions now allow a partnership to sue or be sued as a separate entity.³³ And even though partners may be jointly or jointly and severally liable to third parties for partnership obligations,³⁴ the fact that a partner may owe copartners indemnity or contribution for joint obligations eases the theoretical problems of suing oneself.³⁵ If

29. See, e.g., Larry E. Ribstein, *A Mid-Term Assessment of the Project to Revise the Uniform Partnership Act*, 46 BUS. LAW. 111, 141 (1990).

30. See generally Alan R. Bromberg, *Enforcement of Partnership Rights—Who Sues for the Partnership?*, 70 NEB. L. REV. 1 (1991).

31. See generally Alan R. Bromberg, *Enforcement of Partnership Obligations—Who is Sued for the Partnership?*, 71 NEB. L. REV. 143 (1992).

32. *Benton v. Hunter*, 46 S.E. 414, 416 (Ga. 1904) (holding that an action at law could proceed between former partners because the partnership business had been settled, so that all remaining obligations and rights were individual ones); see also *Gilliam v. Loeb*, 109 S.W. 835 (Mo. 1908) (holding that the restriction on actions at law between partners did not apply where the wronging partner had committed fraud; since fraud could not be a partnership matter, the right to recover damages for fraud was an individual right).

33. See Bromberg, *supra* note 30, at 29-30; Bromberg, *supra* note 31, at 173-74.

34. UNIF. PARTNERSHIP ACT § 15 (1914). The section is under Part III of the Act (Relations of Partners to Persons Dealing with the Partnership), thus applying to third parties, and reads:

§ 15. Nature of Partner's Liability

All partners are liable

(a) Jointly and severally for everything chargeable to the partnership under sections 13 and 14.

(b) Jointly for all other debts and obligations of the partnership; but any partner may enter into a separate obligation to perform a partnership contract.

Sections 13 and 14, referred to above, address both a partner's wrongful act and a partner's breach of trust. Both apply to nonpartner third parties. *Id.* §§ 13-14.

35. Cf. Bromberg, *supra* note 31, at 144-45 (commenting on contribution and indemnity as a means of balancing disproportionate payments among partners).

direct suits at law were allowed between partners, the contribution or indemnity owed by the wronging partner to the wronged partner for a joint obligation could be directly assessed.

In 1982, one court took the extreme step of completely disavowing the common-law restriction on actions at law by a partner against a copartner or a partnership solely because the state legislature had passed a common name statute recognizing a partnership as a separate entity, thus eliminating the need for any restriction on actions at law.³⁶ However, most courts, past and present, acknowledge justifications other than the aggregate-entity theory as underlying the common-law restriction on actions at law between partners where there has been no accounting or settlement.³⁷ Those courts, however, continue to restrict copartner actions due to other policies.

3. *Business Divorce*

A third justification for the general rule was the notion that a partnership should be completely dissolved and settled if the partners required the court to settle their claims.³⁸ A partnership was typically a very personal form of business; partners were highly unlikely to want to continue doing business when embroiled in a legal dispute. But today, the UPA specifically grants a partner the right to demand an account "[w]henever other circumstances render it just and reasonable," rather than requiring that the partnership end before or simultaneous to the action for accounting.³⁹ Also, partnerships no longer automatically end when one partner dies or withdraws from the business.⁴⁰ For dead or withdrawn partners, the partnership relationship is over and there is no longer a reason to withhold the right to litigation. In other situations, partners may wish to continue their association despite a legal dispute, particularly where partnerships can include corporations or large numbers of individuals.⁴¹ The idea of corporations or strangers

36. *Yenglin v. Mazur*, 328 N.W.2d 624, 627 (Mich. Ct. App. 1982). The court concluded: "We find that since a partnership is a separate legal entity for purposes of litigation, capable of suing and being sued, the plaintiff may sue on a general obligation of his partnership without the necessity of first bringing an action for an accounting." *Id.*

37. BROMBERG & RIBSTEIN, *supra* note 2, § 6.08(c).

38. REUSCHLEIN & GREGORY, *supra* note 2, at 287.

39. UNIF. PARTNERSHIP ACT § 22 (1914).

40. BROMBERG & RIBSTEIN, *supra* note 2, § 6.08(b).

41. For example, see *Mitchell Resort Enters. v. C&S Builders*, 570 S.W.2d 463

continuing a business relationship during or following serious dispute seems less unusual than when close individuals choose to do the same thing.

Even where a partnership could continue to do business following a legal dispute, it may still be appropriate to require an accounting action in order to resolve claims at law between the partners. An accounting action takes stock of all partnership business as of a given point in time.⁴² The action could create more finality in settling partnership matters up to the point of alleged wrongdoing.

In addition, if the common-law restriction makes it inconvenient for a partner to sue a copartner, parties will be encouraged to work out their differences and to exercise more care in selecting their partners. This incentive may be particularly important if partners are required to exercise due care in the conduct of business, as has been suggested by some experts.⁴³ Unlike other justifications, judicial economy is still an important policy objective today. Courts should be reserved for disputes other than those arising from the parties' choice to join as partners to make a profit.

4. *Offsetting Liabilities*

The fourth and perhaps primary policy behind the rule that partnership disputes should be resolved through the equitable action of accounting centers around the notion that a partner's claim against a copartner should be considered along with liabilities of the suing partner that might offset the claim.⁴⁴ In the partnership form of business, a partner (other than a limited partner) can be liable for partnership business matters apart from claims between partners.⁴⁵ As stated by a court in 1886:

(Tex. Civ. App. 1978) (suit between the two corporations that had formed a partnership).

42. BROMBERG & RIBSTEIN, *supra* note 2, § 6.08(d).

43. Norwood P. Beveridge, Jr., *Duty of Care: The Partnership Cases*, 15 OKLA. CITY U. L. REV. 753, 754 (1990). The author suggests that the UPA's silence on the standard of care for partners should be replaced with the duty to use ordinary care. *Id.* The suggestion was not incorporated in RUPA. "A partner's duty of care to the partnership and the other partners in the conduct and winding up of the partnership business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law." UNIF. PARTNERSHIP ACT, *supra* note 15, § 404(d) (1992).

44. See, e.g., BROMBERG & RIBSTEIN, *supra* note 2, § 6.08(c).

45. UNIF. PARTNERSHIP ACT § 15 (1914) (describing a partner's liability to third

"The obligation to share losses as well as gains, to contribute jointly with the others to the funds requisite to meet the liabilities of the partnership, is one of the most important and fundamental duties of the relation."⁴⁶ Early courts reasoned that the suing partner's claims could not be ascertained, and did not vest in that individual, until all partnership affairs were settled.⁴⁷ Settlement was a prerequisite to determining claims because "the amount which the one partner is entitled to, if anything, cannot be known until the partnership affairs are settled."⁴⁸

The justification for the general rule barring copartner actions at law involving partnership matters remains valid for the purpose of clarifying complex relationships.⁴⁹ As one court noted upon analyzing a dispute over ownership of property, "the record is replete with confusion and ambiguity concerning the winding up of the partnership as well as the manner in which the partnership property was ultimately liquidated. These circumstances both suggest the prudence of settling the dispute between these two litigants in one comprehensive proceeding for an account."⁵⁰

5. *Judicial Economy*

In addition to the procedural sorting of claims and debts, an action in accounting was considered to further judicial economy by settling all disputes in one proceeding.⁵¹ Absent any restrictions to suits at law, an early court noted that "if one partner may [maintain an action for contribution] in regard to an

parties).

46. *Crow v. Green*, 5 A. 23, 24 (Pa. 1886).

47. *See, e.g., Bishop v. Bishop*, 6 A. 426 (Conn. 1886) (dismissing action for contribution between two partners, the court held that the funds sought were partnership business and thus could not be paid absent settlement of partnership accounts); *Benton v. Hunter*, 46 S.E. 414 (Ga. 1904) (holding that action could proceed since partnership matters had been settled); *Foss v. Dawes*, 101 N.W. 237 (Neb. 1904) (dismissing action for contribution for payment of partnership debts because an accounting action was pending); *Crow v. Green*, 5 A. 23 (Pa. 1886) (holding that partner suing partnership for breach of contract to buy personally owned land was restricted to an accounting since he would have owed the partnership business expenses including a portion of his own claim for breach).

48. *Foss*, 101 N.W. at 238.

49. *See, e.g., Dalton v. Austin*, 432 A.2d 774 (Me. 1981).

50. *Id.* at 778.

51. *See, e.g., BROMBERG & RIBSTEIN, supra note 2, § 6.08(c).*

item favorable to himself, so may another partner in regard to an item favorable to himself, and there might be an interminable litigation over the account."⁵² As a more modern court observed, the accounting action remains superior to specific actions at law because "all activities related to the partnership are subject to scrutiny, [therefore] a wide variety of matters may be determined."⁵³

To some extent, modern procedural rules have eased the need for restricting actions at law between partners, since parties may now join related claims and third parties.⁵⁴ However, it may still be helpful if the court itself could require resolution of related claims rather than relying on the parties to raise all appropriate actions. Whether raised by one of the litigating parties or not, a general partner can owe liabilities to or on behalf of the partnership⁵⁵ to third parties. Without the investigation entailed in an accounting action, such liabilities might be undisclosed if involved parties fail to raise the issues or if neither party makes a claim for an accounting. Failure to protect the rights of third parties seems contrary to UPA provisions which so carefully regulate a partnership's responsibilities toward third parties,⁵⁶ and which place obligations to third parties above debts to copartners.⁵⁷

C. Exceptions to the Rule Restricting Direct Actions at Law Between Partners

Cases decided both before and after adoption of the UPA have developed exceptions to the general rule that no actions at law can be maintained for partnership matters without an accounting or final settlement, thus allowing courts to refuse to require accounting where circumstances seem to render it unnecessary.⁵⁸ The application of these exceptions is rarely rigid. As one court noted, "[m]any cases have looked to the reasons for the general rule in defining exceptions to the rule;

52. *Bishop v. Bishop*, 6 A. 426, 428 (Conn. 1886).

53. *Moffatt v. Harden*, 648 P.2d 1311, 1312 (Or. Ct. App.), *cert. denied*, 653 P.2d 998 (Or. 1982).

54. *See, e.g.*, Ribstein, *supra* note 29, at 141-42.

55. UNIF. PARTNERSHIP ACT § 15 (1914).

56. *Id.*

57. *Id.* § 40(b). This section specifies that payments owed to nonpartners have first priority for payment upon dissolution of a partnership.

58. *See, e.g.*, BROMBERG & RIBSTEIN, *supra* note 2, § 6.08(c).

where the court has found the rule's rationale inapplicable, the rule has not been applied."⁵⁹

Exceptions are as widespread as the rule itself.⁶⁰ Some so-called exceptions actually define common situations where the general rule does not apply, such as when there is a breach of contract to form a partnership.⁶¹ In such a situation, no partnership ever existed, so application of the rule is not appropriate. True exceptions are typically applied in the absence of factors that make the general rule appropriate.

1. *Exceptions for Issues that can be Resolved Without an Accounting*

Some courts have bypassed formal accounting when the dispute can be effectively segregated from other partnership matters. The rationale is that an accounting will serve no purpose because other partnership matters are not in dispute, or there is no dispute by the time suit is brought.⁶² For example, in the 1894 case of *Wilson v. Wilson*,⁶³ a partner had furnished all of the capital investment on behalf of himself and a copartner to begin a partnership to operate a mine. In exchange for his investment, the lending partner received a promissory note from the copartner. The note was not binding unless the partnership became profitable. The court reasoned that if the lending partner

59. *Balcor Income Properties v. Arlen Realty*, 420 N.E.2d 612, 613 (Ill. App. Ct. 1981); *see also*, *Miller v. Freeman*, 36 S.E. 961 (Ga. 1900) (looking to policy to determine whether exceptions applied, the court reasoned that literal application of precedent when applying the rule was inappropriate because most courts made "broad statements, made in reference, not to the cases decided, but to partnership cases generally, [which] are not always guarded and restricted with sufficient care"). *Id.* at 962.

60. *See, e.g.*, *BROMBERG & RIBSTEIN*, *supra* note 2, § 6.08(c).

61. *Id.*

62. *See, e.g.*, *Balcor Income Properties v. Arlen Realty*, 420 N.E.2d 612 (Ill. App. Ct. 1981); *Goldsmith v. Sternberg*, 509 N.Y.S.2d 89 (App. Div. 1986) (holding that a partner could proceed with a claim for contribution for payments incurred while partnership was in bankruptcy, the court reasoned that there was no need to reopen partnership matters that had long been settled); *Roper v. Thomas*, 298 S.E.2d 424 (N.C. Ct. App. 1982) (all other obligations and rights of a partnership formed solely to develop an apartment complex had been extinguished by foreclosure, so limited partner's action at law for mismanagement could proceed against general partner). *See also*, as examples of earlier exceptions of the same type, *Gilmore v. Ham*, 15 N.Y.S. 391 (Sup. Ct. 1891), *aff'd without opinion*, 31 N.E. 624 (N.Y. 1892) (holding that action for assumpsit could proceed for share of assets calculated but never distributed after partnership had dissolved); *Wilson v. Wilson*, 38 P. 185 (Or. 1894).

63. 38 P. 185 (Or. 1894).

had loaned money directly to the partnership, he would have been unable to maintain an action at law because of "the obvious reason that it is not permissible for a party to sue himself."⁶⁴ However, the court held that the action could be maintained between the partners because the promissory note effectively segregated the amount in dispute.⁶⁵ The court did not address any issues apart from the entity-aggregate concern.

In the 1981 case of *Balcor Income Properties v. Arlen Realty*,⁶⁶ two corporations had formed a partnership to obtain and manage a shopping center.⁶⁷ The suing partner was responsible for operating the center and had hired an agent for the job. The agent's performance was guaranteed by the defending partner.⁶⁸ When the agent breached, the suing partner sued to recover on the guaranty. The court reviewed and rejected the aggregate-entity theory as a barrier to maintaining the action. The court reasoned that although sorting out the claims and liabilities of the shopping center partnership would be very complex, the guarantee claim was based on a contract separate from the rest of the partnership relationship.⁶⁹ In the interest of judicial economy, the court held that the action at law could be maintained without the extremely involved accounting of a complex partnership.⁷⁰

Similarly, accounting has been held to be unnecessary where the action is to rescind the partnership, since only restitution is sought, and there is no need for resolution of partnership rights or obligations.⁷¹

64. *Id.* at 187.

65. *Id.*

66. 420 N.E.2d 612 (Ill. App. Ct. 1981).

67. Actually, there were two identical partnerships, each to acquire and manage a different shopping center. *Id.* at 613. For clarity, they are referred to herein as a single partnership.

68. *Id.* The agent was a wholly owned subsidiary of the defending partner. *Id.*

69. *Id.* at 614.

70. *Id.*

71. *See, e.g.,* *Bowman v. Sedgewick*, 82 N.W. 491 (Iowa 1900) (holding that since partner failed to prove that fraud induced him to enter partnership, he could not sue to recover funds advanced to the partnership, nor could he sue for a copartner's negligence in conducting partnership business); *Ferguson v. Jeanes*, 619 P.2d 369 (Wash. Ct. App. 1980) (holding that a woman who had been unduly influenced by her religious counselor to enter a partnership was entitled to rescind the agreement; accounting was not required).

2. *Exception for Issues that are Substantively Separate from Partnership*

Other exceptions include situations where the matter in dispute can be substantively separated from partnership business, not merely separated for the purpose of dispute resolution. Examples include disputes where the issue arose prior to the partnership⁷² or where the dispute involved a partner's distinct property or rights.⁷³ At least one court suggests that when there is a dispute about whether an exception to the restriction on actions at law is applicable, the restriction should be applied because an accounting is a proper forum for investigating matters such as whether or not property belongs to the partnership or to an individual partner.⁷⁴ This situation demonstrates the policy concern that offsetting liabilities might go unadjusted, and is therefore an appropriate case for applying the general rule restricting actions at law between partners.

When the dispute is substantively separate from partnership business, the accounting is moot. There is no concern about judicial economy. In fact, bypassing the accounting is more efficient than requiring the action.⁷⁵ But at least one modern court has applied the restriction to actions at law between

72. See, e.g., *Newberger, Loeb & Co. v. Gross*, 365 F. Supp. 1364 (S.D.N.Y. 1973), *rev'd on other grounds*, 563 F.2d 1057 (2d Cir. 1977), *cert. denied*, 434 U.S. 1035 (1978) (applying New York law to hold that partnership could sue individual partners for wrongful actions occurring prior to partnership formation); *Burch v. Ashburn*, 368 S.E.2d 82 (S.C. Ct. App. 1988) (holding that while the bar precluded actions at law for management of partnership affairs, it did not apply to an action at law for a promissory note executed to buy into the partnership).

73. See, e.g., *Katz v. Powers*, 401 N.Y.S.2d 720, (Dist. Ct. 1978) (holding that where one partner loaned money to a copartner for purely personal reasons and where they executed a personal note, the fact that they were partners and routed the money initially through partnership accounts did not mean the bar should apply); *Jones v. Sageeyah Dev., Ltd.*, 833 P.2d 1235 (Okla. 1992) (holding that even though one partner's motivation for loaning money to a copartner was a business reason—avoiding creditor's proceeding against the partnership—the bar should not apply; the parties had executed a promissory note, and the loan was separable, for capital contribution to the partnership); see also *Davies v. Skinner*, 17 N.W. 427 (Wis. 1883) (holding that an action at law could be maintained to resolve a dispute over a contract separate from partnership business, allowing a partner discounted use of a threshing machine owned by the partnership).

74. *Moffatt v. Harden*, 648 P.2d 1311 (Or. Ct. App. 1982).

75. *Balcor Income Properties v. Arlen Realty*, 420 N.E.2d 612 (Ill. App. Ct. 1981). The court noted that "[t]he better rule . . . is a practical one: a partner or partnership can bring an action against a co-partner if the plaintiff's claim can be decided without a full review of the partnership accounts." *Id.* at 614.

partners even though the number of matters in dispute was few.⁷⁶ That court attempted to further the goal of judicial economy by narrowing the scope of accounting from a comprehensive review of all partnership affairs to a review of only those matters in dispute.⁷⁷ Accounting was especially unnecessary in the case because, for the most part, the partnership had already ended.

Rather than recognizing an exception to the common-law restriction, many courts simply narrow their definition of the restriction to apply only when partnership affairs are complex. However, in one of two cases where the restriction has been expressly abolished, *Sertich v. Moorman*,⁷⁸ the court concluded that a number of factors—the merger of courts of equity and law, the switch to entity theory of partnership, and the flexibility of modern rules of procedure—all pointed to the lack of need for any type of bar. Yet in that particular case, the “partnership was dissolved, the affairs wound up, and a certificate of cancellation executed.”⁷⁹ Since no rights of or obligations to any other parties were involved, the court appropriately concluded that an accounting action was unnecessary. Rather than treating the matter as an exception to the general rule restricting actions at law between partners, the *Sertich* court expressly rejected the rule.⁸⁰ Nonetheless, the court reserved discretion for the trial court to determine whether or not an accounting was needed to sort out the claim, and to require one if appropriate.⁸¹

3. *Exceptions for Blameworthy Acts*

Situations that seem more like true exceptions to the general rule are those in which the wrongdoing partner's conduct is particularly blameworthy. These exceptions include “[w]rongful dissolution, exclusion of a partner from the partnership by diversion of the partnership property from the partnership, or other such tortious activity.”⁸² Courts rarely justify such

76. *Reed v. Crow*, 496 So.2d 15 (Ala. 1986) (holding that accounting need not cover matters which all parties stipulated were already settled).

77. *Id.*

78. 783 P.2d 1199 (Ariz. 1989).

79. *Id.* at 1205.

80. *Id.*

81. *Id.*

82. BROMBERG & RIBSTEIN, *supra* note 2, § 6.08(c), at 6:106, 6:107 (footnotes omitted).

exceptions in terms of underlying policy concerns specific to partnership.⁸³

In the early case of *Gilliam v. Loeb*,⁸⁴ the court allowed an action at law to recover damages for a partner's fraud. Although the fraud specifically involved partnership business, the court avoided discussion of policy by using the exception that actions at law could proceed for matters separable from partnership business.⁸⁵ The court reasoned that fraud by its very nature could never be partnership business.⁸⁶ Another early case expressed a "clean hands for equity" reason for disregarding the policy favoring resolution of all partnership claims in one proceeding.⁸⁷ The court stated: "He [the wrongdoer] cannot, when sued in respect of his dereliction of duty, defend upon the ground that there are unsettled and contingent liabilities against the partnership."⁸⁸

In the later case of *Fulton v. Baxter*,⁸⁹ the Supreme Court of Oklahoma noted that the rule requiring an accounting was secondary to "another venerable maxim: 'Equity will act when the remedy at law is inadequate.'"⁹⁰ In *Fulton*, partners in the business of selling insurance had agreed to end their partnership, but had not yet agreed on the disbursement of partnership assets.⁹¹ When a partner proceeded to use those assets (including phone listings and existing customer policies) as if the business were his own, the wronged copartner sued for and recovered damages.⁹² The court's decision seemed to be based solely on the wrongfulness of the defendant's conduct. No concern was devoted to whether the plaintiff owed any liabilities.⁹³

Similarly, the Georgia Court of Appeals ignored potential partnership claims and liabilities that could have offset claims at law in the case of *Arford v. Blalock*.⁹⁴ The two-person

83. *Id.*

84. 109 S.W. 835 (Mo. 1908).

85. *Id.*

86. *Id.*

87. *Lonergan v. Lonergan*, 55 P. 851 (Kan. 1899).

88. *Id.* at 851.

89. 596 P.2d 540 (Okla. 1979).

90. *Id.* at 542.

91. *Id.*

92. *Id.*

93. *Id.*

94. 405 S.E.2d 698 (Ga. Ct. App. 1991), *aff'd sub nom. Wilenski v. Blalock*, 414 S.E.2d 1 (Ga. 1992).

partnership was formed to operate a branch office for a mortgage company. One partner had been ousted from the partnership by his copartner, after the copartner and a third party officer of the mortgage company had conspired to dissolve the contract between the partnership and the mortgage company.⁹⁵ The court reasoned that the suing partner's cause of action was that of wrongful dissolution of a partnership, and that the damages were based on lost business opportunity following the end of the partnership.⁹⁶ Since this amount could be calculated separately from the suing partner's interest in the partnership (which would require an accounting), the court concluded that the claim could proceed.⁹⁷ Calculation of damages for a discrete injury is not the problem with interpartner lawsuits. It is the offsetting liability from other aspects of the partnership that have usually troubled courts.

The exception made for wrongful acts seems to invoke the moral judgement of equity rather than any policy specific to partnership law. In settling matters between partners, an equitable approach may be quite correct. However, if the courts ignore liabilities which the partnership may owe to third parties⁹⁸ (who are likely to have had even less opportunity to protect themselves than did the injured partner), they may do equity between the partners at the expense of the third parties.

II. STATUTES GOVERNING THE PARTNERSHIP RELATIONSHIP

A. *The Uniform Partnership Act (UPA)*

The UPA does not extensively regulate matters between partners.⁹⁹ However, the UPA does grant a partner the right to "a formal account as to partnership affairs"¹⁰⁰ under certain circumstances.¹⁰¹ According to the official comment to the UPA,

95. *Id.* at 700.

96. *Id.* at 703.

97. *Id.*

98. UNIF. PARTNERSHIP ACT § 15 (1914).

99. REUSCHLEIN & GREGORY, *supra* note 2, at 263.

100. UNIF. PARTNERSHIP ACT § 22 (1914).

101. *Id.* The circumstances are outlined in the full text of § 22, as follows:

§ 22. Right to an Account

Any partner shall have the right to a formal account as to partnership affairs:

- (a) If he is wrongfully excluded from the partnership business or possession of its property by his co-partners,

the purpose of the provision is to allow a partner to demand an account without having to first dissolve the partnership.¹⁰²

The right to an account can be enforced by bringing the equitable action of accounting against the wronging partner.¹⁰³ The UPA does not state whether an action for accounting (final or not) is a partner's exclusive remedy for partnership disputes, as was held at common law.¹⁰⁴ The UPA does, however, contain a section that explicitly states that the rules of law and equity govern gaps in the statute.¹⁰⁵ Following their state's adoption of the UPA, most courts have continued to apply the common-law rule, considering the accounting to be an exclusive remedy, barring actions at law involving partnership matters.¹⁰⁶

Despite the official comment that the UPA's express grant of the right to demand an account is intended to affect only the circumstances under which an accounting can be demanded,¹⁰⁷

-
- (b) If the right exists under the terms of any agreement,
 - (c) As provided by section 21,
 - (d) Whenever other circumstances render it just and reasonable.

Id. The relevant part of Section 21 of the Uniform Partnership Act, referred to above, reads:

§ 21. Partner Accountable as a Fiduciary

(1) Every partner must account to the partnership for any benefit, and hold as trustee for it any profits derived by him without the consent of the other partners from any transaction connected with the formation, conduct, or liquidation of the partnership or from any use by him of its property.

Id.

102. UNIF. PARTNERSHIP ACT § 22, Official Comment (1914).

103. REUSCHLEIN & GREGORY, *supra* note 2, at 282.

104. BROMBERG & RIBSTEIN, *supra* note 2, § 6.08(a).

105. UNIF. PARTNERSHIP ACT § 5 (1914).

106. *See, e.g.*, Dalton v. Austin, 432 A.2d 774 (Me. 1981) (holding that conversion of partnership property was barred); Bright v. Angle, 833 S.W.2d 12 (Mo. Ct. App. 1992) (holding that action for misrepresentation could not proceed since the claimant had not pleaded and proved that partnership accounts had been settled, or that an exception to the bar applied); Giblin v. Anesthesiology Assocs., 567 N.Y.S.2d 775 (App. Div. 1991) (holding that breach of contract actions could not be maintained separate from accounting action still pending); Moffatt v. Harden, 648 P.2d 1311 (Or. Ct. App.), *cert. denied*, 653 P.2d 998 (Or. 1982) (holding that bar applied even where it was disputed whether partnership property was involved, because accounting was proper forum for resolving ownership); Mitchell Resort Enters. v. C&S Builders, 570 S.W.2d 463 (Tex. Civ. App. 1978) (bar applied to suit for intentional mismanagement of partnership property). *But see* Sertich v. Moorman, 783 P.2d 1199 (Ariz. 1989) (expressly abolishing the bar); Yenglin v. Mazur, 328 N.W.2d 624 (Mich. Ct. App. 1982) (holding that the common-law bar no longer applied).

107. UNIF. PARTNERSHIP ACT § 22, Official Comment, 6 U.L.A. 284 (1914).

a few courts have construed that the right shows legislative intent regarding the common-law restriction to actions at law between partners. In *Dalton v. Austin*,¹⁰⁸ the Supreme Judicial Court of Maine reasoned that the UPA's express requirement that a partner account to copartners for profit reflected a "strong legislative preference, borrowed from the common law, for efficient settlement of partnership disputes involving complex and multifarious aspects in a single proceeding."¹⁰⁹ In *Sertich v. Moorman*,¹¹⁰ the Supreme Court of Arizona reached the opposite conclusion about the UPA's express grant of the right to demand an account, stating that "the legislature eliminated the substantive principle differentiating actions of an equitable nature and imposing a barrier in the common law yet protected and provided for the right to maintain the action for an equitable accounting in appropriate circumstances."¹¹¹

Rather than trying to read meaning into the UPA's silence, most courts have looked beyond the statute to case law in determining when and under what circumstances to apply the common-law bar to preaccounting actions at law to settle partnership affairs between partners.¹¹²

B. *The Revised Uniform Limited Partnership Act (RULPA)*

For many businesses, limited partnerships are an effective form of association. Like general partnerships, limited partnerships offer tax advantages. Unlike a general partner, a limited partner secures tax advantaged business investment while limiting liability and escaping management responsibility. The Revised Uniform Limited Partnership Act (RULPA) provides limited partners the right to maintain a derivative suit on behalf of the partnership.¹¹³ The right is granted to enforce rights of the partnership, not those of an individual limited partner. However, RULPA does not address whether the limited partner's

108. 432 A.2d 774 (Me. 1981).

109. *Id.* at 778.

110. 783 P.2d 1199 (Ariz. 1989).

111. *Id.* at 1205.

112. *See, e.g., Dalton v. Austin*, 432 A.2d 774 (Me. 1981); *Bright v. Angle*, 833 S.W.2d 12 (Mo. Ct. App. 1992); *Giblin v. Anesthesiology Assocs.*, 567 N.Y.S.2d 775 (App. Div. 1991); *Moffatt v. Harden*, 648 P.2d 1311 (Or. Ct. App.), *cert. denied*, 653 P.2d 998 (Or. 1982); *Mitchell Resort Enters. v. C&S Builders*, 570 S.W.2d 463 (Tex. Civ. App. 1978).

113. UNIF. LIMITED PARTNERSHIP ACT § 1001 (1976) with 1985 amendments.

derivative action is an exclusive action.¹¹⁴ It is unclear whether a limited partner continues to have the right to an accounting. At least one of the policy reasons underlying the restriction to actions at law is absent when the action is brought by a limited partner—the limited partner is not likely to owe additional contribution to settle the partnership affairs.¹¹⁵ In a complex partnership the accounting action might still be helpful in sorting out what other accounts the partnership might owe to the suing limited partner.

For general partners, RULPA expressly grants the same rights and obligations as a partner in a nonlimited partnership.¹¹⁶ The general partner would thus have the right to demand an account, supposedly accompanied by the same restrictions to other suits at law for partnership affairs.

III. INTERPARTNER SUITS IN GEORGIA

Georgia adopted the common-law rule against direct actions at law involving partnership matters between partners absent final settlement of partnership affairs.¹¹⁷ By 1900 the rule was stated as follows by the Georgia Supreme Court in *Miller v. Freeman*:¹¹⁸ “[O]ne partner cannot, before a final winding up of a partnership, maintain against his co-partner an action at law based upon partnership transactions.”¹¹⁹ Exceptions to the Georgia rule, similar to those of other jurisdictions, were also recognized at the time of *Miller*.¹²⁰ The *Miller* court held that an action at law could not be maintained between partners in an ongoing partnership to operate a peach orchard, where the matter in dispute was a share of profits lost due to a copartner’s

114. *But see* Larry Ribstein, *The New Georgia Limited Partnership Act*, 24 GA. B.J. 168, 172 (1988) (noting that the express grant of the right to a derivative suit makes it clear that lack of an accounting does not bar the derivative suit). However, Georgia’s version of RULPA (O.C.G.A. §§ 14-9-100 to -1204 (1990)) differs from the Uniform Act in that it expressly states that the derivative remedy is not exclusive of other partnership rights. *Id.* at 172.

115. UNIF. LIMITED PARTNERSHIP ACT § 303 (1976) with 1985 amendments.

116. *Id.* § 403.

117. *See Miller v. Freeman*, 36 S.E. 961 (Ga. 1900); *Dixon v. Wilson*, 105 S.E.2d 505 (Ga. Ct. App. 1958) (holding that a partner cannot sue a copartner for a debt owed him by the partnership); *Paulk v. Creech* 70 S.E. 145 (Ga. Ct. App. 1911) (holding that a partner cannot sue a copartner for a share of debt due to the partnership).

118. 36 S.E. 961 (Ga. 1900).

119. *Id.* at 961.

120. *Id.*

negligence. The court discussed two reasons for application of the rule: first, the concept that one partner cannot sue himself, and second, that all partnership debts and obligations need to be balanced.¹²¹ The court held that the second reason was important even though "it appeared that, further than the claim made in the present suit, neither partner owed anything to the other, and that the partnership owed no debts to third persons,"¹²² because partnership assets, accounts receivable, and accounts received had not been ascertained.¹²³

In 1984, the Georgia legislature became the last of forty-nine state legislatures to adopt the UPA. The Georgia version contained numerous modifications.¹²⁴ Georgia's act expressly states that the right to an account is "in addition to the remedies or methods of dispute resolution provided for in the partnership agreement."¹²⁵ However, the statute remains silent as to other remedies *at law*. The variation is probably due to a change that permeates Georgia's version of the UPA, expressly stating that various statutory provisions have effect only where the specific partnership agreement is silent.¹²⁶

In contrast, Georgia's version of RULPA, adopted in 1988, specifically notes that the derivative suit available to a limited partner "shall not limit any right a limited partner might have under the partnership agreement *or otherwise*."¹²⁷ The Georgia variation may indicate legislative intent to allow a limited partner the right to a derivative suit as well as the remedies that a general partner might pursue. Prior to the 1988 RULPA,¹²⁸ Georgia law provided no derivative action. Rather than restricting a limited partner to an action for accounting, the Supreme Court of Georgia ruled in 1980 that a limited partner

121. *Id.* at 963.

122. *Id.*

123. *Accord* Paulk v. Creech, 70 S.E. 145 (Ga. Ct. App. 1911) (noting that given the merger of the Georgia courts of equity and law, the real reason for restricting actions at law for partnership rights and obligations is that all claims need to be resolved before a final claim could accrue to an individual partner).

124. Weidner, *supra* note 12, at 826.

125. O.C.G.A. § 14-8-22 (1990).

126. *See generally* Weidner, *supra* note 12 (pointing out the differences between the Georgia statute and the Uniform Partnership Act).

127. O.C.G.A. § 14-9-1001 (1990) (emphasis added); *see also* Ribstein, *supra* note 114 (pointing out some differences between the Georgia statute and the Revised Uniform Limited Partnership Act).

128. O.C.G.A. §§ 14-9-100 to -1204 (1990).

was not permitted to pursue the action: "The plaintiffs [limited partners] are not entitled to an accounting, because their distribution rights are already being fully litigated in this action, and the extraordinary circumstances required to order an accounting are not present."¹²⁹

For general partners, there is limited case law (due in part to Georgia's late adoption of the UPA) on whether the statute affects the common-law restriction on actions at law between partners.¹³⁰ Though few cases are on point, Georgia's UPA appears to make no change in this regard.¹³¹ Since other states have continued to apply the common-law restriction after adopting the UPA, it is likely that the Georgia legislature intended for the common-law restriction to remain in effect in Georgia.

The Georgia Court of Appeals adopted what appears to be one of the more questionable exceptions to the restriction on interpartner actions.¹³² In *Arford v. Blalock*,¹³³ a partner who had been excluded from participating in partnership business was permitted to pursue an action for wrongful dissolution against his copartner, even though partnership affairs had not been settled. The court expressed no concern about the possibility that the ousted partner may have had some partnership liabilities that could have offset the claims at law. However, making an exception for wrongful dissolution of a partnership is

129. *Hirsch v. Equilateral Assocs.*, 264 S.E.2d 885, 890 (Ga. 1980).

130. See generally O.C.G.A. §§ 14-8-1 to -43 (1990).

131. See generally *Campbell v. Emory Clinic*, 1:90-CV-1403-HTW (N.D. Ga. 1992), reprinted in, *FULTON COUNTY DAILY REP.*, Sept. 2, 1992, at 11-13 (in dismissing some, but not all claims by a partner against a partnership, the court disregarded the argument that a partner should have the same rights a third party would have to sue a partnership); *Williams v. Tritt*, 415 S.E.2d 285 (Ga. 1992) (holding that UPA did not transform the right to an account to a legal, rather than equitable, right entitling the suing partner to a jury trial). The *Williams* court reasoned that since the Uniform Partnership Act was silent on the matter, common law applied. *Id.*

132. *Arford v. Blalock*, 405 S.E.2d 698 (Ga. Ct. App. 1991), *aff'd sub nom. Wilenski v. Blalock*, 414 S.E.2d 1 (Ga. 1992). The court noted, "[t]he original complaint included a count demanding an accounting but, for reasons known only to [the plaintiff's] attorney, the [plaintiff] announced after the close of the plaintiff's evidence that the claim for an accounting was no longer a part of the case." *Id.* at 703. The court never discussed whether the defendant should have then been able to demand an accounting as a cross-claim. *Id.*

133. 405 S.E.2d 698 (Ga. Ct. App. 1991), *aff'd sub nom. Wilenski v. Blalock* 414 S.E.2d 1 (Ga. 1992).

neither new nor radical—it was mentioned as a valid exception by the Georgia Supreme Court in 1900.¹³⁴

IV. FUTURE TRENDS—THE 1992 REVISED UNIFORM PARTNERSHIP ACT (RUPA)

The Revised Uniform Partnership Act (RUPA), recently approved and being prepared for publication, would, if adopted, end statutory silence regarding exclusivity of the accounting action to resolve matters arising from partnership affairs.¹³⁵ RUPA includes a new section that identifies the accounting as included among other remedies at equity *or at law*.¹³⁶ According to the comment accompanying the 1992 draft of RUPA, the purpose of the new section is to “provide ready access to courts and leave great discretion in the courts to fashion remedies.”¹³⁷ RUPA is likely to encourage courts to narrow the restriction to those situations where it might still be appropriate, but courts have been doing this anyway.

The primary impact of RUPA may be to unsettle the law. As one commentator has noted regarding the UPA, despite variations in the common law of different jurisdictions,

134. *Miller v. Freeman*, 36 S.E. 961 (Ga. 1900). “Among the cases cited to sustain the judge in overruling the demurrer in the present case are . . . suits for a wrongful dissolution.” *Id.* at 962.

135. UNIF. PARTNERSHIP ACT, *supra* note 15, § 406(b) (1992).

136. *Id.* § 406(b). The sections states:

(b) A Partner may maintain an action against the partnership or another partner for legal or equitable relief, including an accounting as to partnership business, to:

- (1) enforce a right under the partnership agreement;
- (2) enforce a right under this [Act], including:
 - (i) the partner’s rights under Sections 401, 403, and 404;
 - (ii) the partner’s right on dissociation to have the partner’s interest in the partnership purchased pursuant to Section 701 or enforce any other right under Article 6 or 7; or
 - (iii) the partner’s right to compel a dissolution and winding up of the partnership business under Section 801 or enforce any other right under Article 8; or
- (3) enforce the rights and otherwise protect the interests of the partner, including rights and interests arising independently of the partnership relationship.

Id. Sections 401, 403, and 404 referred to above define, among other matters, a variety of fiduciary duties a partner owes to a copartner. *Id.*

137. UNIF. PARTNERSHIP ACT (1992 Draft). This Draft is reprinted in full, with prefatory notes and comments, in BROMBERG & RIBSTEIN, *supra* note 2, Volume I, 1992 Supplement, Comment to Section 406, at 211. The final version of RUPA has not yet been published with comments.

"[l]itigation over three-quarters of a century has given lawyers a sense of security in at least some areas of the Act, an overall impression of how courts approach this form of doing business, and a sense of the type of problems likely to arise."¹³⁸ RUPA may only dissolve the consensus which has developed.

CONCLUSION

Courts have not been reluctant to use discretion when deciding whether or not to restrict actions at law between partners for partnership matters. Although reasonable and numerous exceptions have been developed, the general rule "is not dead," as the drafters of RUPA noted.¹³⁹ Some policy reasons for the restriction remain valid, though in fewer circumstances than in pre-UPA years. The concept of balancing claims against liabilities owed to the partnership continues to be appropriate in light of the obligations a partnership may owe to third parties uninvolved in the litigation.

Although it may be true that the general rule is riddled with exceptions,¹⁴⁰ if the general rule were expressly dropped, it might spawn litigation about an issue that is settled in many jurisdictions. At present, the discretion of courts to decide those controversies that continue to arise is adequately guided by a long body of common law that is reasonably consistent throughout jurisdictions in the United States. Under RUPA's new section on remedies, courts would be left to ascertain whether any or all of this case law would be still valid. Wronged partners would then be uncertain how and when to pursue claims against partners.

In considering a change to Georgia's version of the UPA, the Georgia General Assembly should leave the existing case law intact, possibly codifying the general rule as narrowed by exceptions rather than taking the RUPA approach of discarding the general rule.¹⁴¹ If Georgia codified the common-law rule restricting actions at law between partners and the exceptions to

138. J. Dennis Hynes, *The Revised Uniform Partnership Act: Some Comments on the Latest Draft of RUPA*, 19 FLA. ST. U. L. REV. 727, 728 (1991).

139. BROMBERG & RIBSTEIN, *supra* note 2, at 212.

140. *See* RIBSTEIN, *supra* note 29, at 142.

141. *But see id.* (urging that RUPA abolish the common-law rule). The 1990 Draft RUPA commented upon did not include a specific section addressing remedies. *Id.* The 1991 Draft did include such a section, as did the approved 1992 Act.

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the rule, then existing case law will be reinforced rather than called into question. As a practical matter, parties can more effectively enforce rights when the path to pursuing remedies is at least somewhat settled.

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