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COMMENTS

RIGHT OF A SURVIVING PARTNER TO PURCHASE A DECEASED PARTNER'S INTEREST UNDER THE UNIFORM PARTNERSHIP ACT

The rules of law applicable to the creation, continuance and termination of a partnership are established in forty-two states by the relevant provisions of the Uniform Partnership Act.¹ The act provides that the death of a partner dissolves the partnership,² whereupon the estate of the deceased partner acquires a right to a payment on account of his interest in the partnership.³ The act is quite clear as to some aspects of this problem—for instance, the right of the surviving partners to possess firm property⁴ and their *right* to wind up the partnership affairs.⁵ However, it is not so clear that the survivors, in the absence of agreement, invariably have a *duty* to liquidate the partnership as the sole means of satisfying the estate of the deceased partner. For the purposes of this discussion, the following hypothetical situation illustrates the problem: *D* and *S* formed a partnership which has been dissolved by the death of partner *D*. *S*, wishing to continue the business in which the partnership was engaged, desires to purchase *D*'s interest and has offered a fair price therefor, but the legal representative of *D*'s estate has refused the offer. Neither the partnership agreement nor *D*'s will contains any provision dealing with the existing situation. The question presented is whether *S* may make a court-sanctioned purchase of *D*'s interest, or whether the legal representative of *D* will be able to force a liquidation sale of the partnership assets and thereby bring the enterprise to an end as a going concern.

¹ ALASKA COMP. LAWS ANN. §§ 28-1-1 to -65 (1949); ARIZ. REV. STAT. ANN. §§ 29-201 to -244 (1956); ARK. STAT. §§ 65-101 to -143 (1947); CAL. CORP. CODE §§ 15001-45; COLO. REV. STAT. ANN. §§ 104-1-1 to -43 (1953); CONN. GEN. STAT. REV. §§ 34-39 to -81 (1961); DEL. CODE ANN. tit. 6, §§ 1501-43 (1953); GUAM CIV. CODE §§ 2395-2472 (Supp. 1962); IDAHO CODE ANN. §§ 53-301 to -343 (1957); ILL. REV. STAT. ch. 106½, §§ 1-43 (1961); IND. ANN. STAT. §§ 50-401 to -443 (1951); KY. REV. STAT. §§ 362.150-360 (1962); MD. ANN. CODE art. 73A, §§ 1-43 (1957); MASS. GEN. LAWS ANN. ch. 108A, §§ 1-44 (1954); MICH. COMP. LAWS §§ 449.1-43 (1948); MINN. STAT. §§ 323.01-43 (1961); MO. REV. STAT. §§ 358.010-430 (1959); MONT. REV. CODES ANN. §§ 63.101-515 (1962); NEB. REV. STAT. §§ 67.301-343 (1958); NEV. REV. STAT. §§ 87.010-430 (1959); N.J. REV. STAT. §§ 42:1-1 to -43 (1937); N.M. STAT. ANN. §§ 66-1-1 to -43 (1960); N.Y. PARTNERSHIP LAW §§ 1-74; N.C. GEN. STAT. §§ 59-31 to -73 (1960); N.D. CENT. CODE §§ 45-05-01 to -09-15 (1960); OHIO REV. CODE ANN. §§ 1775.01-42 (Page 1954); OKLA. STAT. tit. 54, §§ 201-244 (1961); ORE. REV. STAT. §§ 68.010-650 (1959); PA. STAT. ANN. tit. 59, §§ 1-105 (1930); R.I. GEN. LAWS ANN. §§ 7-12-12 to -55 (1956); S.C. CODE §§ 52-1 to -79 (1962); S.D. CODE §§ 49.0101-.0615 (1939); TENN. CODE ANN. §§ 61-101 to -142 (1955); TEX. REV. CIV. STAT. art. 6132b, §§ 1-45 (1962); UTAH CODE ANN. §§ 48-1-1 to -40 (1960); VT. STAT. ANN. tit. 11, §§ 1121-1335 (1958); VA. CODE ANN. §§ 50-1 to -43 (1958); WASH. REV. CODE §§ 25.04.010-430 (1955); W. VA. CODE ANN. §§ 47-8A-1 to -45 (1961); WIS. STAT. §§ 123.01-38 (1961); WYO. STAT. ANN. §§ 17-195 to -237 (1957).

² UNIFORM PARTNERSHIP ACT § 31(4) (hereinafter cited as U.P.A.).

³ U.P.A. § 43.

⁴ U.P.A. § 25(2)(d).

⁵ U.P.A. § 37.

Of course, rights of the parties upon dissolution may be fixed by a partnership agreement, in which the parties are free to incorporate one of three of the more usual types of provisions: that the interest of a deceased partner shall be sold to the survivors; that the deceased partner's interest in the partnership shall continue, with the partnership business being perpetuated, for a given period of time; or that a partner's interest in the partnership shall exist only during his lifetime.⁶ Apart from such an agreed-upon provision, a few states have specifically adapted their probate laws to deal with the foregoing problem;⁷ the vast majority, however, leave the solution in such circumstances entirely to the operation of the Uniform Partnership Act.

At common law the doctrine developed that, upon the dissolution of a partnership by the death of one of its members, a liquidation of the partnership assets was necessary to terminate the partnership business. Basically there were two reasons advanced for this rule. The first was to insure payment of the claims of partnership creditors; for if the old partnership was continued the danger existed that the creditors of the old partnership would be considered merely personal creditors of the surviving partners and not creditors of the new or continued partnership.⁸ The second reason arose from the great disparity of knowledge between the surviving partners and the representative of the deceased partner as to the value of the partnership assets.⁹ Fear that the legal representatives of a deceased partner might be exposed to fraud and overreaching seemingly dictated a liquidation sale of the partnership assets as the best possible means of determining the value of the partnership. Although the problems concerning the payment of creditors of the old partnership have been specifically resolved by the Uniform Partnership Act,¹⁰ there still remains the possibility that fraud may be worked upon the estate of a deceased partner. This discussion is intended to demonstrate that, under the act, the likelihood of fraud should no longer be so controlling a factor as to require invariably a liquidation sale of partnership assets when a court of equity has within its supervisory powers the ability to protect fully all of the parties involved when a partnership is dissolved by death.

It is widely appreciated that many businesses have value only as going concerns, and thus the immediate liquidation of partnership assets upon the death of a partner in many circumstances can only result in a serious reduction of the worth of such a partnership. Obviously, such a reduction

⁶ For discussion and evaluation of the various types of partnership agreement provisions, see generally Fuller, *Partnership Agreements for Continuation of an Enterprise After the Death of a Partner*, 50 YALE L.J. 202 (1940); Comment, 72 HARV. L. REV. 1302 (1959).

⁷ See notes 64 & 65 *infra*.

⁸ However, a promise to pay such old creditors was often implied. See Lewis, *The Uniform Partnership Act*, 24 YALE L.J. 617, 634-36 (1915).

⁹ Annot., 1917C Ann. Cas. 946. See also note 28 *infra*.

¹⁰ U.P.A. § 41. See generally text accompanying notes 35-37 *infra*.

affects the interests of the decedent's estate and the surviving partner in a like manner. In appropriate circumstances a reasonable alternative to liquidation is a court-sanctioned sale of the deceased partner's interest directly to the surviving partner or partners. With court supervision all the legitimate interests of a deceased partner's estate can be fully protected, while at the same time the surviving partners can achieve the equally reasonable objective of safeguarding their own continuing interests. In order to substantiate the desirability and legitimacy of this alternative to liquidation, a detailed consideration of the relevant sections of the Uniform Partnership Act is necessary.

I. UNIFORM PARTNERSHIP ACT PROVISIONS

A partnership is dissolved by the death of any of its partners.¹¹ The act defines dissolution as "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."¹² The effect of dissolution is not to terminate the partnership; rather the partnership "continues until the winding up of partnership affairs is completed."¹³ As such, the terms "dissolution" and "termination," as employed by the act, have different meanings. Dissolution does not completely extinguish authority of the surviving partner to deal with partnership property. As prescribed by the act, the order of events is: (1) dissolution, the point in time when the partners cease to carry on the business together; (2) winding up, the process of settling partnership affairs after dissolution; and (3) termination, the point at which the partnership affairs have been entirely wound up.¹⁴ In the usual circumstances, "winding up" has been thought to refer to, and require, a liquidation of partnership assets, the payment of partnership debts, and the distribution to the partners of the cash value of their partnership interests.¹⁵ However, at no place in the two sections referred to above, nor in the Commissioners' notes thereto, is the term "liquidation" found. And, as will be seen subsequently, when the act does deal with a liquidation situation, that term is used specifically. Thus, it must be concluded that "winding up" was conceived as a term of art, encompassing the process of "liquidation," yet not necessarily requiring a liquidation sale in every instance.

The single most significant section of the act concerning the proposed

¹¹ U.P.A. § 31(4).

¹² U.P.A. § 29.

¹³ U.P.A. § 30, which provides: "On dissolution the partnership is not terminated, but continues until the winding up of partnership affairs is completed."

¹⁴ See U.P.A. § 29, Commissioners' Note, which states: "In this act dissolution designates the point in time when the partners cease to carry on the business together; termination is the point in time when all the partnership affairs are wound up; winding up, the process of settling partnership affairs after dissolution." 7 UNIFORM LAWS ANNOTATED, Partnership, 165-6 (1949).

¹⁵ CRANE, PARTNERSHIP 428-35 (2d ed. 1952).

survivor's purchase as an alternative to a liquidation sale is section 37. It provides as follows:

"Right to Wind Up—Unless otherwise agreed the partners who have not wrongfully dissolved the partnership . . . [have] the *right to wind up* the partnership affairs; provided, however, that *any partner*, his legal representative or his assignee, *upon cause shown*, may obtain winding up by the court."¹⁶

In conjunction with sections 33,¹⁷ 35(1),¹⁸ 25(2)(d),¹⁹ 38(1)²⁰ and 43²¹ of the act, section 37 confers upon a surviving partner expressly or impliedly, an almost unqualified authority to wind up the partnership affairs.²² Thus, the legal representative of a deceased partner cannot as such legally interfere in the ordinary "winding up" of the partnership affairs.²³ In this relationship to the estate of the deceased partner for the purposes of winding up the partnership affairs, the surviving partner has been analogized by the courts to a trustee.²⁴ While he is empowered to possess all of the partnership property for purposes of winding up, his power is limited to the performance of only those acts which are indis-

¹⁶ The omitted words are: ". . . or the legal representative of the last surviving partner, not bankrupt, has . . ." (Emphasis added.)

¹⁷ "Except so far as may be necessary to wind up partnership affairs or to complete transactions begun but not then finished, dissolution terminates all authority of any partner to act for the partnership . . ." U.P.A. § 33.

¹⁸ "(1) After dissolution a partner can bind the partnership . . . (a) By any act appropriate for winding up partnership affairs or completing transactions unfinished at dissolution . . ." U.P.A. § 35(1).

¹⁹ "On death of a partner his right in specific partnership property vests in the surviving partner or partners. . . . Such surviving partner or partners . . . [have] no right to possess the partnership property for any but a partnership purpose." U.P.A. § 25(2)(d).

²⁰ "When dissolution is caused in any way, except in contravention of the partnership agreement, each partner, as against his co-partners and all persons claiming through them in respect of their interests in the partnership, unless otherwise agreed, may have the partnership property applied to discharge its liabilities, and the surplus applied to pay in cash the net amount owing to the respective partners . . ." U.P.A. § 38(1).

²¹ "The right to an account of his interest shall accrue to any partner, or his legal representative, as against the winding up partners or the surviving partners or the person or partnership continuing the business, at the date of dissolution, in the absence of any agreement to the contrary." U.P.A. § 43.

²² *Silberfeld v. Swiss Bank Corp.*, 273 App. Div. 686, 79 N.Y.S.2d 380, *aff'd without opinion*, 298 N.Y. 776, 83 N.E.2d 468 (1948).

²³ As to the possible conflict of this aspect of the U.P.A. with various state probate codes giving the executor of a deceased partner the right to administer partnership property, see Comment, 22 WASH. L. REV. 35 (1947). The one court found to have been presented with this question in fact ruled that the probate provisions in conflict with the Uniform Partnership Act had been repealed by implication. *Davis v. Hutchinson*, 36 F.2d 309, 314 (9th Cir. 1929) (concurring opinion). See also O'Connell, *Need for Statutory Revision in Oregon*, 23 ORE. L. REV. 93, 107 (1944).

²⁴ E.g., *Bankers Trust Co. v. Dennis*, 256 App. Div. 495, 10 N.Y.S.2d 710 (1939), *aff'd mem.*, 282 N.Y. 635, 25 N.E.2d 981 (1940); *In re Johnson's Estate*, 232 N.C. 59, 59 S.E.2d 223 (1950); *Spivak v. Bronstein*, 367 Pa. 70, 79 A.2d 205 (1951).

pensible to that end.²⁵ How long the winding up may last and what acts of the survivor are compatible with that result necessarily vary with respect to the type of business enterprise being concluded.²⁶ By its terms, section 37 does give to the *legal representative* of a deceased partner the right to enforce a winding up sanctioned by a court, when "cause" for such action can be shown. This has been interpreted as allowing a court to appoint a receiver for the partnership assets when the surviving partner is either unable or unwilling to carry out the winding up process on his own behalf.²⁷ A receiver's sale is then held in order to liquidate the partnership.

Section 37 also allows "any partner" to obtain a court-controlled winding up "upon cause shown." Since the phrase "any partner" certainly includes surviving partners, *S* in our hypothetical situation should be entitled to such relief if he so desires and can show "cause." Various practical circumstances are considered as being sufficient to provide the requisite "cause" for a surviving partner to invoke this provision. For example, the complexities inherent in the process of accounting for interests in the partnership business have been considered "cause" within the foregoing definition, as has the fact that one of several surviving partners has exceeded his authority in the winding-up process. It is apparent, then, that in many cases it will be to the definite advantage of a surviving partner that a court have control of the winding up and liquidation process. Moreover, there appear to be other reasons why a surviving partner, though not wanting a liquidation of the partnership, should nevertheless find it both necessary and desirable for a court to control "winding up." An example would be our hypothetical situation, in which *S* desires to acquire *directly* *D*'s interest in the partnership. Since a "winding up" partner acts as a fiduciary in his relation to the estate of a deceased partner, he is forbidden, in such capacity, irrespective of the adequacy of the consideration, to transfer partnership property to himself. Yet, were a court for any reason to assume control of a "winding up" and, in so doing, order a liquidation sale by a court-appointed receiver, the surviving partner would no longer stand in a fiduciary capacity and would be as free to purchase at such a sale as any third party. Thus, a feasible course of action for a surviving partner desiring to purchase the partnership assets would

²⁵ See, e.g., *McKinley v. Long*, 227 Ind. 639, 88 N.E.2d 382 (1949); *Ewing v. Caldwell*, 243 N.C. 18, 89 S.E.2d 774 (1955); *Wood v. Wood*, 312 Pa. 374, 167 Atl. 600 (1933).

²⁶ See generally Annot., 55 A.L.R.2d 1391 (1957).

²⁷ *Jay v. Clark*, 85 Cal. App. 2d 88, 192 P.2d 462 (1948) (court also relying on CAL. PROB. CODE § 571). See also *McKinley v. Long*, 227 Ind. 639, 88 N.E.2d 382 (1949) (receiver appointed though not a decedent situation); *Wanderski v. Nowakowski*, 331 Mich. 202, 49 N.W.2d 139 (1951) (receiver appointed though not a decedent situation). Compare *Orem v. Moore*, 224 Ark. 146, 272 S.W.2d 60 (1954), where the court noted that the wisdom of allowing the surviving partner to wind up the business had not been sufficiently overridden by the legal representative's proof of the necessity for a receiver. See generally *HIGH, RECEIVERS* 523 (3d ed. 1894).

be to refuse to wind up the partnership affairs himself, thereby making it necessary for the representative of a deceased partner to initiate a section 37 court-controlled winding up.

A more direct approach by a surviving partner wishing to purchase a deceased partner's interest seems both logical and desirable. In short, might not *S*'s desire to purchase the interest of *D* in the partnership assets be sufficient "cause" within the meaning of section 37 so as to vest control of "winding up" in a court on application by *S*? And since "winding up" does not necessarily refer solely to liquidation, should not a court proceed with that form of "winding up" which most adequately protects the interests of *all* the parties? Under the rule at common law,²⁸ to obviate any possibility of fraud or overreaching, the representatives of a deceased partner were allowed to insist upon a liquidation of the partnership assets by sale, even though such action was not necessary for payment of partnership debts, and even though the proceeds would scarcely approximate the true value of the assets as a going concern.²⁹ Yet, it is in this very set of circumstances, where a liquidation sale of the partnership assets at salvage value is the best price obtainable, that our hypothetical situation would most often arise. In such circumstances, if a court had control of the winding-up process, a court-controlled accounting and a valuation of the deceased partner's interest ascertained as an incident thereto could provide a logical and equitable alternative to a liquidation sale, and could be allowed on application by the surviving partner. The survivor's payment of this amount, as the purchase price of the deceased partner's share, would inure to the benefit of all the parties, for such survivor should almost invariably be willing to pay more than a purchaser at a judicial sale, when in so doing he can avoid the potential losses occasioned by a liquidation and forced sale. Certainly the possibility of the deceased's representative being exposed to fraud and overreaching should not dictate a liquidation sale when a court can so fully protect that interest and at the same time permit the surviving partner to accomplish a legitimate end. Yet, though much can be said in favor of such a judicially supervised "winding up," there is no authority sustaining its use under section 37. However, no cases have been found which would deny the validity of such a procedure.³⁰

Keeping in mind the proposed interpretation of section 37, it becomes necessary to look to other sections of the act which relate to dissolution and winding up of a partnership. Generally, it can be stated that a number

²⁸ CRANE, *op. cit. supra* note 15, at 459-67; LINDLEY, PARTNERSHIPS 568, 625 (12th ed. 1962); 40 AM. JUR. *Partnerships* § 309 (1942); Annot., 1917C Ann. Cas. 948; 68 C.J.S. *Partnerships* § 285(b), at 785 (1950). Nor could he tortiously convert the personal property of the partnership and thereby become the owner. *In re McCormick's Estate*, 286 Ill. App. 90, 2 N.E.2d 967 (1936).

²⁹ See, *e.g.*, *Bagg v. Osborn*, 169 Minn. 126, 210 N.W. 862 (1926); *Crawshay v. Collins*, 15 Ves. Jun. 218, 33 Eng. Rep. 736 (Ch. 1808); LINDLEY, *op. cit. supra* note 28, at 568-69, 625.

³⁰ See text at note 45 *infra*.

of these sections add force to the proposed interpretation of section 37, while the remainder do nothing to foreclose the possibility of utilizing such a procedure. The first important provision is section 38.³¹ Paragraph (1) of this section provides that when dissolution of a partnership is caused in any way, other than in contravention of the partnership agreement, "each partner, as against his co-partners and all persons claiming through them . . . , unless otherwise agreed, may have the partnership property" applied to pay the firm debts and "the surplus applied to pay *in cash* the net amount owing to the respective partners." (Emphasis added.) Quite obviously omitted from the language of this section is any reference to the "legal representative" of a deceased partner, and, since that term is found extensively throughout other provisions of the act, its absence here must be presumed to have been intentional. Therefore, it appears that section 38 gives "each partner," including a surviving partner, the right to require a liquidation of the partnership so as to satisfy its liabilities, and to have the balance distributed in cash. Section 38, by its terms, does *not* give this right to the legal representative of a deceased partner. Thus, section 38(1) raises no obstacles which would prevent a court from ordering such a sale and purchase as a means of "winding up" a dissolved partnership, when requested to do so by a surviving partner.

Paragraph (2) of section 38, establishing the rights of the partners when the partnership has been dissolved in contravention of the partnership agreement,³² also lends support to the proposed interpretation of section 37. Specifically, a liquidation sale of partnership assets is dispensed with when the partners who have not wrongfully dissolved the partnership wish to continue the business. Provision is made for the purchase of the wrongdoer's interest by the innocent partners.³³ A bond may be required of the innocent partners by the court, but no method of valuation of the interest to be purchased is established. Yet, the act seemingly contemplates that the court requiring the bond will closely scrutinize the transaction to insure fairness to all parties. Certainly, if a court in this setting is capable of ascertaining the interest of a partner in an existing partnership, it should be no more difficult for it to ascertain the value of a deceased partner's share. In sum, section 38(2) embodies a legislative recognition of the fact that liquidation may not be the most satisfactory means of

³¹ U.P.A. § 38(1), quoted in note 20 *supra*.

³² U.P.A. § 38(2), which provides: "When dissolution is caused in contravention of the partnership agreement the rights of the parties shall be as follows . . . (b) The partners who have not caused the dissolution wrongfully, if they all desire to continue the business in the same name, either by themselves or jointly with others, may do so, during the agreed term for the partnership and for that purpose may possess the partnership property, provided they secure the payment by bond approved by the court, or pay to any partner who has caused the dissolution wrongfully, the value of his interest . . . , and in like manner indemnify him against all present or future partnership liabilities."

³³ See, e.g., *Vangel v. Vangel*, 116 Cal. App. 2d 615, 254 P.2d 919 (1954); *Glazer v. Kurman*, 384 Pa. 283, 120 A.2d 892 (1956).

"winding up" a wrongfully dissolved partnership in all situations. The proposed interpretation of section 37 extends no further than to recognize that a forced liquidation sale is not always the most satisfactory means of "winding up" a partnership dissolved by death.

Section 41 of the act is entitled "*Liability of Persons Continuing the Business in Certain Cases*."³⁴ It is concerned primarily with the rights of creditors of a partnership which, though dissolved, has been continued without liquidation.³⁵ Of specific interest to the proposed interpretation of section 37 is the use of the term "liquidation" as it appears in paragraphs (1), (2) and (6) of section 41.³⁶ In these paragraphs of the act it is provided that when a partnership is "liquidated" the proceeds are used to pay off creditors and then any excess is distributed among the partners so as to terminate the partnership. But if a partnership is not liquidated on dissolution, and should there be a sale of a partnership interest to remaining partners, creditors of the first partnership would be fully protected by the express language of sections 41(1) and (2).³⁷ Thus, in our hypothetical situation, these same paragraphs would fully protect any creditors of the *D* and *S* partnership should *S* be permitted under section 37 to obtain a court-sanctioned purchase of *D*'s interest.

The next part of the act which is relevant to this discussion is section 42,³⁸ which deals both with the rights of a former partner to share in the

³⁴ U.P.A. § 41, which provides: "(1) When any new partner is admitted into an existing partnership or when any partner retires and assigns (or the representative of the deceased partner assigns) his rights in partnership property to two or more of the partners, or to one or more of the partners and one or more third persons, if the business is continued *without liquidation* of the partnership affairs, creditors of the first or dissolved partnership are also creditors of the partnership so continuing in business.

"(2) When all but one partner retire and assign (or the representative of a deceased partner assigns) their rights in partnership property to the remaining partner, who continues the business *without liquidation* of partnership affairs, either alone or with others, creditors of the dissolved partnership are also creditors of the person or partnership so continuing the business.

"(3) When any partner retires or dies and the business of the dissolved partnership is continued as set forth in paragraphs (1) and (2) [*i.e., without liquidation*] of this section, with the consent of the retired partners or the representative of the deceased partner, but without any assignment of his right in partnership property, rights of creditors of the dissolved partnership and of the creditors of the person or partnership continuing the business shall be as if such assignment had been made. . . ." (Emphasis added.)

³⁵ See U.P.A. § 41, Commissioners' Note, which states: "This section as a whole deals primarily with the rights of creditors when a new partner is admitted or a partner retires, is expelled or dies, and the business is continued *without liquidation* of the debts of the partnership dissolved by the change in personnel." 7 UNIFORM LAWS ANNOTATED PARTNERSHIP 229 (1949). (Emphasis added.)

³⁶ See note 34 *supra*.

³⁷ *Ibid.*

³⁸ U.P.A. § 42, entitled "Rights of Retiring or Estate of Deceased Partner When the Business Is Continued," which provides: "When any partner retires or dies, and the business is continued under any of the conditions set forth in section 41(1, 2, 3, 5, 6), or section 38(2)(b), without any settlement of accounts as between him or his estate and the person or partnership continuing the business, unless otherwise agreed, he or his legal representative as against such persons or partnership may have the

profits of a continued business and with his relationship to firm creditors. When the business is continued after dissolution with his consent, a deceased or retired partner is entitled to the value of his interest at the date of dissolution, plus, at his election, either the profits attributable to the use of his property or interest on that amount.³⁹ The act does not specifically deal with such partner's rights absent his consent to continuance after dissolution.⁴⁰ However, a majority of the courts interpreting this section have held that consent is not a requisite to an election under section 42.⁴¹ Should the legal representative of a deceased partner seek to receive the value of the partner's interest at the time of dissolution, certainly a subsequent liquidation sale would be useless in ascertaining the amount of that interest. Thus, it has been held that a liquidation sale is not required under section 42 when there is a subsequent election to take the value at the time of dissolution. Rather, only an accounting is required, and the manner of payment may be worked out between the parties.⁴²

Only one case has been found in which a surviving partner sought judicial sanction for the purchase of a deceased partner's interest—*Zach v. Schulman*.⁴³ However, the cause of action asserted in that case was based

value of his interest at the date of dissolution ascertained, and shall receive as an ordinary creditor an amount equal to the value of his interest in the dissolved partnership with interest, or, at his option or at the option of his legal representative, in lieu of interest, the profits attributable to the use of his right in the property of the dissolved partnership; provided that the creditors of the dissolved partnership as against the separate creditors, or the representative of the retired or deceased partner, shall have priority on any claim arising under this section, as provided by section 41(8) of this act."

³⁹ For cases awarding the value at the time of dissolution (death of one of the partners), see, e.g., *Vanderplow v. Fredricks*, 321 Mich. 483, 32 N.W.2d 718 (1948); *M. & C. Creditors Corp. v. Pratt*, 172 Misc. 695, 17 N.Y.S.2d 240 (Sup. Ct.) *aff'd without opinion*, 255 App. Div. 838, 7 N.Y.S.2d 662 (1938), *aff'd without opinion*, 281 N.Y. 804, 24 N.E.2d 482 (1939); *Bracht v. Connell*, 313 Pa. 397, 170 Atl. 297 (1933); *Mattson v. Wagstad*, 188 Wis. 566, 206 N.W. 865 (1926). See generally Annot., 2 A.L.R.2d 1084 (1948), on the construction and application of § 42.

⁴⁰ Only paragraphs 1, 2, & 3 of § 41, quoted in note 34 *supra*, deal with retiring or deceased partners, and under each consent to a continuation is required.

⁴¹ See *In re Streck's Estate*, 35 Ill. App. 2d 473, 183 N.E.2d 26 (1962); *M. & C. Creditors Corp. v. Pratt*, 172 Misc. 695, 17 N.Y.S.2d 240 (Sup. Ct.), *aff'd without opinion*, 255 App. Div. 838, 7 N.Y.S.2d 662 (1938), *aff'd without opinion*, 281 N.Y. 804, 24 N.E.2d 482 (1939); *Cahill v. Haff*, 248 N.Y. 377, 380, 162 N.E. 288, 289 (1928); *Spivak v. Bronstein*, 367 Pa. 70, 79 A.2d 205 (1951); *Froess v. Froess*, 284 Pa. 369, 131 Atl. 276 (1925). *Contra*, *Blut v. Katz*, 13 N.J. 374, 99 A.2d 785 (1953). The majority interpretation follows the common-law doctrine under which a former partner normally received profits or interest at his option whether the business had been continued with or without consent. *E.g.*, *Ruppe v. Utter*, 76 Cal. App. 19, 243 Pac. 715 (App. Dist. 1925) (no consent); *Drapkin v. Klebanoff*, 5 N.J. Misc. 531, 137 Atl. 432 (Ch. 1927) (no consent). This common-law rule was designed to prevent the unjust enrichment of the remaining partners. See Note, 63 YALE L.J. 709 (1954); 67 HARV. L. REV. 1271 (1954).

⁴² *In re Shubert's Will*, 1 App. Div. 2d 654, 146 N.Y.S.2d 257 (1955) (*per curiam*), *aff'd mem.*, 1 N.Y.2d 914, 136 N.E.2d 913, 154 N.Y.S.2d 969 (1956) (*per curiam*); *M. & C. Creditors Corp. v. Pratt*, *supra* note 41.

⁴³ 213 Ark. 122, 210 S.W.2d 124 (1948).

on section 42. The administrators of the estate of the deceased partner had agreed with the surviving partner to continue the partnership hotel business. After some operation the surviving partner sued to compel a sale to him of the deceased partner's interest at a value to be judicially determined. The administrators cross-claimed for a liquidation of the partnership and a distribution of the interest in the proceeds to them. Liquidation was granted and a judicial sale ordered. Evidently the surviving partner had proceeded on the theory that continuation of the partnership business conferred upon him the right to elect to purchase the interest of the deceased partner. This contention was rejected by the court, which held that the language of section 42 related solely to the rights of a deceased partner's representative and conferred no rights upon the survivor.⁴⁴ No fault can be found with such an interpretation of section 42. However, though the court did not mention section 37 of the act,⁴⁵ it apparently assumed that the representatives had a right thereunder to demand liquidation. It does not appear to have been argued—nor did the court consider the matter—that section 37 conferred any applicable rights upon the surviving partner. Yet, the consequences of a liquidation in a situation such as that involved in the *Zach* case demonstrate the merits of a rule which would allow the survivor to purchase directly from the legal representative the interest of the deceased partner. It appears to be a well-settled rule that though a surviving partner, in his capacity as winding up partner, cannot sell the partnership assets to himself, he can nevertheless purchase such assets at a judicial liquidation sale.⁴⁶ Thus, if either party, survivor or representative, commences a suit in equity to wind up the partnership, and a liquidation sale is ordered, there should be nothing to prohibit the survivor from purchasing at that sale.⁴⁷ In effect, then, this court refused to allow the survivor to do directly what he could accomplish indirectly and possibly at a lower price.

The final section of the act which relates to the problem of this discussion is section 43, entitled "*Accrual of Actions*."⁴⁸ Section 43 vests in any partner, or his legal representative, the right to an account of his interest, which right accrues against the winding-up partners at the date of dissolution of the partnership.⁴⁹ Thus, upon the death of a partner the

⁴⁴ *Zach v. Shulman*, 213 Ark. 122, 127-29, 210 S.W.2d 124, 127-28 (1948).

⁴⁵ See text at note 16 *supra*.

⁴⁶ See Annot., 1917C Ann. Cas. 948; LINDLEY, *op. cit. supra* note 28, at 625.

⁴⁷ *James v. Wade*, 200 Ark. 786, 141 S.W.2d 13 (1940); *Galatis v. Plasman*, 80 So. 2d 918 (Fla. 1955); *Murphy v. Murphy*, 152 Kan. 810, 107 P.2d 700 (1940). See also *McGee v. Russell's Ex'rs*, 150 Va. 155, 142 S.E. 524 (1928).

⁴⁸ U.P.A. § 43, which provides: "The right to an account of his interest shall accrue to any partner, or his legal representative, as against the winding up partners or the surviving partners or the person or partnership continuing the business, at the date of dissolution, in the absence of any agreement to the contrary."

⁴⁹ See *Trecker v. Trecker*, 334 Ill. App. 263, 78 N.E.2d 843 (1948)(mem.). See also *Mattson v. Wagstad*, 188 Wis. 566, 206 N.W. 865 (1926). It is not clear whether the duty to "account," as provided for in section 43, requires an actual payment or merely a

surviving partner is required to account to the deceased partner's representative for such partner's interest in the partnership business.⁵⁰ Yet, this section does not expressly compel a liquidation of the partnership assets in order to facilitate the accounting. Nor does it give the representative of the deceased partner the right to demand a liquidation; rather, the right given is for an accounting.

In summary, a number of conclusions can be drawn from the foregoing examination of the relevant sections of the Uniform Partnership Act in their relation to the proposed purchase of a deceased partner's interest by the surviving partner or partners. First, the problems presented under the common law as to the protection of creditors of a dissolved partnership have been dealt with specifically by section 41 and for all practical purposes have been eliminated. Second, section 38(1) of the act gives the right to require a liquidation of a dissolved partnership only to "each partner" and not to the legal representative of a deceased partner. Third, "winding up," as that term is employed by sections 29 and 30, is a term of art, not necessarily requiring a liquidation sale in every instance. And fourth, section 37 permits a court to supervise the winding up of a dissolved partnership upon application showing sufficient "cause." Therefore, since "any partner" is given the right by section 37 to obtain a court-controlled "winding up," the only question presented is whether a surviving partner's desire to purchase the interest of a deceased partner for a fair price is sufficient "cause" to invoke court supervision within the meaning of the language of that section. It is submitted that "cause" is a relative concept, wholly dependent for its meaning upon the circumstances. As used in section 37, it should not be limited only to those situations demonstrating bad faith or wrongdoing on the part of one party. "Cause" should encompass all situations in which a question of fairness to *all* the parties is involved. As so interpreted, a surviving partner's application to a court for supervision of the "winding up" of a partnership dissolved by death, as demonstrating a willingness to purchase the deceased partner's interest at a judicially ascertained fair price, should be legally sufficient "cause" to invoke the aid of equity.

II. EQUITABLE POWER ABSENT THE UNIFORM PARTNERSHIP ACT

The general common-law rule was that when the representative of the deceased partner and the surviving partners could not agree upon the division of the property in kind or upon the price at which the deceased's interest should be purchased for cash, all the assets of the partnership should be sold at a liquidation sale and the proceeds divided according to respec-

statement of the deceased partner's interest. It is clear, however, that section 43 does not compel a liquidation.

⁵⁰ Long v. Mertz, 21 N.J. Super. 401, 91 A.2d 341 (Super. Ct. 1952).

tive interests of the partners.⁵¹ However, the following statement appears in Parsons, *Partnership*:⁵²

"It has sometimes been supposed that the surviving partners have a right to take all the effects and merchandise (after the debts are paid or secured) *at a valuation*. And, undoubtedly, there may be cases in which this would be a just and beneficial mode of settlement, and the court could therefore permit or order it. But it must be clear that they have no such right. Indeed, the right on this point is on the other side; for it would seem, both from the reason of the case and on the authorities, that the representatives of the deceased have a right to require a sale of the effects, as the only certain way of ascertaining their value and making a fair division. But this again, although a rule, cannot be deemed a universal rule; for equity may find in particular circumstances good reasons for not decreeing a sale, although it must be admitted that it strongly inclines to that mode of settlement, as, on the whole, the fairest and the safest."⁵³

Of interest for the purposes of this discussion are those cases in which a court of equity has refused to order a liquidation sale after dissolution of the partnership even though the parties could not agree on a price for the former partner's interest. In an English case⁵⁴ involving the dissolution of a partnership caused by the death of one of the partners, one of the partnership's principal assets was an unassignable contract. The court below was directed to value the contract, and to find an account of all the partnership assets and effects. The survivor was then charged with the deceased's share so determined. The method of handling dissolution adopted there was dictated by considerations of expediency; yet, it is clear that the court could and did protect all parties. An American court was faced with a similar problem in *Colgate's Ex'r v. Colgate*.⁵⁵ After a partner's death had dissolved the partnership, the court found that it would be more advantageous to all the parties to order a direct sale of the decedent's interest to the surviving partners. It was noted that the survivors would be willing to give full value for the interest in order to avoid liquidation of the partnership, whereas a purchaser at a judicial sale might offer less due

⁵¹ See 40 AM. JUR. *Partnership* § 306 (1942) where the rule is stated: "The surviving partners cannot require the personal representatives of the deceased partner to accept a share in the partnership property at a mere estimated value, but on request must ascertain the value of the firm property by the usual method of selling it." See, e.g., *Sigourney v. Munn*, 7 Conn. 11 (1828); *Johnson v. Mantz*, 69 Iowa 710, 27 N.W. 467 (1886); *Bagg v. Osborn*, 169 Minn. 126, 210 N.W. 862 (1926); *Gathright v. Fulton*, 122 Va. 17, 94 S.E. 191 (1917).

⁵² PARSONS, *PARTNERSHIP* (4th ed. 1893).

⁵³ *Id.* § 348, at 441-43 (Emphasis added.) For cases supporting this statement, see *Didlake v. Roden Grocery Co.*, 160 Ala. 484, 49 So. 384 (1909); *Valentine v. Wysor*, 123 Ind. 47, 23 N.E. 1076 (1889); *Crawshay v. Collins*, 15 Ves. Jun. 218, 33 Eng. Rep. 736 (Ch. 1808).

⁵⁴ *Ambler v. Bolton*, 14 Eq. 427 (1872).

⁵⁵ 23 N.J. Eq. 372 (1873).

to possible defects in title.⁵⁶ It should be noted, however, that in neither of these two cases does the record indicate that the legal representative of the deceased partner's estate objected to the sale of the interests to the surviving partners.

Analogous to the above-mentioned situations are cases permitting the surviving partner to purchase the partnership assets at a judicial sale.⁵⁷ The concern of the court in *James v. Wade*⁵⁸ is illustrative. After the death of a partner, the surviving partners filed a bill in equity asking for the appointment of a receiver to wind up the partnership business. At the receiver's sale which eventuated, the surviving partners were the purchasers. The representative of the deceased partner contested the validity of the sale. In affirming the procedure, the court said:

"We know of no procedure whereby the surviving partners could have proceeded where all interests would have been protected as well as in the chancery court. . . .

"This was not a sale by one of the partners, but was a sale by an officer of the court, and the chancery court seems to have exercised the utmost caution to protect the interests of all the parties."⁵⁹

Thus, once a court is convinced that the rights of the deceased's estate will be fully protected, the procedure of sale to the survivor would appear to be satisfactory.⁶⁰

In another area of partnership dissolution, that involving retiring partners or partners wrongfully causing dissolution, some courts have recognized that there are instances in which a liquidation sale of the partnership assets is not fair to all the parties concerned. For the purposes of this discussion, the case of *Gelphman v. Gelphman*⁶¹ is of the most importance. The plaintiff in that case was a partner who had retired because of illness. After the partnership business had been continued for a time, the plaintiff sued for an accounting, dissolution of the partnership, and such other relief as would be proper, but did not specifically request a liquidation and attendant sale. Defendants, the remaining partners, cross-claimed, asking that plaintiff be required to convey all his interest in the partnership to them. The reviewing court affirmed an order that the plaintiff execute and deliver a deed to defendants of his interest in the partnership real estate. In overruling the plaintiff's contention that a liquidation should have been ordered, the court said:

⁵⁶ *Id.* at 383.

⁵⁷ See cases cited in note 47 *supra*.

⁵⁸ 200 Ark. 786, 141 S.W.2d 13 (1940).

⁵⁹ *Id.* at 792, 141 S.W.2d at 15.

⁶⁰ See also *McGee v. Russell's Ex'rs*, 150 Va. 155, 164, 142 S.E. 524, 527 (1928), holding that a receiver's sale to a surviving partner would not be set aside, as the purchase price paid by the surviving partner was the best evidence of the value of the partnership assets.

⁶¹ 142 Kan. 582, 50 P.2d 933 (1935).

"Had appellant's present objection been made at the trial, the court might have ordered the sale of the property, *but it was not obliged to do so. It was competent for the court, sitting as a court of equity, to adjudge the disposition of the partnership property, to order conveyances of partnership property and to make division of partnership assets.*"⁶²

The court thus appeared to rest its decision on alternative grounds, *i.e.*, that plaintiff had not asked for a liquidation sale, and, even if he had, that a court of equity would not be obliged to order a liquidation sale of partnership property upon dissolution, but could instead order a conveyance. The case is important for its disclosure of a favorable judicial attitude toward the inherent power of a court of equity to act in such a manner.⁶³

However, though equity has at times forced retiring or wrongdoing partners to sell their interests to the remaining partners, no case has been found in which a court of equity ordered a deceased partner's representative to sell his partnership interest directly to the surviving partners. The desire to protect the estate of the deceased partner from fraud and overreaching by the surviving partners has apparently been of sufficient magnitude to bar the giving of such relief.

III. SPECIFIC STATUTORY PROVISIONS

The states of Ohio⁶⁴ and Washington⁶⁵ have enacted specific legislation enabling a surviving partner or partners of a partnership dissolved by

⁶² *Id.* at 588, 50 P.2d at 936. (Emphasis added.)

⁶³ See generally Ludlam, *Dissolution of Partnerships by Death*, 23 Miss. L.J. 117 (1952). Other cases of interest are *Turken v. Olshanski*, 237 Mich. 623, 212 N.W. 961 (1927); *Dow v. Beals*, 149 Misc. 631, 268 N.Y. Supp. 425 (Surr. Ct. 1933). Compare the sale of a wrongful partner's interest under the U.P.A. § 38(2)(b).

⁶⁴ OHIO REV. CODE ANN. § 1779.04 (Page Supp. 1962), which provides: "With the approval of the probate court by which the executor or administrator for the estate of a deceased partner was appointed, the surviving partners may take the interest of such deceased partner in the partnership assets, at the appraised value of such interest after the debts and liabilities of the partnership are deducted from such partnership assets, upon giving to the executor or administrator their promissory notes, with good and approved security, in payment for the interest of the deceased partner in the partnership assets. Such notes shall be payable with interest, in not more than nine months from the time the surviving partners elect to take such assets. Such election must be made within thirty days from the date of the approval of the inventory and appraisal by such court."

⁶⁵ WASH. REV. CODE § 11.64.030 (1956), which provides: "The surviving partner or the surviving partners jointly, shall have the right at any time to petition the court to purchase the interests of a deceased partner in the partnership. Upon such petition being presented the court shall, in such manner as it sees fit, learn and by order fix the value of the interest of the deceased over and above all partnership debts and obligations, and the terms and conditions upon which the surviving partner or partners may purchase, and thereafter the surviving partner or partners shall have the preference right for such length of time as the court may fix, to purchase the interest of the deceased partner at the price and upon the terms and conditions fixed by the court. If any such surviving partner be also executor or administrator of the estate of the deceased partner, such fact shall not affect his right to purchase, or to join with the other surviving partners to purchase such interest in the manner hereinbefore provided."

death to elect to purchase the interests of a deceased partner. No agreement in the partnership articles is necessary to obtain the benefit of these statutes. Nor is the consent of the legal representative of the deceased partner required.⁶⁶ In each state the surviving partners need only petition the appropriate court to inform it of their desire to purchase the deceased's interest,⁶⁷ whereupon the appraisement of the deceased partner's interest is placed in full control of the court.⁶⁸ Under both statutory schemes the surviving partners are required to make full disclosure of partnership inventory, assets and liabilities.⁶⁹ After notice, and a hearing on the valuation of the deceased's interest,⁷⁰ the debts and liabilities of the partnership are deducted from the value of its appraised assets to determine the proportionate interests of the partners.⁷¹ Judicial confirmation of the purchase is required for the full protection of the deceased partner's estate. As the Washington court has said, the statutory procedure has two primary purposes. First, it grants a preference right to the surviving partner to purchase the deceased partner's interest; and second, it places a duty upon the court to ascertain the value of the deceased partner's interest and establish the terms of the sale.⁷²

The Ohio legislation allows the surviving partners to give their secured notes for the purchase price, payable not more than nine months from the date the surviving partners elect to purchase.⁷³ The Washington statute permits the court to fix the terms, conditions and time of the purchase.⁷⁴ Both statutory enactments also require that a bond (Ohio;⁷⁵ Washington, "may be" required if it appears necessary to the court⁷⁶) be given by the surviving partners to the legal representative of the deceased partner to in-

⁶⁶ The Ohio legislature in 1957 amended its original statute, which had required the consent of the deceased's executor or administrator to such purchase. The requirement of consent by the executor was thought not to be consistent with the substantive rights of the surviving partner to purchase at the appraised value. The language requiring such consent was thus deleted from the statutory provisions. See OHIO REV. CODE ANN. § 1779.04 (Page Supp. 1962); Sater, *Recent Amendments Affecting Probate Practice*, 18 OHIO ST. L.J. 464, 468 (1957).

⁶⁷ OHIO REV. CODE ANN. § 1779.01 (Page Supp. 1962); WASH. REV. CODE § 11.64.030 (1956). Moreover, even where the surviving partner is also the executor or administrator of the deceased partner, his right under these statutes is not affected thereby. This is true in Washington by virtue of specific statutory language. WASH. REV. CODE § 11.64.030 (1956). By decision the Ohio statute has been interpreted to reach the same result. See *Rammelsberg v. Mitchell*, 29 Ohio St. 22 (1875).

⁶⁸ OHIO REV. CODE ANN. § 1779.01 (Page Supp. 1962); WASH. REV. CODE §§ 11.64.002, .030 (1956).

⁶⁹ OHIO REV. CODE ANN. § 1779.01 (Page Supp. 1962); WASH. REV. CODE §§ 11.64.002, .022 (1956).

⁷⁰ OHIO REV. CODE ANN. § 1779.01 (Page Supp. 1962); WASH. REV. CODE § 11.64.030 (1956).

⁷¹ *Ibid.*

⁷² *In re Glant's Estate*, 57 Wash. 2d 309, 356 P.2d 707 (1960).

⁷³ OHIO REV. CODE ANN. § 1778.04 (Page Supp. 1962).

⁷⁴ WASH. REV. CODE § 11.64.030 (1956).

⁷⁵ OHIO REV. CODE ANN. § 1779.05 (Page Supp. 1962).

⁷⁶ WASH. REV. CODE § 11.64.016 (1956).

sure the payment of all partnership debts and the performance of all partnership contracts.⁷⁷ Finally, it is specifically provided in the Ohio statute,⁷⁸ and necessarily implied throughout the Washington legislation, that the legal representative must deliver to the surviving partners an assignment of the interest of the deceased partner in the partnership assets and cause a certificate of transfer of title to issue as to partnership real estate. Since the statutory provisions discussed above are quite explicit in outlining the procedure to be followed, relatively little litigation has arisen concerning their use. It is clear, however, that the statutory procedure must be explicitly complied with if the option to purchase is intended to be exercised.⁷⁹

Of comparative interest to this discussion is a North Carolina statute⁸⁰ which embodies essentially the same basic procedures as do the Ohio and Washington provisions. However, the North Carolina statute requires not only the approval of the court, but also the "*consent of the executor or administrator*" of the deceased partner before a surviving partner may purchase his interest. (Emphasis added.) In effect, this statutory provision recognizes the considerations of policy motivating the Ohio and Washington legislation; yet, it places a potentially insurmountable obstacle in the path of the privilege otherwise granted. It might well be argued that the requirement of the executor's consent is inconsistent with the survivor's supposed statutory right to purchase. Moreover, rather than curtailing the strict common-law rule as to sales between surviving partners and representatives of deceased partners, this legislation introduces the additional requirement of judicial confirmation before such a sale can be consummated.

IV. CONCLUSION

When a partnership is dissolved by the death of one of the partners, three interests arise which the law should endeavor to protect. The first is the interest of the creditors of the dissolved partnership. In states which have adopted the Uniform Partnership Act, such interests are fully protected by its section 41. The two remaining interests are those of the surviving partners and those of the estate of the deceased partner. As between these two interests, the common law developed doctrines designed primarily to

⁷⁷ *Ibid.*; OHIO REV. CODE ANN. § 1779.05 (Page Supp. 1962).

⁷⁸ OHIO REV. CODE ANN. § 1779.05 (Page Supp. 1962).

⁷⁹ *Weitz v. Weitz*, 15 Ohio App. 134 (1921).

⁸⁰ N.C. GEN. STAT. § 59-81 (1960), which, in part, provides: ". . . (b) Surviving Partner May Purchase.—The surviving partner may, *with the consent of the executor or administrator of the deceased partner* and the approval of the clerk of the superior court by whom such executor or administrator was appointed, purchase the interest of such deceased partner in the partnership assets at the appraised value thereof, including the good will of the business, first deducting therefrom the debts and liabilities of the partnership, for cash or upon giving to the executor or administrator his promissory note or notes, with good approved security, and satisfactory to the executor or administrator, for the payment of the interest of such deceased partner in the partnership assets." (Emphasis added.)

safeguard the latter. Absent an express agreement between the partners, very little consideration was given to the protection of the survivor's continuing interest. This discussion has attempted to demonstrate that the possibility of fraud being worked upon the estate of a deceased partner should no longer be controlling when a court has within its supervisory powers the ability to fully protect *all* the interests arising from a partnership dissolution caused by death. The specific statutory provisions of Ohio and Washington indicate that at least several legislatures have acknowledged this fact. Yet, a result similar to that provided for in those statutes appears to be readily available under section 37 of the Uniform Partnership Act itself. To read "winding up" as invariably necessitating a liquidation upon a dissolution caused by death of a partner is to misconstrue the language of section 37. "Winding up" is a term of art; it was conceived as such and should be so interpreted. Thus, a court should be able to proceed under section 37 with that form of "winding up" which most adequately protects the interests of all the parties in the particular situation before it. In many instances, then, a judicially supervised sale of a deceased partner's interest to the surviving partners would conceivably constitute that form of "winding up." By reading into section 37 the common-law power of the representative of a deceased partner to compel liquidation, the representative is in effect given an uncontrolled option either to proceed under section 42 (to recover the value of the deceased partner's interest at the time of dissolution plus either interest or profits) or to force a liquidation. This latter alternative has awesome potential as a bargaining weapon in any negotiations between the representative and the surviving partners relating to the continuation of the business. It is indeed questionable whether the fortuitous occurrence of death should occasion such a result. Rather, section 42 alone seems to protect fully all legitimate interests of a deceased partner's estate, and the common-law power to force a liquidation of the partnership assets is no longer necessary to insure a fair valuation of the deceased partner's share. It is widely recognized that any well-considered partnership agreement takes into account the effect of the death of any of the partners. The vast majority of such agreements therefore include some provision negating the supposed necessity, at common law, of liquidation upon dissolution of the partnership. It seems inherently reasonable that the uniform law of partnership, applicable in the absence of a specific agreement, should be interpreted to conform with what most partners would desire had they considered the problem. By interpreting section 37 to allow a surviving partner, on application to a competent court, to purchase a deceased partner's interest at fair value and after a fair appraisal, this result could best be effectuated.

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