

EXHIBIT 18-2 MAJOR FORMS OF BUSINESS COMPARED

CHARACTERISTIC	SOLE PROPRIETORSHIP	PARTNERSHIP	CORPORATION
Method of Creation	Created at will by owner.	Created by agreement of the parties.	Charter issued by state—created by statutory authorization.
Legal Position	Not a separate entity; owner is the business.	Not a separate legal entity in many states.	Always a legal entity separate and distinct from its owners—a legal fiction for the purposes of owning property and being a party to litigation.
Liability	Unlimited liability.	Unlimited liability.	Limited liability of shareholders—shareholders are not liable for the debts of the corporation.
Duration	Determined by owner; automatically dissolved on owner's death.	Terminated by agreement of the partners, by the death of one or more of the partners, by withdrawal of a partner, by bankruptcy, and so on.	Can have perpetual existence.
Transferability of Interest	Interest can be transferred, but individual's proprietorship then ends.	Although partnership interest can be assigned, assignee does not have full rights of a partner.	Shares of stock can be transferred.
Management	Completely at owner's discretion.	Each general partner has a direct and equal voice in management unless expressly agreed otherwise in the partnership agreement.	Shareholders elect directors, who set policy and appoint officers.
Taxation	Owner pays personal taxes on business income.	Each partner pays pro rata share of income taxes on net profits, whether or not they are distributed.	Double taxation—corporation pays income tax on net profits, with no deduction for dividends, and shareholders pay income tax on disbursed dividends they receive.
Organizational Fees, Annual License Fees, and Annual Reports	None.	None.	All required.
Transaction of Business in Other States	Generally no limitation.	Generally no limitation. ^a	Normally must qualify to do business and obtain certificate of authority.

a. A few states have enacted statutes requiring that foreign partnerships qualify to do business there.



Vernon v. Schuster, d/b/a Diversity Heating and Plumbing
 688 N.E.2d 1172, 1997 Ill. Lexis 482
 Supreme Court of Illinois

Case 15.1
Sole Proprietorship

Background and Facts

James Schuster was a sole proprietor doing business as (d/b/a) "Diversity Heating and Plumbing." Diversity Heating was in the business of selling, installing, and servicing heating and plumbing systems. George Vernon and others (Vernon) owned a building that needed a new boiler. In November 1989, Vernon hired Diversity Heating to install a new boiler in the building. Diversity Heating installed the boiler and gave a warranty that the boiler would not crack for 10 years. On October 20, 1993, James Schuster died. On that date, James's son, Jerry Schuster, inherited his father's business and thereafter ran the business as a sole proprietorship under the d/b/a "Diversity Heating and Plumbing." In February 1994, the

boiler installed in Vernon's building broke and could not be repaired. Vernon demanded that Jerry Schuster honor the warranty and replace the boiler. When Jerry Schuster refused to do so, Vernon had the boiler replaced at the cost of \$8,203 and sued Jerry Schuster to recover this amount for breach of warranty. The trial court dismissed Vernon's complaint, but the appellate court reinstated the case. Jerry Schuster appealed to the supreme court of Illinois.

Issue

Is Jerry Schuster liable for the warranty made by his father?

ASSETS

In the Language of the Court

Common identity of ownership is lacking when one sole proprietorship succeeds another. It is well settled that a sole proprietorship has no legal identity separate from that of the individual who owns it. The sole proprietor may do business under a fictitious name if he or she chooses. However, doing business under another name does not create an entity distinct from the person operating the business. The individual who does business as a sole proprietor under one or several names remains one person, personally liable for all his or her obligations. There is generally no continuity of existence because on the death of the sole proprietor, the sole proprietorship obviously ends.

succeeding the other, cannot be the same entity. Even though defendant Jerry Schuster inherited Diversity Heating from his father, defendant would not have continued his father's sole proprietorship, but rather would have started a new sole proprietorship.

Decision and Remedy

The Illinois supreme court held that Jerry Schuster, as a sole proprietor, was not liable for the warranty previously made by his father, who was also a sole proprietor. The supreme court reversed the decision of the appellate court.

Business and Ethics Questions

1. Is a sole proprietorship a separate legal entity? Explain.
2. Did Jerry Schuster act unethically by failing to honor the warranty made by his father?
3. Do you think many businesses are run as sole proprietorships? What are the benefits and detriments of doing so?

In this case, therefore, it must be remembered that "Diversity Heating" has no legal existence. Diversity Heating was only a pseudonym for James Schuster. Once he died, Diversity Heating ceased to exist. Now, Diversity Heating is only a pseudonym for the defendant, Jerry Schuster. Once sole proprietor James Schuster died, he could not be the same sole proprietor as defendant Jerry Schuster who became a sole proprietor after his father's death. James Schuster and Jerry Schuster, one



Court of Appeals of
Maryland, 1999.
354 Md. 77,
725 A.2d 385.

BACKGROUND AND FACTS Joseph Creel, Arnold Lilly, and Roy Altizer formed a general partnership called "Joe's Racing" to sell NASCAR racing memorabilia. Their written agreement stated, in paragraph 7(a), that "at the termination of this partnership a full and accurate inventory shall be prepared, and the assets, liabilities, and income * * * shall be ascertained." Paragraph 7(d) added, "Upon the death or illness of a partner, his share will go to his estate. If his estate wishes to sell his interest, they must offer it to the remaining partners first." Nine months later, Creel died, and Joe's Racing dissolved. Creel's spouse, Anne Creel, was appointed personal representative of his estate.^a Lilly and Altizer asked Mrs. Creel to release funds in a partnership account to which only Creel had had access. When she refused, Lilly and Altizer filed a suit in a Maryland state court against her. Meanwhile, Lilly and Altizer took an inventory of the merchandise, had an accountant compute the value of the business, and offered Mrs. Creel payment for Creel's share. Lilly and Altizer then ceased doing business as Joe's Racing and used the assets to begin doing business as "Good Ole Boys Racing." The court held, among other things, that Lilly and Altizer did not breach any fiduciary duty to Creel's estate. Mrs. Creel appealed, arguing in part that they should have liquidated the assets of Joe's Racing. The state intermediate appellate court affirmed the lower court's judgment. Mrs. Creel appealed to the Maryland Court of Appeals, the state's highest court.

IN THE LANGUAGE
OF THE COURT

CHASANOW, Judge.

* * * *

Even though the [Joe's Racing] partnership agreement uses the word "termination," paragraph 7(a) is really discussing the dissolution of the partnership and the attendant winding-up process that ultimately led to termination. Paragraph 7(a) requires that the assets, liabilities, and income be "ascertained," but it in no way mandates that this must be accomplished by a forced sale of the partnership assets. Indeed, a liquidation or sale of assets is not mentioned anywhere in 7(a).

In this case, the winding-up method outlined in 7(a) was followed exactly by the surviving partners: a full and accurate inventory was prepared * * * ; this information was given to an accountant, who ascertained the assets, liabilities, and income of the partnership; and finally, the remaining debt or profit was distributed * * * .

Mrs. Creel argues that the partnership agreement does not address the winding-up process and that we should look to UPA's default rules to fill in this gap. Her contention is incorrect. We only turn to UPA and its liquidation rule if there is no other option, and such is clearly not the case here. * * *

* * * *

Assuming *arguendo* [for the sake of argument] that the Joe's Racing partnership agreement cannot be interpreted as outlining an alternative to liquidation in winding up the partnership in the event of a dissolution caused by a partner's death, we still find that a sale of all partnership assets is not required under either UPA or RUPA in order to ascertain the true value of the business. Support for this is found in Maryland's recent adoption of RUPA, which encourages businesses to continue in either their original or successor form, and also the holdings of out-of-state cases where other options besides a "fire sale" have been chosen when a partnership is dissolved under UPA.

* * * *

We find it is sound public policy to permit a partnership to continue either under the same name or as a successor partnership without all of the assets being liquidated. Liquidation can be a harmful and destructive measure, especially to a small business like Joe's Racing, and is often unnecessary to determining the true value of the partnership.

DECISION
AND REMEDY

The Maryland Court of Appeals affirmed the decision of the lower court. Winding up does not require a forced sale of all partnership assets to determine the value of the business. On the death of a partner, it is acceptable to pay the deceased partner's estate its proportionate share of the value of the partnership, derived from an accurate accounting, without having to fully liquidate the business.