

Question 8 – Selected Answer

1. Lawfully formed a professional limited liability company.

No, Jeannie, Mollie and Herb could not lawfully form a professional limited liability company (PLLC) named “Jeannie, Mollie and Herb Co.” as they planned. We must determine whether Jeannie, Mollie and Herb could lawfully form this professional limited liability company when Jeannie and Mollie are both real estate lawyers and Herb is a licensed real estate broker. Under the Texas Business Organization Code (TBOC) a professional limited liability company must contain the words “professional limited liability company” or the abbreviation “PLLC” as part of the company’s name. Jeannie, Mollie and Herb planned to name the company “Jeannie, Mollie & Herb Co.” which does not include the required language of “PLLC” or “professional limited liability company” that the TBOC requires. Additionally, under the TBOC lawyers cannot form a business with other professionals who are not lawyers and offer legal services. As a result, Jeannie, Mollie and Herb cannot form a company to offer legal services and real estate brokerage services because Herb is a licensed real estate broker, not a lawyer. Therefore, Jeannie, Mollie and Herb would not have lawfully formed a professional limited liability company under the TBOC if the company was named “Jeannie, Mollie and Herb Co.” as planned.

2. Liability to Zac from Mollie’s negligence.

PLLC – Jeannie & Mollie, PLLC would be held liable for (vicarious liability) for Mollie’s negligence when she failed to notice a lien on a piece of real property purchased by Zac. According to the Texas Business Organization Code (TBOC) the entity, the PLLC, is liable for acts committed by members, managers and employees during the course of business. In the course of representing Zac, Mollie negligently failed to notice the lien on a piece of real property purchased by Zac. This event occurred during the course of business by Mollie who is the manager and a lawyer in the PLLC. Therefore the PLLC, Jeannie & Millie, PLLC is liable to Zac as a result of Mollie’s negligence.

Jeannie – Jeannie is not liable to Zac due to Mollie’s negligence. Under the TBOC a member of professional liability company is not liable for acts committed by another member or an employee in the course of business unless that member performed the work or supervised the performance of the work. Jeannie did not represent Zac nor participate in his representation. Therefore Jeannie is not liable for the damages to Zac from Mollie’s negligence. The only way one could possibly come after Jeannie for damages for another’s act would be if they were able to pierce the corporate veil.

Mollie- Mollie is liable to Zac for the damages that arose from Mollie’s negligence. Under the TBOC a tortfeasor is always liable for his own torts and the plaintiff can seek recovery of damages from the tortfeasor. In the case, Mollie is the tortfeasor since she negligently failed to notice a lien on a piece of real property Zac purchased and resulted in Zac having to pay the lien to obtain clear title. As a result, Mollie is liable for the damages Zac sustained of having to pay the lien due to Mollie’s negligence.

3. Limited Liability Partnership v. PLLC

If Jeannie and Mollie had formed a limited liability partnership, the partnership would be liable to Zac for the damages he sustained and Mollie would be liable to Zac for the damages he sustained due to Mollie’s negligence. Under TBOC a limited liability partnership protects the partners and the partners liability is limited to the contributions to the company. Under a limited liability partnership, the tortfeasor is responsible and liable for any torts that he commits in the course of business and the company can be held vicariously liable. However, other partners are not liable for another partners actions if the partners did not participate, supervise or know about the act. As noted above, Jeannie did not participate or supervise Mollie during her representation of Zac. Therefore Mollie and the limited liability partnership would be held liable if Mollie and Jeannie had formed a limited liability partnership.

END OF EXAM

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1. Jeannie, Mollie and Herb could have successfully formed the professional limited liability company as “Jeannie, Mollie and Herb Co.”, but the misleading name may have affected their liability. In addition, Herb does not qualify as a professional. While the name includes “Co” indicating limited liability, the fact of their names in the PLLC’s title could expose them to potential liability. It is presumed that their names in the title means they have personal liability for contracts when they otherwise wouldn’t. In addition, to form a “professional” LLC, all of the members must be in a professional occupation. Here, Jeannie and Mollie are attorneys, but Herb is not, as a real estate broker.
2. Mollie and PLLC are liable to Zac, but Jeannie is only liable up to her capital contributed to PLLC. A PLLC member is always liable for her own negligence. Here, it was Mollie who was negligent in handling Zac’s property transaction, so Mollie is liable. Jeannie is not liable for the torts of other members, but she is liable through PLLC up to the amount of the capital she contributed to PLLC. PLLC is liable to Zac if Mollie’s negligent act was committed in the scope of her employment with PLLC. Here, PLLC was formed to provide legal services and Mollie’s negligence occurred while providing legal services to Zac. Thus PLLC is vicariously liable for Mollie’s negligence and is liable to Zac.
3. If this were a limited liability partnership, the liabilities would remain the same. Mollie and the limited liability partnership would be liable to Zac and Jeannie would not (except to the extent of her interest.) A partner is always liable for her own torts, so Mollie is liable and the limited liability partnership would be liable since Mollie’s negligence occurred within the scope of her duties to the partnership. A partner in a limited liability partnership, however, is only personally liable for the tort of another partner if she either directly supervised that partner, participated in the transaction in which the tort occurred, or knew about the tort and did not prevent it. None of these seem to apply here. The facts do not indicate that Jeannie had any involvement in Zac’s transaction, and she did not supervise. In fact, Mollie was the only manager. Thus Jeannie is not liable personally to Zac, but only to the extent of her partnership interest.

END OF EXAM

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1. Under the Texas Business Organization (TBOC) Jeannie and Mollie as real estate attorneys, could not have formed a Professional Limited Liability Company, with Herb, a non attorney. Moreover, their use of “Jeannie, Mollie and Herb Co.” would have been improper because it is missing the magic words that let the world know they have a limited liability company. Therefore, had they filed their Certificate of Organization under this name, they would have been in trouble because this mistake would have prevented proper formation and hence, possibly a partnership by default, which is terrible because it creates personal liability on the partners.
2. The PLLC, is always liable to 3rd parties for the torts committed by its servant (owner) during their scope of employment. Here Mollie as an owner of the PLLC is automatically a servant of the PLLC for tort liability purposes. Therefore, the PLLC will be liable for Mollie’s negligence is committed during the scope of her employment. Clearly negligently failing to notice a lien in a real estate practice is a tort committed in the scope of employment. Hence the PLLC is liable. However, Mollie is also liable for her own negligence because a tortfeasor is always liable for his or her torts. Therefore, the PLLC and Molly are jointly and severally liable to Zach. In regards to Jeannie’s personal liability, since she is a member of a PLLC, generally she is not liable for the torts of the PLLC or the other owners, unless she: 1. actively participated in the tort conduct; 2. supervised the tortfeasor, or 3. knew about the wrongful conduct and did not try to prevent it. Here, there is no evidence Jeannie knew, participated or supervised Mollie in her negligent transaction with Zach, so therefore, she is not liable, personally, for the tort. Jeannie’s liability is limited to her capital contributions to the PLLC.
3. If Jeannie and Mollie had created a Limited Liability Partnership instead of a PLLC, the liabilities of the Limited Partnership, Mollie and Jeannie would not have been different from those discussed before. Like in a PLLC, partners in a Limited Liability Partnership (LLP) has no vicarious liability except for their own torts and for the torts of those tortfeasors they supervised, participated with or knew about and did not stop. Here, under an LLP, the LLP would have been jointly and severally liable with Mollie for Zach’s claim and Jeannie would have had no personal liability, except to the extent of her capital contributions.

END OF EXAM