

4)

I. Gary can lawfully assign his member interest in the distributions only and he can enforce his demands to the distributions and to see the books.

A PLLC is a professional limited liability corporation. It can only be formed by licensed professionals and the professionals must be of the same profession. A member of a PLLC has certain rights, including the right to management, to distributions, and the right to inspect and copy the books upon written notice. An assignment of a member's interest in a PLLC only entitles the holder, the assignee, of said interest to distributions and the right to inspect the books and records of the PLLC. Moreover, admission as member to a PLLC requires the consent of all members and the practice of the same profession as the other professionals. Distributions are made at the discretion of the PLLC and can only be made if the assets exceed the present liabilities or else they are wrongful.

Dave is an assignee of Gary's membership interest in the PLLC. Therefore, his rights are governed by the above paragraph. Dave's rights as an assignee are very limited and do not include the right to be admitted as a member or to participate in the management of the PLLC. Moreover, even assuming the members all consented, Dave, although a licensed professional, is a CPA, not an attorney, so he cannot be admitted to an attorney-based PLLC.

Nonetheless, Dave is entitled to the economic benefits, the distributions of the PLLC income, if and when the distributions are made until the underlying debt is satisfied. Further, as an assignee, Dave also has a right to inspect the books upon written notice to the partnership.

II. Cathy is personally liable for her negligence, Gary is not personally liable, and the PLLC is liable for her acts.

A PLLC provides insulation from personal liability for its members, except to the extent of their own personal negligence or the negligence of those they supervise. A non-tortious member of a PLLC is not personally liable for the debts and obligations incurred by the PLLC or his co-members unless he was negligent or negligent in supervising or not intervening when observing same. The PLLC is jointly and severally liable for all the obligations of its members that were incurred during the scope of their work for the PLLC. An assignor of a membership interest remains a member for all purposes, save and except the right to distributions.

Cathy's own negligence caused the loss at issue. Therefore, although members are not generally personally liable for obligations incurred while performing the acts for the PLLC, she will be personally liable because she will not be shielded from under own negligent acts under the Texas Business Organizations Code.

Gary is still a member of the partnership, despite his assignment to Dave. As a non-participating or negligently supervising, co-member of the PLLC Gary is not personally liable.

The PLLC is liable for all of its members acts, including negligence, and obligations that are incurred within the scope of their employment. Consequently, because Cathy's errors, negligence, occurred while serving the firm's client in the firm's business, the bringing of lawsuits, the PLLC will be jointly and severally liable for her acts.

III. Cathy is personally liable for her negligence, Gary is not personally liable but is liable to extent of his contribution, and the LLP is liable for her acts.

An LLP is a general partnership for all purposes, except liability. An LLP provides insulation from

personal liability for the partners, except to the extent of their own personal negligence or the negligence of those they supervise. A non-tortious member of a LLP is not personally liable for the debts and obligations incurred by the LLP or his co-members unless he was negligent or negligent in supervising or not intervening when observing same, except to the extent of his contribution to the partnership. The LLP is jointly and severally liable for all the obligations of its partners that were incurred during the scope of their work for the LLP. An assignor of a partnership interest remains a partner for all purposes, save and except the right to distributions.

Cathy's own negligence caused the loss at issue. Therefore, although partners are not generally personally liable for obligations incurred while performing the acts for the LLP, she will be personally liable because she will not be shielded from under own negligent acts under the Texas Business Organizations Code.

Gary is still a member of the partnership, despite his assignment to Dave. As a non-participating or negligently supervisions, co-member of the PLLC Gary is not personally liable. However, he may be liable to the extent of his contribution to the LLP.

The LLP is liable for all of its partners' acts, including negligence, and obligations that are incurred within the scope of their employment. Consequently, because Cathy's errors, negligence, occurred while serving the firm's client in the firm's business, the bringing of lawsuits, the LLP will be jointly and severally liable for her acts.

END OF EXAM

4)

1- Yes, Gary can lawfully assign his membership interest in the PLLC to Dave but Dave is limited to the receipt of Gary's distribution of income only.

(i) - No- Dave cannot a member of the PLLC and cannot participate in the management.

Under Texas law, membership in a professional limited liability company is limited to professionals who can provide the intended services only and are members of the same profession.

Here, PLLC is formed to provide legal services to clients. Gary is a certified public accountant - while he is a professional, he is not in the same profession as Cathy and Gary who are lawyers and he is not licensed to provide legal services. Management of the PLLC is limited to its members. So a non-lawyer cannot be a manager of the PLLC and make management decisions.

(ii) Dave can receive payments from the PLLC. Gary, a member of the PLLC, defaulted on his loan and now Dave as the holder of the security interest, wants to receive distributions of the income. Dave gets a charging order, obtains a lien against Gary's financial interest in the PLLC and enforces the money due to him. Gary can assign his financial expectation from the PLLC to Dave.

(iii) Dave cannot inspect the books and records of the PLLC - this is a right reserved for the members of the PLLC. He is not a member, he cannot inspect the records.

2- Only PLLC and Cathy are liable for Cathy's negligence.

A tortfeasor is always liable for her actions, irrespective of the nature of the business organization. So Cathy will be held responsible for her negligence to file his lawsuit before the statute of limitations expired.

PLLC is liable for the torts committed by its members in the ordinary course of the business. Here the PLLC is formed to provide legal services, and tort happened during that ordinary course of business, so PLLC is liable. Gary is not liable. Members of the PLLC, other than the tortfeasor, are not liable for the torts of the other members.

3- Only LLP and Cathy are liable for Cathy's negligence.

Cathy is responsible as the tortfeasor and the LLP is liable for torts committed by the partners in the ordinary course of the business. But since September 2011, Gary is not liable for any torts committed by Cathy - even if he knew of it, supervised it or should have known of it. Previous versions of TBOC would hold Gary liable if he knew or should have known about it and did nothing or if he supervised Cathy in this filing.

END OF EXAM

4)

1) Gary can lawfully assign the membership interest but Dave is only entitled to receive the income Gary earns from the PLLC and is not entitled to be admitted as a member. Dave is allowed to inspect the books and records if he shows a proper purpose. At issue is the effect of a transfer of a member of a PLLC.

i) Dave will not be admitted as a member of PLLC for two reasons (a) he is not a lawyer and (b) the other members have not unanimously agreed to admit him as a member.

The Texas Business Organizations Code (TBOC) allows lawyers and certified public accountants to form professional limited liability companies to limit their personal liabilities from operations. However, only one type of profession is allowed in each PLLC. Here, Cathy and Gary, the existing members of PLLC are lawyers and Dave, who wants to join is a certified public accountant. Pursuant to the TBOC, Dave is therefore not permitted to be admitted as a member of PLLC.

Further, subject to an alternative contractual agreement between the members, new members are usually only permitted to join a PLLC if the existing members unanimously vote to allow the new member to join. Here, Cathy and Gary have refused to allow Dave to join and that should be upheld.

(ii) Dave is entitled to receive Gary's distribution of income from PLLC until the debt is satisfied.

A member is entitled to transfer his or her interest in a PLLC, however, as discussed above the transferee may not become a member himself but they will be entitled to income distributed from the PLLC. Here, the assignment appears to be valid and Dave has informed the PLLC of his interest so Dave is entitled to receive Gary's distribution of income and would have a claim against PLLC if they incorrectly pay the income to Gary.

(iii) Dave does not have an automatic right to inspect the books and records.

Although a member is entitled to transfer his or her interest in a PLLC, the transferee's rights are limited. They are only entitled to inspect the books and records of the PLLC if they can show a good reason. Therefore, Gary and Cathy are within their rights to refuse Dave's demand as the facts do not indicate that he has, or has communicated, a good reason to review the books and records.

Therefore, Cathy and Gary are entitled to refuse Dave's demands numbered (i) and (iii) but not number (ii).

2) Cathy and PLLC are liable for Cathy's negligence. Gary is not.

A member of a PLLC is always liable for their own torts which occur while performing duties as a member of the PLLC. Here, the facts indicate that Cathy was negligent and she is not able to escape personal liability for a tort merely by her membership of PLLC.

PLLC is liable for the tortious actions of its members if they have actual or apparent authority to be performing the task which results in the tort. Here, Cathy failed to file a lawsuit, which is directly within her role as a member of a legal PLLC, and she is a founding member of the PLLC so she would have apparent authority to bind the PLLC. Therefore, she has actual and apparent authority to bind the PLLC and it is vicariously liable for her negligence.

Gary is not liable for Cathy's negligence because members of PLLCs are not personally liable for the torts of the other members. This is one of the main advantages of forming a PLLC.

Therefore, Cathy and PLLC are both liable for Cathy's tort but Gary is not.

3) Cathy and PLLC are liable for Cathy's torts and it is unlikely that Gary will be liable, but he could be.

The rules for members' liability for their own torts is the same for PLLCs and LLPs. The rules for the organization's liability for the torts of its members (for a PLLC) or partners (for an LLP) are the same for PLLCs and LLPs. Therefore, Cathy and PLLC are still liable for Cathy's negligence.

The rules are different for the liability of other partners in an LLP. Partners in an LLP are only liable for the torts of their fellow partners if they (i) were involved (ii) were supervising the partner that committed the tort or (iii) knew about the tort and did nothing to stop it. Here, there are no facts to indicate that Gary was in any way involved, or was supervising Cathy or knew about the fact that the statute of limitations was about to lapse so it is unlikely that he will be liable for Cathy's negligence.

END OF EXAM
