

### Question 7 – February 2013 – Selected Answer 1

1. BBT, Albert, and EBT can be held liable for the balance due under the contract, but Barry and Carlos are not personally liable. At issue is liability for the contract obligations of a limited partnership. Under the Texas Business Organizations Code ("TBOC"), a limited partnership has one or more general partners and one or more limited partners. General partners are jointly and severally personally liable for partnership obligations. Limited partners have their liability limited to their interest in the partnership and cannot be held personally liable. The limited partnership itself is also liable for partnership obligations, as is any successor-in-interest business form of the original limited partnership. Here, Albert is the general partner of BBT. He signed the contract with FOD as the "sole" general partner. He had actual authority to bind the limited partnership in this manner, and signed on behalf of the partnership, so this contract is an obligation of the limited partnership. Albert will be jointly and severally liable for the partnership obligation as the general partner. Barry and Carlos are limited partners. Under the TBOC, limited partners can be held personally liable for partnership obligations if they exercise control over the partnership or hold themselves out as general partners to third parties. FOD, however, will not be able to argue under these facts that Barry and Carlos took control of the partnership or held themselves out as general partners. The TBOC contains several "safe harbors" that do not amount to control of the limited partnership. Being employed by the partnership and receiving a salary are included in these safe harbors. Further, Albert represented to FOD that Barry and Carlos were "silent" partners. Thus FOD cannot colorably argue that Barry and Carlos held themselves out as general partners. Barry and Carlos are thus insulated from personal liability, although their interest in the partnership may be at risk. BBT will be liable because the limited partnership is always liable for the obligations of the partnership, so long as the agent who bound the partnership to the obligation was acting with authority. Here, Albert was acting within his authority as general partner, and so BBT will be liable. EBT will also be liable as BBT's successor in interest. Under the TBOC, if a business entity changes business forms, the new entity continues to be liable for the obligations of the previous entity. FOD has properly amended its complaint to include this entity. In sum, BBT, Albert, and EBT will be jointly and severally liable for the contract obligation to FOD. Barry and Carlos's liability will be limited to their interest in the limited partnership, but they will not be held personally liable on this obligation.

2. EBT, Barry, and Carlos will be held liable for Lance's injuries, but Albert will not. At issue is a limited liability company's liability for torts of the company's managers. Under the TBOC, a limited liability company insulates its members from personal liability. The company itself is liable for the company's obligations, but the members themselves are not personally liable. The corporate form shields them against liability. A tortfeasor, however, is always liable for his own torts. Here, EBT, and the limited liability company, will be held liable for the tortious conduct of its members Barry and Carlos. Barry and Carlos will also both be liable as tortfeasors. Barry and Carlos committed negligence in allowing Lance to bat without a helmet, contrary to company policy and Albert's instructions. Because tortfeasors are always liable for their own torts, Barry and Carlos will be held liable here. The corporate form of EBT will shield Albert from personal liability. Albert is not a tortfeasor. Both Barry and Carlos admitted in their depositions that Albert had previously instructed them that no one should be allowed to hit with a bat. Thus there are no grounds on which to hold Albert liable under these facts. In sum, EBT, Barry, and Carlos will be held liable for Lance's injuries, but Albert will not.

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### Question 7 – February 2013 – Selected Answer 2

1. No, not every defendant will be held liable to FOD. In a Texas limited partnership, limited partners are not personally liable for the contract obligations of the limited partnership. Limited partners are also not liable for the tort obligations of the limited partnership, provided they did not commit the tort, supervise the tort, or know of the tort and fail to act reasonably to prevent or cure the injury. General partners are personally liable for the obligations of the limited partnership. General partners manage the limited partnership. FOD's lawsuit with Albert, Barry, and Carlos arose while their company was a limited partnership. The fact that the partners subsequently transformed their business entity into a limited liability company (LLC) will have no effect on the FOD obligation. General partners are agents of the limited partnership, who is their principal. When Albert signed the contract with FOD, Albert clearly disclosed his principal and the fact that he was acting on behalf of the principal. "Baseball Training, L.P. by Albert, its sole general partner." Because Albert was the general partner, Albert had actual authority to bind Baseball Training to contracts entered into the ordinary course of business. Since this was a contract for a baseball training field, this contract is within the ordinary course of Baseball Training's business. In addition to actual authority, Albert had apparent authority to bind Baseball Training by virtue of his signing as the "sole general partner." As a result of Albert's contract, Baseball Training is liable to FOD. Because EBT expressly assumed BBT's obligations, EBT will be liable for the balance due under the FOD contract. At the time the FOD contract was entered into, Albert was a general partner in a limited partnership. Under Texas law, a general partner is personally liable for the limited partnership's obligations. If FOD cannot satisfy its claim against EBT's assets, FOD may hold Albert personally liable. At the time of the FOD contract, Barry and Carlos were limited partners. Under Texas law, limited partners are shielded from personal liability for the contract obligations of the limited partnership. Although limited partners may lose this liability shield if they assume management roles (act like a general partner), limited partners do not lose their liability shield merely by being employees of the limited partnership or consulting with the general partner. Barry and Carlos did not do anything to lose their liability shield. Barry and Carlos were employees of the BBT who were not involved in the day-to-day operations of BBT. Barry and Carlos did not participate in the contract negotiations and their mere presence at the signing of the contract will not forfeit their liability shield. FOD may hold EBT and Albert liable, but not Barry and Carlos.

2. Lance was injured because Barry and Carlos allowed Lance to bat without a helmet. Tortfeasors are always personally liable for the torts they commit. Assuming Barry and Carlos were negligent in supervising Lance, Barry and Carlos will be personally liable for Lance's injuries. The fact that Barry and Carlos are members of a limited liability company (LLC) is irrelevant. Ordinarily, LLC members (and managers) are not personally liable for the obligations of the LLC. However, LLC members would be liable if they committed the tort, such as Barry and Carlos did here. Barry and Carlos will be held liable. Lance will be able to hold EBT vicariously liable by virtue of the common law doctrine of respondeat superior. Barry and Carlos were employees of EBT and agents of EBT by virtue of their being members of the LLC. Since Barry and Carlos were batting instructors, Barry and Carlos were acting within the scope of their employment at the time they negligently allowed Lance to be injured. There are no facts that indicate independent contractor. EBT can be liable to Lance. Albert will not be personally liable to Lance. At the time of Lance's injury, Albert was the managing member of an LLC. Under Texas law, neither members nor managers of an LLC are personally liable for the obligations of the LLC. Unlike Barry and Carlos, Albert did not commit a tort against Lance and there is no evidence Albert supervised the tort or knowingly allowed it to happen or failed to remedy it.

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### Question 7 – February 2013 – Selected Answer 3

1. Under FOD's lawsuit only BBT, Albert, and EBT can be held personally liable for the balance due under the contract. At issue is who is liable for debts owed under a contract when there is a Limited Partnership (LP). Under Texas law, a Limited Partnership is created with two types of partners: general partners and limited partners. The General Partners will be held personally liable for the debts and torts through contract and tort law alike just as they would in a general partnership. The limited partners will not be personally liable under contract law or tort law unless they exercised control in the company or acted in a way that gave the other party reasonable belief that they were a general partner rather than a limited partner. A limited partner thus only risks the amount of capital contribution he or she originally put forth.

Here there is a debt owed on the balance of a contract. The Limited Partnership will be liable on this contract as it was signed by Albert the general partner who was exercising actual authority to enter into the contract and his signature denotes that he is signing on behalf of BBT as it states "Baseball training, LP, by Albert its sole general partner." Therefore BBT LP will be liable for the amount due on the contract. Albert will also be liable as a general partner is not protected like limited partners are under a limited partnership. Therefore Albert, who exercised the actual authority as a general partner and entered into the contract with FOD, will be personally liable for the amount due after FOD exhausts the limited partnership resources. Because of the general partner status Albert would have been liable even if he had not participated in the contract, but here there is no question he will be liable. Lastly EBT will be liable even though it was not in existence at the time the contract was entered into. The facts state that EBT was formed in 2011 and that it fully assumed ownership of all the assets debts and liabilities of BBT. Therefore, EBT will be held liable for the amount due as well as a LP cannot simply convert into an LLC to avoid liability. It's important to note that even though BBT was converted into an LLC Albert would still be liable as the contract liability arose before the LLC was created therefore Albert as general partner is still liable. Carlos and Barry will not be liable under the LP because as limited partners they will not be personally liable so long as they did not exercise control in the company. There is no statutory definition of control under the Texas Business Code but there are some safe harbor provisions which state certain classifications are not considered control. One of those safe harbors is an employee. Here Carlos and Barry would both be considered employees of BBT as they were hitting instructors and were paid on salary. However this would not be enough action to constitute control as the safe harbor provision states being employees isn't enough to be considered control. FOD also couldn't rely on the fact that Barry and Carlos were present at the time they signed the agreement as they were specifically introduced as "silent partners" implying that they were not the general partners and had no control over the LP. In conclusion only BBT EBT and Albert will be liable to FOD.

2. EBT, Barry and Carlos will be personally liable, however Albert will not be. At issue is who is liable when there is tort committed by a LLC's members. Under the Texas Business Code an LLC will protect all of its members from personal liability arising out of contract and tort. However an employee or member will still be liable for the torts that they commit. An LLC is liable for the torts committed by its members through agency law. Here, Carlos and Barry were both directly participating in in the activity with Lance. They both did not require Lance to wear a helmet while he was in his training session. The LLC's policy require the warring of helmets during these training sessions and that Carlos and Barry admitted they knew that no one should be allowed to bat without a helmet. By violating the instructions of LLC's policy and Albert's instructions Barry and Carlos both committed the tort of negligence. Therefore they will both be jointly and severally liable meaning they are each personally liable for Lance's injuries. While an

LLC normally would have protected Barry and Carlos from personal liability a member will always be liable for their own torts therefore the LLC will provide no protection to either of them. The LLC will be held jointly and severally liable with Barry and Carlos as an LLC will be liable for its member's actions. Albert will not be liable for Lance's injuries even though he was the manager because an LLC protects all the members even the managers from personal liability in torts and contracts unless it was a tort that they personally committed. Since Albert was not involved in the hitting drills and he was not negligent Albert will not be liable.