

Question 12 – July 2013 – Selected Answer 1

1. Yes, Abner's assignment to Carrie was valid and Carrie will receive only an economic interest in the PLLC. She will not be able to participate in the PLLC.

Under the TBOC, a member may assign his interest in the PLLC (or a company) unless otherwise stated in the membership agreement. The recipient of the interest will not, however, be allowed to participate in the PLLC. The interest is only economic.

Here, Abner's assignment to Carrie's one-half membership interest in the PLLC gives Carrie a one-half economic interest. Carrie will not be allowed to participate or act as partner of the PLLC. Carrie may inspect the books upon proper cause shown by the requesting party. Therefore, Abner's assignment to Carrie was valid.

2. No, Carrie cannot be admitted as a member of the PLLC. Under the TBOC, a professional limited liability company may only provide one professional service. If more than one professional service is provided, the PLLC will be in violation of the TBOC. Here, although Abner and Blake agreed to admit Carrie into the PLLC as a member, it will not be allowed to under the Code. Carrie is a certified public accountant licensed in Texas. Abner and Blake are both lawyers and provide their own professional service. By admitting Carrie into the PLLC as a member and presumably to conduct her professional service as well would be against the Code and invalid. Lawyers and accountants cannot provide both professional services in the same entity. Therefore, Carrie cannot be admitted as a member.

3. PLLC would be liable to Carrie but Abner and Blake will avoid liability. Under the TBOC, a PLLC will shield its members of liability for any creditors. A member/partner will be held personally liable for any negligence they may have committed or liability on personal contracts entered into.

Here, the PLLC will only be liable to Cassie. There is not enough facts to show that either Abner or Blake would be personally liable to Carrie. The PLLC will shield Abner and Blake from liability and will bear the cost itself. Had either Abner or Blake personally entered into the contract themselves, then they would be personally liable, along with the PLLC. As it stands, only the PLLC and not Abner or Blake will be liable to Carrie. Therefore, PLLC is liable.

Question 12 – July 2013 – Selected Answer 2

1. Abner's assignment to Carrie is valid and Carrie will obtain the rights to distributions, profits, right to inspect books and records, and right to an accounting. A partner in a PLLC may validly assign all or part of their interest in the PLLC. Therefore, the assignment to Carrie would be valid.

An assignee is entitled to receive the share of distributions and profits to which the assignor would be entitled to. In addition, an assignee may, for good cause and by written request is entitled to inspect the books and records of the partnership and may, by reasonable request be entitled to an accounting.

2. No, Carrie cannot be admitted as a member of the PLLC. A PLLC is a limited liability company that provides a professional service. A professional service is any field which requires licensing to practice. For example, dentists, certified public accountants, architects, doctors, and lawyers. To be a member of a PLLC, one must be an authorized person. An authorized person is a professional in the field in which the partnership does business. A PLLC may not engage in more than one professional area (with the exception of some kinds of doctors). Here, Abner and Blake PLLC is engaging in legal practice. It cannot therefore admit a non-lawyer as a member, nor can it practice law and accounting simultaneously.

3. Abner and Blake will not be personally liable for any of the PLLC's debts or obligations, but the PLLC will remain fully liable for any and all of the PLLC's obligations. A member of a PLLC is not personally liable on any of the PLLC's debts, obligations, or liabilities. Texas is a "full shield" state in terms of PLLCs. This means that the members are shielded from both torts and contracts obligations. Abner and Blake contracted with Carrie on behalf of the PLLC, not in their individual capacities. Therefore, the PLLC structure shields them from personal liability on the contract debt.

A PLLC is fully liable for any debts, obligations, or liabilities incurred by a manager or member within the scope of the manager or member's employment. Abner and Blake entered into the written contract with Carrie to perform services for the PLLC. Nothing indicates that this was not in the scope of their employment. Therefore, the PLLC will be liable on the contract to Carrie.

Question 12 – July 2013 – Selected Answer 3

1. Yes, Abner's assignment to Carrie of his membership interest is valid. A member of a professional limited liability company (PLLC) has the authority, unless otherwise stated in the certificate of formation or agreement, to assign his membership interest to another person/entity, without the consent of the other members. The member can assign only a portion or the entire interest as he sees fit. The assignee only acquires the rights to the distributions of the company and also a right to inspect the books and records upon the proper showing of good faith and a reasonable request. The assignee does not gain any membership rights in the company, i.e. the assignee does not have any rights to manage the company or make business decisions. Here, Abner has the authority, even if Blake did not consent, to assign one-half of his membership interest to Carrie to satisfy the PLLC's debt to Carrie. As discussed, Carrie will have a right to one-half of Abner's distributions from the company and a right to inspect the books and records upon request, but will not have a right to manage the PLLC.

2. Carrie cannot be admitted as a member of the PLLC even with the consent of both members. Generally, members can decide to bring in another member to the company; however, not every person can legally be brought into a PLLC. A PLLC is a company of professional members that offer services to the public. Every member of the PLLC must offer the same services. A PLLC cannot contain members that provide different professional services. Here, Abner and Blake are licensed lawyers and formed PLLC as a valid professional limited liability company. As a PLLC formed by lawyers, the only members of the PLLC have to be attorneys. Carrie, on the other hand, is a licensed accountant, she is not a lawyer. As such, she cannot be admitted as a member to PLLC, even if both Abner and Blake agree to make her a member.

3. If Carrie sues, PLLC will be liable for her accounting services but Abner and Blake will not. A PLLC, is likened to a general limited liability company, wherein, the members of the company are liable up to their initial investments in the company but are not personally liable for the debts of the company. The members would still be personally liable for their own negligence. The PLLC, other the other hand, is liable for any debts that are entered into by the members on account of the fact that they are considered agents of the principal company and can bind the company for acts done within the scope of the employment. Here, the accounting services were performed pursuant to a written contract between Carrie and PLLC and Carrie performed the valuable services for PLLC. Therefore, because the contract was entered into on behalf of PLLC and for the benefit of PLLC by members who had authority to do so, PLLC will be liable on the debt to Carrie. Because the debts were accrued within the course and scope of their employment and the debt is not a result of a negligent act by either of the members, Abner and Blake are not personally liable to Carrie for the services she rendered to PLLC.