

Question 8 – February 2015 – Selected Answer 1

1. LLP is liable to Angela because a master is vicariously liable for the negligence of its servants when committed within the scope of the servants employment. However, neither Bill or Steve are liable because in a limited liability partnership, the partners are not vicariously liable for the torts of employees (or other partners).

i. LLP

Under Texas law, an employer will be vicariously liable for the negligent acts of its employees if committed during the course of, and within the scope of, employment. Here, an employee failed to secure a bookshelf at LLP's actual office. If this person was in fact an employee (and not an independent contractors, which nothing in the facts suggest), LLP will be liable. Angela is an employee and not an independent contractor are whether she is subject to the control of the employer. This can be determined by looking at things like whether she is paid a salary or by job, where she works, if she uses the LLP's tools or her own, etc.

ii. Bill and Steve

At issue is whether, a partner is vicariously liable for the negligent acts of a partnership employee. Unlike a general partnership, one of the basic tenets of a limited liability partnership is that a partner will generally not be vicariously liable for the negligent acts of a partnership employee. Here, Bill and Steve had nothing to do with the accident and are only partners. Therefore, they will not be liable.

2. LLP will be liable to Big Wig Jets because it is bound by the actions of its agents, and Bill and Steve will also be liable because they signed in their individual capacities.

i. LLP

At issue is whether Bill and Steve had authority to bind LLP to the contract. A principal/agent relationship is a legal relationship that gives an agent the right to bind the principal in an agreement with a third party. Such a relationship will be formed when the parties agree and the agent is under the principles control. The agent will be able to do all things that the principal has given him authority to do and will be liable if such authority (or substitute authority like apparent authority) exists. Under Texas law, all partners are agents of the partnership and, unless otherwise agreed, have the power to participate in management. Among other things, the partner will have the right to do things expressly authorized by the partnership.

Here, Bill and Steve's entered into a partnership agreement that gave them both express authority to enter into agreements on behalf of LLP. In the course of business, they, as agents, entered into the contract "as authorized representatives" of LLP with Big Wig Jets, which they had authority to do. Therefore, LLP is liable.

ii. Bill and Steve

At issue is whether partners that enter into a contract that names the partnership as a party when such partners also sign in their individual capacity.

Under Texas law, the general rule is that a partner of a limited liability partnership will not be liable for the contractual agreements of the partnership and obligations under the contracts are solely the responsibility of the partnership. However, where a partner also enters into an agreement in its individual capacity he may be liable. Here, Bill and Steve explicitly and clearly signed in their individual and agency capacities. Generally, the contract language with Big Wig will control what duties and obligations they have individually. However, in the absence of that there is an inference that they are

essentially acting as sureties to the completion of payment by the partnership. One of the main issues will be if the parties intended to them to be liable. As the facts are presented at present, it is not clear. However, because they signed in their individual capacity, they are not automatically protected by limited liability their partnership form provides.

It should also be noted that it is irrelevant whether the partnership agreement states that the partners will not be liable to third parties in this case because the partnership agreement does not affect rights and relationships with non-parties. However, they maybe entitled to indemnification by LLP if found liable.

3. LLP will be found liable because it is liable for the negligence of partners committed while within the scope of the partnership, Bill will be liable because a partner is always liable for its torts. However, Steve will not be liable because a partner is not responsible for the torts of other partners in a limited liability partnership.

i. LLP

Under Texas law, an employer will be vicariously liable for the negligent acts of its partners committed in its capacity as partner. Here, Bill inadvertently allowed the statute of limitations to run which is clearly within the purview of the partnership. Therefore, the partnership will be liable

ii. Bill

Bill will be liable because a person is generally always responsible for his negligence. This is not a matter of partnership law.

iii. Steve

At issue is whether, a partner is vicariously liable for the negligent acts of another partner. Unlike a general partnership, one of the basic tenets of a limited liability partnership is that a partner will generally not be vicariously liable for the negligent acts of a partner. Here, Steve had nothing to do with Bill's negligence. Therefore, he will not be liable.

Question 8 – February 2015 – Selected Answer 2

1. LLP is liable to Angela.

A limited liability partnership (LLP) is a partnership in which each partner's personal liability is limited or eliminated in certain ways. Liability is usually limited to investment in the LLP. Partners in an LLP are not personally liable for the acts of other agents or partners, and partners are also not personally liable for the obligations of the LLP. The partners are agents of the LLP, which is the principal. Other employees of the LLP may also be agents. Under the doctrine of respondeat superior, an employer may be held vicariously liable for acts of its employees, even negligent or tortious acts, if the act was done within the scope of employment.

Here, Angela was injured when a bookshelf fell on her during her visit to LLP's offices because an employee of LLP failed to properly secure the bookshelf to the wall. The employee was presumably acting within the scope of employment when the employee assembled and put the bookshelf together. The act benefitted the employer, thus the employer may be held vicariously liable. Thus, LLP is liable for the personal injury of Angela. Bill and Steve are not personally liable merely by being partners of the LLP. Neither of them failed to properly secure the bookshelf, therefore, they did not participate in the negligent activity and cannot be held liable.

2. LLP, Bill and Steve are all liable to Big Wig Jets.

As stated above, the partners are agents of the LLP, which is the principal. When an agent has actual or apparent authority, the agent actions may bind the principal and make the principal liable. Actual authority may be express or implied. An agent has actual authority to act when the agent reasonably believes he has authority based on the manifestations of the principal. An agent has apparent authority when a third-party reasonably believes that the agent has authority to act based on manifestations of the principal. In addition, an agent himself may be held liable for contracts entered into on behalf of the principal if he personally agrees to be bound by the contract.

Here, the LLP Partnership Agreement expressly states that both partners, Steve and Bill, had authority to enter into agreements on behalf of LLP; therefore, both had actual authority from the LLP to enter into the agreement with Big Wig Jets for the airplane. In addition, both Steve and Bill signed the contract "individually, and as authorized representative[s] of Bill & Steve LLP." Since both signed in their individual capacity, they can each be held personally liable to Big Wig Jets for the purchase. Thus, LLP, Bill and Steve are all liable to Big Wig Jets.

3. LLP and Bill are liable to Don.

Again, an agent may bind the principal if his actions were actually authorized. In addition, under the doctrine of respondeat superior, an employer may be held liable for the acts of its employees if the act was done within the scope of employment. An agent is not immune from liability simply by his status as an agent. An agent, or partner, can be held liable for his own misconduct or malpractice.

Bill was responsible for handling Don's representation. Bill allowed the limitations to run on Don's claim. Bill's actions were done within the scope of employment for LLP, thus LLP is liable to Don. Bill is also liable for his own negligence or malpractice. A limited liability partnership does not shield a partner from his own wrongful acts. Thus, LLP and Bill are both liable to Don.

Steve is not personally liable to Don simply by being a partner of the LLP. He did not commit malpractice or bring the harm to Don, thus Steve is not personally liable merely because he is a partner of the LLP.

Question 8 – February 2015 – Selected Answer 3

1. In an LLP, the individual partners are not liable for the negligence of the LLP or other limited liability partners of the LLP. The individual limited liability partners are only liable in their individual capacity if they engage in negligent or unlawful behavior.

An LLP is liable if the injury arises from the acts of an employee engaging in conduct the agent has authority engage in. This is because the employee is an agent of the LLP and the agent's actions are imputed to the LLP. An agent's authority can be express, implied, or apparent. Express authority arises when the principal grants the agent permission to engage in an act or the principal does not stop the agent from acting when the principal is aware of the agent's act. Implied authority is when the principal acts in a manner that leads the agent to believe the principal would consent to the agent's act. Apparent authority is when the principal acts in a manner that leads a third party to believe the principal would consent to the agent's act. The LLP becomes vicariously liable for the acts of the agent. For these reasons, the following would be the proper disposition of each lawsuit:

1. In Angela's personal injury lawsuit, the LLP would be liable to Angela and Bill and Steve would not be liable.

Angela's personal injury lawsuit was a result of an injury Angela sustained when a bookshelf fell on her during her visit to LLP's offices. The bookshelf fell as a result of an employee of the LLP failing to properly secure it to the wall. Angela named LLP, Bill, and Steve as defendants. LLP will be liable

because the injury occurred at LLP's offices as a result of one of its employees acting in a negligent manner. The employee is an agent of the LLP acting with either express or implied authority (since the principal likely purchased the bookcase for the office and either told the employee to put it in the office or led the employee to believe he or she was supposed to put it in the office) and the agent's negligent conduct will be imputed to the LLP. This means the LLP will be vicariously liable for the employee's negligence. Bill and Steve are not liable because we are not told that either of them was the negligent employee who failed to secure the bookcase to the wall and neither Bill nor Steve engaged in any wrongful behavior that caused Angela injury. As such, only the LLP is liable to Angela.

2. In Big Wig Jets' lawsuit, the LLP, Bill, and Steve would be liable.

Big Wig Jets' lawsuit was a result of the LLP entering into a contract with Big Wig Jets to purchase an airplane. The buyer named in the contract was "Bill & Steve LLP" and both Bill and Steve signed the contract. Their signatures were "individually, and as authorized representative of Bill & Steve LLP." The LLP defaulted on its payment obligations and all parties have refused to pay. In this case, Bill and Steve were acting as agents of LLP when entered into the contract to purchase an airplane since we are told the LLP entered into the contract. It is likely Bill and Steve were acting under express authority since the LLP entered into the contract. As agents acting within their authority and on behalf of the corporation, the LLP is vicariously liable. Normally, the agents themselves would not be liable since they are limited liability partners, however, they are individually liable in the capacity in which they signed the contract. Both Bill and Steve signed the contract as "individually, and as authorized representative of Bill & Steve LLP." They imputed liability to themselves personally by signing in individual capacity.

3. In Don's malpractice lawsuit, Bill and LLP would be liable.

Don's malpractice suit was a result of Bill allowing the limitations to run on Don's claim that Bill was assigned to. The LLP is vicariously liable since Bill was an agent acting with express authority in taking on a client which is what the LLP was formed to do. Bill is individually liable because he committed negligence and can be sued in his individual capacity. Bill committed negligence by allowing the limitations to run on Don's claim. Steve cannot be liable because he did not engage in any wrongful conduct and his liability is limited as a limited liability partner.