

Question 8 – July 2015 – Selected Answer 1

1. No, Larry cannot be admitted as a member of PLLC. Under TBOC a PLLC can be formed if all the members are licensed by the state of Texas in the same profession. Additionally, the PLLC can only offer one kind of services, with limited exceptions are there allowed to be a mixture of services rendered, some of which will apply here.

Since Alice and Bernice are licensed Accountants and Larry is a licensed attorney he cannot lawfully be admitted a member, they are licensed in different professions and would not be able to render their respective services under the PLLC.

2. PLLC can be held liable for the contract but Alice and Bernice will not be.

A PLLC offers limited liability to all its members for obligations incurred by the entity. There are very few exceptions in which 2 members liability will be pierced and held personally liable for the obligations of the PLLC, none of which apply here.

Since Alice was designated the Managing member she was an agent for the PLLC. As agent, she had authority to bind the PLLC for obligations incurred in the ordinary course of business. Hiring someone to collect delinquent services would be seen as such for PLLC. Since Alice had authority to bind PLLC, it will be held liable for the contractual obligation to Larry.

Alice will not be held liable and neither will Bernice. Members enjoy limited liability and therefore absent any acts by either member which would warrant the Court piercing their liability they will be free from liability. The fact that Alice signed the contract did not make her personally liable. When an agent signs disclosing the principal and unambiguously as an agent of the principal they will not be held personally liable. Alice signed as managing member of the PLLC and therefore will be shielded from liability.

Question 8 – July 2015 – Selected Answer 2

1. Larry cannot be lawfully admitted as a member of the PLLC. Under Texas Law, A Professional Limited Liability Company may be formed to offer professional services. It's members must be licensed to offer its service of choice and it may only offer professional services of one kind (e.g., accounting services, but not accounting and legal services). Here, Alice and Bernice are licenses accountants and they formed their organization with the purpose of providing accounting services. Larry, however, is not an accountant, he is an attorney. By allowing him to admitted into the PLLC the PLLC would be offering more than one type of professional service which is strictly prohibited. Therefore, Larry may not be lawfully admitted as a member of the PLLC.

2. If Larry elects to file suit against the PLLC, Alice, and Bernice, only the PLLC may be held liable for failure to pay under the contract. A major benefit of the PLLC form is that it's members are protected from being held personally liable for the organization's obligations. This shield from liability is applicable to even managers who are deemed to be agent's of the PLLC (the principal). The only exception to the shield of liability arises when a member has committed a tort. A member cannot escape liability for his or her own tort. Here, Alice signed the contract enlisting Larry's services as "Managing Member of PLLC." In doing so, Alice was acting in the ordinary course of business and carrying out a task that was almost certainly within the scope of her authority as the sole managing member. An agent is said to have actual authority when he or she is acting within the scope of the authority given to them either express or impliedly by the words/actions of the principals. As it applies to the present facts, Alice was acting with actual authority at the time she entered into the contract. Thus, the PLLC, as her principal, is bound under the contract and Larry may hold the PLLC liable. Alice and Bernice, however, are not individually liable because as mentioned above the PLLC form protects its members from being personally liable for the organization's obligations. Thus, Larry may hold the PLLC liable as the principal, but he may not hold either Alice or Bernice liable for failure to pay the under terms of the contract.

Question 8 – July 2015 – Selected Answer 3

1) Larry cannot be lawfully admitted as a member of the PLLC because he is an attorney and not an accountant. The issue is whether Larry can be admitted as a member of Alice & Bernice, PLLC ("PLLC").

A Professional Limited Liability Company ("PLLC") is a entity formed for the purposes of rendering professional services. An authorized person may form a PLLC if she is licensed in the professional area in which the PLLC will render services. A PLLC can be formed for only one type of professional service (except for certain joint-practices in the medical field.) A members interest in a PLLC may be transferred, but the transferee does not become a member of the PLLC unless he is a professional of the same type and all members consent.

Here, Larry is a licensed Texas attorney and Alice and Bernice are licensed Texas accountants. Because Larry is not also a license accountant he cannot join the PLLC even if Alice and Bernice agree that he should be joined. Therefore, Larry cannot be lawfully admitted as a member of the PLLC.

2) The PLLC will be liable to Larry but neither Alice nor Bernice can be personally liable on the PLLC's contract with Larry.

The issue is as between Alice and Bernice, which of them could be held liable for the PLLCS's failure to pay Larry per the terms of the contract and which of them cannot be held liable.

The form of the PLLC shields its members from personal liability for obligations and liability incurred by the PLLC. However, a member will be personal liable for her own misconduct. Under agency law, an agent may bind the principle when the principle is disclosed and the agent has authority to act. A principle may give the agent apparent authority to act by putting the agent in a position that would make is reasonable to third parties that the agent had authority to act on behalf of the principle. A member of a PLLC may be liable on contracts of the PLLC if she does not make it reasonably clear she is acting as a representative on behalf of the PLLC and if the parties intend her to be bound personally.

Here, Larry entered into the contract to collect delinquent invoices with the PLLC. Alice signed the contract "Managing Member of PLLC" which clearly indicated she was acting in her representative capacity. Consequently, Alice will be protected by the limited liability of the PLLC form and not be liable to Larry on the contract. Bernice had no involvement in the signing of the contract and will not be personally liable either because of the limited liability of the PLLC. However, Alice had the authority to bind the PLLC to the contract. She was the designated managing member of the PLLC and would ordinarily be able to sign such contract and bind the PLLC. Therefore, the PLLC is liable to Larry, but neither Alice nor Bernice can be held personally liable to Larry on the contract.