

1. In a limited liability partnership, partners are not personally liable for the partnership's obligations. Each partner acts as an agent for the partnership, and therefore may bind the partnership whenever the partner acts to further the partnership's business, and the third party knows that the partner is an agent of the partnership. The Partnership Agreement only governs the internal affairs of the partnership, and may not shield the partnership from liability that it would otherwise be subject to. Thus, the provision limiting the partners' personal liability to third parties has no effect on the partners' liability to third parties. However, the exculpatory clause for Adam with regard to the partnership is valid at least to the extent that it exculpates him from negligence and gross negligence. However, a partnership may not exculpate intentional misconduct by a managing partner.

The liability of the defendants to Consumer is as follows:

ABC is liable: ABC will be held vicariously liable for the action of its employees and partners (i.e., Bill and Chuck, who designed and manufactured the grills). ABC released the defective grill into interstate commerce and would therefore be held liable as an entity.

Adam is not liable: Adam is not liable, because he was not personally negligent in the sale of the grill. Consumer may argue that, as a Managing Partner, Adam had an obligation to ensure grills are safe, but that argument is unlikely to succeed. Adam may become liable to the extent of his contribution to the partnership, however, if the partnership goes bankrupt and cannot pay off its debt.

Bill and Chuck are liable: Bill and Chuck are personally liable because they knew of the defect in the design and failed to fix it or to prevent grills from being sold. Additionally, they were responsible for the design and manufacturing of the grills. If a court finds that they were negligent in their duty to Consumer, they may be held personally liable on the tort.

2. The liability of the defendant to Bank is as follows:

ABC is liable: ABC is liable, because the partners signed as agents for ABC, and it was clear that they were acting in their capacities as agents. Each partner followed his signature with the name of the partnership. When agents act on behalf of the principal, with actual or apparent authority, the principal is bound. Here, there appears to be actual express authority for Adam, the Managing Partner because he was charged with managing the affairs of the partnership. There also appears to be at least apparent authority for the Bill and Chuck, since they were two of the only three members, had significant responsibility within the partnership, and acted within the scope of their role for the partnership.

Adam is not liable: Adam is not personally liable on the loan because he is a limited partner in a limited partnership. Additionally, Adam identified the principal ("ABC") when he signed. Bank may argue that Adam, by estoppel, should be viewed as a general partner because of his involvement in the management of the partnership and title, but these are not enough. The partnership is registered as an LLP, and Adam signed the name of ABC followed by "LLP", indicating that no personal liability is available against partners. Adam may only be liable for his contribution to the partnership in the event the partnership goes bankrupt.

Bill and Chuck are not liable: As with Adam, both Bill and Chuck are limited partners, and indicated their role as such, when they signed the promissory note, including the identification of the principal (ABC). They are not personally liable except for their contribution in case the partnership is bankrupt.

Question 11 – February 2016 – Selected Answer 2

1) Customer v ABC, Adam, Bill, and Chuck.

Umbrella Rule and Application: The issue here is the liability of a member managed Limited Liability Partnership (LLP) and its members for the liability of a partnership arising out of some of the partner's negligence, and in spite of express language that disclaim personal liability for their negligence. Under Texas law, a business entity may exist by virtue of the enacting statutory provisions set out in the Texas Business Organization Code and may exist for any lawful purpose. In Texas, an LLP shields its members the entity's liability outside of their contributions to the LLP. As a matter of law, LLP Members are not shielded from personal liability from the consequences of intentional torts and negligence performed in the ordinary course of business, even if they expressly disclaim such liability. They may contract around it by defining the criteria for personal liability by requiring a court finding for gross negligence, but they may not disclaim it in its entirety. An entity is also vicariously liable for the tort of its members.

Here, Adam, Bill, and Chuck created a valid LLP and unsuccessfully attempted to disclaim personal liability for actions arising out of their tort. By operation of law, actions arising out of tort cannot be properly disclaimed with a partnership agreement provision.

a) Customer v ABC. ABC is liable

Here, ABC is vicariously liable to Customer arising out of the tortious conduct of Bill and Chuck and under strict products liability. This arises out of their prior knowledge of the defective in the design of the grill several months before it was subsequently sold to Customer. The partnership agreement also makes Bill and Chuck jointly responsible for the designing and manufacturing of the entity's products. Bill and Chuck's tortious conduct knowing and intentionally put a defective product into the stream of commerce.

Therefore, ABC is personally liable to Customer on the grounds of strict products liability and for the tortious conduct of Bill and Chuck and under strict products liability.

b) Customer v Adam. Adam is not liable.

Here, Adam is not liable under the LLP's limited liability doctrine. He is also not a tortious actor, so as to pierce his veil of protection from limited liability. Adam had no knowledge of the defect in the grill. He was not informed and did not otherwise know or have reason to know of the defect's existence. Also he is called managing partner, he is not personally liable for the organization's debts and obligations because he is not a general partner.

Therefore, Adam is not liable to Customer because of the LLP's structure and also for his lack of tortious conduct.

c) Customer v Bill. Bill is personally liable as a joint tortfeasor.

Here, Bill is liable to Customer arising out of he and Chuck's tortious conduct. This arises out of their prior knowledge of the defective in the design of the grill several months before it was subsequently sold to Customer. The partnership agreement made Bill and Chuck jointly responsible for the designing and manufacturing of the entity's products. Bill and Chuck's tortious conduct knowingly and intentionally put a defective product into the stream of commerce.

Therefore, Bill is personally liable to Customer and his veil of limited liability protection is pierced.

d) Customer v Chuck. Chuck is personally liable as a joint tortfeasor.

Here, Chuck is liable to Customer arising out of he and Bill's tortious conduct. This arises out of their prior knowledge of the defective in the design of the grill several months before it was subsequently sold to Customer. The partnership agreement made Bill and Chuck jointly responsible for the designing and manufacturing of the entity's products. Bill and Chuck's tortious conduct knowingly and intentionally put a defective product into the stream of commerce.

Therefore, Chuck is personally liable to Customer and his veil of limited liability protection is pierced.

2) First Bank v ABC, Adam, Bill, and Chuck.

Umbrella Rule and Application: The issue here is the liability of a member managed Limited Liability Partnership (LLP) and its members for the liability of a partnership arising out of the debt obligation of the partnership, which was executed in their capacity as partners. Under Texas law, a business entity may exist by virtue of the enacting statutory provisions set out in the Texas Business Organization Code and may exist for any lawful purpose. In Texas, an LLP shields its members the entity's liability outside of their contributions to the LLP. As a matter of law, LLP Members are shielded from personal liability from their execution of debt obligation, which are signed in their capacity as partners. This is based on their express disclaimer of the lack of assuming personal liability and the absence of the parties negotiating for an alternate provision at the time of execution.

Here, Adam, Bill, and Chuck created a valid LLP and properly executed a loan agreement with First Bank in their limited capacity as Partners of ABC.

a) First Bank v ABC

ABC is liable as the entity that is benefiting from the undertaking of its partners. Alex, Bert, and Chuck, had express and implied authority to bind ABC to the obligation. Therefore ABC is liable.

b) First Bank v Adam

Adam is not liable to ABC on the loan obligation, because he executed the agreement as a Managing Partner, ABC Partners LLP. First Bank had prior notice of his limited liability capacity and elected not to negotiate for more assurances. Adam is not personally liable upon the examination of the contracting language; to find otherwise will result in a windfall to First Bank. The partners are benefactors of their entities limited liability protections and there insufficient grounds to pierce this veil and make Adam personally liable.

c) First Bank v Bill

Bill is not liable to ABC on the loan obligation, because he executed the agreement as Partner, ABC Partners LLP. First Bank had prior notice of his limited liability capacity and elected not to negotiate for more assurances. Therefore Bill is not personally liable upon the examination of the contracting language; to find otherwise will result in a windfall to First Bank. The partners are benefactors of their entities limited liability protections and there insufficient grounds to pierce this veil and make Bill personally liable.

d) First Bank v Chuck.

Chuck is not liable to ABC on the loan obligation, because he executed the agreement as Partner, ABC Partners LLP. First Bank had prior notice of his limited liability capacity and elected not to negotiate for more assurances. Therefore Chuck is not personally liable upon the examination of the contracting language; to find otherwise will result in a windfall to First Bank. The partners are benefactors of their entities limited liability protections and there insufficient grounds to pierce this veil and make Chuck personally liable.

Question 11 – February 2016 – Selected Answer 3

1. ABC, LLP and Bill and Chuck can be held liable in Customer's lawsuit. The issue is whether partners of a limited liability partnership (LLP) may limit their liability to injured third parties caused by the partners' conduct.

Under Texas law, a limited partnership provides limited liability to all general partners in the LLP. The phrase limited liability simply means that the general partners will not be held personally liable for the debts of the LLP beyond the partners' investment. However, this limitation on liability is not absolute. In Texas, a person is liable to others for their own torts, even if that person committed a tort in the course of their employment duties or on behalf of their employer. Moreover, Texas law allows the employer to be held vicariously liable for the torts of its employees committed within the scope of the employer's business.

In this case, Bill and Chuck acted negligently when they breached the duty of reasonable care they owed to their customers by not taking affirmative action to fix a known design defect in the products built by ABC, LLP. Although Bill and Chuck's negligence occurred as a result of their work in furtherance ABC, LLP, this fact does not protect Bill and Chuck from liability; therefore, Bill and Chuck will be personally liable to third parties injured by their negligence. Moreover, ABC, LLP--as an entity--will also be liable to parties injured by Bill and Chuck's negligence because their negligent conduct occurred within the scope of their employment at ABC, LLP. In other words, ABC, LLP is vicariously liable for the negligence of Bill and Chuck because they were acting within the scope of their employment when the negligent act occurred.

Bill and Chuck may assert that the partnership agreement expressly limits their liability to third parties, even if that liability arises in tort. However, Texas does not recognize these limitations on the liability of general partners. Under Texas law, a partnership agreement cannot limit the rights of third parties without the consent of those third parties. Here, the partnership agreement limits the rights of third parties to hold Bill and Chris personally liable for their torts. However, nothing with the Texas Business and Organizations Code authorizes such a limitation. Indeed, Texas law explicitly recognizes the principle that each person, including general partners, are liable for their own torts. Therefore, this limitation on liability will not protect Bill or Chuck.

Importantly, Adam will not be personally liable for Bill and Chuck's negligent conduct. Under Texas law, general partners of an LLP will not be held liable for the torts committed by other partners. Instead, only the partners committing the torts will be liable, and the business entity will be liable as well if the torts were committed within the scope of the partner's job duties for the business entity. Here, Adam did not have knowledge of the design defect in the grills, and he had know reason to discover the defect. His lack of knowledge and inability to discover the defect proves he was not negligent. Therefore, Adam will not be held personally liable for Customer's injuries. However, ABC, LLP and Bill and Chuck will be liable to Customer.

2. Only ABC, LLP will be held liable on the loan to First Bank. In Texas, partners in a limited partnership are not liable for the debts and obligations of the limited partnership. In this case, ABC, LLP executed a promissory note in favor of First Bank for \$100,000, and the note was signed by all three general partners. Therefore, First Bank was aware that the loan was being taken out in the partnership's name, and Adam, Bill, and Chuck signed the note in their capacities as partners of ABC, LLP. Therefore, when ABC defaulted on the loan to First Bank, only ABC, LLP may be held liable. A strategic advantage to forming a limited liability partnership is that the general partners are not personally liable for the debts and obligations of the LLP. Here, ABC, LLP was the debtor on the note, and the note was executed by Adam, Bill, and Chuck as mere agents for ABC, LLP. First Bank recognized this, or it should have recognized this. Therefore, ABC, LLP is the only defendant liable to First Bank for defaulting on the loan. Adam, Bill and Chuck cannot be held personally liable because they are protected by ABC, LLP's shield of limited liability.