

Q10 – July 2016 – Selected Answer 1

(1) (a) A&B Law Firm will be liable to Jane for Cody's malpractice. A general partnership in Texas is an association of two or more people for the purpose of running a business. Texas has adopted the entity theory of business organizations. This means that a general partnership is an entity unto itself, where in the past it was nothing more than the aggregate of the partners. Because it is an entity in its own right, it can sue and be sued. It will be liable for torts committed by its employees and partners.

Because Cody committed malpractice in course and scope of his employment with A&B Law Firm, the firm will be liable.

(b) Al and Bill, each individually will be liable for the malpractice committed by Cody. In a general partnership, all partners are jointly and severally liable for the partnership's obligations. There is no limit to liability for the partners in a general partnership. Because Cody committed the malpractice in the scope of his employment with A&B Law Firm, and Al and Bill were partners of the law firm at the time of the malpractice, they each face joint and several liability.

Jane will have to seek satisfaction in her judgment from A&B Law Firm first before she may seek satisfaction from either Al or Bill. So this may provide them with some protection, but because the partnership's current assets are less than \$1 million, and Jane is seeking \$1 million, they may end up being forced to pay at least a portion of the judgment.

(c) Cody is liable, individually, to Jane for malpractice. The malpractice took place while he was a partner of a general partnership, so the entity provides him with no protection to limit his liability. Even if A&B Law Firm was an entity that limited the liability of its partners, Cody would still face individual liability for his malpractice.

A lawyer who commits malpractice is not protected by any limitation on liability, and may be found individually liable. Thus, Cody will be individually liable to Jane for malpractice.

(d) Dan will not face liability for Cody's malpractice on Jane. At issue is whether a partner will face liability for an obligation of the partnership that arose before he became a partner and he did not have notice of the obligation.

The Texas Business Organizations Code provides some protection for a new partner to a partnership for preexisting obligations. Where the obligation arises before the person becomes a partner, he will not face personal liability. However, if he had notice of the obligation prior to becoming a partner, and becomes a partner anyway, then he may face individual liability.

Here, Dan joined A&B Law Firm in June 2015. The malpractice occurred in January 2015, several months before he came aboard. Further, the facts do not indicate that he had any notice of the malpractice committed by Cody when he joined the firm. The fact that Jane didn't learn of the malpractice until after Dan joined the firm (and so will not end up filing suit until after he has already joined) is immaterial. The decisive date is when the infraction occurred. That is the date the partnership became liable for malpractice. Here, it occurred before he became a partner and he had no notice. Thus, he will not face individual liability.

He does stand to lose his \$50,000, however. He contributed the money as his share of the firm's capital account to be used for operating funds. Because he contributed it to the firm, it is now the firm's money. Thus it may be used to satisfy the judgment—he has no claim that it should be protected.