

Question 3 – July 2018 – Selected Answer 1

A)

Al, Brian, and Charlie are all not liable for the debt owed to the Brick's supplier. The issue here is determining the liability for partners in an LLP for a contract claim. Only Brick LLP is liable for the debt.

First, Brick is an LLP or limited liability partnership. Unlike a partnership, and the partners of an LLP have limited liability. This means the partners of an LLP are not jointly and severably liable for the contract debts of the LLP. In this case, Brick supplier is suing for collection of debt. This collection is a contract claim, and thus, none of the partners of the LLP are liable. The fact that the amount of the debt is more than the available assets of Brick is irrelevant, since they are not liable. After the assets are exhausted, Brick will still have no claim against any of them.

B)

Brian is personally liable to the tort Brick is being sued for, along with Brick LLP Al and Charlie are not liable.

The issue here is determining the liability for partners in an LLP for the tort of one of the partners, committed in the scope of employment.

Under Texas law, the partners of an LLP are not liable for the torts committed by another partner. If the tort is committed by the partner during the scope of their employment, only the tortfeasor and the LLP are liable for the tort. The LLP would not be liable if the tort was committed outside the scope of employment. If the other partners had no knowledge of the tortious activity or were directly involved in the tort, they cannot be held personally liable.

In this case, Brian committed the tort in the scope of his employment. Therefore, he is personally liable as the tortfeasor and Brick LLP is liable, since it was in the scope of his employment. Al and Charlie are not personally liable, having no knowledge of the tort and not having participated in it. Since the insurance will not cover the claim, Brian and Brick are liable. Brick has no assets left, after the contract claim. So Brian will be on the hook for the entire amount.

C)

Al is personally responsible for the debt owed to Mortar's supplier, as he is a general partner of Mortar LP. Charlie is likely not personally liable for the debt owed to the supplier, as he is an LP who is likely within a safe harbor. Brian is not personally liable, but only liable to the extent of his interest in the LP.

An LP is an organization that consists of General Partners (GPs) and Limited Partners (LPs). An GP is personally liable for the contractual debts of the organization after the resources of the LP have been exhausted. An LP has limited liability, and is only liable for contract debts up to their

interest in the company. However, a LP can be held personally liable as a GP if their conduct (ie involvement in the business) goes beyond that of a LP and resembles that of a GP.

In this case, Mortar is being sued by a supplier over a contract debt. Thus, as a GP, Al is personally liable for the debt remaining after the assets of Mortar have been exhausted. Charlie frequently consults Al about business operations. Despite this, if this is all that Charlie does, he will likely still be considered an LP, as that would almost certainly be within a safeharbor. Thus, he would not be personally liable for the debt. Brian, as an LP with little interest in the day to day operation, would definitely not be personally liable for the debt.

D)

Al is liable for the tort claim as a GP. Brian is liable for the tort claim as the tortfeasor. Mortar is liable for the tort claim as the tort was committed in the scope of Brian's business dealings for Mortar.

For tort claims against an LP, any partners, Limited or General, who commits a tort is personally liable for the tort claim. Any other GPs can be held liable for the torts of a GP or LP committed in the scope of their business. An LP who is not involved and had no notice of the alleged tort cannot be held personally liable for the claim.

Therefore, Brian, as the tortfeasor, is personally liable for the tort claim, despite the fact he is an LP. Mortar is also liable for his actions as it was committed in the scope of his employment. Al, as the GP, is liable since a GP is jointly and severally liable for torts committed by partners, LP or GP, in the course of employment. Finally, Mortar is liable for the tort claim since it was within the scope of Brian's business dealings for Mortar. Since Mortar will have no assets after the contract claim, Brian and Al will be jointly and severally liable for the entire claim.

Question 3 – July 2018 – Selected Answer 2

(A) Neither Al, Brian, nor Charlie is personally liable for the debt owed to Brick's supplier. The issue is the extent to which the partners in a limited liability partnership are personally liable for contract debts of the partnership.

A Texas limited liability partnership is a limited liability entity formed by filing a certificate of formation with the Texas secretary of state and paying a required filing fee. As a general rule, the partners in a limited liability partnership are not personally liable for the contract debts of the partnership. Instead, only the partnership is liable.

Thus, here, because Al, Brian, and Charlie are partners in Brick, which is a limited liability partnership, they will not be personally liable for the debt Brick owes to its supplier. Only Brick will be liable. It should be noted, however, that since Brick is insolvent, Al, Brian, and Charlie may lose any contributions they made to capitalize the partnership, but the loss of these contributions will be the extent of their liability.

(B) Brian is personally liable for the alleged tort for which Brick is being sued, but Al and Charlie are not personally liable. The issue is the extent to which the partners in a limited liability partnership (LLP) are personally liable for the tort liabilities of the partnership.

Like contract debts, the general rule is that the partners in an LLP are not personally liable for the tort liabilities of the LLP. However, a partner cannot escape personal liability to a third party for his own tort. If that tort was committed in the course and scope of the partnership business, the partnership will be liable for the tort as well through vicarious liability principles.

Thus, here, Brian is personally liable for the alleged tort because he is the tortfeasor and cannot use the LLP to escape liability for his own tortious acts. Since Brian was acting in the course and scope of the partnership business, Brick will also be vicariously liable for the alleged tort. In contrast, Al and Charlie were not directly involved in the tortious activity, nor did they have notice of it until after it occurred. Accordingly, they are not personally liable for Brian's tort simply by virtue of their status as partners in the LLP.

(C) Al is personally liable for the debt owed to Mortar's supplier, but Brian and Charlie are not personally liable. The issue is the extent to which general partners and limited partners in a limited partnership (LP) are personally liable for contract debts of the partnership.

A limited partnership is an entity formed by filing a certificate of formation with the Texas secretary of state and paying a filing fee which offers only partial liability protection depending on the status of its partners. A LP must have at least one general partner and one limited partner. General partners receive no liability protection--they are personally liable for the contract debts of the LP just like partners in a general partnership. Limited partners, on the other hand, are protected from personal liability except to the extent of the capital contributions they made to the LP--thus, as a general rule, they are not personally liable for contract debts of the LP. A limited partner may become personally liable for a LP's contract debts if they participate in the control of the LP such that a third party reasonably believes they are a general partner and relies on this belief. The Texas Business Organizations Code carves out safe harbors for limited partners to conduct certain activities that as a matter of law do not constitute participating in the control of the LP, including being employed by the LP or advising a general partner.

With respect to the LP here, Mortar, Al is the general partner and Brian and Charlie are the limited partners. Thus, Al is personally liable for the contract debts of Mortar by virtue of his status as a general partner--the LP form provides him no liability protection. In contrast, Brian is not personally liable for the contract debts of Mortar because he is a limited partner and he does not participate at all in the day-to-day operations of the LP, so there is no issue as to whether he is participating in control.

Charlie's frequent consultations with Al raise the issue of whether he is personally liable despite his limited partner status because he is participating in control of the LP. Luckily for Charlie, since his participation is limited to advising Al as the general partner, his conduct fits within the safe harbors created by the TBOC. Accordingly, Charlie will retain his limited liability protection and will not be personally liable for the contract debt owed to Mortar's supplier

beyond the value of his capital contribution to the LP (which he and Brian will both likely lose due to the LP's insolvency).

(D) Al and Brian are personally liable for the alleged tort for which Mortar is being sued, but Charlie is not personally liable. The issue is the extent to which general partners and limited partners in a limited partnership (LP) are personally liable for tort liabilities of the partnership.

As noted above, the personal liability of a partner in an LP depends on which type of partner they are. As a general rule, a general partner in an LP is personally liable for the tort liabilities of the partnership, regardless of whether the general partner was involved in the tortious activity or had knowledge of it. As a general rule, a limited partner in a LP is not personally liable for the tort liabilities of the LP beyond his capital contributions. However, like in an LLP, a limited partner in a LP cannot escape liability for his own torts by virtue of his limited partner status--a limited partner is still liable for his own torts.

Here, Al is personally liable for Brian's tort because it was committed in the course and scope of Brian's business for Mortar. A partnership is vicariously liable for the torts of partners committed in the course and scope of partnership business, so Brian's tort became a tort liability of Mortar. Accordingly, Al is personally liable for Brian's tort, and the fact that he was not directly involved and did not have knowledge of the tort before it occurred is irrelevant.

Brian is also personally liable for his tort because he is the tortfeasor. He cannot escape tort liability to a third party simply by being a limited partner in a LP.

Finally, Charlie is not personally liable for the reasons stated in (C) above. He is a limited partner, so he is shielded from personal liability for tort liabilities of the partnership unless he participated in control of the LP. Charlie's consultations with Al are within a TBOC safe harbor and therefore do not constitute participation in control, so Charlie will not be personally liable for Brian's tortious act.

Question 3 – July 2018 – Selected Answer 3

LIMITED LIABILITY PARTNERSHIP (LLP)

Under the Texas Business Organizations Code (TBOC), Limited Liability Partnership (LLP) is like a General Partnership (GP) except that LLP's partners do not have unlimited personal liability like the partners of the GP. In order to create a valid LLP and benefit from the limited liability is necessary to file a certificate of formation with the Secretary of the State (located in Austin, Texas), pay the filing fees and use the abbreviation of Limited Liability Partnership or LLP. Here, we do not know from the facts that this filing was done, if the filing was not done the LLP was not created and remains like any other GP.

Contract in the LLP

The LLP is liable for the debts if the partner acted with authority. Authority can be actual (agreement of the partners, TBOC, or acting within the purpose of the partnership) or apparent (a

third party reasonably believes that the partner has authority based on manifestations or prior interactions with the partnership). In addition a transaction done without authority may be ratified.

Tort in the LLP

In a LLP the partners are not personally liable for the torts for the other partners. Conversely, the tortfeasor is always liable for its own torts. The LLP itself is liable for the tort of its partners (vicariously liable) when the tort is committed in the course of the business.

(A) Here, we know from the facts that Brick suppliers sues for a past due debt. Because the debt of supplier is within the purpose of the partnership (manufacture of bricks) the LLP is liable because the partner that conducted the transaction had actual authority (acted within the purpose). The partners are not liable.

B) The tort of Brian was committed within the course and scope of the business and therefore the LLP is liable (vicariously liable). In addition the tortfeasor (Brian) is also liable because he cannot escape from the liability of its own tort. The rest of the partners are not liable.

LIMITED PARTNERSHIP (LP)

Under the Texas Business Organizations Code (TBOC), Limited Partnership (LP) is like a General Partnership (Gp) except that a LP has at least one limited partner (with limited liability unless the partners participates in the control) and at least one general partner (unlimited liability). In order to create a valid LP an benefit from the limited liability of the limited partners is necessary to file a certificate of formation with the Secretary of the State (located in Austin, Texas), pay the filing fees and use the abbreviation of Limited Partnership or LP. Here, we do not know from the facts that this filing was done, if the filing was not done the LLP was not created and all partners remains liable like any GP.

Contract in the LP

The LP is liable for the debts if the partner acted with authority. Authority can be actual (agreement of the partners, TBOC, or acting within the purpose of the partnership) or apparent (a third party reasonably believes that the partner has authority based on manifestations or prior interactions with the partnership). In addition a transaction done without authority may be ratified. The general partners become personally liable once the creditor has exhausted the assets of the LP because they have no limited liability. Conversely, the limited partners will not be liable unless they lose their protection by participating in the control.

Tort in the LP

In a LP the limited partners are not personally liable for the torts for the other partners. However, he tortfeasor is always liable for its own torts. The LP itself is liable for the tort of its partners (vicariously liable) when the tort is committed in the course of the business, if the LP is liable the

limited partners only can lose their initial contributions but the general partners can be personally liable once the creditors have exhausted the assets of the partnership.

Safe harbors of the Limited Partners - Control

The limited partners will not be liable unless they lose their protection by participating in the control. Control is not defined but there are safe harbors that do not fall within the meaning of control: such as being an employee, consulting from time to time, participate in extraordinary decisions. Here, Brian takes little interest in the day to day business so he is protected. Also Charlie is protected because he merely consults about the business operations so he does not have control.

(C) Here, we know from the facts that Mortar's suppliers sues for a past due debt. Because the debt of supplier is within the purpose of the partnership (manufacture of bricks) the LP is liable because the partner that conducted the transaction had actual authority (acted within the purpose). The limited partners (Brian and Charlie) are not liable but AI can be liable as GP after the assets of the LP are exhausted.

D) The tort of Brian was committed within the course and scope of the business and therefore the LP is liable (vicariously liable). In addition the tortfeasor (Brian) is also liable because he cannot escape from the liability of its own tort. The other limited partner (Charlie) is not liable but AI can be liable as GP after the assets of the LP are exhausted.