

### Question 1 – February 2019 – Selected Answer 1

A. The effect of Jack's withdrawal from the partnership would require the winding up process to begin.

A general partnership is the agreement by two or more persons to go into business together as co-owners for profit. A general partnership needs no formal agreement to be created. A general partnership may last indefinitely, or for a period determined by the partnership agreement. A partner may withdraw at anytime, which may terminate the partnership, if there are not at least two partners remaining to continue the entity. Upon withdrawal of a partner, the partnership must complete the winding up process. Winding up is the break down of the partnership assets, debts, and obligations.

Here, Jack and Bob formed a general partnership in September of 2016 to go into business together to practice law. They are two people who have agreed to go into business together to earn a profit. The partnership agreement provides that the partnership may be terminated at any time at a specially called meeting upon an affirmative vote of 50% of the partners, however, this would likely be invalid against public policy, because it could create the necessity for the partnership to continue even if one party wanted to terminate the agreement. While Jack provided notice of Bob for the meeting, he need not do that, Jack was free to withdraw at anytime. Because Jack and Bob are the only two partners, Jack's withdrawal would begin the partnership winding up, as the partnership cannot continue with only one partner.

Jack's withdrawal from the partnership ended the partnership, and the partnership must now complete the winding up process so that the partnership can be terminated.

B. Bob is liable for the malpractice claim, while the partnership, Jack and Bob are joint and severally liable for the lease.

1) Bob is liable for the alleged malpractice against Sally, however, Jack and Partnership will escape liability because Sally had no knowledge of the partnership.

A partnership creates an agency relationship between partners and the company. A partnership is liable for any of its agents acts made on behalf of the partnership with authority, or within the ordinary course of business for the partnership. Partners are joint and severally liable for the obligations of a partnership, unless they were undertaken by a partner without actual authority, and the third party knew of the lack of authority. A partner will be liable for any debts and obligations he incurred.

Here, Sally hired Bob, in his individual capacity. While normally, Bob as a member of partnership would be able to enter into legal causes of actions on behalf of the partnership, Sally had no notice of the partnership. Further, depending on whether a court finds that the partnership was effectively terminated, there is no partnership anyway. Bob will be liable for his actions as it relates to Sally's suit, because he contracted with her for the lawsuit. The partnership nor Jack will be liable, because Sally did not know of the partnership and Bob contracted on his own behalf.

Bob is liable for his actions, while Jack and Partnership will escape liability.

2) Partnership, Bob, and Jack, will all be joint and severally liable for the lease default because the contract was entered into by Jack, acting within the ordinary course of business of the partnership engaged in the practice of law.

Rules stated above. A partnership is liable for the debts and obligations entered into on behalf of the partnership in the ordinary course of business. Partners are joint and severally liable for the debts and obligations of the partnership, and the acts of other partners if the partners were acting within the ordinary course of business or had authority to act.

Here, Jack signed a lease during his time at the partnership as a representative of the partnership. This will bind the partnership, as Jack signing an office lease for a law office would be within the ordinary course of business. This will also bind Jack and Bob, because there is no indication that Jack did not have the authority to take such act, nor are there any facts supporting that the landlord was aware of any lack of authority.

There may be an argument that because the partnership agreement was to continue on a yearly basis, no partner would have the authority to enter into a lease for longer than a one year term, however, this will fail as no facts support such lack of authority.

Partnership, Bob, and Jack, will all be joint and severally liable for the lease default because the contract was entered into by Jack, acting within the ordinary course of business of the partnership engaged in the practice of law.

### **Question 1 – February 2019 – Selected Answer 2**

A) Because there were only two partners in the general partnership, Jack's withdrawal ended the partnership. The issue is what steps a partner needs to take in order to leave a partnership. Partners may typically withdraw at any time, although they may be liable to the partnership for wrongful withdrawal (e.g., before the expiration of a commitment they made). Partners may alter the usual rules by agreement. Here, Jack and Bob did not have to file formation documents to form a partnership because they had an intent to form the partnership and made an agreement amongst themselves. They likely agreed to share profits and losses and provide capital for the partnership. Their agreement stated that the partnership may be terminated at any time at a specially called meeting upon the affirmative vote of 50% of the partners. With only 2 partners, it was permissible for Jack to withdraw and thus end the partnership (since a partnership needs at least 2 people). Bob may argue that there was not a quorum at the special meeting because there was not a majority of partners in attendance, but the agreement between them should overcome this hurdle and not preclude one partner in a two-person partnership from being able to withdraw, thus ending the partnership. Otherwise, any one partner could force the other partner to stay in the partnership, disallowing withdrawal, simply by not showing up at the special meeting. Furthermore, Jack provided advance notice of the special meeting and additional notice after withdrawing. The notice would satisfy TBOC's standards, as it was written and apparently gave Bob enough time (the facts do not give a specific date in December for when Jack gave notice). Therefore, the partnership has

been dissolved through Jack's withdrawal, although the partners remain liable for their actions prior to and potentially after dissolution (see below).

B1) Bob is liable for malpractice, but the partnership and Jack are not. The issue is what liability a partner has for his own wrongdoing and the effect of liability after a partnership has dissolved. Here, Partnership would have been liable to Sally if she knew of its existence and retained Bob, thinking he was an agent for the partnership. Jack also would have been liable as a partner in a general partnership because he would not have limited liability under this structure. However, with partnerships, the person suing would have to collect damages from partnership assets first before reaching any of the partners.

In this case, Jack had withdrawn from the partnership, leaving only Bob remaining as a partner-- and a partnership needs two or more people to operate. Sally did not know about the partnership and retained Bob after its dissolution. Bob himself is accused of malpractice and would be personally liable even if the partnership had not terminated. Even a partner in a limited liability partnership would be liable to a client for his own malpractice. Because the partnership terminated, Jack was no longer part of any partnership, and Sally did not act on the belief that she was hiring someone from a partnership, only Bob is personally liable for the malpractice.

B2) The partnership, Jack, and Bob are liable for breaching the lease. The issue is what liability a partnership has after it has dissolved but still has liability for debts or contracts. Here, the partnership entered into a five-year lease. Although the lease was only signed by Jack, the signature line said "as an authorized representative" of Partnership. Therefore, he was not signing in his personal capacity. As a partner, he also had authority to sign a lease on behalf of the partnership (possibly express authority from Bob but certainly actual authority regardless). The partnership terminated the lease early when there was no longer a partnership, but the partnership and its partners were all liable on the contract. They are still bound even though the partnership no longer exists. If the partnership still has assets that were not distributed to the partners upon Jack's withdrawal, the property owner may reach those assets first. Then, he may reach the assets of Jack and Bob to cover any damages for the breached lease, assuming a court finds that Jack and Bob breached and that the property owner suffered damages. In sum, the partnership, Jack, and Bob are all liable for the breach of contract.