

Question 9 – July 2019 – Selected Answer 1

(A) Liability for Balance Due Under Contract

OYF is a properly formed limited liability partnership (LLP) under Texas Law and TBOC. An LLP is beneficial business structure because it protects its partners from personal liability from the debts and obligations of the partnership, with the exception of their initial capital contribution.

i. OYF/TT are Liable.

OYF, now TT, will be held liable for the contract with RCF because Ana had the actual authority or apparent authority to bind the partnership.

A partner can act as an agent for the partnership in the regular course of the partnership's business. However, the partners may agree to limit a specific partner's actual authority. A partner may still be held liable under the principle of apparent authority if, by their title and conduct, the third party reasonably believes they have the authority to bind the partnership.

Here, Ana was responsible for managing the partnership's operations, therefore Ana likely had the actual authority to bind the partnership in a contract with RCF. Even if not, Ana's conduct in signing the agreement "by Ana, Partner" and introducing Beatriz and Carolina to the RCF representative as "silent partners" creates a reasonable inference on the part of RCF that Ana had the authority to bind OYF in a contract. OYF was bound and liable for the contract price as long as RCF performed.

The conversion of OYF LLP to a TT LLC did not affect OYF obligations. TT assumed all of OYF debts and obligations under the Agreement. Thus, TT is bound by the contract and liable to RCF under the contract.

i. Ana is Not Liable as an Agent

Ana will not be held liable because she disclosed her role as agent for the partnership.

Under agency law, the principal is liable to third parties on contracts made by the agent. The agent is only personally liable for a contract made on behalf of a principal if the agent did not disclose her status as a agent.

Here, Ana disclosed her status as an agent for the partnership (e.g. the principal) when she signed the agreement "On Your Feet, LLP by Ana, Partner". Thus, Ana is not personally liable in her role as the agent.

Additionally by including LLP, RCF had notice that they were dealing with a limited liability partnership and the partners are not personally liable.

ii. Ana, Beatriz, Carolina as Partners are Not Liable

Ana, Beatriz, and Carolina are not liable as partners of the partnership, or now members of the LLC. Both a LLP and a LLC have the benefit of limiting the liability of partners or members for the debts and obligations of the entity. As long as the entity is properly formed, which is the case here, the members/partners are shielded from the company's debts and are not jointly and severally liable for another partner/member's tortious acts.

Additionally, Ana is not liable as the manager because officers of a company are not personally liable for the debts of the company.

There is not evidence that Ana, Beatriz, and Carolina abused the limited liability under either the alter ego theory or undercapitalization theory such that the court would order the corporate veil to be pierced.

(B) Liability for Diana's Personal Injuries

Ana and Carolina are not liable to Diana's parents. TT and Beatriz are liable.

Twinkle Toes, LLC (TT) is a properly organized limited liability company under Texas Law and TBOC. One of the benefits a LLC structure is that it limits the liability of the members in contracts and tort actions against the LLC and members. The members are not joint and severally liable for the tortious acts of other members. However, a member may be liable for their own tortious acts and so may the LLC.

i. Ana is Not Liable

Ana is not liable for Diana's injuries. Ana is not liable for Diana's injuries because as a member of an LLC, she is not jointly and severally liable for Beatriz's negligence.

Diana's parents may tried to assert a separate negligence claim against Ana on the basis that Ana is the manager. The claim could assert that she was negligent in her duties as the manager. However, the written policy and despositions that confirm that

Ana had instructor Beatriz and Carolina to not let anyone dance without the proper slippers is sufficient prove that Ana did not breach her duty of care owed to Diana. A negligence claim will fail if not all the elements of duty, breach, causation, and damages are met.

ii. Carolina is Not Liable

Carolina is not liable for Diana's injuries. Carolina is a member of TTC. TT is an LLC, thus she is protected from liability for Beatriz's negligence.

iii. Beatriz is Liable

LLC cannot protect a member from it's own negligent conduct, even if the corpore agreement attempts to. Beatriz owed a duty to Diana as her instructor. By letting Diana dance without the proper footwear and against company policy, Diana breached that duty. That breach was the foreseeable cause in fact and proximate cause of Diana's injurys. Diana suffered a ankle injury.

Diana's has a complete negligence claim against Beatriz for her negligence. The LLC structure will not limt her liability for her tortious conduct.

iv. TT is Liable

TT is liable for Diana's injury. The LLC will be held liable for the member's or managers tortious acts that were committed in the ordinary course of business. Here, Beatriz was a member and dance instructor of TT. Diana was injury in TT studio by Beatriz's negligence as a TT dance instructor. The TT written policy regarding footwear will not limit Beatriz's or TT's liability to Diana.

Additionally, Beatriz was a dance instructor that was paid a salary. Beatriz was an employee of TT. The tort occurred within the scope of her employment and during the employment relationship. Thus, TT is liable under a through of respondent superior, or vicarious liability.

Question 9 – July 2019 – Selected Answer 2

A. RCF can successfully hold OYF liable, as the party to the breached contract, and TT, as the successor to OYF. Ana, Beatriz, and Carolina are shielded from OYF's liability because they are partners in an LLP, and Ana is not a party to the contract because RCF knew she was acting to bind the principal.

A limited liability partnership (LLP) is a form of partnership that has traded increased state oversight for greater liability protection for its individual partners. Unlike a general partnership, where the partners are personally liable for the partnership and other partners, in an LLP, partners are only liable for their own misconduct. The partnership is a separate legal entity, and may be sued directly as well.

Just as with other partnerships, the partners in an LLP are agents of the partnership, and may bind the partnership to a contract when they act with legal authority to do so. Such authority may be express, explicitly granted by the partnership agreement, implied power, typically defined by the scope of commercially reasonable powers, or may be the result of representations by the principal to the third party, so called "apparent authority."

Here, each of Ana, Beatriz, and Carolina were likely partners in OYF; they formed OYF together, and Ana described them as partners.

OYF: OYF may be held liable if Ana had the authority as OYF's agent to bind it to the contract, and then actually did so. Ana likely had express authority to bind OYF as she was in charge of managing the business operations. If not, partners typically have the inherent power to contractually bind the partnership. Finally, Ana signed the contract as OYF in her capacity as partner, which would suggest binding the partnership. Accordingly, since the contract was signed by an agent with power to bind the partnership, OYF is liable for breach.

Ana: Ana would not be personally liable for breach, because she would be shielded by her status as a partner in an LLP, and because she would not be a party to the contract by dint of her status as an agent.

First, as a partner in an LLP, Ana would be shielded for personal liability because of OYF's breach. But, she may still be liable if she was a party to the contract as an agent.

In some instances, the agent may be personally liable on a contract signed to bind the principal. But such situations turn on whether the other side of the contract knows that the agent is an agent, and who they are an agent for. If the other party to a contract knows both that the agent is signing on behalf of the principal, and knows the identity of the principal, then the agent is not a party to the contract. When the counterparty knows that the agent is an agent, but does not know the identity of the principal, both the agent and the principal are parties to the contract. And if the other side knows neither that the agent is an agent nor the identity of the principal, then the

other side has their choice between holding the agent or the as of yet undiscovered principle liable.

Here, Anna signed as OYF, clearly indicated her capacity as a partner, and gave RCF a tour of the facilities. RCF clearly knew that Anna was an agent of the partnership, and was acting to bind the partnership. Therefore, Ana would not be a party to the contract and would not be personally liable for breach.

Beatriz & Carolina: Beatriz and Carolina are partners in a LLP, and therefore shielded from being personally liable in the breach action. Unlike Anna, they did not participate in the signing process. Therefore, they are not liable.

A Limited Liability Company (LLC) is similar to an LLP, in that the members are not individually liable for the acts of each other or the company, but like a general partnership, the entity is subject to pass through taxation.

TT: Twinkle toes expressly assumed all of the "liabilities" of OYF. Therefore, RCF may continue the suit against TT for OYF's breach. The change in corporate form does not expose Ana, Beatriz, or Carolina to any liability.

B. Diana's parent's will be able to hold Beatriz liable, as her personal misconduct was likely tortious, and can hold TT vicariously liable, as the tort occurred in the scope of employment. Ana and Carolina will be shielded from liability as members of an LLC.

Beatriz: Employees of an LLC may still be held liable for personal misconduct. Here, Beatriz likely breached the duty of care owed to her student, and violated corporate policy as well. Accordingly she would be personally liable.

TT: Even if LLC status generally shields other members from misconduct, the LLC may still be liable under general principles of agency and vicarious liability. An employer may be vicariously liable for the torts of their employees when the tort occurs in the "scope of employment," which broadly defined looks to whether the task at issue was the purpose for employment and if the corporation had a sufficient degree of control or direction over the employees conduct.

Here, Beatriz was an employee of TT. OYF, and later TT, was explicitly a dance school, and Beatriz was hired to be a dance instructor. Moreover, as the written policy evinces, the company had created formal limits specifically on whether customers could dance without proper footwear. Beatriz and Carolina's deposition testimony backs that up. As such, since the tort occurred within the scope of employment, TT will be vicariously liable for Beatriz's tort.

Ana & Carolina: As the manager and employee of TT, respectively, Ana and Carolina are not personally liable for the misconduct of the corporation or other employees/agents. Therefore, Diana's parent's cannot hold them liable for Beatriz's misconduct. Ana may seem a more appealing target as she is the "manager," and as the deposition testimony evidences, more in charge of the operation, but the principal is TT, not Ana.

Question 9 – July 2019 – Selected Answer 3

A. Twinkle Toes can be held liable for the amount due under the contract, but Ana, Beatriz, and Carolina cannot.

Twinkle Toes is an LLC, and it was an LLP when the cause of action accrued. An LLC provides limited liability to its members, and an LLP provides limited liability to its partners. Under these business forms, the company or partnership is liable for its own obligations and any obligations that the partners or members incur in the scope of their employment, membership, or partnership. Members and partners are also liable for torts that they personally commit and debts that they incur in their personal capacity, because Texas law prohibits limited liability from shielding people from their own personal obligations.

TT is liable because it assumed all liabilities of OYF. Ana, as a managing partner, had actual authority to act as an agent for OYF and bind OYF to the contract. Therefore, OYF was liable under the contract and TT is now liable because TT assumed all liabilities of OYF.

Ana is not liable under the contract. Limited liability shields partners and members from liability for contracts that they sign as agents in their capacity as partners or members. Here, Ana did not sign in her personal capacity; she signed "Ana, Partner." This put RCF on notice that only OYF, not Ana, would be liable under the contract. The fact that OYF had "LLP" in its name also served to put RCF on notice that the partners would not be personally liable for the amount due under the contract.

Beatriz and Carolina are not liable for the amount due under the contract. Partners in and LLP and members in an LLC are not generally personally liable for the debts of the partnership or company. No exception to this general principal applies here. RCF cannot even argue that Beatriz and Carolina entered into the contract in their personal capacity because they did not sign the contract at all. Only TT is liable.

B. TT and Beatriz are liable for Diana's personal injuries. Ana and Carolina are not liable.

TT is liable because an LLC is liable for the torts committed by its members and employees. Beatriz committed the tort of negligence in the scope of her employment, so TT is liable.

Beatriz is liable because a member in an LLC is always liable to third parties for torts that they personally commit, and Beatriz personally committed negligence. Members can limit their liability to the company for negligence, but they cannot limit their liability to third parties. Here, Beatriz breached her duty of care to Diana by allowing her to dance without proper footwear, and this caused Diana's injury. Therefore, Beatriz is personally liable for negligence.

Ana is not liable because she was not negligent. Ana is protected by the limited liability principles explained in part A above. Diana's parents could argue that, as managing member, Ana should have done a better job of supervising her employees, but this argument will almost certainly fail. Ana drafted a written policy that prohibited dancing in inappropriate footwear, and she personally told Beatriz not to allow anyone to dance in unsafe footwear. There is no evidence to suggest that Ana breached a duty of care to Diana, and managing members are not automatically liable for the torts of employees. Therefore, Ana is not liable.

Carolina is not liable because she was not negligent. Carolina is protected by the limited liability principles explained in part A above. Although Carolina is also a dance instructor, the facts only indicate that Beatriz, not Carolina, allowed Diana to dance. If Carolina was also acting as an instructor during the session when Beatriz did this, and if Carolina did nothing to stop her, then Carolina might be liable. However, the facts do not indicate that this happened. There is no evidence in the facts as presented that suggests that Carolina was negligent; therefore Carolina is not liable.

Question 9 – July 2019 – Selected Answer 4

(A)

No, only TT and OYF may be held liable for the balance due under the Contract.

A limited liability partnership is a separate entity from its members, and insulates its members from the company's debts. This means that so long as the company is not a sham, members are generally safe from personal liability. The exceptions being if a

claim arises from member's own negligence, intentional misconduct, or if a member personally assumes the debt.

Here, Ana, Beatriz, and Carolina legally and properly registered OYF as a Texas limited liability partnership. This means that, minus the exceptions listed above, they are protected from personal liability. When Ana signed the Contract, she was acting as an agent for OYF. As a partner for OYF, Ana had the authority to incur debts for the company. Beatriz and Carolina were aware of the contract and made no objections. So, when Ana signed the contract she signed it with the full authority of an agent.

When an agent signs a contract, she is not personally liable unless she assumes liability or she does not disclose that she is acting as an agent. In this case, Ana signed the contract as "On Your Feet, LLP by Ana, Partner". By signing in such a way, Ana made it clear to RCF that she was acting as an agent for OYF and was not assuming any personal liability. The entity, OYF, was disclosed and Ana clearly stated that she was acting in her Partner capacity. This insulated Ana from any personal liability. Beatriz and Carolina are also not liable because they were not involved with the contract, and even if their two run-ins with Dave counted as involvement, as mentioned above, it was the partnership that took on the liability, not the partners.

OYF's obligation to by RCF was not discharged when TT assumed full ownership of all assets, debts, and liabilities of the former OYF. A debt cannot be unilaterally discharged; it needs the consent of all partys. OYF would have needed a novation, but because RCF did not agree to OYF's release, there was no release and OYF is still on the hook.

TT is also liable for the balance due under the contract with RCF for the debt because it assumed full ownership of all debts of OYF. A party can take on another's obligations without the permission of the creditor. Here, TT promised to pay OYF's debts, so its failure to do so would be a breach.

Therefore, the two parties liable for the debt are TT and OYF.

(B)

No, only TT and Beatriz may be liable for Diana's personal injuries.

A limited liability company is an entity that insulates its members from the company's obligations. Its make up is similar to how a corporation looks. There are members that are similar to shareholders and managers that are similar to directors. While the makeup is similar to a corporation, other areas are more similar to a partnership.

Liability is usually reserved only for the company, but in cases of negligence or intentional misconduct an individual may be held personally liable.

Here, Beatriz may be held liable for Diana's personal injuries because it was her personal negligence that caused Diana to break her ankle. Beatriz knew not to allow the children to dance in inappropriate footwear, but allowed Diana to do so anyway. An individual will not be insulated from personal liability when it was their own negligent misconduct that caused the liability to arise. Because Beatriz's negligence is what incurred the liability she may be held personally liable.

TT may also be held liable because Beatriz is an employee of TT. An employer may be held vicariously liable for their employees conduct if the employee was acting within the scope of their employment. Here, Beatriz was leading a ballet class when her actions caused Diana's injury. Negligence on behalf of the employee does not excuse an employer from liability. Beatriz did not exceed the scope of her employment; she was just negligent in the implementation of it. Although TT had a written policy that prohibited the use of inappropriate footwear, this is not enough to cut off TT's liability.

Neither Ana or Carolina are liable for Diana's injuries because their conduct is not in question and the LLC status of the company insulates them from the company's own liability.

Therefore, TT and Beatriz are both liable for Diana's personal injuries.