Question 6 – February 2020 – Selected Answer 1

(A) GrillKing (GK), Bill, and Chuck will likely be liable, but Adam will not be. At issue is the extent to which partners may limit their tort liability pursuant to a limited liability partnership agreement.

GK

As the LLP, GK is liable for the negligence of its "employees/partners" under a theory of vicarious liability pursuant to a master-servant relationship. Vicarious liability occurs when the servant, acting on behalf of the master, commits a tort while acting within the ordinary scope of employment (typically, this is in the context of a employer-employee relationship but applies likewise where a partner is working on behalf of the limited liability partnership (LLP)). Here, Bill and Chuck were jointly responsible for designing and manufacturing GK's products. Thus, there existed a master-servant relationship in the form of Bill/Chuck acting on behalf of GK. Bill and Chuck designed a defective product while performing within their ordinary scope of employment (designing/manufacturing products). Bill/Chuck became aware of the defect and failed to correct it or at minimum, warn customers and pull it from the shelves. Therefore, Bill/Chuck committed this negligence during their scope of employment which means that GK will be liable under a theory of vicarious liability.

Bill/Chuck

While the LLP Agreement (LLPA) provides that none of the partners will be liable for debt/obligation arising in contract, tort, or otherwise, such provisions are not valid to the extent that a partner is individually liable for a tort. Here, as noted above, Bill/Chuck committed negligence when they failed to remove/correct/warn of the defective design/hazard. Therefore, Bill and Chuck have committed this tort of negligence in employment capacities, but this does not relieve them of personally liability for such negligence. Partners are not relieved of their individual tort liability by entering the LLPA. However, as noted below, partners are not generally liable for torts committed by other partners.

Adam

Adam will not be held liable. The facts indicate that Adam was completely unaware of the design defect. Adam will not be liable solely because he was the managing partner of GK. Adam, as a partner, is not liable for the torts of other partners (Bill/Chuck). Therefore, Adam will escape liability here.

(B) GrillKing (GK) will be liable on the loan, but Adam, Bill, and Chuck will not be individually liable. At issue is whether the partners of a limited liability partnership ("LLP") may become personally liable for the contractual obligations/debts of the LLP.

Generally, one of the main benefits of using an LLP is that it protects all of the partners from personal liability for the debts/obligations of the LLP itself. While that general rule can be subject to exceptions in some cases, that will not be the case here.

GK Liability

As the LLP, GK is liable for all of its contractual obligations that any authorized partners enter into on its behalf. Here, the partners all named Adam as the Managing Partner of GK in the LLP Agreement ("LLPA"). By doing so, the partners gave Adam actual (express) authority to enter into contracts on behalf of GK. Adam executed to promissory note (the "Note") with Bank as "Managing Partner, GrillKing LLP" which indicates that Adam signed this on behalf of GK, and not individually. Additionally, GK is named the "Borrower" on the note. This shows that GK is obligated under the contract.

Adam

As noted above, Adam executed the Note as "Managing Partner" and not individually. This shows that Adam intended for GK to assume this obligation, and that Adam did not execute this in his personal capacity. While agents may, under certain circumstances, be liable for the contractual obligation of a principal (i.e., when the principal (GK) is not disclosed to the third party), that is not applicable here as GK was listed as "Borrower" on the Note. Therefore, Adam is not liable on the Note merely because he is the Managing Partner.

Bill and Chuck

Bill and Chuck are not liable for the obligation. Bill/Chuck, as partners of GK, have implied authority to execute contracts on behalf of GK. Bill and Chuck each signed as "Partner, GrillKing LLP" indicating that they were not signing in their individual capacity. While agents may, under certain circumstances, be liable for the contractual obligations (i.e., when the principal (GK) is not disclosed to the third party), that is not applicable here as GK was named "Borrower" on the note. Therefore, Bill/Chuck are not liable.

Question 6 – February 2020 – Selected Answer 2

A) Grillking, Bill, and Chuck can be held liable for the Customer's lawsuit.

Under Texas law, a Limited Liability Partnerhsip (LLP) consist of a partners who have limited liability. When the company is formed, those partners with limited liability are listed on the certifacte of formation. Partners in a LLP are not held liable for acts done by employess of the LLP or contractual obligations. Partners of an LLP are held liable for their own torts. Before a individual partner's assets can be obtained, the plaintiff must file suit against the entity (the company), obtain a judgment against the entity, and then exhaust the assets of the entity. Then the partners' assets may be reachable if there still exists upnpaid damages.

GrillKing - the entity

Grill King is liable to customer for the act committed by Bill and Chuck

The partnership is responsible for acts committed in the oridinary course of business by its agents. Each partner of a partnership is an agent. Respondeat superior theory allows a person to sue the entity for acts vicariously committed by its agents and employees.

Here, GrillKing is liable to customer for the negligence committed by the partners Bill and Chuck related to the product defects. Bill and Chuck knew about the defects, but did nothing to fix them. Their acts caused the customer's damages.

Bill and Chuck

Bill and Chuck are both individaully liable for their own tortious acts.

Under Texas Law, a limited partner is not held liable for acts committed by the partnership (company) or its employees, but the partner is liable for his own negligent acts, even when the partner is a limited partner, if the partern participates in the daily operations of the LLP.

Here, both Bill and Chuck knew of the product defects, but did nothing to fix the defects or stop the sale of the grills. They were the employees responsible for the design of the grills an had taken a acting role in the company, as opposed to just being a silent investor.

Therefore, becuase of their acts and involvement in daily operations of the LLP they can each be held liable individually for their acts. They are not responsbile for each other's act.

Adam

Adam is not liable individually, because he did not know about the defect.

Under the rules discussed above, Adam escapes individual liabiity because he did not know of the product defects. While the LLP's partner agreement states he will not be liable, it is invalid, as the agreement cannot waive his personal liabity for his own acts, that he does while managing th company.

Adam is not liable.

B) GrillKing is liable to Bank for its lawsuit.

Under Texas law, a Limited Liability Partnerhsip (LLP) consist of a partners who have limited liability. When the company is formed, those partners with limited liability are listed on the certifacte of formation. Partners in a LLP are not held liable for acts done by employess of the LLP or contractual obligations. Partners of an LLP are held liable for their own torts. Before a individual partner's assets can be obtained, the plaintiff must file suit against the entity (the company), obtain a judgment against the entity, and then exhaust the assets of the entity. Then the partners' assets may be reachable if there still exists upnpaid damages.

GrillKing is liable for the contractual obilgations, while Adam, Chuck, and Bill are not.

Limited partners acting as agents for the LLP in signing for loans will not be held individually liable for the debts, as long as, the loan was in the ordinary course of business and for the business, and the partners signed as agents of the company.

Here, the loan was signed by all partners as partner for "GrillKing" indicating the loan was for the partnership. Under agency law, they showed apparent authority to act as an agent of GrillKing.

Therefore, Only GrillKing, the entity will be liable for the bank loan.

Question 6 – February 2020 – Selected Answer 3

(A) GrillKing (GK), Bill (B) and Chuck (C) can be held liable to Customer (CU) in his lawsuit, but not Adam (A).

The issue is whether all members of a limited liability partnership (LLP) can be held personally liable for a tort committed by only some of the members, or for a contract entered into by the LLP.

Under the Texas Business Organizations Code, a LLP is a partnership in which the partners have agreed to limit the liability for contracts of the partnership to the partnership property. If a valid LLP has been formed, its members are not liable for any contracts entered into by the LLP. As regards liability for torts, the partners in a LLP are not liable for the tort of another partner. Only the actual tortfeasor and the LLP would be liable, provided the tort was committed within the scope of the business purpose of the LLP and the responsibilities of that partner. The general tort liability rules apply, including the rules regarding product liability.

Liability of LLP

In the case at hand, A, B and C formed a valid LLP. The LLP sold a grill to CU, which exploded and caused personal injuries to CU and damage to his house. The grill had a defect when it left GK's facility, and GK did nothing to remove the defetct or warn customers. The actions and omissions of B and C were within the scope of the LLP's business and within their responsibilities (design and manufacturing). These acts and omissions can therefore be attributed to the LLP. GK placed the grill in the stream of commerce by selling it.

LLP is thus liable on the basis of product liability to CU.

Liability of B and C

B and C are jointly and severally liable to CU, because it was their responsibility to design and manufacture the grills. The exclusion of tort liability in the partnership

agreement is not valid with reagard to their own torts which they commit as tortfeasors.

B and C are therefore jointly and severally liable, together with GK, but CU can recover only once.

Liability of A

A was not involved in the design and manufacturing of the grills. he did not know or had reason to know that the defect existed. He did therefore not commit the tort, is shielded from liability by the LLP and not personally liable.

(B) Only GK can be held liable to Bank (B) in the lawsuit regarding the loan.

The issue is whether the loan agreement was entered into by GK and B, or whether it was entered into by the partners and B.

A validly formed LLP can determine one or more of the partners as managing partner with authority to enter into contracts on behalf of the LLP. Agency rules apply. In order to bind the LLP, the managing partner that enters into the contract / signs must have actual or apparent authority to enter into the contract on behalf of the LLP.

Here, the promissory note designated GK, the LLP, as Borrower. A signed the note as "Managing Partner, LLP". Since he was the managing partner of GK, and B and C were aware of the note, it can be assumed that he had actual authority. But in any event he had apparent authority, becaus ehe signed "Managing Partner". He teherfore entered into the loan agreement on behalf of GK. GK was thus validly bound by the agreement and is the only valid defendant in the suit.