

TEXAS AGENCY OUTLINE

I. **LIABILITY IN CONTRACT:** Principal becomes liable to 3d party on a contract entered into by the principal's agent if A & P both consent & A is subject to P's control.

A. Capacity

1. P must have contractual capacity (because the contract's between P & T).
2. A need not have contractual capacity (because A is just an intermediary).

Sixteen-year-old LeAnn Rimes appoints Mom as her agent. Mom contracts with Sony Music on LeAnn's behalf. Can LeAnn disaffirm the contact? **Yes, because LeAnn as an infant lacks contractual capacity**

Can Mom validly appoint LeAnn as Mom's agent? **Yes, because agent doesn't need contractual capacity**

B. Agency law requires no writing but Statute of Frauds or some other law may.

Kate Hudson hires Michael Ovitz to be her agent. **No writing required**

Kate hires Mike to be her agent for 5 years. **Falls within SoF 1 year provision**

Gilligan authorizes Mike to convey his island to Puff Daddy. **Agents authorizing to sell R.E. must be in writing in Texas. A may be paid or serve gratuitously or substitute.**

C. Consideration is not required.

II. **ACTUAL AUTHORITY**

A. Creation of Actual Authority.

1. EXPRESS: P expressly tells A to act on P's behalf.

Freud tells Regis to sell his couch. Does Regis have express actual authority to sell it? **Yes, and he can do whatever is reasonable to accomplish task** /

That's true even if Freud is mistaken about A's identity or the subject matter of the agency.

2. IMPLIED: P's conduct leads A to believe A has authority.

Beavis, Butthead's manager, buys supplies from KMart without permission. Beavis knows Butthead has paid without objection. If Beavis keeps buying from KMart, is Butthead bound? **Yes, it looks Beavis that B has endorsed his behavior. It is reasonable.**

B. Actual authority must exist when A enters a contract, as actual authority can terminate in many ways:

1. After a specified time, a reasonable time, or a specified even occurs.

2. By a change of circumstance (e.g. subject matter is destroyed).
House burns down
3. When A. Acquires an interest adverse to P's (e.g. joining P's competitor).
A hired
4. When A says so (remember: agency is consensual).
Agency is consensual in nature
5. When P says so (ditto), unless the power is coupled with an interest.
Unless power to sign is irrevocable

Hootie gives J-lo the power to sell his truck & says the power's irrevocable. Can Hootie revoke? **Yes, because merely say it is irrevocable is not enough**

Hootie borrowed money from J-lo & says she can sell the truck if he defaults. Can he revoke?

No, because J is his Co → J's power to sell truck is coupled with an interest in the loan. Power of attorney given as collateral for loan or security

Hootie authorizes J-lo to sell his truck for a 15% commission. Can Hootie revoke?

Yes, A's right to share in proceeds of sale is not considered an interest in subj matter

Hootie mails a letter revoking J-lo's authority, but she had already contracted to sell the truck. Is Hootie bound by the sale?

Yes, because revocation of accrual authority is reflective only on receipt

6. On death, incapacity or bankruptcy unless power coupled with an interest.
- C. Delegation: OK if P consents (can be express or implied from circumstances).
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To subagent

III. SUBSTITUTES FOR ACTUAL AUTHORITY

A. APPARENT AUTHORITY: P leads T to think A has authority, though A doesn't.

1. Equitable doctrine: Protects T who relies on P's holding out A as agent.
Mulder tells Pamela Lee, "If you want to buy my X-Files, see Scully." Mulder has never authorized Scully to sell the files. If Pamela contracts with Scully to buy them, is Mulder bound?

Yes, because M created the impression on P's that S had authority

2. Reasonable belief must be reacted by P, not A; otherwise, not fair to P.

Scully, in Mulder's presence, tells Pamela she's Mulder's agent, though Scully has no actual authority. Mulder is silent. If Scully contracts with Pamela on Mulder's behalf, is he bound?

Yes, because M's silence in the face of S's statement created S's authority

3. Can linger even after actual authority is terminated.

Beavis bought supplies from KMart without permission. Butthead paid, but told Beavis not to do it again. Beavis does it anyway. Does Beavis have actual authority to bind Butthead?

No, because B told him not to do it again

Does Beavis have apparent authority to bind Butthead?

Yes! Look at it from KMart's perspective: Beavis had bought supplies from them before & Butthead had paid for them, so it's reasonable for KMart to think that Beavis can do it again.

How can Butthead destroy this apparent authority?

B can tell KMart that Beavis has no authority to bind him

B. RATIFICATION

1. Even if "A" acts without actual or apparent authority, "P" can ratify the act:
 - a. By expressly affirming the transaction;
 - b. By accepting the benefit of the transaction; or
 - c. By suing T on the transaction.
2. Requirements
 - a. "P" must have knowledge of all material facts.
 - b. "P" must accept the entire transaction (e.g. "P" can't simultaneously ratify the contract & disavow a misrepresentation made by "A").
 - c. "P" must have contractual capacity both at time of ratification & at time of the original transaction (because ratification is retroactive).

A promoter of a not-yet-formed corporation enters a lease on its behalf. Can the corporation, once it is formed, ratify the lease?

3. Because ratification is retroactive, we must be concerned about the intervening rights of an innocent party who'd be hurt by ratification.

Lucy, without authority, sells Desi's car for \$6,000. Later, Desi agrees to sell it to John Bobbitt for \$5,000. Bobbitt did not know what Lucy had done. Can Desi ratify Lucy's earlier sale? He'd like to (Lucy sold the car for more), but Desi can't _____ because Bobbitt did not know about the earlier sale (i.e., Bobbitt is an "innocent" purchaser).

C. ADOPTION

A promoter of a not-yet-formed corporation, enters a lease on its behalf. Can the corporation, once it is formed, ratify the lease?

Can the corporation, once it is formed, adopt the lease?

If the corporation does adopt the lease, is the promoter relieved of liability?

Only if there's a _____ (an agreement to substitute the corporation for the promoter); otherwise, once the corporation adopts the lease, both the corporation & the promoter are liable.

IV. RELATIONSHIP OF PARTIES

A. Relationship of P and A:

1. A owes P strict fiduciary duties, even if agency is gratuitous:
 - a. Duty of loyalty (can't compete without disclosing all material facts).
 - b. Duty of reasonable care (depends on any special skills A may have).
 - c. Duty of obedience (must follow P's reasonable instructions).
2. P must compensate (unless gratuitous), reimburse & indemnify A.
3. Broad range of remedies (e.g. contract, tort, constructive trust, etc)

Beavis buys goods from Bozo & gets a \$1,000 kickback. Of course, Butthead can get the \$1,000, but don't say it that way! Use agency terminology to impress the examiners: Butthead can have a _____ imposed on Beavis' profit from his _____.

B. Relationship of P and T (assuming A had actual authority or a substitute for it):

1. P is always liable to T.
2. T is always liable to a "disclosed P" (T knows P's identity) or to a "partially disclosed P" (T knows P exists, but doesn't know who P is).
3. T is even liable to an "undisclosed P" (T doesn't know P exists) unless:
 - a. Holding T liable would unduly burden T (requirements contract);
 - b. P fraudulently concealed her identity; or
 - c. T bargained for A's personal performance.

Madonna hired Julia Child to cater her wedding. In fact, Julia was acting on behalf of Peg Bundy. Madonna had no idea! Does Peg have any rights against Madonna?

- C. Relationship of A and T [remember: A is just an intermediary]
1. T not liable to A unless A's power is coupled with an interest in the agency.
 2. A is not liable to T unless:
 - a. P is partially disclosed or undisclosed; or
 - b. A reached her "warranty of authority."

Aunt Bea contracts with Helen Crump on behalf of Opie and Goober as disclosed Ps. Unknown to Aunt Bea, Opie is underage. Goober breaches. Is Aunt Bea liable to Helen?

Goober was disclosed, so he is _____

Opie lacked capacity, so Aunt Bea's liable to Helen for _____

V. LIABILITY IN TORT (vicarious liability to protect "innocent" 3rd party).

- A. Key issue: Was the tort committed by a servant acting within scope of employment? If so, the master is jointly & severally liable with the servant to the injured party.
- B. Is the tortfeasor servant (s) or independent contractor (I/C)? More likely S if:

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1. Employer has the right to control how the job's done, even if not exercised;
 2. Employer supplies the tools and workplace;
 3. Employment is long-term;
 4. Little skill is required;
 5. The work is part of the regular business of the employer; and
 6. Payment is made in regular intervals, not by the job.

I accidentally knock over the podium & injure an Aggie down front. If BARBRI liable?

Foley's hires Lucy to demonstrate cosmetics at its store on weekends for 3 months for \$2,000. Lucy jabs Trixie in the eye with an eyebrow pencil while chatting with Ethel. If Foley's liable?

- C. M is not automatically liable for every tort committed by S. Only if S was acting within the scope of employment will M be liable for S's tort.
1. If S was doing what s was hired to do, the tort was within scope.
 2. If S was deviating from normal tasks, how substantial was the deviation?
 - a. A minor deviation ("_____") is usually within scope.
 - b. A substantial deviation ("_____") is usually outside scope.

Sue, an Arco truck driver, goes to a pub 9 blocks off her route for a beer. On the way back, she hits Roseanne. Sue finishes by 5:00, the usual stopping time. Is Arco liable to Roseanne?

Sue was on a frolic, so it looks like Arco is not liable. But when the accident occurred, Sue was returning to her route & she finished on time, so maybe Arco should be liable. In a close case,

3. We've been talking about S's negligence, but what about S's intentional torts? They are considered outside scope of employment unless:
 - a. Force is used to further M's business (e.g. bouncer);
 - b. M ratifies the use of force ("nice job"); or
 - c. M authorized S to commit an intentional tort (e.g. misrepresentation).

- D. M & S are jointly & severally liable to T (i.e. T can sue either S or M or both, but is entitled to only one total satisfaction).

If Sue was acting within the scope of employment, who's liable to Roseanne?

If Roseanne sues Arco, does Arco have any rights against Sue?

If Roseanne releases Sue from liability, will arco also be released?

Fred borrows Barney's full-time gardener. While working in Fred's yard, the gardener negligently injures a passerby. Who's liable: Barney (the original M) or Fred (the borrower M)?

- E. M may be liable for M's own negligence if M fails to train or supervise employees or fails to check an employee's criminal record or job history.

Domino's hired Dennis the Menace as a driver without checking his driving record. Dennis had 2 prior DWIs. Drunk on a frolic, Dennis hits Mr. Wilson. Is Domino's liable? On what theory?

Domino's is not vicariously liable for Dennis' negligence because he was _____

But Domino's is liable for its own negligence because _____

TEXAS GENERAL PARTNERSHIPS

I. FORMATION

- A. To determine who is a partner, look to the following factors:
1. INTENT. But court may find involuntary PS anyway to protect 3d parties.
 2. CONTROL. Right to control may be enough, even if not exercised.
 3. CAPITAL CONTRIBUTION. No required to be a partner, but relevant.
 4. SHARING IN PROFITS. Just one factor (no longer a presumption).

Rob Camiletti's bakery owes Pillsbury money, but Rob & the firm are insolvent. Pillsbury claims Rob's sweetie, Cher, is a partner because she received 20% of the profits. True?

What if Cher is getting profits as wages, rent, repayment of a debt, or interest on a loan?

What if Cher were getting 20% of the gross receipts, not 20% of the profits?

- B. General contract principles apply since a PS is a contract among partners.
- C. No writing required by PS law but may be required by Statute of Frauds.

Ice T & Ice Cube form a PS to record 2 rap albums. Is a writing required?

What if they agreed the PS was to last for 2 years?

- D. Partners can choose what state's law controls, if that state bears a reasonable relationship to the PS; otherwise, look to where its chief executive office is located.
- E. A joint venture is treated like a PS, but requires express agreement on sharing losses.
- F. If no PS has been formed, parties may still be liable as if they are partners in order to protect reasonable reliance by 3d parties. Based on estoppel principles (used to be called "PS by estoppel" [PBE], which conveys the concept perfectly).

Grace applies to Bank One for a loan. Will let her say he's her partner, even though he's not. Is

Will liable to Bank One if it loans money to Grace based on the statement?

Can Bank One recover from Grace?

Can Grace's other creditor recover from Will based on the statement?

II PROPERTY INTERESTS

A. Partnership Property [i.e. property owned by the PS]

1. Property is PS property if it's acquired in the PS's name or the name of one or more partners with an indication in the instrument transferring title of their capacity as partners or the existence of a PS, even if the PS name isn't used.
2. Property acquired with PS funds is presumed to be PS property.
3. Property acquired in the name of one or more partners, without PS funds, is presumed to belong to them if the instrument transferring title doesn't reflect their capacity as partners or the PS's existence, even if used for PS purposes.

AB Partners uses a truck acquired in A's name. AB Partners pays insurance on it & B uses it for deliveries. A paid for the truck. Is it PS property or A's separate property?

*** B. Rights in Partnership Property

1. The PS's rights in PS property are unrestricted.

Can the PS pledge its interest in the truck as collateral for a loan?

Can a judgment creditor of the PS attach the PS's interest in the truck?

2. A partner's only right in PS property is the right to use it for PS purposes, [because it's not hers!].

Assume the truck is PS property. Can A use it on her vacation?

3. A partner has no rights in PS property that can be transferred [because we don't want outsiders interfering with PS property].

If the truck is PS property, can A pledge it as collateral for a personal loan? Can A's judgment creditor attach ("charge") her interest in it? If A dies, does A's husband acquire any rights in it?

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- C. A Partner's Interest in the Partnership Itself
 - 1. A financial asset, like stock, which gives you no claim on a corporation's assets, just a claim on the financial value the assets represent.
 - a. Passes to heir/devisee on partner's death, like other financial assets.
 - b. Is community property, like other financial assets.
 - 2. May be transferred [merely redirects the flow of profits].
 - a. Transferee does not become a partner or acquire management rights.
 - b. Transferor retains all other rights and obligations of being a partner.
 - 3. Is personal property (like stock), even if PS's only asset is real estate.

III. RELATIONS AMONG PARTNERS

- A. PS agreement control; statute applies unless otherwise agreed ("UOA").
- ***
- B. Sharing profits and losses

Rachel, Phoebe & Monica form the RPM Partnership. If Rachel contributes 60% of the capital, and the others contribute 20% each, how will profits be split?

Same facts. How will they share the losses?

If they agree Rachel won't bear any loss, will she be free from liability to a 3d party?

- C. Remuneration

Monica runs RPM's day-to-day operations. Is she entitled to compensation?

- D. Management rights

Rachel gets 60% of the profits; Monica & Phoebe get 20% each. Rachel votes against selling goods to Frasier; Monica & Phoebe vote in favor. What result?

E. Indemnification and Interest

Phoebe pays out \$10,000 on a PS debt. What are her rights against RPM?

F. Partners owe strict fiduciary duties to the PS. Partners can't eliminate these duties but may determine the standard to be applied if it's not manifestly unreasonable (??).

1. Duty of care of an ordinarily prudent person in similar circumstances.
2. Duty of loyalty (e.g. can't take advantage of PS opportunity).
3. Duty to exercise good faith.
4. Duty to render full information about the PS on reasonable request.

G. Partners can litigate claims against the PS or other partners during the life of the PS, even if the lawsuit is related to PS affairs.

H. Admission of new partners

Rachel & Monica want to admit Dharma as a partner. Phoebe objects. Result?

If Dharma is admitted, is she liable for debts incurred by RPM before she was admitted?

IV. RELATIONS BETWEEN PARTNERS & THIRD PARTIES

A. APPLY AGENCY PRINCIPLES [partnership is P, partner is A].

1. ACTUAL AUTHORITY may be conferred:
 - a. By PS agreement;
 - b. By a vote of the partners; or
 - c. By statute, which makes every partner an agent of the PS for carrying on its business in the usual way.
2. APPARENT AUTHORITY may be created by:
 - a. A partner's title;
 - b. The way the PS has conducted business in the past; or
 - c. The way similar firms in the area conduct business.

Ally McBeal knows Monica is RPM's managing partner & has signed contracts for RPM before. Rachel

& Phoebe forbid Monica to sign new contracts, but she signs one with Ally anyway. Did Monica have actual authority to bind RPM?

Did Monica have apparent authority to bind RPM?

Yes! Look at it from _____ perspective: She knew Monica was the managing partner & had done this kind of before, so it's reasonable for Ally to think Monica is authorized to do it again.

3. IF NO AUTHORITY, LOOK FOR RATIFICATION OR ADOPTION.
4. Conveyance of real property.

Southfork is PS property. Partner JR conveys Southfork to "W" without authority. Can the PS get the property back from W?

If W had transferred Southfork to Eminem, could the PS get Southfork back from Eminem?

- ***
- B. Liability for PS obligations.
 1. The PS itself is liable.
 2. Liability of the partners: JOINT & SEVERAL [p.21].

RPM breaches its contract with Ally. Can Ally recover her damages from Rachel individually?

Must Ally try to recover from the PS first?

Rachel has the right to be _____ by the PS and the right to _____ from the other partners for their share of the obligation.

- C. Notice to a partner is generally imputed to the PS.

VI. WITHDRAWAL OF A PARTNER (where a partner "bows out")

- ***
- A. An "event of withdrawal" ("w/d") occurs on:
 1. The PS's receipt of notice of a partner's express will to withdraw;
 2. The occurrence of an agreed-upon event (e.g. a partner turns 65);

3. A partner's expulsion, death, bankruptcy, or incapacity;
 4. The appointment of a trustee, receiver, or liquidator for a partner;
 5. The termination of a partner that is a business entity; or
 6. The redemption by the PS of a transferee's interest in the PS.
- B. Effect: PS usually buys out w/d partner for fair value & continues without her.
- C. A withdrawing partner is liable:
1. To existing creditors unless released (expressly or impliedly).
 2. For 2 years to subsequent creditors who reasonably believed she was then a partner & were unaware of the withdrawal.

Six months after Phoebe withdraws, Rachel contracts for RPM with Niles. Is Phoebe liable?

But Phoebe could have protected herself by _____

3. To other partners if her withdrawal was wrongful (breach of PS agreement).

Rachel, Phoebe & Monica agree RPM will last for 2 years. Can Phoebe withdraw after 1 week?

They form RPM to buy land, subdivide it & sell off the lots. Phoebe is declared a bankrupt before the last lot is sold. What result?

This is a PS to accomplish a particular undertaking (it has a _____). Phoebe can withdraw before the undertaking is accomplished, but again, she'll be liable for breach of contract.

What if they form RPM to run a bar? The next day, Phoebe is declared a bankrupt. Result?

This is a PS _____ from which any partner can withdraw at any time without penalty (p.8). Most PSs are "at will" (only a PS for a definite term or a particular undertaking is not).

*** D. A w/d partner may have apparent authority to bind the PS for 1 year after w/d. Four month after withdrawing, Phoebe contracts for RPM with Niles. Niles had dealt with Phoebe before & knew she was a partner, but was unaware of her w/d. Is RPM liable to Niles?

Is there anything RPM could have done to protect itself?

But RPM can seek indemnification from Phoebe because _____

VII. WINDING UP A PARTNERSHIP

- A. Only certain events require a PS to be wound up:

1. Occurrence of an event that makes a PS's business illegal;
2. Sale of substantially all PS assets outside the usual course of business;
3. Entry of a judicial decree requiring winding up of the PS; &
4. End of a definite term, completion of a particular undertaking, or occurrence of a specified event;
5. Unanimous consent in a PS for a definite term, etc.;
6. In a PS at will, agreement of a majority-in-interest of partners who have not assigned their PS interests;
7. In a PS at will, a request to wind up from any partner, unless a majority-in-interest agree to continue.

If Phoebe requests winding up, is that "curtains" for RPM?

A: Not necessarily if it is a partnership at will.

What is Rachel & Monica continue RPM's business without an express agreement?

A: Mere continuation - Facia proof of con...

B. Partners who have not withdrawn can wind up PS affairs.

*** C. A partner may continue to have apparent authority to bind the PS after an event requiring winding up has occurred, even on new business.

Rachel contracts for RPM with Ray Lewis after an event requiring winding up has occurred. The contract is not for winding up. Is RPM liable to Ray on the contract?

So long as Rachel had apparent authority, RPM will be liable to Ray if he did not have notice that winding up had occurred.

If RPM is liable to Ray, will he have any rights against the partners individually?

Yes, Ptrb are J&S liable

Is there anything the PS or the partners could have done to protect themselves?

Notified Ray that event begins winding up occurred.

Does RPM have any rights against Rachel?

Yes. She is liable to RPM as long as she had noticed that winding up event occurred.

D. Distribution of Partnership Assets on Winding Up

RPM has \$100,000 & owes \$30,000 to 'N Sync, a 3d-party creditor. Rachel & Monica each put up \$5,000 capital & Rachel also loaned RPM \$15,000. In winding up RPM, who gets what?

1st: to creditors (including partners who are creditors) **30K to 'N Sync 15k to Rachel**

2nd: to partners for what is in their capital accounts (contributions + profits - losses)

R 5K + profit 1/3
M 5K + profit 1/3
P + profit 1/3

E. Partnership Assets Insufficient to Cover Liabilities

What if RPM had only \$33,000 in assets when it was wound up?

33K split between 'N Sync (22K) & Rachel (11K) pro rata

F. Creditors' rights (not in statute; left to other law, like federal bankruptcy code)

Phoebe & RPM are both insolvent. If Phoebe's separate creditors & RPM's creditors assert claims against PS assets, who has priority?

Partnership CR on PS assets

What if both sets of creditors assert claims against Phoebe's separate property?

Both CR's have equal claims under Bankruptcy code

LIMITED LIABILITY PARTNERSHIPS (LLPs)

I. TORT LIABILITY [p.21]

A. A partner in an LLP is not liable for torts committed by other partners or LLP employees unless he:

1. Was directly involved in the activity,
2. Was supervising the tortfeasor, or
3. Had notice or knowledge of the tort & did nothing to prevent it.

B. A partner is still liable for his own torts, malpractice, etc.

C. The LLP itself is vicariously liable for torts.

Rachel, Phoebe & Monica graduate from law school & form an LLP. Phoebe commits malpractice defending Bill Clinton in a paternity suit. From whom can he recover?

Phoebe? **Yes - liable for own malpractice**

Rachel & Monica? **No, unless supv. Phoebe**

The LLP? **Yes, liable w/Phoebe**

II. CONTRACT LIABILITY [p.21]

- A. A partner in an LLP is not liable on LLP contracts.
- B. The LLP itself is vicariously liable (assuming actual authority or a substitute).

Phoebe, acting with authority, contracts for the LLP with Bill. Who's liable?

Only LLP

III. FORMATION

- A. Must register annually with the Secretary of State & pay annual \$200/partner fee;
- B. Must include the words "Registered Limited Liability Partnership" or the initials "LLP" in its name [to provide notice to 3d parties]; &
- C. Must carry at least \$100,000 in liability insurance or segregate \$100,000 in funds [to protect 3d parties].

LIMITED PARTNERSHIPS (LPs)

I. NATURE AND FORMATION

- A. Definition: a PS having one or more general partners [generally liable for PS debts] & one or more limited partners [liability limited to investment](cf. LLP).
- B. Must file certificate with Secretary of State & pay fee.
- C. Must include the words "limited partnership" or initials "L.P." in its name.
- D. General PS law governs except where L.P. statute is inconsistent.

II. LIABILITY OF LIMITED PARTNERS [p.21]

- *** A. General rule: Liability of limited partner limited to her capital contribution.

Ken Starr forms an L.P. to run a club. Linda Chavez invests \$50,000 as a limited partner. The club flops; all its \$\$ is gone, including Linda's \$50,000. Is Linda personally liable for the L.P.'s debts?

No, liability limited to cap contribution

- B. Exception: Where a limited partner takes part in "control" of the L.P.'s businesses. The statute doesn't say what "control" is, but it does provide certain "safe harbors."

What if, in addition to being a limited partner, Linda was also employed by the L.P. as maitress d'? What if she were also advising the general partner? What if she guaranteed a note for the L.P.?

All OK - W/I safe harbor provision

What if Linda did all these things and more?

Then runs risk of participating in "control"

- C. Scope of Liability for Participating in Control: Reliance Test

Linda signs for a bank loan on the L.P.'s behalf. Her conduct leads the bank to mistakenly believe she's a general partner. Can the bank recover from Linda individually?

Yes. If bank rens believed based on her conduct that she was a GP. - can collect personally

Can other creditors of the L.P. recover from Linda individually?

Only if they also were misled by her conduct - creditor by creditor reliance liability basis

- D. Other Ways a Limited Partner Can Become Liable for L.P. Debts
1. If a limited partner knowingly lets his name be included in the L.P.'s name, he's liable to creditors who didn't know **he was just L.P.**
 2. If a certificate hasn't been filed, a limited partner is jointly & severally liable. But he can avoid future liability by **Filing a certificate or withdrawing from L.P. w/I reasonable time**

III. RIGHTS & OBLIGATIONS OF LIMITED PARTNERS

- A. A promise to contribute must be in writing. If so, it's enforceable by the L.P or a creditor who relied on the promise.
- B. Can withdraw by agreement or by giving 6 month's notice to each general partner.

IV. RIGHTS & OBLIGATIONS OF GENERAL PARTNERS [same as in a general PS]

Ken wants to avoid personal liability. Can he make Newt, who's broke, the sole general partner?

Yes. L.P. not required to have any assets

Can Ken form a corporation & make the corporation the sole general partner?

Yes

Sounds great. So what's the drawback?

Newt or corp will be in control as G.P.

Ken can form a **limited liability ltd partnership** (LLLP) which limits general partners' liability to the same extent as an LLP (so why would you form a regular L.P.?)

V. DISTRIBUTION OF ASSETS ON WINDING UP

The L.P. has \$3 million & owes \$300,000 to 3d party creditors. Limited partners put up \$1 million. Linda, a limited partner, also loaned the L.P. \$500,000. How will the assets be distributed on winding up?

1st: to creditors, including partner creditors **300K to Cr 500K to Linda on loan**

2nd: to partners for capital **1mm each**

3rd: to partners for profits **balance split among partners according to partnership agreement**

LIMITED LIABILITY COMPANIES (LLCs)

I. ADVANTAGES: GET BEST OF BOTH CORPORATE & PARTNERSHIP FORMS

- A. Members get limited liability, like shareholders in a corporation.
- B. Pass-through tax treatment- like a PS, if you just 'check the box.'

II. FORMATION: LIKE A CORPORATION

- A. Must file articles of organization (AO), have registered office, etc.
- B. AO must state duration (perpetual duration allowed).
- C. Name must contain words "limited liability company" or initials "LLC".
- D. Professionals can form LLC ("PLLC"), but all of them must be licensed in Texas.
- E. How can form an LLC with only one member.

III. ASSIGNMENT & ATTACHMENT OF A MEMBER'S INTEREST: LIKE A PS

IV. MANAGEMENT: TOTAL FLEXIBILITY & LIMITED LIABILITY!

- A. Can be structured like a corporation or PS, but managers run LLC unless otherwise provided in AO [note: different from most jurisdictions]. **Default rule**
- B. Members get limited liability for all LLC obligations, except their own torts [p.21].
- C. The LLC itself is vicariously liable on contracts & torts under agency principles.

Rachel, Phoebe & Monica form a PLLC. Phoebe commits malpractice defending yet another paternity suit against Dr. Ross. From whom can he recover?

Phoebe? **Yes, liable for own malpractice**

Rachel & Monica? **No**

The PLLC? **Yes**

Phoebe, acting with authority, contracts for the PLLC with Dr. Ross. Who's liable?

Only PLLC

Net result: **In Texas, LLC, LLP & a corp all offer prop... from partner liability**

Vicarious Liability in Unincorporated Texas Business Associations: A Comparison

Business Form	Vicarious Liability of Partners/Members	Comment
GP	Joint & several	Worst aspect of GP
LLP	None supervising,	Tort: (unless etc.) Safe from most torts
Contract: None	& contracts	LLP

LP

Joint &
several for
general partners

None for limited partners (exc. control)

Tit for
tat for
limited
partners

LLC

None

Like a
corporation

REMEMBER:

- (1) A partner or member is always liable for his or her own malpractice &
- (2) The firm itself is always liable if the act was within the scope of its business.
- (3) Can convert from one form of business associations to another or merge one into another by getting approval of the owners & filing with the Secretary of State.