

San Luis Obispo College of Law
Business Organizations I (Agency and Partnership)

Fall 2025 Exam

Professor: J. Hancox

Instructions:

Answer 3 Essay Questions.

Time Allotted: Three (3) Hours

QUESTION 1

In 2024, Marvin and Lucy started a computer software business. Marvin prepared marketing materials and Lucy made sales calls. During the first year, Lucy sold 10 copies of certain software programs for \$5,000 each. The business had a net profit of \$48,000 and Marvin and Lucy each received \$24,000.

In January 2025, Marvin and Lucy hired an attorney to form a limited partnership under the name "Programs LP". The attorney properly prepared all necessary documents to form the Limited Partnership and Marvin and Lucy both signed. However, the attorney carelessly failed to file the Limited Partnership Formation Documents with the Secretary of State.

Lucy continued to make sales calls to sell the software. She also sold a five-year service contract developed by Marvin. Due to brisk sales, Programs LP projected income of about \$300,000 per year for the next five years from the service contracts alone. Programs LP obtained a \$200,000 business loan from American Business Bank secured by the accounts receivable for the service contracts.

In July 2025, Lucy had an automobile accident, caused solely by her own negligence, on the way to visit a prospective buyer after visiting her mother at the nursing home during her lunch. The accident injured a pedestrian. As a result of the accident, Lucy stopped working and sales collapsed.

In October 2025, Programs LP went out of business, leaving negligible assets and the unpaid loan to American Business Bank.

1. Is Programs LP, Marvin, and/or Lucy liable to the pedestrian for the injury? Discuss.
2. Is Programs LP, Marvin, and/or Lucy liable to American Business Bank for the loan? Discuss.

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Business Organizations (Agency & Partnership)

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Prof. J. Hancox

QUESTION 2

Aaron, Bullock, and Candace are attorneys who formed a law firm called ABC Law. They filed no documents with the Secretary of State or any other state office. They equally share the firm's profits after paying all expenses and make all business and management decisions.

Aaron, Bullock, and Candace agreed to bestow the title "nonequity partner" on senior attorneys even though senior attorneys have no management authority or and cannot sign on behalf of the firm. The firm website and business cards for senior attorneys list their title as "partner."

Marco, a senior attorney, met Nancy at a social function. Nancy told Marco about her business's legal problems. Marco gave Nancy his business card. After looking at the card, Nancy asked Marco if as a "partner" he can agree to the firm handling her legal problems at a reduced hourly rate in return for a promise of future business. Marco was aware that the firm has a strict policy of not reducing hourly rates, but signed a written agreement for it to handle Nancy's legal matters at a reduced hourly rate. Marco signed as follows: Marco, for ABC Law, Partner

1. What type of business entity is the firm using to conduct business? Discuss.
2. Are the senior attorneys employees, partners, and/or agents of the firm? Discuss.
4. Is the firm bound by the agreement that Martha signed with Nancy? Discuss.

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QUESTION 3

Diego, Edgar, and Frank are partners in the DEF law firm, which operates under a general partnership agreement. DEF provides all firm attorneys with cell phones to facilitate prompt attorney-client communications. DEF has a policy that all firm attorneys must carry their work-provided cell phones with them at all times and that all client emails must be responded to immediately, at least with a personal acknowledgment of receipt.

Sully, an attorney well known for her many highly publicized trials, often works closely with DEF, but is not a party to the written DEF partnership agreement. DEF believes that Sully's presence raises the profile and prestige of DEF.

Sully leases an office in the suite of offices used by DEF, for which DEF charges Sully \$8,000 per month. The DEF receptionist greets all clients of DEF and Sully. Sully uses the DEF firm name and telephone number on her letterhead. Sully bills her clients directly for her services. Sully also receives 10% of the annual profits of DEF in recognition of her value to the firm.

After work one day, Diego was driving in heavy traffic to attend a baseball game when he received an urgent email from a DEF client. While briefly stopped in traffic, Diego attempted to answer the email on his work-provided cell phone. Due to this distraction, Diego negligently caused a car accident that was the actual and proximate cause of serious injuries to the other driver, Peeta.

Peeta sued Diego, DEF, Edgar, Frank, and Sully for damages arising from the car accident.

Which of these defendants might reasonably be found liable for damages arising from Peeta's car accident and why? Discuss.

ANSWER OUTLINE
Business Organizations (Agency & Partnership)

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QUESTION 1 – Answer Outline

1. Agents
2. Principals
3. Employees
4. Authority
5. Vicarious Liability
6. Indemnification
7. Ratification
8. Type of entity, partnership, or venture
9. Liability of General Partners

Question 2 – Answer Outline

1. Agents
2. Principals
3. Employees
4. Authority
5. Vicarious Liability
6. Indemnification
7. Ratification
8. Type of entity, partnership, or venture
9. Classification of Senior Attorneys
10. Liability of partners or co-adventurers

Question 3 – Answer Outline

1. Agents
2. Principals
3. Authority
4. Employees
5. Vicarious Liability
6. Indemnification
7. Liability of partners
8. Liability of agents

1)

PROGRAMS LP, MARVIN, AND LUCY'S LIABILITY TO THE PEDESTRIANPARTNERSHIPS

A partnership is the association of two or more persons to carry on as co-owners of a business for profit, regardless of whether they intended to form a partnership. Among the types of partnerships include general partnerships, limited partnerships, and limited liability partnerships.

GENERAL PARTNERSHIPS

A general partnership is the default form of a partnership. There are no formal requirements to form a general partnership; thus, the partnership exists as soon as the parties begin business. In a general partnership, all partners are general partners and they are all jointly and severally liable for partnership debts. In a general partnership, none of the partners have limited liability. A presumption of a general partnership arises by evidence of sharing profits, joint ownership of property, and sharing of control, capital investments, and labor.

LIMITED PARTNERSHIPS

A limited partnership consists of one or more general partners and one or more limited partners carrying on as co-owners of a business for profit. The general partners are jointly and severally liable for partnership debts and have management and control over the day to day operations of the partnership. Limited partners, on the other hand, are only liable to the extent of their investment in the partnership. Limited partners also have no management or control over day to day operations and only participate in voting under extraordinary circumstances. To form a limited partnership, the partners must file a

certificate of limited partnership with the secretary of state that is signed by all GPs and includes the names of all GPs, the name of the limited partnership, identifies the location of the designated office, and identifies the name and address of the agent for service of process. Importantly, parties that intend to form a limited partnership but fail to satisfy all of the formalities will still have formed a general partnership, given that there are no formal requirements.

CLASSIFICATION OF PROGRAMS LP AS A PARTNERSHIP

Here, Programs LP is a general partnership, despite "LP" in its name, because the parties did not satisfy the formalities to form a LP, and they can still classify as a GP since there are no formal requirements. Despite Marvin and Lucy's intent to form a LP, and enlisting the assistance of an attorney, the attorney's failure to file the LP formation documents with the SOS invalidates their attempt to form a LP. Since there are no formal requirements to form a GP other than the association of 2 or more persons carrying on as co-owners of a business for profit, Marvin and Lucy have formed a GP. Further evidence of their establishment of a general partnership is their sharing of profits in 2024, in which they split the profit of \$48K equally, and shared in the labor of the partnership by having established job duties. Thus, Marvin and Lucy are both general partners in the partnership and share the same rights, duties, and liabilities.

PARTNERSHIP'S AND INDIVIDUAL PARTNERSHIP'S LIABILITY FOR TORTS

A partnership is vicariously liable for the torts committed by partners in the ordinary course of partnership business. General partners are jointly and severally liable for partnership debts, which would include any sort of damages judgment or settlement against the partnership. Finally, partners are personally liable for torts that they personally commit in the ordinary course of partnership business. A partner is acting in the ordinary

course of partnership business if the partner was on the job at the time of the incident, is acting with the authority of the partnership, or is acting for the benefit of the partnership. The liability of Programs, Marvin, and Lucy will each be addressed in turn.

LUCY'S LIABILITY

Here, Lucy is personally liable to the pedestrian for damages arising out of the injuries from the car accident because the accident was caused by Lucy's negligence. Lucy is also jointly and severally liable as a general partner because the accident occurred during the course of partnership business when she was on her way to visit a prospective buyer. Lucy was on the job at the time of the accident and was acting for the benefit of the partnership when she negligently struck the pedestrian. Thus, Lucy is both personally liable and jointly and severally liable as a GP.

PROGRAMS' LIABILITY

Here, Programs is vicariously liable to the pedestrian for damages arising out of the injuries from the car accident because the accident was caused by Lucy's negligence during the ordinary course of partnership business when she was on her way to visit a prospective buyer. Lucy was on the job at the time of the accident and was acting for the benefit of the partnership when she negligently struck the pedestrian. Thus, Programs is vicariously liable to the pedestrian for Lucy's conduct.

MARVIN'S LIABILITY

Here, Marvin is jointly and severally liable to the pedestrian for damages arising out of the injuries from the car accident because the accident was caused by fellow general partner Lucy's negligence during the ordinary course of partnership business when she was on her way to visit a prospective buyer. Lucy was on the job at the time of the accident and was

acting for the benefit of the partnership when she negligently struck the pedestrian. Thus, Marvin is jointly and severally liable to the pedestrian for Lucy's conduct.

RIGHTS AND DUTIES OF PARTNERS

The rights of partners include the rights of ownership, use, profits and losses, management and control, indemnification, and transferability. The duties of partners include the duties of care, loyalty, disclosure, accounting, good faith and fair dealing, and obedience. Notable here, the right of indemnification means that although the general partners are jointly and severally liable for the torts caused by the partners, the partners have the right to seek indemnification from the tortfeasor partner. Similarly, the partnership has the right to be indemnified by the tortfeasor partner if the partner caused the accident due to their own negligence or misconduct.

Here, Marvin is jointly and severally liable for the damages to the pedestrian and could be on the hook for the entirety of a damages award, if any. Marvin would have to pay the award in the event that neither Lucy nor the partnership do; however, he then has the right to seek indemnification from Lucy as the partner who is personally liable. Similarly, Programs is vicariously liable to the pedestrian and could end up stuck paying the entirety or some of the damages award, if any, then may seek indemnification from Lucy as the partner that caused the debt due to her own negligence. However, Marvin and Programs would urge that they do not need to indemnify Lucy because she breached her duty of due care while in the ordinary course of partnership business.

TERMINATION OF THE PARTNERSHIP - DISSOLUTION AND WINDING UP

Dissolution of a partnership occurs when the partnership ceases to exist, which triggers the winding up process. A partnership may be dissolved voluntarily by agreement of the

partners, a significant change in circumstances, and other ways that are generally irrelevant here. Upon dissolution, the partners liquidate any remaining assets, satisfy any remaining debts, and can distribute any remaining assets among the partners.

Here, Programs dissolved in October 2025 when it went out of business due to its collapse in sales after Lucy's accident, which constitutes a significant change in circumstances and presumed agreement between the partners to dissolve, although it is unclear how the decision to go out of business was made. If the pedestrian files suit and obtains a settlement or judgment, it would need to be satisfied in the winding up process, and it would need to be taken care of before any remaining assets could be distributed to the partners.

CONCLUSION RE: PROGRAMS LP, MARVIN, AND LUCY'S LIABILITY TO THE PEDESTRIAN

For the foregoing reasons, Lucy is personally liable to the pedestrian and jointly and severally liable in her capacity as a GP, Marvin is jointly and severally as a GP, and Programs is vicariously liable. Despite the dissolution of the partnership, they would be liable to the pedestrian before they can distribute any remaining assets among themselves.

PROGRAMS LP, MARVIN, AND LUCY'S LIABILITY AMERICAN BUSINESS BANK

PARTNERSHIPS

See rules discussed above.

As noted, Marvin and Lucy formed a general partnership and are equal partners in Programs. Thus, Marvin and Lucy both have authority to make decisions on the day to day operations of the partnership. ✓

PARTNERSHIP RIGHTS AND DUTIES

See rules discussed above. ✓

As general partners, Marvin and Lucy have the right to share in the profits and losses of the partnership as well as management and control. Although they have this right under general partnership principles, it is worth noting that Lucy and Marvin generally outlined their respective authority and job duties under the partnership, as Mark was tasked with preparing marketing materials and Lucy made sales calls. These responsibilities do not fully encompass all aspects of the day to day operations of the partnership, so other acts that arise that require authority are likely shared equally between them, discussed further below. ✓

PARTNERSHIP'S LIABILITY FOR CONTRACTS (AUTHORITY)

A partnership is liable for contracts entered into by the partners, and liability follows agency principles. ✓ Thus, to bind a partnership for a contract, the partner who entered into the contract must have been acting with actual authority or apparent authority. ✓

ACTUAL AUTHORITY ✓

Actual express authority is expressly given to the partner by the partnership. ✓ A partner acts with actual implied authority when the partner reasonably believes that the partner has authority to bind the partnership based on necessity, prior dealings, or custom. ✓

APPARENT AUTHORITY ✓

A partner acts with apparent authority when an act, omission, or other conduct by the partnership creates the appearance of authority in the partner and a third party reasonably believes that the partner had authority to transact with them.

Here, Lucy most likely did not have actual express authority, but she did have actual implied and apparent authority to bind Programs and enter into an agreement to obtain a loan from American Business Bank (ABA). Lucy likely did not have actual express authority because the actual express authority she was granted was to make sales calls, and obtaining a business loan is beyond that authority. However, Lucy had actual implied authority because due to high demand and brisk sales, which is within Lucy's wheelhouse, a necessity arose to obtain a business loan to keep up with the flourishing business. As a general partner, Lucy and Marvin had equal management and control over Programs, so either one of them could have entered into the agreement with ABA to obtain the loan. Finally, Lucy acted with apparent authority because her position as a general partner of Programs created a reasonable belief in ABA that Lucy had authority to bind Programs and enter into a loan agreement. Further, the loan was secured by the accounts receivable for the service contracts, which further compelled ABA to enter into the agreement.

Thus, Lucy had authority to bind Programs in the loan agreement, and Programs is liable for Lucy's agreement.

Further, as indicated previously, general partners are jointly and severally liable for partnership debts. Thus, Marvin and Lucy are jointly and severally liable for the debt and may seek indemnification of either of them pay more than their fair share.

RATIFICATION

A principal will be bound by an agent's unauthorized act if the principal subsequently engages in conduct that demonstrates affirmance of the act. Ratification is implied if the

principal has full knowledge of the material facts and accepts, receives, or retains a benefit, remains silent, acquiesces, fails to disaffirm or repudiate, or otherwise demonstrates adoption of the agent's act, which absolves the agent of liability.

Here, in the event that it is determined that Lucy did not have authority to enter into the loan agreement, it may be true that Programs/Marvin ratified Lucy's act of entering the agreement, which would bind Programs/Marvin for the unpaid loan. The facts are not entirely clear as to when the loan was obtained, but it can be inferred that Programs retained the benefit of the loan or at least remained silent and failed to disaffirm Lucy's act of obtaining the loan. Phrased another way, there is no indication that Programs or Marvin took issue with Lucy obtaining the loan until now when the business has collapsed and they do not want to pay the loan.

Thus, it is possible that Programs/Marvin ratified Lucy's act of obtaining the loan, which binds Programs/Marvin for the unpaid loan.

DISSOLUTION AND WINDING UP

See rules above.

As noted, the partnership is liable for pending debts that still need to be satisfied, and those come before any partners can receive any distributions of assets. Thus, Programs, Marvin, and Lucy are liable to ABA for the loan.

CONCLUSION RE: PROGRAMS LP, MARVIN, AND LUCY'S LIABILITY TO AMERICAN BUSINESS BANK

Programs is liable to ABA for the loan, and Marvin and Lucy are jointly and severally liable.

END OF EXAM

2)

ABC LAW AS A BUSINESS ENTITYPARTNERSHIPS

A partnership is the association of two or more persons to carry on as co-owners of a business for profit, regardless of whether they intended to form a partnership. Among the types of partnerships include general partnerships, limited partnerships, and limited liability partnerships.

GENERAL PARTNERSHIPS

A general partnership is the default form of a partnership. There are no formal requirements to form a general partnership; thus, the partnership exists as soon as the parties begin business. In a general partnership, all partners are general partners and they are all jointly and severally liable for partnership debts. In a general partnership, none of the partners have limited liability. A presumption of a general partnership arises by evidence of sharing profits, joint ownership of property, and sharing of control, capital investments, and labor.

Here, ABC Law is a general partnership because they filed no documents with the SOS or any other state office, which is required for the other forms of a partnership. Further evidence of a general partnership is Aaron, Bullock, and Candace's equal sharing of the firm's profits and losses and sharing of control and labor in the day to day operations of the business and management decisions.

Thus, ABC law is a general partnership.

CONCLUSION RE: ABC LAW AS A BUSINESS ENTITY

ABC Law is a general partnership. ✓

SENIOR ATTORNEYS STATUS AS EMPLOYEES, PARTNERS, AND/OR AGENTS OF THE FIRM

GENERAL PARTNERSHIPS

See rules discussed above. ✓

As noted, ABC Law is a general partnership. Notably, the partnership only names Aaron, Bullock, and Candace as the individuals who formed the partnership. Aaron, Bullock, and Candace are the only individuals at ABC Law that share in the profits, losses, and control over the partnership. Thus, they are the only actual partners in the partnership, discussed further below.

RIGHTS AND DUTIES OF PARTNERS

The rights of partners include the rights of ownership, use, profits and losses, management and control, indemnification, and transferability. The duties of partners include the duties of care, loyalty, disclosure, accounting, good faith and fair dealing, and obedience. These are the rights and duties of the partners themselves, and they do not necessarily extend to employees of the partnership who are not general partners.

Here, Aaron, Bullock, and Candace are the partners of ABC Law and share in all of the rights of partners, as well as have the obligation to abide by the prescribed duties of partners. These do not extend to employees, such as senior attorneys, particularly as the senior attorneys circumstances are described. Specifically, despite their title being "non-

equity partner" and their business cards saying "partner," senior attorneys at ABC Law have no management authority, nor can they sign on behalf of the firm. Thus, the senior attorneys are not given all of the rights of partners, including the rights of equal management and control over the business operations.

AGENCY

An agency relationship is a mutually consensual relationship in which one person, the agent, agrees to act on behalf of and subject to the control of another, the principal. An extremely common agency relationship is that of employer/employee.

Here, an agency relationship is established as employer/employee between ABC Law and the senior attorneys because the attorneys and the firm are in a mutually consensual relationship to work as attorneys on behalf of ABC Law and subject to its control. While the specific job duties of the attorneys are not provided, specific restrictions of their job duties are given, including their lack of management authority and inability to sign on behalf of the firm, which are general obligations of a principal in an agency relationship.

Thus, an agency relationship is established between ABC Law and the senior attorneys in the form of an employer/employee relationship.

CONCLUSION RE: SENIOR ATTORNEYS'S STATUS AS EMPLOYEES, PARTNERS, AND/OR AGENTS OF THE FIRM

For the foregoing reasons, the senior attorneys are both employees and agents of ABC Law, but they are not partners.

MARCO'S AGREEMENT WITH NANCY

PARTNERSHIPS

See rules discussed above.

As noted, ABC Law is a general partnership. Thus, the partners and the partnership itself are exposed to liability. The partnership is liable for partnership debts, including those entered into on behalf of the partnership, and the general partners are jointly and severally liable for partnership debts.

PARTNERSHIP'S LIABILITY FOR CONTRACTS (AUTHORITY)

A partnership is liable for contracts entered into by the partners, and liability follows agency principles. Thus, to bind a partnership for a contract, the partner who entered into the contract must have been acting with actual authority or apparent authority.

ACTUAL AUTHORITY

Actual express authority is expressly given to the partner by the partnership. A partner acts with actual implied authority when the partner reasonably believes that the partner has authority to bind the partnership based on necessity, prior dealings, or custom.

Here, Marco did not act with actual express or implied authority because as a senior attorney, he had no management authority and could not sign on behalf of the firm. Because he has specifically prescribed restrictions on his authority, including the inability to sign on behalf of the firm, authority does not arise expressly nor impliedly, since Marco's belief of authority to bind ABC Law was unreasonable. There was no necessity in which Marco could bind ABC Law, and there is no indication that any prior dealings or custom would have created a reasonable belief of implied authority in Marco by ABC Law.

APPARENT AUTHORITY

A partner acts with apparent authority when an act, omission, or other conduct by the partnership creates the appearance of authority in the partner and a third party reasonably believes that the partner had authority to transact with them. Specifically in partnerships, the appearance of authority may also arise if the partnership holds someone out to be a partner.

Here, Marco acted with apparent authority because ABC Law's act of giving Marco the title of "non-equity partner" and listing him as a "partner" on their website and business cards holds Marco out as a partner that has authority to bind ABC Law. Further, and importantly, this act by ABC Law created a reasonable belief in Nancy that Marco had authority to sign a written agreement as a partner on the firm's behalf. Nancy's belief was reasonable for the foregoing reasons, but also because she specifically asked him if he could enter the agreement as a partner, and he said yes. In sum, there was no reason for Nancy to believe that Marco did NOT have authority.

Thus, Marco had apparent authority to act on behalf of ABC Law, which binds ABC Law to the agreement with Nancy.

ESTOPPEL AND THE OSTENSIBLE AGENT

A principal may be bound by the doctrine of estoppel if a third party reasonably believes that an ostensible agent had apparent authority to bind the principal, and the third party detrimentally relies upon that promise. Estoppel requires a justifiable reliance upon the authority and a detrimental change in position.

Here, the facts do not indicate a detrimental change in position by Nancy, but her reliance upon the agreement was justifiable.

RATIFICATION

A principal will be bound by an agent's unauthorized act if the principal subsequently engages in conduct that demonstrates affirmance of the act. Ratification is implied if the principal has full knowledge of the material facts and accepts, receives, or retains a benefit, remains silent, acquiesces, fails to disaffirm or repudiate, or otherwise demonstrates adoption of the agent's act, which absolves the agent of liability.

Here, in the event that it is determined that Marco did not have authority to enter into the agreement with Nancy, it may be true that ABC Law ratified Marco's act of entering the agreement, which would bind ABC Law to the agreement that Marco signed with Nancy. Ratification requires a SUBSEQUENT act or omission by the principal that demonstrates affirmance, and the facts do not include any of the parties' conduct after Marco signed the agreement. Thus, ABC's acts of giving Marco business cards that say he is a partner and listing him as such on their website likely would not apply retroactively to ratify Marco's act. However, any subsequent conduct would constitute ratification by way of remaining silent and acquiescing, including if ABC allowed Marco to keep his business cards with the "partner" title or if they maintained his title as "non-equity partner" on the firm's website. Further, if ABC did any work for Nancy pursuant to the agreement, it would ratify Marco's act, especially because ABC would retain a benefit because Nancy promised to give ABC future business in exchange for the reduced hourly rate.

Thus, it is possible that ABC ratified Marco's act of signing the agreement, which would bind ABC.

DUTIES OF AGENT TO PRINCIPAL

The duties of the agent to the principal include the fiduciary duties of care, loyalty, disclosure, accounting, indemnification, and good conduct/to obey.

Here, as an employee of ABC Law, Marco was their agent and breached his duties to act with due care under a reasonable prudent person standard or with the ordinary skill by a person in the same profession, as well as the duty of good conduct/obedience, by entering into an agreement for which he knew he did not have authority. Further, ABC Law would argue that by breaching his duties, he also triggered his duty to indemnify and must indemnify ABC Law for the losses and expenditures caused by entering into the agreement without authority.

CONCLUSION RE: MARCO'S AGREEMENT WITH NANCY

The firm is bound by the agreement that Marco signed with Nancy because Marco acted with apparent authority.

END OF EXAM

3)

DEF LAW FIRM AS A BUSINESS ENTITY AND SULLY'S INVOLVEMENTPARTNERSHIPS

A partnership is the association of two or more persons to carry on as co-owners of a business for profit, regardless of whether they intended to form a partnership. Among the types of partnerships include general partnerships, limited partnerships, and limited liability partnerships.

GENERAL PARTNERSHIPS

A general partnership is the default form of a partnership. There are no formal requirements to form a general partnership; thus, the partnership exists as soon as the parties begin business. In a general partnership, all partners are general partners and they are all jointly and severally liable for partnership debts. In a general partnership, none of the partners have limited liability. A presumption of a general partnership arises by evidence of sharing profits, joint ownership of property, and sharing of control, capital investments, and labor. Further, holding an individual out as a partner creates a rebuttable presumption that that person is a partner.

Here, it is expressly stated that DEF operates under a GP agreement. Thus, Diego, Edgar and Frank are general partners and share equal management, control, and rights under the partnership.

Further, although she was not initially a member of the partnership, the law recognizes Sully as a general partner in DEF because Sully shares in the profits of DEF and DEF holds her out as a partner of DEF. Specifically, her collection of 10% of the annual profits of DEF in recognition of her value to the firm establishes profit sharing, which

creates a presumption of a GP. Further, "her value to the firm" and the fact that her presence "raises the profile and prestige of DEF" demonstrates such a significant contribution of labor that rises to the level of the partners wanting to share profits, which is certainly more than any other employee. Also, DEF held Sully out as a partner because DEF's receptionist treated DEF clients and Sully clients as if they are one in the same, which creates the appearance of Sully being a partner in DEF. Most importantly, Sully used the DEF firm name and phone number on her letterhead, which clearly shows that Sully was held out as a partner of DEF.

Sully would disagree and highlight that Sully paid substantial rent in the amount of \$8K per month, which Sully would not have to do if Sully were a partner in DEF. Sully would further highlight that Sully bills her clients directly for her services, which she would not have to do if she was a partner with DEF, and her clients knowingly pay HER and not DEF. Phrased another way, Sully would urge that she is not held out as a partner of DEF because her clients do not pay DEF for her services, her clients know she is not a partner with DEF, and she is not held out to be a partner of DEF because she pays rent for her office space, which just so happens to be a suite in the same offices as DEF.

While there is some merit to Sully's arguments, it is substantially outweighed by the mountain of evidence in favor of Sully being a partner in DEF.

Thus, Sully is a general partner in DEF, alongside Diego, Edgar, and Frank.

Now that it is established that DEF is a general partnership and Diego, Edgar, Frank, and Sully are all general partners, and each party's liability is addressed below in turn.

LIABILITY OF DIEGO

A partner is personally liable for any torts that they cause.

Here, Diego is personally liable for damages arising from Peeta's car accident because he was the person who committed the tort that caused the harm. The facts indicate that the accident was caused due to Diego's distraction and negligence. Thus, he caused the accident and is personally liable to Peeta.

As will be discussed more below, Diego is also jointly and severally liable in his capacity as a general partner.

LIABILITY OF THE GENERAL PARTNERS DIEGO, EDGAR, FRANK, AND SULLY

General partners are jointly and severally liable for partnership debts and torts committed by partners in the ordinary course of partnership business. A partner is acting in the course and scope of partnership business if they were on the job at the time of the accident and were engaging in the work that they were hired to perform, they were acting with the authority of the partnership, or they were acting for the benefit of the partnership. An exception applies if the partner made a major deviation from the scope of employment and was engaged in a "frolic" which would absolve the general partners of liability.

Here, Diego, Edgar, Frank, and Sully are jointly and severally liable because Diego caused a tort in the ordinary course of partnership business. Diego was in the ordinary course of partnership business because he was responding to an urgent client email on his work-provided cell phone, per DEF's policy that all attorneys must carry their work phone with them at all times and respond to client emails immediately, even if it's just sending a personal acknowledgment of receipt.

DEF and the general partners would disagree and note that Diego was not in the ordinary course of partnership business because he was driving to attend a baseball game at the

time of the accident, which constitutes a frolic clearly outside of the ordinary course and scope of partnership business.

Their argument is not persuasive because the policies surrounding work phones is absolute in nature and states that employees must carry their work provided phone with them "at all times" and that all clients must be responded to "immediately." If the policy stated something to the effect of "during work hours" instead of "at all times" and "immediately," they would likely prevail in their assertion that Diego was acting outside the ordinary course of partnership business. However, the clear language of the policy allows a strong inference that Diego was obligated to provide a response to the urgent client email immediately, and this obligation is what created the distraction that caused the accident.

Thus, the general partners Diego, Edgar, Frank, and Sully are all jointly and severally liable for Peeta's damages.

LIABILITY OF DEF

A partnership may be vicariously liable for the conduct of its partners during the ordinary course of partnership business. A partnership may also be directly liable for actions arising from their own conduct, such as negligent hiring, training, or supervision.

DEF is vicariously liable for Diego's conduct because Diego was acting in the ordinary course of partnership business, discussed at length above. Further, DEF may be directly liable if the trier of facts finds that DEF's policy mandating "immediate" responses to urgent client emails "at all times" constitutes negligent training or supervision. Specifically, the trier of fact may find that instituting the policy and making employees abide by it at all times, regardless of whether it is during work hours, constitutes negligent training because it is reasonably foreseeable that such a strict policy would lead to distractions that can

cause accidents such as the one that happened to Peeta. Additionally, or alternatively, the trier of fact may find that if DEF did not truly intend for the policy to apply "at all times" and "immediate" could extend to perhaps a few minutes later or the next business day, DEF negligently trained their employees on the policy because it led to the belief that they must respond even when they are driving outside of the office not for a work purpose. For similar reasons, DEF may be held directly liable for negligent supervision if the trier of fact finds it problematic that DEF implemented an ambiguous policy surrounding cell phones and failed to supervise employees to make sure that they were being used appropriately and not in a way that would cause foreseeable harm, such as getting distracted by the phone while driving. In sum, DEF may face direct liability in addition to the vicarious liability on behalf of Diego.

RIGHTS AND DUTIES OF PARTNERS

The rights of partners include the rights of ownership, use, profits and losses, management and control, indemnification, and transferability. The duties of partners include the duties of care, loyalty, disclosure, accounting, good faith and fair dealing, and obedience. Notable here, the right of indemnification means that although the general partners are jointly and severally liable for the torts caused by the partners, the partners have the right to seek indemnification from the tortfeasor partner. Similarly, the partnership has the right to be indemnified by the tortfeasor partner if the partner caused the accident due to their own negligence or misconduct.

Here, Edgar, Frank, Sully, and DEF would urge that their rights to indemnification are implicated. Edgar, Frank, and Sully are jointly and severally liable for the damages to Peeta and could be on the hook for the entirety of a damages award, if any. Edgar, Frank, and Sully would have to pay the award in the event that neither Diego nor DEF do. However, Edgar, Frank, and Sully would have the right to seek indemnification from Diego and/or DEF. Similarly, DEF is vicariously liable to Peeta and could end up stuck paying the

entirety of some of the damages award, if any, then may seek indemnification from Diego as the partner that caused the debt due to his own negligence.

Edgar, Frank, Sully, and DEF would urge that Diego breached his duty of due care because he failed to act as a reasonable prudent person would/up to the level of skill as a person in a similar profession would because he negligently used his phone outside of the workplace that created a distraction and resulted in harm to Peeta. They would urge that because of this, Diego is not entitled to indemnification as a GP.

CONCLUSION RE: LIABILITY FOR PEETA'S DAMAGES

For the foregoing reasons, Diego is personally liable to the pedestrian and jointly and severally liable in his capacity as a GP. Edgar, Frank, and Sully are jointly and severally as GPs. DEF is vicariously liable for Diego's conduct, and may also be directly liable for negligent training and/or supervision.

END OF EXAM