

San Luis Obispo College of Law

Business Organizations I (Agency and Partnership)

Fall 2024 Exam

Professor: K. Gottlieb

Instructions:

Answer 3 Essay Questions.

Time Allotted: Three (3) Hours

SLO

Business Organizations (Agency & Partnership)

Fall 2024

Prof. Gottlieb

Exam 1

Andrew, Bob, and Christine are attorneys who formed a law firm. 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.

Associate attorneys are paid a fixed salary, plus 25% of gross billings for any clients they bring to the firm. Senior attorneys are paid based upon the number of hours they bill plus an annual bonus if they bill more than 2,000 hours in a year. The senior attorney bonus pool is equal to 5% of firm profits, which is split equally by the number of qualifying senior attorneys each year. Andrew, Bob, and Christine agreed to bestow the title "non-equity partner" on senior attorneys even though senior attorneys have no management authority.

The firm website and business cards for senior attorneys list their title as "partner." Martha, a senior attorney, met Nancy at a social function. Nancy told Martha about her business's legal problems. Martha gave Nancy her business card. After looking at the card, Nancy asked Martha if as a "partner" she can agree to the firm handling her legal problems at a reduced hourly rate in return for a promise of future business. Martha 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.

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

SLO

Business Organizations (Agency & Partnership)

Fall 2024

Prof. Gottlieb

Exam 2

Amy, Bob and Carl are partners in the ABC law firm, which operates under a general partnership agreement. ABC provides all firm attorneys with cell phones to facilitate prompt attorney-client communications. ABC 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.

Sam, an attorney well known for his many highly publicized trials, often works closely with ABC, but is not a party to the written ABC partnership agreement. ABC believes that Sam's presence raises the profile and prestige of ABC. Sam leases an office in the suite of offices used by ABC, for which ABC charges Sam \$3,000 per month. The ABC receptionist greets all clients of ABC and Sam. Sam uses the ABC firm name and telephone number on his letterhead. Sam bills his clients directly for his services. Sam also receives 10% of the annual profits of ABC in recognition of his value to the firm.

After work one day, Amy was driving in heavy traffic to attend a baseball game when she received an urgent email from an ABC client. While briefly stopped in traffic, Amy attempted to answer the email on her work-provided cell phone. Due to this distraction, Amy negligently caused a car accident that was the actual and proximate cause of serious injuries to the other driver, Priya. Priya sued Amy, ABC, Bob, Carl, and Sam for damages arising from the car accident. Which of these defendants might reasonably be found liable for damages arising from Priya's car accident and why? Discuss.

SLO

Business Organizations (Agency & Partnership)

Fall 2024

Prof. Gottlieb

Exam 3

Marsha drove a truck, made routine deliveries, and undertook other driving responsibilities for Sunshine Farms. She was responsible for maintaining her own operator casualty insurance, paying for any traffic tickets she might receive while operating a Farms vehicle, and being available "on call" for driving assignments, both on weekdays and weekends. When "on call," Marsha had the right to refuse any Farms assignment and to drive for other companies, which she did on occasion.

One weekend, Marsha was called by Farms to drive to Sacramento. She agreed to the assignment. Marsha's instructions were "to proceed north from Bakersfield by way of Fresno where she was to remain overnight." Also, she was specifically told not to smoke while in the Farms' truck. The next day, instead of proceeding directly north from Fresno to Sacramento as instructed, Marsha first drove an hour east into the foothills where she conducted some personal business. From there, she returned to the Highway and proceeded north toward Sacramento. Before arriving in Sacramento, Marsha stopped at a gas station to fill the truck with gasoline and get a pack of cigarettes. She purchased the cigarettes and was smoking one while standing in the parking lot of the station. Before returning to the truck, she attempted to extinguish the lit cigarette against the side of a large steel container. Unfortunately, the container held a flammable liquid and ignited, causing a fire and serious damage to the property.

[Geographical Note: Bakersfield, Fresno, and Sacramento are arranged in a roughly north-south line through California's Central Valley. Bakersfield is the southernmost of the three, Fresno is about 100 miles north of Bakersfield in the middle, and Sacramento (the state capital) is about 170 miles further north of Fresno]

QUESTION: Assuming that Marsha was negligent in extinguishing her cigarette, discuss whether Farms may be vicariously liable for the resultant damage to the gas station.

ANSWER OUTLINE

SLO

Business Organizations (Agency & Partnership)

Fall 2024

Prof. Gottlieb

Model Answer -Question 1

1. TYPE OF BUSINESS ENTITY

Issue: What type of business entity is formed when attorneys practice law together without filing any formal documents?

Rule:

- A general partnership is formed when two or more persons carry on a business for profit, regardless of their intent to form a partnership
- No formal filing is required to create a general partnership
- Partners share profits, losses, and management equally by default
- Partners have equal rights in management unless otherwise agreed

Analysis:

- Andrew, Bob, and Christine practice law together
- They share profits equally
- They share management decisions
- They filed no formal documents
- They engage in business for profit
- All elements of a general partnership are present

Conclusion: The firm is operating as a general partnership.

2. STATUS OF ASSOCIATE ATTORNEYS

Issue: What is the legal status of associate attorneys who receive fixed salary plus commission?

Rule:

- Employees receive compensation for services, typically salary
- Partners share in profits and have management rights
- Key factors distinguishing employees: fixed compensation, lack of management rights, supervision by others
- Commission arrangements don't automatically create partnership status

Analysis:

- Associates receive fixed salary
- 25% commission on clients they bring in is compensation for service

- No indication they share in losses
- No management authority
- Typical employee relationship structure

Conclusion: Associate attorneys are employees, not partners, members, or shareholders.

3. STATUS OF SENIOR ATTORNEYS

Issue: What is the legal status of senior attorneys labeled as "non-equity partners"?

Rule:

- Mere title of "partner" doesn't create partnership status
- True partnership requires profit sharing and management rights
- Courts look to substance over form in determining relationship
- Compensation based on performance/hours doesn't create partnership

Analysis:

- Senior attorneys paid based on hours billed
- Bonus pool is compensation, not true profit sharing
- No management authority despite "partner" title
- Title is explicitly "non-equity partner"
- Substance of relationship is employment

Conclusion: Senior attorneys are employees despite the "partner" title.

4. BINDING NATURE OF MARTHA'S AGREEMENT

Issue: Whether Martha's fee agreement with Nancy binds the firm under apparent authority principles?

Rule:

- Apparent authority exists when:
 - Principal (firm) creates reasonable belief in third party that agent has authority
 - Third party reasonably relies on that belief
- Partners have apparent authority to bind partnership in ordinary business
- Firm may be liable for representations it allows about partner status

Analysis:

- Firm allowed Martha to use "partner" title on business cards
- Firm created appearance of partnership status to public
- Nancy reasonably relied on Martha's apparent authority as "partner"
- Fee agreements are ordinary business for law firm
- Martha exceeded actual authority but had apparent authority
- Nancy's reliance on partner status was reasonable

Conclusion: The firm is likely bound by Martha's agreement with Nancy despite Martha's lack of actual authority, because the firm created apparent authority by allowing her to use the partner title.

Model Answer-Question 2

PARTNERSHIP OBLIGATIONS AND LIABILITY ANALYSIS

1. PARTNERSHIP OBLIGATION

Issue: Whether Amy's negligent conduct creates a partnership obligation under California partnership law.

Rule: Under Corporations Code §16305(a), a partnership is liable for loss or injury caused by a partner's wrongful act or omission in the ordinary course of business. Each partner acts as an agent of the partnership when conducting partnership business per §16301(1).

Analysis: Amy was following firm policy requiring immediate client communication when the accident occurred. Although she was driving to a baseball game, her attempt to handle client matters constituted partnership business. The accident occurred directly from this partnership function, bringing her conduct within §16305(a).

Conclusion: The accident creates a partnership obligation because Amy was acting in the ordinary course of partnership business.

2. PARTNER LIABILITY

Issue: Whether partners Bob and Carl are personally liable for Amy's negligent conduct.

Rule: Under Corporations Code §16306(a), partners are jointly and severally liable for partnership obligations, which include liabilities arising under §16305.

Analysis: ABC operates as a general partnership and has not registered as a limited liability partnership. Since the accident created a partnership obligation and both Bob and Carl were partners when it occurred, §16306(a) imposes joint and several liability on them.

Conclusion: Bob and Carl are jointly and severally liable for damages from Amy's accident.

3. SAM'S STATUS

Issue: Whether Sam's relationship with ABC creates partner status or partner by estoppel liability.

Rule: Under Corporations Code §16202(c), profit-sharing creates a presumption of partnership, except when profits are received as payment for services or rent. Under §16308, partnership by estoppel arises when a person represents themselves as a partner or consents to another's representation, and a third party relies on this representation to their detriment. The representation can be made by explicit statements or conduct that would lead a reasonable person to believe a partnership exists.

Analysis: Sam's arrangement has partnership indicators: he receives 10% of profits, uses the firm name and telephone number on letterhead, and shares reception services. However, he maintains independence by

paying rent, billing separately, and operating outside the partnership agreement. For partnership by estoppel, the shared reception services and letterhead use could create an appearance of partnership to clients. However, the facts don't indicate whether any clients actually relied on this appearance or whether ABC explicitly represented Sam as a partner.

Conclusion: Sam's liability is uncertain. While his profit-sharing likely falls within §16202(c) exceptions, the shared facilities and letterhead might create partnership by estoppel if evidence shows clients relied on these representations. A court would need to examine specific client interactions and representations to determine if estoppel applies.

Model Answer - Question 3

Primary Issue

Whether Sunshine (Farms is vicariously liable under respondeat superior for Marsha's negligent act at the gas station.

Rule

Under agency law principles, an employer is vicariously liable for torts committed by employees acting within the scope of employment. This requires:

1. Employment relationship exists
2. Employee acted within scope of employment
3. Tortious conduct occurred during scope

Analysis

This requires analysis of two sub-issues:

Sub-Issue 1: Employment Status

Rule

Employment status depends on employer's right to control manner and means of work.

Analysis

Factors supporting employment:

- Farms controlled routes
- Farms owned truck
- Farms gave specific conduct rules
- Driving was core business function

Factors against employment:

- Own insurance
- Right to refuse work
- Could work for others
- Paid own tickets

Conclusion

Despite some independent contractor factors, Marsha was an employee due to Farms' significant control over her work.

Sub-Issue 2: Scope of Employment

Rule

Employee acts within scope if:

- Conduct is required by or incidental to duties
- Conduct is reasonably foreseeable
- Personal deviations have ended
- Conduct at least partially serves employer

Analysis

Three key elements require examination:

1. Sacramento Deviation
 - Initially outside scope during personal business
 - Re-entered scope upon resuming direct route
 - Gas stop occurred after return to route
2. Gas Station Stop
 - Necessary for delivery
 - On authorized route
 - Incidental to duties
 - Served business purpose
3. Smoking Violation
 - Explicitly prohibited, but only in the truck
 - Personal gratification, not furthering business purposes
 - But occurred during necessary business stop and outside the truck
 - Even if considered a rule violation it doesn't remove her activities from scope if conducting authorized activity

Overall Conclusion

Farms is likely vicariously liable because:

1. Marsha was an employee despite some contrary factors
2. She had re-entered scope after deviation
3. The negligent act occurred during necessary business activity
4. The smoking prohibition alone doesn't override the business nature of the stop
5. The primary activity (refueling) served employer's interests

The authorized nature of the stop and its business purpose outweigh the prohibited smoking. When employees combine authorized activities with prohibited conduct, employers remain liable if the negligence occurs during necessary business operations.

1)

1. Type of Business Entity

Have Andrew, Bob and Christine formed a partnership?

General Partnership

A general partnership (GP) is formed when two or more persons agree to carry on as co-owners a business for profit, whether or not they intend to form a partnership. No formalities such as state filing or a partnership are required. All partners are agents of the partnership for the purposes of carrying out the business of the partnership and have equal management and control.

Here, Andrew (A), Bob (B), and Christine (C) formed a law firm together where they share the profits equally and make all business and management decisions. They did not file anything with the Secretary of State. By starting the business together, sharing management and sharing profits, A,B, and C have formed a general partnership.

2. Status of Associate Attorneys

Are associate attorneys partners or employees?

Partners do not receive a salary for partnership business.

Associate attorneys at the firm are paid a fixed salary plus 25% of gross billing for any clients they bring in. Partners don't usually collect a salary, so that is the first factor that leads to the presumption that associate attorneys are employees. There don't appear to be any other aspects of their employment that would categorize them as anything but an employee.

3. Status of Senior Attorneys

Are the senior non-equity partners actually partners?

Limited Partnership

Limited Partnerships (LP) are formed with at least one general partner and at least one limited partner and create a two-tiered structure with differing rights, duties, and liabilities. In order to form a LP, documents must be filed with the Secretary of State. Limited partners are not liable for the debts and liabilities of the partnership beyond their capital investment and have no management rights, and do not owe fiduciary duties to the partnership.

Eventually, A, B, and C give the title of non-equity partner to certain senior attorneys in their firm. These attorneys have no management authority but they do share in profits, but only to a small extent (sharing 5% between them), not equally with the other partners. It is possible that A, B, and C were attempting to change their GP into an LP, but without filing with the SOS, they will remain a GP. Most likely, the founding partners were not trying to change the type of business entity they had created, but might have accidentally done so.

However, calling the senior attorneys partners might create liabilities for both the firm and the senior attorneys with the partner title.

Purported Partners

A purported partner is not an actual partner, but actions by the partnership and the purported partner may cause third parties to rely on the belief that they are actual partners.

Here, A, B, and C have bestowed the title of non-equity partner or some senior associates and have given them business cards with the title of partner. As discussed in the scenario below with Martha and Nancy, this may cause liabilities for the firm and the individual.

It appears that the senior associate non-equity partners are not actual partners, but some may be purported partners as well as being employees.

4. Agreement between Martha and Nancy

Is the partnership liable for Martha's contract?

The principal will be bound by a contract entered into by an agent if the agent has actual or ostensible authority.

Authority

Actual authority

Actual authority may be express or implied. Express authority is created when authority is expressly given, either in writing or orally, to the agent. Implied authority is created when the agent believe they have the authority to act because it's necessary to carry out their duties, it's common for someone in their position to have the authority to act, or they have acted in a similar manner in the past with the principals knowledge.

Martha (M) did not have express authority because no one in the firm told her that she could agree to reduced rates. In fact, Martha expressly knew that the firm had a strict policy against such an act. Neither did Martha have implied authority because she had no reason to believe that she needed to sign the contract as part of her duties as a senior attorney, she had not done it before, and it was not common for a senior attorney in her firm to do so.

M may argue that she thought she had the authority because "partners" have management rights, but nothing else in the relationship between M and the firm could reasonably be construed that way.

Ostensible Authority

Ostensible authority creates the appearance of authority and exists where the principal has held out the agent as having authority to act on their behalf and a third party reasonably relies on the agent having that authority.

Here, M was given a business card by the firm with the title of partner. This is a manifestation by the principal, which in this case is the firm, that M has the authority of a partner. Nancy (N) was reasonable in her reliance on Martha's authority, because she had no reason not to think N wasn't actually a partner. When someone gives you a business card at a social function, it's not usual behavior to follow up to make sure it wasn't a fraudulent card, or to find out whether a law firm is confused by the meaning of the word "partner."

Because M had ostensible authority, the written agreement she signed with N is valid and the firm will be liable for the contract.

Does the firm have recourse against M?

ID:

Exam Name: BusLaw-SLO-F24-Gottlieb-OS

Agents have a duty to indemnify the principal for intentional bad acts.

Because M knew that she did not have actual authority, the firm may seek to have her indemnify them. They could potentially take the loss from the reduced hourly rate out of M's pay or bonus.

END OF EXAM

2)

PARTNERSHIP LIABILITY: TORTS

In a general partnership, the partnership itself as well as all general partners are joint and severally liable for any torts committed within the authority of the partnership. A partnership can only act through its agents and each member is an agent of the partnership. They have equal management and control. Ordinary partnership decisions require a majority vote, extraordinary partnership decisions require a unanimous vote. Partnership liability for torts follows agency principals of authority: actual (express/implied) and ostensible authority. The partnership will be liable where the partner had the authority to act.

ACTUAL EXPRESS AUTHORITY

A partner has actual express authority when the partner has a vote of the partnership to do something or if in the partnership agreement.

Here, Amy (A) is a general partner at a law firm. There was a firm policy that required all attorney carry their company issued phones on them at all times and required that client emails get responded to immediately. There are no facts to indicate a specific vote by the partners however having company policies are critical to the functioning of a business. It is likely that this policy was voted on unanimously by all partners. When A answered this email she was specifically acting under the authority of the partnership because she was doing what the written and voted on policy required. The firm will argue that A did not have express authority because she was driving. And texting and driving violates the law and the law firm would never implement a policy that required attorneys to break the law. The firm will argue that when Amy broke the law she was acting outside the authority of the partnership.

ACTUAL IMPLIED AUTHORITY

A partner has implied authority when he reasonably believes he had the authority to act on behalf of the partnership for necessity, prior dealings, or customs.

Here, A will argue that she was acting under implied actual authority because she felt she must respond to the email out of necessity because it was an urgent client email. She may have felt that the customs of the firm was to at least acknowledge the email through voice commands to prove the requisite acknowledgement as per the firm policy.

There is a strong likelihood that a court will find A had both actual express and implied authority when she negligently caused the car accident.

OSTENSIBLE AUTHORITY

A partnership will be liable when it has given the appearance that a partner has authority (cloaked the partner in authority) and a third party reasonably relies on that appearance of authority.

There are no facts to suggest this type of authority is implicated.

CONCLUSION: The court will likely find that Amy was acting with partnership authority when she caused the accident.

WHO IS LIABLE FOR DAMAGES?

JOINT AND SEVERAL LIABILITY

In a general partnership, the partnership itself as well as all general partners are joint and severally liable for any torts committed within the authority of the partnership. Partners

are joint and severally liable for torts. However, the partnership or each individual partner may seek indemnification.

Here, Amy caused the accident and was acting within the scope of partnership authority when it happened. Plaintiff has sued ABC partnership and all of the partners A, B, C, individually. The partnership and the general partners personally will be held liable for the full amount of the damages awarded to the plaintiff.

INDEMNIFICATION:

Indemnification is when a first party's actions cause a second party to incur liability. The second party can sue for indemnification, to be held harmless for the damages caused by the first party.

Here, the partners might try to seek indemnification from Amy because she was on her phone while driving, whether or not it was illegal, they will argue it was reckless and that her recklessness was outside the authority of the firm and they should be held harmless for Amy's negligent actions.

SAM:

Sam is not a partner of the firm. Sam has contract dealings with the firm and the firm shares some profits with him but he has no control over the operations and management of the firm. He has the appearance of a limited partner because he shares an office space and receptionist, which is likely why Plaintiff included him in the suit. But he is not a partner and rents that space. The facts explicitly state that Amy Bob and Carl are the partners of a *general* partnership. Thus, Carl cannot be a partner.

CONCLUSION: ABC firm is joint and severally liable with Amy, Bob, and Carl as general partners, personally liable. Bob and Carl can seek indemnification for Amy's

ID:

Exam Name: BusLaw-SLO-F24-Gottlieb-OS

conduct that cost the firm and the partners personally in damages. Sam is not a partner and will not be liable for the actions of Amy that caused damages.

END OF EXAM

3)

1. Marsha's Status

In order to determine whether Sunshine Farms ("Farms") may be vicariously liable for Marsha's tortious conduct, the nature of the relationship between Farms and Marsha must be established.

Here, the facts state that Marsha drove a truck, made routine deliveries, and undertook other driving responsibilities for Farms. She maintained her own insurance, paid for any tickets she might receive while operating a Farms vehicle and was available on call for assignments. When she was on call, Marsha had the right to refuse any Farms assignment and to drive for other companies, which she did on occasion.

Based on these facts, Marsha would likely be considered an independent contractor because she maintained her own insurance, paid for any tickets she may receive, worked on an on call basis, and had the right to refuse assignments which means that although she worked for Farms benefit and with their assent, they did not control when or how she worked.

2. Farms' Liability

Generally, a principal is only liable for the tortious conduct of an independent contractor when the conduct was committed in the normal course of business.

Here, Marsha accepted an assignment from Farms to drive to Sacramento. Specifically, she was to proceed North from Bakersfield by way of Fresno where she was to remain overnight. She was also specifically told not to smoke while in the Farms truck. The next day, instead of proceeding directly to her prescribed route, she drove an hour East into the foothills and conducted some personal business. When she got back on the

highway to head North towards Sacramento (the route she was supposed to be on), she stopped for gas to fill the truck and buy a pack of cigarettes. She smoked a cigarette in the parking lot of the gas station, and before getting back in the truck, she attempted to put it out against the side of a steel container. The container held flammable liquid and ignited, causing serious damage to the gas station property.

Based on these facts, Masha took a frolic (as opposed to a detour which would be shorter, like stopping for breakfast or turning back because she forgot something at the gas station) when she drove an hour off of her prescribed route to conduct personal business. It is likely that Marsha's frolic was at least contributing factor to her need to stop and fill the Farm truck's gas tank, so stopping at the gas station could be considered part of the frolic even if the gas station was on her prescribed route. Smoking itself is also not within the regular scope of Marsha's duties as a driver. These facts combined with her status as an independent contractor make it unlikely that Sunshine Farms would be held vicariously liable for the damage Marsha caused to the gas station.

3. Conclusion

Based on the facts as presented, Marsha would likely be considered an independent contractor. Based on her status as an independent contractor and the specific circumstances surrounding the incident at the gas station, it is likely that Sunshine Farms would not be held vicariously liable for the damage to the gas station.

END OF EXAM
