

Answer Outline: Question 1

1. Does a partnership exist between Teri and Mom?
  - (a) Partners are jointly and severally liable for the debts and obligations of the partnership?
  - (b) A partnership consists of 2 or more persons engaged in business for profits
    - i. Sharing of profits creates presumption of partnership
    - ii. Other factors indicating partnership
      - A. Pay back loan when business sold
      - B. Right to inspect books and records
    - iii. No say in day to day business indicates creditor relationship
2. If no partnership is Mom liable under agency theory?
  - (a) Agency rule: Agency exists where one person designates another to act on his behalf, and the other person agrees to do so.
  - (b) Means of agency authority:
    - i. actual
    - ii. apparent
    - iii. implied
  - (c) No actual authority other than loan and business relationship
  - (d) No apparent authority
    - i. Agent can not create her own authority
    - ii. Must trace to acts of principal
  - (e) No actions by Mom
3. If a partnership existed, did Teri breach fiduciary duty to Mom?
  - (a) Partners owe each other highest duty of good faith and loyalty
  - (b) Can not take business opportunity for own use
    - i. Meinhard v. Salmon
  - (c) Teri took opportunity that arose from course of business and should account to Mom for her share of the profits.

Answer Outline: Question 2

1. Is the Shareholders Agreement between Anna, Rosa and Nick enforceable?
  - (a) Vote Pooling Arrangements are enforceable
    - i. Appointment of 3 of them as directors is specifically enforceable
  - (b) Director Voting Rules: Should it be in the bylaws to be effective?
    - i. Court probably would enforce as shareholders agreement if no harm to creditors or other third party
  - (c) Distribution of Dividends
    - i. Traditionally would be viewed as encroaching on discretion of Directors
    - ii. Modern trend away from that rule and in favor of enforceability
2. Does the corporation meet applicable test to pay dividends? Retained earnings or pass balance sheet test?
  - (a) Would still apply despite agreements
  - (b) Test should be met because of wording, unless corporation has carried forward losses
    - i. Nimble dividend?
3. Was Anna validly removed as a director even if the Shareholders Agreement is unenforceable?
  - (a) California cumulative voting state
  - (b) Can not remove a director without cause if the votes cast against removal would be sufficient to elect her
  - (c) Anna had enough votes to stop removal
4. Did Rosa and Nick breach their fiduciary duty to Anna?
  - (a) Shareholders of a closely held corporation owe fiduciary duties to each similar to those existing among partners
    - i. Not do anything to defeat reasonable expectations of minority shareholders
    - ii. Nick and Rosa acting together constitute controlling shareholders and they have such duties
    - iii. Defeat by cutting off income through lease termination
    - iv. Stop dividends
    - v. Nick and Rosa still have salaries
    - vi. Attempt to freeze out Anna
5. Can Rosa sue to dissolve the corporation
  - (a) Grounds for dissolution
    - i. Fraud and oppression
    - ii. Required to protect interests of minority shareholders

Answer Outline: Question 3

1. General Rule: Shareholders, directors and officers are not personally liable for the debts and obligations of the corporation.
2. Are the contract and accident damages liabilities of the corporation?
  - (a) Contract debt
    - i. President scope of authority
    - ii. Should there have been board approval given size of the debt
  - (b) Liability for accident claim: Was Mark acting within the scope of his employment?
    - i. On company business; returning to the office
3. Exceptions to rule protecting shareholders from liability for corporate debts:
4. Personal liability for own wrongful conduct:
  - (a) Mark caused the accident with the cyclist, so he is personally liable for that claim.
5. Watered Stock Liability
  - (a) Par Value of Stock establishes minimum amount that must be paid for it.
  - (b) Par value abolished in many jurisdictions and under the Model Act; Still may have par value in Delaware
  - (c) The Shareholders are liable for the difference between par value per share and amount the actually paid.
  - (d) Each liable for \$95,000 that they must contribute
6. Liability for exercise of corporate power before articles filed
  - (a) Statutory rule that anyone who exercises power before Articles filed is personally liable
  - (b) Bright line rule
  - (c) No longer de facto corporation
  - (d) Corporation by estoppel may survive where both parties act as though corporation exists
  - (e) More compelling in contract claim
  - (f) Should Bill be estopped from denying corporate existence?
7. Which shareholders should be liable?
8. Should the corporate veil be pierced to provide recovery above insurance limits for bicyclist Mark struck?
  - (a) Alter Ego Test
    - i. under capitalization
    - ii. lack of formalities
    - iii. co-mingling
  - (b) Does Equity require denying corporate protection?
  - (c) What is the importance of insurance coverage?