

Question 1

1. Issue: Did Ruth and Joe form an LLP?

- a. Rule: A partnership consists of two or more individuals engaged in business for profit.
- b. Rule: Partners of a general partnership are jointly and severally liable for all the debts and obligations of the partnership.
- c. Rule: There are no specific statutory requirements for creating a general partnership; the partners need only reach an agreement to act as partners.
- d. Rule: A limited liability partnership protects a partner from liability for the acts of the other partners. It breaks the vicarious liability link among the partners.
 - i. A certificate of registration must be filed with the Secretary of State.
 - ii. Must personally guarantee a minimum amount of malpractice liability, but may buy insurance to cover that obligation.

2. Issue: Are Ruth and Jason entitled to liability protection of LLP despite failure to comply with statutory formalities?

- a. Registration not filed.
- b. Are de facto LLP's recognized?
- c. Estoppel ?

3. Issue: Is Ruth liable for amount due under the lease? Was Joe an agent of the Partnership?

- a. Rule: Ruth is an agent of the partnership; she may appoint subagents
- b. Rule: Different sources of agent's authority:
 - i. Express or actual—granted by principal.
 - ii. Apparent: Principal leads third party to believe such authority exists.
 - iii. Estoppel: Principal estopped from denying authority.
 - iv. Ratification: Principal accepts benefits with knowledge of terms
 - v. Equal Dignities Rule
- c. Analysis:
 - i. Joe lacks express authority
 - ii. Apparent: confusion?
 - iii. Estoppel
 - iv. No written authorization
 - v. Did she ratify by not saying anything?
 1. Joe and Landlord didn't tell her all of the material deal terms.

4. Issue: Is Ruth liable for Jason cooking the books.

- a. Rule: Intentional tort vicarious liability if agent believed he was acting to further interests of principal
- b. Rule: Or if acting within scope of apparent authority.

5. Issue: Can Ruth recover commissions Joe receives from the Landlord?

- a. Rule: Agent can not receive a secret benefit even if no loss or harm to the principal.
- b. Took benefit of commission.

Question 2

1) Issue: What duties to the directors of Lightning owe the shareholders?

- a) Rule: L is a closely held corporation
 - i) No market for shares
 - ii) Shareholders perform different roles
- b) Rule: Shareholders of a closely held corporation owe each other the same fiduciary duties as partners,
- c) Rule: In addition, directors owe the corporation a fiduciary duty of care

2) Issue: Did Joni, Bob and Van discharge the fiduciary duty of care?

- a) Business Judgment Rule: Presumption directors acted in good faith.
- b) Need to inform themselves.
- c) May trust reports from others but must cross examine about information and facts relied on
- d) Gross Negligence: Smith v Van Gorkum
- e) Analysis:
 - i) Never spoke with Clara about her methodology.
 - ii) Would have discovered limits of inquiry: Different entities
 - iii) Did call another consultant and got feedback that amounts okay.
 - iv) Is this enough?

3) Issue: Did directors breach their duty of loyalty?

- a) Conflict of interest in establishing salaries
- b) Received a benefit shareholders did not
- c) May or may not be able to justify fairness.
- d) Takes out of BJR?

4) Issue: What impact does Limitation on damages clause have?

- a) Rule: Not apply in breach of loyalty case.
- b) Conflict of interest invalidates protection of exculpation clause.

Question 3

Issue 1: Can Emily recover from Patty and Rose the dividend payments they authorized?

- a. Directors who authorize illegal dividend payments, and shareholders who knowingly receive them are liable to the creditors of the corporation for the amount illegally paid.
- b. Delaware law governs under the internal affairs doctrine
- c. Delaware law authorizes the payment of dividends based on balance sheet test: Assets less liabilities less stated capital.
- d. Or pay nimble dividends—from earnings of last two years.
- e. Corp had \$100,000 in earnings over 3 years would be the maximum dividend.
- f. Patty and Rose authorized \$500,000 in illegal dividends.
- g. Liable for up to that amount, though Emily would need to return or credit her one-third of the payment.

Issue 2: Can Emily recover her \$500,000 loan to the Corporation?

- a. Shareholders may lend money to the corp in addition to their capital contributions.
- b. If the corporation's debt to equity ratio is excessive, a bankruptcy court may subordinate the shareholders debt to amounts due other creditors.
- c. The shareholders funded the corporation in a way that created a huge debt to equity ratio. In a bankruptcy or liquidation proceeding, the debt to Emily would likely be subordinated.

Issue 3: Did Patty and Rose breach fiduciary duty to Emily by selling to Gecko?

- a. Shareholders of a closely held corporation owe each other the same fiduciary duty as partners.
- b. Selling shares to a known corporate raider likely to harm the corporation breached that fiduciary duty.
- c. Patty and Rose put their financial interests ahead of Emily's and excluded her from the business opportunity created by Gecko's offer.

Issue 4: Are Gecko and his Directors liable for looting the corporation?

- a. Are the directors entitled to the protection of the business judgment rule?
- b. They did not act impartially or in good faith
- c. Can the directors defend the fairness of the transactions? No
- d. Gecko also owes a fiduciary duty to Emily

- e. Does the exculpation language in the articles protect the directors?
- f. Did the directors breach their duty of loyalty thereby removing themselves from the protection of the exculpation provisions?

Issue 5: Do officers and directors have liability to communities and other third parties harmed by their decisions?

- a. What if any obligations do corporations have to non-shareholders?
- b. Consider modern public benefit corporations