

## QUESTION 5

## QUESTION 5 STARTS HERE

① Type of Business Entity - LAW firm

### General Partnership

A general p-ship<sup>is</sup> formed when 2 or more persons agree to work together in business for a profit. A general partnership (GP) does not require a filing of documents

w/ the secretary of state. GP requires that all partners share equally the profits of the firm.

A GP differs from other types of partnerships, such as Limited Partnerships and limited liability p-ships b/c the

liabilities of the GP is not limited. In a LP and LLP require filing documents w/ sec. of state. GP, all General Partners are liable for

The torts or liabilities of other GP's, and the GP itself is liable for the torts of its partners.

Here it is likely that Andrew, Bob and Christine formed a General Partnership b/c there were 3 people who agreed to form a law firm for profits. We are told that A, B, C did not file documents w/ the Secretary of State, so it can only be a GP, not LLP or LP. <sup>from</sup> ~~From~~ the facts it is indicated that the parties took action to limit any of their liabilities. Here, A, B, C. equally share firm profits after

paying all expenses and make all the business + mgmt decisions. It is likely that A, B, C formed a general p-ship when they formed their law firm.

Therefore, A, B + C has formed a General partnership.

## Corporation

A corporation must file an article of incorporation w/ Secretary of State. It must consist of board of directors, who manage the corp, as well as shareholders who own the corp. In a corp, individual officers, shareholders are not liable for torts of the

Corporation, unless exceptions apply, allowing creditors to pierce ~~the~~ corporate veil.

Here, the facts support that A, B + C formed a general p-ship, not a corporation.

~~Thus a corp was not form~~ b/c no board of directors was named and liability is not limited. ★ (see last paragraph below)

Thus, a corp was not formed.





## QUESTION 5 continued

2. Whether Associate Attys are: ~~Emp~~

Employees

An employee earns a fixed salary and may be entitled to percentage of billings. However, employees do ~~is~~ not have ownership or management interests.

Here, A.B.C.'s firm's associate attys are paid a fixed salary, and plus 25% gross billings for any clients they bring to the firm. However, nothing indicates that Associate Attys have management interests or any ownership interests of the firm.

Also the 25% gross billings is not an ownership share.

Thus, it is likely the Associate Attys are employees of the firm.

### Partners

A partner is a higher level member of the firm w/ an ownership / management interest. Such as sharing the profits of the firm.

We have established that Associate attys do not have ownership or ~~man~~ management interests. They also do not share profits of the firm, which only A, B + C do.

Thus, the Associate Attys are not partners.

## Members

## Shareholders

A shareholder is a person w/ ownership interest in a corporation.

Here, we have established that the firm is a GP, not a corporation. Also the associate attys do not have ownership interest in the firm.

Thus, Associate attys are not shareholders.

3. Whether Senior Attys are:

Employees

See rules on Employees above.

Here, Senior Attys are paid based upon number of hrs they bill plus an annual bonus if they bill more than 2000 hrs/yr.

~~The Sr. Atty bonus pool is 5% firm profit~~

But the number of hrs is a salary and they get a bonus for working more than certain number of hrs. Sr. Attys are employees.

Thus, Senior Attys are employees.



## Partners

See rules on partners above.

Here, we are told the Sr attys are entitled to a bonus pool & equal to 50% firm profits which Sr. attys share equally each yr. as well as the annual bonus for billing 2000 hrs/yr. B/c they are entitled to the firm profits, they will qualify as partners.

Thus, Sr. Attys are partners. B/c they take a share of the profits

## Members

## Shareholders

See rules on Shareholders above.

Here, the Senior Partners may argue since they are entitled to the <sup>5%</sup> firm profits they have an ownership interest in the firm. However, we have established that the firm is a GP not a corporation. Thus, Sr attys are not shareholders to the firm. Thus, Sr. attys are not shareholders b/c even if they may have ownership interest the firm is not a corporation.

4. Whether the firm is bound by M's agreement w/ N

### Agency

<sup>Under</sup> ~~in~~ agency theory, there is a principal-agent relationship. In a principal-agent relationship, the principal assents that the agent act on its behalf under the principal's direction and control. The agent assents to be bound by the principal's control over agent.

There are 4 types of <sup>authority under</sup> agency: actual, express, actual implied, apparent and retified agency, authority.

## Actual Express

There is actual express <sup>authority</sup> ~~agreement~~

if there is assent given by Principals

<sup>within</sup> ~~the~~ four corners of the agreement

Here, it is likely <sup>martha</sup> ~~martha~~ did not

have actual express authority, b/c nothing

in the fact indicated that such authority

was granted to ~~M~~ <sup>M</sup> ~~M~~ may argue that

she was given actual express authority

when A, B + C bestowed the title "non-equity"

partner on all Sr. attys and the firm

website + business cards read "Partner" as

<sup>martha</sup> ~~martha~~'s title. However, giving N title of



"Partner" does not equate to giving her actual express authority to enter into an agent w/ ~~the~~ Nancy b/c no such authority ~~was~~ bestowed in the four corners of Martha's employment contract.

Thus M lacked actual express authority to enter into the agent w/ Nancy.

### Actual Implied

Actual implied agent <sup>arises</sup> ~~also~~ when agent doesn't have express authority but authority is implied due to prior course of dealing or prior acquiescence.

Here, nothing in the facts support

that there was any prior dealing by M on firm's behalf. The facts indicate that the firm had a strict policy of not reducing rates, so it is unlikely to bind prior acquiescence by the firm.

Thus, Martha did not have ~~appear~~ actual implied authority to enter into the agent w/ Nancy.

### Apparent Authority

Here, apparent authority arises when agent has no actual authority but holds herself out to a third party who relies on the "agent's" apparent

authority, believing that "agent" is authorized to contract on behalf of the principal.

Here, there was apparent authority b/c Nancy relied on Martha's status as "partner" (after looking at ~~M's~~ M's business card that listed M as "partner") ~~N also~~ ~~relied on M's statement~~.

When M agreed to represent N at a reduced rate, N relied on this statement to sign the written agent b/c she believed M was authorized to enter into agreement and that <sup>she was authorized to</sup> ~~she could~~ reduce the hourly rate for <sup>return of</sup> promise of future business.



B/c N relied on N's status of "Partner"  
and N readily ~~agreed~~ agreed to reduce her  
hourly rate w/ N's representation there  
(which only a higher ranking atty may make)  
was apparent authority.

Thus, M had apparent authority b/c  
N reasonably relied on M's "partner" status  
and believed she could reduce the hourly  
rates in exchange of business.

### Ratification

Authority by ratification arises when  
an agent lacks actual or apparent  
authority to act on principal's behalf  
but principal later ratifies the contract



Question 5 continued

Here, ~~it is likely~~ if the facts do not support that M had apparent authority, she may argue that there is authority by ratification. However, given that the ~~firm~~ firm has a strict policy of reducing hourly rates, it is unlikely that the firm would ratify M's agreement w/ Nancy.

Therefore, it is likely there is no authority by ratification, b/c the ~~to~~ firm is not likely to ~~to~~ ratify the agreement



\* Corporation (should go under corp paragraph above)

Here, there is no corp, b/c even if A, B + C

share all the firm's profits after expenses

and make all business decisions + management

decisions. ~~they~~ the facts indicate they

did not form a board of directors, nor

appoint any officers to serve.

Thus, A, B + C did not form a corporation.