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1. On what theory or theories might Arnold be found personally liable for damages to Landlord Co?

### General Partnership

Does not require formalities, it is two or more people agreeing to run a business as partners and share in profits, liabilities and responsibilities. Each is personally liable.

Here, Arnold (A) and Betty (B) agreed to launch a business selling durable paint that Arnold had developed and patented. They agreed to share all profits and to act as equal owners. Betty agreed to contribute \$100k to the business venture. A and B agreed that B would be responsible for market research and marketing and A would be responsible for incorporating the business and taking care of any other steps needed to start the enterprise.

Thus, A and B first formed a general partnership.

### Incorporation

To be incorporated one must file articles of incorporation with the secretary of state, that includes officers, address of business, the purpose of the business and if stock would be issued.

### Limited Partnership

A limited partnership consists of one general partner and one limited partner. They are liable for their own torts and share business liabilities with profits from the partnership.

Here, from the facts we are told that A took the necessary steps, to incorporate Durable Paint.

Thus, Durable Paint was a limited partnership corporation.

### Officers

Upon incorporation, officers are to be named in the Articles and maintained and voted on by the Board of Directors. (BOD)

Here, at the corp's first BOD meeting A and B were named as sole directors and officers. Moreover, A and B voted for the corporation to assume all rights and liabilities for the lease and to accept assignment of Arnold's patent rights.

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From the facts, it indicates that the BOD meeting only consisted of A and B as directors, as other participants were not mentioned. If that is indeed the case, the establishment of the BOD as well naming A and B both directors and officers violates the rules of incorporation. A board of directors must have three or more directors in order to prevent division of goals and mismanagement of the business.

The "voting" that took place at this meeting will likely not be recognized and they were not listed as officers in the Articles, as they did not hold these positions upon incorporation.

Thus, A and B may or may not have a valid incorporation filed with the secretary which would make them a De Facto corporation (made a colorable attempt at incorporating but are unaware they are not a corporation) rather than a De Jure corp. (valid articles have been filed with the secretary of state) or A and B remained where they started as general partners.

### Lease

Must be a valid written contract because the subject is real property.

Here, from the facts we know that A located a building within which to operate the business, owned by Landlord Co., And that it was a one-year lease and in the name of Durable Paint Inc. (prior to incorporation).

We can presume that it was a valid written lease.

### Breach of Lease

A tenants duty to the landlord is to pay rent. A landlord's duty to the tenant is to ensure delivery of the leasehold.

Here, A and B breached their duty to pay Landlord Co. two months rent when they were six months into their lease.

Landlord Co. has the option to either evict A and B and sue for the remaining rent or evict A and B and find a new tenant and not try and collect all rents due from A and B.

Thus, A and B have breached their lease with Landlord Co. and depending on what route Landlord Co. takes, A and B could be on the hook eight months rent.

### Liability

General Partnership

Defined above.

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Here, if Durable Paint was found not to be validly incorporated, A and B were in a general partnership.



Should that be the case then both A and B are personally liable to Landlord Co. for the back rent because partners under a general partnership are personally liable and afforded no protections.

### Limited Partnership

Defined above.

Here, if A and B limited partnership was validly formed, it affords protections from some personal liability but not all.

Thus, A and B potentially use corporate funds to take care of the rent and if there is not enough funding, the partners would have to make the deficit with their own funds.

### Contract Theory

A may be found personally liable for damages to Landlord Co. under misrepresentation (failure to disclose material information) for entering into a lease under a corporation name before it was validly formed.

Here, A entered into a one year lease with Landlord Co. before incorporating Durable Paint. It is unclear is A was fraudulent in his entering into the lease under the corp name or it was a mistake for him to believe he should take the lease under Durable Paint. A was also responsible for incorporating the business and taking care of any other steps needed.

Thus, A could be held responsible only because B was not responsible for this side of the business.

### Expectancy

When two parties enter a contract and it is breached the non-breaching party is expected to recover what they would have earned had the contract not been breached.

Thus, A could be liable for the damages to Landlord for rent should the lease have not been valid under Durable Paint Inc. And if DP remained a general partnership, A could be held personally liable.



2. On what theory of theories might Betty be found personally liable for damages to Landlord Co?

### General Partnership

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Defined above.

Here, B as a partner with A, could be held personally liable for the back rent owed to Landlord Co.

Limited Partnership

Defined above.

Here, B once corp funds have been exhausted would have to contribute to the deficit of the debt.



Thus, B might be found personally liable for damages to Landlord Co.

3. On what theory or theories might Arnold be found personally liable for damages to Betty?

Misrepresentation -Fraud

Fraudulent misrepresentation is either omitted facts or false information provided and induced reliance.

Here, when A and B first began their business venture, A told B that he thought the patent was worth \$100k. He did not tell Betty that he has previously tried to sell the patent to several reputable paint companies but was never offered more than \$50k. B in turn contributed \$100k to the business. Durable Paint faced unforeseen and costly manufacturing and supply problems and the capital was exhausted.

B has the potential to be responsible to B for her contribution based on her reliance on A's misrepresentation about his patents' worth. Which may mean she is entitled to reliance damages.

Question #2 Final Word Count = 1134

**END OF EXAM**