2)

To discussArnold and Betty's personal liabilities against the Landlord Co. and to each other (Arnold to Betty), we first need to look at what type of legal entity Arnold and Betty formed or intended to form at each state of their dealings, and what would be the result of that.

When Arnold and Betty came together and discussed selling paint together and sharing the profits and become equal owners, they formed a partnership. A partnership is formed when two or more people come together and have the intention to run a business for profit together. They do not have to have any specific intent other than that such as "forming a partnership" or have to follow any formalities such as having a written agreement or registration or filing with the State (i.e. Secretary of State: "**SOS**"). When parties agree to share profits that creates the presumption that they intended to form a partnership, as sharing profits means sharing losses too (profits = revenue - loss) and partnership standard is to share profits and losses equally amongst the partners, unless anything to the contrary. Each partner of the partnership is jointly and severally liable at a personal level for the partnership, once the partnership assets are exhausted. Although the partners can limit their liabilities, *unless* they form a Limited Partnership (min one limited, min one general partner, where the general partner is personally liable), or Limited Liability Partnership (all partners limited liability), or Limited Liability Company (all members limited liability), or a corporation, their responsibility limitations only are applicable within themselves and cannot be claimed towards third parties. Aside from a partnership all other forms listed above require registration or filing with the SOS, and have certain formalities be followed.

Each partner is an agent of the partnership and as in agency, there is no requirement to receive a compensation as a result of agency, there is no writing requirement, but that the agents actions be taken with fiduciary duty (reasonable person in like circumstances, and with the partnerships interest in mind, good faith actions). Agents actions bind the principal, just like each partners' actions binding the partnership if there is actual or apparent authority. Actual authority arises from the conversations, dealings, or actions between the partners where the agent-partner reasonably believes that he has such a right, and the apparent authority arises from the actions, representations of the agent-partner or partnership that a third party reasonably believes that the agent had the authority to enter into such a deal. Unless a third party, before the agreement is informed that the agent does not have authority, or is aware, both the actions entered into by the agent with actual or apparent authority will bind the partnership.

Arnold and Betty agreed that, Betty would be responsible for market research and marketing, and Arnold would be responsible for incorporating the business and taking necessary steps

needed to start the enterprise. From this language and the company name he used to enter into the lease agreement "Durable Paint, Inc." it is clear that their actual intent was to form a corporation, which is a totally separate entity than the owners and do not create any personal liability. However, when Arnold entered into the lease agreement the company was not yer formed. Therefore, Arnold was either acting as an agent-partner of the partnership they formed with Betty, or as a promoter. Promoter is the party who enters into agreements on behalf of a company that is not formed yet. The promoter is personally liable on such an agreement, unless the company after being formed enters into a novation agreement with the promoter and the 3rd party, to release the promoter, or if the promoter when entering into the agreement clearly indicates that the company is to be held liable only and the formation of the company is the condition precedent for the agreement to become effective. Otherwise if later on the company adopts/ratifies the agreement (express or implied), making the company jointly and severally liable with the promoter would be the result. ***Since in the facts it is mentioned that the corporation assumed all rights and liabilities for the lease, in either the promoter or agent-partner analysis, Arnold can be hold personally liable as a surety, once the corporation is insolvent.***

A corporation is managed by the directors appointed by the shareholders, and in the case of Betty and Arnold, if there are very few shareholders, they can also take the role of being the director, owing the corporation fiduciary duties (duty of loyalty and duty of care) and making it a closed (closely-held) corporation. When the parties tried to follow the formalities of a corporation in good faith, came a little short, but presented themselves as a corporation, and third parties indeed treated them as one (estoppel - reliance) we can look into a ***de facto corporation***, where although it was not fully formed at the time, due to the exception provided for the above listed acts, it can be considered a ***de jure corporation*** and if that works for Durable Paint, Inc., then Arnold would not be hold liable for the damages to Landlord Co.

As for Betty, in the case of a promoter, Betty will not be held personally liable as she had no part in Arnold's lease negotiation before the formation of the corporation. In a partnership view, Betty can be held liable as there was apparent authority and actual authority. However, it is more likely that their intent was to form a incorporated, as they even used that name in the lease agreement, and Arnold's actions were just seeking agreements before the formal registration and formation of the company with the SOS, and under promoter responsibility, therefore not making Betty personally liable for the lease agreement.

Arnold can be personally liable to Betty, considering he misrepresented the value of his patent in the beginning, and did not invest anything else to the company. His corporate protection would be lifted under the piercing the corporate veil doctrine, if it is determined that the company formation was not followed properly, the company was not funded sufficiently, or if there is any

suggestion that the purpose is to perpetuate fraud. Here the company was not funded sufficiently as Arnold only put in the patent which proved itself to be pretty worthless, but this doesn't seem too likely to succeed. Also, the courts are more willing to go this route for torts rather than contract matters. Betty may also claim that Arnold breached his fiduciary duties (duty of loyalty and duty of care) but aside from his misrepresentation, he seems to be dealing with the company's best interest in heart, and not benefitting from the company opportunities, or competing with the company, or signed a lease that was to the detriment of the corporation.

Question #2 Final Word Count = 1142

END OF EXAM