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### **General Partnership (GP)**

A general partnership is created expressly or impliedly without the formal requirements of a corporation. Unlike a corporation, a GP does not need to be filed with the Secretary of State. The only basic requirements a GP needs to have is individuals that have created a business for the purposes of making profit.

Here, here the facts state that Amy(A), Bob(b) and Carl (C) are partners in the ABC law firm (ABV) which operates a general partnership agreement. There are facts indicating that they have the formalities of a partnership and are seeking to make profits together as a business. ABC provides that all firms attorneys with cell phones to facilitate prompt attorney-client communications. Further the use of these communications, including the client emails, would indicate that because they are to be responded immediately, they are for the purpose of making profit for a business.

Thus, there is a valid GP.

### **Implied GP With Sam (S)**

See rule above. Additionally, A GP with another individual need not be written expressly within an agreement, it can be implied.

Here, the question is S is considered to be a partner of ABC. Though S does not expressly state is a general partner of ABC, his actions could imply that he intended to be a GP with ABC as his actions indicate so. Here, S as a highly publicized trial attorney, often worked closely ABC, indicating that he wanted to work with ABC for-profit. It does not matter whether or not S did not have a written agreement with ABC, as ABC inherently believed that S's presence raised the profile and prestige of ABC to create more profit for the business. Though S could argue that he is not in GP with SABC as he only tenant of offices of ABC, as ABC charges S \$3,000, per month, the fact that ABC receptionist greets all clients all of ABC and S's clients which would further imply that S wanted to be a part of the ABC partnership. Further S using the ABC firm name and telephone number on his letterhead would further the argument that intended to be part of the ABC partnership and intended to make profits with ABC as all their clients would presume that they are in a GP together. Lastly, and most importantly in terms of profit sharing, Sam receives a 10% of the annual profits of ABC in recognition of his value to the firm and would highly be considered to be profit sharing.

Thus, for reasons above, though S does not have an express agreement with ABC, he considered to be a GP of ABC.

### **Agent of the ABC GP—Amy, Bob, Carl, and Sam**

Every partner of the GP is considered to be the agent of the GP and could potentially share the liability of the GP if a tort has been committed. There are two type of authorities, express and

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implied.

***Express Agency—Amy (A), Bob (B), Carl(C)***

Express authority is easily recognizable as it is distinguished by the GP agreement.

Here, the facts state that ABC, are held as partners to the ABC law firm under the GP agreement, thus, there is express authority between A, B, and C.

***Implied Agency—Sam (S)***

Authority can also be implied, a reasonable person would understand that an individual is person is part of the GP.

Here, and previously discussed above, S could be seen as a implied agent the ABC GP. Though S may argue that he does not follow the ABC policy of the all firm attorney having their work-provided cell phones with them, he does profit share with ABC annually of 10%. Further, S using the ABC firm name and telephone number on his letterhead would further the argument that intended to be part of the ABC partnership and intended to make profits with ABC as all their clients would presume that they are in a GP together. Because of ABC wanting to use S's name prestigious name, a reasonable person would believe that S would have exclusive decisioning making and control as the other ABC GP partners. Any client whether they were of ABC's or S's, being greeted by the receptionist would indicate to a reasonable person that A, B, C, and S all work together in unison as one general partner. Though their offices may be located separately, it is the fact S uses ABC's firm name and telephone number on his letterhead, S bills his clients directly for services arguably through ABC's charging system, and S receiving 10% of ABC's profits would suggest that S is a implied agent of ABC.

Thus, for all discussed above and the argument sections of "Implied GP With Sam (S)" section, there is in implied authority that S has control of the GP.

**Agent Liability of ABC to Priya (P)—Amy (A), Bob(B), Carl(C), and Sam(S)**

Unlike a corporation, a GP does not share the same extensive protection of liability and any and all general partners could be potentially personally liable for the acts of another partner. Due to the fact each partner is agent of the parter, they are liable for any torts that are committed in the regular course of business and acts done for the betterment of the partnership.

As previously mentioned, A, B, and C are express agents of ABC have express authority while S is a implied GP of ABC and has implied authority. Because of this, any an all individuals could held liable for P. Thus, A, B, C, and S can be held personally liable to P's injuries.

***Vicarious Liability—Frolic verses Detour***

Due to the fact partner is a agent of the partnership, a plaintiff can hold an agent of the partnership under vicarious liability depending whether the agent traveling was considered a frolic or a detour. A frolic is a major deviation from the regular course of business while a detour is not and the agent partner could be held vicariously liable.

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The other partners of ABC including S could argue that A was under a frolic as she was driving for a baseball game. However, as further discussed below, this could be considered a detour as she was answering an email which is a policy under the partnership. Thus, it most likely that A was committing a detour instead of a frolic which would hold A as-well as B, C, and S personally liable for A's action.

***Tort Done Within the Regular Course of Business—Amy(A) Email Reply via Cellphone***

Any tort committed during the regular course of business of a GP, all partners of the GP can be held liable.

Here, the real issue is whether, A's cellphone call was in the regular course of business. While the other partners of ABC could argue that the tort committed against P was not in the regular course of business as A was driving in heavy traffic to attend a a baseball game. However, P could counter argue taht A received an urgent email from and ABC client and according to their policy, all partners, including B and C are requited to respond immediately. A had attempted to answer the email on her work-privileged cellphone while distracted had injured P. This negligent tort of texting while driving was done under the regular course of business and could hold S, A, B, and C personally liable as they do not enjoy the rights of a corporation free from liability.

Thus, for all discussed above, because the tort was caused during the regular course of business, A, B, C, S, and ABC as a GP could be personally liable.

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**END OF EXAM**