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**WHICH OF THESE DEFENDANTS MIGHT REASONABLY BE FOUND LIABLE FOR DAMAGES ARISING FROM PRIYA'S CAR ACCIDENT AND WHY:**

**General Partnership**

A general partnership is an agreement between several persons intending to create a partnership relationship. The intent to form the partnership is what governs the relationship. The partners in a general partnership are each responsible for the liability incurred by the partnership.

Here, there is a general partnership because Amy, Bob, and Carl are partners in the ABC law firm and it operates under a general partnership agreement.

Thus, Amy, Bob and Carl are general partners and are potentially liable for any of the law firms liabilities.

**ABC//AMY**

**Actual Authority**

Because Amy is a general partner, Amy is liable for the damages arising from the car accident because she negligently caused the car accident which the facts stated are the actual and proximate cause of the injuries incurred by Priya.

Amy would argue that she is not liable personally but ABC is because she received an urgent email from an ABC client and there is a strict ABC policy that all client communications must be responded to immediately, and that she used her work-provided cell phone to answer the email. The firm gave all attorneys cell phones to prioritize client communications. Also, Amy would argue that because of her doing her duty to communicate with the client distracted her resulting in her negligently causing the car accident.

ABC would rebut that Amy was not acting within the scope of her employment when she caused the accident. In fact, she was driving to attend a baseball game when she received the email. ABC would contend that Amy was not required to "respond immediately" according to the organization's policy but to respond "at least with a personal acknowledgement of receipt". But Amy would argue, that they are supposed to carry their cell phones "at all times" which should mean even when attending baseball games

If Amy's arguments are persuasive, Amy may not be personally liable for the accident.

**BOB/CARL**

If ABC can prove that Amy is personally liable for the car accident, the firm may not incur any liability

And As general partners, Bob and Carl will not be liable for the damages arising from the

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accident. However, if it is deemed by the court that ABC is jointly and severally liable for Priya's injuries, then Bob and Carl will be liable as well.

## **SAM**

### **Limited Liability Partnership (LLP)**

A limited liability partnership is a partnership where its partners limit their liabilities to the amount intended. The LLP must be registered with the Secretary of State to be legal.

Here, Sam can be liable for ABC's liabilities as a limited liability partner. Although Sam is not in the ABC partnership agreement, ABC is using his presence to raise its profile and prestige. Sam may argue that he did not expressly state that he is a limited partner and that the LLP was not registered with the state. Therefore, he would not share in ABC's liabilities (i.e. damages from the car accident).

### **Agency**

There are two types of agency: actual and apparent.

Actual agency is an expressed authority to conduct or practice according to the principal. Apparent authority is an implied authority evidenced by the conduct of the agent performing activities on behalf of the principal.

#### **Apparent Authority**

Here, although Sam is not a party to the ABC partnership agreement, he can be considered as having apparent authority to perform activities by ABC.

Sam has apparent authority because he works closely with ABC, he leases an office in the suite of offices used by ABC staff, and the receptionist greets all ABC clients as clients of "ABC and Sam". Sam's use of the company's firm name and phone number on his letterhead. His association with the company is so intertwined that the public would deem him as an agent or limited partner at least of ABC. Sam is known for his many highly publicized trials.

Sam would contend that he is merely a tenant in ABC's suite because he is being charged \$3000/month while the other lawyers in the firm are not. Furthermore, Sam would argue that the firm does not consider him as one of their attorneys because he was not provided a cell phone to facilitate communications with clients- Sam would note that he bills his clients directly for his services and not through ABC law firm.

However, Sam's argument would be unavailing because Sam receives 10% of the annual profits of ABC as a recognition of his value to the firm. Because Sam is increasing the law firm's good will (enough to be rewarded 10%) he should also share in the firm's liabilities.

Sam is liable for the damages arising from the car accident.

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**END OF EXAM**