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Partnership

A partnership is when co-owners of a business operate the business for-profit. There need not be any formal arrangements for a partnership to be formed. There need only be an operation of a business as co-owners for profit.

Here, the facts state that Amy, Bob and Carl are partners in the ABC law firm, which operates under a general partnership agreement. Though formal agreements are not needed for a partnership to be formed, here there is one formed under a formal agreement because the facts state that Amy, Bob and Carl operate under a general partnership agreement. Moreover, the business is likely for-profit and operated as such because the facts indicate that ABC provides all firm attorneys with cell phones to facilitate prompt attorney-client communications. From these facts we can infer that the co-owners -- Amy, Bob and Carl -- operate the business for-profit because they are providing legal services to their clientele as evidenced by the fact that ABC provides all firm attorneys with cell phones to facilitate prompt attorney-client communications. Thus, there is a partnership formed here under a formal partnership agreement which governs the business of the partnership.

Sam's Actual Implied Authority

Actual implied authority is when an agent of a principal operates within the scope of their employment in carrying out their duties. Though these duties are not expressly stated in an agreement, as long as the agent operates within the scope of their employment in carrying out their duties, then actual implied authority is inferred.

Here, as analyzed above, Amy, Bob and Carl are partners in the ABC law firm, which operates under a general partnership agreement. However, the facts state that Sam, an attorney well known for his many highly publicized trials, often works closely with ABC, but is not a party to the written ABC partnership agreement. Priya may argue that though Sam is not a party to the written ABC partnership agreement, Sam demonstrated actual implied authority in his work with ABC because he often works closely with ABC. Moreover, Priya may point to the fact that Sam leases an office in the suite of offices used by ABC, uses the ABC firm name and telephone number on his letterhead, and receives 10% of the annual profits of ABC in recognition of his value to the firm. This facts indicate that though Sam is not under the partnership agreement, he may be employed by ABC to a degree because not only does he operate within the same physical space as ABC, use the ABC firm name and telephone number in representing himself to the public, but he too shares in the profits of the business -- 10% of the annual profits. Sam may counter that there is no actual implied authority here because Sam was not employed with ABC, rather that he merely worked closely with them. A Court may come out other way of this. However, if Priya is unable to establish that Sam exercises actual implied authority then she may be able to demonstrate that he exercises apparent authority.

Sam's Apparent Authority

Apparent authority is when a partnership holds of an individual as if they were a part of the business and represents the business as an agent.

Here, Priya will likely argue that ABC law firm certainly did hold out Sam as a representative of the business because the facts indicate that Sam worked closely with ABC. In fact not only did Sam work closely with ABC, ABC itself believed that Sam's presence raises the profile and prestige of ABC. This demonstrates that ABC certainly did hold Sam out to be a representative of its business because they were using Sam's presence to raise the profile and prestige of ABC. Moreover, Sam leased an office in the suite of offices used by ABC. This indicates that Sam shared close quarters in his work with ABC, not only with regard to the subject matter of his work but also within the working space. This is further supported by the fact that ABC's receptionist greeted all clients of ABC and Sam. To a client coming into the office space it would appear that Sam was a part of the firm because the receptionist is greeting clients of Sam along with ABC. Sam also uses ABC's firm name and telephone number on his letterhead. This would certainly cause a client to assume that Sam was a part of the ABC firm because using the name and telephone number of the firm indicates his affiliation with the partnership. Thus, Sam exercises apparent authority with respect to his ties with ABC. Thus, it is likely that Priya will be able to establish that Sam is held out to be a representative of the business.

Amy's Negligence

Duty

An individual has a duty of care to those that would be foreseeably harmed by the individual's negligence. Under the Cardozo majority view, the individual has a duty to those within the foreseeable zone of danger. Under the Andrews view, the individual has a duty to any one who is foreseeably harmed by the individual's negligence.

Here, Amy was driving in heavy traffic to attend a baseball game when she received an urgent email from an ABC client. Due to this distraction, Amy negligently caused a car accident that was the actual and proximate cause of serious injuries to the other driver, Priya. Under the majority view, Priya was within Amy's foreseeable zone of danger because the foreseeable zone of danger here is the area around Amy's car, which is the heavy traffic surrounding her. Priya as a driver within the heavy traffic is within Amy's zone of danger. Under the minority view, Priya is an individual that was foreseeably harmed by Amy because an individual driving in heavy traffic with Amy would foreseeably be harmed by Amy's own negligence in driving. Thus, Amy has a duty to Priya.

Standard of Care

The standard of care is that of a reasonably prudent person in similar circumstances.

Here, a reasonably prudent person in Amy's circumstances, which is sitting in heavy traffic, would likely avoid answering her email because there is a higher risk of crashing into the car in front or behind her, especially if the traffic is stop-and-go. Thus, a reasonably prudent person would wait until they are parked to answer the email or pulled over to the side guard of the road before answering an email, if it was especially urgent.

Breach

A breach occurs when an individual breaches the applicable standard of care. Here, as analyzed above, the standard of care is that of a reasonably prudent person sitting in heavy traffic.

Here, Amy breached her duty of care to Priya because a reasonably prudent person in heavy traffic would focus on the road especially since there is a higher risk of a fender bender or an inadvertent crash due to a quick brake check. When Amy decided to attempt to answer her email on her work-provided cell phone and due to this distraction caused a car accident, that was a breach of her duty of care because again, in heavy traffic it is more likely a driver would focus on the road for fear that cars driving so closely would accidentally cause an accident if Amy herself is not ready to move or brake at a moment's notice. Thus, Amy breached her duty of care to Priya as a reasonably prudent person in heavy traffic.

Causation

Actual Cause

An individual is the actual cause of a plaintiff's harm if "but for" the defendant's negligence, the harm to defendant would not have occurred.

Here, the facts clearly state that Amy is the actual cause of Priya's injuries. Without more facts this is likely the case given that but for Amy stopping to answer the email, the accident would not have occurred and Priya would not have suffered injuries. Thus, Amy is the actual cause of Priya's injuries.

Proximate Cause

An individual is the proximate cause of plaintiff's harm if plaintiff's harm was a foreseeable result of defendant's negligence.

Here, the facts clearly state that Amy is the proximate cause of Priya's injuries. Without more facts this is likely the case given that Amy's negligence in stopping to answer an email in heavy traffic would foreseeably cause injuries to Priya from a car crash. Thus, Amy is the proximate cause of Priya's injuries.

Damages

To recover damages for a tort, the plaintiff must prove actual injury, not merely economic loss.

Here, the facts indicate that the accident caused serious injuries to Priya. Without more facts, we can assume that Priya suffered actual injuries that were not merely economic in nature. Thus, Priya is entitled to damages.

Jointly and Severally Liable

Co-owners of a partnership are jointly and severally liable for the liabilities of their fellow co-owners.

Here, as analyzed above, there is a partnership formed by Amy, Bob, and Carl as ABC law firm. This is because Amy, Bob, and Carl act as co-owners of a business for-profit, which is evidenced not only by the fact that they are providing legal

services as attorneys but also evidenced by the general partnership agreement that they drafted. As analyzed above, though Sam is not a party to the written ABC partnership agreement, Sam is likely a co-owner to the partnership because not only does he receive 10% of the annual profits of ABC in recognition of his value to the firm but he also exercises apparent authority as an agent of the partnership by sharing office space with ABC, having ABC's receptionist greet his clientele as well and using the ABC firm name and telephone number on his letterhead. Thus, Sam is likely a co-owner of the partnership business. Here, ABC had a policy that all firm attorneys must carry their work-provided cell phones with them at all times and that all client emails must be responded to immediately, at least with a personal acknowledgment of receipt. Amy, while briefly stopped in heavy traffic, attempted to answer an urgent email from an ABC client on her work-provided cell phone. Presumably Amy was complying with ABC's policy that all firm attorneys must respond to client emails immediately or at the very least provide a personal acknowledgment of receipt. So, Amy was acting within the scope of her employment when she decided to briefly stop in heavy traffic and attempt to answer an urgent email from an ABC client on her work-provided cell phone. Amy was not responding to a personal email or scrolling on her phone for pleasure, she was attempting to answer the urgent client email from an ABC client. In this case, the partnership and Sam would be jointly and severally liable for the injuries that Amy negligently caused to Priya because Amy was operating within the scope of her employment and co-owners of a partnership are jointly and severally liable for the liabilities of their fellow co-owners. As discussed above, though Sam is not in the partnership agreement, he has shared profits with ABC and exercised apparent authority as a representative of ABC and ABC has held him out with such apparent authority. Thus, Amy, Bob, Carl, Sam and ABC are all jointly and severally liable for the damages arising from Priya's car accident.

Conclude

Amy, Bob, Carl, Sam and ABC are all jointly and severally liable for the damages arising from Priya's car accident.

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