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**Who is liable for each of the following items:**

**a. The Delta Loan?**

**Formation of a General Partnership**

A general partnership is formed when partners agree to share in the profits. No intent is required to form this partnership and no articles of incorporation need to be filed with the secretary of the state.

Here, Ann, Bob, and Claire opened a retail shoe store called ABC shoes. They formed a general partnership because they pooled their own resources together to open the store which indicates that they did not a promoter that sought out profits for them to form a corporation. Furthermore, because they agreed to split any profits equally and each individual did not have a certain set of profits that needed to be allocated on the percentage of the amount of work each was contributing, a general partnership was formed.

Thus, Ann, Bob, and Claire formed a general partnership.

**Authorized Express Authority**

Authorized express authority is applicable when the by laws of a corporation or general partnership agreement lists specific duties that are designated to each partner.

Here, ABC Shoes is liable to Delta Loan. Specifically, because the general partnership agreement between ABC Shoes stated that each would provide capital and take an active role in day-to-day operations which indicated to Ann that she is able to enter into contracts for the benefit for ABC shoes. ABC Shoes will argue that Ann did not have authorized express authority to enter into any contracts but Ann will point to the fact that "active role in day-to-day operations" includes obtaining the necessary funds to increase their profits and that is exactly what she did by getting a loan for marketing expenses. ABC Shoes will further argue that because Ann signed the loan papers as "Ann, for ABC shoes" she is personally liable for the loan as she did not seek the consent of other partners and only her name is stated on the loan papers. However, the argument will likely not stand because Ann signed it stating that it was "for ABC shoes" and it was specifically for their marketing expenses and no benefit of her own.

Thus, Ann had authorized express authority to enter into the loan agreement on ABC Shoes behalf.

**b. The Echo loan?**

**Corporation Formation**

A corporation is validly formed when articles of incorporation are filed with the secretary of the state and there is a valid objective for formation.

Here, ABC Shoes was validly incorporated as "ABC Incorporated" with each person designated in their respective roles. ABC Incorporated will state that they validly formed their corporation because not only did they designate each individual with their duties but also because adopted bylaws and regularly held meetings. However, they did not form a valid corporation because they failed to file their articles of incorporation with the secretary of the state and their shareholders are also their directors. Shareholders and directors each have important functions of an organization and must not hold the same role because shareholders are to hold directors accountable if they engage in self-dealing behavior.

Thus, a valid corporation was not formed.

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**DeJure Corporation**

When a corporation fails to file articles of incorporation with the secretary of the state or fails to designate a different set of shareholders compared to their directors then a de jure corporation is formed. A de jure corporation is still valid and may function under the current bylaws of the corporation or even be deemed a partnership.

Here, because ABC Incorporated failed to file the articles of incorporation with the secretary of the state and designated their directors as the sole shareholders they have a de jure corporation. For these reasons, the corporation will remain a general partnership.

Thus, ABC Incorporated is a de jure corporation.

**Authorized Express Authority**

Authorized express authority is applicable when the bylaws of a corporation or general partnership agreement lists specific duties that are designated to each partner, director, or shareholder.

Here, Ann holds the title of president, director, and shareholder and entered into a contract with Echo Bank for the expansion of their business. Echo Loan will argue that the corporation is liable for the loan because Ann acted on behalf of the corporation after receiving consent from Bob and Claire and they were aware of this contract while giving their approval. Furthermore, Echo Loan will argue that the corporation is liable because Ann again signed the contract as "ABC Inc. by Ann, President" which indicates that it is on behalf of the corporation and specifically for the benefit of their expansion.

Thus, ABC Inc. will be liable for the Echo Loan.

**c. The Big Shoe Co. contract?****Authorized Express Authority**

Authorized express authority is applicable when the bylaws of a corporation or general partnership agreement lists specific duties that are designated to each partner, director, or shareholder.

Here, Ann entered into a contract with Big Shoe Co. to buy \$50,000 worth of inventory. ABC Inc. will argue that they are not liable for this loan because Ann entered into this contract without consulting Bob or Claire. However, Ann will argue that she signed the contract again with her signature being "ABC Inc. by Ann, President" which indicates that it was for the benefit of the corporation and not for her personal benefit.

Thus, ABC Inc. will be liable for the Big Shoe Co. contract.

**Implied Authority**

Implied authority is applicable when the partner believes their actions are reasonably necessary to carry out the functions of the partnership and it is within their designated set of duties.

Here, Ann will argue that she had implied authority to enter into this contract because she believed that more inventory was needed for the corporation to be successful. She will also argue that because she was the only one entering into contracts on behalf of the corporation she believed that she had the implied authority to do so. Finally, Ann will state because Claire and Bob never rejected any of the previous contracts she entered into she believed that consulting them would just cause a further delay in obtaining the proper inventory needed to carry out the business.

Thus, ABC Inc. will be liable for the Big Shoe Co. contract.

**Express Authority**

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Express authority is applicable when a third party reasonably believes the partner has authority to enter into the contract due to previous dealings. However, if the third party is informed that the partner does not have express authority to enter into the contract and moves forward with it regardless of this information, then the contract is not valid.

Here, Claire and Bob will argue that the contract is not valid because Ann did not consult them. However, Big Shoe Co will counter argue that while they never conducted business with Ann before they were not aware that Ann was not authorized to enter into the contract on behalf of the corporation. Furthermore, they will argue that because Ann signed the contract as "ABC, Inc. by Ann, President" they believed she had the necessary authority to enter into the contract on behalf of the corporation because she holds the highest position.

Thus, ABC Inc. will be liable for the Big Shoe Co. contract.

**d. Damages for Peter's injuries?**

**Vicarious Liability**

Under the theory of vicarious liability an employer is liable for the negligent acts of their employee if they are acting within the scope of employment. An employer is not liable for the negligent acts of an independent contractor unless it is a non-delegable duty or an inherently dangerous activity.

Here, ABC. Inc hired Fred to work for their store and he negligently injured Peter. ABC. Inc will argue that they are not liable for Fred's negligence because he was not a full time employee and just an independent contractor that only worked for them occasionally to pick up inventory. However, Peter the pedestrian will counter argue that Fred was acting within the scope of his employment when he caused the injuries because the accident occurred after Fred was on his way back from picking up inventory. ABC. Inc will state that while Fred was acting within the scope of his employment and doing necessary duties pertaining to the function of his job Fred is still an independent contractor because he only does work for them on as needed basis, he is not on their permanent payroll, and he was not engaged in a non-delegable duty or an inherently dangerous activity as he was just transporting shoes.

Thus, ABC Inc. will not be liable for Peter's injuries.

Question #3 Final Word Count = 1420

**END OF EXAM**