Every general partner is an agent of a general partnership for the purpose of carrying on its business. The act of every partner, including the execution in the partnership name of any contract or instrument, binds the partnership, unless the partner so acting has in fact no authority to act for the partnership in the particular matter. Here, Davis had the authority as a general partner and bound the partnership when he signed a $150,000 promissory note to Foundation as "Cliff W. Davis, Partner."

If a promissory note is executed in the name of the partnership, the partnership is bound, unless a contradictory agreement between the partners is known to the parties with whom they are dealing. The side agreement between Davis and Mitchell, the two general partners, which relieved Mitchell of any personal liability for the promissory note, was not effective against Foundation, which had not agreed to such restriction on Mitchell's liability. Because Foundation had no knowledge of the agreement between Davis and Mitchell regarding Mitchell's liability for the note, Mitchell cannot avoid personal liability as a general partner on the promissory note owed to Foundation. The partnership is liable to Foundation for the unpaid note, and the two general partners, Davis and Mitchell, are jointly liable—personally liable—on the note owe to Foundation. *Edward A. Kemmler Memorial Foundation v. Mitchell*, 584 N.E.2d 695, Web 1992 Ohio Lexis 205 (Supreme Court of Ohio)

Critical Legal Thinking Cases

14.1 Sole Proprietorship James Schuster was a sole proprietor doing business as (d.b.a.) "Diversity Heating and Plumbing" (Diversity Heating). Diversity Heating was in the business of selling, installing, and servicing heating and plumbing systems. George Vernon and others (Vernon) owned a building that needed a new boiler. Vernon hired Diversity Heating to install a new boiler in the building. Diversity Heating installed the boiler and gave a warranty that the boiler would not crack for ten years. Four years later, James Schuster died. On that date, James's son, Jerry Schuster, inherited his father's business and thereafter ran the business as a sole proprietorship under the d.b.a. "Diversity Heating and Plumbing." One year later, the boiler installed in Vernon's building broke and could not be repaired. Vernon demanded that Jerry Schuster honor the warranty and replace the boiler. When Jerry Schuster refused to do so, Vernon had the boiler replaced at a cost of $8,203 and sued Jerry Schuster to recover this amount for breach of warranty. Jerry Schuster argued that he was a sole proprietor and as such he was not liable for the business obligations his father had incurred while operating his own sole proprietorship. Is Jerry Schuster liable for the warranty made by his father? *Vernon v. Schuster, d/b/a/ Diversity Heating and Plumbing*, 688 N.E.2d 1172, Web 1997 Ill. Lexis 482 (Supreme Court of Illinois)

14.2 Liability of General Partners Jose Pena and Joseph Antenucci were medical doctors who were partners in a medical practice. Both doctors treated Elaine Zuckerman during her pregnancy. Her son, Daniel Zuckerman, was born with severe physical problems. Elaine, as Daniel's mother and natural guardian, brought a medical malpractice suit against both doctors. The jury found that Pena was guilty of medical malpractice but that Antenucci was not. The amount of the verdict totaled $4 million. The trial court entered judgment against Pena but not against Antenucci. Plaintiff Zuckerman made a posttrial motion for judgment against both defendants. Is Antenucci jointly and severally liable for the medical malpractice of his partner, Pena? *Zuckerman v. Antenucci*, 478 N.Y.S.2d 578, Web 1984 N.Y.Misc. Lexis 3283 (Supreme Court of New York)

14.3 Right to an Accounting Charles Fial and Roger J. Steeby entered into a partnership called Audit Consultants to perform auditing services. Pursuant to the agreement, they shared equally the equity, income, and profits of the partnership. Originally, they performed the auditing services themselves, but as business increased, they engaged independent contractors to do some of the audit work. Fial's activities generated approximately 80 percent of the partnership's revenues. Unhappy with their agreement to divide the profits equally, Fial wrote a letter to Steeby seven years later, dissolving the partnership.

Fial asserted that the clients should be assigned based on who brought them into the business. Fial formed a new business called Audit Consultants of Colorado, Inc. He then terminated the original partnership's contracts with many clients and put them under contract with his new firm. Fial also terminated the partnership's contracts with the independent-contractor auditors and signed many of these auditors with his new firm. The partnership terminated about eleven months after Fial wrote the letter to Steeby. Steeby brought an action against Fial, alleging breach of fiduciary duty and seeking a final accounting. Who wins? *Steeby v. Fial*, 765 P.2d 1081, Web 1988 Colo.App. Lexis 409 (Court of Appeals of Colorado)

14.4 Tort Liability Thomas McGrath was a partner in the law firm Tarbenson, Thatcher, McGrath, Treadwell & Schoonmaker. One day, at approximately 4:30 P.M., McGrath went to a restaurant–cocktail establishment in Kirkland, Washington. From that time until about 11:00 P.M., he imbibed considerable alcohol while socializing and discussing personal and firm-related business. After 11:00 P.M., McGrath did not discuss firm business but continued to socialize and drink until approximately 1:45 A.M., when he and Fredrick Hayes, another bar patron, exchanged words. Shortly thereafter, the two encountered each other outside, and after another exchange, McGrath shot Hayes. Hayes sued McGrath and the law firm for damages. Who is liable? *Hayes v. Tarbenson, Thatcher, McGrath, Treadwell & Schoonmaker*, 50 Wash.App. 505, 749 P.2d 178, Web 1988 Wash.App. Lexis 27 (Court of Appeals of Washington)

14.5 Liability of General Partners Pat McGowan, Val Somers, and Brent Robertson were general partners of Vermont Place, a limited partnership formed for the purpose of constructing duplexes on an undeveloped tract of land in Fort Smith, Arkansas. The general partners appointed McGowan and his company, Advance Development Corporation, to develop the project, including contracting with materials people, mechanics, and other suppliers. None of the limited partners took part in the management or control of the partnership.

Eight months later, Somers and Robertson discovered that McGowan had not been paying the suppliers. They removed McGowan from the partnership and took over the project. The suppliers sued the partnership to recover the money owed them. The partnership assets were not sufficient to pay all their claims. Who is liable to the suppliers? *National Lumber Company v. Advance Development Corporation*, 293 Ark. 1, 732 S.W.2d 840, Web 1987 Ark. Lexis 2225 (Supreme Court of Arkansas)

14.6 Liability of Limited Partners Union Station Associates of New London (USANL) was a limited partnership formed under the laws of Connecticut. Allen M. Schultz, Anderson Nolter Associates, and the Lepton Trust were limited partners. The limited partners did not take part in the management of the partnership. The National Railroad Passenger Association (NRPA) entered into an agreement to lease part of a railroad facility from USANL. NRPA sued USANL for allegedly breaching the lease and also named the limited partners as defendants. Are the limited partners liable? *National Railroad Passenger Association v. Union Station Associates of New London*, 643 F.Supp. 192, Web 1986 U.S. Dist. Lexis 22190 (United States District Court for the District of Columbia)

14.7 Liability of Partners Raugust-Mathwig, Inc., a corporation, was the sole general partner of a limited partnership. Calvin Raugust was the major shareholder of this corporation. The three limited partners were Cal-Lee Trust, W.J. Mathwig, Inc., and W.J. Mathwig, Inc., and Associates. All three of the limited partners were valid corporate entities. Although the limited partnership agreement was never executed and a certificate of limited partnership was not filed with the state, the parties opened a bank account and began conducting business.

John Molander, an architect, entered into an agreement with the limited partnership to design a condominium complex and professional office building to be located in Spokane, Washington. The contract was signed on behalf of the limited partnership by its corporate general partner. Molander provided substantial architectural services to the partnership, but neither project was completed because of a lack of financing. Molander sued the limited partnership, its corporate general partner, the corporate limited partners, and Calvin Raugust individually to recover payments allegedly due him. Against whom can Molander recover? *Molander v. Raugust-Mathwig, Inc.*, 44 Wash.App. 53, 722 P.2d 103, Web 1986 Wash.App. Lexis 2992 (Court of Appeals of Washington)

Ethics Cases

14.8 Ethics When the Chrysler Credit Corporation (Chrysler Credit) extended credit to Metro Dodge, Inc. (Metro Dodge), Donald P. Peterson signed an agreement guaranteeing to pay the debt if Metro Dodge did not pay. When Metro Dodge failed to pay, Chrysler Credit sued Peterson on the guarantee and obtained a judgment of $350,000 against him. After beginning collection efforts, Chrysler Credit learned through discovery that Peterson owned four limited partnership units in Cedar Riverside Properties, a limited partnership. Chrysler Credit sued to obtain the money owed by Peterson from his interests in these other limited partnerships. *Chrysler Credit Corporation v. Peterson*, 342 N.W.2d 170, Web 1984 Minn.App. Lexis 2976 (Court of Appeals of Minnesota)

1. What is a personal guarantee?
2. Did Peterson act ethically in this case?
3. Can Chrysler Credit recover against Peterson's limited partnership interests?

required warning about not using the backdoor after dark had not been posted at the restaurant.

Martin's parents and Dudek and Kincaid sued McDonald's to recover damages for negligence. Is McDonald's liable for negligence? *Martin v. McDonald's Corporation*, 572 N.E.2d 1073, Web 1991 Ill.App. Lexis 715 (Court of Appeals of Illinois)

15.2 Liability of Limited Partners In 2002, Damon Chargois and Cletus Ernster, both lawyers, formed a limited liability partnership known as Chargois & Ernster, L.L.P. (CELLP). CELLP prosecuted lawsuits against Dillard Department Stores, Inc. (Dillard's), alleging that Dillard's racially discriminated against customers. In June 2003, in an attempt to solicit business, CELLP developed a website that included a link using the "Dillard's" name and logo. Clicking on this link took visitors to dillardsalert.com, a separate website documenting acts of alleged racial profiling by the department store.

Dillard's sued CELLP in U.S. District Court for trademark infringement and cyberpiracy. On July 25, 2004, while the litigation continued, Chargois and Ernster dissolved their limited liability partnership, and CELLP's registration as a LLP expired. On November 2, 2004, the court entered a judgment ordering CELLP to pay Dillard's $143,500 in damages. When the judgment was not satisfied, Dillard's sued Chargois and Ernster in their individual capacities, alleging that the partners were personally responsible for the judgment. Are Chargois and Ernster personally liable for the unpaid judgment obtained against their law firm? *Evanston Insurance Company v. Dillard Department Stores, Inc.*, Web 2010 U.S. App. Lexis ___ (United States Court of Appeals for the Fifth Circuit)

15.3 Liability of a Franchisee The Southland Corporation (Southland) owns the 7-Eleven trademark and licenses franchisees to operate convenience stores using this trademark. Each franchise is independently owned and operated. The franchise agreement stipulates that the franchisee is an independent contractor who is authorized to make all inventory, employment, and operational decisions for the franchise.

Timothy Cislaw, 17 years old, died of respiratory failure. His parents filed a wrongful death action against the franchisee, a Costa Mesa, California, 7-Eleven franchise store, and Southland, alleging that Timothy's death resulted from his consumption of Djarum Specials (clove cigarettes) sold at the Costa Mesa, California, 7-Eleven franchise store. The Costa Mesa 7-Eleven was franchised to Charles Trujillo and Patricia Colwell-Trujillo. Southland defended, arguing that it was not liable for the alleged tortious conduct of its franchisee because the franchisee was an independent contractor. The plaintiffs alleged that the franchisee was Southland's agent and therefore Southland was liable for its agent's alleged negligence of selling the clove cigarettes to their son. Is the Costa Mesa franchisee an agent of Southland, thus making Southland liable for the alleged tortious conduct of its franchisee? Does the doctrine of apparent agency apply in this case? Who wins? *Cislaw v. Southland Corporation*, 4 Cal.App.4th 1284, 6 Cal.Rptr.2d 386, Web 1992 Cal.App. Lexis 375 (Court of Appeal of California)

15.4 Limited Liability Company Angela, Yoko, Cherise, and Serena want to start a new business that designs and manufactures toys for children. At a meeting in which the owners want to decide what type of legal form to use to operate the business, Cherise states:

> *We should use a limited liability company to operate our business because this form of business provides us, the owners, with a limited liability shield, which means that if the business gets sued and loses, we the owners are not personally liable to the injured party except up to our capital contribution in the business.*

The others agree and form a limited liability company called Fuzzy Toys, LLC, to conduct the member-managed business. Each of the four owners contributes $50,000 as her capital contribution to the LLC. Fuzzy Toys, LLC, purchases $800,000 of liability insurance from Allied Insurance Company and starts business. Fuzzy Toys, LLC, designs and produces "Heidi," a new toy doll and female action figure. The new toy doll is an instant success, and Fuzzy Toys, LLC, produces and sells millions of these female action figures. After a few months, however, the LLC starts getting complaints that one of the parts of the female action figure is breaking off quite regularly, and some children are swallowing the part. The concerned member-managers of Fuzzy Toys, LLC, issue an immediate recall of the female action figure, but before all of the dolls are returned for a refund, Catherine, a 7-year-old child, swallows the toy's part and is severely injured. Catherine, through her mother, sues Fuzzy Toys, LLC, Allied Insurance Company, Angela, Yoko, Cherise, and Serena to recover damages for product liability. At the time of suit, Fuzzy Toys, LLC, has $200,000 of assets. The jury awards Catherine $10 million for her injuries. Who is liable to Catherine, and for how much? How much does Catherine recover?

15.5 Liability of Members Harold, Jasmine, Caesar, and Yuan form Microhard.com, LLC, a limited liability company, to sell computer hardware and software over the Internet. Microhard.com, LLC,

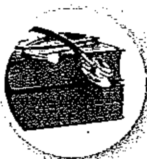
hires Heather, a recent graduate of the University of Chicago and a brilliant software designer, as an employee. Heather's job is to design and develop software that will execute a computer command when the computer user thinks of the next command he or she wants to execute on the computer. Using Heather's research, Microhard.com, LLC, develops the Third Eye software program that does this. Microhard.com, LLC, sends Heather to the annual Comdex computer show in Las Vegas, Nevada, to unveil this revolutionary software. Heather goes to Las Vegas, and while there, she rents an automobile to get from the hotel to the computer show and to meet interested buyers at different locations in Las Vegas. While Heather is driving from her hotel to the site of the Comdex computer show, she negligently causes an accident in which she runs over Harold Singer, a pedestrian.

Singer, who suffers severe physical injuries, sues Microhard.com, LLC, Heather, Harold, Jasmine, Caesar, and Yuan to recover monetary damages for his injuries. Who is liable?

15.6 Liability of Members Isabel, Koshi, and Winchester each contribute $50,000 capital to form a limited liability company called Fusion Restaurant, LLC, which operates an upscale restaurant that serves "fusion" cuisine, combining foods from cultures around the world. Fusion Restaurant, LLC, as a business, borrows $1 million from Melon Bank for operating capital. Isabel, Koshi, and Winchester are so busy cooking, serving, and running the restaurant that they forget to hold members' meetings, keep minute books, or otherwise observe any usual company formalities for the entire first year of business. After this one year of hard work, Fusion Restaurant, LLC, suffers financial difficulties and defaults on the $1 million bank loan from Melon Bank. Melon Bank sues Fusion Restaurant, LLC, Isabel, Koshi, and Winchester to recover the unpaid bank loan. Who is liable?

15.7 Member-Managed LLC Jennifer, Martin, and Edsel form a limited liability company called Big Apple, LLC, to operate a bar in New York City. Jennifer, Martin, and Edsel are member-managers of the LLC. One of Jennifer's jobs as a member-manager is to drive the LLC's truck and pick up certain items of supply for the bar each Wednesday. On the way back to the bar one Wednesday after picking up the supplies for that week, Jennifer negligently runs over a pedestrian, Tilly Tourismo, on a street in Times Square. Tilly is severely injured and sues Big Apple, LLC, Jennifer, Martin, and Edsel to recover monetary damages for her injuries. Who is liable?

15.8 Duty of Loyalty Ally is a member and a manager of a manager-managed limited liability company called Movers & You, LLC, a moving company. The main business of Movers & You, LLC, is moving large corporations from old office space to new office space in other buildings. After Ally has been a member-manager of Movers & You, LLC, for several years, she decides to join her friend Lana and form another LLC, called Lana & Me, LLC. This new LLC provides moving services that move large corporations from old office space to new office space. Ally becomes a member-manager of Lana & Me, LLC, while retaining her member-manager position at Movers & You, LLC. Ally does not disclose her new position at Lana & Me, LLC, to the other members or managers of Movers & You, LLC. Several years later, the other members of Movers & You, LLC, discover Ally's other ownership and management position at Lana & Me, LLC. Movers & You, LLC, sues Ally to recover damages for her working for Lana & Me, LLC. Is Ally liable?



Ethics Cases

15.9 Ethics Christopher, Melony, Xie, and Ruth form iNet.com, LLC, a limited liability company. The four members are all Ph.D. scientists who have been working together in a backyard garage to develop a handheld wireless device that lets you receive and send e-mail, surf the Internet, use a word processing program that can print to any printer in the world, view cable television stations, and keep track of anyone you want anywhere in the world as well as zoom in on the person being tracked without that person knowing you are doing so. This new device, called Eros, costs only $29 but makes the owners $25 profit per unit sold. The owners agree that they will buy a manufacturing plant and start producing the unit in six months. Melony, who owns a one-quarter interest in iNet.com, LLC, decides she wants "more of the action" and soon, so she secretly sells the plans and drawings for the new Eros unit to a competitor for $100 million. The competitor comes out with exactly the same device, called Zeus, in one month and beats iNet.com, LLC, to market. The LLC, which later finds out about Melony's action, suffers damages of $100 million because of Melony's action. The LLC sues Melony to recover damages.