



Sample Version

QuickSheets

Uniform Bar Exam / Multistate Essay Exam

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Studicata UBE/MEE QuickSheets™

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BUSINESS ASSOCIATIONS

AGENCY RELATIONSHIPS

CREATION: An agency relationship is created when:

1. The parties voluntarily consent to enter into an agency relationship; **AND**
2. The agent is subject to the principal's control.

TERMINATION: The agency relationship may be terminated by the parties if the:

1. Agent or principal manifests to the other the desire to cease the agency relationship;
2. Express terms of the agency expire; **OR**
3. Purpose of the agency relationship is fulfilled.

The agency relationship may be terminated by operation of law if the:

1. Agent or principal dies;
2. Agent or principal loses capacity; **OR**
3. Agent materially breaches a fiduciary duty owed to the principal.

AUTHORITY TO BIND PRINCIPAL: An agent may bind a principal to a contract if the agent is acting within his actual or apparent authority. Once a principal is validly bound to a contract by his agent, the principal is liable under the terms of the contract.

ACTUAL AUTHORITY: An agent acts with actual authority (express or implied) when the agent reasonably believes, in accordance with the principal's manifestations to the agent, that the principal wishes the agent to act.

Express Authority. Actual express authority exists when the principal directs the agent to engage in the precise task in question.

Implied Authority. Actual implied authority exists when the agent believes, based on a reasonable interpretation of the principal's words or conduct, that the principal wishes the agent to act on his behalf.

APPARENT AUTHORITY: An agent acts with apparent authority when:

1. The principal holds the agent out as having authority to act on the principal's behalf; **AND**
2. The principal's conduct, when reasonably interpreted, causes a third party to rely on the agent's appearance of authority when dealing with the agent.

PRINCIPAL/AGENT VICARIOUS LIABILITY

RESPONDEAT SUPERIOR: An employer (principal) may be liable for torts committed by an employee (agent) if:

1. An employer-employee relationship exists; **AND**
2. The employee's commission of the tort occurs within the scope of employment.

INDEPENDENT CONTRACTORS: Generally, a principal is not liable in tort for the unauthorized conduct of an independent contractor. The principal's amount of control over the agent is

the key factor in determining whether an agent is an independent contractor. Other relevant factors include:

1. The nature of the work
2. The skill required in the particular occupation;
3. Who supplies the equipment or tools to perform the work;
4. The method of payment (hourly, salary, etc.);
5. The length of the employment; **AND**
6. How the parties characterize the transaction.

PARTNERSHIP TYPES AND FORMATION

GENERAL PARTNERSHIP (GP): A GP is a type of partnership that has no limited personal liability. A GP is formed when:

1. Two or more person;
2. Associate as co-owners;
3. To carry on a business for profit.

LIMITED PARTNERSHIP (LP): An LP consists of one or more general partners and one or more limited partners. General partners remain personally, jointly and severally liable for all debts of the LP, while limited partners are personally liable for debts only to the extent of their investment in the LP.

Formation. An LP is formed when a written certificate of limited partnership is executed in substantial compliance with state law and filed with the secretary of state.

LIMITED LIABILITY PARTENRSHIP (LLP): An LLP limits a partner's potential liability for professional malpractice that is committed by another partner. Any partnership may become an LLP upon the:

1. Approval of the partners by vote; **AND**
2. Filing a statement of qualification with the secretary of state.

PARTNERSHIP LIABILITY

TORT LIABILITY: General partners are jointly and severally liable for all obligations of the partnership arising from any wrongful act or omission of any partner acting:

1. Within the ordinary course of business; **OR**
2. With the authority of all other partners.

Limited partners are not personally liable for obligations of the LP arising from the wrongful acts or omissions of other partners (they are always liable for their own misconduct).

CONTRACT LIABILITY: Each partner is an agent of the partnership. Therefore, the actions of every partner that are made within the ordinary course of business to carry on the partnership's business bind the partnership, unless the partner taking the action:

1. Has no authority to act on behalf of the partnership; **AND**
2. The other side has knowledge or notice that the partner lacks authority.

DUTIES OF THE PARTNERS

DUTY OF CARE: Each partner owes a limited fiduciary duty of

care to the partnership and other partners, which requires that each partner refrain from engaging in:

1. Grossly negligent or reckless conduct;
2. Intentional misconduct; **OR**
3. A knowing violation of the law.

DUTY OF LOYALTY: Each partner owes a fiduciary duty of loyalty to the partnership and other partners, which requires that each partner:

1. Act in good faith and fairly toward the other partners;
2. Account for any property, profit, or benefit derived by the partner from the partnership business; **AND**
3. Refrain from:
 - a. Competing with the partnership; **AND**
 - b. Usurping a business opportunity that properly belongs to the partnership.

EFFECT OF BREACH: If a partner breaches the duty of care or loyalty, he may be held personally liable for damages.

PARTNERSHIP DISSOLUTION

DISSOLUTION: Dissolution of a partnership does not immediately terminate the partnership. Rather, the partnership enters a “winding up” phase, which continues until the winding up of the partnership’s affairs is completed.

CAUSES: There are three main causes of dissolution

1. Actions taken by the partners (e.g., dissociation);
2. Operation of law (e.g., the partnership’s business becomes illegal); **OR**
3. Court order (e.g., a judicial dissolution may be granted if it becomes impracticable to continue the partnership’s business).

UNIFORM PARTNERSHIP ACT (UPA): Under the UPA, any change in partner membership automatically triggers dissolution of the partnership unless there is an agreement to the contrary.

REVISED UNIFORM PARTNERSHIP ACT (RUPA): Under RUPA, absent an agreement to the contrary, the “disassociation” (occurs when a partner ceases his association with carrying on the partnership business) of a partner does not automatically trigger dissolution unless:

1. The partnership is an at-will partnership; **OR**
2. There is an occurrence of an event that the partners specified in the partnership agreement that would cause dissolution (e.g., term partnerships).

TERM PARTNERSHIPS: Under RUPA, a term partnership may be dissolved before its term expires if:

1. At least half of the partner’s express their will to wind up the business within 90 days after a partner’s disassociation by death, bankruptcy, becoming incapacitated, or wrongful disassociation; **OR**
2. All of the partners agree to amend the partnership agreement by expressly agreeing for dissolution.

CORPORATION FORMATION

ARTICLES OF INCORPORATION: Generally, a corporation is formed when the articles of incorporation are filed with the secretary of state (unless the articles specify a delayed effective date).

Amendments. The articles may be amended if there is a majority vote from the directors and shareholders. However, minor amendments may be made by the board of directors without shareholder approval.

CORPORATE BYLAWS: Corporate bylaws are written rules of conduct that must be initially adopted by the incorporators or board of directors. The bylaws may contain any provision for managing the business and regulating the affairs of the corporation to the extent that is consistent with the law and articles of incorporation. If there is a conflict between the articles and bylaws, the articles of incorporation govern.

Amendments. The bylaws may be amended or repealed by the corporation’s shareholders. The board of directors may also amend or repeal the bylaws unless the shareholders expressly specify otherwise.

PIERCING THE CORPORATE VEIL

GENERAL RULE: Generally, shareholders of a corporation are not personally liable for the debts of the corporation. However, the major exception to this rule is the doctrine of piercing the corporate veil.

PIERCING THE CORPORATE VEIL: Courts will allow a creditor to pierce the corporate veil and hold a shareholder personally liable for the debts of a corporation when:

1. The shareholder has dominated the corporation to the extent that the corporation may be considered the shareholder’s alter ego;
2. The shareholder failed to follow corporate formalities;
3. The corporation was undercapitalized; **OR**
4. There is fraud or illegality present.

EFFECT: Once the corporate veil has been pierced, courts generally hold all of the shareholders liable. However, some courts do not extend liability to passive investors.

SHAREHOLDER RIGHTS

MEETINGS: A corporation must hold an annual meeting of shareholders at a time that is fixed in accordance with the bylaws. Special meetings can be held in certain situations.

Notice. Generally, shareholders who are entitled to vote must be provided with sufficient notice of all annual and special meetings.

Quorum. A quorum must be present in order for the shareholders to take action at a meeting. Unless otherwise set forth in the articles, a quorum exists when at least a majority of the shares entitled to vote are present.

VOTING RIGHTS: The articles may provide that holders of certain types of shares cannot vote unless specific conditions