5)

1. Business Entity

General Partnership

A general partnership is the default form of entity that is formed when more than two people decide to work together. It only requires an intent to engage in profit sharing. Even without any formalities in formation--such as filing with the Secretary of State--it automatically forms as a result of people deciding to engage in profit sharing.

Here, A, B, and C filed no documents with the Secretary of State. However, they did agree to equally share the firm's profits after paying all expenses. They also agreed to make all business and management decisions. While there are no facts as to who has a higher share or greater authority in making management decisions, presumably, their decision to share equally in firm's profits indicate that they hold equal rights respectively in making business and management decisions.

Thus, it is likely that A, B, and C had formed a general partnership to conduct their business.

Limited Partnership/Limited Liability Partnership

Limited partnership or limited liability partnerships differentiate partners based on whether they are general partners or limited partners. As the name suggests, general partners are liable for the partnership's debts, but is allowed to engage in decision making and management. Limited partners are shielded from liability. It has to be meet corporate formalities and filed with the Secretary of State.

Here, no facts indicate that A, B, and C belonged to a different class of partners. Instead, they made all business and management decisions together and equally shared the firm's profits. While nothing is said about liability, because they are equally sharing profits after paying all expenses (presumably in equal shares), this is unlikely to be a limited liability entity. No documents were filed to the Secretary of State.

Thus, it will not be a limited partnership or a limited liability partnership.

Limited Liability Company

Limited liability companies shield members (NOT called partners) from liability. It also allows for pass through taxation treatment. It has to be filed to the secretary of state.

Here, nothing was filed to secretary of state, and nothing indicates that A, B, and C became members of a limited liability company.

Thus, they did not form an LLC.

Corporation

Corporation is an incorporated entity that is owned by shareholders, and is run by directors, who delegate their management rights to officers such as the CEO or the President. Documents have to be filed with Secretary of State for valid formation of a corporation.

Here, there was no formation documents that were submitted to the Secretary of State, and no corporate formalities were followed in the formation stage.

Thus, it was not formed as a corporation.

In conclusion, the firm was formed as a **general partnership.**

2. Status of Associate Attorneys

Individuals who work at a partnership who are paid a fixed salary are generally considered employees. Despite any bonus payments that may be given out, it is not likely to give them management rights or any shares ownership shares of the partnership.

Here, Associates are paid a fixed salary. This is likely to make them an employee. They are not members because the entity that was formed was not an LLC. Furthermore, the entity was not a corporation, so Associates are not shareholders of the firm.

Despite the fact that they receive 25% of the gross billings for any clients they bring, these are considered more like incentives or bonus payments rather than a share of the partnership.

Thus, the Associates are most likely employees of the firm.

3. Status of Senior Attorneys

When an individual within a partnership gets to share profits, they are likely to be considered partners for classification purposes. Despite not having any management authority, the mere fact that profit is being shared allows one to be a partner.

Here, the senior attorneys are paid based upon the number of hours they bill, plus an annual bonus. This indicates that they receive a regular salary and additional bonus as compensation. In that sense, they may have the same status as Associates as employees.

However, unlike Associates, senior attorneys may access a bonus pool that is equal to 5% of the firm profits. These shares are split equally by the number of qualifying senior attorneys. Because the Senior Attorneys are practically allowed to profit share for the partnership's profits, it is likely that they are considered partners for classification purposes.

It should be noted that the 5% firm profits are not in the form of corporate dividends, which is an amount paid out to shareholders by corporations. Dividends are decided and distributed by the leadership of the corporation and does not depend on whether an individual has exceeded their performance expectations. This further supports that Senior attorneys are not shareholders.

Thus, in conclusion, the senior attorneys are likely to be considered partners because they are engaging in profit sharing.

<u>"Non-Equity Partner" and the title "Partner" on business cards</u>

Despite what A,B, and C have agreed to bestow or what the firm's website states, those things do not have an impact on classifying senior attorneys' role in the partnership. They are merely titles that are given within the organization. The deciding factor that makes Senior Attorneys partners is their ability to profit share.

As stated above, partners are not required to have management authority to qualify as partners. All it takes is to engage in profit sharing.

Thus, the ability to engage in profit sharing makes the Senior attorneys partners.

4. Firm's obligation with regards to M's agreement with N

Actual Authority

Actual authority is created when a principal gives via express or implication that the agent has the authority to do something on behalf of the principal.

Here, despite the firm's website and the business cards, A,B, and C, did not expressly or implicitly give M authority as a partner. It's more likely that they limited the authority by calling them "non-equity partners" who do not have any management authority.

Thus, there was no actual authority.

Apparent Authority

Apparent authority exists when the principal holds out to the third party that the agent is authorized to act on behalf of the principal. Contrary to actual authority (which depends on the relationship between principal and agent), apparent authority depends on what the third party is perceiving in terms of whether authority is given.

Here, M will argue that she had apparent authority because she was "advertised" on the firms' website as a partner.Furthermore, she was given a business card that called her a partner. When N told M about her legal problems, M gave N her business card. The business card was used to present M's position within the firm. Essentially, the business card was used to hold out M as a partner to a third party. Upon seeing that M was a partner and possibly a person of significant managerial rights, N likely decided to negotiate on the hourly rate of return.

Put differently, since business cards are used to give others an impression of what the person's position is in the organization, it is likely that a 3rd party would consider someone with a "partner" on a business card to indeed be a partner of a law firm. By listing senior attorneys as partners on the firm's website and business cards as Partners, the firm has held out to the third party that senior attorneys are authorized to make important business decisions.

Thus, M will likely have had the apparent authority to engage with N on N's legal problems.

Scope of Authority

The agent may not exceed the scope of authority even when given authority to engage in certain acts. The scope is generally limited to what the principal had expressly given, but it could also be implied based on the past acts of the entity or the principal.

Here, M knew that the firm had a strict policy of not reducing hourly rates. Nonetheless, she still

signed a written agreement to handle N's legal matters at a reduced hourly rate. Because M probably knew that she was not allowed to negotiate fees, and also that she did not have any managerial rights in negotiating with others, she is likely to have exceeded the scope.

Firm's obligation

If some agreement was made by an agent to further the agent's interest, then the firm will not be bound by the obligation. However, if it were made to advance the firm's interest, then the firm might be liable if it ratifies (see below under ratification).

Here, M probably signed the written agreement so taht she could bring in clients and bill more hours, which would entitle her to a greater amount of salary. It is likely that she signed the agreement with N to further her interest. Knowing that the firm had a strict policy of not reducing hourly rates, it is unlikely that M had engaged in the written agreement to further the firm's interest.

Thus, the firm will not be obligated to the agreement between M and N unless it ratifies the agreement.

Ratification

A firm may ratify an unauthorized agreements between the agent and principal if the principal knows of the terms of the agreement; dose not deny the existence of the agreement; and decides to receive the benefit of the agreement.

Here, given the firm's history of strict policy of not reducing hourly rates, it is unlikely that the firm will ratify the agreement. It seems unlikely that the firm will choose to receive the benefits. Nonetheless, if N's promise of future business is material, the firm may want to ratify for future business.

Thus, more facts are needed to figure out whether the firm will ratify the agreement. But until it does so, the firm will not be bound ot the agreement between M and N.

Promoter Liability

Promoter liability are promises based before entity formations that the firm may be liable for.

Here, promises Made before Entity Formation is not applicable because A, B, and C had already formed a law firm.

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END OF EXAM