

# Navigating Partnership Perils

Many firms choose LLPs and LLCs as a preferred, though hazardous, course

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In every state in the union, the law is clear: Lawyers are liable for their own acts and omissions. But when they organize their businesses as professional corporations, limited liability corporations or limited liability partnerships, they can reduce their exposure for what others do, as well as for the firm's commercial obligations. The amount of protection varies.

California's Limited Liability Partnership law, for example, broadly shields LLP-organized partners from personal liability for the errors and omissions of other partners, their employees and agents in connection with rendering professional services.

It also offers protection from the tortious conduct of others arising outside the professional context and from commercial or contractual obligations of the limited liability partnership.

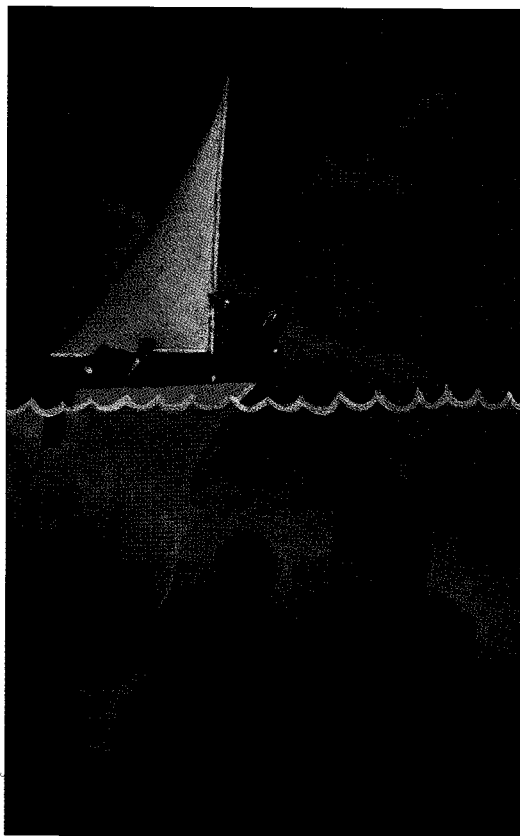
Partners remain individually liable for their own errors and omissions, including those of their subordinates, torts in which they are directly involved, and commercial or contractual obligations that they personally guarantee.

In some other states, limited vicarious liability is available only for tort claims arising out of the business dealings of a limited liability partnership or limited liability company. A claim for breach of contract, unlike one for professional negligence, might not be covered. Nor would partners or corporation members in these states escape personal liability for contractual obligations, such as leases and bank loans.

Still other jurisdictions confine

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vicarious liability to acts or omissions arising from the provision of professional services. Lawyers also remain individually liable for both the partnership's or company's commercial and contractual obligations, as well as for other tortious acts of their partners, members, employees and agents. The latter category may include claims ranging from breach of fiduciary duty to sexual harassment.



Both the American Law Institute and the American Bar Association have provided guidance on how courts should interpret these statutes. The proposed ALI Restatement espouses the traditional rule that each principal of a law firm remains vicariously liable for the malpractice of any other principal or employee of the firm, even though the firm may be organized under professional corporation or limited liability statutes.

(See § 79 of the Restatement Third of the Law Governing Lawyers, Chapter 4, "Liability of Law-

yers to Clients and Non-Clients.")

A differing view, embraced by some states and embodied in ABA Formal Opinion No. 303 (1961), permits lawyers to limit their vicarious malpractice liability if five conditions are satisfied:

- The attorney rendering the service remains personally responsible.
- The fact of limited liability is made clear to the client.
- Firm ownership is limited to attorneys.
- No fees are shared with non-attorneys.
- Management of the firm is exclusively by attorneys.

## Security Devices

Some states condition limited liability on the owners' personal guarantee or maintenance of insurance or other security for malpractice claimants. Vicarious liability is not completely eliminated, but is capped by the amount of the security, while direct liability is unrestricted.

By providing a pool of assets to satisfy potential judgments, these security devices further the arguments for limited liability by addressing, in part, the ALI's concern that clients have recourse against their lawyers.

Another consideration is the effect of limitations on liability in states that have legal ethics codes patterned after the ABA Model Code, Disciplinary Rule 6-102. These codes ostensibly prohibit lawyers from prospectively limiting their malpractice liability because of the unique nature of lawyers' relationships with their clients. The seeming inconsistency, however, is illusory.

Disciplinary Rule 6-102, for example, prohibits a lawyer from limiting direct liability to one's own clients for malpractice. The rule does not address vicarious liability, just as doing business as a limited liability partnership, company or corporation doesn't eliminate direct liability for acts and omissions.

When all is said and done, many lawyers prefer a limited liability organization over the unlimited personal liability exposure of a general partnership. ■