

# Week five assignment



This type of entity will provide the control of a sole proprietorship while placing liability on the business rather than the individual. Fireworks have the potential to be dangerous, causing serious damage to both people and property. The potential for liability associated with the use and/or manufacture of fireworks is unavoidable. " Any one of the following defects may expose the manufacturer to liability for injuries that are caused by their product: design defect, manufacturing defect and defect in marketing," (McLaughlin, & Laurite, 2014).

Liabilities associated with these defects include intentional torts, negligence and strict liability. The first step to avoiding an attack on personal assets is relocating operations to an area zoned for the manufacture of fireworks. No matter what the entity, the manufacture of explosives in a residential area will enable a liability protection to be pierced. An intentional tort will occur when the manufacturer sells a product that he knows is defective or dangerous of which injuries are certain to occur. In such cases, ACME has a duty to warn the consumer of potential harm.

If ACME fails to provide warnings or recalls on its products, it can be held liable for battery to anyone injured by its products. According to a 1903 product liability case, a company is liable for failing to notify the buyer that the product is potentially dangerous, is defective, or negligence in the manufacture or sale of a dangerous product. See *House v. J. I. Case Threshing Mach. Co.*, 120 F. 865 (8th Cir. 1903). Should a mishap occur during the manufacture, sale or storage; a sole proprietor will be liable for any and all property damage incurred to both himself and/or his neighbors.

With a sole proprietorship there is no legal distinction between the owner and the business thus, he is at risk of losing personal assets in a lawsuit against the business. Should injury, death, or damage to property occur from intentionally manufacturing or selling a ungenerous product, both the manufacturer and suppliers can be sued for unintentional injuries. This risk extends beyond the manufacture and supply of the fireworks; it also includes care in design and use. For instance, should a consumer purchase defective ACME Fireworks from a retailer and sustain injury to him and others, ACME can be sued.

See *Boeing Airplane Co. V. Brown*, 291 F. Ad 310 (9th Cirri. 1961). " Strict liability in tort arises when someone suffers an injury not from anyone's willful negligent act, but rather by engaging in some intrinsically dangerous activity or, under certain resistances, through the manufacturing of unsafe products," (Rogers, S. 2012). Courts today, rationalize strict liability by establishing the fact that manufacturers are better positioned to prevent risk of loss than, that Of the consumer. As such, it is theresponsibilityof the manufacturer to ensure their products are safe.

In order to be strictly liable for a product, the plaintiff must demonstrate that there is a defect, the defect was caused by the manufacturer and in turn, was the cause of injury. See *Kerr v. Corning Glass*, 169 N. W.. Ad 587 (Min. 1969). In order to determine Contract Viability, it s important to review the agreements between ACME and the retailers. Examine each contract carefully ensuring it contains five essential elements. The legitimacy of the agreements is dependent upon it containing an offer, acceptance, consideration legality and capacity.

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To further explain, an offer is an invitation to enter into a contract. If a company agrees to the terms outlined in the offer, they have then accepted the agreement. Once an agreement has been recognized, it must be established that both parties have intentions to enter into a legal binding contract. The considerations of his agreement are legal exchanges for services or products. For ACME Fireworks, this will include the prices paid for the fireworks and the amounts desired. In order to be legally binding, the cost of doing business must not be illegal and, the ability to perform must not be impossible.

Finally, it must be determined that both parties have entered into the contract freely without coercion or duress. Additionally, the law prohibits contracts made with persons of diminished mental capacity and minors. The contract probability concerns itself with the performance specifications and acquirement of the agreement. Though the agreement appears to be viable, if it lacks a specific performance strategy, it will not have a future. The probability Of the agreement to remain in force will be dependent upon the period of performance and quantities desired during that period.

Fireworks are seasonal whereby; a retailer agreeing to order large quantities on a regular basis is not realistic. There is no guarantee the quantities will remain consistent throughout the contract period. Additionally, ACME is concerned about failing to meet its contractual obligations should it not hire enough people. The basic questions that need to be addressed are: how and when to order, amounts to order and what happens if ACME fails to deliver? The owner is concerned that there will not be enough work for the additional employees once the initial orders have been filled.

The terms and conditions of the contract will determine the type of employees ACME will hire. At-will employment provides no obligation of continuous employment once the orders have been filled. For this reason, the law allows an employer to terminate without just cause or reason. Generally, this rule is applied for seasonal work. ACME Fireworks has several options to consider in meeting contract demands, performance and productivity. By hiring temporary full-time associates, ACME can readily meet demands however; there is no incentive to maintain a standard of quality or productivity.

Same is true for part-time associates as their hours are usually dictated by the needs or demands of a business. Consideration for casual and day labor employees might prove useful. Casual employees typically work on an as needed basis and usually consist of single parents, college students or applicants seeking extramoney. Temp Agencies provide labor on a daily, weekly or monthly basis. Typically, temp agency employees that excel are offered permanent positions within an organization. Hiring regular employees on a probationary basis will allow ACME the ability to meet the quality, performance and productivity of the contract.

Generally a just-cause type of employment this employee is evaluated at the end of a specified period based upon certain criteria. If an employee fails to meet standards then they are usually let go. With the increase in business size and operation certain liabilities can raise concern. It is important to understand the differences associated with the different entities when choosing what best fits your organization. Whether choosing a Sole Proprietorship, a Partnership, a Corporation or a Limited Liability Company, it

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is important to assess all the risks associated with the nature of the business.

Currently, ACME Fireworks operates out of a garage and the owner enjoys complete autonomy over operations. Operating as a Sole Proprietorship, the business and the owner remain one and the same. This provides the highest risk of loss to personal assets. The disadvantage is that a sole proprietor has limited options for raising capital and no limits on liability for business debts; thus if the business does not fare well, the sole proprietor can face personal bankruptcy," (Rogers, S. 2012).

As a partnership, ACME Fireworks will share ownership with two or more people. " Partners are automatically owners and managers of the business, and the law presumes equal rights unless the partners have specified otherwise," (Rogers, S. 2012). In a partnership, taxes are assessed on the earnings of the partners and not that of the business. Should the company become party too lawsuit or is unable to fulfill its contractual obligations, the personal assets of all the partners can be used to satisfy a judgment by the court. Partners are not only liable for their own actions, but also for the business debts and decisions made by other partners. In addition, the personal assets of all partners can be used to satisfy the partnership's debt," (SABA. Gob, 2014). Should ACME Fireworks consider a Corporation, it will become an independent legal entity. The owner(s) will then become shareholders which will limit their liability and legal responsibility. In order to remain free of any personal liability, the company must operate according to state corporation laws. If the corporate form of business organization is used to defraud creditors, stockholders will lose the protection of limited liability

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and will be held personally liable for all debts of the corporation," (Rogers, S. 2012). Since a corporation requires the filing of complicated forms, annual reports and fees, it can prove costly for a small company. Additionally, a corporation is double taxed whereby; the company pays taxes on its earnings and the shareholders pay taxes on dividends paid. A Limited Liability Company (LLC) provides the limited liability features of a Corporation but operates like a partnership or sole proprietorship.

A LLC " typically features easier formation (although filing under the statute is required) and lower filing fees, flow-through taxation where members of a LLC are taxed on their earnings, but the business itself is not taxed, the stability of a corporation (a member's leaving will not dissolve the LLC), and limited liability, where the business is liable for its debts and the people who own it are not," (Rogers, S. 2012). Since ACME Fireworks is a small business with a single owner, a LLC will provide a low cost alternative that provides limited protection of personal assets.

Unlike like a corporation, the taxes, profits and losses are passed through to each member of the LLC. Members are protected from personal liability for the actions and decisions Of the LLC. However, in the case of wrongful or illegal acts, the limited liability can be pierced and personal assets can be assessed. Additionally, it is important to separate business funds from personal funds. Should ACME use a personal ann. account to pay its creditors, they can in turn pierce the limited liability and seize the owners' personal funds. The Federal Government does not recognize a LLC as a separate entity as in a corporation.

As such, the owner(s) of ACME Fireworks will file their shared earnings on their personal income tax. If the LLC is a single owner operation, income will be reported on a Schedule C just like that of a sole proprietorship. Should there be more than one member sharing in the profits and losses, a form 1065 will be filed as is done in a Partnership. The entire net income of the LLC must be accounted for in the filings of all members involved. The owner of ACME Fireworks has asked for advice in choosing an entity that would provide the least risk to personal assets, should he fail to meet his contractual obligations.

It is important for ACME Fireworks to understand the risks associated with the nature of the business. In assessing the current operation, ACME Fireworks operates out of a garage and currently employs approximately 15 people. The liabilities associated with the manufacture of dangerous materials poses a high risk to personal assets should a mishap occur. Before engaging further, ACME must consider relocating to meet both local and state zoning laws. Additionally, Federal OSHA standards must be in place in order to release the owner of allegations associated with safety, wrongdoing, or negligence.

The law provides certain protections associated with Partnerships and Corporations. As a sole-proprietor, ACME Fireworks and the owner are one in the same. Should the company fail in its obligations or fail to warn and/or injure a consumer, the owner is held personally liable. If ACME is to pursue a partnership, the partners share in the personal liabilities of the company. For the production of what is considered dangerous materials (fireworks), the



risks associated with injuries from product liability to manufacture are substantial.

The company IS liable for intentional torts, negligence and strict liability as such; neither a sole-proprietorship nor partnership is suggested. As a manager of ACME Fireworks, would recommend the company pursue a Limited Liability Corporation. According to the Small Business Administration, " Members are protected from personal liability for business decisions or actions of the LLC," (SABA. Gob, 2014). Essentially, if the LLC becomes party to a suit or is unable to fulfill its obligations, members enjoy the same protections as that of shareholders in a corporation.

However, as a limited liability company, they are not exempt from litigation involving wrongful acts by its members or employees. In a LLC, the owner will retain control over the company as in a sole-proprietorship and lessens the risk of personal liability. The owner is also concerned with ACME's ability to meet either contractual obligations or make payroll. The LLC would provide the protections it needs without relinquishing control to a Board of Directors, as in a corporation. Without knowing the specific terms and conditions of the agreements, it is difficult to ascertain viability and validity.