

LLC Review Problems

Manny Moneybags and Harry Hardhat were close friends as children. Later in life, Manny made a lot of money the old fashioned way: he inherited it. Harry, on the other hand, has not had it so easy. He went straight to work after high school and didn't have the opportunity to attend college.

While supervising his crew of ditch diggers one day, Harry got the idea that ditch diggers could work more efficiently if, instead of each using a separate shovel, the group of diggers operated a single large shovel with multiple heads. Harry drew a rough sketch of his creation, which he called the "Digger." Harry approached Manny about their forming a business that would manufacture and sell the Digger. Manny agreed.

Harry and Manny heard from a friend that a limited liability company is "the way to go" for all new business entities. They wrote and signed a piece of paper that stated as follows:

"The Manny and Harry Digger Company, L.L.C. is hereby formed. Harry Hardhat will contribute the design of the "Digger" and will be responsible for all management and administrative matters. Harry will quit his job and work full time on this. Manny Moneybags will contribute \$100,000 immediately, and agrees to contribute an additional \$650,000 over the next two years as funds are needed by the company. Manny will not be involved in management."

- (a) Did Manny and Harry effectively form a limited liability company? Why or why not? Describe the necessary document(s) that are required for the formation of a limited liability company, the necessary matters that are required to be included in each document and the filing requirements applicable to those document(s).**
- (b) Assume that instead of writing out their own document, Manny and Harry come to you to prepare the organizational documents of Manny and Harry Digger L.L.C. Should Manny and Harry Digger, L.L.C. be a "member managed" or "manager managed" limited liability company? Explain the difference between a manager managed and a member managed limited liability company, including the differences in control rights and agency authority.**
- (c) Manny is concerned about liability arising out of job site accidents involving the Digger. Explain the liability protection afforded to Manny by the limited liability company law. Can creditors of the company force Manny to pay them the \$650,000 Manny agreed to contribute over the next two years? Is Manny's agreement to contribute \$750,000 required to be a public record, or can Manny keep this agreement confidential?**
- (d) Manny and Harry agreed that the first \$750,000 of distributions would go to Manny and thereafter they would split all distributions evenly. Is this an acceptable and enforceable allocation of profits and losses?**