

Problem 7.5

Columbus Hockey, LLC (“Company”) is a limited liability company formed for the purpose of (i) owning a National Hockey League (“NHL”) franchise to operate a hockey team in Columbus, and (ii) operating such a team after a franchise had been obtained from the NHL. Hunt, McConnell and Wolfe are the only members of the Company. The members’ relative capital contributions and interests in the profits of the Company are as follows:

	Capital Contribution	Interest in Profits
Hunt	\$30,000	30%
McConnell	\$30,000	30%
Wolfe	\$70,000	40%

Before the NHL would consider the Company’s application for an NHL franchise, the Company was required to arrange for the construction of an arena in Columbus suitable for NHL hockey. A proposal for public financing of an hockey arena failed in a public vote.

Nationwide Insurance Company (“Nationwide”) approached Hunt, and offered to build an arena, and to lease it to the Company. Without consulting with the other members of the Company, Hunt said that, while the Company was interested in principle, the terms proposed by Nationwide were not acceptable. Hunt rejected two later proposals by Nationwide (again, without consulting the other members of the Company).

At that point, Nationwide approached McConnell, and proposed terms for a lease. McConnell decided that if Hunt wasn’t interested in the proposal, that he was. Without consulting with the other members of the Company, McConnell agreed to the Nationwide proposal, but did so on his own behalf. McConnell then submitted his own application for an NHL franchise. Ultimately, the NHL rejected the Company’s application, and instead awarded the Columbus franchise to McConnell, individually.

Hunt and Wolfe demanded the right to participate in the ownership of the franchise. When McConnell refused, Hunt and Wolfe brought appropriate actions, both individually, and on behalf of the Company, against McConnell, seeking any and all appropriate remedies.

Except for the capital contributions and interests in the profits described above, the only provision of either the Articles of Organization or the LLC Operating Agreement [in Texas, Regulations] that might affect your answer is Section 3.3, which provides:

§ 3.3 Members May Compete. Members shall not in any way be prohibited from or restricted in engaging or owning an interest in any other business venture of any nature, including any venture which might be competitive with the business of the Company.

Discuss the relative rights and responsibilities of the Company, and of its members, with respect to the NHL franchise, giving reasons to support your answer.

(1) Assume that the Company was organized under the Uniform Limited Liability Company Act (ULLCA). How do ULLCA Sections 101(10)–(11) & (13), 103, 404, & 409 affect your answer?

(2) Assume instead that the Company was organized under the Delaware Limited Liability Company Act (Del. LLC Act). How do Del. LLC Act Sections [18–] 101(7), (10),–(11), 302, 402, 404 & 1101 affect your answer?

(3) Assume instead that the Company was organized under the Texas Limited Liability Company Act (Tex. LLC Act), and that it is member–managed. How do Tex. LLC Act Articles 2.09, 2.12, 2.17, 2.23 affect your answer?