

Monterey College of Law – Hybrid JD

Business Law I – Section 1

Fall 2025

Prof. B. Sluss

Instructions:

Answer three (3) essay questions.

Time Allocated: Three (3) Hours

Question 1

Chris owns a boutique design studio called "Creative Concepts" and decides to expand the business by hiring a project manager. Chris approaches Dana, an experienced project manager known for successful collaborations with various clients. During their discussion, Chris outlines the responsibilities Dana will have, including overseeing client projects, negotiating contracts, and managing the studio's team of designers.

On Dana's first day, Chris hands over a list of ongoing projects and instructs Dana to negotiate a contract with Alpha Marketing for a high-profile design campaign. Chris specifies the budget constraints, the key design elements required, and the deadline for completing the project.

A few weeks later, Beta Innovations, a potential client not previously discussed, reaches out to Dana directly, seeking proposals for a product launch campaign. Dana, relying on her past experience she proceeds to negotiate and finalize a contract with Beta Innovations.

Unbeknownst to Chris, Dana attends an industry conference where she meets Gamma Technologies, a cutting-edge tech company interested in collaborations. Without specific instructions from Chris, Dana engages in discussions and reaches a preliminary agreement for a joint project. Dana presents her business card to the Gamma representative, indicating her role as the Project Manager for Creative Concepts. Furthermore, she directs the representative to Creative Concepts' website, where a video features Chris expressing full confidence in Dana and endorsing any decisions she makes.

Upon Chris's return, Dana presents the contracts negotiated with Beta Innovations and Gamma Technologies. Chris expresses satisfaction with the Beta Innovations contract but is taken aback by the Gamma Technologies deal. Following an extensive conversation, Dana explains all the pertinent details of both contracts to Chris. In response, Chris states, "I am content with the Beta Innovations contract, but I do not approve of the Gamma Technologies contract."

Answer the following based on Agency Law:

- 1. Was an agency relationship established between Chris and Dana? Discuss.**
- 2. Did Dana have authority to make a contract with Beta Innovations? Discuss.**
- 3. Did Dana have authority to make a contract with Gamma Technologies? Discuss.**

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Question 2

Alfred, Beth, and Charles orally agreed to start ABC Computers (“ABC”), a business to manufacture and sell computers. Alfred contributed \$100,000 to ABC, stating to Beth and Charles that he wanted to limit his liability to that amount. Beth, who had technical expertise, contributed \$50,000 to ABC. Charles contributed no money to ABC but agreed to act as salesperson. Alfred, Beth, and Charles agreed that Beth would be responsible for designing the computers, and that Charles alone would handle all computer sales.

ABC opened and quickly became successful, primarily due to Charles’ effective sales techniques.

Subsequently, without the knowledge or consent of Alfred or Charles, Beth entered into a written sales contract in ABC’s name with Deco, Inc. (“Deco”) to sell computers manufactured by ABC at a price that was extremely favorable to Deco. Beth’s sister owned Deco. When Alfred and Charles became aware of the contract, they contacted Deco and informed it that Beth had no authority to enter into sales contracts, and that ABC could not profitably sell computers at the price agreed to by Beth. ABC refused to deliver the computers, and Deco sued ABC for breach of contract.

Thereafter, Alfred became concerned about how Beth and Charles were managing ABC. He contacted Zeta, Inc. (“Zeta”), ABC’s components supplier. He told Zeta’s president, “Don’t allow Charles to order components; he’s not our technical person. That’s Beth’s job.”

Charles later placed an order for several expensive components with Zeta. ABC refused to pay for the components, and Zeta sued ABC for breach of contract.

Not long afterwards, ABC went out of business, owing its creditors over \$500,000.

- 1. How should ABC’s debt be allocated? Discuss.**
- 2. Is Deco likely to succeed in its lawsuit against ABC? Discuss.**
- 3. Did Beth violate any of her fiduciary duties to the partnership when she entered into the agreement with Deco? Discuss.**

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Question 3

Bonar, Fellows, and May are successful attorneys who set up a law firm under the name “BFM Legal Services LLP” (“BFM LLP”). They agreed to share profits and losses equally. Bonar prepared the documents required to register the firm as a limited liability partnership and instructed his assistant to file them with the Secretary of State. Inadvertently and unbeknownst to Bonar, Fellows, and May, Bonar’s assistant never filed the appropriate documents.

Bonar, Fellows, and May leased office space for four attorneys in the name of BFM LLP. They rented the extra office to Ping, an attorney who had a small solo law practice, for a monthly rent of the greater of \$1100 or 10% of his billings. Ping committed malpractice arising from a case that he undertook soon after he moved into the BFM LLP office space.

The law firm hired Sally, a law school student, to deliver and retrieve documents from other law firms and file documents with the court. Sally was considered an employee of the law firm.

One day, while on her way to the courthouse, she received a text from Bonar instructing her to come back to the office to pick up another file that needed to be filed with the court urgently. While attempting to read the text, Sally accidentally collided with a parked car, which happened to be occupied by the driver and one other passenger. They both were injured and now are suing Sally and the law firm.

1. Can Bonar, Fellows, and May each be held personally liable for the accident involving Sally? Discuss.

2. Can Bonar, Fellows, and May each be held personally liable for Ping’s malpractice? Discuss.

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Agency & Partnership Final Grading Rubric

Professor Bill Sluss

Student ID No./Name _____

Q1 _____ (out of 100) Q2 _____ (out of 100) Q3 _____ (out of 100)

Total pts _____ out of 300 = Grade _____

Question 1

1. Was an agency relationship established between Chris and Dana? Discuss

[Points x 1]

Agency (2)

___ Issue

___ Rule

Agreement (9)

___ Issue

___ Rule

Application: **[Points x 2]**

___ Need an agreement.

___ (agreement can be oral unless Statute of Frauds is applicable) between the parties

___ with the agent assenting to act as an agent.

___ Conclusion

Benefit the Principal (5)

___ Issue

___ Rule

Application: **[Points x 2]**

___ The agreement must benefit the principal.

___ Conclusion

Principal has the right to Control Agent (5)

___ Issue

___ Rule

Application: **[Points x 2]**

___ The principal has the right to control the agent.

___ Conclusion

2. Did Dana have authority to make a contract with Beta Innovations? Discuss.

Authority (2) [Points x 1]

___ Issue

___ Rule

Actual express authority (9)

___ Issue

___ Rule

Application: [Points x 2]

___ Actual express authority is authority specifically granted to the agent by the principal.

___ It may be oral,

___ but a writing is required if the Statute of Frauds applies.

___ Conclusion

Actual Implied authority (7)

___ Issue

___ Rule

Application: [Points x 2]

___ Actual Implied authority occurs where the agent reasonably believes the principal gave him authority because of necessity (task reasonably necessary to accomplish agency goals),

___ custom, or prior dealings.

___ Conclusion

Apparent Authority (7)

___ Issue

___ Rule

Application: [Points x 2]

___ Apparent authority occurs where the principal has provided the agent with the appearance of authority,

___ on which a third party reasonably relies.

___ Conclusion

Ratification (13)

___ Issue

___ Rule

Application: [Points x 2]

___ Ratification occurs when an agent takes an action without proper authority, and

___ the principal subsequently engages in conduct that approves the agent's action.

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___ The principal will be bound where he has capacity, knowledge of all material facts,
___ and accepts the agent's transaction.
___ Agent no longer liable if this occurs.
___ Conclusion

3. Did Dana have authority to make a contract with Gamma Technologies? Discuss.

Authority (2) [Points x 1]

___ Issue
___ Rule

Actual express authority (9)

___ Issue
___ Rule
Application: [Points x 2]
___ Actual express authority is authority specifically granted to the agent by the principal.
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___ Rule

Application: [Points x 2]

___ Ratification occurs when an agent takes an action without proper authority, and

___ the principal subsequently engages in conduct that approves the agent's action.

___ The principal will be bound where he has capacity, knowledge of all material facts,
___ and accepts the agent's transaction.

___ Agent no longer liable if this occurs.

___ Conclusion

No Authority (9)

___ Issue

___ Rule

Application: [Points x 2]

___ Where the agent acts without actual or apparent authority,

___ the principal is not liable on the contract and

___ the agent is personally liable.

___ Conclusion

Question 2

1. How should ABC's debt be allocated? Discuss.

[Points x 1]

Limited Partnership (12)

___ Issue

___ Rule

Application: **[Points x 3]**

___ A limited partnership is a partnership that has at least one general partner and at least one limited partner, which creates a two-tiered partnership structure with differing rights, duties, and liabilities for general and limited partners.

___ The main difference is that a limited partner is liable for the obligations of the partnership only to the extent of his capital contribution and is not entitled to manage or control the partnership business.

___ Formalities are required to be filed with the secretary of state.

___ Conclusion

General Partnership (9)

___ Issue

___ Rule

Application: **[Points x 3]**

___ A partnership is an association of two or more persons to carry on as co-owners of a business for profit.

___ No formalities are required, and its existence is determined by the intent of the parties.

___ Conclusion

Partnership Debt Allocation (12)

___ Issue

___ Rule

Application: **[Points x 3]**

___ General partners are personally liable for the debts of the partnership.

___ Profits are shared equally, and losses are shared in the same proportion as profits in the absence of a contrary agreement.

___ Each partner is an agent of the partnership, and all partners are personally jointly and severally liable for partnership debt.

___ Conclusion

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Priority of Distribution (15)

___ Issue

___ Rule

Application: [Points x 3]

___ Assets are distributed in the following order: (1) Creditors, including partners who are creditors,

___ (2) Partners who have loaned money to the partnership or are entitled to compensation for winding-up activities,

___ (3) Capital contributions by partners, and

___ (4) Profits and surplus, if any remain, are shared equally amongst the partners unless there is an agreement otherwise.

___ Conclusion

2. Is Deco likely to succeed in its lawsuit against ABC? Discuss.

[Points x 1]

Authority (2)

___ Issue

___ Rule

Actual express authority (9)

___ Issue

___ Rule

Application: [Points x 3]

___ Actual express authority is authority specifically granted to the partner by the partnership.

___ It may be oral, but a writing is required if the Statute of Frauds applies.

___ Conclusion

Actual Implied authority (6)

___ Issue

___ Rule

Application: [Points x 3]

___ Actual Implied authority occurs where the partner reasonably believes the partnership gave him authority because of necessity (task reasonably necessary to accomplish agency goals), custom, or prior dealings.

___ Conclusion

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Apparent Authority (9)

___ Issue

___ Rule

Application: [Points x 3]

___ Apparent authority occurs where the partnership has provided the partner with the appearance of authority,

___ on which a third party reasonably relies.

___ Conclusion

3. Did Beth violate any of her fiduciary duties to the partnership when she entered into the agreement with Deco? Discuss.

[Points x 1]

Duty of Care (6)

___ Issue

___ Rule

Application: [Points x 3]

___ A partner owes the partnership the duty of care to act as a reasonable prudent person would act under similar circumstances (local community standards).

___ Conclusion

Duty of Loyalty (9)

___ Issue

___ Rule

Application: [Points x 3]

___ A partner owes a duty of loyalty to the partnership.

___ A partner must put the interests of the partnership above his own interests.

___ Conclusion

Conflicts of Interest (9)

___ Issue

___ Rule

Application: [Points x 3]

___ A partner should never engage in conflicts of interest with the partnership by self-dealing, usurping the partnership's business opportunity, by making secret profits, or competing with the partnership.

___ Self-dealing is when a partner takes action to gain personal benefit, instead of for the benefit of the company.

___ Conclusion

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Duty of Good Faith (6)

___ Issue

___ Rule

Application: [Points x 3]

___ This duty as in contracts is implied for each partner.

___ Conclusion

Question 3

1. Can Bonar, Fellows, and May each be held personally liable for the accident involving Sally? Discuss.

[Points x 1]

Limited Liability Partnership (“LLP”) (17)

___ Issue

___ Rule

Application: [Points x 7]

___ An LLP is a form of partnership where the partners are not personally liable for the obligations of the partnership.

___ To form an LLP, certain formalities must be followed including filing a statement of qualifications with the secretary of state.

___ Conclusion

General Partnership (17)

___ Issue

___ Rule

Application: [Points x 7]

___ A partnership is an association of two or more persons to carry on as co-owners of a business for profit.

___ No formalities are required, and its existence is determined by the intent of the parties.

___ Conclusion

Partnership Liability for Torts of Employee (24)

___ Issue

___ Rule

Application: [Points x 7]

___ A principal is liable for an agent's torts that are committed within the scope of the principal-agent relationship.

___ An act is within the scope of the relationship if the conduct was of the kind the agent was hired to perform, the tort occurred on the job,

___ and/or the agent intended his action to benefit the principal.

___ Conclusion

2. Can Bonar, Fellows, and May each be held personally liable for Ping's malpractice? Discuss.

[Points x 1]

General Partnership (24)

___ Issue

___ Rule

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Application: [Points x 7]

___ A partnership is an association of two or more persons to carry on as co-owners of a business for profit.

___ Was Ping a partner

___ No formalities are required, and its existence is determined by the intent of the parties.

___ Conclusion

Partnership Liability for Torts (24)

___ Issue

___ Rule

Application: [Points x 7]

___ The partnership members are joint and severally liable for torts committed by a partner

___ in the scope of the partnership or done with authority.

___ Partners can seek indemnification from other partners if they are paying more than their share.

___ Conclusion

Grade for Final Exam is 90 – Great Job!

Your papers were well written and organized.

1) Grade for Question 1 is 94 - see comments

1. Was an agency relationship established between Chris and Dana?

Agency

A Principal-Agent relationship is established when a principal authorizes an agent to act on their behalf and represent them with third parties. The requirements of a Principal-Agent relationship are:

(1) an agreement between the parties, it may be oral but a writing is required if the Statute of Frauds applies; (2) the principal benefits from the relationship; and (3) the principal can control the agent.

Agreement:

Here, Chris owns a boutique design studio called "Creative Concepts" and is the principal in this scenario. Chris approaches Dana to act as a project manager and the two individuals have a conversation about what the responsibilities are of the project manager role. The facts do not state explicitly that Dana agreed to act as the project manager, however the facts do state "On Dana's first day" which heavily implies that Dana has accepted the position. The facts do not suggest that this agreement must be in writing due to the Statute of Frauds, so the oral agreement is valid.

Therefore, an agreement has been made.

Benefit:

Here, Chris benefits from hiring Dana because he is in need of a project manager. By hiring Dana, an experienced project manager, Chris will be able to focus on other matters to grow his business.

Therefore, Chris benefits from hiring Dana.

Control:

Here, Chris has specified the responsibilities and parameters of what the project management role looks like. For example, the PM will be responsible for overseeing client projects, negotiating contracts, managing the team of designers, and operate within specific budget constraints. Chris has control over what aspects of the business Dana may operate.

Therefore, Chris has control over Dana.

Conclusion

An agency relationship has been formed with Chris as the Principal and Dana as the Agent.

2. Did Dana have authority to make a contract with Beta Innovation?

Agency Authority

An agent will bind the principal to contractual obligations when the agent acts with authority. Authority may be express, implied, or apparent.

Actual Express Authority

Occurs where the principal has expressly granted the agent authority to enter into a type of agreement.

This may be oral, but a writing is required if the Statute of Frauds applies.

Here, when creating the relationship at the onset, Chris told Dana that she would have control over "negotiating contracts", among other responsibilities. On Dana's first day, Chris informed Dana about a project with Alpha Marketing that needed additional negotiation and gave budgetary constraints to that deal. Chris didn't explicitly state that Dana had authority to enter into new contracts with Beta Innovations, but a key aspect of her role is to "negotiate contracts." This demonstrates a strong inference that Dana has broad negotiation authority over new contracts.

Therefore, Dana has (did not have – your conclusion does not match your analysis which was correct) express authority.

Actual Implied Authority

Occurs where the agent reasonably believes that he/she had authority based on necessity, custom, or prior dealing.

Here, in the event that Dana did not have express authority, Dana "relied on her past experience" to negotiate and finalize a project with Beta Innovations. While a contract with Beta Innovations had not been discussed with Chris, the facts suggest that her reliance on past experience deals with her time working for Chris. However, it is possible that Dana is operating on her own, individual past experiences as "an experienced project manager." If this is the case, then Dana does not have implied authority. However, it is likely that Dana was relying on her experiences with Chris when she negotiated the contract with Beta Innovations.

Therefore, Dana had implied authority.

Apparent Authority

Occurs where the principal's actions caused a third party to believe that the agent had authority, and the third party reasonably relies on the principal's representations.

Here, the facts do not suggest that Chris has acted in any way to influence Beta Innovations decisions. Instead, Beta Innovations reached out to Dana directly seeking bids/proposals. Apparent Authority requires actions or representations by the Principal that influence the third party, none of which is present here. Since Beta reached out to Dana directly there is a possibility that they had visited the

Creative Concepts website and were influenced by the video that Chris expressed “full confidence in Dana and endorsing any decisions she makes.”

Therefore, there is no apparent authority

No Authority

When an agent acts without authority the agent will be personally liable for contracts and the principal will be released from liability.

Here, Dana had Express authority to negotiate contracts and even if that argument fails, she has implied authority based on prior experiences to make a contract with Beta Innovations.

Therefore, Chris will be bound to the contract.

Ratification

Occurs when an agent acts without authority and the principal subsequently engages in the contract.

The requirements for a valid ratification are that the principal (1) has capacity, (2) has knowledge of all material facts, and (3) engages in the contract.

Here, (1) no facts suggest that Chris lacks capacity, so he has capacity to ratify the contract. (2) When Chris returned, Dana presented the Beta contract to Chris and Dana "explains all the pertinent details" of the Beta contract to Chris. And (3) Chris states that he is "content with the Beta Innovations contract," which shows an intent to engage in the contract.

Therefore, even if no authority were to be found, the contract is valid because Chris has ratified the contract with Beta Technologies.

3. Did Dana have authority to make a contract with Gamma Technologies?

Agency Authority

An agent will bind the principal to contractual obligations when the agent acts with authority.

Authority may be express, implied, or apparent.

Actual Express Authority

Occurs where the principal has expressly granted the agent authority to enter into a type of agreement.

This may be oral, but a writing is required if the Statute of Frauds applies. Here, Chris has expressly stated that Dana has authority to "negotiate contracts;" Chris didn't expressly state which companies

Dana could negotiate with, instead he gave her blanket authority to negotiate contracts. Even though the facts state that Dana acted "without specific instructions from Chris," this is irrelevant because part of the agency relationship formed was that Dana would have the responsibilities of negotiating contracts. This broad authority would easily apply here. Did Chris express to Dana that she had

authority to enter the contract with Gamma? No, he didn't. He couldn't have because he was unaware of her entering the contract. Remember, the call is asking did Dana have actual express authority to enter the agreement with Gamma.

Therefore, Dana has express authority.

Actual Implied Authority

Occurs where the agent reasonably believes that he/she had authority based on necessity, custom, or prior dealing.

Here, the facts do not state that Dana is acting on her past experience. But, because of her role and responsibilities, it is reasonable that Dana has implied authority to negotiate this preliminary agreement with Gamma Technologies based on prior dealings or necessity (Chris was out of office and was not there for Dana to inquire).

Therefore, Dana has implied authority.

Apparent Authority

Occurs where the principal's actions caused a third party to believe that the agent had authority, and the third party reasonably relies on the principal's representations.

Here, Chris put a video on his website where he expresses his "full confidence in Dana and endorsing any decisions she makes." This is a powerful endorsement, one that Gamma Technologies has seen and reasonably relied on during the negotiations process. Dana provided her business card showing that she is the Project Manager for Creative Concepts as well. This all shows that Chris has given an appearance of authority to any third party, including Gamma Technologies, on which to rely.

Therefore, Dana has apparent authority.

No Authority

Rule supra.

Here, Dana has authority and Chris will be bound to the preliminary agreement.

Ratification

Rule supra.

Here, (1) Chris has capacity because no facts suggest he lacks capacity; (2) Dana has detailed all of the relevant facts about the preliminary deal with Gamma Technologies when Chris returned, and (3) Chris has disapproved of the preliminary agreement and has expressed an intent to not sign off on the Gamma Technologies deal. Since Chris did not ratify the Gamma Technologies deal, Dana would still be liable unless Gamma establishes apparent authority.

Therefore, Chris has not ratified the preliminary agreement.

Conclusion

Dana has authority to bind Chris to the Gamma Technologies agreement. However, it is a preliminary agreement and based on its terms, Chris may be able to cancel their bid (seeing how a preliminary agreement likely has some additional protections for both parties to cancel without injury.) If there are no such provisions in the preliminary agreement, then Chris will be bound to the agreement.

2) Grade for Question 2 is 91 – see comments

Before analyzing the questions below, a partnership must be established. Four types of partnerships are potentially relevant here: General Partnerships, Limited Partnerships, Limited Partnerships, and Joint Ventures.

General Partnerships

Is an agreement of two or more persons to operate as co-owners of a business for profit. No formalities are required, although a writing will be required if the Statute of Frauds applies. Formation is based on Intent.

Here, Alfred, Beth, and Charles orally agreed to start ABC Computers, so they could manufacture and sell computers. Alfred agreed to contribute \$100,000 and expressed an intent to limit his liability to that amount. Beth contributed \$50,000 but did not express any intent to limit her contributions or liability. Charles did not contribute finances, but instead agreed to act as the salesperson. Beth would handle the design elements and Charles alone would handle sales. This all shows that the three individuals made an oral agreement (SOF is not implicated so no writing is required) to start ABC and they detailed their key responsibilities. It is clear that the parties intended to create a business and operate it for profit.

Therefore, a general partnership has been formed between all three parties.

Limited Partnerships

Is a partnership with at least one general partner and at least one limited partner. The limited partner(s) will not be liable for the debts or torts of the partnership beyond their capital contribution. Formation requirements: (1) filed with the secretary of state, (2) identify the names of the general partner and agent for service, (3) name the partnership ending in "LP" or "Limited Partnership," (4) and keep records. If these are not followed, it defaults to a general partnership.

Here, Alfred expressed an intent to act as a limited partner while Beth and Charles did not express this intent. This would start to establish a Limited Partnership but there are several errors. The company

was named "ABC Computers" without the required "LP" or "Limited Partnership" verbiage. Additionally, no agent was listed for service, no facts suggest records have been kept, and most importantly, none of this was filed with the secretary of state. Therefore, no limited partnership has been formed, it defaults to a general partnership.

Limited Liability Partnerships

Is a partnership with no general partner, instead all partners are limited partners who are not liable beyond their capital contributions. Formation requirements: (1) filed with the secretary of state, (2) Name the business ending in either "LLP" or "RLLP", and (3) list the name of the business and its address for agent of service. If these are not followed, the business defaults to a general partnership. Here, only Alfred expressed an intent to be a limited partner. This alone stops the analysis for an LLP because the others had no such intent. Additionally, none of the requirements have been followed. Therefore, there is no LLP; it is a general partnership.

Joint Ventures

Is an association of two or more persons to complete a specific project or business for profit; limited to a specific timeline or task. Formation is based on intent. Here, the facts suggest an intent to operate a business for profit, not complete a limited project. Therefore, no joint venture has been formed, it is a general partnership.

Conclusion

A general partnership has been formed with Alfred, Beth, and Charles as co-owners.

_____1. How should ABC's debt be allocated?

Partnership Debt Allocation This is really the rule for priority of Distribution (I see that you actually combined the two rules and you received fully credit for debt allocation and partial credit for priority of distribution)

Debt of the partnership is allocated in the following order: (1) to creditors, (2) to partners who are creditors or are owed funds for winding-up activities, and then (3) any remaining surplus or debt will be divided evenly or by the terms of the partnership.

Here, ABC went out of business owing over \$500,000. The facts do not state how much ABC has in assets that they would liquidate during dissolution and winding-up to cover these debts. All three partners will be jointly and severally liable because they are general partners. You should have discussed nos. 2 and 3 in your rule above even if there are no facts to support either.

Therefore, each partner will be responsible for 1/3 of the \$500,000.

Additional Factors Needing More Information

1. Zeta v. ABC. - The debt value is unknown. Note: The Zeta analysis was not necessary. There was no call related to Zeta.

Partnership Agency/Authority

Partners are considered agents of the partnership and are presumed to have authority to bind the partnership, barring an agreement otherwise. A partner's authority can be express, implied, or apparent. Here, Charles knew that he was responsible for sales, not the design of computers. However, it is unclear if "design" includes the rights to purchase orders. This responsibility was not clearly labeled.

Actual Express

Occurs where the partnership and other partners have expressly granted a partner specific authorities. Here, it is unclear if Charles had the specific authority, but it is unlikely that he did. It is more likely that purchase orders for parts falls under the "design" elements, which was Beth's responsibility. Therefore, Charles did not have actual express authority to enter into the contract.

Actual Implied

Occurs where the partner reasonably believes that she had authority based on necessity, custom, or prior dealings.

Here, it is unlikely that Charles reasonably believed that he had authority to order parts because why would he intentionally order expensive components? No prior dealings or custom show necessity either.

Therefore, Charles did not have implied authority.

Apparent Authority

Occurs where the partnership's actions reasonably demonstrate to a third party that the partner had authority, and the third party relies on that representation.

Here, because Charles is a partner, it is possible that Zeta relied on a representation made by Charles, but the facts do not specify. Additionally, Alfred had told Zeta that Charles did not have the authority to purchase components.

Therefore, Charles did not have apparent agency.

No Authority

Where a Partner acts without authority, the partner will be personally liable and the partnership will be released from liability.

Conclusion

Charles did not have authority to order the parts from Zeta and if a portion of the \$500,000 debt is exclusive to the Zeta contract, that will be Charles's liability.

2. Deco v. Beth

The same Agency and debt allocation applies to Beth's contract with Deco. Authority is discussed below.

Beth did not have authority to enter into that contract and if any portion of the \$500,000 debt is specific to the Deco contract, Beth will be personally liable for that debt.

2. Is Deco likely to succeed in its lawsuit against ABC?**Partnership Liability for Contracts**

Partners are agents of the partnership and of each other and are jointly and severally liable for the contracts entered into by a partner. The contracts entered into by a partner will bind the partnership if the contract was either made (1) with authority, or (2) within the scope of the partnership.

Scope of the Partnership

The scope depends on the relationship itself and the agreement.

Here, the parties agreed that Beth would be responsible for designing the computers and that Charles would have exclusive control over sales. This agreement demonstrates that Beth was not operating within the scope of their relationship or within the roles assigned by the partnership.

Therefore, no authority to bind has been created by the scope of the partnership.

Partnership Agency/Authority

Partners are considered agents of the partnership and are presumed to have authority to bind the partnership, barring an agreement otherwise. A partner's authority can be express, implied, or apparent.

Actual Express

Occurs where the partnership and other partners have expressly granted a partner specific authorities.

Here, the partnership granted Beth the express authority to design the computers. At no point did the partnership authorize Beth to sell computers. The express authority could have been oral or written as long as it satisfied the Statute of Frauds.

Therefore, Beth does not have express authority.

Actual Implied

Occurs where the partner reasonably believes that she had authority based on necessity, custom, or prior dealings.

Here, no facts suggest that Beth had a reasonable belief that selling computers to Deco was within her scope. She had no experience, no prior dealings, and there was no need to sell computers to Beth's sister's company for the absurdly low price.

Therefore, Beth had no implied authority.

Apparent Authority

Occurs where the partnerships actions reasonably demonstrate to a third party that the partner had authority, and the third party relies on that representation.

Here, the facts do not show a situation where the partnership influenced or made representations to Deco that would imply that Beth had authority to sell computers. Additionally, with Beth's sister owning Deco, Inc., it is likely that Deco knew Beth didn't have authority (but this is speculative and the facts don't specify.) Not until afterward do the facts clearly demonstrate that Deco knew Beth didn't have authority. Simply being a partner has an appearance of authority and that might be enough to establish apparent authority. However, more facts are needed to be conclusive.

Therefore, it is likely that there was some apparent authority.

No Authority

When a partner acts without authority, the partner will be personally liable and the partnership will be released from liability.

Here, depending on additional facts regarding apparent authority, it could be shown that Beth acted with no authority and would be personally liable.

Therefore, Beth may be personally liable.

Ratification

Occurs when a partner acts without authority and the partnership subsequently engages in the conduct. Requirements to be valid: (1) the partnership has capacity, (2) partnership has knowledge of all material facts, and (3) the partnership engages in the contract.

Here, (1) the partners have capacity because no facts suggest a lack of capacity. (2) The partnership is not fully aware of all of the material facts; it is unclear if Charles and Alfred are aware that Beth's sister owns Deco, Inc. And (3) Alfred and Charles have not taken any steps to ratify or engage in the contract.

Therefore, there is no ratification.

Conclusion

Beth will likely be personally liable for the contract with her sisters business. More facts might sway that to partnership liability.

3. Did Beth violate any of her fiduciary duties to the partnership when she entered into the agreement with Deco?

Partnership Fiduciary Duties

Partners are agents of the partnership and owe the partnership the following fiduciary duties:

Duty of Care

Partners must act as reasonably prudent persons in the same or similar situation.

Here, Beth knew that her sister owned Deco, Inc., and decided to sell computers without authority (which she knew was Charles' job) and decided to sell them at an irresponsibly low price to benefit her sister. This is not how a reasonably prudent person would have handled the situation. A reasonable person would have allowed Charles to negotiate the contract.

Therefore, Beth has violated the duty of care.

Duty of Loyalty

Partners must put the interest of the partnership above their own.

Here, Beth owes a duty of loyalty to the partnership and has put the interests of her sisters company, Deco, Inc., and hers above the interests of the partnership by entering into an agreement for an unreasonably low price that was not profitable.

Therefore, Beth has violated the duty of loyalty.

Duty to Avoid Conflicts of Interest

Partners must avoid conflicts of interest with their capacity as a partner including usurping, selfdealing, secret profits, and competing with the partnership.

Here, Beth has decided to make a deal with her sisters company. The facts do not show if Beth was getting a kickback, commission, or taking business opportunities for herself that the partnership would be interested in, while selling to her sisters company. So technically she has not violated the secret profits, self-dealing, or the partnership aspect. However, this does fall under the bucket of usurping

because Beth has decided to go behind the other partners backs and negotiate a deal that damages the partnership. Usurping is when a partner basically steals a business opportunity from the partnership – this was not applicable here. When Beth gave her sister's company, Deco a sweetheart deal that was very unfavorable to ABC, it could be inferred that she received some sort of familia benefit and therefore was guilty of self-dealing.

Therefore, Beth has violated the duty to avoid conflicts of interest.

Duty to Disclose

Partners must disclose all material facts relevant to the partnership.

Here, it is unclear if Beth informed Charles and Alfred about her relationship with the owner of Deco, Inc. Based on the facts, it is likely that the partnership is unaware of Beth's relationship, which is a material fact as to why Beth acted how she did.

Therefore, Beth violated the duty to disclose.

Duty to Account

Partners must be allowed to inspect and copy the books/records. Additionally, if a principal violates any duties or damages the partnership, the other partners can hold the defaulting partner accountable by filing suit or disgorging them.

Here, no facts suggest that any records were kept or that anyone needed/wanted to inspect them.

And Beth caused damage so her rights to protect the partnership are irrelevant to this situation.

Therefore, no violation of the duty to account.

Duty to Indemnify

Partners can seek indemnification from suits.

Here, Beth would not be able to seek indemnification because she was the one who damaged the partnership with the contract to Deco.

Duty to Act in Good Faith and Fair Dealing

Partners must act in good faith and fair dealing in all aspects of the partnership relationship. Here, Beth has not acted in good faith because she intentionally sold computers to her sisters company for an unreasonably low price and she was not the person in charge of sales.

Therefore, Beth has not acted with good faith and fair dealing.

Your overall grade for the Final Exam is 87 – Very Good!

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1) Your grade for Question 1 is 88 – see comments below.

1. Agency relationship between Chris ("C") and Dana ("D")

Issue

The issue is whether an agency relationship was created between Chris, the owner of Creative Concepts, and Dana, the employee he hired as a project manager.

Rule

An agency relationship exists where 1. There is an agreement between the principal and agent with the agent's assent, 2. The agent's services are performed for the benefit of the principal, and 3. The principal retains the right to control the agent's conduct. No formal writing or consideration is required. Employees are agents of their employers.

Analysis

Here, C approached D, discussed the responsibilities of negotiating contracts, overseeing client projects, and managing the design team. D accepted the position. This satisfies the mutual assent requirement. The purpose of hiring D was to assist in the expansion of Creative Concepts. Thus, D's performance would clearly benefit C's business. Finally, C immediately began exercising control by handing D a list of projects and giving specific instructions on budget constraints, design elements, and deadlines for the Alpha Marketing contract negotiation. These details show C's right to control the manner and means of D's work. All three elements (agreement, benefit, and control) are satisfied which proves that an agency relationship was formed. In addition, the agreement can be oral unless SOF is applicable.

Conclusion

Yes, D was an agent of C at Creative Concepts.

2. D's authority to contract with Beta Innovations ("Beta")

3) [Your grade for Question 3 is 93 – Great job!](#)

1. Personal Liability of BFM for Sally's ("S") accident.

Issue

The issue is whether the partners may each be held personally liable for tort injuries caused by Sally, a law-firm employee, while acting within the scope of her employment.

Rule

Partnership Status

A partnership exists when two or more persons carry on as co-owners of a business for profit, regardless of intent and without formalities. An LLP requires proper state filing formalities. If these are not met, the entity defaults to a general partnership, and partners are personally liable for debts and obligations. [No formalities required for a general partnership.](#)

Vicarious Liability of Partners

In a general partnership, the partnership and all general partners are jointly and severally liable for torts committed by employees or partners within the scope of partnership business. A principal or employer is liable for torts of its employee-agents committed within the scope of employment, while performing tasks they were hired to perform, or while acting with an intent to benefit the employer.

LLP

If an LLP is properly formed, partners are not personally liable for partnership obligations, whether tort or contract. Only the tortfeasor and the partnership assets are liable. However, this protection applies only if the LLP is validly formed by the proper filing with the secretary of state.

Analysis

Entity Classification

Although the partners believed they formed an LLP, Bonar's assistant never filed the paperwork. Because of this oversight, BFM LLP was never legally formed. Thus, despite the name BFM LLP, the

business legally defaults to a general partnership. Therefore, Bonars, Fellows, and May are general partners and thus personally liable for partnership torts.

Sally's Employment Status

Sally was hired by the firm to deliver and retrieve documents. She was considered an employee, which makes her an agent of the partnership.

Scope of Employment

Sally injured the driver and passenger while transporting legal files, a task she was hired for. Although she was distracted by a text message from Bonar, the accident happened while performing partnership business and within the scope of her employment. A minor deviation from performing her job (reading a text) is considered a mere detour, not a frolic. Thus, the partnership is vicariously liable. You just needed to state that since she was performing her duties within the scope of her employment the partnership benefited from her activities. I gave you partial credit related to the benefit element.

Partner Liability

Because this entity is a general partnership, each partner is jointly and severally liable for tort obligations of the partnership. The Plaintiffs may sue Sally, the partnership, and any or all of the individual partners.

Conclusion

BFM can each be held personally liable for the accident because the partnership was never properly formed as a limited liability partnership and is legally a general partnership; Sally was an employee acting within the scope of her employment; and partners in a general partnership are jointly and severally liable for partnership torts.

2. Personal Liability of BFM for Ping's ("P") malpractice.

Issue

Whether the partners may be personally liable for malpractice committed by P.

RuleGeneral Partnership Liability

Partners are liable for torts committed by partners or employees acting within the scope of partnership business. They are not liable for torts committed by non-partners unless the non-partner is acting as an agent of the partnership.

Was P a Partner or Agent

A person becomes a partner by contributing money in exchange for profits, not revenue sharing. Merely sharing gross revenues or paying rent is not sufficient to establish a partnership. An agency relationship requires agreement, benefit, and control.

LLP Protection

An LLP would shield partners from malpractice of other partners. An LLP must file the proper paperwork with the secretary of state.

AnalysisWas P a Partner of BFM?

Pin was not a partner, he was simply renting office space. He paid rent to BFM based on his revenue. This was not profit-sharing. P also maintained a solo practice, independent of BFM. The firm did not share his profits or rely on P as a co-owner. Under partnership law, sharing profits creates a presumption of partnership, but sharing gross billing or rent does not. Thus, P was not a partner of BFM.

Was P an Agent of the Firm?

While the firm gained revenue (a benefit) from P, BFM did not actually control P's legal work, did not supervise him, and did not authorize him to act on behalf of the firm. He handled his separate clients and cases. Therefore, P was not an agent of the partnership.

Vicarious Liability for P's Malpractice

A partnership is vicariously liable only for torts committed by its partners, employees, or agents acting within the scope of authority. P was none of these. Thus, BFM is not vicariously liable for P's malpractice merely because he rented an office space from them.

Apparent Partnership/Partnership by Estoppel

If BFM held P out as a partner, liability could attach. But here, the facts do not indicate that P used their office supplies or letterhead, that the firm advertised P as a partner, or that clients believed that P was part of BFM because of the firm's conduct. Thus, partnership by estoppel does not apply here.

Conclusion

BFM are not personally liable for P's malpractice because P was not a partner or an agent and was operating a solo practice. The firm had no control over his legal work, and thus the general partnership bears no liability for P's torts.

In sum, all partners will be held personally liable for Sally's accident because the LLP was never formed and Sally was acting within the course and scope of her employment with BFM. Additionally, BFM will not be held liable for P's malpractice because P was not a partner or agent of the firm, and the partnership did not control his legal work.

END OF EXAM