

Monterey College of Law – Hybrid

Business Organizations I (Agency and Partnership) – Sec. 2

Final Exam

Fall 2025

Professor: Stirling

Instructions:

Question 1: 90 points

Question 2: 90 points

Question 3: 90 points

Total 270 points

Time Allotted: Three Hours

Question 1

Phineas is a California concert pianist preparing for the Chopin International Piano Competition in Warsaw that offers a very large monetary prize. He needs someone to help him prepare his music and travel with him to “take care of all the headaches” so he can concentrate on winning. His friend, Axiom, offers to do this. Axiom is also a pianist, but not on the same level as Phineas. Phineas tells Axiom he will pay all his expenses while travelling and then exclaims “I am so relieved. You and I are going to win this and be rich!”

They travel to Warsaw with Axiom organizing all plane, train and hotel details. Phineas wins and becomes a worldwide sensation with numerous offers from orchestras and record producers. He sends Axiom the reimbursement and tells him he is no longer needed.

Axiom comes to you distraught. He believes he is entitled to “his share” of the prize money and the income from the recording contracts and orchestra performances, and now wants to sue Phineas for compensation. He also tells you, in full disclosure, that he sold one of Phineas’ handkerchiefs to a fan for \$10,000, “but Phin will never miss it.”

What is your advice to Axiom?

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Question 2

Meanwhile, Phineas, now a global superstar, agrees with Paolo Fazioli and Pietro Fazioli (brothers that own the Fazioli piano maker whose pianos were used in the competition) to form a partnership to sell Fazioli Pianos. They each agree to contribute \$100,000, and share the profits equally. Their main office is located in Beverly Hills, California.

The partnership flourishes and many pianos are sold. Phineas, while on vacation in Svalbard, Norway, meets Floki, the president of PIKEA, a small Norwegian piano maker. Floki tells Phineas he can make pianos cheaply (they must be assembled at home by the purchasers). He offers to “cut Phineas in on the operation” and sell “PIKEA” pianos that everyone will think “sound just like Faziolis”, especially if they are endorsed by Phineas. Phineas agrees, especially because he has become disenchanted with Fazioli and feels justified because he thinks the brothers are hiding profits.

At the next partner meeting, Paolo and Pietro confront Phineas about PIKEA and throw their cappuccinos in his face. What can they argue/claim, and how can Phineas defend himself?

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Question 3

Meanwhile, Phineas has also become a partner in a music school with Posh and Patricia in Bakersfield. They each contribute \$100,000 to lease the studio and classrooms, and Phineas moves one of his Steinway concert grand pianos to the school which he and the other teachers use. Patricia is in charge of the books, but she forgets to transfer the funds from her account to the partnership account. She uses the funds to purchase two additional pianos, paying with her personal credit card.

A few months later, while teaching a 10-year-old prodigy, Phineas becomes angry and screams at the student. The student jumps and the keyboard cover crashes on her hands, shattering all ten fingers. The ER doctor says she will never be able to play the piano again. Her parents sue the partners and the partnership.

Phineas, Posh and Patricia ask for your advice on how to dissolve the partnership and divide the assets, as well as the possible outcome of the parents' lawsuit.

ANSWER OUTLINE

Business Organizations I (Agency and Partnership)

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Answer 1 (Outline)

20% Organization (Similar headings – boldfaced below)

20% Issue (Spot all issues)

20% Rules (Name all rules – underlined below)

20% Analysis (Apply law to facts – all non-underlined, non-italicized font below)

20% Conclusions (Get correct conclusions – as *italicized* below)

Introduction – nature of the relationship

Agency or partnership?

- California partnership law will apply as the parties appear to be based in California according to the facts.
- Under California Agency law, an agency relationship exists when one party, the agent, consents to act on behalf of, and under the control of another, the principal.
- Under California Partnership law, a partnership is an association of two or more persons to carry on as co-owners a business for profit.
- Phineas' exclamation is misleading in that it appears that the two are doing business together. However, Axiom offers to "help him" and does not appear to be contributing to the generation of profits other than administratively.
- *Accordingly, this is an agency relationship, with Axiom acting as the agent under the control of Phineas.*
- *An alternative argument can be that this is a partnership due to Axiom's understanding that "[they] would be rich" and thus a co-owned business for profit was created. (see alternative answers below)*

Axiom's duties as agent and Phineas' duties as Principal

- California Agency law imposes fiduciary duties on agents, including duties of loyalty, care and fair dealing, and a duty to obey or follow instructions. It also imposes a duty on Principals to compensate agents for the work they have done as agreed.
- In this case, Axiom appears to have fulfilled his duties with regard to the travel. In addition, Phineas has paid Axiom for the work, assuming this was an agency.
- *Accordingly, if this is an agency, both fulfilled their duties under the CA Agency statutes.*

Axiom's actions regarding the handkerchief

- As stated above, CA Agency law requires agents to obey a duty of loyalty and the instructions of the agent. It also imposes a duty of indemnification and reimbursement for the results of acting outside the scope of the duty.
- Taking and selling the handkerchief was not within the course and scope of Axiom's duties. Further, Axiom purloined a personal object of Phineas' and benefitted from it financially.
- *Accordingly, Axiom must reimburse Phineas for the amount realized from the sale of the handkerchief as he failed in his fiduciary duty.*
- If this is a partnership, CA Partnership law deems items obtained with partnership funds are partnership assets. Depending on the type and usual business of the partnership, a partner may or may not have authority to sell partnership assets.
- If a partner acts outside the scope of the partnership to the detriment of the other partners, he/she may be liable for the loss.
- The facts do not indicate that Phineas contributed this asset to a partnership with Axiom. Further, if this is a partnership, it does not appear (yet) to be in the business of selling such items.
- *Accordingly, Axiom failed in his partnership duties and will be liable to Phineas for the loss of the item and the amount realized.*

Suggested advice to Axiom

- Disclose the sale and reimburse Phineas.
- Discuss the nature of the relationship with Phineas to determine if a partnership was created and any financial agreement.

Answer 2 (Outline)

20% Organization (Similar headings – boldfaced below)

20% Issue (Spot all issues)

20% Rules (Name all rules – underlined below)

20% Analysis (Apply law to facts – all non-underlined, non-italicized font below)

20% Conclusions (Get correct conclusions – as *italicized* below)

Nature of the relationship between Phineas, Paolo and Pietro

- Under California Uniform Partnership law, a partnership is an association of two or more persons to carry on as co-owners a business for profit.
- In this case, the three agree to sell pianos for profit. They do not appear to have a written agreement or have filed any documents.

- *Accordingly, the three have formed a partnership. As it is in California, California partnership law will apply.*
- *As they have not filed any documents, this will be treated as a general partnership. The facts do not indicate a written agreement, so California partnership law will govern the partnership and the partners' interactions and duties.*

Phineas' duties as a partner

- Under California Partnership law section 16404, partners owe the partnership the fiduciary duty of loyalty including, but not limited to, not competing with the partnership or dealing with someone whose interests are adverse to the partnership.
- The same section also imposes a duty of good faith and fair dealing.
- Further, the section provides that partner does not violate a duty or obligation merely because the partner's conduct furthers the partner's own interest.
- Here, Phineas has violated his duty of loyalty by entering into a transaction with PIKEA for the sale of pianos, the same type of business as his partnership with Fazioli.
- While he may argue that the law permits him to further his own interests, this activity is in direct competition with the partnership.
- *Accordingly, Phineas may be liable to the partnership for a violation of his fiduciary duty of loyalty, and may be liable to the partnership for lost profits.*

Suspicion of hidden profits

- **California Partnership law provides that a partner may maintain an action against the partnership or the partners and in doing so require an accounting.**
- **The same law requires the partnership to maintain accounts reflecting the assets as well as each partner's share in proceeds, etc.**
- Under these laws, Phineas may take action against his partners to discern whether they have been hiding profits from him.
- *Accordingly, Phineas may take legal action against the partnership and the partners for repayment of any hidden profits due to him as a partner.*

Paulo's and Pietro's options and Phineas' reply

- Under California Partnership law section 16404, partners owe the partnership the fiduciary duty of loyalty including, but not limited to, not competing with the partnership and dealing with someone whose interests are adverse to the partnership.
- The same section also imposes a duty of good faith and fair dealing.
- The remedy is for the other partners to demand reimbursement for lost profits, or treat the new business as partnership business.
- Further, the law provides that a partner does not violate a duty or obligation merely because the partner's conduct furthers the partner's own interest.
- Paulo and Pietro may argue that Phineas violated his fiduciary duties by entering into a business agreement with Floki in direct competition. They may vote to treat the activity as partnership business, or to be reimbursed for lost profits.

- Phineas may defend himself by claiming that the law permits him to act in his own interest. Paulo and Pietro will argue that direct competition overrides this excuse.
- Phineas may also disclose the activity to the partners who may vote to adopt the activity.
- *Depending on the other partners' decision, and whether Phineas discloses the new business, Phineas may be liable for lost profits, or the partnership may elect to enter the new business with PIKEA.*

Answer 3 (Outline)

20% Organization (Similar headings – boldfaced below)

20% Issue (Spot all issues)

20% Rules (Name all rules – underlined below)

20% Analysis (Apply law to facts – all non-underlined, non-italicized font below)

20% Conclusions (Get correct conclusions – as *italicized* below)

Nature of the relationship between Phineas, Posh and Patricia

- Under California Uniform Partnership law, a partnership is an association of two or more persons to carry on as co-owners a business for profit.
- In this case, the three agree to sell create a partnership for a music school. They do not appear to have a written agreement or have filed any documents.
- *Accordingly, the three have formed a partnership. As it is in California, California partnership law will apply.*
- *As they have not filed any documents, this will be treated as a general partnership. The facts do not indicate a written agreement, so California partnership law will govern the partnership and the partners' interactions and duties*

Partnership Property

- Under California Uniform Partnership law, contributions of cash to the partnership are considered partnership assets. In addition, property purchased with partnership assets is partnership property. Property purchased by a partner with his/her own funds and no indication of intent for the purchase to be on behalf of the partnership, is not partnership property, but rather the property of the individual.
- In this case, the \$300k comprises partnership assets as it was contributed by the partners for purposes of starting the business.
- The facts do not indicate that Phineas specifically contributed the Steinway piano to the business. As such, it appears to be separate property.

- The additional pianos appear to be separate property belonging to Patricia. She purchased them with her personal assets and the facts provided do not suggest that the partnership agreed to the purchase. If there was an agreement, these may be deemed partnership property.
- *The facts indicate that the assets of the partnership include the cash, but do not include the pianos, unless an agreement between the partners was reached.*

Liability for the accident

- California partnership law provides that a partnership is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission, or other actionable conduct, of a partner acting in the ordinary course of business of the partnership or with authority of the partnership.
- Phineas was engaging in the ordinary course of business of the partnership (teaching the piano) when the accident occurred. The facts do not indicate if the parents feel it was Phineas' screaming that caused their daughter to jump, nor do they indicate that her jump directly caused the cover to close.
- *In the absence of additional facts, Phineas was engaged in the ordinary course of partnership business and thus the partnership is liable for any injury incurred. Accordingly, in the event the parents' action is successful, the partnership would be liable for the damages.*

Winding up

- California Partnership law provides that a partnership may be dissolved upon the agreement of the parties and takes place after winding up the partnership's books (assets and liabilities).
- The law requires the partnership to account for and pay any outstanding third-party liabilities and collect any third-party debts. The remaining assets are distributed in proportions as agreed by the partners, once any liabilities of the partners to the partnership are settled. All partners are liable jointly and severally for all obligations of the partnership
- In this case, the facts indicate that the only assets include the \$300k contributed by the three partners. They do not indicate if there is a lease for the premises.
- The facts do not indicate that Phineas charged a fee for the partnership's use of his Steinway. If there was such an agreement, Phineas will need to be reimbursed if he has not already been paid.
- The facts do not indicate if the partners agreed the additional pianos were partnership property. If no agreement exists, the pianos are assets belonging to Patricia personally and a usage fee may be owing.
- The facts do not indicate any distributions were made to the partners.
- The facts do not indicate that the lawsuit has been completed.
- *Accordingly, it appears that each partner is eligible for payment of his/her original contribution of cash. It is unlikely, however, that the winding up and dissolution can be completed prior to the settlement of the parents' lawsuit as the partnership may be liable.*

Finally, if damages are awarded to the parents exceeding the \$300k, the partners may be personally liable for the balance as all partners are jointly and severally liable.

- *Only once all liabilities are paid can a final distribution be made and the partnership dissolved.*

1)

To determine the rights and duties of the parties it is necessary to first identify the type of business association they formed and operated under at the time of the events which led to the present dispute.

Commented [ps1]: Good intro

1. Is Axiom a Partner or an Agent?

Agency

Agency is a fiduciary relationship that is formed when one person [the agent] consents to act on behalf of and subject to another [the principal]. First, an agent must manifest assent to act on behalf of the principal. Second, the agent "acts on behalf of" another when they "carry out the principal's affairs." Third, the principal must control the agent's activities; specifically the manner and means in which the agent must conduct the principal's affairs.

Partnership

A partnership is formed when two or more persons carry on as co-owners of a business for profit, regardless of their intent. The default form of a partnership is a general partnership and does not require any filings. A party is deemed to be a partner if they (1) share net profits of the business and (2) control and manage the course of business.

Here, Axiom (A) may be under the mistaken impression that he and Phineas (P) formed a general partnership and is seeking a share of P's monetary prize and earnings that resulted thereafter. This is an understandable mistake since P communicated both that he only needed "someone to help him" and "take care of all the headaches" while also suggesting he would share the prize and earnings when he said "You and I are going to win this and be rich." However, a partnership requires that two or more persons carry on as co-owners, share net profits, and share management and control of the business. The facts indicate that A only provided auxiliary and administrative support as opposed to sharing a say in the management and control of P's music. A's responsibilities consisted of organizing all plane, train, and hotel details as opposed to having a say in the production of the music. (1) These facts strongly indicate that A was an agent who agreed to act on behalf of P when he offered to assist P. (2) A acted on behalf of P by coordinating travel plans and helping with the preparation, not production, of P's music. (3) P controlled the manner and means in which A carried out P's affairs by working closely with A as they traveled and prepared for the competition.

Therefore, P and A did not form a partnership and A is not entitled to a share of A's monetary prize and subsequent earnings. Instead, A is an agent of P and has both rights and duties as such.

Commented [ps2]: Excellent analysis!

2. Did P breach his duty of good faith and fair dealing?

Principal's Duties

The principal owes the agent (1) the duty to exonerate and indemnify for costs associated with the agency, (2) the duty to compensate, (3) the duty of care, and (4) the duty of good faith and fair dealing.

In this case, A is entitled to compensation and reimbursement or indemnification for the costs associated with the agency. The facts state that P did reimburse A for his travels and presumably his labor which satisfies P's duty to compensate and indemnify A. P also owed A a duty of good faith and fair dealing which required that he disclose any dangers or risks associated with the agency. A may argue that P was required to disclose that his comment "You and I are going to win this and be rich" did not mean that A would receive a "share" of the prize of subsequent earnings since his comment would have made a reasonable person rely on a "share" of the prize. However, this is likely to be a difficult action to bring against P because although A did not become rich, he likely received a portion of the prize or earnings through his compensation.

Therefore, P likely upheld his duties to A and is unlikely to bring a claim against P for breaching his duty as a principal.

3. Did A have authority to sell P's handkerchiefs to a fan?

Authority

A principal may be liable for an agent's actions if the agent acted within their express, implied, or apparent authority. An agent has express authority if the principal expressly informed the agent of their authority either in writing or orally. An agent has implied authority if (1) the actions were necessary, ordinary, or proper to carry out the principal's affairs (2) based on the principal's conduct or manifestations or if it was conduct which the principal had not disapproved before. An agent has apparent authority if (1) a third party reasonably believed the agent has actual authority (2) because of the principal's conduct or manifestations.

Here, A was likely not authorized to sell P's handkerchief to a fan. P empowered A, either orally or in writing, with the express authority to prepare his music and to "take care of all the headaches." Additionally, the instruction to "take care of all the headaches" does not specify discrete duties which suggest that A had implied authority to do what was necessary, proper, and ordinary to handle the administrative tasks that P did not want to spend time on. However, selling P's handkerchief for \$10,000 is absurdly out of A's implied authority to "take care of all the headaches" because it was not

necessary, ordinary, or proper to prepare P's music or coordinate the travel plans. Further, the sale clearly exceeds A's express authority.

Therefore, A exceeded his authority by selling P's handkerchief to a fan for \$10,000.

4. Did A breach his duties as agent of P?

Agent's Duties

The agent owes the principal the (1) duty of good conduct and to obey, (2) duty to indemnify for losses that result from negligence, intentional misconduct, and exceeding authority, (3) duty to account, and (4) the fiduciary duties. The fiduciary duties include (1) the duty of disclosure, (2) the duty of care, and (3) the duty of loyalty.

In this case, A is likely liable to P for the handkerchief and the amount he received for its sale. First, A breached his duty of good conduct and to obey by going beyond P's instructions and stealing P's property. Second, since P's handkerchief has a value of at least \$10,000, which A took for himself, A breached his duty to indemnify P for the value of the handkerchief because the sale exceeded his authority and is also within the scope of intentional misconduct because A sold the handkerchief without P's knowledge. Third, A breached his duty to account because he did not provide P with an account of the amount he received for the sale of the handkerchief. Fourth, A breached his fiduciary duties.

A's duty to disclose required him to disclose (1) all material facts which are necessary for P to make and informed decision and (2) when A takes on an interest adverse to P. Here, A did not disclose that he was marketing P's handkerchief which is a material fact which prevented P from reaching an informed decision on whether he should continue employing A. Additionally, A failed to disclose to P that he had taken on an interest adverse P when he marketed P's handkerchief and received earnings from the sale of P's property which would have otherwise been P's earnings.

A's duty of care required him to (1) take all reasonable efforts to carry out P's affairs and (2) do so at the standard of care common among those in like business. A breached his duty of care by exceeding the standard of care common among those in like business. A breached his duty of care by exceeding his authority and failing to uphold a standard of care common among those in like business which at a minimum required him to uphold his other fiduciary duties

A's duty of loyalty required that he only acted in P's best interest, specifically he (1) must refrain from gaining a material benefit from a third party in connection to the agency, (2) must refrain from taking

on an adverse interest to P, (3) must refrain from competing with P, (4) must refrain from using P's property for his own benefit, and (5) must not divulge confidential information. A breached his duty of loyalty because he took on an interest adverse to P and received a personal and material benefit from the sale of P's property.

Therefore, P breached his duty of good conduct and to obey, duty to indemnify, duty of care, and duty of loyalty by marketing P's handkerchief and selling it for \$10,000.

Agency Termination

An agency terminates by will of either party absent any agreement.

Here, there are no facts indicating an agreement.

Therefore, Phineas was within his right to terminate Axiom's agency.

Conclusion:

My advice to Axiom is that he received a fair compensation for acting as Phineas' agent and is unlikely to be considered a partner entitled to share of Phineas' earnings or prize. However, he should be aware that he breached several of his duties he owed to Phineas in his scope as an agent and is likely liable for the \$10,000. He should either try to get the handkerchief back or in the alternative, give Phineas the \$10,000. Otherwise, he is likely to be sued and be liable for the amount.

Organization 19

Issues 19

Rules 17

Analysis 19

Conclusion 20

Total: 94

Very well done and use of IRAC! Very clear and effective comparison of the two business forms. Be sure to include the source of the rules in order to bolster your arguments and conclusions. Very good conclusion with useful advice.

2)

To determine the rights and duties of the parties it is necessary to first identify the type of business association they formed and operated under at the time of the events which led to the present dispute.

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1. Did Phineas, Paolo, and Pietro form a partnership?

Partnership

A partnership is formed when two or more persons carry on as co-owners of a business for profit, regardless of their intent. The default form of a partnership is a general partnership and does not require any filings but does impose a joint and several liability on all its partners. A party is deemed to be a partner if they (1) share net profits of the business and (2) control and manage the course of business.

Here, the facts state that Phineas ("P1") agreed to form a partnership with Paolo ("P2") and Pietro ("P3") to sell Fazioli Pianos. Additionally, they each contributed \$100,000 and share the profits equally. Based on the facts, the three parties formed a partnership because they carried on as co-owners of a business that sold Fazioli pianos for a profit, shared the profits equally, and each contributed a monetary amount which strongly indicates that the parties had a stake in the business. Absent any further agreement terms, the default partnership is a general partnership. All three parties are also likely partners because they made equal contributions and had partner meetings.

Therefore, P1, P2, and P3 formed a general partnership ("Fazioli Pianos") to sell Fazioli pianos. As such, they each have rights and obligations as partners.

Type of General Partnership

A general partnership may either be by will, by term, or by unique undertaking. The type of general partnership informs the partners' options for ending the partnership. A partnership by will is not conditioned on any duration or specific undertaking and may end by will. A partnership by term is tied to a duration agreed upon by the partners and may only end at the end of that term. A partnership by unique undertaking is conditioned on the a specific and discrete goal which may only terminate after the goal has been satisfied.

In this case, Fazioli Pianos did not have an agreement that specified the duration of the partnership or a unique undertaking.

Therefore, Fazioli Pianos will be considered a partnership by will.

2. Did any of the partners breach their duties to each other and/or the partnership?

Duties of the Partners

Each partner in a partnership acts as an agent of the partnership and the individual partners. As agents, the partners owe each other and the partnership the fiduciary duties of care and loyalty. The duty of care requires that the partners must not engage in conduct that is grossly negligent, intentional misconduct, or a known violation of law. The duty of loyalty requires that the partners act only in the partnership's best interest and that they (1) must disclose and hold as trustee any profits gained in the course of the partnership business, (2) must refrain from acting as or on behalf of someone with an interest adverse to the partnership business, and (3) must refrain from competing with the partnership business.

2a. Did P1 breach his fiduciary duties to Fazioli Pianos, P2, and P3, by agreeing to endorse PIKEA pianos?

Here, P1 agreed to endorse PIKEA pianos and receive a "cut" or "share" for the sales of the endorsed pianos. First, P1 breached his duty of care because he engaged in intentional misconduct by endorsing cheaper pianos that directly compete with Fazioli Pianos because Floki state they would "sound just like Faziolis." Second, P1 breached his duty of loyalty because he took on an interest adverse to the Fazioli Pianos and directly competed with the partnership business by agreeing to endorse the PIKEA pianos knowing that they were cheaper alternatives to the Fazioli Pianos.

Therefore, P1 breached the fiduciary duties he owed to the partnership, P2, and P3 because he endorsed and received a share of the profits of PIKEA pianos which were cheaper products that intentionally competed with Fazioli Pianos.

2b. Did P2 and P3 breach their fiduciary duties to Fazioli Pianos and P1 by hiding a portion of the profits?

In this case, there are not facts that clearly show P1's beliefs to be true. However, if P1 is correct, P2 and P3 breached their duty of care because they engaged in intentional misconduct by hiding the profits to which P1 has equal rights to based on their agreement, and as otherwise afforded by law in lieu of an agreement. Additionally, if the allegation is correct, P2 and P3 also breached their duty of loyalty because they failed to disclose and hold as trustee any profits from Fazioli Pianos by intentionally hiding them from P1.

Therefore, if P1 can prove that P2 and P3 intentional withheld a portion of the partnership profits, P1 is likely to succeed in a counter claim alleging a breach of fiduciary duties and may recover the embezzled profits.

Terminating the Partnership

A partnership may end either through dissociation or dissolution. Dissociation occurs when one of the partners exits the partnership but the partnership business continues. Dissolution occurs when the partners agree to terminate the partnership or the partnership is terminating by judicial proceedings. Before a partnership may terminate, it enters a legal process named "winding-up" where the partnership must liquidate assets, satisfy financial obligations to creditors, and distribute any surplus among the partners.

Here, given the current circumstances between the partners, dissolution is likely the best option to proceed with. The partners must agree to dissolve the partnership and liquidate the assets to satisfy any financial obligations to creditors and then divide any surplus equally among the partners. First, the partners would pay any loans owed to the creditors to satisfy liabilities. Then, the partners are reimbursed the \$100,000 they each contributed to the partnership. Lastly, the partners would divide the surplus equally.

Conclusion:

P2 and P3 will likely proceed with a claim against P1 for breaching his fiduciary duties of care and loyalty by endorsing and receiving a share of profits for the sale of PIKEA pianos which directly compete with Fazioli Pianos. P1 is likely to defend himself by presenting a counter claim against P2 and P3 for breaching their fiduciary duties of care and loyalty by intentionally hiding a portion of the profits which P1 had equal rights to. At the end, Fazioli Pianos will like termination through dissolution due to irreparable differences that prevent the partnership from carrying on.

Organization 19

Issues 19

Rules 17

Analysis 19

Conclusion 20

Total: 94

Very well done and use of IRAC! Be sure to include the source of the rules in order to bolster your arguments and conclusions. Also be sure to include compromises such as adoption of the pikea business

3)

To determine the rights and duties of the parties it is necessary to first identify the type of business association they formed and operated under at the time of the events which led to the present dispute.

1. Did Phineas, Posh, and Patricia form a partnership?

Partnership

A partnership is formed when two or more persons carry on as co-owners of a business for profit, regardless of their intent. The default form of a partnership is a general partnership and does not require any filings but does impose a joint and several liability on all its partners. A party is deemed to be a partner if they (1) share net profits of the business and (2) control and manage the course of business.

Here, the facts state that Phineas ("P1") agreed to form a partnership with Posh ("P2") and Patricia ("P3") which sold piano lessons for profit. Additionally, they each contributed \$100,000 and while the facts do not state that they share the profits equally, California affords that right in lieu of an agreement. Based on the facts, the three parties formed a partnership because they carried on as coowners of a business that sold piano lessons for a profit, shared the profits equally (as presumed according to California law), and each contributed a monetary amount which strongly indicates that the parties had a stake in the business. Absent any further agreement terms, the default partnership is a general partnership. All three parties are also likely to be partners because all three came together asking for advice.

Therefore, P1, P2, and P3 formed a general partnership ("Piano School") to sell piano lessons. As such, they each have rights and obligations as partners.

Type of General Partnership

A general partnership may either be by will, by term, or by unique undertaking. The type of general partnership informs the partners' options for ending the partnership. A partnership by will is not conditioned on any duration or specific undertaking and may end by will. A partnership by will is tied to a duration agreed upon by the partners and may only end at the end of that term. A partnership by unique undertaking is conditioned on the a specific and discrete goal which may only terminate after the goal has been satisfied.

In this case, Piano School did not have an agreement that specified the duration of the partnership or a unique undertaking.

Therefore, Piano School will be considered a partnership by will.

2. Did any of the partners breach their duties to each other and/or the partnership?

Duties of the Partners

Each partner in a partnership acts as an agent of the partnership and the individual partners. As agents, the partners owe each other and the partnership the fiduciary duties of care and loyalty. The duty of care requires that the partners must not engage in conduct that is grossly negligent, intentional misconduct, or a known violation of law. The duty of loyalty requires that the partners act only in the partnership's best interest and that they (1) must disclose and hold as trustee any profits gained in the course of the partnership business, (2) must refrain from acting as or on behalf of someone with an interest adverse to the partnership business, and (3) must refrain from competing with the partnership business.

2a. Did P1 breach his fiduciary duty by causing the 10-year-old's injuries?

Here, P1 likely did not violate his duty of care because his negligent behavior does not amount to gross negligence. Partners are afforded a lower standard of care to promote partnerships and business. While P1's behavior was likely negligent, it does not breach the standard of care required of partners because it may have been reasonable reactions given the circumstances and there are no facts indicating that P1 intended to cause any injury.

Therefore, P1 did not breach his duty of care by indirectly causing the student's injuries.

2b. Did P3 breach her fiduciary duty by failing to maintain the books properly?

Here, P3 likely did not violate her duty of care because her negligent behavior does not amount to gross negligence. Partners are afforded a lower standard of care to promote partnerships and business. While P1's behavior was likely negligent, it does not breach the standard of care required of partners because she did not intentionally misappropriate funds, but instead simply forgot to transfer the funds to the partnership account.

Therefore, P3 did not breach her duty of care by forgetting to transfer funds from her account to the partnership account.

3. Is the Piano School liable for the student's injuries?

Partnership Liability

In a general partnership, the partnership and its partners are jointly and severally liable for any torts or obligations resulting from the partners' conduct in the ordinary course of the partnership business unless they exceeded their authority. A partner may have express and/or implied authority. A partner, acting as agent, has express authority if the principal expressly informed the agent of their authority either in writing or orally. A partner, acting as an agent, has implied authority if (1) the actions were necessary, ordinary, or proper to carry out the principal's affairs (2) based on the principal's conduct or manifestations or if it was conduct which the principal had not disapproved before. An agent has apparent authority if (1) a third party reasonably believed the agent has actual authority (2) because of the principal's conduct or manifestations.

In this case, the facts only indicate that P1 had express authority to teach piano lessons. As a piano teacher, P1 also has implied authority to engage in conduct that was necessary, ordinary, and proper to carry out his express authority to teach piano lessons. While becoming angry and screaming at the student may not be best practices, it is reasonable that it is a reaction that is not uncommon among teachers from time to time. Additionally, a third party may reasonably believe that P1 acted with actual authority when he became angry and screamed at the student because it was within his scope as a teacher for Piano School, it was of the same nature as his agency, and in part still intended to serve Piano School.

Therefore, Piano School, P1, P2, and P3, are all jointly and severally liable for the student's injuries that the parents are likely to allege. Nevertheless, Piano School, P2, and P3, may attempt to avoid liability by arguing that P1 exceeded his authority.

4. Are the two additional pianos partnership property?

Partnership Property

Assets (1) acquired in the name of the partnership or (2) in the name of one or more partners with an indication that they acted within their role as partners, are considered partnership assets and partnership property.

Here, P3 purchased two additional pianos with her personal credit card. The facts do not state whether the purchase order had any indication that she bought the pianos within her capacity as partner or if she purchased it under the partnership's name. Without any of the indications, the pianos are likely P3's personal property and would not be partnership property subject to equal division.

Therefore, if there is evidence that the pianos were either purchased in Piano School's name or P3's name with and indication of her status as partner, then the pianos are partnership property. Otherwise, they are likely P3's personal property.

Terminating the Partnership

A partnership may end either through dissociation or dissolution. Dissociation occurs when one of the partners exits the partnership but the partnership business continues. Dissolution occurs when the partners agree to terminate the partnership or the partnership is terminating by judicial proceedings. Before a partnership may terminate, it enters a legal process named "winding-up" where the partnership must liquidate assets in cash, satisfy financial obligations to creditors, and distribute any surplus among the partners in cash.

Here, P1, P2, and P3 came together to ask for advice on how to dissolve the partnership. Before anything, the partnership will have to defend any lawsuits which include the lawsuit brought by the student's parents. After the lawsuit reaches a judgement or a settlement, the partnership may proceed with the winding up. First, the partnership will need to liquidate all assets and satisfy any financial obligations owed to creditors. Second, the partners will each be reimbursed their \$100,000 contributions, and P3 will receive her pianos if it was established that it was her personal property. Lastly, any surplus profits will be distributed equally among the three partners. However, if only liabilities remain, all partners are jointly and severally liable to satisfy those obligations.

Conclusion:

Piano School, Phineas, Posh, and Patricia are all jointly and severally liable for the student's injuries that resulted from Phineas' conduct which was within his scope as an agent and teacher of Piano School. Before the partners can dissolve the partnership by will, they will need to defend the pending lawsuit filed by the student's parents. After that, the partners may proceed with winding up, liquidation, satisfaction of liabilities to creditors, and lastly the equal distribution of surplus profits. However, if only liabilities remain, all partners are jointly and severally liable to satisfy those obligations.

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Very well done and use of IRAC! Better use of the rules in order to bolster your arguments and conclusions, but need to expand. Great conclusion with useful suggestions. Any issues with phineas's piano? Contribution? Usage with rental fee?

END OF EXAM