

Monterey College of Law – Hybrid

Business Organizations I (Agency and Partnership)- Sec. 1

Final Exam

Fall 2024

Professor: M. Egenthal

Instructions:

Answer three (3) essay questions.

Question 1: 100 points

Question 2: 100 points

Question 3: 100 points

Time Allocated: Three (3) Hours

Question 1

Daniel owns a florist shop, Bloomsclapes that specializes in weddings and other celebrations. He is the sole owner and the business is a sole proprietorship. He hires Bill and the employment agreement states that Bill will work in the shop to both talk to customers about designs and help with the creations, as well as manage the general operations when Daniel is traveling (there are delivery and installation workers that need to be paid). As Daniel is also a world-ranked marathon runner, he travels often. In order to keep the business running, he provides Bill with a power of attorney that allows Bill to act on Daniel's behalf and to "enter into and execute any contract for the purchase of goods or merchandise as needed for the operation of the current business of Bloomsclapes, or to sign any credit or promissory note in connection with the operation of the current business of Bloomsclapes on my behalf."

While Daniel is running in a marathon in Manaus, Brazil, Bill comes up with an idea for selling specialty personalized gift baskets containing chocolates, candles and potpourri. He goes to the bank and tells them he has power of attorney from Daniel "to run the business." The bank manager knows Daniel and does not bother to look at the power of attorney. Bill signs a promissory note for \$50,000 to purchase the baskets from Bertha's Basketville. Bill takes delivery of the baskets and decides he could make more money personalizing them himself and selling them online. That evening, he leaves the store closed and locked (he is the only employee with a key so no other staff have access) and flies to Cambria, Wales to create his online business. When Daniel returns one week later, the store is still locked, all the flowers in storage are dead including \$100,000 of rare orchids, and he receives notice that the bank has not been repaid and no employees paid so they all quit.

What would you advise Daniel regarding his position with the bank, Bill's actions, and the legal recourse (if any) he can take against Bill?

QUESTION 2

Ringo, Lolita, and Finnigan orally agreed to start RLF (“RLF”), a business to manufacture and sell wild caught cod dog food. Ringo contributed \$100,000 to RLF, stating to Lolita and Finnigan that he wanted to limit his personal liability to that amount. Lolita, who has technical expertise at making dog food, contributed \$50,000 to RLF. Finnigan contributed no money to RLF but agreed to act as salesperson. Ringo, Lolita, and Finnigan agreed that Lolita would be responsible for making dog food, and that Finnigan alone would handle all sales of dog food.

RLF opened and quickly became successful, primarily due to Finnigan’s effective sales techniques. Subsequently, without the knowledge or consent of Ringo or Finnigan, Lolita entered into a written sales contract in RLF’s name with Boris, Inc. (“Boris”) to sell dog food manufactured by RLF at a price that was extremely favorable to Boris. Lolita’s sister owns Boris, Inc. When Ringo and Finnigan became aware of the contract, they contacted Boris and informed it that Lolita had no authority to enter into sales contracts, and that RLF could not sell dog food profitably at the price agreed to by Lolita. RLF refused to deliver the dog food, and Boris sued RLF for breach of contract.

Thereafter, Ringo became concerned about how Lolita and Finnigan were managing RLF. He contacted Cod, Inc. (“Cod”), RLF’s fish supplier. He told Cod’s president, “Don’t allow Finnigan to order fish; he’s not our technical person. That’s Lolita’s job.” Finnigan later placed an order for several expensive amounts of fish (including some fish other than cod such as Colombian dogfish and Arctic guppies) with Cod. RLF refused to pay for the fish, and Cod sued RLF for breach of contract. Not long afterwards, RLF went out of business, owing its creditors over \$500,000.

1. How should RLF’s debt be allocated? Discuss.
2. Is Boris likely to succeed in its lawsuit against RLF? Discuss.
3. Is Cod likely to succeed in its lawsuit against RLF? Discuss.

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Question 3

Before Ringo, Lolita and Finnigan begin their partnership, they ask you to draft a partnership agreement (they plan to be a general partnership). Please provide a general description of the planned activity and minimum of 10 clauses you will include in the agreement. Please provide full sentences. In particular, include items that would have prevented their problems and provide the reasoning. (you can assume that they did not follow your instructions and adopt the agreement in the form you provided.)

Hybrid

Business Org

Fall 2024

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 business: No facts indicate that there are any other owners of Bloomscares, nor that it is incorporated, so this would be a sole proprietorship owned by Daniel.

Nature of the relationship

- An agency relationship exists when one party, the agent, consents to act on behalf of, and under the control of another, the principal.
- In this case, Bill agreed to employment by Bloomscares and to act on behalf of Daniel. *Accordingly, Bill is an agent of the principal, Daniel.*
- As an agent, Bill owes particular duties to the principal, including fiduciary duties such as a duty of loyalty, a duty of care and a duty to obey or follow instructions.

Does Daniel have any recourse with regard to the loan payable to the bank?

- Daniel expressly empowered Bill to act on his behalf by providing a power of attorney that included the signing of promissory notes.
- The power of attorney was limited, however, to the business of the shop, which did not include purchasing and selling baskets.

- *As such, Bill violated his fiduciary duty to Daniel by entering into a transaction for which he had no authority.*
- Be that as it may, a principal is responsible for the act of the agent taken in the course of employment. As such, it would appear that Daniel is responsible for the loan signed on his behalf by Bill.
- The bank manager may argue that Bill had apparent authority to sign the loan document. Apparent authority arises when a principal holds an agent out as having a certain level of authority. Daniel may argue, however, that Bill's authority was not apparent, but rather express by way of the power of attorney. The manager did not read the power of attorney which would have informed the bank that Bill was not authorized to obtain the loan unrelated to the business of Bloomscares, and thus the loan agreement itself was invalid. *Daniel can therefore argue that he is not responsible for the loan as it was invalid.*

Does Daniel have any legal recourse against Bill?

- An agent has various fiduciary and other duties to the principal, such as the duties of care, loyalty and to follow instructions.
- In this case, Bill was empowered to sign promissory notes, but only related to the business of the shop which did not include baskets.
- Bill would not be able to argue that he had implied authority to obtain the loan and purchase baskets. Implied authority includes ancillary actions that the agent may logically conclude are within his/her power as part of the overall authority. Had Bill signed the loan to purchase repair parts, implied authority may have been present. In this case, however, the shop did not sell baskets, nor was the loan related to necessary parts.
- *Accordingly, Bill violated his fiduciary duty of care and acted outside of the course of his employment, and thus Daniel would not be responsible for the purchase of the baskets.*
- Secondly, Bill was responsible for running the shop in Daniel's absence which included opening and closing the shop and managing the other employees. As such Bill violated his fiduciary duty of care to Daniel to keep the business running. Bill may have a legal complaint for loss of business for the days the shop was not operating.
- Thirdly, Bill decided to take the baskets and start his own business. Such an action would be a violation of his duty of loyalty to Daniel. It should be noted, however, that Bill may argue that Bloomscares was not in the business of selling baskets so there would be no violation of a duty of loyalty. Regardless, Bill was an employee and has absconded with the baskets that were the property of the shop, and in doing so has not only committed criminal theft, but also a violation of his duty of loyalty to the principal.
- Finally, with regard to the question of whether Daniel can succeed in pursuing legal action against Bill for the above noted issues, the facts indicate that Bill has left the country. Unless Bill returns, any legal action may be procedurally challenging and expensive.
- *In summary, Daniel should argue that he is not responsible for the loan as it was an invalid transaction for which he gave no express approval. Daniel does have legal recourse for the lost revenue for the days Bill failed to open the shop.*

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)

Introduction

1. Nature of Organization
2. RLF is a general partnership under definition
3. Partnerships are business for profit and if no agreement, profits are split

1. How should RLF's Debt be Allocated?

1. Just like profits, without agreement, debts are split equally.
2. R wanted to limit his liability. However, absent a formal agreement, R is going to be considered a general partner.
 - a. Also R has active management (general managerial position, apparent equal voting rights), R was the one to call Cod (C) and tell them not to accept orders from F.
 - b. Limited partners, those with limited liability, generally have no managerial functions.
 - c. Under agency law, any contract or tortious action entered into in the scope of the partnership is deemed to be partnership debt, and all partners are jointly and severally liable.
3. Therefore, any contracts that were properly entered into and authorized by a partner having authority are partnership debts that R, L, and F will be jointly and severally liable for as individuals.
4. *Therefore, the order of payment is: (1) all debt creditors, (2) all capital contributions from each partner, which would be \$100,000 to R and \$50,000 to L and zero to F since partners generally have no right to salary or compensation for services; (3) any remaining profits equally to R, L, F.*

2. Is Boris likely to Succeed in its Lawsuit against RLF?

1. Validity of the Agreement: Boris (B) must show that Finnigan was authorized to enter the contract.
 - a. All partners are authorized agents of the partnership but the nature of authority may vary.

- b. Express authority exists when the arrangement expressly states what an agent may do, but sales were expressly reserved to F so L doesn't have express authorities.
 - c. Implied authority exists when the function is 1) necessary to carry out other responsibilities, 2) one that has been done in the past dealings without objection, or 3) normal custom for someone with the position of the agent. Sales are not necessary to L's technical design responsibilities, and she has never sold before.
 - d. Apparent authority exists when the company cloaks the agent with authority to do certain things and later withdraws or limits that authority without notifying a customer who is still relying on that authority. In this case, there is no indication that RLF held L out to be a sales representative in the first instance. There was likely no good basis that B had to rely on any authority from RLF. However, given that L herself is a managing partner, B likely could argue that L's actions were sufficient to show that the corporation had given her authority to act. As such, they will argue that it was reasonable to rely on this without any other notice. This would bind RLF.
2. ***Failing to perform on the contract is a breach of duty and the partnership, as well as the individual partners, will be obligated to pay as described above.***
3. Breach of Duty of Good Faith and Loyalty
- a. Partners have fiduciary duties to each other that are described as the utmost duty of good faith and loyalty.
 - b. Duty of Loyalty means a partner must not engage in self-dealing, usurping business opportunities, or competing against the company. In this instance, L engaged in a transaction with her sister who owned B. The terms were apparently very favorable to B. This could be viewed as self-dealing because it promoted L's familial interest with her sister and was not in the best interest of the company.
 - c. Duty of Good Faith requires that partners act in a way that solely benefits and is advantageous to the partnership. Again, L's deal with B didn't garner the profits that it should have. Furthermore, this duty requires disclosure of conflicts of interest to the other non-interested partners so that they can either cleanse the transaction through ratification or disapprove it. There is no indication that L informed her partners. The other partners have a very strong argument to bring a claim against L for these breaches of duty.
4. ***Therefore, the entire liability for the breached contract would be on L, which would deviate from the normal liability scheme described above, and B could only succeed against B.***

3. Is Cod likely to Succeed in its Lawsuit against RLF?

- 1. Validity of the Agreement
 - Cod's (C) claim on this contract again hinges on the authority of F to enter into it. In this instance, F has the express authority to enter into sales contracts. However,

this contract was for components being purchased by F, which is outside his express authority.

- Implied authority: C may argue that components are necessary to production and later sales, which gives F implied authority to enter into contracts. Plus, it is reasonable to assume that a partner who can sell can also buy. This reasonable assumption lends credence to a claim of apparent authority.
- Apparent authority: C will argue that RLF has held F out as a person whose sole responsibility is to contract, and it reasonably relied on that representation. C will argue, therefore, that any resulting contract liability would be distributed among the partnership and R, L and F.

2. Actual notice to C of Lack of F's authority

- C's main issue is that R called and gave actual notice that F could not enter into this contract. This would destroy any reasonable reliance that C had. R told C that L was the technical person, not F. As such, C should have seen that this was outside the scope of F's authority. But F is still a general partner in the company.
- C could rightly assume that one partner doesn't have the sole authority to terminate the management authority of another partner. Management functions are only transferable and alterable upon a unanimous vote of the partnership. R alone tried to limit what F could do. C may argue that it knew this wasn't a proper action by R and more reasonably relied on F.
- RLF will argue that C at least should have investigated further once given notice that F may not have authority and failure to follow through made their reliance on his apparent authority unreasonable. RLF will argue that this contract is invalid and will not bind RLF for this persuasive reason.

3. Effect of R's Notice on F's Duties

- R might also claim that F's activities outside his scope of duty were not in good faith.
- The argument is that acting in an area in which F knows nothing about shows a lack of obedience to his agency limits and lack of good faith in honoring partnership agreements on authority.
- But R didn't act with the consent of E. As such, there is no indication that the majority of management is at odds with F's decision to enter the contract. This appears to be solely the reservation of D with E and F.
- ***In the end, there was likely no breach of duty and any potential liability from this contract would flow to all, not just F.***

Answer 3

Introduction and description

Options:

1. Name of the partnership

2. Purpose and type of the partnership
3. Partners identified
4. Contributions by each partner.
5. Liability (joint and several)
6. Meeting frequency
7. Powers of partner 1
8. Powers of partner 2
9. Powers of partner 3
10. Fiduciary duties and any limitations, additions, modifications
11. Impact of one partner leaving.
12. Dispute resolution
13. Dissolution plan

3.0/33

1)

Agency

Was a Valid Agency Relationship Formed?

Agency is a fiduciary duty that is created when one party, the principal assents their desire for another person, the agent to act on their behalf, to their pleasure and benefit, and under their control and the other person consents to do so. Thereby, an agency relationship is formed. There needs to be mutual consent to enter this agreement, control of the principal over the agent and the agent's actions ought to benefit the principal.

Consent does not have to be expressly in writing (although it is beneficial to have matters as such in writing), but could be verbal, or via performance (part of complete).

Control matters in an agency analysis and is satisfied if the principal controls the means and manners by which the work ought to be completed not just the end result. This is a significant analysis, especially when dealing with Independent contractors.

The agent is bound under the fiduciary duties imposed under such a relationship with the sole goal that their actions ought to benefit the principal's interests

Here, we have Daniel who has retained the services of Bill to work in his shop, talk to customers about designs, help with creations, "manage" the general operations when Daniel is travelling. Furthermore, the facts state that there are employees that need to be paid.

Bill's performance suggests an agreement and consent to act on behalf of Daniel and to the interest of Daniel.

In conclusion: Yes, an agency relationship has been formed whereby Daniel is in the position of a principal and Bill is the agent.

Authority

What Authority did Bill have?

Authority is the legal principal that may bind the principal for contracts entered into by their agent. The scope of the authority will determine the extent of contractual obligations between Principal and Agent. There are four types of authority: (1) Express Authority: This is when the terms and scope of the duties to be performed by the agent are clear either via written agreement or orally instructed by the principal; (2) Implied: These are actions that are necessary and flow from the natural role of the agent within their capacity as the principal's agent. Implied authority addresses actions that are necessary to be done in order to complete the express authority (Example. Store General manager may have express authority to order products to sell, but they also have an implied authority to stock the store floor in order to sell such products); (3) Apparent Authority: here, the focus is on a third-party's perspective as to the principal agency relationship and it focuses on the principal's actions and omissions. For instance if a third party asks in a joint presence of the agent and principal if the agent has the authority and the principal nods their head or agrees (or if they don't say anything when a reasonable person in the principal's position would object); and finally (4) inherent authority: once again, the idea here is the third-party's perspective and reasonable belief regarding whether the agent had the authority at issue. This is when a similarly situated person in the position of the agent, would generally have the authority to enter in such a contract (suppose a store manager and a vendor. Generally, store manager may order products for the store).

Here, Bill had the following express authorities: (1) to talk to customers about designs, (2) to help with creations; (3) Manage the General Operations when Daniel is travelling.

These were all authorities orally given to Bill (express authority). There is however an ambiguity regarding the word "manage" and it would be advisable to avoid general words such as this absent clear scope of the meaning of such words.

Nice ✓
Additionally Daniel Executed a Power of Attorney that expressly granted Bill the following authority: (1) to act on Daniels behalf (again, Daniel should refrain from using such open-ended terms); (2) Enter into and execute any contracts for the purchase of goods or merchandise as needed for the operations of the current business of Bloomscapes (once again, we I would advise Daniel to refrain from granting such broad power of attorney to employees); and (3) to sign any credit or promissory note in connection with the operation of the current business of Blommscapes on Daniel's behalf.

(In conclusion: Daniel had expressly granted Bill a wide range of authority including entering into contracts, signing ant credit, as well as broad terms such as "manage" or "Act" and "any" credit. Hence, Bill had certain express authorities.

Was selling Gift Baskets containing chocolates, candles and potpourri within Bill's authority?

It is unclear whether the deviation from the normal operation of the business of selling flowers and related flowers accessories was warranted under the express terms of the authority granted to Bill which states "Manage general Operation" or whether chocolate and candles and other unusual things fall within the authority to "enter into and execute any contracts for the purchase of goods or merchandise as needed for the operation of the current business of Bloomscales. with duty of care

Before we get here → authority? - No ACTUAL
This is an important issue that could lead to a breach of Duty of Obediance (discussed infra) - how about apparent? No! why? IRAC

The \$50,000 Promissory Note - The Identity of the Principal & Whether Bill had the Authority to Sign a promissory Note on Daniel's behalf

Whether or not a Principal can be held liable for a contract entered by their agent, depends on whether the third-party, here the bank via their agent (the banker) knew the identity of the principal. Principals can be: (1) Disclosed: when the third-party is aware of the agency relationship and knows the principal (this would make the principal liable); (2) Unidentified: this is when the third-party knows that the agent is acting on behalf and in the interest of a principal but does not specifically know the principal's identification (principal would be liable); and (3) when the identity of the principal is Undisclosed: this is where the agent is pretending that they are acting on their own behalf and that there is no principal but in fact there is. Under these circumstances and absent knowledge of the principal or subsequent ratification, the principal may disclaim liability for a contract).

Here, the bank teller, acting as the agent of the bank knows Bill and Daniel. They know that Bill works for Daniel at Daniel's shop. What they should have done was to check the POA to ensure they had done their due diligence. However even if they had seen the POA, Bill had the right to "Sign any credit or Promissory Note in connection with the operation of the current business".

In Conclusion, although the bank employee did not verify the POA, Bill was granted the authority to sign promissory notes in connection with the operation. AND while their intent may have been genuine at first (to benefit and further the interests of the principal), their later actions diverted from this intent and became self-absorbing. Bill Had the authority to sign a promissory note.

What Duties owed to Daniel did Bill Breach?

Human - Not sure I follow? Extra
Above Amount? Not full?
?

At the center of the agency relationship lays the principals of Fiduciary duty. Although they may not be expressly written or orally agreed on, these duties are the pillars of an effective, healthy and thriving business relationship. The term Fiduciary Duty can be thought of as an umbrella term that encompasses several specific duties, such as duty of loyalty, duty of obedience, duty of care, duty to inform, duty to account, duty to refrain from obtaining material gain as a result of the agency relationship and outside the scope of the relationship, duty of good faith and fair dealings and duty of good conduct to name a few.

Here, what Bill did was clearly wrong. He took out a note for \$50,000, closed the store, did not pay the employees, let merchandise go to waste, did not attempt to mitigate any damages to Daniel.

Duty of Loyalty

The duty of Loyalty requires the agent to act with the sole benefit of the principal in mind. It requires the agent to abstain from acting contradictory to the principal's interests, avoid acting against the principal (P), avoid conflict of interests (unless the P has been informed and permission for a deviation has been granted).

Here, Bill did not act with Daniel's best interest in mind. He took out the money, closed the store, failed to pay the employees, and let merchandise go to waste, not to mention all the business that Daniel has lost along with the business's reputation for being closed for one whole week.

Bill breached his duty of Loyalty to Daniel.

Duty of Good Conduct

The Agent must refrain from acting in a way that negatively affects the Principal's reputation and good name. Their actions ought to align with the principal's main principles and overall goals (a vegetarian employee cannot sit outside the store, wearing their uniform during their lunch and have a big steak) they should be mindful of the objectives and interests of the principal and act reasonably to protect those interests.

Here, Bill closed the store for a whole week. Daniel likely has regular customers or engages in B2B sales. The store being closed for a week, absent any notice to the public or employees casts a shadow of doubt on Daniel's proficiency as a business owner and the business name itself.

Daniel Breached his Duty of Good Conduct

Duty to Refrain from Self-Dealing

An agent ought not to use their position as the agent to gain material benefits for self interest. Any such potential interest must first be disclosed with the principal (under the duty to disclose) and requires the principal's full consent and approval.

Here, Daniel used his position and the agency relationship that he had with Bill to get \$50,000 richer. This is a breach of Bill's Duty

Duty to Obey

The agent has a duty to act within the scope of their authority and to comply with all lawful and reasonable requests of the principal (certain emergency situations may warrant a slight deviation from this duty only if absolutely necessary)

While Bill had the authority to act and sign the promissory note, Bill did not have the authority to take the money and fly to Wales and not show up to work, not open the store, not pay the employees and let the merchandise go to waste.

Bill breached his duty of Obedience to Daniel

Duty to Protect Principal's property and goods

The agent shall not mishandle the principal's property or commit waste.

Here, Bill let all the merchandise go to waste. Bill had a duty (an express duty) to ensure the interest of Daniel. Bill failed to do this. And while the other employees are not "property", Daniel will not have to hire other staff (if he cannot retain the services of the angry staff he had) and train them while also still liable to pay his previous staff.

Duty of Not to obtain Material gain as a result of the Agency relationship

An Agent cannot use their position to gain material advantage (money or gifts) without full disclosure with Principal (before the fact) and an express consent and approval from the principal.

Here, Bill used his position as the agent to get his hands on \$50,000 that he did not have, and used this money with the intent to open an online business. His actions further manifest Bill's intent.

Bill breached his duty as well.

What I would advise Daniel....:

any claims?

I would let Daniel know that unfortunately he, as the sole owner is liable for the \$50,000 because he had given Bill the express authorization to sign any promissory note.. But he does have a claim against Bill (provided that he returns back to the jurisdiction) for breach of fiduciary duty and more than likely embezzlement (being entrusted with property of another and converting the property to yours) and potentially even fraud.

I would inform Daniel not to give general POAs to anyone. Limited authority is fine. And also to refrain from using broad terms such as "manage" (absent a clear, defined scope of what the term "manage" means). Or phrases such as "sign ANY credit or promissory note" (the word "any" is not a good word absent clear definition); and possibly have an assistant manager that reports back to Daniel. In fact the manager should ideally report to the owner as part of a standard business procedure (or even under the duty to disclose: any material information, risks, opportunities, and issues in a timely manner)

Daniel is faced with a difficult situation and I hope that he will overcome this rather hurtful and bitter event.

***Additional points regarding Principal's duties that may not have been discussed here:

Duty to compensate: A principal has a duty to compensate. Due to Bill's numerous breaches, Daniel's relationship and legal duties with the other employees have been impacted. Principals have several duties with respect to their agents such as duty to provide a safe working environment; duty to cooperate so that the agent can accomplish their duties, duty to inform the agent regarding any material changes, duty to compensate for reasonable expenses that the agent incurred. Hence there is also a relationship

between Daniel and the other staff that were materially affected as a result of Bill's actions. These shall also be mentioned in a claim by Daniel versus Bill.

2)

We first must determine what type of partnership has been created here by Ringo, Lolita, and Finnigan.

There are three types of partnerships:

1. GENERAL PARTNERSHIP

A general partnership shares all profits, losses, liability, and control. Each partner's personal assets are accessible in event of a lawsuit. There is no formality requirement to where the GP must file and register the partnership with the Secretary of State. Here,

2. LIMITED PARTNERSHIP

In a LP, there must be at least one general partner (the one who runs the day-to-day operations) and one limited partner (the financial contributor). Registration with the Secretary of State is a requirement.

3. LIMITED LIABILITY PARTNERSHIP

In a LLP, the partnership is similar to that of a GP, just with the additional requirement that the partnership must register with the Secretary of State.

Here, Ringo may be under the impression that since he contributed capital towards the partnership, that it makes him a limited partner within the business. Additionally, while a limited partner doesn't have control over the day-to-day operations, their money is still at stake, so they can be involved in major decisions, such as protecting the partnership's assets. Especially when that partner has contributed towards those assets. However, there is no indication that RLF registered with the Secretary of State, and without that formality requirement, RLF is just a general partnership.

LLPship
has
no
LP's

CONCLUSION

The court will hold that RLF is a general partnership. *level!*

1. RLF's debt

CREDITORS RIGHTS

In a GP, creditors can sue the partners individually because their personal assets are not protected from liability. All three partners will be held responsible for the outstanding debt to the creditors. Later on, a partner, such as Ringo, can try and seek indemnification from another partner to recoup some damages. The partnership will eventually become bankrupt, solvent, and dissolve.

CONCLUSION

The debts will be paid for by the partners personal assets.

2. BORIS v. RLF

EQUAL MANAGEMENT AND CONTROL

In a GP, all partners share management and control over the partnership. Lolita argument will be that since she has the equal control over business operations, she had authority to enter into the contract with Boris Inc. However, Ringo and Finnigan will assert that she did not have authority to enter into a sales contract.

AUTHORITY

There are two main types of authority: Actual and Apparent.

Joint + several liability right?

what debts go where? In what order?

- ① Creditors*
- ② Partners capital - 50% contrib. (OK)*
- ③ Remaining Assets all equally*

ACTUAL AUTHORITY is where the agreement had clearly stated rules to follow, within their scope of authority. This can be express, like in a conversation or in a written agreement. It can also be implied, in which the partner performed such action because it was necessary to the obligations given to them.

APPARENT AUTHORITY is when the principal holds the agent out to having more authority than they really do, and a third party assumes that the agent had the power to bind in a contract.

Ringo, Lolita and Finnigan all orally agreed that Lolita was going to make the dog food, Finnigan was going to be the salesperson, and Ringo was going to be the capital.

Therefore, it was expressly stated and consented to each partners duties and authority.

Further, Lolita also breached a fiduciary duty of loyalty to the partnership. The duty of loyalty requires that the partner not put their interests above the partnerships. It can be reasonably inferred that by selling the dog food at an unprofitable price to her sister, the partnership was at a disadvantage at the expense of Lolita's personal stake. There was also a conflict of interest in doing business with her sister at a discounted price.

However, Boris can assert the fact that she knows that Lolita paid \$50k into the partnership and therefore has a personal stake in the business. Boris may be under the impression that Lolita is a managing partner and can enter into contracts as she sees fit. Additionally, because Lolita entered into the contract on behalf of RLF, she nonetheless bound RLF as a partnership.

CONCLUSION

Boris will most likely succeed in its lawsuit against RLF.

3. COD v. RLF

yes, but authority?
unless he
has
more

It has been established that in a GP all partners have control over the business operations. Here, the President at Cod has most likely been dealing with Finnigan for all fish orders since Finnigan is the salesperson and believes he is the person with the authority to place orders. Therefore, when Ringo called to inform him that Finnigan no longer has the authority, Cod should have complied with the order. Failing to do so, resulted in the order not being paid for. However, Ringo did not communicate to Finnigan that he was no longer to place orders of fish with Cod. Cod made the placement of the fish order, under the impression that he still had authority to do so. Ringo is unable to make unilateral decisions surrounding the authority of his partners.

Actual Express

CONCLUSION

Cod will most likely succeed in its lawsuit against RLF.

Think: Buying vs. Selling

Actual
Impress.
Aquable

what is
the
effect
of notice to C
and R's Notice
on F's
duties,

3)

I would begin by explaining the basic information about general partnership and then then add 10 clauses that could protect the partners from 3rd party creditor and from each other in case of liability.

*and protect the
pship - pship is
your
client*

General partnership is created by association of 2 or more persons to carry out the business for the purpose of gaining profit as co-owners. Applicable laws are UPA and RUPA. Under RUPA, partnership is an entity distinct from its partner. Under UPA, partnership is an aggregate of 2 or more partners. General partnership could be created by express (verbal or written agreement) or through implied action of partners. All partners are personally liable for the debt of the partnership and do not have limited liability. partners could contribute to the partnership by cash or property or intangible assets.

On 12/12/2024, R and L and F are agreeing to start a general partnership for the common goal of carrying out "RLF" business as co-owners for the purpose of sharing profits. RLF business will manufacture and sell wild caught cod dog food. Under this partnership agreement, L has contributed 50k to this partnership and is authorized to only make dog food and purchase fish supplies. R has contributed 100k to this partnership and R's liability is limited to 100k and R will not be contributing the process of buying fish product or making and selling dog food. F has contributed no money to this partnership and is authorized to only sell dog food. Following clauses are the remaining terms of this agreement:

1. R and L and F are creating a general partnership names "RLF".
2. RLF is established in state X.
3. RLF's partners are R and L and F. R lives in X street. L lives in Y street. F lives in Z street.
4. RLF's agent for service of process is R. R lives in X street.

5. Term of this agreement: RLF partnership will end on 1/1/2030. ✓
6. Debt Allocation: In the event of presence of debt when the business is terminated, R is only liable for up to 100k and F and L are liable equally for the remaining debt. 5
7. Profit distribution: Profit should be distributed at the end of the partnership term, or at the end of each year upon unanimous vote. R and L and F would be entitled to equal shares of profit. ✓
8. This agreement is heightening the duty of care by requiring R and L and F to read every word in every contract they sign. and other partner have to agree ? Ambig.
9. This agreement is heightening the duty of loyalty by requiring R and L and F to put partnership interest above their own and not compete for a year after leaving the partnership. Ambig.
10. In the event of death of partner, evaluate and cash out that partner's interest and pay her family. ? Ambig.
11. Each partner is liable for her own tort and mere negligence. Ambig.

Sign:

R

L:

F:

(The names of the general partnership, names of the general partners, name of the agent for the purpose of service of process, date that the partnership is over or terminated, the modification of duty of loyalty, the modification of duty of care, the modification of duty

of good faith and fair dealing (not not eliminating it), each partner's share of profit, each partner's share of losses, Partner's obligations and share in the event of death of a partner, partner's obligations and agreement in the event of the sale of a partner's share, liability in the event of tort done by a partner.)

END OF EXAM