

**Monterey College of Law – Hybrid**

**Business Organizations I (Agency and Partnership)- Sec. 2**

**Final Exam**

**Fall 2024**

**Professor: Stirling**

**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.

\*\*\*\*\*

Business Organizations – Sec. 2  
Fall 2024  
Prof. P. Stirling

### **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-Sec2**

**Fall 2024**

**Prof. Stirling**

**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

1)

### **Daniel's position with the Bank**

The first issue is Daniel's position with the bank. Daniel and Bill are in an employee/employer relationship. Daniel and Bill are also in an Agent/Principle relationship.

### **Agency Rule**

Agency is a consensual relationship created when one person (the agent) acts on behalf and under control of another (principle). The relationship may be in written or oral. However, it always makes sense to have legal agreements in writing.

Here, Bill is Daniel's agent because he has agreed to act on behalf and under the control of Daniel. The question is what actions Bill was authorized to take with the bank. Daniel was very specific in what actions Bill may take on his behalf. Daniel did have a written agreement. The agreement spelled out the duties. These included talking and helping with customers as well as general operations when Daniel is traveling. The agreement specifically stated that Bill's duties only included "current" business. Daniel also gave Bill a power of attorney that allowed Bill to act on Daniel's behalf on, again, "current" operations.

Bill then signs a promissory note for \$50,000 from the bank. The loan was to expand the shop's operations. Bill did not have authority to take out a loan to expand the business.

I would advise Daniel that he has a credible argument against having to repay the \$50,000 because Daniel did not authorize Bill taking out the loan for expansion. Bill did have authority to sign a credit or promissory note, but only to continue "current" operations, not to expand them. The bank manager is also negligent in giving Bill a loan because he did not either call Daniel to confirm the loan. The facts state that the manager knew Daniel. She should have called him to discuss the loan. If she had, Daniel would have told him not to do it. Also, Bill told the manager that he had a power of attorney. The manager should have read it. He would have seen that the power of attorney did not authorize Bill to take out a loan for expansion.

The bank will counter by saying that Bill had apparent authority because he was Daniel's agent. Apparent authority is what a third person thinks the agent has a right to do. The manager may argue that they had no way to know what the loan was for. However, if the bank had asked the proper

question. and read the power of attorney, they would have realized that Bill was acting outside of his scope of employment. In addition, the manager knew Daniel. He could have easily followed up with a call to Daniel. In this case, the bank manager knew or should have known that Bill was acting outside his scope of employment and did not have apparent authority. However, because the manager could have followed up better, the apparent authority argument will most like fail

Conclusion, Daniel has a good case against being liable to the bank for the loan. The court will probable find in Daniels favor.

### **Authority**

**Express:** What the principle tells the agent

**Implies:** What the agent believes

**Apparent:** What a third party believes

### **Bill's Actions**

The issue is what can Daniel do in regards to Bill's actions? Here Bill broke many of his Fiduciary duties to Daniel.

### **Fiduciary Duties**

An agent has many fiduciary duties to the principle. These duties include, among others, the duty of loyalty, care, good faith, and disclosure. Here Bill broke all of these. First, he broke the duty of care and good faith because he did not follow Daniel's specific instructions. Instead of sticking to the current business model, he came up with the idea of selling personalized gift baskets and chocolates. He also, instead of properly running the shop, he took the baskets and flew to Wales. He killed of the plants worth \$100,000, and did not pay the employees so they all quit. Bill may argue that he was operating under what he considered his duties.

Bill may argue that Daniel hired him and therefore granted Implied authority to proceed as he deemed necessary. Implied authority is what the person thinks he has authority to do. Express authority is what the principle tells the agent he can do. Here the court will likely find that Bill did not have implied authority to take the actions he did.

**Conclusion.** An agent may be liable for grossly negligent actions. Here, Daniel has a good argument that Bill was grossly negligent. Under CA RUPA, I would advise Daniel that Bill may be civilly liable for both the \$50,000 loan and for the \$100,000 in dead flowers. Bill may also be criminally liable if he does not return the \$50,000. Bill may also be liable for the cost of hiring new employees to replace the ones who quit because they were not paid by him.

Organization 19

Issue 18

Rule 18

Analysis 19

Conclusion 18

Total: 92

Very well done. Good use of IRAC and description of applicable rules. I agree with your argument. One item that could have been added is the challenge of pursuing actions against someone who has left the country. It will be very difficult for Daniel if Bill does not return.

**Formatted:** Indent: Left: 0", First line: 0", Right: 0.01",  
Space After: 6 pt

2)

The issue in this case is whether the parties entered into a partnership.

### **Partnership**

A partnership is an association of 2 or more persons who agree to co-own a business for profit, whether or not they intend to create a partnership. In the absence of a written agreement stating otherwise, the default partnership is a general partnership. Under a general partnership the partners equally divide profits and liabilities and are held jointly and severally liable. In absence of a partnership agreement, state law governs the partnership.

Here, Ringo (R), Lolita (L), and Finnigan (F) orally agreed to start a business manufacturing and selling wild caught cod dog food. Because they are creating a product to sell, they are in business to make a profit. They orally agreed to certain terms including that F would act as a salesperson and would handle all sales alone and that L had technical expertise and would be responsible for making the dog food. Since their agreement was oral, state law will govern their partnership and it will default to a general partnership. Under a general partnership, the partners share equally in profits and are jointly and severally liable for liabilities of the partnership (unless an agreement to limit liability is made analyzed below).

*Therefore, RFL is a general partnership and the three partners are jointly and severally liable.*

State law outlines the power and the duties of partners under a general partnership.

### **Power of Partners: Agents**

Each partner is an agent of the partnership. Partners' actions within the ordinary course of business bind the partnership unless they lack authority and the party they are transacting with has notice of that lack of authority. If a partner acts outside of the ordinary course of business, the act is invalid unless it is agreed to by all the other partners.

*Here, state law will govern the partnership between the partners because there is an oral agreement.*

**Commented [ps3]:** Very good description, but would be more effective in the context of the facts, i.e., the issue is whether RLF...

**Formatted:** Highlight

### Authority

Partners can have express, implied or apparent authority to act on behalf of the business. Partners can come to an agreement that limits the authority or liability of any or all partners.

### Express Authority

Express authority can be granted orally or in writing, except if the authority is to enter into written contracts then the authority must also be in writing. Here, the partners made oral agreements regarding their roles in the business. The partners gave F the express authority to act as sole salesperson. They also gave L the authority to make the dog food. In their oral agreement, R tried to limit his liability to the amount of his investment \$100,000.

### Limited Liability

A limited liability partnership must have a written agreement and the limited partner acts mainly as an investor and cannot take part in managing the business. R tried to limit his liability to the partnership orally, which makes it invalid because a writing is required. Additionally, he would not be able to perform business management functions as a limited partner, however, the facts state that he contacted a fish supplier and told them not to enter into contracts with one of the other partners. This kind of action is business management since it affects partners authority and the general operations of the business.

Commented [ps4]: Very good!

*Therefore, due to R's management functions and the lack of written agreement, R is not a limited partner and he will be held jointly and severally liable for the credit obligations of the partnership (discussed below).*

### Contract with Boris

In regards to the sales contract with Boris, R and F will argue that L violated the express authority given to her by the partnership because her express role was to make dog food and F's role as to be the sole salesperson. They will argue that L acted beyond her authority when she entered into a sales contract with Boris, knowing that F was authorized to be the sole salesperson for the business. They will argue that L was assigned to make dog food and selling dog food has nothing to do with the process of making it. L will argue that although they named F the sole salesperson, their agreement didn't explicitly prohibit her from making sales, it just assigned her as the dog food maker.

Additionally, she will argue that the operations of the business fall to all 3 partners and sales are part of the operations. However, given the language used in the agreement regarding that F "alone would handle all sales", L's argument will fail.

*Therefore, L exceeded her authority when making the contract with Boris.*

#### Contract with Cod

F will argue that he had express authority to enter into the contract with Cod because he had the express authority to enter into sales contracts and supplier contracts are closely related to sales contracts. He will argue that he makes sales based on marketing the quality of the supplies they use in their dog food and that in order to ensure the highest quality of fish supply, he has the authority to contract with suppliers as well. F will argue that business operations fall to all the partners since they are jointly and severally liable to the partnership and its obligations. He will point to the fact that no one is explicitly named operations manager and, therefore, by default it falls on all of them. R and L will argue that the oral agreement was very explicit in naming F as the sole sales person and that any function beyond that was outside of his scope.

*Therefore, the court will likely find that F did not have express authority to contract with Cod.*

#### Implied Authority

Implied authority is actual authority to either 1) do what is necessary, usual, and proper for the partner to perform their responsibilities or 2) act in manner that the partner believes the partners wishes them to act based on their partnership agreements.

#### Contract with Boris

Here, L will argue that she had implied authority to enter into a written contract with Cod because, as a partner, she would share in the profits and losses and she wanted to ensure that the business made more profits by doing what was necessary and proper for the interests of the business. She will argue that the designation of general partnership and the fact that they are jointly and severally liable should incentivize them to do all they can to make profits and that the language of their oral agreement didn't explicitly prohibit her from making sales. R and F will argue that their agreement was clear regarding her role and that she exceeded the scope of her role by making the sale. Additionally, they will argue

**Commented [ps5]:** Interesting argument



that she was not acting in the best interest of the business because she violated her fiduciary duties by entering into this contract with Cod (discussed below).

*It is possible the court will find L had implied authority under the general partnership, however, even if so it is likely she breached her fiduciary duties so her authority will be invalid.*

#### Contract with Cod

F will argue similarly to L that he had the implied authority to enter into the contract with Cod because the general operations fall to all the partners and they should all be working to increase business profits. He will argue that he can better perform his role as sales person if he can better know the supply they use and if he can ensure the quality of the ingredients by purchasing them himself. R and L will argue that their oral agreement was explicit in what F's authority was and that he exceeded the scope.

*It is likely the court will find that F did have implied authority to contract with Cod.*

#### Apparent Authority

Apparent authority exists where a principal causes a third party to reasonably believe that a partner had authority to act for the partnership. The third party has a duty to ascertain the fact and scope of the authority. Here, Cod and Boris will argue that the partners they contracted with had apparent authority. They will argue that they contracted with general partners of the business and that it was reasonable to think that general partners can enter into contracts with their buyers and suppliers. Boris will argue that their belief was reasonable because if they asked L about her authority, she would have said she had authority to contract. If they would have asked R or F, they would have said that she didn't have authority. That kind of conflict is not good for business and it would not give the buyer confidence in RFL's business operations. Therefore, they will argue that relying on the fact that a general partner represents the partnership is reasonable. Cod will argue the same about F's authority. Since there is no written agreement and the partners have conflicting ideas of their authority, it is reasonable that Boris and Cod thought they were entering a valid contract with a representative of the partnership.

*It is likely the court will find that L and F had apparent authority.*

Whether the partners breached their duties to the partnership and the other partner will affect how the liabilities are split.

### **Duties of Partners**

Partners have various duties to each other and the partnership including the duty of care, the duty of loyalty, duty of good faith and fair dealing.

#### **Duty of care**

Refrain from grossly negligent conduct, intentional misconduct, violation of the law. Here, R and F will argue that L violated her duty of care by contracting with Boris because she did not act in the best interest of the partnership when she entered into a contract with her sister's company and gave them a price that was extremely favorable despite not making a profit for the partnership.

*Thus the court will likely find that L violated her duty of care to the partnership.*

#### **Duty of Good Faith and Fair Dealing**

Regarding the contract with Cod, F will argue that R violated his duty of good faith and fair dealing when he tried to limit F's functions within the partnership. He will argue that they entered into a general partnership and R did not have the right to limit F's contracts with suppliers because he would have needed agreement from the full partnership.

*Therefore, R did not act in good faith when he tried to limit how partners interacted with their suppliers.*

#### **Duty of loyalty**

Includes the duty to not compete and to not take on an adverse interest to the partnership. Here, F and R will argue that L took an interest adverse to the partnership when she contracted with her sister's company to for a low price that did not benefit the profits of the partnership. She also did it without notifying the other partners which brings her loyalty into question.

*The court will likely find L violated her duty of loyalty.*

### Duty of disclosure

As argued above, L did not disclose or get consent from her partners in entering into a contract with Boris.

*Therefore, L violated her duty of disclosure.*

### Creditors

Order of settlements: 1) third party creditors, 2) partner creditors, 3) profits remaining split between partners. Upon winding up, the assets of the business are liquidated to fulfill creditor obligations. Here, Boris and Cod are third party creditors of the partnership so their obligations will be paid out first. The business has obligations to their creditors of \$500,000 which will be paid out of business assets first and then any surplus will be distributed to the partners based on their initial investment. **Ending**

### Partnership

#### Dissolution

Dissolution of a partnership can occur by agreement of the parties or by court decision. Here, the facts tell us that RLF went out of business so the business is dissolved. The business assets will be liquidated to fulfill liability obligations. An accounting will be done that will list detailed transactions separated by partner. Once all obligations are paid, the company is terminated.

How will the debts be allocated?

Since RLF is a general partnership, the liabilities are normally equally allocated among the partners. However, the court will likely find that L exceeded her authority and violated her duties so the partnership will be able to recover from her any lost profits due to her misconduct in contracting with Boris.

Is Boris likely to succeed in its lawsuit?

Boris will likely be able to recover from RLF. Although, L exceeded her authority and violated her duties by not disclosing and not acting in best interest of the partnership, the court will likely find that Boris was reasonable in thinking she had apparent authority and this will make the partnership liable. However, the partners can bring suit against L for breach of her duties to recover from her for their losses.

Is Cod likely to succeed in its lawsuit?

Given that R exceeded his authority in trying to limit F's management capacities, that F did not violate duties to the partnership, and that Cod was reasonable in thinking F had apparent authority, RLF will likely be liable to Cod.

Organization 18

Issue 19

Rule 19

Analysis 19

Conclusion 17

Total 92

Excellent! Well analyzed with very interesting and persuasive arguments. Your conclusions could be a bit longer and more descriptive. Also, presenting the issue/rule in the context of the facts would be more effective

**Formatted:** Indent: Left: -0.01", Hanging: 0.01", Right: 0.18", Space After: 6 pt

3)

Here, the parties would need to establish the following in order to be able to begin their partnership:

1. The parties would need to be able to provide the name of partnership. this case, it would be the parntership name being RLF.
2. All partners in the agreement would need to be Ascertainable Partners. Here the ascertainable partners are Lolita, Ringo, and Finnigan;
3. The parties would need to be able to **provide the partnership type**. The partnership type to this would be that they have a business to manufacture and sell wild caught cod dog food;
4. The partners must agree to what would they would be their liabilities that they would face of the partnership (Joint and & severally). The parties would need to indicate what their liabilities are severally and jointly.;
5. One of the partnership's powers. One could be by Lolita, by being the technical expert at making the dog food;
6. The partnership power by Finnigan who would be the sales person in the partnership.
7. The last partnership power would need to be **established by Ringo**.
8. The partnership would need to list their contributions to the partnership. Here, Ringo has contributed \$100,000. Lolita has contributed \$50,000 to the partnership.
9. What will happen when the partnership ends. The partners would need to state what would happen if the partnership ends, **if the partnership was dissolved and what would be the consequences of that**.
10. The duties of each partner and the partnership. Here the facts state that Lolita is the technical expert at making the dog food; Ringo would need to state his duty; and Finnigan alone handles all sales of the dog food.

**Commented [ps9]:** Remember it default to a GP.

**Commented [ps10]:** All must agree

**Commented [ps11]:** What might these be?

Organization 16

Issues 16

Rules 16

analysis 18

conclusion 16

total 82

40: this would be more effective if drafted in the manner of a formal agreement. You included a lot of good items, but don't forget dispute resolution, the type of partnership (GP) and decision making procedures. Another good item is effective date is when then agreement is signed by all.

**Formatted:** Indent: Left: 0.15", Right: 0.04", Space After: 6 pt, No bullets or numbering

END OF EXAM