

Monterey College of Law

Business Orgs (Agency & Partnerships)

Fall 2025

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Instructions:

Answer 3 Essay Questions

Exam Duration: 3 Hours (1 Hour Per Essay)

Question 1

Marla is an experienced mechanic who owns a small vintage bicycle restoration shop. She approaches her friend Trina with an idea to expand into limited-run manufacturing. Trina agrees to contribute \$100,000 to the business but insists she does not want any personal liability or control over daily operations. They orally agree that Marla will run the business, while Trina will receive 40% of the profits. No certificate of limited partnership is filed.

Marla registers the business under the name "Golden Gear," opens a business account, and begins operations. Trina occasionally attends product development meetings and once signs a vendor agreement "on behalf of Golden Gear." Later, Marla hires an employee, Seth, to manage logistics. Seth regularly negotiates contracts with suppliers using company letterhead and is listed as "Operations Director" on the website. Marla tells Seth that he cannot make any major purchasing decisions without her approval.

While Marla is away on vacation, Seth signs a contract to purchase a high-end laser cutter for \$30,000 from a supplier, MetroFab, to fulfill a large incoming order. Marla refuses to pay for the equipment, claiming Seth had no authority.

Separately, a customer, Nadine, sues Golden Gear after falling off a bicycle she claims was negligently assembled by Seth. Seth had been rushing the job so he could leave work early, contrary to Marla's quality assurance policies.

Trina, seeing the lawsuit in the news, emails Marla that she wants "out of this entire thing before it ruins me." She deletes her name from the business website and transfers her share of profits to her personal trust. Marla continues to operate the business.

1)

1. Formation and Trina's Liability

Limited Partnership:

A certificate must be filed. If the statutory requirements are not met then it's just a General Partnership. Here, No certificate was filed. Therefore, Marla and Trina are a General Partnership.

General Partnership:

All general partners are equal and have unlimited liability.

Wrongful Dissociation:

A partner may dissociate at anytime, but not in bad faith. A partner may be liable for up to two years during the winding up and liquidation period, where the partnership needs to get the cash to buy out the partner leaving. The partners behind may continue working at the business.

Here, Trina is liable for her wrongful acts when leaving the partnership because she did not wait for the business to properly liquidate funds and buy out her share of \$100K, instead she wrongfully transfer funds to her personal account. An action such as payouts must be unanimous and obtain consent from all parties. The facts do not tell us that she obtained authorization from Marla in order to do that. Therefore, Tina is liable for her desperate actions.

As partners they share fiduciary duties, including the Duty of Account, where partners must keep separate accounting of the business funds from their personal funds. Here,

Trina breached this duty because she commingled business funds and moved them to her personal trust account.

Liquidation Rule: A partner must wait for the winding up and liquidation process, but can force the sale of the business to get their profits due.

Here, Trina could have forced the sale of business if Marla did not have enough funds to buy her out, but not unilaterally remove the funds without consent. She now might receive less than her initial contribution as a penalty fee is most likely due.

2. Vicarious Liability (Nadine vs. Marla, Golden, and Seth)

A principal can be liable for an agent's tort acts based on the Scope of Employment. We look at skill of the employee, tools, supervision, and instructions. Special Doctrines.

Intentional Tort: An employer is liable for the employees negligent conduct while performing their duties.

Here, Marla is the employer, who hired Seth, the employee/servant to manage the logistics of Golden Gear and his title is the Director of Operations. Marla and Seth have a mutual agreement per the employee contract. Therefore, the business is liable for Seth's negligent actions when he was performing the duties he was hired to perform such as restoring and assembling Nadine's bike. He was working at the business and using the tools of the business to perform his job.

The Court will look at the employer's right to control when the tort was committed; Here, Seth was negligent when assembling the bike for Nadine. He was at work, and Marla had full control of Seth actions. Seth's conduct was under his job duties but he did not follow Marla's quality assurance policies to make sure that the bike was assembled correctly. He was rushing to go home early and probably did something wrong to the bike. Nadine

would have to prove that because of Seth's actions, the bike did not work and caused her injury and damages.

Duty of Care:

An agent must act with care and competence. Here Seth breached this duty if he acted careless when assembling the bike for Nedine.

Duty to Indemnify:

An agent must reimburse the principal for the agent's misconduct or negligent acts.

Here, Seth must reimburse whatever damages Marla has to pay to Nadine if he was found liable for Nadine's injuries, and Marla and Trina are on the hook for being the business owners and partners of Golden Gear.

3. Third Party (MetroFab):

Agency:

A principal manifests assent that an Agent can act on behalf of the principal, and for the benefit of the principal. It's a fiduciary relationship based on Consent, Benefit and Control. The principal has the right to control the Agent. The consent can be expressed or implied.

We have established that Seth is Marla's agent.

Authority:

A third party can sue a principal and its agent, if authority is established and the agent acted with the principal's authority (express, implied or apparent).

Express Authority: Instructions and direction are very clear.

Here, Seth was told not to make major purchases without Marla's consent. Seth did not have express authority to make such purchase. However, Seth might argue that he had the implied authority to make such big purchase.

Implied Authority:

For Actual (implied) authority, it's the authority reasonably necessary to carry out the principal's instructions. The Court looks at the conduct of the parties, course of business, and the instructions given by the principal, title of the agent, and necessity.

Seth was the Operations Director in charge of the logistics and had the authority to negotiate contracts on behalf of the business. Even though, he made a big purchase and spend a lot of money to buy the laser cutter, it was only to full fill a large incoming order, on behalf of the business. Here, Seth had the implied authority to do whatever he needed to do to carry out his duties as Director of Operations.

The third party had no way of knowing that Seth was not authorized to make the purchase unless Marla told the third party about it.

2)

1. Partnership's Contract Liability to Celebrity Client:

Partnerships: An association of two or more partners for the goal of sharing profits even if no official partnership is formed. Partnerships are entities that can be sued. Every partner is an agent of the partnership. There is automatically apparent authority for all partners to third parties.

Here, Jamie and Alexis are equal partners and share net profits, and share control and management of the business. Even if the celebrity client did not know about Jamie's involvement, they can sue the partnership and both partners are liable. A partner cannot prevent the other partner from binding the partnership in contracts such as the contract Alexis did with the Celebrity Client. Jamie might argue that he never approved this contract but cannot be off the hook in this situation. They're both equally bound to fulfill this contract with the Celebrity Client.

When there are two people in partnership it is very difficult to reach unanimous consent because there is not a third party to break the tie. Even if Jamie does not agree with Alexis' actions, there are no other partners involved.

The third party reliance on Alexis' apparent authority is crucial.

2. Fiduciary Duties:

Fiduciary Duties arise between a partnership when the partnership is formed. Even before the partnership is formalised with a contract. Sophisticated parties might still be liable even if Fiduciary Duties are violated.

Duty of Loyalty:

Partners share fiduciary duties. Violations include, Secret profits, Self-Dealing, Undisclosed ventures, Misused confidential information.

Jamie breached the fid duty of loyalty because is making side deals using the property of the partnership, such as the partner's inventory to complete that side job. Jamie is self-dealing jobs on the side for her own benefit and not the partnerships and breaching also the Duty of Disclosure: Disclose all material facts. Especially Conflicts. Also Duty to Account: Keeping good records and separate accounting from personal funds and is hiding the profits from the side deal and keeping them to herself. Therefore, Jamie is liable for her actions to the partnership.

Duty of Good Faith: A partner cannot use their contractual capacity to hurt the partnership.

3. Alexis' Wrongful Dissociation and Dissolution

When one partner leaves is dissociation, and when the partners decide to go separate ways is Dissolution. A partner may dissociate at anytime, but not in bad faith. A partner may be liable for up two years during the winding up and liquidation period, where the partnership needs to get the cash to buy out the partner leaving. The partners behind may continue working at the business.

Here, Alexis is forcing a dissolution and that would require a wind up process and liquidation of the partnership. However, Jamie claims that the partnership continues and forcing a Alexis to dissociate from the partnership by filing paperwork to remove Alexis' name from the partnership bank accounts.

Since the parties cannot agree on what to do. Then Alexis would have to file for Judicial Dissolution and ask the Court to dissolve the company and sell it. And Jamie would have to file for a Judicial Expulsion of Alexis to remove them from the partnership and continue with the business.

In kind distribution is possible (exchange assets for cash) but all partners must agree. Here, Alexis and Jamie can agree to split assets if they wish to.

Limited valuation: Jamie would be subject to receive less money than the investment due to the wrongful conduct of self-dealing, hiding profits, and using the partnership's property to complete her own jobs on the side.

3)

Limited Partnerships:

Limited Partnerships are passive investors that contribute capital but they don't manage the business nor take any part into making decisions for the business.

Here, Desiree is a LP but is actually acting like a general partner by making decisions into the business and contributing ideas, negotiating contracts with vendors, even co-signs agreements with Raul (the General Partner).

Nina is also a LP but also acting as General partner by offering paid farms tours, and hosting events in the name of the partnership.

Both Desiree and Nina's Limited Liability protection bubble can be pierced by such actions when acting on behalf of GreenRoots, even if a certificate was properly filed. This means they can liable just like a General partner if acting in bad faith. Modern statutes have some relaxation in this limitations.

1. Desiree and Nina's Contract Liability to the supplier

Third Party Creditors:

A third party creditor can sue the partnership for unpaid monies due to them. A third party creditor can obtain a judgment (charging order) against the partnership when reliance is evident.

Here, the supplier relied on Desiree's apparent authority and her actions as a general partner. The facts do not tell us that the supplier ever received notice that Desiree lacked capacity to make any deals or make any purchases. Desiree's Limited Protection can be pierced if proven she signed contracts with vendors and even made negotiations on behalf of GreenRoots.

Therefore, GreenRoots would be liable for Desiree's actions on behalf of the company and the supplier can obtain a judgment to collect money for the unpaid invoices.

2. Nina's breach of Fiduciary Duties to Raul or Green Roots

Duty of Loyalty and Good Faith:

All partners are agents of the partnership. An agent must act solely for the benefit of the partnership. Violations include, Secret profits, Self-Dealing, Undisclosed ventures, Misused confidential information.

Nina has breached her fiduciary duty of loyalty because she is Self-Dealing by making money with Green Roots without telling the GP (Raul) and keeping Secret Profits. She also breached her duty of Good Faith by not unsuppressing new opportunities of the partnership to make money such as the tours of the farm. Therefore, Nina is liable.

3. Nina's forced Dissociation of the LP

A partner may dissociate at anytime, but not in bad faith. A partner may be liable for up to two years during the winding up and liquidation period, where the partnership needs to get the cash to buy out the partner leaving. The partners behind may continue working at the business.

A general partner may remove a LP partner if they're acting in good faith. Raul can argue that Nina's actions and breached of fiduciary duties when she was self-dealing and pocketing the money of the tours are enough cause to remove her as a Limited Partner.

Nina's actions will also potentially reduce her payout because now she owes damages to GreenRoots for her actions. That is called limited valuation. When the partner who did wrongful acts receives less money for their wrongful conduct.

1. What legal issues arise concerning Golden Gear's business form and Trina's liability? Discuss.
2. What legal theories could Nadine use to hold Marla or Golden Gear liable for Seth's conduct? Discuss.
3. Is MetroFab's contract enforceable against Golden Gear? Discuss.

Question 2

Jamie and Alexis form a partnership to design and sell sustainable home decor. Their written partnership agreement states that Alexis handles all marketing, and Jamie oversees design and purchasing. Each partner owns 50% and must unanimously approve major contracts.

Without telling Jamie, Alexis negotiates a lucrative deal with a celebrity client for a custom design package and signs the contract. Jamie, furious, claims Alexis overstepped and refuses to fulfill the contract.

Meanwhile, Jamie arranges a side deal with a separate client and uses leftover partnership inventory to complete the job, keeping the profits for herself.

Alexis discovers the side deal and, after a heated argument, declares the partnership dissolved. Jamie insists the business continues and files paperwork to remove Alexis's name from the partnership bank account.

The celebrity client sues the partnership for breach of contract. Alexis sues Jamie for breach of fiduciary duty and wrongful exclusion from the business.

1. What liability does the partnership have to the celebrity client? Discuss.
2. What fiduciary duties, if any, did Jamie breach? Discuss.
3. What are the legal consequences of Alexis's declaration of dissolution? Discuss.

Question 3

Raul, Desiree, and Nina decide to create an urban farming initiative. They form "GreenRoots, L.P." under California law. Raul is the general partner. Desiree and Nina are limited partners. The certificate is properly filed.

Desiree, a former landscape architect, insists on contributing ideas for the farm's layout. She regularly attends board meetings and sometimes negotiates contracts with vendors when Raul is busy. She once co-signed a lease agreement with Raul.

Nina, meanwhile, begins offering paid farm tours and hosts events under the GreenRoots name without telling Raul. She keeps the proceeds to herself.

A supplier sues GreenRoots and all three partners after unpaid invoices pile up. The supplier claims Desiree appeared to be a general partner. Raul claims he never authorized the contract. Nina insists she is not liable for any debts.

Raul sues Nina for breach of fiduciary duty and seeks to remove her from the LP. Nina argues that limited partners owe no such duty and cannot be removed without cause.

1. What liability, if any, do Desiree and Nina have for the supplier's claim? Discuss.
2. Did Nina breach any fiduciary duty to Raul or GreenRoots? Discuss.
3. Can Raul remove Nina as a limited partner? Discuss.

Model Answer Outline – Question 1

1. Golden Gear's Business Form & Trina's Liability

- Default general partnership: oral agreement, profit sharing, no LP certificate filed (Corp Code §15902.01).
- Presumption of partnership based on shared profits + management involvement (meetings, vendor agreement).
- No limited liability for Trina unless she qualifies as an inadvertent partner under §15903.06.
- Renunciation insufficient without addressing creditor reliance.

2. Nadine's Tort Claim

- Respondeat superior applies: Seth = employee.
- Acts within scope of employment? (rushing vs. frolic).
- Partnership tort liability under Corp Code §16305.

3. MetroFab Contract

- No actual authority (expressly prohibited).
- Apparent authority likely: title, past practice, website.

MetroFab can reasonably rely on Seth's representation.

Model Answer Outline – Question 2

1. Liability to Celebrity Client

- Alexis lacked actual authority per agreement.

- Apparent authority likely: ordinary course of business, third-party unaware of internal limitations (National Biscuit Co. v. Stroud).
- Partnership bound unless client had knowledge of limitation.

2. Jamie's Fiduciary Duties

- Duty of loyalty breached: secret profits, use of partnership assets (Corp Code §16404).
- Must account for partnership opportunities and property.

3. Dissolution

- At-will partnership dissolves upon notice unless agreement states otherwise.
- Post-dissolution actions limited to winding up (Corp Code §16803).

Jamie's removal of Alexis may breach winding-up rules and fiduciary duties.

Model Answer Outline – Question 3

1. Liability to Supplier

- Limited partner liability shield (Corp Code §15903.03).
- Desiree: co-signed lease, attended meetings → risk of apparent authority.
- Gateway Potato Sales v. G.B. Investment Co.: Creditor must show reliance.
- Nina: no evidence of reliance or control; shield likely holds.

2. Nina's Fiduciary Duty

- Limited partners generally owe no fiduciary duties unless managing.
- However, implied covenant of good faith/fair dealing (Corp Code §15901.10(b)(7)).
- Using GreenRoots' name and profiting privately likely breaches that duty.

3. Removal of Nina

- LP agreement governs removal; if silent, judicial removal only.

- DV Realty Advisors standard: removal requires good faith + cause.
- Breach of good faith + misuse of name/profits = possible justification.