Business Law I

Midterm Examination

Fall 2022

Prof. E. Wagner

Instructions:

There are two (2) questions in the examination.

You will be given 3 hours to complete the examination.

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Business Organizations I
Midterm Examination
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QUESTION 1

Dilbert, Ethel, and Fred orally agreed to start DEF Infrared Saunas ("DEF"), a business to manufacture and sell Infrared Saunas. Dilbert contributed $100,000 to DEF, stating to Ethel and Fred that he wanted to limit his personal liability to that amount. Ethel, who had technical expertise, contributed $50,000 to DEF. Fred contributed no money to DEF but agreed to act as salesperson. Dilbert, Ethel, and Fred agreed that Ethel would be responsible for designing the Infrared Saunas, and that Fred alone would handle all Sauna sales.

DEF opened and quickly became successful, primarily due to Fred's effective sales techniques. Subsequently, without the knowledge or consent of Dilbert or Fred, Ethel entered into a written sales contract in DEF's name with Geco, Inc. ("Geco") to sell Infrared Saunas manufactured by DEF at a price that was extremely favorable to Geco. Ethel's sister owned Geco. When Dilbert and Fred became aware of the contract, they contacted Geco and informed it that Ethel had no authority to enter into sales contracts, and that DEF could not profitably sell Infrared Saunas at the price agreed to by Ethel. DEF refused to deliver the Infrared Saunas, and Geco sued DEF for breach of contract.

Thereafter, Dilbert became concerned about how Ethel and Fred were managing DEF. He contacted Zeta, Inc. ("Zeta"), DEF's components supplier. He told Zeta's president, "Don't allow Fred to order components; he's not our technical person. That's Ethel's job." Fred later placed an order for several expensive components with Zeta. DEF refused to pay for the components, and Zeta sued DEF for breach of contract. Not long afterwards, DEF went out of business, owing its creditors over $500,000.

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

2. Is Geco likely to succeed in its lawsuit against DEF? Discuss.

3. Is Zeta likely to succeed in its lawsuit against DEF? Discuss.

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Question 2

Emerson has a bicycle sales and repair shop, Elite Cycles. He is the sole owner and the business is a sole proprietorship. He hires Tarquin and the employment agreement states that Tarquin will work in the shop to both sell cycles and to repair them, as well as manage the operations when Emerson is traveling. As Emerson is also a triathlete, he travels often. In order to keep the business running, he provides Tarquin with a power of attorney that allows Tarquin to act on Emerson'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 Elite Cycles, or to sign any credit or promissory note in connection with the operation of the current business of Elite Cycles on my behalf."

While Emerson is competing at the World Triathlete Championships in Ashgabat, Turkmenistan, Tarquin comes up with an idea for selling specialty personalized helmets. He goes to the bank and tells them he has power of attorney from Emerson "to run the business." The bank manager knows Emerson and does not look at the power of attorney. Tarquin signs a promissory note for $50,000 to purchase the helmets from HM Helmets. Tarquin takes delivery of the helmets 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 can enter) and drives to Canada to create his online business. When Emerson returns one week later, the store is still locked, and he receives notice that the bank has not been repaid.

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

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Business Organizations I
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ANSWER 1 (OUTLINE)

20% Organization (Similar headings – boldfaced below)

20% Issue (Spot all issues)

20% Rules (Name all rules – <u>underlined</u> 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. DEF is a partnership under definition
3. Partnerships are business for profit and if no agreement, profits are split

1. How should DEF's Debt be Allocated?

1. Just like profits, without agreement, debts are split equally.
2. D wanted to limit his liability. However, absent a formal agreement, D is going to be considered a general partner.
    a. Also D has active management (general managerial position, apparent equal voting rights), D was the one to call Zeta (Z) and tell them not to accept orders from F.
    b. Limited partners, those with limited liability, generally have no managerial functions.
    c. <u>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.</u>
3. Therefore, any contracts that were properly entered into and authorized by a partner having authority are partnership debts that D, E, 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 D and $50,000 to E and zero to F since partners generally have no right to salary or compensation for services; (3) any remaining profits equally to D, E, F.***

2. Is Geco likely to Succeed in its Lawsuit against DEF?

1. Validity of the Agreement: Geco (G) must show that E 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 E 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 E'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 DEF held E out to be a sales representative in the first instance. There was likely no good basis that G had to rely on any authority from DEF. However, given that E herself is a managing partner, G likely could argue that E'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 DEF.
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, E engaged in a transaction with her sister who owned G. The terms were apparently very favorable to G. This could be viewed as self-dealing because it promoted E'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, E's deal with G 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 E

informed her partners. The other partners have a very strong argument to bring a claim against E for these breaches in duty.

4. ***Therefore, the entire liability for the breached contract would be on E, which would deviate from the normal liability scheme described above, and G could only succeed against E.***

3. Is Zeta likely to Succeed in its Lawsuit against DEF?

1. Validity of the Agreement
    - Zeta's (Z) 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: Z 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: Z will argue that DEF has held F out as a person whose sole responsibility is to contract, and it reasonably relied on that representation. Z will argue, therefore, that any resulting contact liability would be distributed among the partnership and D, E and F.
2. Actual notice to Z of Lack of F's authority
    - Z's main issue is that D called and gave actual notice that F could not enter into this contract. This would destroy any reasonable reliance that Z had. D told Z that E was the technical person, not F. As such, Z should have seen that his was outside the scope of F's authority. But F is still a general partner in the company.
    - Z 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. D alone tried to limit what F could do. Z may argue that it knew this wasn't a proper action by D and more reasonably relied on F.
    - DEF will argue that Z 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. DEF will argue that this contract is invalid and will not bind DEF for this persuasive reason.
3. Effect of D's Notice on F's Duties
    - D 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 D 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 2 (OUTLINE)

20% Organization (Similar headings – boldfaced below)

20% Issue (Spot all issues)

20% Rules (Name all rules – <u>underlined</u> 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 Elite, nor that it is incorporated, so this would be a sole proprietorship owned by Emerson.

Nature of the relationship

- <u>An agency relationship exists when one party, the agent, consents to act on behalf of, and under the control of another, the principal</u>.
- In this case, Tarquin agreed to employment by Elite Cycles and to act on behalf of Emerson. *Accordingly, Tarquin is an agent of the principal, Emerson.*
- <u>As an agent, Tarquin 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</u>.

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

- Emerson expressly empowered Tarquin 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 helmets.
- *As such, Tarquin violated his fiduciary duty to Emerson 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 Emerson is responsible for the loan signed on his behalf by Tarquin.
- The bank manager may argue that Tarquin 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. Emerson may argue, however, that Tarquin'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 Tarquin was not authorized to obtain the loan unrelated to the business of Elite Cycles, and thus the loan agreement itself was invalid. *Emerson can therefore argue that he is not responsible for the loan as it was invalid.*

Does Emerson have any legal recourse against Tarquin?

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

1)

Question 1, How Should Debt be allocated? great all around!

Whether Dilbert, Ethel, and Fred formed an agency-principle relationship between themselves, and the partnership entity?

An agency-principle relationship is a consensual relationship in which a person, the agent, acts under the control of, and for the benefit of, another, the principle.

Here, Dilbert, Ethel, and Fred each acted as agents for the principle partnership because they consented to act under the control of the partnership (DEF), shown by their agreement to participate in the partnership, and assigned each other or agreed to perform under their roles of the organization. By agreeing to act as engineer, or sales person, they assigned themselves functionality and responsibilities to act under the control of the principle. Further, when they assigned themselves these roles, the assignment was done for the benefit of the principle partnership because the principle would benefit from each's agent's expertise in the field, and thereby further the goal of the partnership to make money.

Thus, the individuals (D, E, and F) formed an agent-principle relationship with the partnership.

✓ **Whether Dilbert, Ethel, and Fred formed a partnership?**

✓ A partnership is an association of two or more persons for the purpose of engaging as co-owners of a business, for profit.

Here, the association was made between the parties when they "agreed to start DEF," thus associating with one another. Association is a voluntary act, which is done in this

case because the parties agreed to work together to form the partnership. Further, there are two or more persons because there are three persons involved. The purpose of the DEF is that of a for-profit business because the goal of the business was to make money through the sale of their infrared saunas. Further, the parties are co-owners of this business because each either contributed capital, or expertise, for the running of the business, and would therefore be considered co-owners because each had control over the functioning of the organization, and received profits in return for their labor/capital.

Thus, the parties formed a partnership.

Whether Dilbert, Ethel, and Fred formed a General Partnership (GP), Limited Partnership, or Limited Liability Partnership (LLP)

General partnerships can be formed through agreement (either oral or in writing), where an LP or an LLP require a certificate to be filed with their state's government. These organizations differ based on the protections they offer from liabilities to the partners.

Here, the parties formed a general partnership because the facts do not provide that any filing was done with the state. The facts provide that the parties "agreed" to form a partnership, but there is no indication that the parties entered into a written agreement to do so, which is required for an LP or LLP. While Dilbert stated that he wanted to limit his "personal liability" to the amount that he invested ($100,000) this will be problematic for Fred (discussed below).

Whether Dilbert, Ethel, and Fred can be held personally liable for the debts of their partnership?

Under a general partnership, all partners are held jointly and severally liable for the credit owed by the partnership. Further, the general partnership does not protect the personal assets of the partners, which may be attached by a creditor. A creditor will be owed first

from the assets of the partnership, then from the personal assets of the partners. If the partnership is able to satisfy the debts from the creditor with partnership assets, the partners will only be liable with respect to the percentage of profits that they are entitled to, pursuant to their partnership agreement.

Here, the parties formed a general partnership. Thus, each partner is personally liable for any liabilities that the partnership generates. Although Dilbert stated that he wanted to limit his "personal liability" to the amount invested, their general partnership will not shield his personal assets from a judgment creditor because the parties failed to make the necessary and required filings with their state government.

Whether the parties owe equal portions of outstanding debt

In a general partnership, the partners will typically owe debts with respect to the percentage of profits with which they share in. Indeed, even a non-capital investing partner will be held jointly personally liable for any debts accrued by the partnership. Modernly, however, there is a split of authority regarding the personal liability of a non-capital investing partner, with certain courts finding that they are not personally liable beyond their investment of labor while the partnership was operating.

Here, Ethel and Fred contributed their labor and time to the success of the business, with Ethel contributed a smaller amount than the non-labor contributing third partner, Dilbert. In this case, the court may find that the individual partners are, or are not, personally liable for the debts of the partnership, beyond the labor which they contributed to the partnership. Because there is a split of authority, it may depend on the court's interpretation of the partner's actions which brought about the collapse of the business (discussed below).

In this case, the parties contributed unequal amounts to the investment capital for the partnership. Ethel only contributed $50,000, where Dilbert contributed $100,000. Indeed, Fred contributed zero dollars, but instead contributed his expertise to the partnership. Likewise, while Ethel contributed less money than Dilbert, she too lent her technical expertise to the partnership. However, Fred and the other partners are still co-equal partners to the partnership, each entitled to a 1/3 profit interest, because absent an explicit agreement to the contrary, each contribute to the functioning of the organization, and in the generation of profits.

As a result of the actions of the labor investing partners (discussed below), the court will find that each partner is liable for any debts owed by the organization first through partnership assets, then personally, divisible by 1/3rd.

Whether the partnership owes a duty to dissolve in a particular fashion (Question Conclusion).

Dissolution occurs when the partnership agrees to dissolve the partnership and cease doing business. Dissolution can occur at a specific time, or happening of event, such as might be specified in a partnership agreement. A partnership may dissolve when the partnership becomes insolvent, and is no longer able to pay its debts. Dissolving a partnership requires that the parties engage in a "winding down" period, in which they continue to owe duties to one another and to the partnership, and must satisfy any debts. Partnership debts must be paid first to creditors and then to the partners, in their respective profit owning percentage interests. If the debts remain beyond the partnership's ability to pay, then the partners are individually liable to the percentage of the partnership that they own.

Here, the debts of the partnership are to first be allocated to the partnership generally. If the partnership went out of business with no liquid assets, any physical assets will be

liquidated and sold to satisfy the debts. If the debts are left unsatisfied, the partners owe the debts personally. Thus, the partners will owe each 1/3rd of the remaining debts owed by the organization. missing the return of all capital contributions from each partner

Question 2: Is Geco likely to succeed?

very good!

Whether Ethel had the express authority to contract on behalf of the partnership

Express authority is that which the principle has explicitly manifested assent for the agent to engage in or to perform certain activities. Express authority may be consented to orally or in writing.

Here, Ethel made a sales contract with customer. There are no facts to support that the other partners expressly agreed, either in writing or by oral agreement, that she would have such an authority. Indeed, the facts provide that Ethel's role in the partnership was that of an engineer, which would indicate that - at minimum - the parties did not contemplate that she had the authority to enter into a sales contract with Geco.

Therefore, Ethel did not have the express authority to enter into a contract on behalf of the partnership.

Whether Ethel had the implied authority to contract on behalf of the partnership

Implied authority is authority which the agent either reasonably believes, or actually is, necessary to bring about the usual or necessary objectives of the principle.

Here, Ethel will argue that she had the implied authority to enter into a sales contract, because the goal of the partnership was to make money, and entering into sales contracts would typically bring that objective to fruition. The remaining partners will argue, however, that merely entering into a sales contract does not necessarily further the goals

of profitability, and that this particular sales contract did not do so because of the extremely favorable price offered to Geco.

Thus, Ethel did not have the implied authority to enter into a contract with Geco.

Whether Ethel had the apparent authority to contract on behalf of the partnership

Apparent authority is when a third-party reasonably believes that the agent has the authority to engage in the conduct or contract. Apparent authority requires that the principle take some affirmative step in furthering the belief. This affirmative step must come from some other source than simply by word of the agent. Additionally, the belief of the third party is both subjective and objective in that the third-party must actually subjectively believe that the agent had the authority, and that belief must have been objectively reasonable. Further, if the third-party has notice of the agent's lack of authority, the third-party is estopped from further relying upon that initial belief. By claiming apparent authority, the third-party is able to hold the principle liable for the contract that the agent entered into.

Here, the partnership will attempt to stem liability for the contract that Ethel entered into on its behalf. To do so, they will argue that Ethel did not have the apparent authority. They will argue that the third-party did not reasonably believe that Ethel had the authority by showing that Geco had notice of Ethel's role in the organization by demonstrating that Geco's owner was Ethel's sister, and that by the nature of that relationship, had notice that Ethel did not have the authority. Ethel, by contrast, will argue that the partnership took an affirmative step by granting Ethel the title of "partner" when they established the partnership, and that it is typical in this industry that partners are able to enter into sales contract. Partnership will counter that this is not an affirmative step because it is merely a natural by-product of the organizational structure, rather than an indication or manifestation of their intention to give the impression that Ethel had authority.

The court will find that Ethel did have apparent authority because of her title in the organization; however, once Geco was put on notice that Ethel did not have authority ("they contacted Geco and informed it that...") any further reliance upon this apparent authority will not be sufficient. As a result of the apparent authority, the partnership is liable for the debts owed under the contract, as a result of their refusal to deliver upon it.

Question 2 Conclusion

Here, because Ethel had the apparent authority to enter into a contract on partnership's behalf, Geco will succeed in its lawsuit against DEF. DEF may in turn seek indemnification from Ethel for her potential fiduciary liability breach when she entered into this sweet-heart deal with her sister. Partners owe between themselves and to the partnership a fiduciary duty of good faith and fair dealing and because it appears that she entered into a contract on behalf of the principle, for the benefit of her sister, to the detriment of the partnership, the court will find that she owes to the partnership the duty to indemnify, or some damages for a violation of her fiduciary duty.

this needed more analysis

Question 3: Is Zeta likely to succeed?

Whether Fred had the express authority to enter into the sales contract with Zeta?

(See rule above regarding express authority)

Here, Fred did not have the express authority to enter into the sales contract because there is no indication that the partnership manifested its assent to Fred doing so. Indeed, a partner called Zeta and expressly declined Fred's authority to enter into sales contracts with third-parties.

Thus, Fred did not have express authority.

what about that partner's auth. to unilaterally [illegible] auth?

Whether Fred had the implied authority to enter into the sales contract with Zeta?

(See rule above regarding implied authority).

Here, Fred did not have the implied authority to enter into the sales contract because the principle partnership expressly denied him the authority to do so. Therefore, any belief that Fred had that the authority was impliedly granted to him by the necessities of the business would be unreasonable, and contrary to the needs of the partnership, and indeed, contrary to the authority which was impliedly expected by his position.

Thus, Fred did not have implied authority.

Whether Fred had the apparent authority to enter into the sales contract with Zeta?

(See rule above regarding apparent authority).

Here, Fred did not have the apparent authority to enter into the contract with Zeta because even though he was a partner within his partnership, and had the title which would otherwise have reasonably indicated to the third-party that he did in fact have the authority, the third-party will be estopped by claiming that they subjectively, or reasonably subjectively, believed that he had authority because they were put on notice that Fred did not have authority when Dilbert called to state that Fred did not have the authority to make the purchase..

Therefore, Zeta will be estopped from claiming that Fred had apparent authority.

great!

Whether Dilbert had the authority to stop Fred from ordering parts

Generally, a partner has the right to contract on behalf of the partnership, so long as they are acting within the scope of the partnership's business.

Here, Fred did place an order which would normally be considered within the scope of the partnership's business; however, in a partnership, the parties are free to enter into partnership agreements that tailor their individual roles and obligations to the partnership. Here, the parties agreed to work within respective roles, Fred acting as the sales person. It is normally outside of the expected role of a sales person to make part orders, and thus, Fred did not have the general ability in this case to contract on behalf of the partnership for the purpose of purchasing supplies necessary in the construction of the saunas.

Thus, Fred's ability to contract on behalf of the partnership was tailored by the needs and roles established by the partnership.

Zeta Conclusion

As Fred's authority to enter into agreements on partnership's behalf was expressly disclaimed, and because Zeta had notice of this disclaimer, the lawsuit against partnership by Zeta will be unsuccessful. Zeta will then sue Fred for having entered into a contract with Zeta and ordering goods that were not needed, which harmed Zeta materially.

END OF EXAM

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2)

excellent analysis

Question 1, Emerson and the bank?

Whether Emerson and Tarquin formed an agency-principle relationship?

An agency-principle relationship is a consensual relationship in which a person, the agent, acts under the control of, and for the benefit of, another, the principle.

Here, an agency-principle relationship was formed because Tarquin, a person, agreed to act on behalf of Emerson as his employee. Employees fulfill the goals and objectives of their employer, and act under the employer's direction and control. Further, Tarquin is acting for the benefit of Emerson because Tarquin is continuing the business operations of Emerson while he travels extensively, is performing labor for Emerson, and is continuing the business as necessary for the business's success. Tarquin is a person, and Emerson is also a person.

Thus, Tarquin and Emerson formed an agency-principle relationship.

Whether Tarquin had the express authority to enter into the promissory note with the bank

Express authority is that which the principle has explicitly manifested assent for the agent to engage in or to perform certain activities. Express authority may be consented to orally or in writing.

Here, express authority is not present because Emerson did not manifest his intent that Tarquin enter into a promissory note with the bank. Express authority requires that the principle give explicit authorization for conduct, which is not present in these facts. Tarquin had the express authority to do other things, such as "sell cycles and to repair

them" or to "manage the operations when Emerson is traveling." "Manage the operations" is not a form of express authority because it does not precisely spell-out the authority granted to the agent. Further, the power of attorney document does not expressly empower Tarquin to make the purchase because the PoA states that Tarquin had the authority to "enter into and execute any contract for the purchase of goods... *as needed for the operation of the current business."* Thus, Tarquin did not have the authority to attempt to expand the "current business" by making a purchase to broaden the scope of the business by making customized helmets. The "current" business is that of a bicycle sales and repair shop, and the customization of helmets (particularly to the tune of requiring a $50,000 purchase) is a major deviation from the current path that the business is set on. Tarquin will argue that the "current" business, by the nature of bicycle sales includes the sale of helmets, and thus includes the expansion into the making of customized helmets, however, this argument will be unsuccessful because of the magnitude of the purchase, indicating that this customization plan was a major deviation from normal business.

Thus, Tarquin did not have the express authority to enter into the bank note.

Whether Tarquin had the implied authority to enter into the bank note

Implied authority is authority which the agent either reasonably believes, or actually is, necessary to bring about the usual or necessary objectives of the principle.

Here, Tarquin and the bank will argue that Tarquin had the express authority to enter into the note. They will point towards the employment agreement that they entered into, in which Tarquin will "manage the operations when Emerson is traveling." Tarquin/Bank will argue that the agent reasonably believed that the promissory note was necessary to carry on the business of the bike shop. Further, bank will argue that, at the time of the transaction, Tarquin had the implied authority to purchase the helmets to carry on the

business, and that the promissory note was necessary to do so. Emerson, by contrast, will argue that it is not reasonable for Tarquin to have drawn a $50,000 note for the purchase of helmets, and that the bicycle sale and repair shop did not require such a large volume purchase while he was gone for his triathelon. At most, Emerson may have been traveling for a few weeks, and even if the bike shop had been out of helmets completely, a small purchase would have been sufficient to bring about the bike shop's goals of selling bike helmets. Emerson will further argue that the underlying motivation of Tarquin's was to make purchase so as to embezzle the property from the bike shop, and to abscond with the bike helmets entirely, which would not be reasonably interpreted as furthering the goals of the shop because this action would only cause debt, litigation, or loss of repute, rather than help it make money.

The court will find that Tarquin did not have the implied authority to make the $50,000 loan.

Whether Tarquin had the apparent authority to enter into the bank note

Apparent authority is when a third-party reasonably believes that the agent has the authority to engage in the conduct or contract. Apparent authority requires that the principle take some affirmative step in furthering the belief. This affirmative step must come from some other source than simply by word of the agent. Additionally, the belief of the third party is both subjective and objective in that the third-party must actually subjectively believe that the agent had the authority, and that belief must have been objectively reasonable. Further, if the third-party has notice of the agent's lack of authority, the third-party is estopped from further relying upon that initial belief.

Here, the bank will claim that Tarquin had the apparent authority to enter into the loan with them, because the bank will identify the Power of Attorney document as having empowered Tarquin to enter into the note. Bank will argue that it reasonably believed

Tarquin had authority, and that the PoA represented an affirmative step by Emerson to empower them to reasonably believe that Tarquin possessed such authority. Emerson, however, will demonstrate that bank did not form the requisite belief because they never looked at the power of attorney. Further, it is unreasonable that the bank would rely solely upon Tarquin's claim that he "had power of attorney." Further, the affirmative step must originate from the principle, but can not solely stem from the word of the agent. In this case, the bank solely relied upon the agent's word in that Tarquin had the authority to enter into the contract. Even then, it was unreasonable for the bank to rely upon the term "power of attorney" in vesting sufficient rights in the agent to make such a loan. Here, the power of attorney could be reasonably interpreted as not having vested sufficient rights in Tarquin as to make the loan. Further, after having heard from Tarquin that Tarquin had "power of attorney" the bank was put on notice to further investigate the extent and scope of this power of attorney, to ensure that Tarquin had express authority with which to engage the bank.

Thus, Tarquin did not have apparent authority to enter into the loan.

Whether Emerson owes any liability to the bank through vicarious liability principles

Vicarious liability imposes liability upon an employer when an employee acts to harm another, through his negligent acts. Authorities are unclear as to whether this encompasses the breadth of negligence actions, such as gross negligence, or is limited to mere negligence, or wanton negligence, or reckless disregard. An employer is not vicariously liable for the intentional torts of the employee, unless the intentional tort was commanded by the employer, or the scope of the employee's duties encompasses such potential for intentional torts.

Here, Tarquin potentially committed the intentional tort of fraud against the bank. Thus, Tarquin did not commit a negligent act. Further, this intentional tort was not within the scope of the employer's expected scope of actions by the employee, as Tarquin was simply expected to manage the bicycle shop in Emerson's absence, as opposed to establish a promissory note for him in the amount of $50,000 for the purchase of helmets.

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Thus, Emerson will not be held vicariously liable for any acts of Tarquins.

Bank v. Emerson Conclusion

Tarquin did not act with any form of authority when engaging with the bank, and the bank did not sufficiently ensure any form of authority that Tarquin may have claimed to have had. Emerson will not be found to be vicariously liable to the bank for any of Tarquin's torts. Thus, Emerson will not suffer any liability from the bank.

Question 2, Tarquin's actions and Emerson's Legal Recourse

Whether Tarquin violated the duty of loyalty.

An agent owes their principle the duty of loyalty. The agent must attempt to avoid gaining an interest adverse to that of the principle, and must make known any adverse interests to the principle.

Here, Tarquin violated the duty of loyalty when he entered into the loan, and took the helmets so that he could make money online. He intentionally developed a position adverse to the principle when he embezzled the goods from the employer because the embezzlement enriched Tarquin, at the cost to the principle.

Thus, Tarquin has violated the duty of loyalty. Emerson has the right to sue Tarquin over this breach of loyalty, and the court will award Emerson a reasonable amount to compensate him for this breach.

Whether Tarquin violated the duty of care

An agent owes to their principle the duty of care. Agents must engage with the business of the principle with the skill, competence, and ability that they possess.

Here, Tarquin has violated the duty of care to Emerson by acting to the principle's detriment by making a low competence decision to make such a large investment in an untested field. An agent of reasonable skill would know that it is foolish to make such a large business expense without first testing the validity of the idea. Further, Tarquin has violated this duty when he locked the shop, and left, which resulted in the shop remaining closed for one week until Emerson could return.

Thus, Tarquin has violated the duty of care. Emerson has the right to sue Tarquin over this breach of duty, and the court will award Emerson a reasonable amount to compensate him for this breach.

Whether Tarquin violated the duty of obedience

An agent owes to their principle their following of all reasonable orders or wishes of the principle. The agent will not be required or penalized for obeying an illegal/immoral command.

Here, Tarquin has violated this duty by not following the goals of the principle. Emerson has made clear that he has left Tarquin in charge of the shop so that while Emerson is away, Tarquin can carry on the current business affairs. Emerson has specifically empowered Tarquin to do so, and expects him to do so, as demonstrated by the PoA,

thus, Tarquin has violated the duty to obey by not following these reasonable objectives of the principle. Further, Emerson harmed the business and failed to obey the objectives of maintaining the business because he locked the shop, and was the only employee with a key, thus shutting down the shop's earning capacity for an entire week while Emerson traveled back to the area.

Thus, Tarquin has violated the duty of obedience. Emerson has the right to sue Tarquin over this breach of duty, and the court will award Emerson a reasonable amount to compensate him for this breach.

Whether Tarquin has a duty to indemnify Emerson

An agent owes the principle the duty to pay compensation for any harm that the agent causes to the principle, by way of any intentional tort or reckless conduct.

Here, Tarquin has committed the intentional tort of embezzlement by taking the property of his employer (the loan, and then the helmets) and then absconding with them to Canada. Alternatively, Tarquin has committed fraud against the bank. In either case, Emerson has now incurred legal fees, and potential damages, for the intentional and illegal actions of his agent. Therefore, Tarquin will need to pay Emerson for these costs.

Tarquin has a duty to indemnify Emerson. Emerson has the right to sue Tarquin over this breach of duty, and the court will award Emerson a reasonable amount to compensate him, which will include the amount of profit lost by the shop for the week that it was forced to be closed, as well as for the legal fees. If the bank is able to litigate successfully against Emerson for the $50,000, Tarquin will also be responsible for that because this amount was lost by Tarquin due to his conduct.

Tarquin's Actions and Legal Recourse Conclusion

Emerson will be able to litigate against Tarquin for Tarquin's violation of the above duties.

END OF EXAM