

1. The vehicle is owned by the partnership, Shirt Co. In Texas, there is a presumption that when a partner uses its personal funds, the item purchased is theirs. However, as a general partner, Ethel had the ability, under agency principal, to buy items for Shirt. Here, because title to the vehicle was issued to "Ethel Partner, Shirt Co.", Ethel purchased the vehicle and its property of the partnership. Ethel was a partner of Shirt, and expressly wrote that she was acting not acting on behalf of the partnership as a partner.

The printing machine is owned by Fred. In Texas, when a partner uses its own funds to buy an item in its own name, the item is presumably not partnership property. To the seller of the machine, Fred did not represent himself in anyway or a partner representing Shirt and buying the machine on its behalf. Also, Fred subsequently used the machine for its own non-partnership business purposes. The initial 1000 t-shirts are owned by Shirt Co. In Texas, when a check, order paper, has the name of the partnership or bank account number, the items bought are partnership property. Here, the check was Shirt's and the fact that Fred didn't indicate his capacity as partner, or that he was acting on behalf of the partnership by writing so on the check, is not controlling because the Shirt's check was used to buy the T-shirts.

2. Fred has violated duty and to the partnership. In Texas, there are duties of loyalty, fair dealing. The duty of loyalty is a fiduciary duty, and as such Fred was required to put his individual business interests behind those of Shirt. By purchasing 500 shirts for the purpose of selling the same type of T-shirts at Shirt Co., also via the internet, Fred will usurp Shirt's business opportunities. Fred also had a duty to disclose the business opportunity to Shirt Co. first and allow Shirt Co. to decide if it wanted to take the opportunity to print more shirts with cartoons because Fred had realized there was a larger market for it. Fred violated the duty of loyalty through his planned self-dealing in the same cartoon T-shirt market or Shirt Co. Overall, Fred is liable to Shirt Co. for these breaches, and for any damages he caused by them.

3. Shirt is liable to the vendor for 500 T-shirts. In Texas, when a partnership purchases items using a check that bounces, the partnership is liable to a vendor to make payment. However, a partnership must use an individual or an agent of the partnership to be liable. Here, looking from the perspective of the vendor, the vendor would only believe it was dealing with Fred as an agent of Shirt Co. Fred had already purchased T-shirts from the vendor using a Shirt check. This gave at least apparent authority to bond Shirt Co. an agent of Shirt, the principal. Also, from the vendor's perspective, it probably gave actual authority from prior dealings with Fred as an agent of Shirt. Fred had already purchased T-shirts from the vendor using a Shirt check. This gave at least apparent authority to have Shirt as an agent of Shirt, the principal. Also from the vendor's perspective, it probably gave actual authority from prior dealings with Fred as an agent of Shirt. The fact that Fred used a personal check this time is overcome because of the prior dealing with the vendor. Thus, Shirt is liable through the agency principal of apparent authority.

END OF EXAM

1) The vehicle and the t-shirts are partnership property. The printing machine is Fred's property.

A partnership is the association of two or more people to go into business together for profit. Because this business form is so involved with the partners, sometimes ownership of property becomes an issue. There are four rules – property acquired in the naming the of partnership is the partnerships; property acquired naming the partnership in its title is property of the partnership; property acquired with partnership funds is presumed (rebuttable) property of the partnership; finally property acquired with partner's personal funds is presumed property of the partner – not the partnership, Again, that last rule is rebuttable.

The vehicle was purchased with Emil's money. A rebuttable presumption arises in Texas that the vehicle is partner property, not partnership property. Nevertheless, the title to the car was taken in the name of the partnership. Such evidence is more than enough to rebut the presumption and the vehicle is partnership property.

The ownership of the t-shirts is less clear cut, but I think a court would find they are partnership property. At issue is the interplay between two rebuttable presumptions, that the shirts were purchased with partnership funds, but the bill of sale does not list the partnership of the owner. So the title rule is inapplicable. However, Fred did not use his own personal funds, he used a check drawn on the partnership's account. Because a check seemingly identifying the partnership was used, a court could likely think Fred was acting/acquiring property for the partnership and the shirt's are likely partnership property.

The printing machine, applying the same rules, is not partnership property because it was with Fred's funds and not acquired in the partnerships name or title taken to the property in the partnership's name.

2) Fred probably violated his duty of loyalty to the partnership by competing with it when he purchased the shirts with cartoons. The purpose of the partnership was to print messages with funny or satirical content. Depending on the cartoons, those could be funny or satirical.

Each partner in a partnership owes it a duty of care, good faith, and loyalty. The duty of loyalty hinges on the direct competition between the partner and the partnership. In Texas, a partner in a partnership must not usurp opportunities that the partnership could pursue. Fred usurped the opportunity because he did not disclose it to Ethel, not did he give the partnership an opportunity to decline the opportunity. If Fred is successful and gets profit, a constructive trust could be imposed to disgorge his profits.

3) Shirt is liable to vendor.

Each partner in a partnership has the ability to act for the partnership unless otherwise agreed in the partnership agreement. The facts are silent about an agreement so the default rules apply. In Texas, the default rules provide that each partner in a partnership has actual authority, statutorily to bind the partnership. Under agency principles, when Fred acts on behalf of the partnership, expressly or impliedly, he acts with actual authority. Nevertheless here, it is unlikely Fred has

bound the partnership with actual authority because shirt (Ethel and Fred) did not expressly agree that he could get more shirts, nor do the facts suggest Ethel impliedly agreed. Fred has bound Shirt through apparent authority. Apparent authority is the reasonable but mistaken belief in the mind of a third party. The principal must act in some way to create the appearance of authority, which is the case here. Because Fred used a check previously drawn on Shirt's account, it was like Shirt saying to the world that Fred had the authority to bind it as its agent. Shirt could argue that Fred used a personal check the second time and not a check on their account. That argument will likely be insufficient because in access is not a recognized method in Texas for terminating actual authority. Shirt would have to send a notice on Vendor, and the facts do not suggest this was done.

Shirt is liable to vendor on a theory of apparent authority and may seek contribution from the partners in the partnership, Ethel and Fred as they are joint and severally liable for liability on Shirt.

END OF EXAM

## 1) Vehicle

Partnership owns the vehicle. A partner of a partnership who purchases equipment for use in the partnership, but with his or her own funds usually makes the property that partner's personal property. If a partner signs the title or contract though as "Partner, Shirt Co.," then the title will be considered the partnerships. The person whom the property was purchased from will think that he is dealing with the partnership if the partner appears to have authority to purchase for the company. Here, Ethel, even though using her own money, purchased the vehicle with the partnership's name and her title as a partner. Therefore, the vehicle is owned by the partnership.

Printing Machine

Applying the rules set above, it appears that the printing machine would be owned by Fred. He purchased out of his own funds, and the bill of sales show that he used his own name "Fred" as the purchaser. There may be something to the fact that the seller didn't think he was buying for his personal use, but the facts show that Fred owns the printing machine.

1,000 T-Shirts

Here, it is likely that the T-shirts are the partnerships. Inventory bought on partnership account is presumptively the partnership's. The fact that a partner did only sign his name on the bill of sale may make an impact on the ownership, but the source of funds weigh more heavily. Here, Fred purchased 1000 T-shirts on the partnerships account with a check that would show the source of funds to the seller. The 1000 T-shirts are owned by the partnership.

2) Fred usurped a partnership opportunity and breached his duty of loyalty. A partner owes several fiduciary duties to both his other partners and the partnership itself. If a partner takes a partnership opportunity away from the partnership, he usurped the chance for the partnership to make money on a deal that should make them a profit. A partner can have deals on the side of his partnership, but not when it takes away the deal from the partnership and its partners. The partner also has a duty of care and loyalty. The partner needs to do his job with good faith and not self-deal. Here, Fred used his own money and likely his own printing machine to make and sell 500 T-shirts, but he sent them on the internet the same way that Shirt, Co. was going to do. Fred likely took sales and profits away from the partnership and will have to pay damages to it.

3) The partnership is likely liable for Fred's purchase to vendor. When a partner appears to have authority to purchase from a 3<sup>rd</sup> party to be purchasing inventory for the partnership, the partnership is liable for that contract. Also, a general partnership and the general partners are joint and severally liable for all torts, contracts, and mistakes made in the course of the partnership business. If the vendor here believed that Fred was purchasing 500 T-shirts for use in his business then Shirt Co. is going to be on the hook for paying it off. Vendor likely thought Fred bought 500 T-shirts for his T-shirt business and thought the partnership would be liable for the shirts. If Shirt Co. can show that Fred brought for himself, with his own money, and in his own name on the account, and vendor thought they were entirely for Fred, then Shirt Co. would not be liable.

END OF EXAM