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**1) The partnership owns the vehicle and the 1,000 black cards from Vendor. John owns the printing machine.**

A partnership is created when two or more people come together to carry on a for-profit business as co-owners. A partnership is an entity distinct from its partners and may own property in its own right as a legal entity. When property is acquired using partnership funds or when title is issued to the partnership, that property is presumed partnership property.

#### Vehicle

When title to property is issued to the partnership, that property is presumed partnership property. Here, although Mary used her own money to purchase the vehicle, title to the vehicle was issued to the partnership. Thus, the vehicle is partnership property.

#### Printing Machine

When property is purchased personal money and title is issued to a partner in his individual capacity and not in his official partnership capacity, then that property is presumed to be the partner's separate property. Here, John used a personal check to purchase the printing machine and the bill of sale showed only his name as the purchaser. Thus, the printing machine is presumed to be John's personal property.

#### 1,000 Blank Cards

When property is acquired using partnership funds, that property is presumed partnership property whether or not title is issued to the partnership. Here, John used a check drawn on the partnership bank account to purchase the 1,000 black cards from Vendor. Although the bill of sale showed his name alone and did not reference his connection to the partnership or his official role, this is irrelevant where the property is purchased with partnership funds. Thus, the partnership owns the 1,000 blank cards from Vendor.

**2) John has violated his duty of loyalty to the partnership.**

A partner owes fiduciary duties to the partnership, to his fellow partners and to transferees of partnership rights. These duties include the duty of care and the duty of loyalty. The duty of care requires a partner to act with the care of an ordinary prudent person under the circumstances. The duty of loyalty includes refraining from acting in a way that is adverse

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to the partnership interests. Specifically, the duty of loyalty entails that a partner must not compete with the partnership. The duties of care and loyalty must be discharged in good faith and in the best interest of the partnership.

Here, John violated the duty of loyalty when he competed with the partnership by using the printing machine to print 500 additional birthday cards for a friend without Mary's knowledge and kept the proceeds for himself. John and Mary intentionally entered into a partnership for the specific profit-producing purpose of printing birthday cards. John acted adversely to the partnership's interests by usurping a partnership opportunity and engaging in self-dealing without informing his co-partner. Under the duty of loyalty, John had a duty to inform Mary and the partnership of the opportunity to print his friend's 500 birthday cards and to offer this opportunity to the partnership before acting on it for himself. Because John failed to inform Mary of the opportunity, failed to offer the opportunity to the partnership, and acted on the opportunity for his own personal gain and not for that of the partnership, John breached his duty of loyalty.

### **3) Partnership is liable to Vendor for the additional 500 blank cards purchased by John using his personal check.**

Each partner is an agent of the partnership and the partnership is the principal. Under the laws of agency, a partnership is responsible for all contractual obligations entered into by its agents when those agents have actual or apparent authority to enter into such contracts. Actual authority can be express or implied. An agent has actual authority when he reasonably believes he has the authority to bind the partnership in contract. Here, John has implied actual authority to enter into contracts on behalf of the partnership in the ordinary course of the partnership's business. Here, the partnership was formed for the purpose of printing birthday cards for profit. Thus, purchasing blank cards falls under the implied authority of its agents.

Mary may argue that John did not have actual authority because he was acting in his personal capacity and not in the capacity of the partnership. However, this argument would fail to relieve the partnership of liability because even John did not have actual authority, he still had apparent authority. Apparent authority exists if a third-party reasonably believes an agent has authority to act on behalf of the partnership. Here, Vendor had reasonable belief that John had authority because John had previously conducted

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business with Vendor on behalf of the partnership when he purchased the 1,000 blank cards from Vendor.

While the partnership's liability does not absolve John's liability (John is still personally liable for the check), the vendor will likely come after the partnership because John does not have sufficient funds in his checking account to cover the check.

Because partners are jointly and severally liable for the obligations of the partnership, Vendor can sue the partnership or Mary or John personally. If Mary has to pay for the entirety of the obligation, she will have a valid claim against John for contribution.

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**(1) The vehicle and the 1,000 blank cards are owned by Partnership, but the printing machine is owned by John.** As a general rule, assets are owned by a partnership when assets are purchased either (a) with partnership funds, or (b) naming the partnership as the holder on title to the assets. If assets are purchased entirely with an individual partner's own assets and name that partner as the holder of the asset without any indication that the assets is for the partnership, the assets belongs to the partner, not the partnership. These rules apply to general partnerships in the same manner as they do for other partnerships or companies.

**(a) Vehicle.** While Mary purchased the vehicle using her own money, title to the vehicle was issued to Partnership. Therefore, the vehicle is owned by Partnership.

**(b) Printing Machine.** John purchased the printing machine with his own funds and only his name was mentioned on the bill of sale. Immediately after the purchase, this asset belongs to John. If John contributes the asset to the partnership, it will be owned by Partnership, but it is currently owned by John.

**(c) 1,000 blank cards.** Because the 1,000 blank cards were purchased using a check drawn on Partnership's bank account, the blank cards are owned by Partnership. The fact that only "John" was named as the purchaser does not change this because assets purchased using partnership funds belong to the partnership. Thus, Partnership owns the 1,000 blank cards.

**(2) John violated his duty of loyalty to Partnership.** All partners in a partnership owe a duty of loyalty to the partnership. This duty entails that partners will not compete with the partnership for their own personal gain. Here, Partnership was formed for the purpose of printing birthday cards, and John made 500 birthday cards, sold them, and kept the proceeds for himself. While John was technically the owner of the printing machine and he purchased the 500 blank cards with his own funds, he breached his duty of loyalty by directly competing with Partnership when he sold the cards to a friend. Directly competing in this manner operates to detract business opportunities from Partnership, which is a direct violation of a partner's (John's) duty of loyalty. Therefore, John would be liable to

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Partnership and would be required to reimburse it for its share of these proceeds.

**(3) Partnership is liable to Vendor for the additional 500 blank cards purchased by John using his personal check.** Any partner of a partnership can bind the partnership to transactions when the partner had authority to enter into the transaction. All partners have actual authority to act and transact in a manner consistent with the purpose of the partnership. Partners do not, however, have actual authority to act in a manner inconsistent with this purpose or directly compete with the partnership. While John had the actual authority to conduct "printing birthday card" business, he did not have the actual authority to directly compete with Partnership. Therefore, John lacked actual authority to bind Partnership to paying for the 500 blank cards.

However, a partner may bind the partnership even if he does not have actual authority if he has apparent authority to act. Apparent authority exists when the 3rd party that the partner is transacting with reasonably believes the partner has the authority to act on behalf of the partnership. This apparent authority is often created by past interactions between the 3rd party and the partner or partnership. Here, John had already purchased 1,000 blank cards from Vendor in the past and he used a check drawn on Partnership's bank account to do this. Based on this singular transaction, it was more than reasonable to believe that John had apparent authority to purchase the additional 500 blank cards on behalf of partnership. The fact that this second purchase was with a personal check from John does not destroy apparent authority.

Because of John's past transaction with Vendor and his using of a check drawn on Partnership's bank account for the past transaction, it was reasonable for Vendor to believe that John had authority. Therefore, because of John's apparent authority, Partnership is liable to Vendor for the additional 500 cards. Thus, because John's bank dishonored the check, Partnership will be liable for the amount owed based on John's apparent authority.

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**1. The partnership owns the vehicle and the blank cards while John owns the printing machine.**

**a. Vehicle**

A partnership owns property that is purchased for the benefit of the partnership when a partner purchases for the benefit of the partnership and the purchase is made in the name of the partnership regardless if the partner used personal or separate accounts to make the purchase.

Here, although Mary used her own money to make the purchase, the purchase of the vehicle is for the benefit of the partnership as evidenced by the partnership's name on the title. Because the vehicle is purchased with the partnership's name on the title, the partnership owns the car and Mary may be deemed a creditor to the partnership.

**b. Printing Machine**

When a partner purchased property using his own funds and there is no evidence that the partner is acting on behalf of the partnership, the property is presumed to be the property of that partner, especially when the property is also purchased in the name of the partner solely.

Here, the printer was on John's personal account, not in the name of the partnership, and the bill was made out directly to John as the purchaser. There is no evidence that the John was acting on the behalf of the partnership when making that purchase even though printing is essential to the partnership. As such, because the property was purchased with his account and made out to him directly with no mention of the partnership, John owns the printing machine.

**c. Initial Blank Cards**

It is presumed that a partnership owns the property that a partnership purchases on the

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Here, John used the partnership's account to purchase the blank cards as evidenced by the partnership's check. Although John is listed as the purchaser, there is clear evidence that John was acting as agent when he purchased the cards. Therefore, the partnership owns the blank cards.

**2. John has violated the duty of loyalty because he engaged in self-dealing and competed with partnership.**

Partners owe two duties to the partnership - a duty of care and a duty of loyalty. Duty of loyalty is the partner should act in good faith and in the best interest of the partnership. The partner should engage in self-dealing which arises when he receives benefits for himself. Also, the partner should compete with the partnership and should not usurp the partnership opportunities and resources.

Here, John violated the duty of loyalty because he took the profits from the partnership and kept them for himself in bad faith. Further, it was not in the partnership's best interest for John to keep the proceeds for himself. In addition, it can be argued that he was competing with the partnership because he did not inform the partnership rather he sold cards on his own to a friend and partnership's resources to do so. Because of John's action, he violated the duty of loyalty to the partnership.

**3. The partnership is liable to the Vendor for the additional cards under the agency doctrine of apparent authority.**

In a general partnership, partners are jointly and severally liable for actions of other partnership and the liability of the partnership. The partnership will also be liable for the actions of the partners. Further, partners are agents of the partnership. A form of agency is apparent authority which occurs a third party reasonably believes that the person is acting on behalf of the principal (partnership in this case).

Here, the facts are clear that John and Mary are partners under Texas law and there is a valid partnership. Because John is a partner, the partnership is liable for his actions. John first purchased the cards on the Partnership's account. He later purchased an additional 500 which the third party could have reasonably believed that John was acting on the behalf of the partnership since he had already purchased blank cards. Therefore, his action created the apparent authority relationship. As such, the partnership will be liable for the additional cards although the check was based on his personal account.

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