

## Question MEE 1 – February 2024 – Selected Answer 1

1. Wendy and Mary created a general partnership relationship through the share of profits, however, Angelo only created a creditor/borrower relationship with the partnership.

A general partnership is defined as two or more persons carrying on business for profit. A person can be an individual or a legal entity. There need not be an intention to create a partnership, rather as long as the parties intend to carry on a for profit business then the partnership will automatically be created. Generally, a sharing of profits will create a presumption that a partnership was formed. However, this presumption can be rebutted by a showing that the profits are being used to repay a debt or interest on a loan.

Here, Wendy and Mary formed a partnership when Wendy agreed to pay Mary 15% of the profits for as long as the company remained in business. In addition to the share of profits, Mary also began working at the store and helping with the planning of the business. This evidences an intention to carrying on a business together for a profit, rather than a simple repayment of the money that Mary provided to Wendy as assistance for the company's financial difficulties.

However, Angelo did not form a partnership relationship with either Wendy or Mary. Instead, Angelo wrote on his check that he was providing the money for a "loan to Kibble." Additionally, although Angelo is sharing in the profits of the company, to the tune of 15%, this share is limited until the company repays the debt, with interest, at which time Angelo's share of the profits will terminate. This is sufficient to rebut the presumption that although Angelo is sharing in profits, he did not form a partnership with the other parties.

Accordingly, Wendy and Mary have formed a partnership agreement by carrying on the Kibble business for profit, however, Angelo is merely a creditor of the partnership who is entitled to a share of the profits until his loan, plus interest is repaid.

2. Yes, Bob is entitled to a share of the monthly profits through the assignment from Mary.

A partner in a partnership agreement may assign their rights to profits to any party without the consent of the other parties. However, a partner may not assign their entire rights in the partnership unless (i) they give notice to all other partners, and (ii) the other members consent to the assignment.

Here, Mary attempted to assign her entire interest in Kibble to her son Bob. Mary then provided the written assignment to Wendy to provide notice of the assignment. However, Wendy said that she "did not want Bob involved with Kibble." Therefore, Wendy did not consent to the assignment of full partner rights to the partnership.

As a result, Mary's assignment is good up to the extent of the profits, and Bob is therefore entitled to Mary's share of the profits, however, Mary's purported assignment of rights greater than that -- i.e. management rights -- was not effective.

3. No, Bob is not entitled to inspect the books and records of Kibble since he did not gain partner status in the partnership.

A partnership can govern and limit the operations of the partnership through a partnership agreement. However, when no such agreement exists then the partnership is governed by the UPA. One right that a partnership cannot limit or extinguish is the right of all partners, and their agents, to review the books and records of the partnership upon request.

Here, Bob attempted to review the books and records of the company through a demand made to Wendy. As discussed above, Bob never gained rights as a partner in the partnership, instead he only gained an entitlement to the profits of the partnership. As a result, Bob does not have the right to demand the inspection of the books and records of the partnership. That right remains solely with Mary and Wendy.

Therefore, Wendy does not have to comply with Bob's demand to inspect the books and records of Kibble, because Bob is not a partner or an agent of a partner.

4. No, Wendy is not entitled to use the delivery van on Sundays to take her nieces to softball games.

Property which is purchased by a partnership or contributed to a partnership by the partners is the property of the partnership alone. Partners do not have the right to use the partnership property for their own personal benefit. A partner who wrongfully uses partnership property must account to the partnership for that wrongful use.

Here, Wendy used the company van to transport her nieces to softball games on Sundays. This use has nothing to do with the company of selling dog food, toys and grooming products, and therefore constitutes personal use of the partnership property. After Mary demanded that Wendy stop the personal use of the van, Wendy refused noting that the company did not use the van for business on Sunday. This

further reinforces that the use for purely for personal use, rather than business use. As a result, Wendy must account to the partnership for the loss they have occurred by the personal use of the partnership van.

## **Question MEE 1 – February 2024 – Selected Answer 2**

### **[1] Legal Relationships**

Wendy and Mary are partners in a general partnership in Kibble while Angelo is a creditor of Kibble. At issue are the legal ramifications of the actions of Wendy, Mary, and Angelo.

A general partnership is created whenever two or more persons associate to carry on as coowners a business for profit. Importantly, the subjective intent to create a partnership is irrelevant; as long as the individuals intend to act as co-owners, a general partnership will be created. Courts look to both intent and actions of the parties to determine whether parties intended to act as co-owners. When parties agree to share profits, a rebuttable presumption of the intent to operate as co-owners arises. However, if profits are merely shared in repayment for a loan, no such presumption arises. In addition, agreement to share losses of the business as well as participate in management and day-to-day operations indicates intent to act as co-owners.

Here, Wendy created Kibble as a business for profit, selling dog food as well as dog toys and grooming products. In response to her request for financial assistance, Wendy received Mary's check specifically payable to Kibble and agreed, in return, to share 15% of Kibble's monthly profits indefinitely. Further, Mary agreed to share 15% of any losses, began working at the store, and assisted in business planning for Kibble. These facts conclusively establish Wendy and Mary are general partners.

However, Angelo is not a partner of Wendy and Mary. Unlike Mary, Angelo intended his money as a loan to Kibble. He agreed to receive profits only until the loan was fully repaid with interest. Further, it appears Angelo has not and will not participate in Kibble's in any other way besides his initial funding payment. Because his receipt of profits is limited to the repayment of his loan and there are no further facts to indicate co-ownership, Angelo is not a partner. Instead, Angelo is only a creditor of Kibble.

Accordingly, a general partnership has been formed between Wendy and Mary while Angelo is a creditor of Kibble.

### **[2] Bob Entitlement to Monthly Profits**

Bob is entitled to Mary's share of the monthly profits of Kibble. At issue is whether a partner in a general partnership can assign her financial rights to another.

A partner's interest in a general partnership consists of two components: (1) management rights and (2) financial rights. A general partner may, in her complete discretion, assign her financial rights to another, meaning the assignment may occur over the objection of other partners. However, a general partner may not assign her management rights without consent of other partners. In a general partnership, the addition of a new partner—i.e., assigning management rights—requires the unanimous consent of the partners unless some other arrangement is specified in a partnership agreement (this is sometimes referred to as the pick your partner rule). A valid assignment requires a present intention to assign her rights to another and generally need not be in writing.

Here, Mary manifested the present intention to assign her rights to her son Bob. In her letter, she specified that she was assigning all of her interest in Kibble *effective immediately*. This communication suffices to effectively assign only her financial rights because, as discussed above, management rights cannot be assigned without consent of all partners. Thus, despite Wendy's opposition to Mary's assignment to Bob, Bob will receive Mary's financial rights in the partnership. Accordingly, Bob is entitled to Mary's 15% of Kibble's profits each month.

### **[3] Bob Entitlement to Inspection**

No, Bob is not entitled to inspect the books and records of Kibble. At issue is whether a partner in a general partnership can assign management rights to another.

Partners in a general partnership have the ability to inspect the books and records of the partnership. This right enables the partners to carry out all of their partnership business and meet their fiduciary obligations to the partnership. However, the right to inspect the books and records is incident to the management rights possessed by a partner. As mentioned in Part 2 above, a general partner may assign her financial rights to another but cannot assign her management rights without the unanimous consent of the other partners.

Here, Bob will not be able to inspect the books and records because Mary's management rights cannot be assigned to Bob without Wendy's approval. Wendy clearly stated, "I don't want Bob involved with Kibble," meaning Mary did not have Wendy's consent to transfer her management rights and create a new partner. Because Bob is not a partner, he is not entitled to review the books and records. Further, Mary continued to be active in the business operations of Kibble, giving further evidence that management rights were not assigned.

#### **[4] Wendy Entitlement to Delivery Van**

No, Wendy is not entitled to use the delivery van on Sundays to take her nieces to their softball games. At issue is (1) whether the delivery van is partnership property and (2) the power of a partner in a general partnership to utilize partnership property for personal purposes.

##### *Property Status*

A partnership has entity status, meaning the partnership can own property in its own name. Whether property should be classified as partnership property is determined by two primary factors. First, any property bought with partnership funds is presumptively considered partnership property. Second, any property bought and held in the name of the partnership (or in a partner's name with sufficient indication of intent to hold it as partnership property, *e.g.*, Wendy on behalf of Kibble), will also be presumptively considered partnership property. In addition, the use to which property is typically put can also be indicative of partnership property.

Here, the delivery van was purchased with the proceeds of the checks from Mary and Angelo. Mary's check was specifically payable to "Kibble," and Angelo's check was also designated specifically to "Kibble." This means that Wendy used partnership funds to purchase the delivery van. Further, the delivery van was purchased in Kibble's name. Finally, the delivery van is typically used in connection with partnership business. For these reasons, the delivery van must be considered partnership property.

##### *Authorized Use of Partnership Property*

Partnership property can generally only be used by a partner in connection with partnership business. This means, partners are free to use partnership property so long as they do so in a way that furthers the aims of the partnership. By contrast, a partner may not use partnership property for personal purposes unless the partnership has approved such use. Unless a partnership agreement specifies otherwise, approval to use partnership property outside of the ordinary course of the partnership's business requires a unanimous vote in favor of the use.

Here, it appears there is no partnership agreement altering the general rule requiring unanimous agreement to authorize personal use of partnership property. As such, Wendy cannot use the delivery van for personal purposes without Mary's consent. Upon learning of Wendy's personal use of the delivery van, Mary demanded Wendy stop doing so, indicating Wendy does not have the approval of her partner. Thus,

Wendy is not entitled to use the delivery van on Sundays to take her nieces to their softball games.

### Question MEE 1 – February 2024 – Selected Answer 3

#### **Q1: What legal relationships have the parties established through their dealings?**

A partnership is created if there are 2 or more people that carry on as co-owners of a business for profit. Under partnership law, there is a presumption of a partnership being formed if there is a sharing of profits. However, there is not a partnership formed if there is an explanation for the sharing of profits (like paying off a debt or a loan). If there is not a clear indication of intent to enter a partnership (i.e. intent to carry on as co-owners of a business for profit) then courts consider a variety of factors to consider if a partnership is formed. For example, if the individual acts like an owner (and exercises control over the business or manages the business), or if the business calls itself a partnership, among other things.

#### Wendy

Here, Wendy was initially a sole proprietor of Kibble. Then, she began to share profits with Mary and Angelo, this creates the presumption of the formation of a partnership. Wendy's actions indicate that she is no longer the sole owner of Kibble, but rather a partner.

Therefore, Wendy is a partner of Kibble.

#### Mary

Here, Mary was receiving profits from Wendy. Here, Mary is also sharing in losses of Kibble "as long as Kibble remained in business". This behavior indicates that Mary is likely a partner of Kibble as she is sharing in both the profits and the losses with Wendy. Mary also began working at Kibble and business planning. These activities and involvement further indicate that Mary is a partner of Kibble.

Mary is a partner of Kibble.

#### Angelo

Here, Angelo was receiving profits from Kibble (which creates the presumption of a partnership being formed.) However, in the memo of the check, Angelo specifically wrote "loan to Kibble" and agreed to accept repayment of the loan "until the total loan amount was paid." Given the memo of the check and the terms of repayment of the loan, Angelo is likely not a partner. He is also not actively involved in the business.

therefore, Angelo is a creditor of Kibble.

#### **Q2: Is Bob entitled to Mary's share of the monthly profits of Kibble?**

Under partnership law, a partner's ownership interest in the business is called a partnership interest. This is comprised of two parts: a financial interest and a management interest. A partner may unilaterally assign their financial interests of their partnership interest. The recipient of a partner's financial interest is then entitled to the profits of the partnership (like the partner would ordinarily be entitled to.)

Here, as established above, Mary is a partner for Kibble. Mary wrote a letter to Bob stating she was assigning to him her interest in Kibble effective immediately. This letter was an effective assignment of Mary's financial interest to Bob. Bob has a legally enforceable right in the monthly profits of Kibble because of this valid assignment.

Therefore, Bob is entitled to the monthly profits of Kibble since there has been a valid assignment.

**Q3: Is Bob entitled to inspect the books and records of Kibble?**

Under partnership law, generally only a partner is entitled to inspect the books and records of the partnership. Someone becomes a partner of a partnership typically by unanimous consent of all the existing partners (unless a different standard is indicated in the partnership agreement). The transfer of a partnership interest to a recipient does not automatically make the recipient a partner.

Here, Bob was the recipient of the partnership interest of Mary (as described above) but this did not automatically make him a partner at Kibble. Although Mary has consented to Bob being a partner (arguably she has consented by transferring her interest to him as a gift), Wendy has not consented to Bob being a partner. Wendy has expressly stated to Mary that she does not want "Bob involved with Kibble." Since there is no unanimous consent between the existing partners to make Bob a partner, Bob is not a partner. There is nothing in the facts to suggest that a different threshold of approval (other than unanimous consent) ought to be applied to the given facts.

Therefore since Bob is not a partner of Kibble, he is not entitled to inspect the books and records of Kibble.

**Q4: Is Wendy entitled to use the delivery van on Sundays to take her nieces to their softball games?**

Under partnership law, a partnership is a distinct separate legal entity that can hold property on its own. A partner has no personal rights in the property that is held by a partnership, because the property belongs to the partnership. A partner may only use partnership property in the ordinary course of business of the partnership. Property is presumptively partnership property if it is titled under the partnership's name. Further evidence of property belonging to a partnership is the type of funds that were used to purchase the property.

Here, partnership funds were used to purchase the delivery van (proceeds from the checks from Marry and Angelo). Additionally, the delivery van purchase was made "in Kibble's name" this evidence indicates that the delivery van was indeed partnership property, meaning it belonged to Kibble.

As established above, Wendy is a partner of Kibble, so she has no rights to use partnership property (like the delivery van) for her own personal use. Using the delivery van on Sundays does not constitute an activity that is within the ordinary course of business for the partnership. Kibble is a business that sells dog food, toys, and grooming products-- softball games do not fall within the context of an ordinary course of business activity for Kibble.

Therefore, Wendy was not entitled to use the delivery van on Sundays to take her neices to softball games.