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Agency & Partnership  
Final Exam  
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Law School

General instructions. This is a closed book exam. Do not use any materials other than the exam, bluebook, and pen. Do not take the exam or bluebook out of the room. Do not speak with any person other than the faculty member who is administering this exam until you have turned in your exam.

You have a total of two hours to complete the exam. Answer all questions. Recommended times are indicated.

I. Short Answers (recommended time: one and one-half hour)

Instructions. Answer each question in this part with a coherent literate response in your blue book. Each question in this part can be answered adequately with a response that is no longer than one paragraph.

1. Big Land Inc., a corporation, makes large investments in real estate across the country. Big Land Inc. usually tries to conceal its interest in purchasing land, because sellers who learn that Big Land was interested, often inflate the prices of land. Consequently, Big Land often hires local lawyers to purchase land in their own names in behalf of the corporation.

Big Land wanted to purchase 400 acres of land in Lamar, Mississippi, for resale for commercial development. The corporation sent Vick Peoples, Vice President for Sales, to Lamar to arrange for the purchases. The corporation's charter provides: "The President and Vice Presidents for Sales are authorized to buy and sell land in behalf of the corporation, to enter into contracts for the purchase and sale of land in behalf of the corporation, and to perform all other lawful acts incident to the acquisition or disposition of legal interests in real property."

Mississippi law provides:

An action shall not be brought whereby to charge a defendant or other party. . . .

(b) upon any contract for the sale of lands. . . . unless. . . the promise or agreement upon which such action may be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith or signed by some person by him or her thereunto lawfully authorized in writing.

Miss. Code. Ann. S 15-3-1.

Vick retains an attorney in Lamar, named Perry Mason, and after reviewing Vick's credentials and authority, Mason agrees to

purchase land in his own name in behalf of the corporation.

Mason subsequently makes arrangements to purchase the real estate from the owners and enters into written contracts (in his own name) with the sellers for the purchase of 400 acres. But when he presents deeds at the closing that disclose that the Big Land Inc. is purchaser, the sellers refuse to transfer title. The sellers demand an extra \$10,000 to sell to Big Land Inc.

Big Land Inc. has come to you for legal advice. Please advise.

2. Anton and Binky decided to start a delivery business. For ten dollars they would deliver a package anywhere in the town of Lucius. Anton contributed his old car to the business (valued at \$500), and Binky contributed \$200 in cash for gas, boxes, ads, and other start up costs. There was no specific agreement about how the business would be run, but Anton and Binky divided the income evenly.

For three months, the business generated income, and there were no losses. But then the car's transmission broke, and it was going to cost \$600 to repair the car.

Anton wanted the partnership to fix the car but Binky thought that it was not worth the investment. Anton and Binky could not agree about what to do and decided to abandon the business. But they could not agree on how to divide up the partnership assets.

The partnership property includes the car and \$200 in cash. The partnership owes \$100 to a local gas station for fuel.

Anton wants his car returned in good working order. And Binky claims compensation for extra time he put making deliveries during the last month of business.

Anton and Binky have come to your office for legal advice. After you explain that you cannot represent both of them because of conflict of interest, Anton retains you. Please advise Anton on who pays whom what, and why.

3. A New York law firm represents one hundred clients who claim they were injured by use of an ear-stretching product manufactured by Ear-So-Long, Inc., a Mississippi corporation. The product was sold in quantity to New York purchasers through advertisements run on late-night television.

After investigating the claims, the firm concludes that they are meritorious, but it decides to litigate the claims in Mississippi.

Without consulting its clients, the firm retains Dan Doolittle, a Mississippi lawyer, as co-counsel in the case. The New York firm selected Doolittle at random from a legal directory. Doolittle is fully qualified to practice before all courts in Mississippi, but Doolittle has had several complaints filed against him by former clients, who alleged that he was inattentive to their cases and refused to return phone calls.

The complaints did not result in any sanction against the lawyer. Doolittle has also been joined as defendant in two actions alleging negligence in connection with his professional responsibilities. Both cases were settled.

Doolittle filed a class action in Mississippi state court in behalf of the one hundred clients, and he arranged for service of process by certified mail.

Unfortunately, Mississippi does not have a rule authorizing class actions, and Mississippi does not allow certified mail service of process against defendants within the state.

By the time the errors have been discovered, the limitations periods have expired. The clients (claiming losses of between fifty and one hundred million dollars) have commenced civil actions against the New York firm.

The New York firm has retained you. Please explain its potential liability for the negligence of Doolittle.

4. In 1987 Doctor Holiday, a pediatrician, decided to open a pizza restaurant in River City. River City is a city with a population of about 200,000. It has over one dozen pizza restaurants, but none of them are very good.

Holiday hired Samuel Cook as pizza cook, and Cook worked for Holiday for three years.

While working for Holiday, Cook invented a new pizza recipe, which quickly became the most popular item on the menu. As a result, the restaurant's pizza was rated "Best in the City" two years in a row by a local magazine.

Some of the pizza's ingredients were toppings (such as chicken livers) that were apparent from a visual observation of the pizza. But the most important part of the pizza recipe was the sauce, which combined three unusual flavoring agents -- sorghum, basil leaves, and a small quantity of vanilla extract.

Because of the great popularity of the pizza, Holiday's restaurant was a great success, and he made an profit of over \$100,000 while Cook cooked.

As the business became more successful, Holiday decided to enter a written employment contract with Cook. Under the terms of the contract, executed January 2, 1990, Holiday agreed to hire Cook for one year, and Cook agreed to work for Holiday for one year. Cook further agreed, in the event he left the employment of Holiday, not to compete with Holiday for a period of two years by selling pizza retail or wholesale within the city limits of River City. The contract did not mention the pizza recipe.

On May 15, 1990, Cook quit working for Holiday. Before leaving, and while still working for Holiday, Cook finalized plans for going into business. During his last month at work, Cook told all the customers that he would be opening his own pizza restaurant in June.

On June 1, 1990, Cook opened a pizza restaurant within the city limits of River City. Cook is using the pizza recipe he used at Holiday's restaurant. Cook's business is thriving, and

Holiday's restaurant has suffered a serious decline in business. Holiday has come to you for legal advice. What can be done?

5. Big-Mart Corp., a large retail chain store, regularly sells its old trucks. The trucks have the Big-Mart Logo displayed on all sides, and are painted in the distinctive pink, orange, and green colors of Big-Mart.

John Smasher purchased one of the used Big-Mart Corp. trucks from Big-Mart. According to the purchase agreement, Smasher was supposed to remove all Big-Mart logos from the truck prior to using it in public.

But Smasher did not remove the Big-Mart logos from the truck, and he drove it around town. Various Big-Mart corporate personnel, including the General Manager, President, and Vice President or Marketing, saw Smasher driving around town in the truck, displaying the Big-Mart logo. They said nothing to Smasher and did not report Smasher's conduct to any one else at the corporation.

Several weeks after purchasing the truck, Smasher negligently ran over and seriously injured a pedestrian, Patty Walker, in a cross walk in front of a drug store. Smasher ran into the drug store and asked the pharmacist to call an ambulance. The pharmacist had seen the accident, and assuming that Smasher was an employee of Big-Mart, he called an ambulance.

Smasher is insolvent. Patty Walker has sued Big-Mart for her personal injury. The pharmacist, after paying the ambulance, is also suing Big-Mart, seeking reimbursement for the costs of the ambulance service that he paid.

Big-Mart has moved for summary judgment in both actions. Rule on the motions and explain.

6. Mrs. Smart was a real estate agent who worked for College Town Realty, Inc. (a corporation). John Doe owned a house in College Town, which he wanted to sell. And John Doe went to the offices of College Town Realty, Inc., where he talked with Mrs. Smart, about listing his house.

Mrs. Smart explained the role of a real estate agent as being an agent for the seller. And she explained that the agent's compensation would be fixed at six percent of the selling price of the house. She explained that this form of compensation would give the agent extra incentive to sell at the best price, which was in the owner's interest, too.

Doe signed a written contract which gave College Town Realty, Inc., exclusive authority to advertise and show the house to prospective buyers for a period of three months. The contract provided for six percent compensation. Mrs. Smart signed the contract in behalf of College Town Realty, Inc. in the form "College Town Realty, Inc., by Mrs. Smart." Doe accepted Mrs. Smart's recommendation that they begin by asking \$35000 for the house.

As he left the office, Mrs. Smart shook his hand warmly and said, "I am so happy to be your real estate agent. Please do not hesitate to call if I can do anything to help."

During the first month it was on the market, Mrs. Smart and two other employees of College Town Realty showed Mr. Doe's house to about twenty prospective buyers. One person made an offer to buy the house while Mrs. Smart was showing it. He offered to buy it for \$25,000. Mrs. Smart communicated the offer to Mr. Doe, and Doe turned down the offer. On another occasion, during the first month it was on the market, a person offered to buy it for \$25,000, and Mrs. Smart communicated the offer to Mr. Doe. He turned down the offer but directed her to make a counter-offer to sell it for \$30,000. Mrs. Smart made the counter-offer, but the prospective purchaser did not accept.

During the second month on the market, Mrs. Smart received two more offers. The first was for \$24,000, and she did not bother to communicate it to Mr. Doe. The second was for \$25,000 and, without communicating it to Doe, she told the prospective buyer that Doe had previously turned down two \$25,000 offers but would be willing to sell it for \$30,000. The buyer declined to make a higher offer.

During the third month, there were no offers made on the house, and Doe decided not to renew his listing agreement with the College Town Realty, Inc.

A year later Doe finally sold the house for \$20,000 through another agency. Sometime after the sale he learned that Mrs. Smart had turned down the two offers to sell the house for \$25,000 and \$24,000.

He has come to you for legal advice. Please advise.

## Part II. Analytic Essay (one-half hour recommended)

Instructions. Write a coherent literate essay in the Blue Book in response to following problem.

Mr. Clean was an associate at a large law firm; he was an employee of the partnership, not a partner. He spent most of his time working on a large class-action tort case, in which a client, Roto-Chopper Corporation, was a defendant. Mr. Clean travelled all over the country taking depositions of plaintiffs, medical experts, and other plaintiff witnesses.

Mr. Clean usually travelled by air, and he made travel arrangements through his secretary, who made them through a local travel agent, Travel House, Inc. Mr. Clean instructed his secretary to make reservations on Northeastern Airlines, whenever possible. And his secretary instructed the travel agent to make reservations on Northeastern Airlines, whenever possible.

Mr. Clean made the reservations in his own name and charged them on his personal credit card. But he was immediately reimbursed by the firm for the cost of work-related travel, and the firm in turn charged Roto-Chopper for the travel expenses.

Although tickets were sometimes less expensive on other airlines, Mr. Clean preferred to fly on Northeastern, because Northeastern gave him "frequent flier credit." For every one thousand miles of travel on Northeastern that Mr. Clean paid for, Northeastern gave him credit worth 200 miles free travel. Mr. Clean was able to accumulate such credit.

At the end of a year, he had accumulated frequent flier credit towards twenty-six thousand free miles of travel on Northeastern Airlines. All but one thousand of the free miles were accumulated from air travel that Clean had undertaken in connection with his representation of Roto-Chopper.

Moreover, a review of the costs of travel reveal that, if Mr. Clean had regularly taken the least expensive available airfare, rather than taking Northeastern, whenever available, the travel expenses that he submitted to the firm, and that the firm submitted to Roto-Chopper, would have been \$7000 lower.

Partners at the firm were not aware of all the details of Mr. Clean's travel arrangements, but several partners knew that the practice of using one airline in order to accumulate frequent flier credit was widespread. In fact, some partners engaged in conduct similar to Mr. Clean's.

Has Mr. Clean done anything wrong? Does he have any potential liability to anyone for anything? What about the partnership? What about the partners?