

Memo on Business Associations Fall 2021 Writing Assignment

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1. What arguments can the customer make to support his claim to acquire the vase for the agreed \$500?

Dee agrees to sell the vase to the customer for \$500 (rather than \$5000) and Bob's mother wants to refund the money and not deliver the vase. The question here relates to Dee's authority. She was hired to work for Ariboca Designs, and was working out of Bob's mother's premises and occasionally helping out in the shop. The question does not specify what this "helping out" involved, but it does seem that Bob's mother may have left Dee on her own in the shop (there is no mention of any other employee).

The facts suggest that Dee may be an agent of Bob's mother with respect to this helping out in the shop (mutual agreement that the agent acts on behalf of the principal and subject to the principal's control). It is not clear what, if any, instructions Bob's mother gave to Dee as to what she might have authority to do, or whether she imposed any limits on Dee's authority. Nor is it clear how Dee came to make a mistake about the price of the vase (for example, was the label unclear or damaged).

The customer will want to argue that Dee, as a salesperson, had apparent authority to make the sale (*Three-Seventy Leasing v Ampex*). Dee was in the store, and agreed to make the sale. There is nothing about the description of the facts to suggest anything that might put the customer on notice that Dee might not have authority to make the sale.

The circumstances here similar to the facts in *Hoddeson v Koos*. In that case the person who appeared to be a salesperson was an impostor, rather than an agent who may have been acting outside the scope of her actual authority, and the court's decision speaks to the doctrine of agency by estoppel, rather than apparent authority. Here it seems that the better approach is to focus on apparent authority (Dee does seem to be an agent), and on the idea that if Bob's mother wants to make it clear to customers that Dee does not have authority to make sales she should find a way to either prevent Dee from making sales or alert customers to this fact. Her failure to do so means that, as far as the customer is concerned, she is bound to deliver the vase for the \$500.

I don't think it makes sense to discuss implied actual authority here. The customer is just as protected by apparent authority as by implied actual authority, and there do not seem to be any facts that would suggest a stronger basis for an implied actual authority argument. That might be the situation where the principal made statements to the agent about the agent's authority that would expand the authority beyond what the customer would reasonably understand Dee's authority to be from the circumstances.

I also do not think you need to discuss inherent agency power here (*Watteau v Fenwick*) as Dee seems to appear to the customer to be a salesperson.

2. Does Bob's mother have the right to fire Dee?

It is not clear from the facts described whether Bob's mother is purporting to fire Dee with respect to her role in the shop or her employment by Ariboca Designs. She clearly has the right to terminate Dee's work in her own store, as there is no indication that anyone else has a role in the management of this business.

Whether or not she would be able to fire Dee as an employee of Ariboca Designs would depend on her role with respect to that business.

Ariboca Designs seems to be a partnership between Ari, Bob and Cara and perhaps also Bob's mother. A partnership exists where two or more people are carrying on business as co-owners together (RUPA §202). The facts given do not state that Ari, Bob and Cara have agreed to share profits, which is commonly the way to establish co-ownership, although we have seen in the cases in the book that profit sharing does not necessarily mean there is a partnership (e.g. *Fenwick v Unemployment Compensation Commission*, *Martin v Peyton*). Nor do the facts suggest Bob's mother is sharing in profits. However, all four do seem to be working together in this business in a way that looks something like a partnership venture. However, you do not have enough facts to be able to say for sure whether it is a 3 person or a 4 person partnership. But whether or not Bob's mother is a partner it does not seem likely that she would be able to fire Dee as an employee of the partnership on her own.

In a partnership under RUPA default rules ordinary matters are decided by majority and extraordinary matters, admission of new partners, and changes to the partnership agreement are decided by unanimity (RUPA §401). In this partnership hiring and firing of employees does not seem to be an ordinary matter (Dee is the only employee we know about), thus would seem to require unanimity. But note that even if a majority were required to fire Dee then Bob's mother would not be able to do this— at least three of the partners would have to agree. If Bob's mother is not a partner she has no decision-making power with respect to the partnership business. There is no indication the partners have agreed to give authority over Dee's employment to Bob's mother.

3. What legal issues do you see arising out of Cara's decision to work for the fashion designer and her behavior after she makes that decision?

The fashion designer comes to Cara because of her work using the jewelry that is the core of the partnership business, and Cara is to share contacts in Costa Rica with the fashion designer. Cara's work for Ariboca has involved working with the Costa Rican jewelers, so this opportunity grows out of the partnership's business. Whether or not the business is a partnership or a joint venture the opportunity seems to be one that really belongs to the business and which Cara should not take for herself. Instead she should offer the opportunity to her partners. (RUPA §404, *Meinhard v Salmon*). By taking a partnership opportunity (the opportunity to work with the fashion designer) without disclosing it to/offering it to her partners, Cara is in breach of her fiduciary duty of loyalty to the partnership and to her partners. Cara's solicitation of the jewelry suppliers to work with the fashion designer also may be in breach of duty (cf. *Town and Country v Newbery* though here it is suppliers rather than customers). This would allow them to ask the court for an order of judicial dissociation under RUPA §601 (wrongful conduct, breach of duty). But, as Cara has indicated her desire to dissociate herself this is not necessary.

Under RUPA a partner can dissociate at any time, and damages for wrongful dissociation only apply where there is a breach of the partnership agreement (RUPA § 601), but amounts owing to the partnership from the dissociated partner must be set off against the purchase price (RUPA §701). A wrongfully dissociating partner may also have to wait until the expiration of the term or completion of the undertaking before she receives the buy-out price, but Cara does not seem to

be dissociating wrongfully as there does not seem to be any agreement as to a term for the partnership.

4. What other (Business Associations-related) legal issues do you see in these facts?

The main issues I see here relate to planning. This is an informal partnership, a general partnership, and with no sign of a partnership agreement. If the partners want a partnership form they should file to become a limited liability partnership (entities other than llps are beyond the scope of this question). The partners should think about issues such as the term of the partnership, rights to profits and to participate in management, authority of the partners, duties of the partners (whether or not to contract around the duties as they all seem to be involved in independent business activity as well as the partnership business) and how to deal with buyout of any dissociating partner.

The Question:

Ari, Bob, and Cara are all students at Arcadian State University, majoring in Business, and they are all very focused on identifying and developing business opportunities.

Ari specializes in marketing and has a number of clients for whom he provides marketing advice and services. Bob's family is in the antiques and collectibles business and Bob follows in the family tradition and is developing a business which finds artefacts which are used in the design and decoration of restaurants and boutique hotels. Cara organizes fund-raising events for non-profit organizations.

Ari, Bob and Cara went to Costa Rica on vacation and were very impressed by some jewelry they saw there. They began to discuss with the manufacturers of the jewelry how they might arrange for supplies of the jewelry they could import into the US. They also bought a quantity of the jewelry to take back with them. After returning to Arcadia they developed a plan for marketing and selling the jewelry, in which all three would be involved. Bob's mother agreed to lend them some money to get the new venture off the ground. Cara persuaded one of her clients to feature the jewelry at one of her fund-raising events, and worked with the Costa Rican manufacturers to meet the client's wishes. Ari began work on marketing the jewelry to US-based customers. Over time, Cara became the main contact point with the Costa Rican jewelry makers.

They decide to call the jewelry line Ariboca Designs, and it soon becomes clear that they will be able to sell a lot of the jewelry, so they order more supplies. They decide that they will need to hire someone to deal with day-to-day administration. Ari, Bob, Cara, and Bob's mother all interview a number of applicants for the position. They agree to hire Dee. Bob's mother agrees to let Dee work out of her business premises (they all think it will be useful to have someone who is able to make sure Dee is working effectively), and also decides to set aside some space for a display of Ariboca jewelry there. From time to time Dee helps out in the store, although doing so is not within her job description.

One day a customer comes into the store while Bob's mother is out, and asks Dee for help identifying the price of an antique vase. Dee tells the customer the price of the vase is \$500, whereas in fact the price is \$5000. The customer pays the \$500 and Dee agrees to ship the vase to

the customer. When Bob's mother returns she is horrified, and tells Dee she is fired. She calls the customer and says she is not going to deliver the vase and will refund the \$500. The customer insists the vase is now his.

A fashion designer contacts Cara and says she has been impressed with the way Cara has used the jewelry in some of her recent fund-raisers. The designer offers Cara a job at a very generous salary on the basis that Cara will share her contacts in Costa Rica with the designer. Cara approaches her contacts in Costa Rica and tells them that an important fashion designer is impressed with their work and that working together with the designer will be huge for all of them. They agree. Shortly afterwards Cara tells Ari and Bob that she is moving on, and that she wants them to pay her the value of her share in the business.

Answer the following questions, explaining your analysis:

1. What arguments can the customer make to support his claim to acquire the vase for the agreed \$500?
2. Does Bob's mother have the right to fire Dee?
3. What legal issues do you see arising out of Cara's decision to work for the fashion designer and her behavior after she makes that decision?
4. What other (Business Associations-related) legal issues do you see in these facts?