

# Law assignment essay sample



**ASSIGN  
BUSTER**

Part a) Legal position enabling expulsion of Annabel from the partnership.

Step 1:-

The problem at hand deals with Partnership law as governed by the Partnership Act 1895 in the absence of a written agreement. Principles of Common law and Equitable principles also apply. Partnership Act governs the partnership of 'Health Plus'. Sec. 30 of the Act, as it relates to misappropriation of partnership property. The application of Sec. 39 Partnership Act 1895 and the Fiduciary Duty breached. Supreme Courts position to dissolve the Partnership due to absence of an agreement. Step 2:-

The partnership of Health Plus is a verbal agreement. Hence it is governed by the Partnership Act 1895. Firstly it is evident that a Partnership exists as there is an intention to create and carry on a business with a view to profit. There is an element of Agency, where one partner acts on the behalf of the other. A sharing of profits, liabilities and joint ownership of partnership property establishes a clear existence of a partnership as per Sec 8 PA. Has there been a misappropriation of funds as was discussed in Mann v. Hulme (1961). Case deals with the receipt of money by an agent/partner and the scope of authority conferred. A partner in his role owes a fiduciary duty to his other partners, to act in good faith and in their best interests, Helmore v. Smith. Law v. Law and the Sec 39 PA, emphasizes the need to render true accounts and all other information to any other partner. A partner not governed by a written contract cannot be expelled by a majority vote (S. 35(1) PA ) Dissolution by court can be invoked as under S. 46(c) PA – in instances where the court is moved to infer that the carrying on of business will be affected by the actions of the guilty partner. A reconstitution of the

partnership can take place on the dissolution of the old partnership and a new constitution being put in place.

Step 3:-

Annabel is a partner of Health Plus for all intents and purposes of the business. Annabel is liable for the misappropriation of partnership property in the form of money ( *Everett v. Federal Commissioner of Taxation* (1980) ). There is evidence, as per the auditors, that funds were used for personal benefit in the form of payments. As there is no written agreement, Annabel is governed by the PA 1895, Common law principles and Equity. The partners of Health Plus can raise concerns that Annabel's actions can prejudice the carrying on of business and petition for relief under Sec. 46 (c) PA. A new firm can be then reconstituted with the new members with notice being issued as per Sec 47 (1) and 47 (2) PA. Step 4:-

Given that the Partnership is that of a verbal agreement, it sets no guidelines for the expulsion of a partner. Annabel can be expelled on a successful application as under Sec. 46(c) PA. Annabel will be liable to account for the Partnership property misappropriated by her, other than for that obtained by her in the position of a trustee. A reconstituted partnership must notify third parties of the dissolution and the new constitution along with the names of the partners. As Annabel has breached her fiduciary duties and has acted only in the interests of herself and given the lack of transparency as per the use of funds, leading to a drop in profits, an application under S. 46(c) PA would succeed. Part b) Adrian's authority to contract as a partner of Health Plus & liability of Health Plus to pay Quick Cure on the contract. Step 1:-

The problem at hand deals with the principles of Partnership law as governed by the Partnership Act of 1895. The dominant feature is the operation of the law of agency and if Adrian was authorised to so contract on behalf of Health Plus with Quick-Cure. Given that Adrian is a partner, is he then a partner as per the law and not a mere representative of Heath Plus. In what manifestation of authority did Adrian contract? , Apparent or actual authority. In prior dealings with Quick – Cure did the state of affairs as prevailed in the present problem form a normal course of dealing or was it not so. Having established that the pre-requisites for a binding contract were satisfied, is then Health Plus stopped from denying payment to Quick-Cure on the stated contract. Step 2:-

Section 7 (1) of PA 1895 – defines a partnership as a contractual relationship between two or more parties, in the pursuance of a business with a view to profit. *Smith v. Anderson* – Is authority for the description of the term Pursuance or ‘ Carrying-on’ of business. It implies a repetition or a continuation of acts or transactions, either in fact or in intention. The existence of a partnership can be deduced in terms of Common Law as follows: – Firstly, an Intention to so carry on business in partnership. Secondly, the existence of a relationship of agency amongst partners. In a partnership all parties are able to act as agents. Thirdly, the sharing of profits and losses is a clear indication of the existence of a partnership. In terms of statutory rules; a clear indication is deduced by the joint ownership of property, sharing of gross returns and a receipt of the profits.

*Duke Group v. Pilmer* (1999) – is authority to state that it is in the manifestation of an agent-principal relationship, that business can occur as it

<https://assignbuster.com/law-assignment-essay-sample/>

relates to a partnership. *Goudberg v. Herniman Associates Pty Ltd* – States that there is no room for personal gain, what is required is a joint enterprise and not a personal business affair. This question deals in most, with the law, as it relates to, the creation of Agency. Agency is when one party, under authorization, acts on the behalf of the principal, to bind a third party to a contract, as entered between the third party and the principal. In a partnership, each partner is the agent of the rest of the partners as well as each partner is also the principal of the rest of the partners. Authority to act can be of two kinds;

1. Actual Authority – which maybe express and hence clear and in writing/definite terms or implied, which may relate to customary practices or as is necessary to carry out the instructions as stated. 2. Apparent Authority – This is where the agent causes the third party to believe he has the necessary authority by means of making a representation. This is then relied upon by the innocent party and a change in position of that party occurs. Principal could be liable for having held out the agent as having authority by means of words or actions. *Construction Engineering (Aust) Pty Ltd v. Hexyl Pty Ltd (1985)* – This is a case in which a company enters into a partnership agreement with Hexyl for the construction of home units. Construction Engineering did not know of this partnership agreement when it entered into a contract of construction with the said company. A conflict arose as to payment. Law permits recovery from other partners. HC Held: Hexyl was not a party to the contract. This was due to the application of two indicators.

1. Actual Authority – emphasizes fact that every partner is deemed an agent of the firm and the partners. 2. Ostensible Authority – In situations of no real

authority, actions of a partner is justified given the normal carrying out of business in a firm. Such actions are binding on the partners and firm, given that third party is not aware of the lack of authority. Construction engineering in the above case had no reason to infer the existence, or provided with information, as to the partnership with Hexyl. *Cox v Hickman* (1880) – Receiving a profit as creditors did not suffice as proof of a partnership. Each and every partner, unless otherwise provided as per a written agreement, has actual authority to act on behalf of the firm. Hence every partner incurs liability as principal for the actions of another partner (agent), carried out in day to day activities of the partnership business. In such a circumstance, the principal will be, by the application of agency by estoppels, prevented from denying the third party that relied on the representation, from the expected benefit of the contract.

Sec. 26 PA 1985 – states that liability as per contracts entered into, in the course of the partnership, makes jointly liable all partners for debts and liabilities as per the concluded contracts. *Mercantile Credit Co Ltd v. Garrod* (1962) – Case illustrates the need to have the transaction be of a kind carried out by the business. Here two people leased a garage. They were prohibited from selling cars. However this was breached. Plaintiff sued on the partnership and recovered damages. Court deduced that from the point of view of the plaintiff, the sale could be assumed as per the normal course of business. Mocotta J ruled – ‘ He was doing an act of a like kind to the business carried on by the persons trading in a garage’ *Goldberg v. Jenkins* (1889) – is authority to state that transaction must not arouse any inquiry or suspicion by the third party, as it should be done in the usual said manner.

Here a partner borrowed money in the firm's name at an interest rate of over 60% as against the usual 6-10% range. It was held that this was not the 'Usual Way' of the firm and the firm was not liable on the transaction. Further the third party must not doubt the agent's authority and must believe they are dealing with a partner. Step 3:-

As the above law proves, Adrian is a partner of Health- Plus for all Intents and Purposes. Hence his authority to enter into a contract with Quick-Cure is well established and binding on all other partners. Further the partners of the medical practice were aware of and hopeful of the receipt of the new drug and its intended use. In this light, it is evident that as a relationship already existed between Quick-Cure and Health Plus, that if Adrian adopted the transaction as ensued in the normal day to day practice between the two firms, then a binding contract is to be formed. In such an event Health Plus cannot deny the payment of the \$200, 000 value of the contract. They may argue that the need to await the scientific reports on the drug as an essential component of their practice. However if that was the previous practice as between the two entities, then a delay can be accommodated. If not, then Health Plus must pay on the binding contract. Financial advice of the firm is also an important aspect, and if it was considered as a pre-requisite in the decision making process of entering into a supply contract, it could allow Health Plus a grace period, if not so, they must once more pay on the concluded contract. Step 4:

In conclusion it is evident that there exists a business relationship between the two entities. As Adrian is a fully-fledged partner of Health Plus and given the course of conduct, he possesses sufficient authority to contract on behalf

of the practice with Quick-Cure. Adrian's actions as agent are binding on Health Plus and its partners, unless prior dealing prove, a waiting period, for the checking of Scientific reports and company financial status, Health Plus must satisfy the payments as due on the properly constituted contract with Quick-Care.