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1 October/ November 1999

1. 1 a) List the ~~essentials~~ of the partnership agreement.

1. each partner must make a contribution to the partnership (e.g. money, labour, etc)
2. the partnership business must be carried on for the joint benefit of the partners
3. the partnership must have the objective of making a profit

b) Explain how the ~~naturalia~~ of a partnership agreement differs from the ~~essentials~~ of a partnership agreement (10)

Naturalia:

1. partners can alter the *naturalia*
2. partners share in the profits and losses of a partnership
3. each partner has the power to represent the partnership in transactions falling within the scope of partnership business unless the partners agree to the contrary (mutual mandate)
4. partners will not receive compensation for their contributions: their compensation lies in profit sharing
5. partners hold the assets of a partnership as co-owners because a partnership is not a legal entity

- 1.2 Mary and Cindy are partners in the décor business, trading as "Stars". Mary is the is the manager of the business and has employed her mother on a part- time basis to work in their shop in peak periods Mary and Cindy have decided that the unanimous consent of the partners must be obtained at the formal meeting before a contract exceeding the value of R10 000 may be concluded on behalf of the partnership. Discuss whether Stars will be bound by the following contract concluded in the name of the partnership: Cindy purchased paintings to the value of R120 000 on behalf of the partnership from an art dealer for the decorating contract without her necessary consent. Mary's mother did not like the paintings and sent them back to the shocked art dealer.(5)

A partner who acts in terms of his or her mutual mandate can only bind the partnership to transactions which fall within the scope of the partnership business.

Each partner has the implied authority to perform all acts which are incidental to the proper conduct of the business.

Thus: third parties who wish to hold the partnership liable for a contract that was concluded by a partner have to prove that the specific contract fell within the scope of the partnership business. They do not need to prove that the partner had the necessary authority to conclude the agreement on behalf of the partnership.

In this case the parties agreed that no partner had the authority to conclude contracts of more than R10 000.

However, this restriction on the authority of the partners will have no consequence if the transaction fell within the scope of the partnership business.

If it does, the partnership is bound by the contract even though Cindy concluded the contract without the necessary authority. It is important that the supplier acted in good faith. If he/she knew that Cindy did not have the authority to conclude the agreement, the agreement will be void.

2.1 Section 64 of the Close Corporations Act makes provision for special liability where the corporate form is abused. Discuss.(5) (Think of piercing the corporate veil in companies)

Hmm, I think the question is wrong: section 64 deals with reckless or fraudulent trading, where 65 deals with abuse of the corporate juristic personality... So here goes with Section 65:

Section 65 grants the court certain powers in the case of the abuse of the corporation's separate juristic personality.

This section gives the court the power to pierce the corporate veil.

The court may find a corporation not to be a juristic person if it finds that the incorporation of the corporation or any act by or on behalf of it constitutes a gross abuse of its juristic personality as a separate entity.

The members of the corporation can be held personally liable for any debts the corporation may have.

- 2.2 Towers CC is a construction corporation. Johnnie a member of Towers CC attends an auction and buys a mixer at a bargain price. He now wants to sell the mixer to Towers CC at a profit. One of the other members, Peter feels unhappy about this. Advise Johnnie.(10)

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