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| LAW ASSIGNMENT |

Answer to Question A:

Introduction

Shaun and Craig re-planned their business model from online lessons to face-to-face class lessons and thereby shifting their place of business from Shaun’s mother’s garage to a rented or leased music studio. And thus, Shaun got a music studio on lease in a trendy neighborhood in the city. The formal agreement was entered and signed by the Shaun alone. And when Craig came across the music studio, he acknowledged and liked the work space of music studio and without having a discussion on the lease or rent value, he brought his musical instruments and equipment to the studio the next day. The business slowly picked its momentum and fees from students were deposited into their joint bank account. And thus the question lies whether there exist a partnership between Shaun and Craig.

Rule

The Common-laws rules that govern the test for determining the existence of partnership are, intention of the parties, agency relationship between the parties and the sharing of losses and profits. Further, the statutory rules which helps to recognize the partnership states that partnership is a relationship which various persons share between one another for carrying on a business with a view and intention to earn profit. Further Section 2 of the Partnership Act also states to consider the following matters into consideration for determining the existence of partnership, like, joint ownership of property, sharing of gross returns. A partnership can come into existence by a written agreement, verbal agreement or by conduct (Schroeder 1982)

Analysis

In the present scenario, Shaun and Craig carried on the business of music lessons with no written agreement but the conduct clearly hints that a partnership existed. This is generally referred to as partnership by estoppels. It is born when the words or actions of the partnership hints others that a partnership exists. It arises when a partner with or without the consent of other partner represent himself as a partner. And a partner by estoppels is estopped (prevented) from making a denial to be a partner at any later stage. Further, Shaun and Craig had the intention to start the business with a view to earn profit and this is the reason they start the business and get the business registered for their online venture which is indicative of their intention and further there must be an existence of fiduciary relationship between the two parties, i.e., common bank account and regular meetings between the two to establish the existence of relationship. One can have a view that there has been no specific agreement in writing to start the re-planned business with a formal evidence of any supporting document.

Conclusion

Though there is no specific agreement in writing in the second re-planned business model of face-to-face class lessons but the conduct and intention is clear enough between the two parties to carry on the business with a view of profit and share the profits and losses. Hence, it is concluded that there exists a partnership between the two parties, i.e., Shaun and Craig.

Answer to Question B:

Introduction

Once the partnership business started between the two parties, i.e., Shaun and Craig, there arose some hurdles and thrones that started to create friction between the two, like, Craig started to do extra lessons outside the studio at his home and kept the earnings to himself alone, despite the gradual growth in the business but it was not enough that Shaun and Craig could pay off their liabilities like rent and electricity of next month, and further a incident with one of the student that resulted in suit that slashed a demand of $ 12,000 on both the partners. All these summed up and made Craig to back off from the partnership business and he left the studio with all the musical instruments and equipments he bought along with himself. So, the issue at hand is can Craig leave the partnership business as he did (Partnership Act 1981)

Rule

A retiring partner continues to be liable for the debts incurred by the partnership before he retires. The residual partners and creditors may let off and discharge the liabilities of retiring partner by giving a written consent of from the conduct of the creditors. Further, the retiring partner shall serve a resignation notice on all creditors and other partners of the partnership firm which should be published in the government gazette within 14 days of his resignation. Sec 36(1) and Sec 36(2) of the act which aims at providing personal notice of dissolution to people with whom firm has dealings and with persons whom firm had no dealings can be notified by the official gazette. (Refer the case law of Brundell v. Alexander (1886) 12 VLR 908).

Analysis

In the given case, Craig has voluntarily decided to exit from the partnership without serving a notice of resignation in a government gazette within his 14 days of resignation. And thus until such communication is received people will continue to treat the old partners as the existing partners.

Conclusion: Hence, based on the above analysis, we can sum down that Craig cannot leave the partnership as he did in the given instance (Schroeder 1982)

Answer to Question C:

Introduction

Craig started to do extra lessons outside the studio at his home and kept the earnings to himself alone. Hence, the point of consideration is that, whether, he is entitled to the fees from extra classes to himself alone or its revenue should belong to the partnership business.

Rule

The Act has some provisions for duties owed by a partner to other partners. Sec 29 makes an obligation on a partner not to make private profits without consent of other partner. Any profit obtained by the partner has to be handed to the partnership, i.e., for the benefit of the partners jointly. And further Sec 30 avoids a partner to carry a competitive business without consent of the other. (Partnership Act 1981)

Analysis

In the given case, Craig has kept such earnings to himself thereby defying the Sec 29 and Sec 30 of the Act.

Conclusion: Thus, Craig is not entitled for the fees from extra lessons and it belongs to the partnership business and partners jointly.

Answer to Question D:

Introduction

The musical instruments and equipment worth $ 25,000 were brought by Craig to the studio at the initiation of business. The point at hand is whether it’s a partnership property or not.

Rule

The partnership property is one which is used for partnership purpose but that’s not the lone factor to decide on it because a partner may just provide an asset to the firm for use while the property remains with the individual partner. And so, it has to be specified particularly whether a property is to become a partnership property or not (Partnership Act 1981)

Analysis

In the given case, Craig had brought the assets with no specific instruction to make his musical equipments and instruments a partnership property.

Conclusion

Thus, based on the above assessment, it is clear that the music instruments and equipments are not partnership property (Partnership Act 1981)

Answer to Question E:

Introduction

Craig left the partnership in between without settling the liabilities incurred while he was a partner. So, point lies who has to pay the outstanding rent and electricity.

Rule

As per the relevant rules, liability of partners covers contracts, torts, bankruptcy and criminal wrongs. Thus, in case of contracts, there is a joint liability of the partner with other partners for debts and liabilities arising during the course they were partners (Queensland n.d)

Analysis

Thus, in the given case the rent and electricity which are which were contracts enters on an agency status makes the partners jointly liable.

Conclusion

Thus, it can be concluded that the partners, Shaun and Craig are jointly liable to pay such liabilities.

Answer to Question F:

Introduction

Ronnie, a student, suffered an injury in the normal course of the business and his lawyers sent letters to both Shaun and Craig with a suit of $ 12,000 as they didn’t have public liability insurance. The point of discussion is if Ronnie successfully sues the partners, who is liable to pay him.

Rule

In case of liability that arises out of tort which is a result of civil wrong as against the criminal wrong, the liability can be joint or several if it is committed in the ordinary course of business. If liability is several and decision of judgment is obtained against one partner, it is still possible to bring action against other to the satisfaction of the judgment. Other partner is held responsible for the wrong done by one if he has acted within his apparent and actual authority. (Case law of Walker v. European Electronics Pty Ltd (in liquidation) (1990) 23 NSWLR 1)

Analysis

The unfortunate incident that happened with Ronnie was in the ordinary course of business and both are jointly responsible for the same as letters have been sent to both partners separately.

Conclusion

If Ronnie is successful on suing the partners, both are jointly liable to pay to him for his compensation.