

W/CNS

Business Associations – Quiz #3

S.S.N.: _____

Answer the following question based on the general legal principles you have learned. There is no need to cite to particular statutes (or to the Uniform Laws on which some of those statutes are based), though you may do so if you choose to.

You may not use your books, notes or any other materials to assist you. You will have 30 minutes.

Laura Welwell, a young law professor, has a bright idea: she thinks she could make money by starting her own for-profit law school. She approaches Michelle Quoin, a lawyer she knows, about joining the effort.

Ms. Quoin says, "What's in it for me?"

Prof. Welwell says, "I'll pay you \$1,500 per week, and if we make money, I'll pay you more."

"That's a little vague for me," says Ms. Quoin, "I'd like a guaranteed share of the profits."

Welwell responds, "I'd consider that, but I can't say for sure yet. Are you in it or not?"

"OK," says Ms. Quoin.

As they are getting organized and applications are rolling in, Prof. Welwell decides the school will need more instructors. So she and Ms. Quoin meet with Josephine Deviline, another lawyer, whom Ms. Quoin has worked with in the past. Professor (now "Dean") Welwell does all the talking at the meeting. She describes her vision for the school and the particular duties she envisions for Ms. Deviline. She offers Ms. Deviline \$1,000 per week; Ms. Deviline asks for \$1,500; Welwell counters with a "final offer" of \$1,200 and says, "Are you in or not? Michelle is in this with me, and we'd like to have you on board as well."

Ms. Deviline says, "Well, if that's the case, count me in."

Ms. Deviline closes out most of her law practice. With little time to try to sell the practice, she is happy just to find other attorneys willing to take on the many cases she's been handling so that she can concentrate full time on getting ready to teach and to perform the administrative tasks that will be part of her job at the school.

The day before the school is set to open, Dean Welwell disappears and so does all of the tuition money that has been paid in. With no money to operate, the school crashes. The students, the faculty, and trade creditors are extremely unhappy with the situation, and they descend on "Assistant Dean" Quoin, who, it turns out, is married to a wealthy and devoted venture capitalist. One of the students, Studbar Assock; Josephine Deviline; and West Publishing Company, from whom Ms. Quoin has ordered and received thousands of dollars of books for her and other professors' classes, all decide to sue Michelle Quoin after they discover that the school was never incorporated (or organized as any other business association that requires a formal filing).

Based only on the facts you've been given, discuss the likely liability issues that will arise in litigating the claims against Quoin by (a) Assock, (b) Deviline, and (c) West Publishing?

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The issues that will likely arise in litigating liability in the claims against Quoin include:

Assock v. Quoin:

- **Whether Quoin is a partner of Welwell** – Since there is no evidence of any direct dealing by Assock with Quoin, Quoin's liability if any will depend on the nature of Quoin's ties to Welwell. If Quoin is merely an employee (or other agent) of Welwell, Quoin will not be responsible for Welwell's acts. However, if Quoin is a partner of Welwell's, she might bear some responsibility for Welwell's contractual obligations or even her torts.
- **Whether, if Quoin is a partner in the school, Welwell's acceptance of students and their tuition bound Quoin as well** – Was Welwell's action authorized? If not authorized, could it nevertheless be binding?
- **Whether, if Quoin is a partner in the school, Welwell's tortious behavior in apparently stealing the tuition money made Quoin vicariously liable.**

Deviline v. Quoin:

- **Whether Quoin is a partner of Welwell.** (see above)
- **Whether Quoin is a partner of Welwell by estoppel** – In the meeting with Deviline and Quoin, did Welwell's comments create a reasonable belief in Deviline that Quoin was a partner, and did Deviline rely to her detriment on Quoin's partnership status?

West Publishing Company v. Quoin:

- **Whether Quoin is a partner of Welwell.** (see above)
- **Whether Quoin is personally liable for the books she ordered** – If she was acting as the agent of a disclosed principal, she would not be personally liable.
- **Whether Quoin was acting as an agent for an undisclosed principal** – The school, whatever its name, was not a legal entity (on the facts given).
- **Whether West had a duty to inquire as to the school's legal status before extending credit.**