

AGENCY/PARTNERSHIP - 10 OF 29 EXAMS - overall issue freq: 1.8%

AGENT-PART: Accounting - O: 1 - T:7.14% - E:0.13% - F:0.00% - Prio: LOW

An accounting is the making up and rendition of an account, either voluntarily or by order of a court. Under New York Partnership Law, a partner has the right to a formal accounting if: (1) the partner is wrongfully excluded from partnership business or possession of partnership property by co-partners; (2) the right to a formal account exists pursuant to the terms of any agreement; (3) a co-partner has derived any benefit from any transaction connected with the formation, conduct, or liquidation of the partnership, or from any use by him or her of partnership property without the partner's consent; or (4) an accounting is just and reasonable under the circumstances. An accounting is generally a statement of receipts and disbursements which shows all detailed financial transactions of business including a listing of original contributions and current assets and liabilities of the partnership. A partner who acts outside the scope of the partnership, or converts to his own use partnership property cannot be sued by other partners for damages – the only available remedies are the dissolution of the partnership and an accounting. The existence of the partnership must be proven in order for a court to permit an accounting. Partnership business may be continued during the pendency of an accounting action. The statute of limitations for an action for dissolution of a partnership, and for an accounting, is ten years.

[Exam: July 2008](#): Issue Link

AGENT-PART: Agency - O: 3 - T:21.43% - E:0.39% - F:33.33% - Prio: LOW

An agent is a person who is authorized to act for, or represent another person referred to as the principal. A principal-agent relationship can be established when three elements are present. (1) Assent, meaning there is an informal agreement between the principal and the agent; (2) Benefit, meaning the agent's conduct must be for the principal's benefit; and (3) Control, meaning the the principal must have the right to control the agent by having the power to supervise the manner of the agent's performance. An agent is a fiduciary with respect to matters within the scope of his agency, and a breach of his fiduciary duties will terminate the authority given. A principal will be vicariously liable for contracts entered into by the agent if: (1) a principal-agent relationship exists; and (2) the principal authorized the agent to enter into the contract. An agent can have express, implied, apparent or necessary authority to act on behalf of the principal. Express authority is authority that has been explicitly given - it is a clear expression of authority to act in a certain way on behalf of the principal. Implied authority is authority which the agent reasonably believes the principal has given, because of necessity, custom, or prior dealings between the principal and the agent. Apparent authority is created by written or spoken words or any other conduct of the principal that "cloaks" the agent with the appearance of authority and a third party reasonably relies on the appearance of authority. In New York, partners, as agents, may bind a partnership and the partnership may be liable for the acts of its agents. In addition, a director or officer of a corporation may bind a corporation where the officer acts with actual or apparent authority.

[Exam: July 2009](#): Issue Link

[Exam: February 2003](#): Issue Link

[Exam: July 2001](#): Issue Link

AGENT-PART: Agent Liability - O: 1 - T:7.14% - E:0.13% - F:0.00% - Prio: LOW

An agent is a fiduciary with respect to matters within the scope of his agency, and a breach of his fiduciary duties will terminate the authority given. Depending on the nature of the agency's subject matter, the agency agreement itself, and custom, an agent must obey all reasonable directions by the principal, and may be liable to the principal for loss suffered through liability to third parties for acts done contrary to the agent's authority. An agent who exceeds limitations imposed by the principal will be liable to the principal for breach of duty to obey instructions. Any attempt to relieve an agent of liability for their failure to perform fiduciary duties is against public policy and is void. Generally, when an agent acts on behalf of a disclosed principal, the agent will not be