

## A.M. Essay 1 - Example #1

### 1)

1. CCI is a corporation. Alan and Bob each act as an officer, director and shareholder of the corporation. As an officer and director of the corporation, Alan has a duty to act in good faith and in the corporation's best interests. Shareholders are entrusted with the responsibility of electing and terminating directors. Shareholders can vote to remove a director at any meeting. Here, Alan terminated Bob's employment as a secretary/treasurer, rather than a director. As president of the corporation, he has a duty to act in the best interest of the company, and that includes terminating employees who are harming the company. Therefore, Alan acted within his authority as president to terminate Bob's employment as treasurer/secretary.

2. Directors of a corporation have a duty to manage. Their day to day decisions are usually protected by the business judgment rule, so long as the director acted in good faith and in the corporation's best interests. The directors are also fiduciaries of the corporation with a duty of care and a duty of loyalty. The duty of care requires the director to act prudently regarding the business of the corporation, just as he would in managing his own affairs. The duty of loyalty forbids the director from obtaining an unfair benefit to the corporation's detriment. This duty includes refraining from interested director transactions and usurping a corporate opportunity. Here, Bob used CCI funds to earn a legal education. He benefited himself by taking money away from the corporation. This is in direct violation of Bob's duty of loyalty to the corporation.

3. Directors act as fiduciaries of the corporation. They are bound by both the duty of care and the duty of loyalty. The duty of care requires the director to act prudently regarding the business of the corporation, just as he would in managing his own affairs. The duty of loyalty forbids the director from obtaining an unfair benefit to the corporation's detriment. This duty includes refraining from interested director transactions and usurping a corporate opportunity. He holds no such duties as a shareholder. Had Bob maintained his directorial position, he would be precluded from competing with CCI because of his duty of loyalty. However, he has resigned his position, and no longer has a duty to manage the corporation nor has the duty to act with care and loyalty. There is nothing to indicate that Bob had signed a covenant not to compete with CCI upon his resignation or termination nor is there any indication that he is using CCI trade secrets

in the operation of his business. Without his managing and fiduciary duties to bind him, Bob has breached no duty by forming a new corporation and competing with CCI.

4. As a shareholder of CCI, it is possible for Bob to try and dissolve the corporation. A dissolution of a corporation is a fundamental corporate change. For ordinary business matters, a quorum of shares must be present (i.e. a majority of shares), and a majority of the quorum must approve the business matter. A fundamental corporate change, such as a merger, dissolution, sale of substantially all of the assets, etc. requires a 2/3 vote of the shares. There are only two shareholders of CCI, and they each own 50% of the shares, which makes a 2/3 vote nearly impossible to achieve. In a situation where there are only two, equal shareholders, one shareholder may ask the court to order dissolution. Here, Bob would have to ask the court to order dissolution and present to the court why it should do so.

## A.M. Essay 1 - Example #2

1)

### **PART 1**

#### **Alan most likely had the authority to terminate Bob.**

The board of directors of a corporation is vested with the management of that corporation. However, daily management is typically delegated to officers of the corporation. The corporation's Articles of Incorporation can specify who has the authority to make employment termination decisions. Typically, an officer or employee can be terminated for any reason. The only remedy the officer or employee has is contractual.

Notably, Bob was only terminated in his employment capacity, not his capacity as a member of the Board of Directors or as an officer of the corporation. Therefore, whoever the Articles of the Incorporation or bylaws of the corporation vested with the authority to make personnel decisions, could have terminated Bob's employment in this capacity. Since the facts are silent as to these provisions, the officers of the corporation would most likely have the authority to remove an employee. While both Bob and Alan were officers of the corporation, as President, Alan would most likely have paramount authority with regard to personnel decisions. Thus, Alan most likely had the authority to remove Bob as an employee.

### **PART 2**

#### **Bob breached the duty of loyalty he owed to CCI.**

Members of the board of directors owe a duty to the corporation to manage the corporation. However, the business judgment rule presumes that decisions are made in the best interest of the corporation. Therefore, directors are not liable for innocent mistakes in business judgment. Directors also owe a duty of care and a duty of loyalty to the corporation. First, the duty of care requires that a director exercise the same level of care with regard to corporation as one would with his/her own business affairs. Second, the duty of loyalty requires that the director not receive any benefit to the detriment of the corporation.

Bob's decision could be considered a management decision that would be entitled to the insulation of liability that the business judgment rule provides. However, the business judgment rule will not excuse liability if there has been a breach of a fiduciary duty. First, Bob most likely

did not breach their duty of care he owes to the corporation. Since the duty of care only requires that the director act with the same level of care as he or she would in handling personal business affairs, Bob probably acted reasonably. Many sole proprietors would fund personal obligations from business funds if they were to eventually advance business interest. Thus, Bob performed with the appropriate duty of care.

However, Bob most likely breached the duty of loyalty he owes to the corporation. A director cannot receive a benefit to the detriment of the corporation. Bob received an expense-free legal education that was paid out of corporate funds. Thus, Bob received a benefit that was simultaneously a detriment to the corporation. The fact that the corporation could possibly benefit from the expenditure in the future does not excuse the breach. Thus, Bob breached his duty of loyalty to the corporation.

### **PART 3**

#### **Bob did not breach a duty he owed to OUC.**

As noted, directors of the board owe both a duty of care and a duty of loyalty. Maintaining a competing business with the corporation presumptively violates the duty of loyalty. However, the duty of loyalty is owed while the individual serves as a director. Officers of corporation owe a similar duty while they are officers.

Bob began OUC only after he resigned as both an officer and a director of the corporation.

However, a Court could hold Bob liable for breaching a duty of loyalty to the corporation if he used nonpublic information he acquired during his tenure as an officer or director to start the new corporation. Since the facts are silent to that issue, Bob did not breach a duty.

### **PART 4**

#### **Bob may be able to dissolve the corporation.**

Dissolution can occur by action of the Secretary of State, the Attorney General, by Corporate Act, by a vote of shareholders, or by Court order. The relevant circumstances would be by Corporate Act or by a shareholder vote under these facts. Since the board of directors is

limited to 2 votes and Alan and Bob have equal votes as shareholders, there will most likely be an impasse on the matter. Bob could petition the Court to dissolve the corporation. A Court will dissolve a corporation where there are equal shares and an impasse.

Here, Bob & Alan do have equal shares and an impasse would likely result.

Thus, if the Court finds that such facts exist, Bob could dissolve CCI in this manner.

## A.M. Essay 1 - Example #3

1)

1. No, Alan did not have authority to terminate Bob's employment with CCI. The issue is who in a corporation has the authority to hire and fire the corporation's officers. Shareholders, directors, and officers are the main persons with authority in a corporation. Under Missouri statutes, shareholders have the authority to elect the board of directors. Directors have the authority to control the business and hire the officers. The officers of a corporation have the authority to run the day-to-day operations of the business, which includes the hiring and firing of employees beneath them. The board of directors act by making decisions at a meeting at which a quorum of directors is present. A quorum is a majority of the directors, unless the corporation's articles of incorporation states otherwise. If a quorum is present at the meeting, then a majority of directors present is required to approve a decision. In this case, CCI has two directors. A quorum of CCI's directors requires both directors to be present because with only one director present, there is no majority. With only two directors, both must act to make a decision. Here Alan unilaterally decided to fire Bob as Secretary/Treasurer. Because he made this decision without Bob's approval, he acted without authority.

2. Yes, Bob breached a duty to CCI by using the corporate funds to pay his law school tuition. At issue are the duties a member of a corporate board of directors owes to the corporation. The board of directors are responsible for the overall management of a corporation. Generally the board is presumed to act in the best interest of the corporation. But directors are also fiduciaries. As fiduciaries, they owe a duty of care and duty of loyalty to the corporation and its shareholders. The duty of loyalty provides that a director cannot benefit in a corporate transaction at the expense of the corporation. Conduct prohibited under this rule includes self-dealing. Self-dealing occurs when a director engages the corporation in a transaction with himself or a relative, or another business in which he owns an interest. This type of transaction is prohibited unless approved by the other directors after full disclosure of the interests involved. In this case, Bob used corporate funds to pay his personal debt. He did not notify Alan before doing so. This transaction benefitted Bob personally. Bob could argue that he was performing legal work for the corporation, and that the corporation needed to indemnify him for his expenses. But indemnification would require approval by the board, and he did not obtain its approval.

3. No, Bob did not breach a duty to CCI by forming OUC. As explained above, a corporate director owes a duty of loyalty to the corporation. This duty requires a director to act in the best interest of the corporation. A director could not participate in a business that competes with the corporation at least without first disclosing the other interest to the corporation. The duty of loyalty, however, ends when a person is no longer a director of the corporation. Unless the person was bound by a non-compete agreement, that person could pursue whatever employment he chooses after leaving the corporation. The fact that a person is merely a shareholder of the corporation does not create any duty of loyalty to the corporation. In this case, Bob resigned as a director and was no longer employed by CCI when he began OUC. Therefore, he did not breach any duty of loyalty to CCI.

4. Bob may pursue a judicial dissolution of CCI. Under Missouri corporation statutes, when a corporation is owned equally by two shareholders, and the two shareholders have reached a deadlock over a major corporate decision, either shareholder may petition the court for a judicial dissolution of the corporation. The court may grant the dissolution if Bob can prove that it is in the best interest of the corporation to do so. Here Alan and Bob have reached a deadlock over whether to dissolve CCI. Dissolution of a corporation is a major corporate decision. Therefore, Bob may petition the court to seek a dissolution.

## A.M. Essay 2 - Example #1

2)

1. A Missouri court will have jurisdiction over the divorce, but not necessarily over the child custody issues.

### Divorce

In Missouri, to have jurisdiction over a divorce, the court must have had personal jurisdiction over the marriage. This occurs when one spouse is domiciled in the state of Missouri. Here, Missouri will have domicile jurisdiction because Jack is domiciled in Missouri. To determine domicile, the court must consider whether the individual is physically present within the state and where there is an intention to reside in the state for any period of time. Here, Jack satisfies both requirements as he currently lives in Missouri.

### Child Custody

The court will also have long-arm jurisdiction over Jill and will therefore be able to decide child custody and maintenance issues. Long arm jurisdiction exists when both the constitutional requirements and the Missouri statute are satisfied. The Missouri statute provides for long-arm jurisdiction when there has been an act of sex or marriage within Missouri. The constitutional requirement will be met if the individual purposefully availed him or herself of the benefits of the forum state. Here, Jill and Jack were married in Missouri, therefore bringing them within Missouri's long-arm statute. Presumably, the act of sex that led to the first child also occurred in Missouri, but this is not necessary to determine since the marriage took place in Missouri. The US Constitutional requirements are also met. A court must have personal jurisdiction over a spouse to enforce child custody issues. Although Jill is not a current resident of Missouri, the court will be able to decide issues of child custody because it has personal jurisdiction over Jill through the long-arm statute. The court may also consider the child's home state, which here could be either Illinois or Missouri, since the child spends some time with parents in each state. The court can also obtain transient personal jurisdiction over Jill if she is served while in Missouri. Transient personal jurisdiction only requires that an individual be served within the state and not have been tricked into the state or be present in the state due to a subpoena to testify before a criminal grand jury. Jill could be served at any time that she is in the state, including when she comes to the state for her divorce proceedings. If the court has transient

personal jurisdiction over Jill, the long-arm statute need not be applied.

2. A blood test will not be required for the court to award Jack custody of the first child. Children born within a marriage are presumed to be the biological children of the husband. Here, the first child was born while Jill and Jack were dating, but before they were married. Jack cannot therefore claim that the child is his based solely on the marriage. Jack can, however, assert his rights as a father due to his being listed on the birth certificate and having supported the child as though he was the father. The court may decide that these facts alone prove that Jack is the father. A blood test or DNA test would also be admissible as a method of determining paternity, but will not be required. Once the court is satisfied as to paternity, it will make the determination of custody according to the best interests of the child.

3. Yes, the fact that Jill has a second child may be a factor in determining custody of the first child. Custody determinations are made by determining the best interests of the child. Courts can consider various factors in making this determination, such as which parent is likely to be cooperative, the wishes of the child, the relationships the child has with either parent or with other family. Here, the first child has been primarily living with Jill and her second child and only visiting Jack for one weekend a month. The court may consider the first child's relationship with Jill and the child's relationship to the second child. If the court finds a close relationship between the two, or that it would be in the best interests of the child to have a relationship with his sibling, the court may consider the second child as a factor in determining custody. The court may not consider Jill's extramarital affair in determining custody of the first child.

## A.M. Essay 2 - Example #2

2)

1. No, a Missouri court will not have jurisdiction to decide all issues in this case because of the doctrine of divisible divorce. Under Missouri law, a Missouri court will have subject matter jurisdiction over the status of a divorce if the party filing the petition is domiciled in Missouri, meaning he has lived in Missouri for 90 days and the petition has been on file for 30 days, or the marriage was licensed in Missouri. However, where the respondent no longer lives in Missouri, the issue of a divisible divorce arises and a Missouri court can only decide issues relating to maintenance/alimony and child custody if the court can assert personal jurisdiction over either the respondent or the child. A Missouri court will be able to assert personal jurisdiction over the respondent by personal service in the state (in hand), if not a Missouri resident or if the minimum contacts of the long arm statute can be met (such as act of sex). Missouri establishes personal jurisdiction over child matters under the UCCJA (although it has just adopted the UCCJEA because other states that have adopted this newer model legislation have failed to give Missouri judgments full faith and credit because Missouri has not adopted the newer version). Missouri will have personal jurisdiction over matters relating to the child if Missouri is the child's home state (within 6 months), extended home state (not within 6 months but one parent still lives in the state), a significant relationship to the child is present, emergency jurisdiction or default. Regardless of whether Jack has now lived in Missouri for 90 days, and the petition has been on file for 30 days, the Missouri court should have subject matter jurisdiction over the status over the divorce because the marriage was licensed in Missouri. The court should be able to decide maintenance issue because the long arm statute is likely met because of Jill's minimum contacts with the state by the act of sex that resulted in the birth of the first child in Missouri. With respect to the child matters of custody and support, it appears that the home state for the first child is in Illinois because this is where the child has lived for the prior six months (despite visiting the father in Missouri infrequently). Thus, the Illinois court has primary home state jurisdiction and the Missouri court should not decide these issues if Illinois has asserted jurisdiction. Missouri may have extended home state jurisdiction, but it should not assert it unless Illinois refuses to.

2. No, a blood test will not be required for the court to award Jack custody of the first child.

Under Missouri law, if a child is born during the marriage of the mother and the alleged father or born within 300 days of separation or divorce, the father is presumed to be the legal parent of the child. Also, if the father's name appears on the birth certificate of the child as the father, then he is likewise presumed to be the legal parent of the child. This presumption can be rebutted by clear evidence to the contrary by the biological mother of the child. Although the first child was born before Jack and Jill were legally married, because Jack indicated on the birth certificate that he is its father, the court will presume that he is the legal father and will not require a blood test to award Jack custody of the first child. Unless Jill disputes this in court, the judge would not require a blood test. If, however, Jill were to dispute that the first child is Jack's legal father, Jack could request that the court order a blood test to prove that he is the biological father of the child. Here, there is no indication that Jill is going to contest the paternity of the first child, so a blood test should not be required.

3. No, the fact that Jill has a second child will not be a determining factor in ordering custody of the first child. Under Missouri law, the court uses the standard of the best interests of the child in determining custody. Absent a parenting plan (which the court has discretion to adopt or not), the court will use statutory factors such as the child's wishes unless too young, the parents' wishes, the mental and physical health of each parent, the importance of relationships to be maintained among the child and other relatives, whether a parent has the intent to relocate, and the court maintains a preference for a parent that is likely to cooperate with the court. The court cannot award custody based on the financial positions of the respective parents nor on the tender years doctrine or the gender/age of the child. Moreover, the court has a preference for joint legal and physical custody if there is a commonality of beliefs among the parents. Also, marital misconduct is not a factor in determining custody unless it is so severe that it relates to the mental or physical ability of the parent to raise the child (such as with sexual abuse). Here, Jack and Jill were separated and Jill likely committed adultery by sleeping with Samuel and having a child out of wedlock. However, this is not the type of activity that would in any way negatively affect Jill's ability to raise her child and the court should use this test/standard to determine custody, not the fact that she has a second child. However, Jill will argue that the court should use this fact in her favor so that the child will have a meaningful relationship fostered with the

new half-sibling but this is by no means dispositive.

## A.M. Essay #2 - Example #3

2)

1. Jack is seeking a divorce, and custody of the first child. Missouri will have jurisdiction to grant the divorce. In order to grant a divorce, the court needs to have personal jurisdiction over one spouse. Here, Missouri has jurisdiction over Jack if he is domiciled in the state. Domicile means he is present in the state with intention to stay indefinitely. Because the facts indicate that he lives in Missouri, Missouri will have jurisdiction over the divorce. To have jurisdiction, the state only needs personal jurisdiction over one spouse. Personal jurisdiction over the other spouse is unnecessary, though the court would probably have it over Jill, as well, under the long-arm statute because she and Jack were married in Missouri. Regardless, Missouri has jurisdiction to grant Jack's request for a divorce.

Jack is also seeking custody of the first child. Missouri probably will not have jurisdiction to hear this case, as personal jurisdiction is required of all the parties. Under the UCCJEA, recently enacted in Missouri, the child's home-state has the absolute preference for determining custody of the child. The home-state is defined as the state the child lived in for the last six months, and that at least one parent lives in. Here, the facts indicate that the child has lived in Illinois for at least one year, so this will be the child's home state. This is also Jill's domicile (because she is present with the intent to stay indefinitely). Under the UCCJA, which the UCCJEA replaced, if the child's home state is not available, the child's extended home state would be the next choice. The extended home state is a state the child lived in the preceding six months, and at least one parent still lives there. However, this is not necessary here, as the home-state is present. Therefore, the Illinois court will have jurisdiction over the custody proceedings. This is permissible as a divisible divorce (where some matters are settled in one state, while others are settled in another). Because personal jurisdiction over both the child and Jill is appropriate in Illinois, those courts will probably have jurisdiction.

If maintenance or property distribution needs to be determined in the future, Missouri will also probably not have jurisdiction to decide that, as the jurisdiction of both the parents would be required for a court to make those determinations. Therefore, as Jill is domiciled in Illinois, Illinois will probably be the best choice of courts there, as well.

2. Jack and Jill were not married at the time of the first child's birth. There is a presumption that a spouse is the father of a child born during the marriage. Here, that presumption does not apply. However, Jack was listed on the birth certificate after the child's birth, and it appears Jack, Jill, and the child acted as a family unit until the separation. Because they married after the birth, Jack was listed on the birth certificate, and they acted as a family unit, Jack is probably the presumed father of the child. To rebut a claim of a presumed father, it must be shown by clear and convincing evidence that the father is not the father. This can be done by a blood test that is at least 98 percent accurate. (While this is generally done by fathers seeking to rebut paternity of a child, it would probably also be appropriate for the mother to use the same tactic.) There are other ways to prove by clear and convincing evidence that Jack is not the child's biological father; however, the blood test is probably the most effective. The Court would probably also consider the relationship of Jack and the child, Jack's contribution to the child's life, and the fact that they were held out as a family unit when making this determination, so the blood test would provide compelling evidence.

Also, it is important to note that the Missouri Legislature recently passed a bill regarding presumed fathers of children in Missouri, so I would need to look into that law before making any hard and fast recommendations.

3. The fact that Jill has a second child will impliedly be a factor in determining whom to award custody. In awarding custody, the best interests of the child are considered by the court. There are numerous factors that go into this: the parents' wishes (based on a parenting plan filed by each or both parents), the child's wishes, the financial statuses of both parties, the physical and mental health of the parties and the child, the Friendly Parent Provision (which parent would be more likely to allow the other a continued relationship with the child), the intent to relocate, the need for a continuing and substantial relationship with both parents, and the need for a continuing relationship with other people in the child's life. The last prong listed is probably where the second child will come in to the determination. Courts have a preference for keeping siblings together if possible. While the addition of another child could play into the equation, it probably

will not be a huge factor in determining the best interests of the child. It will be considered, along with grandparents and other people with whom relationships would be in the child's best interests. It will not count against Jill as custodian, however.

## A.M. Essay 3 - Example #1

3)

### 1. Janie's Causes of Action against Sub-Spectacular ("SS")

Yes, Janie has a cause of action against SS through respondeat superior for Jack's negligence in causing the accident.

An employer is liable for the torts of its employees that are committed within the scope of employment. Here, the facts state that SS was Jack's employer. A tort committed during a frolic is not within the scope of employment, while a tort committed during a mere detour is within the scope of employment. To determine whether a tort was a frolic or a mere detour, courts consider the time and space of the conduct, whether the conduct involved was that the employee was hired to perform, and whether the conduct was intended to benefit the employer. Here, Jack's negligence in driving the delivery truck in the parking lot of the coffee shop was likely a mere detour. Jack was hired to drive a delivery truck, so the conduct involved was the type of conduct he was hired to do. Jack was on the job in time, in that he was presently making deliveries for SS. He was only slightly outside the space of employment, in that the coffee shop was only a few blocks away from the delivery site. Indeed, the coffee shop may have even been directly on the delivery route. Janie can argue that the conduct of stopping by the coffee shop was intended to benefit the employer because the coffee would keep Jack alert in the performance of his duties. Considering all of these factors together, a court should determine that the trip to the coffee shop was a mere detour, and thus was within the scope of employment. Therefore, SS will be vicariously liable to Janie for any negligence for which Jack is liable.

Janie has a cause of action against Jack, and thus vicariously against SS, for negligence. A prima facie case of negligence requires a duty of care, breach of that duty, actual and proximate causation, and damages. A driver owes a duty of reasonable care to all foreseeable plaintiffs, which include other drivers. Here, Janie is another driver, so Jack owed Janie a duty of reasonable care. Thus, Jack must have driven with the care that a reasonably prudent person would exercise in similar circumstances. Jack likely breached that duty when he sped up to try to beat Janie to the parking spot, because a reasonably prudent person would not have tried to beat Janie to the parking spot. The collision of the vehicles would not have occurred but for Jack's attempt to beat Janie to the spot, so Jack's negligence is an actual cause of the collision. The collision is the direct and foreseeable result of Jack's conduct, so it is also the proximate cause.

Janie incurred property damage to her car, which satisfies the damage requirement. Therefore, Janie can establish a prima facie case of negligence against Jack, and vicariously against SS. Missouri has adopted pure comparative negligence, whereby a plaintiff's recovery is reduced by the percentage at which she is found to be at fault. Therefore, Janie's recovery from Jack and SS will be reduced by her comparative negligence, which is analyzed below.

## 2. Jack's Causes of Action against Janie

Jack has a cause of action against Janie for negligence, as well as for battery and assault. The requirements for negligence are set out above. Janie owed a duty of care to other drivers on the road, including Jack. She likely breached that duty by failing to keep a proper lookout and failing to avoid the collision in the parking lot. But for her failure to avoid the collision, it would not have occurred, and the collision was the direct and foreseeable result of Janie's negligent conduct. The truck Jack was driving also incurred damage, however, that truck is owned by SS. Therefore, Jack can not recover for damage to the truck, but only SS can. Therefore, in order for Jack to recover any damages from Janie, he will have to show some damage. If he can establish damages through harm to personal property in the truck, or personal injury through any injuries he sustained in the accident, Janie will be liable to him for negligence. Janie's liability to Jack will be reduced by Jack's comparative negligence, as noted above.

Jack also has a cause of action for battery against Janie. Battery requires proof of an unlawful intentional physical contact with the person of the plaintiff and causation. Here, Janie pushed Jack against the truck. The circumstances indicate that Janie intended to make contact with Jack's person when she pushed him against the truck. Contact is unlawful if it is harmful or offensive to a reasonable person. Here, a reasonable person would likely find being pushed against a truck and yelled at after a collision to be offensive. The physical contact was the actual cause of the contact in that, but for Janie's pushing Jack, there would have been no contact. It was also the proximate cause because it was the direct and foreseeable result of pushing Jack into the truck. Even if a plaintiff sustains no damages in a battery action, he may recover nominal damages.

Jack also has a cause of action for assault against Janie. Assault requires the intentional creation of the apprehension of an immediate battery and causation. The conduct must be intentional, not

the creation of the apprehension. Here, Janie intended to push Jack, thus satisfying the intent requirement. Jack appears from the facts to have been facing Janie at the time that she pushed him, because he got out of his vehicle, presumably to exchange information with Janie regarding the collision. If he was facing Janie when she pushed him, Jack apprehended the immediate battery that took place when Janie contacted Jack. In addition, but for Janie's act of pushing Jack, he would not have apprehended that push, and his apprehension was the direct and foreseeable consequence of Janie pushing him. Therefore, Jack can also establish assault against Janie, if he was facing her when she pushed him.

### 3. Janie's Causes of Action against Jack for Telling Everyone in Town that Janie is a Terrible Driver

In addition to Janie's cause of action against Jack for negligence, discussed above, Janie has a cause of action against Jack for defamation. At issue are the requirements for common law defamation.

Defamation requires the plaintiff to show a defamatory statement about the plaintiff, publication of that statement, causation, and harm to the plaintiff's reputation. Missouri law also requires proof of fault. A statement is defamatory if it maligns the plaintiff, although mere insults are not enough. Here, Jack's telling everyone that Janie is a terrible driver is probably a defamatory statement. While it may appear to be mere insults, conduct that is not defamatory may become defamatory if it is continuous. Here, Jack's "telling everyone in town" is likely continuous conduct that would raise it from mere insults to a defamatory statement. It would take quite a while to tell everyone in town that Janie is a terrible driver, so it will likely be continuous. The statement is also clearly about Janie, in that Jack says that Janie is a terrible driver. A defamatory statement is published if the defendant communicates that statement, either intentionally or negligently, to a third party capable of understanding it. Here, Jack intended to communicate that statement to many third parties, thus satisfying the publication requirement. At least one person in town likely speaks English, and will be able to understand the statement. But for Jack's publication of that statement, the third parties who received it would not have, so Janie's reputation would not have been injured. In addition, the injury to Janie's reputation is the direct and foreseeable result of the defamatory statement. Here, Janie is also entitled to presumed

damages. A plaintiff is entitled to presumed damages for slander per se. Slander, a spoken defamatory statement, is slander per se if it is a statement about the plaintiff's business, a bad disease, or the unchastity of a woman. The statement that a driving instructor is a terrible driver is a defamatory statement relating to her business reputation. Here, the statement relates to Janie's business reputation, because she is a driving instructor. Therefore, Janie will be entitled to presumed damages. Under Missouri law, fault can be established through negligence or recklessness as to the truth of the statement. Here, Jack made the statement at least with negligence. Jack did not inquire into Janie's driving ability other than in this one situation. A reasonable person would make such an investigation before publishing a statement that she is a terrible driver. Thus, Janie can establish a prima facie case.

Jack's defenses include truth or consent. Here, Janie did not consent. The facts do not contain evidence of whether Jack's statement is true. If he can prove that Janie is in fact a terrible driver, he can avoid liability for defamation.

## A.M. Essay 3 - Example 2

3)

1. Generally, employers are not liable for the torts of their employees, unless they are committed within the scope of the employee's employment. This is the doctrine of respondeat superior. Employers are liable for the acts of their employees in the scope of their employment. Therefore, it is important to first determine whether Jack was acting within the scope of his employment with Sub-Spectacular at the time of the collision. Here, Jack was making a delivery for Sub-Spectacular to a local company. This is within the scope of his employment, because he is a delivery truck driver. He was driving his employer's truck. His delivery was of the exact type of work he was supposed to perform in the scope of his employment, and the delivery was for the benefit of his employer. However, because he was ahead of schedule, he stopped off to get a coffee. This was some sort of deviation from his employment, and Sub-Spectacular might not be liable. This depends on whether Jack's action was a frolic or a detour. Under the Frolic and Detour doctrine, employers are still liable for torts created during "frolics" from employment, minor deviations from the employment. However, employers are not liable for "detours," major deviations from the scope of employment.

Here, the facts indicate Jack was 10 minutes ahead of schedule. Assuming he was planning on staying on schedule, the most time he could have anticipated he would spend at the coffee shop is 10 minutes. Additionally, the facts indicate the coffee shop was a few blocks away. Therefore, Jack was not planning on being outside his scope of employment for very long, and it required only a minor deviation from his original route. Because of this, the stop at the coffee shop was probably a frolic, and Sub-Spectacular would be liable for Jack's acts. If the court determines this was a detour, Sub-Spectacular would not be liable. His employer could argue that Jack was instructed not to make any changes to his route, and therefore, it should not be liable. However, this probably will not prevail. Therefore, any claims Janie can bring against Sub-Spectacular. Sub-Spectacular can recover contribution from Jack for his own negligence, as employees are always liable for their own negligence, even if it is within the scope of employment.

She would probably want to bring a negligence claim where she would need to show Jack had a

duty to her to drive carefully, he breached that duty by trying to steal the parking spot, that his breach actually and proximately caused her damages, which it did because when he accelerated, the collision occurred and it was foreseeable that speeding up to try to secure a spot would cause a collision, and that it caused her damages, here, the damages to her car. She could also bring a battery or aggravated battery claim and seek to prove that Jack intended to cause harmful or offensive touching of Janie and her car, and used a dangerous weapon. However, she probably cannot assert this claim against Sub-Spectacular, as it is an intentional tort, which is presumptively outside the scope of his employment as a delivery truck driver.

2. Jack can assert assault and battery against Janie, because she yelled at him and pushed him against the delivery vehicle. Assault is the intent to create a fear of imminent harmful or offensive conduct in another. Jack can argue that Janie, by yelling at him, caused him apprehension of harmful touching. Generally, words alone are not sufficient to find an assault, there needs to be some act. However, the act can be slight. It does not matter if the person is not in actual fear of the touching. All that matters is that it would cause apprehension in a reasonable person. For instance, if Janie pulled back before she pushed Jack, and caused him to fear being pushed, this could be enough for an assault, even if he was not actually afraid of Janie. We would need more facts to determine the viability of this claim.

Battery is the harmful or offensive touching of another's person. Here, Janie pushed Jack against the delivery vehicle. She intended to touch him, and she did offensively touch him, so Jack should be able to make a cause of action for battery. Janie could argue that she was provoked because Jack intentionally hit her car, but that will probably not prevail.

Because Janie will probably bring a negligence claim, it might also be in Jack's best interests to bring a cause of action for negligence against Janie, as well. He could argue that while he was negligent in seeking the spot, Janie had the last clear chance to avoid the collision, and therefore she should be liable for the accident. He could also argue Janie should be held to a higher standard of care because she is a private driving instructor. Therefore, he could argue that her duty was of more than a reasonably prudent person on the road, but was that of a similarly

situated professional driving instructor, and that she breached that duty to him, actually and proximately caused his damages. If he could show this, it would either reduce the recovery against him if he is in a comparative negligence jurisdiction, or if he is in a pure contributory negligence jurisdiction, disallow any recovery by Janie at all.

3. If Jack actually follows through with his threat to tell everyone in town Janie is a terrible driver, Janie could bring a cause of action against him for defamation. To make a claim for defamation, Janie would have to show that Jack made a defamatory statement about Janie, that he publicized it to a third-person, and that she was damaged. There are two types of defamation: libel and slander. Libel deals with written defamation, while slander deals with spoken defamation. Here, slander would probably be in question. The statement that Janie is a terrible driver would probably be per se slanderous, because it implicates her professional conduct, as teaching people how to drive is her job. However, even if it is not deemed to be slander per se, telling everyone that she is a terrible driver is probably still defamatory, because a reasonable person would not want such information publicized about them. Additionally, for publication, the statement must be published to at least one third-party. Commercial publication is not required, and telling "everyone" in town would be sufficient. If the statement was deemed slander per se, Janie would not have to plead damages because her general damages would be presumed. However, if she has special damages, such as no one hiring her as a driving instructor, she should plead those, as well.

## A.M. Essay 3 - Example #3

3)

1. Janie may be able to assert a negligence action against Sub Spectacular through the theory of respondeat superior. The issue is whether a principal will be liable for the torts that their agent commits. A principal will be liable for the torts their agent commits if there was an employer-employee relationship and the tort was committed during the scope of employment. A principal will not be liable for torts an independent contractor commits unless they were engaging in ultrahazardous activities. Usually, a principal will not be liable for intentional torts their agent commits because intentional torts are usually seen as outside the scope of employment. There are exceptions to this however; a principal will be liable for the intentional torts their agents commit if force was authorized, force was typically generated by this type of employment or it was foreseeable a tort would be committed.

An employer-employee relationship results when the employee is under the control of the employer and they are designated as "employees" and are paid regularly, versus by the job or on a one-time deal. Something is within the scope of employment if it was committed during the employment relationship or it was done to benefit the employer. If a tort occurs during an activity that is a major deviation from the employment scope this is a frolic and thus would not be committed within the scope of employment and the principal would still be liable. Minor deviations from employment activities will not relieve a principal from liability.

In this case, Sub-Spectacular is the principal and Jack is their agent. It appears from the facts that he was a regular employee because it doesn't indicate that he was just hired for one isolated task or for one day and therefore he was probably an employee and not an independent contractor. The incident occurred during the scope of employment because it states that Jack was driving the truck for his company for delivery. He stopped at the coffee shop which was only a few blocks away from his ultimate destination for his employer and therefore, it is likely this was not a "frolic" and a major deviation, but only a minor detour and thus was still acting within the scope of employment. Therefore, because there was an employer-employee relationship and because the incident occurred during the scope of employment, the principal (Sub Spectacular) would be liable for some of the things that occurred outside the coffee shop.

Janie may be able to assert a negligence claim against the principal because Jack negligently drove his car fast trying to secure the parking spot, but then the words that Jack told

her afterwards are likely (as discussed below) an intentional tort or defamatory statement and those would be seen as outside the scope of the employment relationship. Negligence elements are: duty to the plaintiff, breach, causation, harm.

Intentional torts would not be authorized or foreseeable from the type of work that Jack did for his agents. Force would not be authorized by this type of employment--he is authorized to deliver sandwiches and it isn't foreseeable that Jack would need to rough people up to get the job done. Therefore, Janie can assert a negligence claim against the principal. The principal would be vicariously liable for the actions of their agent in this situation but only for the car crash and not for the potentially actionable words Jack used.

2. Jack may have a cause of action for assault or battery or intentional infliction of emotional distress against Janie.

The elements of the tort of battery are the intent to cause a harmful and offensive contact and a harmful and offensive contact results. Harmful contact is something where someone is injured by the contact and offensive contact is something that is objectionable to a reasonable person. Offensive contact is also something that is unpermitted. In this case, Janie pushed Jack up against the car. This may have been harmful to Jack--he may have been injured as a result. Being pushed up against a car is also most likely objectionable to a reasonable person. It was also unpermitted. There was no consent for Janie to engage in this conduct. There are also no defenses that Janie could raise in this situation. There is no indication that Jack was threatening her in any way before she pushed him. If he had been threatening her, she may have been able to protect herself or her property (defense of self and property) but there is no indication that those defenses are available to Janie.

Assault is the intent to cause an imminent apprehension of an offensive or harmful contact. In this case, Janie may be liable for this if her yelling caused Jack to be in imminent apprehension of a harmful and offensive contact. The facts do not indicate whether Jack was placed in apprehension of a harmful or offensive contact. As discussed above, Janie probably does not have any defenses to this cause of action.

Intentional infliction of emotional distress is an intent to cause extreme emotional distress by extreme and outrageous conduct. The conduct must really be extreme and outrageous--we are

expected to live with a lot in our friction filled world. Extreme and outrageous conduct may become such depending on the type of plaintiff( if the plaintiff is old, young or pregnant) or if the conduct is continuing for a really long time. The type of defendant may also make the conduct extreme and outrageous. Common carriers who subject passengers to things may be held liable. In this case, Jack would argue that yelling at him and pushing him up against a truck was extreme and outrageous and he may succeed if he can show he was emotionally distressed as a result of it. It is not likely that he would succeed in this cause of action.

3. Janie may have a cause of action for defamation against Jack. She may also have an intentional infliction of emotional distress claim against Jack.

Please see above for the elements for intentional infliction of emotional distress. In this case, a court may agree that threatening to tell lots of people that you are bad at your job may very well be extreme and outrageous conduct. If Janie can show that she was emotionally distressed as a result of it, she may succeed on this claim.

#### Defamation

The elements for defamation are: a defamatory statement, publication, and harm to reputation. If this was a public figure at issue and a matter of public concern, additional elements would need to be met such as falsity of the statement and fault. Fault can either be malicious (the statement was said with recklessly or intentionally) or negligent. However, this altercation is between two private individuals and the matter is not one of public concern so therefore only the first three elements need to be established for the prima facie case. There are a few defenses to defamation: absolute and qualified privileges and consent. Absolute privileges cannot be lost-- they are given to spouses and to people taking part in litigation or during a legislative session. Qualified privileges can be lost and are typically given to someone when we want to encourage that type of statements (things contained in a reference letter for example). Consent can be given either expressly or impliedly.

A defamatory statement is one that is harmful to a reputation and would be objectionable to a reasonable person. Publication means that the statement is told or written to a third party who is capable of understanding the statement. It only requires that 1 other person (other than the plaintiff) heard the statement. Harm to the reputation can be shown by showing pecuniary

damages. Missouri courts require damages to be shown. If the statement was published maliciously, then punitive damages may be shown. Slander per se categories mean that the damage is presumed. These include: crimes involving moral turpitude, loathsome disease, saying a woman is unchaste, and matters involving a business or profession.

In this case, there was a defamatory statement: it was made by Jack and would harm her reputation and it would be objectionable to a reasonable person. It was also published to a third person--the facts indicate that he "told everyone in town" so therefore, the publication element has been met. There were third parties who were capable of understanding the statement. Finally, damages would be presumed because it was slander per se. Spoken words that had to do with the last category of slander per se--something involving a business or profession. The statement here was about her profession--her driving which is her livelihood--she is a driving instructor. Jack would not also be able to assert any privileges. The absolute privileges would not apply here--it was not during litigation and it was not during a legislative hearing. There would also not be a qualified privilege--Janie did not "invite" the defamation in any way and this type of communication is not one that society would like to give to people. The facts also indicate that Janie did not give her consent to this speech. Therefore, because the prima facie elements can be met and no defenses are available, Janie may be successful on her defamation claim against Jack.

## A.M. Essay 4 - Example #1

4)

This answer is governed by the law of agency because both Bob and Dave are agents of Furniture. Bob as an employee of Furniture and Dave as the vice-president of Furniture both are agents for them.

Recovery From Furniture and More - OI may recover from Furniture for the amount due on the invoice.

A corporation is liable for contracts entered into by its agents if those agents have authority. An agent can have (1) actual authority or (2) apparent authority. A corporation can also be liable if it ratifies the contract created by one of its agents even if the agent did not have authority.

### (1) Actual Authority

An agent has actual authority if the principal tells or communicates to the agent that they have authority to do something. The focus is on the communication between the agent and the principal. Actual authority can be either express or implied. It is express if the principal actually, explicitly tells the agent what they can and cannot do. It is implied if it is something that the agent reasonably thinks they can do based on the principals words or conduct.

Here, Bob does not have actual authority. Dave explicitly told Bob not to order any equipment from OI without Dave's approval. Thus, Bob knew that he was not supposed to order from OI without first discussing this with Dave. Dave, as the vice-president of Furniture, has the authority to tell employees what they can and cannot do. Thus, in this situation Dave acts as the voice of the principal, on behalf of Furniture. Thus, because the principal told the agent he did not have authority to bind the corporation in a contract with OI without Dave's approval, Bob did not have actual authority to do this.

### (2) Apparent Authority

Though Bob did not have actual authority, there is a strong argument that he had apparent authority to enter the contract with OI on Furniture's behalf. Apparent authority is focused on the communication between the principal and the 3rd party. An agent has apparent authority if (1) the principal holds the agent out and cloaks them with authority to bind the principal and (2) the 3rd party justifiably relies on that holding out. Here, Dave held Bob out as a person with authority when he told a sales rep at OI that he should deal with Bob. OI did not have any knowledge that Bob had been told by Dave to get approval before finalizing any orders. OI then justifiably relied on this holding out by accepting the order from Bob and shipping the ordered equipment to PBS. Thus, because there was a holding out and justifiable reliance, Bob had apparent authority to bind his principal.

If Dave wanted to prevent this from happening, he must provide personal and timely notice to OI that Bob did not have authority to enter the contract without further approval. Because Dave, acting on behalf of Furniture did not do this, apparent authority existed and Bob bound Furniture on the contract.

### (3) Ratification

Even though Bob has apparent authority, OI could also argue that a ratification occurred. Ratification occurs when a principal who would not otherwise be bound, (1) accepts the benefits of a contract entered into by its agent without authority, (2) has knowledge of the material terms, and (3) accepts the whole contract. Here, OI could argue that the principal accepted the benefits of the contract when it accepted the equipment that was delivered. However, Furniture in return could argue that though it accepted the goods, it did not have knowledge of the material terms and thus, no ratification occurred. Ultimately, it does not matter because Furniture will still be bound because Bob had apparent authority.

In conclusion, a principal is liable on contracts entered into by its agents if the agent has authority. As discussed above, Bob had apparent authority and thus Furniture is bound. It is irrelevant that Furniture was operating under a fictitious name.

Recovery From Bob - OI may not recover from Bob for the amount due on the invoice.

An agent is liable for contracts entered into if either (1) they did not have authority from the principal or (2) if the principal was disclosed or partially disclosed. Here, as discussed above, Bob, the agent, had apparent authority to bind the partnership. Therefore, the first grounds for holding an agent liable on a contract does not exist. However, the second grounds might be possible.

An agent may still be liable on a contract, even if he had authority, if the principal was undisclosed or partially disclosed. An undisclosed principal situation occurs when the agent does not tell the 3rd party that they are acting on behalf of a principal. This is not the situation here. OI knew that Bob was speaking for a principal. The problem is that OI thought he was acting on behalf of PBS, while he was in fact acting on behalf of Furniture. and More. Thus, there was not an undisclosed principal.

A partially disclosed principal occurs where the agent tells the 3rd party that they are acting on behalf of a principal but don't tell the 3rd party who that principal is. Here, OI thought Bob was acting on behalf of PBS while he was in fact acting for Furniture. The reason for requiring that the agent disclose the principal is so that if something happens, the 3rd party knows who to go to or who to sue. Here, Bob might argue that the principal was disclosed even though the wrong name was used. Furthermore, OI had spoken with Dave, the vice-president, and thus would know how to contact and find the principal if something goes wrong. Therefore, there is no reason to hold the agent liable because OI knows who they are dealing with even though the name is mistaken. However, OI might argue that the mistake is sufficient enough to hold the agent liable. Because the fictitious name is not registered, it would be possible for PBS to avoid the contract and OI would not be able to find them because there are no public records connecting PBS to Furniture. Both are good arguments, but it is likely that Bob will not be held liable because OI knew who they were dealing with and thus, any prejudice or problem that might result from not knowing the principal is avoided.

### Recovery From Dave

Dave, as vice-president of Furniture, is also an agent for Furniture. However, he was not the agent that entered into the contract on behalf of Furniture. Thus, OI cannot recover from him under agency law. However, as an officer of Furniture, he owes a duty of care to the corporation. OI might argue that he did not exercise his duty of care when he told OI to deal with Bob but did not tell them that Bob did not have actual authority to enter a contract on their behalf. A breach of duty of care might result in the corporation seeking indemnification from Dave for

## A.M. Essay 4 - Example #2

4)

If OI sues Furniture & More, Dave, and Bob, OI will be able to recover from Furniture & More or Bob. However, OI will be limited to one recovery for the invoice price. Therefore, OI has the choice of suing either Furniture & More or Bob for the full amount of the invoice. It will not be able to sue both.

### OI v. Furniture & More (F&M)

OI will be able to recover from Furniture & More (F&M) for the amount due on the invoice. At issue in this portion of the question is whether an agency relationship exists between F&M and Bob and whether F&M can be liable under the contract made by Bob if he was an agent.

In this case, Bob was an agent of F&M. An agent relationship arises when both parties (both the principal and the agent) assent to the creating an agency, the agent has the right to act on behalf of the principal, and the principal has the right to control the agent's actions. In this case, all three are presumably present. Bob is an employee of F&M, so both parties have assented because Bob accepted offered employment from F&M. Bob had the right to act on behalf of F&M because he was an employee. Lastly, the principal, F&M, had the right to control Bob's actions because he was their employee. Therefore, all 3 elements of the agency relationship are met. F&M is the principal, and Bob is the agent. An agency relationship exists.

A principal is liable for a contract made by the agent if the agent entered into the contract with authority. There are 2 types of authority: actual and apparent. Actual authority exists when the principal expressly or impliedly gave the agent the power to enter into the contract. In this case, no actual authority exists because Dave, an officer of F&M, specifically told Bob to enter into a contract without prior approval, but Bob did so anyway. Therefore, Bob acted without actual authority. Apparent authority, on the other hand, exists when the principal cloaks the agent with the authority to enter into the contract and a 3rd party relies on that appearance. Here, there was apparent authority because Dave told OI that it should deal with Bob, an employee at F&M about whether to buy equipment from OI. That meets the "cloaking" requirement. OI relied on that

cloaking of authority because it sold and shipped the equipment to F&M after getting approval from Bob. Therefore, there is apparent authority in this case.

Because Bob is an agent of F&M and there was apparent authority to enter into the contract to buy the equipment, F&M is liable on the invoice for the equipment.

#### OI v. Dave

OI will not be able to recover from Dave. Under Missouri corporation law, an officer of a corporation is not personally liable for the debts of the corporation. In this case, Dave is the vice-president of F&M. Vice-Presidents are officers of a corporation. Therefore, because Dave is an officer, he is not liable for the invoice for the equipment, as a debt, of F&M.

OI may argue that Bob was an agent of Dave, so Dave will be liable to OI for the contract Bob entered, but that argument will fail, and Dave will still not be liable for Bob. An agent relationship arises when both parties (both the principal and the agent) assent to the creating an agency, the agent has the right to act on behalf of the principal, and the principal has the right to control the agent's actions. In this case, there is no indication that either Bob or Dave intended to create an agency relationship wherein Bob acts on behalf of Dave as an agent. Dave never indicated that Bob would be buying this equipment for the benefit of Dave. Instead, the facts indicate that Bob was to act as an employee of F&M on behalf of F&M, the corporation for which Dave is an officer. Therefore, this argument will fail and OI will still not be able to recover from Dave.

#### OI v. Bob

Bob, as an agent of F&M will be liable to OI. As already established above, Bob was an agent of F&M. As a general rule, agents are not personally liable for contracts entered into on behalf of their principals. However, an agent will be personally liable for the contract if either (1) the principal was fully or partially undisclosed or (2) the agent entered into the contract without

authority. As already established above, Bob had apparent authority to enter into the contract, so he will not be liable to OI on that ground. However, Bob will be liable to OI because F&M was a partially undisclosed principal. A principal is partially undisclosed if the agent reveals that he is acting in an agent capacity but does not reveal the identity of the principal. In this case, F&M is partially disclosed. OI did not believe that it was dealing with Bob directly; it believed it was dealing with PBS. Therefore, the fact Bob was an agent was revealed to OI. However, Bob failed to reveal the true identity of the principal. Instead of revealing that PBS was an unregistered fictitious name of F&M, Bob indicated to OI that it was dealing with PBS. Therefore, the identity of the principal was undisclosed, making the principal partially undisclosed. Because F&M was a partially undisclosed principal, Bob is personally liable on the contract as an agent.

## A.M. Essay 4 - Example #3

4)

### 1. General Liability

Under agency law, for a third party to enforce a contract against a principal, a third party must establish that the agent that entered into the contract with the third party had authority to enter into the contract. Authority can be shown in three potential ways. First, actual authority exists when a principal has either explicitly or impliedly given authority for an agent to act on the principal's behalf. Express actual authority is shown by the words of the principal to the agent. Implied actual authority is the authority an agent reasonably believes he or she has based on a number of factors including: authority necessary to effectuate the express authority, authority inferred from prior dealings, authority inferred from industry custom, and authority in the event of an emergency. The second manner of having authority is through apparent authority. Apparent authority exists when the principal has cloaked the "agent" with the appearance of authority and the third party reasonably relies on that appearance of authority. Finally, authority exists when the principal ratifies an action that at the time of the action the agent did not have authority. Ratification can occur through the express ratification or impliedly by accepting the benefits. In either case, the principal must know all material facts and must ratify the contract in full.

For an agent to be liable on the contract, he must either lack authority or has failed to disclose or only partially disclosed his principal. Partial disclosure occurs when the the third party knows that the agent is acting on behalf of someone else but does not know who the other person is. Subagents, that is an agent of an agent, ordinarily do not bind the principal unless the agent has authority to have a subagent. Dave as a vice president of the company would be allowed to have a subagent because of the nature of his position. Therefore, Furniture and More can be bound by either Dave or Bob

### 2. Liability for Furniture and More

As a corporation, Furniture and More must act through its agents Dave and Bob.

Therefore, it will be bound to the extent that Dave or Bob had authority to enter into the contract. Dave as Vice President had actual authority to enter into the contract because a vice president generally has the authority to purchase office supplies. Bob had authority to enter into the contract on behalf of Furniture and More as well. Although Bob lacked actual authority because of the express limiting instruction from Dave, he had apparent authority to enter into the transaction based on the interactions of Bob and OI. Dave told OI that they should purchase the equipment through Bob, but did not communicate the approval limits to OI. In addition, OI could also claim that Dave ratified Bob's decision by accepting the equipment with the knowledge that Bob did not have authority to enter into the contract. As a result, Furniture and More is bound by the actions of Dave and Bob. Therefore, it can be held liable for the invoice by OI.

### 3. Liability for Dave and Bob

As an agent, Dave is liable under the contract because he did not fully disclose the principal. As stated previously, an agent remains liable under a contract if either he did not have authority or he did not disclose or only partially disclosed the principal. In this case, both Dave and Bob had authority to enter into the contract as shown by the previous paragraph. However, neither Dave nor Bob disclosed that they were actually working on behalf of Furniture and More rather than PBS. Because the agents did not disclose their true principal, they remain liable on the contract.