

Bradley Business Associations: Spring 2015 Hypo Number 1.

Ajatar, Bennu and Cerberus became friends while they were in high school. Ajatar went to college and studied engineering and then went to work for Drac Inc, where he worked for a number of years on designing and programming robots. Bennu began to train as a chef and gradually established a name for himself as an innovative food designer. Cerberus studied marketing. Two years ago the three friends decided that it would be fun to put all of their skills together. They bought a second hand food truck and Ajatar spent a number of evenings and weekends working on the truck to build in robotic components for food delivery. When the truck was ready, they three decided that they would begin to set up a food truck each weekend at a local tourist spot. Cerberus began an advertising campaign for ABC Truck Foods, and he agreed to pay Firedrake to design a logo for the truck and to use in the ABC advertising.

The first weekend was a huge success. After paying for the costs of food and fuel the three friends cleared \$2000 in profits. After the third weekend customers were praising the ABC Truck Foods food on Twitter and a local journalist came to interview the friends. In the interview Ajatar says "This is our dream: we will be foodtrucking together for the next ten years," while Bennu and Cerberus stand by, grinning.

This first section of the facts describes an arrangement which looks like a partnership. The three friends, A, C and C bought a food truck together and they began to develop a food truck business. A partnership is created where two or more people carry on as co-owners a business for profit (RUPA s. 202 (The Florida version is linked to from the blog)). And this seems to be what A, B and C are doing even though they do not seem to realize it. The co-ownership of the truck on its own does not establish a partnership, but the working together and sharing of profits, which, although it is not explicitly stated, is implied ("we will be foodtrucking together for the next ten years.") It would be relevant to cite *Holmes v Lerner* (CB p 70) here (the notes after that case explore the extent to which it is necessary to establish an agreement to share profits for there to be a partnership although the facts of the question suggest there were actual profits to be shared in contrast to the situation in *Holmes v Lerner*).

The arrangements for advertising and for the logo raise some questions about C's authority. One possibility based on these facts is that the three partners all have actual authority with respect to their own areas of expertise, but we don't know this as we are not told they have any such agreement. C has the authority to bind the partnership to transactions in the ordinary course of the partnership business as a matter of apparent authority. We don't know how a court might think about this - it is a factual question - but there is a possibility that the others would be treated as having ratified the expenses when they took advantage of the logo and advertising work. The facts don't tell us whether there is any disagreement about these expenses.

Soon Cerberus began to talk to the others about expanding. He said that Griffin, a friend of his from college, was looking for investment opportunities and that he thought that ABC Truck Foods could be a useful opportunity because of the combination of its innovative truck design and good food. The three friends negotiate with Griffin about the possible terms of a business relationship between them. But Griffin persuades Bennu and Cerberus that Ajatar isn't really the sort of person that they want to have involved in the business as he is too busy with his job with Drac Inc. and is not very practical.

You could discuss the rules for partners entering and leaving a partnership. If the

arrangement is a partnership then the default rules under the partnership statute come into play. Agreement as to the bringing in of new partners requires unanimity (RUPA s 401(9): A person may become a partner only with the consent of all of the partners. This paragraph also foreshadows a possible issue with respect to A's exclusion from the partnership. Would "not being very practical" be grounds for exclusion of a partner? (Some discussion of dissolution, judicial dissolution, wrongful dissolution could be appropriate here, together with the sorts of remedies courts allow in the cases- eg dissolution, buyout).

Griffin, Bennu and Cerberus meet with an attorney who sets up a limited liability company for the business, ABC Truck Foods LLC. The LLC will sell Bennu's food from trucks modeled on Ajatar's designs. Each of Griffin, Bennu and Cerberus has a 1/3 ownership share in the LLC. It is to be a member managed LLC, and the operating agreement provides that each member shall receive a salary for their work for the LLC. Bennu will be the Chief Creative Officer of the LLC, Cerberus will be President, and Griffin will be Chief Financial Officer. The LLC operating agreement provides:

.... g. Any member may give written notice to the other members of his/her election to cease as a member and the remaining members shall have sixty (60) days from the receipt of said notice during which to elect to purchase the quitting member's interest in the company....

k. Members may compete with the business of the LLC.....

The beginning of this paragraph resembles *Holmes v Lerner* where the formation of an LLC occurs in the context of an existing partnership and a partner is excluded (or at least offered very limited opportunities for participation in the LLC) in the process. On the basis of *Holmes v Lerner* A would seem to be entitled to be compensated for the value of his interest in the partnership. But here the business proposes to use A's designs even though he is being excluded from the LLC, which seems wrong (he should be compensated for the use in some way if not given an interest in the LLC or the LLC should be prohibited from using his designs). The paragraph also raises some agency issues (arising from the allocation of titles). And there are issues about the provisions specified as being included in the operating agreement. The competition provision is reminiscent of *McConnell v Hunt Sports Enterprises* (CB p. 172)

Griffin begins to be tired of dealing with Bennu and Cerberus. He persuades them to allow Hob to join the LLC on payment of \$25,000 and that the ownership shares should be adjusted so that each of Bennu, Cerberus and Griffin owns 24% and Hob owns 28%. Hob becomes the Vice President of the LLC. Hob and Griffin begin to vote together consistently in ways that annoy Bennu and Cerberus and they decide to leave the LLC. They give notice to Griffin and Hob that they are leaving the LLC. Together they figure that they can use their savings to set up a new food trucks business with some new recipes Bennu has been working on in his spare time.

H and G voting together can outvote B and C, and this seems to cause problems although the facts don't tell us exactly what these problems are (cf *VGS v Castiel* CB p 178 - though the facts here seem quite different). The LLC agreement seems to allow members to leave on 60 days' notice. In addition members are allowed to compete with the LLC's business while they are members so the agreement would surely allow B and C to compete with the LLC when they are no longer members (cf *McConnell v Hunt Sports Enterprises*). The LLC agreement provides for members to purchase a leaving member's interest but it does not seem to require such a purchase nor are we given any details about valuation etc. But we do know that B and C have savings and

seem confident they can make their separate business work, and to the extent that the business is the development and sale of the food this is likely to be where a lot of the value of the business is (we don't know how valuable the truck/trucks and other assets are).

Discuss.

The prompt for the question is very broad. So it could be appropriate to discuss whether you think that the cases you refer to in answering the question are decided correctly or how the law should address these sorts of issues.