1. The vehicle is owned by the partnership, Shirt Co. In Texas, there is a presumption that when a partner uses its personal funds, the item purchased is theirs. However, as a general partner, Ethel had the ability, under agency principal, to buy items for Shirt. Here, because title to the vehicle was issued to "Ethel Partner, Shirt Co." Ethel purchased the vehicle and its property of the partnership. Ethel was a partner of Shirt, and expressly wrote that she was acting not acting on behalf of the partnership as a partner.

The printing machine is owned by Fred. In Texas, when a partner uses its own funds to buy an item in its own name, the item is presumably not partnership property. To the seller of the machine, Fred did not represent himself in anyway or a partner representing Shirt and buying the machine on its behalf. Also, Fred subsequently used the machine for its own non-partnership business purposes. The initial 1000 t-shirts are owned by Shirt Co. In Texas, when a check, order paper, has the name of the partnership or bank account number, the items bought are partnership property. Here, the check was Shirt's and the fact that Fred didn't indicate his capacity as partner, or that he was acting on behalf of the partnership by writing so on the check, is not controlling because the Shirt's check was used to buy the T-shirts.

2. Fred has violated duty and to the partnership. In Texas, there are duties of loyalty, fair dealing. The duty of loyalty is a fiduciary duty, and as such Fred was required to put his individual business interests behind those of Shirt. By purchasing 500 shirts for the purpose of selling the same type of T-shirts at Shirt Co., also via the internet, Fred would usurp Shirt's business opportunities. Fred also had a duty to disclose the business opportunity to Shirt Co. first and allow Shirt Co. to decide if it wanted to take the opportunity to print more shirts with cartoons because Fred had realized there was a larger market for it. Fred violated the duty of loyalty through his planned self-dealing in the same cartoon T-shirt market or Shirt Co. Overall, Fred is liable to Shirt Co. for these breaches, and for any damages he caused by them.

3. Shirt is liable to the vendor for 500 T-shirts. In Texas, when a partnership purchases items using a check that bounces, the partnership is liable to a vendor to make payment. However, a partnership must use an individual or an agent of the partnership to be liable. Here, looking from the perspective of the vendor, the vendor would only believe it was dealing with Fred as an agent of Shirt Co. Fred had already purchased T-shirts from the vendor using a Shirt check. This gave at least apparent authority to bond Shirt Co. as an agent of Shirt, the principal. Also, from the vendor’s perspective, it probably gave actual authority from prior dealings with Fred as an agent of Shirt. Fred had already purchased T-shirts from the vendor using a Shirt check. This gave at least apparent authority to have Shirt as an agent of Shirt, the principal. Also from the vendor’s perspective, it probably gave actual authority from prior dealings with Fred as an agent of Shirt. The fact that Fred used a personal check this time is overcome because of the prior dealing with the vendor. Thus, Shirt is liable through the agency principal of apparent authority.

END OF EXAM

Conclusion Rule
Question 1  Selected Answer #3  JULY 2009

1) Vehicle

Partnership owns the vehicle. A partner of a partnership who purchases equipment for use in the partnership, but with his or her own funds usually makes the property that partner’s personal property. If a partner signs the title or contract though as “Partner, Shirt Co.”, then the title will be considered the partnership. The person whom the property was purchased from will think that he is dealing with the partnership if the partner appears to have authority to purchase for the company. Here, Ethel, even though using her own money, purchased the vehicle with the partnership’s name and her title as a partner. Therefore, the vehicle is owned by the partnership.

Printing Machine

Applying the rules set above, it appears that the printing machine would be owned by Fred. He purchased out of his own funds, and the bill of sales show that he used his own name “Fred” as the purchaser. There may be something to the fact that the seller didn’t think he was buying for his personal use, but the facts show that Fred owns the printing machine.

1,000 T-Shirts

Here, it is likely that the T-shirts are the partnerships’ inventory bought on partnership account is presumptively the partnership’s. The fact that a partner did only sign his name on the bill of sale may make an impact on the ownership, but the source of funds weigh more heavily. Here, Fred purchased 1000 T-shirts on the partnerships account with a check that would show the source of funds to the seller. The 1000 T-shirts are owned by the partnership.

2) Fred usurped a partnership opportunity and breached his duty of loyalty. A partner owes several fiduciary duties to both his other partners and the partnership itself. If a partner takes a partnership opportunity away from the partnership, he usurped the chance for the partnership to make money on a deal that should make them a profit. A partner can have deals on the side of his partnership, but not when it takes away the deal from the partnership and its partners. The partner also has a duty of care and loyalty. The partner needs to do his job with good faith and not self-deal. Here, Fred used his own money and likely his own printing machine to make and sell 500 T-shirts, but he sent them on the internet the same way that Shirt Co. was going to do. Fred likely took sales and profits away from the partnership and will have to pay damages to it.

3) The partnership is likely liable for Fred’s purchase to vendor. When a partner appears to have authority to purchase from a 3rd party to be purchasing inventory for the partnership, the partnership is liable for that contract. Also, a general partnership and the general partners are jointly and severally liable for all torts, contracts, and mistakes made in the course of the partnership business. If the vendor here believed that Fred was purchasing 500 T-shirts for use in his business then Shirt Co. is going to be on the hook for paying it off. Vendor likely thought Fred bought 500 T-shirts for his T-shirt business and thought the partnership would be liable for the shirts. If Shirt Co. can show that Fred bought for himself, with his own money, and in his own name on the account, and vendor thought they were entirely for Fred, then Shirt Co. would not be liable.