Dickinson
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Question 1

In 1942 the Secretary of Labor issued an order prohibiting "homework" in the knitted outerwear industry. In 1981 his successor lifted that ban.

In May of 1982, an unemployed maple syrup sapper named John Lee Minnie bought three "S-well S-knit" machines for a total of $2,500 with funds obtained from the Vermont Welfare Department under a program for retraining the chronically unemployed. Each machine is forty-eight inches long, fifteen inches wide, six inches deep and weighs 125 pounds. When assembled it stands on four thirty-inch legs to provide a horizontal work station, approximately at waist level. As the operatee draws the "shuttle" back and forth across the top of the machine, yarn of several colors is drawn from bulk spools containing one thousand yards each and woven into a finished sweater, hat or scarf. The pattern is produced automatically by a series of "punch cards" that are fed into the machine at the beginning of each project. One operator is required for each machine.

On June 1, 1982, Minnie entered into a "Blanket Purchase Order" with Vermont Yarn Mills, Inc. to produce sweaters. The agreement, which had no stated duration, required Minnie to convert all bulk yarn furnished to him by Vermont Yarn into finished sweaters according to designs on "punch cards" also to be furnished by Vermont Yarn. For each sweater completed and returned by Minnie within a reasonable time, he would receive $7.57. The agreement also contained a provision guaranteeing Minnie a minimum payment of $3.35 per hour, the Federal minimum wage, as required by the wage and hour sections of the Fair Labor Standards Act. The agreement requires that Minnie furnish one or more standard knitting machines (like the "S-well S-knit"), any miscellaneous "findings" (buttons, thread and the like) required to finish the sweaters, a suitable workplace and a means of safeguarding Vermont Yarn's property from theft and fire loss while in his possession.

Minnie's situation is typical of all "home knitters." They are usually senior citizens (who need supplementary income), mothers of young children (who must remain in the home), or the hardcore unemployed (who strive to regain their Yankee pride). In virtually every case the family's living room becomes its workshop. Most "home knitters" sign an agreement with only one company and remain with it for a long period, although the agreements do not prohibit working for more than one company or switching companies at will. Occasionally especially adept and efficient "home knitters" are paid "bonuses" of $500 to $1,000 for switching from one company to another. At present "home knitters" account for only 15% of knitted outerwear production. The remainder is evenly divided between company-owned mills and " independents," large scale manufacturers who do not sell under their own brand name. Both company-owned and "independent" plants use computer-controlled machines that produce dozens of garments at a time with almost no labor.

On August 20, 1983, an employee of Standish Buttonworks, Sterling Jason by name, delivered buttons to Minnie's home that had been ordered to complete sweaters for Vermont Yarn. While Jason was waiting for Minnie to sign a receipt, the legs buckled on a "S-well S-knit' being operated by Minnie's wife, Sarah, dropping the heavy machine on Jason's foot and shattering several bones. A later investigation revealed that the legs had not been secured with cotter pins, as specified in the manufacturer's written instructions, so that the machine could be taken down easily each evening in order to clear the Minnie family's living room.

Jason sued Minnie and Sarah for $15,000, claiming lost wages and pain and suffering (his medical expenses were paid by Standish Buttonworks' workman's compensation carrier). Since Minnies' only assets are the three "S-well S-knit" machines, Jason also sued Vermont Yarn alleging that a master-servant relationship existed between it and the Minnies. After the jury returned a verdict for Jason in the amount of $15,000, the trial judge entered judgment n.o.v. for defendant Vermont Yarn on the grounds that no agency relationship had been established. The court of appeals reversed (2-1) citing some vague policy concerns. Now Vermont Yarn, supported by the Clothing Manufacturers Association and the Chamber of Commerce, has appealed to the Vermont Supreme Court. The appeal is hotly contested by the garment workers' unions, with the tacit cooperation of Jason.

Your boss, Justice Melville P. Taft, is keenly aware of the historic proportions of Jason v. Minnie et al. She has asked you to recommend a decision on the appeal, explaining your analysis fully. She would also like you to place this case in the context of the evolution of agency law and to explain the policy ramifications of the case.

[NOTE - You should ignore the fact that Vermont Yarn may be an "employer" for the purposes of the Fair Labor Standards Act. All parties agree that the issue here is solely a question of state law to which the federal question is irrelevant.]

Question 2

For many years Smith, Tucker and Company was a successful real estate brokerage firm. Its fortunes declined, however, to the point that in 1981, the year in which Morgan joined the firm, Smith and Tucker were the only other partners. Morgan was actively engaged in selling real estate for which he received the usual salesman's commission. He also was entitled to 20% of the net profits or losses of the firm. Morgan had no role in the day-to-day management of the firm although he did occasionally take part in "Partner's Meeting" at which major management decisions were made.

In October, 1983, the bottom fell out of the housing market. That same month, Smith died (penniless, as it turned out) and Morgan and Tucker decided to close the firm. While Morgan took an extended vacation, Tucker undertook to wind-up the firm's business. When Morgan returned in April, 1984, he discovered that Tucker had fled, leaving dozens of unsatisfied creditors and clients, many of whom filed actions against Morgan as the last solvent and available partner. Among those actions are the following:

a. Allen owns three small apartment houses which had been managed by Smith, Tucker and Company since 1974. When Smith died, she demanded an accounting and discovered that the firm had failed to turn over to her $3,000 it received in 1979. Her action seeks to recover that sum from Morgan.

b. Copy-Quik, an instant printing outfit, seeks $1,500 for printing ordered by Tucker during January and February, 1984. Morgan points out that the printing was done after the decision to wind-up the firm's affairs (although CopyQuik claims not to have known this fact). He also notes that the work done consisted of duplicating bulletins for Tucker's church and literature for an anti-property tax group.

c. Donelson seeks to recover $27,000 in lost profits under a contract to sell a small store to the firm. The contract, dated June 15, 1983, identifies the purchaser as "Smith, Tucker and Company" and is signed by Sam Klinger as "authorized agent." Klinger was a commission salesman for the firm for many years. Morgan insists, however, that

Klinger was not authorized to enter into such a contract because under the partnership agreement, all decisions to purchase or sell real estate required the approval of all partners, which was not obtained. Donelson dismisses this argument by noting that Klinger recited in the contract that be was "duly authorized" and pointing to four other properties which had been bought or sold on his signature (although in each of those cases the requisite approvals had been obtained beforehand).

d. Edwards is seeking $15,000 damages for misrepresentations allegedly made by Smith in connection with the sale of vacation property in 1982. The beachfront lot turned out to be a malarial swamp fit only for salamanders and water moccasins. Edwards concedes that Smith never saw the lot himself but contends that the firm "knew of the true condition of the lot" because Klinger had learned the sad truth from the owner during some conversations in 1980 when the owner was considering bringing a suit against his vendor.

With respect to each of the above actions:

(1) State whether Morgan will be held liable.

(2)(a) If your answer to (1) is "No," state whether the plaintiff has an action against anyone else (including Tucker, if he is found), OR (b) if your answer to (1) is "Yes," state whether Morgan has an action against anyone else (including Tucker)

Briefly explain your answers.

Question 3

Engineers, Inc. is an engineering firm that not only performs the usual services for local architectural and construction firms but also is the nation's premiere designer of roller coasters. In light of this odd mix of business, the company has a policy of rotating employees' work assignments to insure they will be flexible enough to accommodate market changes. The company's standard employment agreement contains the following: "Employee acknowledges Company's need to protect its legitimate business interests and accordingly promises not to compete against it anywhere in the United States for a period of seven years." Quail, an engineer with the company for ten years who had worked extensively in both sides of the business, resigned on May 31, 1982 and joined an engineering firm located three blocks away on June 1st of that year. His new employer performs surveys, design certification and other engineering tasks for the local architectural and construction firms but has never even considered designing a roller coaster. Can Engineers, Inc. enforce the quoted portion of its employment agreement with Quail? Briefly explain.