Dickinson
AGENCY & PARTNERSHIP
Summer 1980

Question 1

For many years Smith, Tucker and Company was a successful real estate brokerage firm. Its fortunes declined, however, to the point that in 1977, 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 Meetings" at which major management decisions were made.

In October, 1979, 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, 1980, 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. Widow Allen owns three small apartment houses which had been managed by Smith, Tucker and Company since 1970. When Smith died, she demanded an accounting and discovered that the firm had failed to turn over to her $3,000 it received in 1975. Her action seeks to recover that sum from Morgan.

b. Barker seeks to recover $12,000 in lost profits he claims resulted from the firm's refusal to honor a contract to purchase land from him. The contract, dated May 15, 1979, identifies the purchaser as "Smith, Tucker and Company" and is signed by Tucker as "partner." Morgan contends that the contract is void, however, because the partnership agreement provides that the firm can purchase land only with the approval of all partners and he never gave his approval.

c. Copy-Quik, an instant-printing outfit, seeks $1,500 for printing ordered by Tucker during January and February, 1980. Morgan points out that the printing was done after the decision to wind-up the firm's affairs (although Copy-Quik 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, neither of which were required for the firm's business.

d. 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, 1979, 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 for the reason noted above - decisions to purchase or sell firm property required the approval of all partners, which was not obtained. Donelson dismisses this argument by noting that Klinger recited in the contract that he 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).

e. Edwards is seeking $15,000 damages for misrepresentations allegedly made by Smith in connection with the sale of vacation property in 1978. The beachfront lot turned out to be a malarial swamp fit only for salamanders and water moccasins. Edwards conceded 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 1976 when the owner was considering bringing a suit against his seller.

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 will have an action against anyone else (including Tucker, if he is found), or (b) if your answer to (1) is "yes," state whether Morgan will have an action against anyone else (including Tucker); and,

(3) Briefly explain your answers to (1) and (2).

Question 2

Amusement Park, Inc. ("Park") is a large theme park which takes pride in its bizarre rides. In late 1978, Jones, Park's Director of Purchasing, approached Specialty Engineers ("Specialty"), a firm making a business of designing theme parks and rides, to devise a ride which would be truly unique. The agreement required Specialty to deliver a completed design by June, 1979, in return for an amount equal to 5% of the construction costs of the ride. In late May, however, Specialty approached Jones about an extension of the deadline. In accordance with Park's usual practice, Jones agreed to an extension until October, 1979. A grateful Specialty paid Jones a gratuity of $500 which he neglected to report to his employers.

The ride devised, the "Cosmic Corkscrew," was an ingenious cross between a roller coaster and a centrifuge which hurled the rider through hairpin turns on the outside of the track. As the deadline neared, Specialty's staff worked feverishly to complete the work. The design was completed on time, however.

When it received the design, Park sent it to Crafters Construction Company ("Crafters") for the actual manufacturing and installation of the ride. The manufacturing process consisted of bending and welding several tons of steel pipe and rail. During one bending operation a jig which had been carelessly mounted broke loose injuring Zimmer, a Crafter's employee. He is, of course, entitled to Workman's Compensation, but he also has filed a suit against Park because he was working on their ride at the time of his injury.

When the Cosmic Corkscrew was finished, it was disassembled and taken to Park's site for final installation. Normally a crew of seven would be sent for the task but, because of illness and the press of other business, Crafter's superintendent sent only five employees along. At the assembly site, Park's supervisor sent out two Park employees, Nimble and Quick, to help. As Nimble and Quick were unloading one of the large girders they left it too close to the edge of the truck. The girder flipped over striking and injuring Loomis, a customer at the Park. Loomis, of course, is suing Crafters and Park for negligence.

As soon as the ride was completed in June, 1980, Park's attendants loaded one of the cars with sandbags in order to test the ride's safety. As the first car whirled around the outside of the first curve the track snapped scattering sandbags over a wide area. The cause of the accident was faulty design. In their haste Specialty's engineers neglected to adjust the stress figures for the fact that the cars would be traveling on the outside, rather than the inside, of the track. All seem to agree, this is the kind of mistake that engineers "just shouldn't make." Unfortunately when the sandbags scattered, one struck and injured Grimes, a Park employee who happened to be walking by. He has filed for Workman's Compensation but also is suing Specialty for its negligent design of the Cosmic Corkscrew.

Finally while preparing for the above litigation, Park's supervisor discovered the "gratuity" Jones received for extending the delivery date for the design of the Cosmic Corkscrew. He and others in Park's management are outraged.

(a) Will Zimmer succeed in his suit against Park? Briefly explain;

(b) Will Loomis succeed in his suit against Crafters and/or Park?
Briefly explain;

(c) Will Grimes succeed in his suit against Specialty? Briefly explain; and,

(d) What, if anything, can Park do about Jones accepting the "gratuity"?
Briefly explain.