

FEBRUARY 2019 MEE
QUESTION 3—AGENCY & PARTNERSHIP

Five years ago, three radiologists—Carol, Jean, and Pat—opened a radiology practice together. They agreed to call their business “Radiology Services,” to split the profits equally, and to run the practice together in a manner that would be competitive. Toward that end, they purchased state-of-the-art radiology imaging equipment comparable to that of other radiology practices in the community.

Shortly after opening the practice, Carol, Jean, and Pat retained an attorney to organize the practice as a limited liability company. The attorney prepared all the necessary documents and forwarded the documents to Carol, Jean, and Pat for signature. However, they were so involved in their radiology practice that they forgot to sign the documents, and they have never done so.

Four months ago, Carol suggested to Jean and Pat that the practice replace some of the imaging equipment. Jean was worried about overspending on imaging equipment, but she did not express her concern to Carol and Pat.

Three months ago, Carol, without discussing the matter further with either Jean or Pat or obtaining their consent, purchased for the practice a \$400,000 state-of-the-art imaging machine like those recently acquired by other radiology practices in the community.

After the purchase but prior to delivery, Jean learned what Carol had done and was furious. Jean did not believe the practice could afford such an expensive machine. When Jean confronted Carol, Carol said, “Too bad, it’s a done deal—get over it.” At that, Jean responded, “That’s it. I’ve had enough. This machine was purchased without my consent. It’s a terrible idea. I’m out of here and never coming back. Just give me my share of the value of the practice.” Carol responded, “Fine with me.” Carol and Pat subsequently agreed to continue their participation in Radiology Services without Jean.

Radiology Services is in a jurisdiction that has adopted both the Revised Uniform Partnership Act (1997, as amended) and the Uniform Limited Liability Company Act (2006, as amended).

1. What type of business entity is Radiology Services? Explain.
2. Did Carol have the authority to purchase the imaging machine without the consent of Jean and Pat? Explain.
3. Did Jean’s statements to Carol constitute a withdrawal from Radiology Services? Explain.
4. Were Jean’s statements sufficient to entitle her to receive a buyout payment from Radiology Services for her interest in the practice? Explain.

Question Presented

Three radiologists opened a practice together, agreeing to share profits equally and co-manage it, with no set term, and bought competitive imaging equipment.

← profit-sharing + co-management + no term = at-will general partnership

They intended to form an LLC and had documents prepared, but never signed or filed them.

← no LLC (nothing filed) → default to a general partnership

Carol, without consulting Jean or Pat, bought a \$400,000 state-of-the-art imaging machine like those other practices had.

← each partner can bind the partnership in the ordinary course

Furious, Jean told Carol, I'm out of here and never coming back; just give me my share of the value. Carol and Pat then continued without her.

← express will to withdraw = dissociation (at-will → not wrongful)

Jean never made a written demand for payment.

← buyout is due 120 days after a written demand

1. What type of business entity is Radiology Services?
2. Did Carol have authority to buy the machine without consent?
3. Did Jean's statements constitute a withdrawal?
4. Are her statements enough to entitle her to a buyout?

← → general partnership vs. LLC

← → partner authority / ordinary course

← → dissociation

← → buyout on dissociation

Question 1: What Entity Is Radiology Services?

Issue. Whether Radiology Services is a general partnership or an LLC.

Rule. A general partnership is the default entity when two or more persons carry on a business for profit as co-owners, sharing profits and management; with no definite term or undertaking, it is at-will. An LLC comes into existence only when the required formation documents are signed and filed with the state.

Which entity did they actually form?

Default = general partnership (co-owners sharing profits/management); no term = at-will. LLC only if documents signed and filed.

Analysis. Here, the radiologists **shared profits equally and co-managed the practice** with no set term, which is a general partnership at will. Although they intended an LLC, they **never signed or filed the formation documents**, so no LLC was ever formed.

Conclusion. Therefore, Radiology Services is an at-will general partnership.

Shared profits + co-management + no term = at-will GP; unfiled LLC docs = no LLC.

At-will general partnership.

Question 2: Carol's Authority to Buy the Machine

Issue. Whether Carol could bind the partnership to buy the imaging machine without Jean's and Pat's consent.

Rule. Each partner is an agent of the partnership and may bind it by acts apparently carrying on the partnership's business in the ordinary course. Acts outside the ordinary course require the authorization of the other partners; a partner who acts within the ordinary course does not need consent and is not liable to the others for doing so.

Analysis. Here, buying a **state-of-the-art imaging machine comparable to those of peer practices** is within the ordinary course of a radiology practice, so Carol had authority to bind the partnership without consulting Jean and Pat, and she is not liable to them for an ordinary-course purchase.

Conclusion. Therefore, Carol had authority to purchase the machine without the others' consent.

Can one partner buy this alone?

A partner binds the partnership by ordinary-course acts; extraordinary acts need consent.

Comparable imaging equipment = ordinary course → authorized without consent.

Yes: ordinary-course authority.

Question 3: Did Jean Withdraw?

Issue. Whether Jean's statements to Carol constituted a withdrawal from the partnership.

Rule. A partner dissociates by giving the partnership notice of an express will to withdraw. In an at-will partnership, a partner's withdrawal by express will is not wrongful.

Analysis. Here, Jean's statement that she was **out of here and never coming back and wanted her share** was clear notice of an express will to withdraw, which dissociated her; because the partnership was at-will, her dissociation was not wrongful.

Conclusion. Therefore, Jean's statements dissociated her from Radiology Services.

Did she dissociate?

Express will to withdraw = dissociation; at-will → not wrongful.

Clear 'I'm leaving' = notice of express will to withdraw; at-will → proper.

Yes: she dissociated (not wrongfully).

Question 4: Is Jean Entitled to a Buyout?

Issue. Whether Jean's statements entitle her to a buyout payment for her interest.

Rule. When a partner dissociates and the remaining partners continue the business (so there is no dissolution and winding up), the partnership must buy out the dissociated partner's interest. The buyout price is due 120 days after the dissociated partner makes a written demand for payment.

Analysis. Here, Carol and Pat continued the practice, so Jean's dissociation did not dissolve the partnership, and she is entitled to a buyout of her one-third interest. But because she made no written demand, no 120-day payment period has begun.

Conclusion. Therefore, Jean is entitled to a buyout, though the payment timing awaits her written demand.

Does dissociation trigger a buyout?

Dissociation + business continues → buyout owed; price due 120 days after a written demand.

Business continued → buyout of her 1/3; no written demand → no payment clock yet.

Yes: entitled to a buyout (timing needs a written demand).

Step-by-Step: Partnership Formation, Authority & Dissociation

Classify the entity, test one partner's power to act, then follow the exit through dissociation and buyout.

1. Entity: co-owners sharing profits and management, nothing filed?

→ Default **general partnership**; no term = at-will. LLC only if documents signed and filed. **Q1: at-will GP**



2. Partner authority: is the act in the ordinary course of the partnership's business?

→ Yes → a partner binds the partnership **without consent**. **Q2: comparable imaging machine = ordinary course**



3. Dissociation: did a partner give notice of an express will to withdraw?

→ Yes → **dissociation**; at-will means it is not wrongful. **Q3: Jean dissociated**



4. Consequence: do the remaining partners continue (no dissolution)?

→ Yes → the dissociated partner gets a **buyout**, due 120 days after a written demand. **Q4: buyout owed; no written demand yet**