

Two siblings, a brother and a sister, decided to start a bike shop with their cousin. They filed a certificate of organization to form a limited liability company. The brother and the sister paid for their LLC member interests by each contributing \$100,000 in cash to the LLC. Their cousin paid for his LLC member interest by conveying to the LLC five acres of farmland valued at \$100,000; the LLC then recorded the deed.

Neither the certificate of organization nor the members' operating agreement specifies whether the LLC is member-managed or manager-managed. However, the operating agreement provides that the LLC's farmland may not be sold without the approval of all three members.

Following formation of the LLC, the company rented a storefront commercial space for the bike shop and opened for business.

Three months ago, purporting to act on behalf of the LLC, the brother entered into a written and signed contract to purchase 100 bike tires for \$6,000 from a tire manufacturer. When the tires were delivered, the sister said that they were too expensive and told her brother to return the tires. The brother was surprised by his sister's objection because twice before he had purchased tires for the LLC at the same price from this manufacturer, and neither his sister nor their cousin had objected. The brother refused to return the tires, pointing out that the tires "are perfect for the bikes we sell." The sister responded, "Well, pay the bill with your own money; you bought them without my permission." The brother responded, "No way. I bought these for the store, I didn't need your permission, and the company will pay for them." To date, however, the \$6,000 has not been paid.

One month ago, purporting to act on behalf of the LLC, the cousin sold the LLC's farmland to a third-party buyer. The buyer paid \$120,000, which was well above the land's fair market value. Only after the cousin deposited the sale proceeds into the LLC bank account did the brother and sister learn of the sale. Both of them objected.

One week ago, the brother wrote in an email to his sister, "I want out of our business. I don't want to have anything to do with the bike shop anymore. Please send me a check for my share."

1. What type of LLC was created—member-managed or manager-managed? Explain.
2. Is the LLC bound under the tire contract? Explain.
3. Is the LLC bound by the sale of the farmland? Explain.
4. What is the legal effect of the brother's email? Explain.

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Question Presented

Brother, sister, and cousin form an LLC; the brother and sister each contribute \$100,000 cash and the cousin conveys farmland worth \$100,000, and the LLC records the deed. Neither the certificate nor the operating agreement says the LLC is member- or manager-managed, but the agreement bars selling the farmland without all three members' approval.

← *silent on management = member-managed by default; express limit on land sales*

Acting for the LLC, the brother signs a contract to buy 100 tires for \$6,000 from a manufacturer he had bought the same tires from twice before at the same price; the sister now objects and tells him to return them.

← *ordinary bike-shop purchase + prior course of dealing = actual + apparent authority*

The cousin, acting for the LLC, sells the LLC's farmland to a third party for \$120,000, above market; the brother and sister learn only afterward and object.

← *extraordinary act + agreement bars it + recorded deed = buyer on notice, no authority*

The brother then emails: 'I want out of the business ... please send me a check for my share.'

← *withdrawal = dissociation, but no buyout right; the LLC continues*

Questions: (1) member- or manager-managed? (2) bound on the tires? (3) bound on the farmland? (4) effect of the email?

← *four questions, four separate answers*

Issue 1: Management Structure

Issue. Whether the LLC is member-managed or manager-managed.

Rule. G/R: An LLC is member-managed by default unless the certificate of organization or the operating agreement provides for manager-management. In a member-managed LLC each member has equal management rights and is an agent of the LLC for its ordinary business.

Question 1.

default is member-managed

Analysis. Here, neither the certificate nor the operating agreement appoints managers, and all three members actively run the shop. The default governs.

no manager provision anywhere

Conclusion. Therefore, the LLC is member-managed, so each member is an agent for ordinary business.

sets up authority analysis

Issue 2: The Tire Contract

Issue. Whether the LLC is bound by the brother's contract for the tires.

Question 2.

Rule. G/R: In a member-managed LLC, each member is an agent with authority to bind the LLC on acts in the ordinary course of its business. Actual authority covers acts a member reasonably believes the LLC wants; apparent authority arises from the LLC's manifestations to a third party, including a course of dealing.

actual (ordinary course) + apparent (prior dealings)

Analysis. Here, buying tires is ordinary business for a bike shop, so the brother had actual authority as a managing member. He also had apparent authority: the LLC had twice paid this same manufacturer for the same tires at the same price, a course of dealing the manufacturer reasonably relied on. The sister's later objection cannot undo authority that already existed.

tires are core inventory; repeat purchases

Conclusion. Therefore, the LLC is bound on the tire contract.

answer to Question 2

Issue 3: The Farmland Sale

Issue. Whether the LLC is bound by the cousin's sale of the farmland.

Question 3.

Rule. G/R: A member's authority reaches ordinary-course matters; extraordinary acts, or acts the operating agreement restricts, fall outside actual authority. Apparent authority fails where the third party knows or has reason to know the member lacks authority; recorded title and the nature of the business can put a buyer on notice.

extraordinary act + agreement limit + notice

Analysis. Here, selling real estate is not the ordinary business of a bike shop, and the operating agreement expressly required all three members' consent, which was not given, so the cousin had no actual authority. There was no apparent authority either: the LLC made no manifestation to the buyer, and the deed recorded in the LLC's name put the buyer on notice to check the cousin's authority.

no actual, no apparent; buyer on record notice

A good price does not cure the missing authority.

Conclusion. Therefore, the LLC is not bound; the sale is voidable by the LLC.

answer to Question 3

Issue 4: The Brother's Withdrawal

Issue. Whether the brother's email dissociates him and entitles him to immediate payment for his share.

Question 4.

Rule. G/R: A member may withdraw at any time, causing dissociation; unlike a partnership, dissociation from an LLC does not by itself dissolve it. A dissociated member loses management rights and, absent a buyout provision, cannot force payment for the interest; the member is paid on dissolution or by a voluntary distribution. Judicial dissolution requires illegal, fraudulent, or oppressive conduct, or that continuing is not reasonably practicable.

dissociation only; no automatic buyout

Analysis. Here, the email is an express withdrawal, so the brother is dissociated and loses his management role. But the operating agreement provides no buyout, the LLC continues in business, and nothing shows oppression or impracticability, so he cannot compel payment now.

LLC survives; no oppression shown

Conclusion. Therefore, the email dissociates the brother, but he must await dissolution or a voluntary distribution to be paid.

answer to Question 4

Step-by-Step: Binding a Member-Managed LLC

Management type sets each member's agency power; then test each act for authority.

1. Any manager provision in the certificate or agreement?

→ No: member-managed by default; each member is an agent for ordinary business. **member-managed**



2. Tires: ordinary course?

→ Yes, plus a prior course of dealing = actual and apparent authority. **LLC bound**



3. Farmland: ordinary course, consent, notice?

→ Extraordinary act, agreement bars it, recorded deed = no authority. **LLC not bound**



4. Withdrawal email: dissolve or pay out?

→ Dissociation only; no buyout; the LLC continues. **no immediate payout**