

Agency Review Problems

Question I

For many years, Ruth owned and operated a restaurant as a sole proprietorship doing business as (d/b/a) Ruth's Family Restaurant. Several years ago, Ruth sold the assets of the restaurant to Scott. Ruth and Scott agreed that: (1) the restaurant would operate under the name "Ruth's Family Restaurant"; (2) Ruth would manage the restaurant for Scott but would have no ownership interest in the restaurant; (3) all necessary licenses would remain in Ruth's name; and (4) Ruth would hire all employees, but only on an at-will basis (as is customary in the restaurant business). No one other than Ruth and Scott was aware that Scott had bought the restaurant.

Prior to Scott's purchase of the restaurant, Ruth had purchased supplies from Wholesale Restaurant Supply Co. (Wholesale), always signing the contracts as "Ruth, d/b/a Ruth's Family Restaurant." Following Scott's purchase of the restaurant, Scott instructed Ruth in very clear terms not to make any purchases of restaurant supplies from Wholesale in the future. Ruth complied with this instruction for the next several months.

Last year, Ruth hired Nora, her niece, as assistant manager of the restaurant under a written employment contract for a 20- year term. Ruth signed the contract as "Ruth, d/b/a Ruth's Family Restaurant."

Soon after Nora was hired, she pointed out to Ruth that Wholesale's prices were generally less than those of the other local supply company. Despite Scott's clear prohibition, Ruth resumed buying supplies from Wholesale, again signing all contracts as "Ruth, d/b/a Ruth's Family Restaurant."

When Scott discovered what Ruth had done, Scott took over management of the restaurant, discharged Nora and Ruth, and refused to pay thousands of dollars of invoices from Wholesale for restaurant supplies delivered to the restaurant.

Wholesale has sued Scott to recover on the outstanding invoices. Nora has sued Scott for breach of the employment contract.

- 1. Is Ruth personally liable to either Wholesale or Nora? Explain.**
- 2. Is Scott liable to Wholesale? Explain.**
- 3. Is Scott liable to Nora? Explain.**

Question II

Best Care Hospital, one of five hospitals in City, operates the largest emergency room in City. Best Care advertises extensively about the quality of care provided in its emergency room. It has billboards strategically placed throughout City urging local citizens to come to Best Care “because Best Care’s emergency room doctors are the absolute best and will really care for you.” In fact, Best Care employs no doctors; instead it contracts with seven doctors in City to staff the emergency room on a 7-day, 24-hour basis. These contracts provide:

1. Each doctor is an “independent contractor,” not an “agent/employee,” and may conduct a private practice but may not work in any other emergency room;
2. Each doctor is responsible for the manner in which he or she provides medical care and for the purchase of malpractice insurance;
3. Each doctor is authorized to purchase supplies and equipment for Best Care’s emergency room from a list of approved vendors located in City and within Best Care’s price guidelines;
4. Each doctor is periodically reviewed by Best Care’s governing board to assure that each doctor provides quality care;
5. Each doctor independently bills patients for services provided; and
6. All emergency services are performed in the Best Care emergency room using supplies and equipment provided by Best Care.

Three months ago, Owen, a local orthopedist and one of the doctors with whom Best Care contracts, ordered a portable X-ray machine costing \$25,000 from Vision, a company located in a town 450 miles from City. Vision is not on Best Care’s approved vendor list and Owen did not consult with anyone at Best Care before he placed the order. When Owen ordered the machine, which was to be custom designed for Best Care, he truthfully told Vision that he was one of the seven emergency room doctors at Best Care and needed the machine for the emergency room. Owen also stated that he was acting on behalf of Best Care. Vision had had no previous dealings with Owen or Best Care and agreed to make the machine according to the custom specifications provided by Owen. When Vision shipped the X-ray machine, Best Care refused to accept delivery, even though the price for the machine was within its price guidelines. Best Care claimed that Owen had no authority to purchase the machine on its behalf. Vision filed an action for breach of contract against Best Care.

Last month, Anita was hit by a bus. When the ambulance arrived, Anita asked the ambulance driver to take her to Best Care, quoting the billboard claim that “Best Care’s emergency room doctors are the absolute best.” When Anita arrived at the emergency room, she was treated by Owen. Owen correctly told Anita that she needed immediate surgery. During the operation, Owen negligently severed one of Anita’s arteries, and she bled to death. Anita’s estate has filed a wrongful death action against Owen and Best Care for damages resulting from Owen’s negligence.

- 1. Is Owen an independent contractor or servant (employee) of Best Care? Explain.**
- 2. Is Best Care liable to Vision for breach of contract? Explain.**
- 3. Assuming Owen is an independent contractor, is Best Care liable to Anita’s estate for Owen’s negligence? Explain**