

MEE Question 1

In February, Wendy opened Kibble, a store selling dog food made from organic ingredients as well as dog toys and dog grooming products. Wendy operated Kibble as a sole proprietorship. Kibble soon ran into financial difficulties, and Wendy could not pay its bills.

In early April, Wendy asked her friends Mary and Angelo for financial assistance.

On May 1, in response to Wendy's request, Mary delivered to Wendy a check payable to "Kibble." In exchange for this contribution, Wendy agreed in a signed writing to pay Mary 15% of Kibble's monthly profits for as long as Kibble remained in business. Mary also agreed that, if Kibble suffered losses, she would share 15% of those losses with Wendy.

As part of their deal, Mary began working at the store with Wendy and helped Wendy with business planning for Kibble.

On May 2, also in response to Wendy's request, Angelo delivered to Wendy a check payable to "Kibble." On the memo line of this check, Angelo wrote "loan to Kibble." Angelo agreed in a signed writing to accept 15% of the monthly profits of Kibble as repayment of the loan until the total loan amount, including interest, was repaid.

Wendy used the proceeds of the checks from Mary and Angelo to purchase equipment, supplies, and a delivery van in Kibble's name.

Beginning in June, Wendy paid 15% of Kibble's previous month's profits to Mary and another 15% to Angelo.

On October 1, Mary wrote a letter to her son Bob stating that she was assigning to Bob, as a gift, all her interest in Kibble effective immediately. Later that day Mary handed a copy of that letter to Wendy, who immediately read it and said to Mary, "I don't want Bob involved with Kibble." Mary continued to be active in the business operations of Kibble.

Early in November, Wendy distributed the appropriate October profits of Kibble to Mary and Angelo but distributed nothing to Bob.

On November 10, Bob demanded that Wendy distribute Mary's share of Kibble's profits to him and that she also allow him to inspect the books and records of Kibble.

On November 15, Mary learned that Wendy was using Kibble's delivery van on Sundays to transport her nieces to their softball games. Mary demanded that Wendy stop doing so, but Wendy refused, noting that the van was not being used for Kibble's business on Sundays.

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1. What legal relationships have the parties established through their dealings? Explain.
2. Is Bob entitled to Mary's share of the monthly profits of Kibble? Explain.
3. Is Bob entitled to inspect the books and records of Kibble? Explain.
4. Is Wendy entitled to use the delivery van on Sundays to take her nieces to their softball games? Explain.

1. Legal Relationship between the Parties

(1) Wendy and Mary formed a partnership through their dealings.

Partnership is created when two or more people agree to do business for profit together.

Here, in exchange for Mary's financial contribution to Kibble, Wendy's store selling dog food and dog-related items for profit, Wendy has agreed to pay Mary 15% of Kibble's monthly profits. Mary also agreed to share 15% of losses incurred by Kibble. In addition, Mary began working at Kibble. These facts indicate that they have agreed to do business for profit together. As such, it could be said that they formed a partnership.

(2) Wendy and Angelo entered into a loan contract, making Wendy a debtor and Angelo a creditor.

Contract is formed when there is a mutual assent and consideration.

Here, Angelo delivered to Wendy a check stating "loan to Kibble". In return, she agreed in writing to accept 15% of the monthly profits of Kibble from Wendy, evidencing the mutual assent and consideration (bargained-for-exchange). Thus, they have formed a valid loan contract.

(3) Bob is a third party beneficiary as he would receive all Mary's interest in Kibble as a gift.

2. Bob is entitled to Mary's share of the monthly profits of Kibble because her right can be assigned without Wendy's consent.

3. Bob is not entitled to inspect the books and records of Kibble because he is not a partner of Kibble.

4. Wendy is not entitled to use the delivery van on Sundays for personal use because the van belongs to Kibble which may only be used for the purpose of their business unless otherwise agreed.