

EXAMINERS' ANALYSIS OF QUESTION NO. 13

1. Which party bears the burden of proof regarding the existence of a partnership?

The burden of proof to show a partnership is on the party alleging the partnership. *Grosberg v Michigan Nat Bank Oakland*, 113 Mich App 610, 614 (1982); *Falkner v Falkner*, 24 Mich App 633, 644 (1970). Because Steve is the party alleging the partnership, it is Steve's burden to establish the existence of a partnership.

2. What is the burden of proof required to establish a partnership in this case?

Generally, the party alleging the partnership is required to prove that a partnership exists by a preponderance of the evidence. *Lobato v Paulino*, 304 Mich 668, 670 (1943). However, where the alleged partners are relatives, a heightened standard applies, and the party alleging the partnership is required to prove the existence of the partnership by clear and convincing evidence. *Grosberg, supra; Falkner, supra; Cole v Cole*, 289 Mich 202, 204 (1939). Therefore, Steve will be required to establish the existence of the partnership by clear and convincing evidence.

3. Does a partnership exist between Brian and Steve?

A partnership is an association of two or more persons to be the co-owners of a business for profit. MCL 449.6(1). In general, under this statute the primary question is "whether the parties intentionally acted as co-owners of a business for profit, and not on whether they consciously intended to create the legal relationship of 'partner-ship.'" *Byker v Mannes*, 465 Mich 637, 652 (2002). MCL 449.7 lays out specific rules for determining the existence of partnership. MCL 449.7(4) states that "[t]he receipt by a person of a share of the profits of a business is prima facie evidence that he is a partner in the business . . ." (emphasis added). However, the statute also lays out several exceptions to the "prima facie evidence" rule. Relevant to this fact pattern, the statute states that no inference of partnership is drawn if the profits were received in payment "[a]s a debt by installments or otherwise," MCL 449.7(4)(a). While receiving a share of the profits would

normally constitute evidence of partner-ship, no inference of partnership exists because the facts state that the payments were made to Steve in order to satisfy a debt. Moreover, the facts do not indicate that Steve made any other contributions toward the enterprise, such as labor, *Michigan Employment Sec Commission v Crane*, 334 Mich 411, 416 (1952), and no other acts of the parties are supplied that would allow for the argument that the parties acted as co-owners of a business for profit. Based on the information provided, a partnership does not exist between Brian and Steve.