

## AGENCY QUESTION

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Over 5,000 individuals in the United States operate hot-air balloon businesses. A hot-air balloon has four key components: the balloon that holds the heated air, the basket that houses the riders, the propane burner that heats the air in the balloon, and the propane storage tanks.

The owner of a hot-air balloon business recently notified several basket and burner manufacturers that she or her agent might be contacting them to purchase baskets or burners. The owner did not specifically name any person as her agent. Basket and burner manufacturers regularly receive such notices from hot-air balloon operators. Such notices typically include no restrictions on the types of baskets or burners agents might purchase for their principals.

The owner then retained an agent to acquire baskets, burners, and fuel tanks from various manufacturers. The owner authorized the agent to buy only (a) baskets made of woven wicker (not aluminum), (b) burners that use a unique "whisper technology" (so as not to scare livestock when the balloon sails over farmland), and (c) propane fuel tanks.

The agent then entered into three transactions with manufacturers, all of whom had no prior dealings with either the owner or the agent.

(1) The agent and a large manufacturer of both wicker and aluminum baskets signed a contract for the purchase of four aluminum baskets for a total cost of \$60,000. The agent never told the manufacturer that he represented the owner or any other principal. The contract listed the agent as the buyer and listed the owner's address as the delivery address but did not indicate that the address was that of the owner rather than the agent. When the baskets were delivered to the owner, she learned for the first time that the agent had contracted to buy aluminum, not wicker, baskets. The owner immediately rejected the baskets and returned them to the manufacturer. Neither the owner nor the agent has paid the basket manufacturer for them.

(2) The agent contacted a burner manufacturer and told him that the agent represented a well-known hot-air balloon operator who wanted to purchase burners. The agent did not disclose the owner's name. The agent and the burner manufacturer signed a contract for the purchase of four burners that did not have "whisper technology" for a total price of \$70,000. The burner contract, like the basket contract, listed the owner's address for delivery but did not disclose whose address it was. The burners were delivered to the owner's business, and the owner discovered that the agent had ordered the wrong kind of burners. The owner rejected the burners and returned them to the manufacturer. Neither the owner nor the agent has paid the burner manufacturer for the burners.

(3) The agent contracted with a solar cell manufacturer to make three cells advertised as "strong enough to power all your ballooning needs." The agent did not tell the manufacturer that he was acting on behalf of any other person. One week after the cells were delivered to the agent, he took them to the owner, who installed them and discovered that she could save a lot of money using solar cells instead of propane to power her balloons. The owner decided to keep the solar cells, but she has not paid the manufacturer for them.

Assume that the rejection of the baskets and the burners and the failure to pay for the solar cells constitute breach of the relevant contracts.

1. Is the owner liable to the basket manufacturer for breach of the contract for the aluminum baskets? Is the agent liable? Explain.
2. Is the owner liable to the burner manufacturer for breach of the contract for the burners? Is the agent liable? Explain.
3. Is the owner liable to the solar cell manufacturer for breach of the contract for the solar cells? Is the agent liable? Explain. (Do not address liability based upon restitution or unjust enrichment.)