**Answer-1**

**Issue:**

* In present case we have to advice Marry about her rights and recommend here whether she can recover any amounts from partners or from partnership firm.
* Second legal point from partnership firms points of view, what is a legal position for

Claim maid by Merry.

**Law:**

Provision of Partnership Act 1892:

* Pursuing to sections of Partnership Act 1892, partnership is the comprehension between persons to complete the specific business to win the benefit. The previously stated game plan does exclude Corporation inside its sneak peak.
* Section 2 of the Act gives different criteria to figure out if specific movement is partnership or not. In like manner the accompanying criteria should be fulfilled with a specific end goal to constitute partnership:
* There must be specific arrangements between two or more legally qualified Person
* This arrangements is for specific purpose such as to undertake any business or professional activates
* Intention to enter in to such arrangements for any economic purpose
* The governing statue of partnership does not make any difference between partners and partnership firm.
* Section 2(3) of partnership Act 1892, guides for existence of partnership, in a way that if there exist close for sharing of net profit between or among the partners, then this close indicates about existence of partnership
* Pursuing to provisions of partnership Act, every accomplice owes guardian obligation towards each other and firm as entirety. Consequently every accomplice is relied upon to act in accordance with some basic honesty and in light of a legitimate concern for the firm. Segment 29 of the Act gives that accomplice is relied upon to uncover all individual advantages he has gotten from the firm operation to all the accomplices and his demonstration must not be against enthusiasm of the firm.

Legal relations among and between partners and with outsiders

Relationship between Partners:

In order to understand relations between partners, section 5 of this act will assist us, accordance to this section relations between partners are same as of principal and agent, so this whenever any question for interrelation between partner are arias then provisions of general law of agency will applied.

* Further second governing principal for inter relations of partner is partnership deed executed between or among the partners, this partnership deed contains a special provisions for express authority or limit any power.
* Any contract executed or deed done by partners in accordance with the express power given to him under partnership deed will binds the firm.

**Relationship with outsiders**

* Where any partner of partnership firm represents firms or any partner before third Person then such partner is consider as agent for partners or partnership firm, here general law of agency will be applicable and this partner will binds the partner or to partnership firm by its actions.
* Section 5(1) contains a special provisions for partner capacity to bind partnership firm. It gives that unless the demonstration done by partners is not inside the power and the individual with whom the exchange is completed thinks about the same, outsider can bind the firm for the demonstration of accomplice.
* Partnership firm can prevent it shall from legal liability crated by any partner of partnership firm subject to satisfaction of all the following requirements before judicial authority
* First of all it must be prove before judicial authority that partner has done such act which is beyond its power or authority AND
* Third party with whom partner is dealing has a knowledge the partner are not authorise to do such act, or such action is beyond the power of partner.
* The aforementioned condition suggests that outsider will be suspended from getting harms Just on the off chance that he knows about constraint on power of accomplice.
* Section 8 of the Act makes it clear that inward course of action which restrains the power of the individual accomplice makes obstacles in upholding of privileges of outsider just if outsider knows about presence of such confinement.
* In Mercantile Credit Ltd v Garrod court held that languages of section 5(1) unmistakably shows that if outsider is skilled to set up effectively about his lack of awareness in regards to restriction on accomplice's power, he can recoup harms from firm. It plainly demonstrates that inward impediment on the accomplice's power has no unfriendly ramifications on case of outsider.

**Authority acquired from statue.**

Section 5 demonstrates that partners have some implied authority or power. In like manner partners are qualified for do each action in the normal course of business in regular way regardless of the possibility that the same is not approved by partnership deed. This power of the individual partners is known as implied authority. Partnership firm can be sued by outsider for all acts done by the partners in his suggested limit. However to make risk of firm, the accompanying conditions should be satisfied:

* All actions or act of individual partners should have direct or indirect relations with operation of business
* All such action are in ordinary business actions
* This act or actions shall not be in personal capacity inside of which this should be in capacity of partner.

Actions done in accordance with above conditions indicates that such actions are under implied authority

**Application:**

* In the given case Peter, Jones and Smith are the partners of United Surveyors. The primary scope of the firm is to attempt survey work. The rights and commitments of the partners for this situation are represented by procurements of law of agency and express procurement of partnership deed. Petar, Jones and Smith are call as principal as well agent for each other. The partnership deed executed amongst them approves singular accomplice to execute the contract for United Surveyors, the firm. This will be considered as However, the deed limit the limit of accomplice to execute contracts to the degree it makes risk up to $5000. This can be considered as inside limitation on the limit of accomplice. The firm can utilize this as haven to dodge risk emerging from the contract, for quality in abundance of $5000, executed by firm just if outsider managing firm knows about this inner limitation.
* Mary being a third party for partnership is aware for all business activities
* Smith while purchasing instruments for surveyors activity are known as representative of partnership firm and that why he call agent in term of general agency law.
* Smite enter in to contract with Mary for purchasing surveying instrument for $6000 and also for oil drilling machinery for $3000 this indicate smite actions are beyond his statutory authority.

**Conclusion:**

1. ***In case of contract of surveying instruments purchase at $6000,***

The partnership firm is liable to pay third party, Mary basis that following points shall be considered.

1. While executing a contract by smith, he is representing partnership firm.
2. Purchase of surveying instruments is a normal business transections
3. Third party, Mary does not hold any information for restriction of right of partners.

The aforementioned contentions demonstrates that the demonstration to buy instrument will be consider as to implied authority of Smith and as Mary didn't know about the inner impediment, she have ability to bind the firm for the act of Smith, by excellence of Section 5 and Section 8. Thus she can recover $6000 from the firm.

1. ***In case of contract to purchase oil drilling machines at $3000***

In order to identify legal situation of firm following points should be noted

1. While executing a contract to *purchase oil drilling machinery,* smith has represented himself as partner of firms.
2. However actual business activity of United Surveyors is to undertake surveying activity, so this clearly indicated that execution of purchasing contract for oil drilling machinery is not a part of ordinary business activity
3. Moreover Mary has clear idea of business activities of unitedsurveyors.

So above stated legal consequence indicates that Mary is not legally authorise to claim any amounts form partnership firm.

**Answer 2**

**Issue:**

* in present case we are require to examine legal validity of contrast executed by promoters
* as well here we are also require to examine the promoters liability for pre incorporation contracts
* One additions points for consideration in light of above legal requirements is to determined personal liability of directors, as well liability of shareholders and promoters for the contract executed by company after incorporation of company.

**Law:**

* Pursuing to provisions of Corporation Act 2001, a body corporation comes in to existence only after incorporation
* Further section 119 of afforded act, state that body corporation is known as separate legal entity after successfully incorporation under the act and shall be regard as responsible body for acts done in a name of company.
* Moreover aforesaid act consider a body corporation as separate legal entity and call legally qualified Person for execution of contract.
* Contract Act is also consider a body corporation as legally qualified persona for execution of valid contract
* A legal statues of separate legal entity allows a corporation to create right and liability in name of corporation, this clearly indicates members are not entitle or responsible for rights or liability created in name of corporations.
* The legal states of separate legal entity are also considered as court of Law, in case of *Salomon v A. Salomon & Co Ltd.*
* the concept of separate legal entity has following implications

1. The liability of shareholder are limited, this includes the liability as stated in Memorandum of Association. This indicates that members are not liable for act of company.
2. Member are not an agent for company hence company works independently through duly constitute boards.

* For pre-incorporated contracts:
* All contracts executed by promoters of the company before the incorporation of body corporate are knows as pre incorporation contract as stated in Corporation Act 2001
* Pursuing to provisions of Corporation Act promoters are persons who participates in formation of body corporate
* All the contract executed by promoters on behalf of Body Corporation before incorporation of company are adopted by corporation after incorporation subject to satisfaction of Board of directors.
* pursuing to provisions of Contract Act, an right and liability in respect of any contact shall be created only when parties to contract are in existence, but in respect pre incorporation contract, body corporation is not in existence hence corporation shall not be consider party to contract.
* General Act contains a provisions for legal statues of promoters. Pursuing to provisions of general law in order to have principal agent relation it is necessary to create valid principal agent relations, likewise, the promoter can't be considered as agent of the proposed partnership. This is on the grounds that at the time of acting in the capacity of promoter, principal is not yet in presence. General Law requires presence of both agent and principal to make legitimate relationship of agency. Because of absence of substantial relationship of principal and agent, the partnership on its presence can't sanction the agreement executed by the promoter before incorporation and in addition company can't be bound by outsider for the pre incorporation contracts.
* Afore said statutory requirement clearly indicates that promoter is personally liable for all pre incorporation contracts unless such contracts are validly adopted by corporation after incorporation. Reason for personal liability of promoters is that while execution of contract by and on behalf of propose corporation, the corporation is not in existence so promoters are not legally authorise to do such acts as agents.
* Followings are the legal position found in Corporation Act

1. Company may after incorporation adopt either with same term or with variation in term of contracts executed by promoters, the adoption of pre incorporation contracts are at wish of body corporation
2. If company adopts this pre incorporation contracts with variation in terms then such variation should be carried out within reasonable time limit or with the time as stated in pre incorporation contracts.
3. In case after execution of pre incorporate contracts body corporate does not register itself then promoters shall be personally liable
4. Moreover after incorporation of corporation, company refuse to adopt the pre incorporate contracts then promotes shall be personally liable for pre contracts.
5. One of the sections of Corporation Act empowers a promoters to file a suit in for loss suffer by him due to non-adoption of contract by corporation after incorporation.

**Application:**

In this case, the Steve Jones has incorporated company WA Gold Exploration Ltd. The company was incorporated on July 10. As Steve Jones has taken requires steps to incorporate company, he can be considered as promoter as per the provision of Corporation Act 2001. In the capacity of promoter he owes fiduciary duty towards the proposed company.

In the capacity of the promoter he has executed contract with Thor Mining Machinery Ltd. The said contract was executed on July 6. As the company was incorporated on July 10, the said contract will be considered as pre-incorporation contract. As per the provision of Corporation Act, on incorporation of company, the company has to decide whether to adopt the contract or not. The liberty is given to company. In case if the company adopts the contract, company will be liable for contract. At the same time if company decides not to adopt the contract, there will be no liability of the company. In the given case, directors of WA Gold Exploration Ltd have decided not to accept the pre incorporation contract executed by Steve Jones in the board meeting. In this case, the contract executed by Steve Jones will attract personal liability for Steve Jones. The liability is because of section 131 of the Corporation Act 2001.

As the consequences of incorporation, company will be considered as separate legal entity. Because of the separate legal entity, the company is entitled to execute the contract. According to Corporation Act, 2001 the liability of the contract executed by the company is of its own. The company can be held responsible for the contract executed by it. As the corporation Act considered company as separate from its member, member cannot be held personally liable for the contract executed by the company. The board of directors of WA Gold Exploration Ltd has executed contract with Volvo Trucks Ltd on 14th July. This contract can be considered as company’s own contract. WA Gold Exploration Ltd can be held liable for obligation arising out of this contract. In this case after execution of contract with Volvo Trucks Ltd, the board has decided not to move ahead with the contract. In this case it amounts to breach of contract on the part of company and for this company can be held liable. Because of separate legal entity Steve Jones, promoter cannot be held personally liable for this contract as the same was executed after incorporation.

**Conclusion:**

* Section 131 empowers Thor Maine to recover amount personally from Steve Jones
* While Volvo truck is not in legally authorised to recover any amount for Steve Jones for the contract executed after incorporation of company

**Reference**

*PARTNERSHIP ACT 1891*. (2016). Retrieved 30 April 2016, from <https://www.legislation.sa.gov.au/LZ/C/A/PARTNERSHIP%20ACT%201891/2006.02.01/1891.506.PDF>

*law teacher*. (2016). *law teacher*. Retrieved 30 April 2016, from PARTNERSHIP ACT 1891. (2016). Retrieved30April2016,from <https://www.legislation.sa.gov.au/LZ/C/A/PARTNERSHIP%20ACT%201891/2006.02.01/1891.506.PDF>

Government Gazette,. (2016). *THE COMPANIES ACT 2001*. Retrieved 30 April 2016, from <http://www.ocra.com/documents/mauritius_documents/information/Companies-Act-2001.pdf>

the ACT Parliamentary Counsel,. (2016). *Agents Act 2003*. Retrieved 30 April 2016, from <http://www.legislation.act.gov.au/a/2003-20/current/pdf/2003-20.pdf>

Australian Government,. (2016). *Public Legal Interpretation series*. Retrieved 30 April 2016, from <http://www.austrac.gov.au/sites/default/files/documents/pli10_agency.pdf>