

Business Associations
Final Exam
Fall, 2015
Professor Devlin

Instructions: This is a 3 hour closed book exam, consisting of three essay questions. The first is worth 40 points, the second is worth 30 points, and the third is worth 20 points. (Your mid-term was worth 10 points, for a total of 100 points.) Do not refer to prior essay answers when answering any particular essay. Please budget your time spent on each question accordingly.

Question One (40 points)

Loretta started working as a nanny to help her parents with the bills while in high school. Her father, James, was a layabout, but he knew a little about the law and a little about computers, so he set up a corporation called Nice Nannies, Inc. and, as its President and sole stockholder, advertised in supermarkets and at day care centers. The idea paid off, and there were plenty of clients. Loretta was the only employee. Being poor (and more than a tad unscrupulous), she sometimes stole things from her clients -- some jewelry, a pair of shoes once in a while, even a nice watch, once. She sold these on EBay. (In an ironic twist, the brother of the client that she stole the watch from bought it from Loretta on EBay as a gift for his sister, who was disconsolate because she thought she had lost the watch). Loretta never got caught (yet), but there were suspicions. She also lied on her timesheets to her father, and when she was paid in cash, she sometimes reported little or nothing of the income to him.

When she went away to college, she knew she would have to continue to work, at least part-time, so she started a web-based business devoted to selling cutesy things for small pets (she loved puppies and kittens). She called her business Small Things Considered, Inc. and issued 75 shares of stock to herself. The business took off slowly, but it did take off, and she brought in her college roommate, Gladys (who had a trust fund, and who contributed \$10,000 to the enterprise) to help fill orders and keep the growing company running. Loretta orally promised Gladys 25% of the corporate stock (which has never been issued). Just like in the past, Loretta sometimes took cash payments from customers and didn't record the transactions on the company's ledgers. The young ladies entered into a complex transaction with a manufacturer of cheap pet toys located in Taiwan. Basically, their contact person in Taiwan, Fred Finagle, owner of FF, Incorporated, inspected the products before they were shipped to America, for a substantial fee. Fred was a lazy slouch and delegated the job to his only employee, his equally lazy nephew, Roger, who did nothing. FF was responsible for paying the supplier out of its fee. It turns out the items had unsafe levels of toxic carcinogens, and many puppies and kittens came down with awful diseases a few years later.

Before that, Gladys saw the potential of this business so she had her father, Bob Brickle

(he was a successful plaintiffs' attorney – mostly medical malpractice cases), incorporate a business called Petfancy, Inc. This business was a direct competitor of Small Things Considered, but Gladys was careful to hide her tracks, so the public records showed no connection to her or her father. It was incorporated in another state, and the incorporator was her father's golfing buddy, Stan. This business really took off, primarily because it sold the same goods (from the same manufacturer!) at almost half the cost charged by Small Things Considered.

Seeing that her business was being badly damaged by this unscrupulous but unknown competitor, and realizing that the complaints (but not the lawsuits, not yet) were starting to come in, Loretta sold the entire business to JJ McWatt, an up and coming maker of pet clothing. She signed a 50 mile, 5 year non-compete clause. She never even told Gladys.

Flush with cash, she just shut the website down, informing Gladys that they were losing money, and that her investment of \$10,000 was completely gone, and that they were four months past due on their cable and internet bills. Then, Loretta dropped out of college, and began to travel across America in her VW Jetta. While in Louisiana, she came upon the idea of selling pet grooming supplies to pet owners, and concocted a pet cleaning solution she called Spotless Spot, and began selling it over the web, promising free delivery. She leased space in a warehouse to house the product, and hired the elderly Nancy Nightingale to oversee things.

Loretta also hired pizza delivery persons to also deliver her products. Since she gave the drivers a significant commission for new business leads, many of them took to bringing extra supplies along with them while delivering pizzas, which they handed out to customers. Unfortunately, Loretta used some lye in the cleaning solution, so it didn't take long before there were many distraught and irate customers. One of her drivers, a guy named Rico, got into a really bad accident (a child named DeeDee was hospitalized) while delivering pizzas (and cleaning solutions). He was cited by the police for negligent driving.

Two weeks ago, Loretta fired Nancy for coming in late two days in a row. Nancy was five minutes late each day, because she had to stop by and see that her daughter, Sheila, was doing okay at the county jail, where she was unjustly incarcerated on trumped-up embezzlement charges. Nancy has already contacted a lawyer about her rights in this matter.

One week ago, Gladys (remember Petfancy?) told an employee, Verna, to clean up the messy warehouse where they stored all of their products. Verna started to clean the floors but then decided to take a lunch break, and one of the store employees and a possible customer (who was checking out their wares) slipped and fell on the soapy water which had splashed all over the floor. Both the employee and the customer suffered severe injuries, as the floor of the warehouse is linoleum.

Three days ago, Loretta snuck back into town and noticed that the adjacent storefront in the little mall where JJ McWatt runs his business out of was empty, and she leased the

space, hiring an employee, Chico, to sell Spotless Spot from that location. Loretta has all the names and addresses and phone numbers of her prior regular customers memorized, and Chico has begun contacting them.

Three more things. First, Chico just got out of prison, having served 5 years for embezzlement. When Loretta interviewed him and asked for references, Chico gave her the name of his brother-in-law, who, when contacted by Loretta, told her that Chico had been working for him the past five years as a salesperson, and that he was a good worker with impeccable character. Chico began pocketing money from Loretta's business within an hour after he was hired.

Second, Chico was on his way back from lunch yesterday, when he stopped at a nearby mall to pick up some letterhead for the new business. He noticed there was a Dunkin' Donuts in the mall, and thought that a nice hot pumpkin spice latte would be tasty. The floors were slippery at the Dunkin' Donuts, and Chico spilled scalding hot coffee on himself and two other patrons when he slipped inside the store. He and the patrons (one of the patrons told the cashier that he was going to sue) received medical care for their burns.

Third, just last month, Bob Brickle's friend, Fiona Flint, was seriously short of cash, so Bickle bought 10 shares of stock in Flint's company, Corky, Inc. for \$5,000. Corky was started 5 years ago in Massachusetts by Fiona and two of her buddies (Fern and Fritz) who worked in a winery. The business was simple: buy cork, fashion the cork into wine bottle corks, and sell them to wineries. Fiona and her 2 buddies each owned 1,000 shares of stock in the company, and it had grown over the years to have 10 full-time employees. There was a right of first refusal language clearly stated in the By-Laws of the corporation, but Fiona did not want Fern or Fritz to know about her money troubles, so she never offered the stock to them. After buying the stock, Brickle did a little research on the company, and found out that Fern and Fritz had been involved in egregious self-dealing (with the company) 2 years ago, and had even started their own company (making wine bottles) without ever telling Fiona.

So, being the smart attorney that he is, Brickle filed a derivative lawsuit on behalf of the company, naming Fern and Fritz as defendants.

Discuss the rights and duties of all of the parties, including all possible causes of action and damages.

Question Two (30 points)

Bernie, Phil, and Skeeter orally agreed to form a oral partnership a number of years ago to own and operate a distribution business, focusing primarily on delivering adult undergarments and medications to senior citizens, and massages and therapeutic oils and candles (aromatherapy) to anybody with the cash to buy their services and wares. As part of their oral agreement, Bernie was the general manager and ran the warehouse which housed the vans and assorted supplies. Phil was an assistant general manager and was in

charge of ordering supplies and making sure drivers were available to perform their jobs, including the giving of massages (these particular drivers had to be certified massage therapists). Skeeter was also an assistant general manager, and since he came from a long line of accountants, he managed the books.

Three months ago, Skeeter hired his no-good, just out of jail son, Draco, to work in the front office with him. Not only does Draco do nothing but play solitaire on the office computer all day, he also has never received his high school diploma, because basic math totally confused him. In addition, Draco is selling some of the office supplies (he has a key to the supply cabinet) to his friends, including two recent graduates of Suffolk Law School, who have started their own aromatherapy business and are in desperate need of the cheap supplies which Draco procures for them. Skeeter, good father that he is, looks at his son and sees nothing but a warm personality and a real go-getter attitude. Phil and Bernie despise Draco.

But it gets worse. Bernie's identical twin brother Josiah, came into the warehouse last week and, as a joke, pretended to be Bernie. He ordered tons of supplies and computer products from two vendors who were making sales calls. The first vendor, Martin, had never done business with the company before, but he left with an order exceeding \$10,000 for all new computers for the warehouse. The second vendor, Bob, had been a vendor to the company for a long time. He worked as a sales agent for a local auto body shop, and he left with a signed agreement to have the company use the shop for all of its repair work for the next 5 years. Finally, Josiah called up a local supplier and ordered a brand new set of expensive, high tech shelves from a local, expensive, high tech shelf manufacturer for \$1,500.

Ten months ago Phil received a phone call from his sister, Karen, to invest in a medical supply distribution business about 5 miles away from the warehouse. Phil contributed \$10,000 and invested in Karen's store as a silent, limited partner. Karen is the general partner, responsible for all tax and other filings. Apparently, no documents were ever filed with the Secretary of State. Karen sold a piece of real estate she owned to the partnership which she bought 5 years ago at a public foreclosure auction for \$5,000. She sold it to the limited partnership for \$50,000 (it has been valued by an independent appraiser to have a fair market value exceeding \$80,000). The medical supply distribution business owes about \$250,000 to various vendors, and is now insolvent.

Eight months ago, Skeeter found himself a little short of cash, so he cut a check from the partnership to himself for \$3,000.

Five months ago, Bernie got a call at the office from a software whiz named Gregson, who had heard good things about the partnership business, and good things about Bernie. He offered to form a corporation with Bernie, with Bernie contributing \$25,000, and Gregson contributing his expertise, to write a software program which would streamline operations for warehouse distribution companies. Bernie and Gregson incorporated the business, and each took 100 shares. The corporation, called Warehouse Efficiency Solutions, Inc., merged last week with Google, in a stock for stock deal valued

(conservatively) at \$5,000,000.

Discuss the rights and duties of the parties, including all possible actions and damages.

Question Three (20 points)

Cheryl and Caroline and Frieda were lifelong friends, and they did everything together. It is therefore not surprising that Cheryl and Caroline and Frieda all married accountants, that these accountants would all go into the accounting business together (more on that in a second), that they all would live on the same nice suburban cul-de-sac, and that they all had two kids each before starting their own business together making baby blankets. They incorporated, calling their new business Cheryl and Caroline's Children's Binky Blankets Emporium, Inc. Each of the three shareholders was given 100 shares of no par common stock, and each was named to the Board of Directors. Cheryl and Caroline did all of the work (hence the corporate name), and Frieda considered herself a silent partner, paying \$5,000 for her shares (Cheryl and Caroline only paid \$2,500 each) and just came into the offices when there was really a rush order, and extra hands were needed. Otherwise, she stayed home.

Their husbands had a barely-making-ends-meet practice which was operated as a partnership (on the advice of a local, well-respected lawyer named Rastus). Buster, married to Frieda, began having marital difficulties, and soon was spending more time moping about his life at the local pub than he was working on client matters. Is it any wonder that he hasn't filed tax returns of numerous individual and corporate clients on time, and that they have incurred significant interest and penalties from the IRS for non-filing?

Six months ago, an internet legal marketing company vice-president named Slade came to the accounting office. The internet legal marketing company wanted to establish an LLC to handle all the tax work for personal injury attorneys. The fee it charged attorneys was \$20,000, plus 2% of the profit earned by attorneys on their cases. The two accountants immediately agreed, and formed a limited liability corporation with the two of them (they never told Buster, as he wasn't coming into the office very much) as members, with the third member being the internet legal marketing company. The LLC is doing quite well, and all 3 of the members have received over \$100,000 in earnings to date. (Well, except for one small thing. One of the members of a law firm client (the LLC had many such clients) found for them by Slade was in the office last week and slipped and fell on some Earl Grey tea which had been spilled on the floor. The client was badly hurt, and was taken away to the hospital in an ambulance.

Frieda died last month, leaving her shares of stock to her husband, as she never got around to either divorcing Buster or changing her will, which she made two weeks after her honeymoon. Since then, Buster has insisted on telling Caroline how to better operate the toy store, and since he has cut back on his accounting hours (with no cut in his share of profits, yet), he has told Caroline that he wants to work part-time at the store.

One last thing. One of Buster's irate clients (Maxco, Inc.) hired Harvard law School attorney Josephine DoGood and she filed suit against Buster, and received a default judgment for \$5,000 against Buster (since Buster never responded to the Complaint). Yesterday, Buster filed for bankruptcy. The president of Maxco, Inc. is furious.

Discuss the rights and liabilities of the parties, and all causes of action and damages.

Business Associations
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Question One (50 points)

Loretta started working as a nanny to help her parents with the bills while in high school. Her father, James, was a layabout, but he knew a little about the law and a little about computers, so he set up a corporation called Nice Nannies, Inc. and, as its President and sole stockholder, advertised in supermarkets and at day care centers. The idea paid off, and there were plenty of clients. Loretta was the only employee. Being poor (and more than a tad unscrupulous), she sometimes stole things from her clients -- some jewelry, a pair of shoes once in a while, even a nice watch, once. She sold these on EBay. (In an ironic twist, the brother of the client that she stole the watch from bought it from Loretta on EBay as a gift for his sister, who was disconsolate because she thought she had lost the watch). Loretta never got caught (yet), but there were suspicions. She also lied on her timesheets to her father, and when she was paid in cash, she sometimes reported little or nothing of the income to him.

When she went away to college, she knew she would have to continue to work, at least part-time, so she started a web-based business devoted to selling cutesy things for small pets (she loved puppies and kittens). She called her business Small Things Considered. The business took off slowly, but it did take off, and she brought in her college roommate, Gladys (who had a trust fund, and who contributed \$10,000 to the enterprise) to help fill orders and keep the growing company running. Just like in the past, Loretta sometimes took cash payments from customers and didn't record the transactions on the company's ledgers. The young ladies entered into a complex transaction with a manufacturer of cheap pet toys located in Taiwan. Basically, their contact person in Taiwan, Fred Finagle, owner of FF, Incorporated, inspected the products before they were shipped to America, for a substantial fee. Fred was a lazy slouch and delegated the job to his only employee, his equally lazy nephew, Roger, who did nothing. FF was responsible for paying the supplier out of its fee. It turns out the items had unsafe levels of toxic carcinogens, and many puppies and kittens came down with awful diseases a few years later.

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a business called Petfancy, Inc. This business was a direct competitor of Small Things Considered, but Gladys was careful to hide her tracks, so the public records showed no connection to her or her father. It was incorporated in another state, and the incorporator was her father's golfing buddy, Stan. This business really took off, primarily because it sold the same goods (from the same manufacturer!) at almost half the cost charged by Small Things Considered.

Seeing that her business was being badly damaged by this unscrupulous but unknown competitor, and realizing that the complaints (but not the lawsuits, not yet) were starting to come in, Loretta sold the entire business to JJ McWatt, an up and coming maker of pet clothing. She signed a 50 mile, 5 year non-compete clause. She never even told Gladys.

Flush with cash, she just shut the website down, informing Gladys that they were losing money, and that her investment of \$10,000 was completely gone, and that they were four months past due on their cable and internet bills. Then, Loretta dropped out of college, and began to travel across America in her VW Jetta. While in Louisiana, she came upon the idea of selling pet grooming supplies to pet owners, and concocted a pet cleaning solution she called Spotless Spot, and began selling it over the web, promising free delivery. She leased space in a warehouse to house the product, and hired the elderly Nancy Nightingale to oversee things.

Loretta also hired pizza delivery persons to also deliver her products. Since she gave the drivers a significant commission for new business leads, many of them took to bringing extra supplies along with them while delivering pizzas, which they handed out to customers. Unfortunately, Loretta used some lye in the cleaning solution, so it didn't take long before there were many distraught and irate customers. One of her drivers, a guy named Rico, got into a really bad accident (a child named DeeDee was hospitalized) while delivering pizzas (and cleaning solutions). He was cited by the police for negligent driving.

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Third, just last month, Bob Brickle's friend, Fiona Flint, was seriously short of cash, so Bickle bought 10 shares of stock in Flint's company, Corky, Inc. for \$5,000. Corky was started 5 years ago in Massachusetts by Fiona and two of her buddies (Fern and Fritz) who worked in a winery. The business was simple: buy cork, fashion the cork into wine bottle corks, and sell them to wineries. Fiona and her 2 buddies each owned 1,000 shares of stock in the company, and it had grown over the years to have 10 full-time employees. There was a right of first refusal language clearly stated in the By-Laws of the corporation, but Fiona did not want Fern or Fritz to know about her money troubles, so she never offered the stock to them. After buying the stock, Brickle did a little research on the company, and found out that Fern and Fritz had been involved in egregious self-dealing (with the company) 2 years ago, and had even started their own company (making wine bottles) without ever telling Fiona.

So, being the smart attorney that he is, Brickle filed a derivative lawsuit on behalf of the company, naming Fern and Fritz as defendants.

Discuss the rights and duties of all of the parties, including all possible causes of action and damages.

Question Two (25 points)

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including the giving of massages (these particular drivers had to be certified massage therapists). Skeeter was also an assistant general manager, and since he came from a long line of accountants, he managed the books.

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But it gets worse. Bernie's identical twin brother Josiah, came into the warehouse last week and, as a joke, pretended to be Bernie. He ordered tons of supplies and computer products from two vendors who were making sales calls. The first vendor, Martin, had never done business with the company before, but he left with an order exceeding \$10,000 for all new computers for the warehouse. The second vendor, Bob, had been a vendor to the company for a long time. He worked as a sales agent for a local auto body shop, and he left with a signed agreement to have the company use the shop for all of its repair work for the next 5 years. Finally, Josiah called up a local supplier and ordered a brand new set of expensive, high tech shelves from a local, expensive, high tech shelf manufacturer.

Ten months ago Phil received a phone call from his sister, Karen, to invest in a medical supply distribution business about 5 miles away from the warehouse. Phil contributed \$10,000 and invested in Karen's store as a silent, limited partner. Karen is the general partner, responsible for all tax and other filings. Apparently, no documents were ever filed with the Secretary of State. Karen sold a vacant piece of real estate to the limited partnership which she bought 5 years ago at a public foreclosure auction for \$5,000. She sold it to the limited partnership for \$50,000 (it has been valued by an independent appraiser to have a fair market value exceeding \$80,000). The medical supply distribution business owes about \$250,000 to various vendors, and is insolvent.

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Question Three (20 points)

Cheryl and Caroline and Frieda were lifelong friends, and they did everything together. It is therefore not surprising that Cheryl and Caroline and Frieda all married accountants, that these accountants would all go into the accounting business together (more on that in a second), that they all would live on the same nice suburban cul-de-sac, and that they all had two kids each before starting their own business together making baby blankets. They incorporated, calling their new business Cheryl and Caroline's Children's Binky Blankets Emporium, Inc. Each of the three shareholders was given 100 shares of no par common stock, and each was named to the Board of Directors. Cheryl and Caroline did all of the work (hence the corporate name), and Frieda considered herself a silent partner, paying \$5,000 for her shares (Cheryl and Caroline only paid \$2,500 each) and just came into the offices when there was really a rush order, and extra hands were needed. Otherwise, she stayed home.

Their husbands had a barely-making-ends-meet practice which was operated as a partnership (on the advice of a local, well-respected lawyer named Rastus). Buster, married to Frieda, began having marital difficulties, and soon was spending more time moping about his life at the local pub than he was working on client matters. Is it any wonder that he hasn't filed tax returns of numerous individual and corporate clients on time, and that they have incurred significant interest and penalties from the IRS for non-filing?

Six months ago, an internet legal marketing company vice-president named Slade came to the accounting office. The internet legal marketing company wanted to establish a national presence for the firm to handle all the tax work for the attorneys for the money generated from all the fees it would charge lawyers (for a hefty up-front fee and a share of the legal profits they earned). The two accountants immediately agreed, and formed a limited liability corporation with the two of them (they never told Buster, as he wasn't coming into the office very much) as members, with the third member being the internet legal marketing company. The LLC is doing quite well, and all 3 of the members have received over \$100,000 in earnings to date. (Well, except for one small thing. One of the members of a law firm client found for them by Slade was in the office last week and slipped and fell on some Earl Grey tea which had been spilled on the floor. The client was badly hurt, and was taken away to the hospital in an ambulance.

Frieda died last month, leaving her shares of stock to her husband, as she never got around to either divorcing Buster or changing her will, which she made two weeks after her honeymoon. Since then, Buster has insisted on telling Caroline how to better operate the toy store, and since he has cut back on his accounting hours (with no cut in his share of profits, yet), he has told Caroline that he wants to work part-time at the store.

One last thing. One of Buster's irate clients (Maxco, Inc.) hired Harvard law School attorney Josephine DoGood and she filed suit against Buster, and received a default judgment for \$5,000 against Buster (since Buster never responded to the Complaint). Yesterday, Buster filed for bankruptcy. The president of Maxco, Inc. is furious.

Discuss the rights and liabilities of the parties, and all causes of action and damages.

Decker

Business Associations
Final Examination
Fall, 2010

Student ID Number

Instructions:

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Good luck, and have a safe and happy holiday season.

QUESTION ONE

Stephan Jameson, freshly graduated from Babson College with an MBA, decided to go into the business his mother started years ago. His mother, Jane, operated a sole proprietorship out of her kitchen, selling delicious chocolate treats which she packaged and sold to specialty stores. After a few years learning the business, Stephan and his mother branched out to other confectionary treats, and then realized they might be able to expand dramatically if they began selling their treats to big stores, like Stop & Shop, with the catch that the treats, which children loved, would pack 150% of the recommended vitamins in each bag. They figured children would always eat sweets, and their parents might be more inclined to buy the treats for them, if they contained vitamins.

So they expanded operations, and, as 60-40 partners (Jane was 60%), they signed a lease in an industrial park close to home, where they could set up a more professional operation. They then purchased (on credit from the seller) a \$25,000 piece of machinery. Then they brought in Fred Grimley, a noted expert on childhood nutrition, with Jane and Stephan each giving up 5% of their interests. Then they purchased all sorts of supplies, also on credit, totaling \$50,000. Six months later, after they got all the information they needed from Fred, they told him he was no longer welcome in the business. As Fred was leaving the plant, he had a heart attack, and died before he made it out the door. He left a grieving widow and 2 lovely children.

Stephan and Jane closed up shop immediately, and walked away, leaving behind their creditors.

Two months later, on the advice of their (sleazy and not very astute) attorney, they set up a limited partnership, called Stephjane LP. Since neither wanted to be a general partner, the attorney concocted a plan under which the general partner of the limited partnership would be a corporation, called Kidhealth, Inc. So all the paperwork was filed.

The corporation leased a building in Lawrence. Stephan signed the lease as President on April 15th, 2008. He remembers that date clearly, because he also filed his tax returns on that date. The lease was a 10 year lease, with a 10 year option to renew. The rent was fair market rent. The lease specifically limited the operations at the building to the manufacturing of candy.

KidHealth, Inc. became a duly organized corporation in Massachusetts on May 1, 2008. Its Articles of Incorporation states that it was organized for the purpose of manufacturing and selling tasty candy confections at wholesale to stores like Stop & Shop (nothing was mentioned about selling them at retail, at KidHealth's own outlet stores). KidHealth was authorized to issue 2,000 shares of stock. Stephan owned 500 shares. Jane, getting up in years, got 250 shares. Both were on the Board of Directors, and Stephan was the CEO, and Jane was given the title of CFO.

In the middle of 2008, Stephan brought in Chrissy Slater. He met Chrissy at a candy trade show, and lured her to quit her job with Nestle's, Inc. (the maker of many confections for kids, and which had been branching out into the field of children's vitamins for a few years, because business was beginning to really heat up). To entice her, he gave her a pretty good starting salary (\$85,000), a nice title (Executive Vice President) and 100 shares of stock in the corporation. Chrissy had the responsibility of making sure that the office was running smoothly, while Stephan was out and about, manufacturing the candy and making sales calls to get the candy onto store shelves.

Chrissy, you should know, was previously Northeast Regional Director of Quality Control at Nestle's, Inc., and she signed a noncompete agreement in 2003, after she had been at Nestle for 2 years, rising through the corporate ranks. It provided the typical language limiting the scope of duties, was for 5 years, and had a geographical noncompete area in the "Northeast."

In late 2008, Stephan also brought his college buddy Greg into the business. Greg was a nice guy, but essentially useless, and he was given a lofty title and a pretty good salary to do basically nothing.

Just 8 months ago, with excess inventory of candy, KidHealth opened a little retail store in the foyer of the leased building. They did some advertising and, since there was an elementary school nearby, they soon did a brisk after-school business.

One fateful day a little while back, the following things happened.

First, some background. It was a cold morning. It had rained a little the night before, and the roads were still a little slick, and it was also very foggy. Stephan was driving his fine European touring sedan to work. On the way, he picked up his mother (who no longer drove, having gotten into an accident a little while back while driving to King's Subs to pick up lunch. Not paying enough attention, Jane blew through a red light, and ran into a little old lady named Bertha in a small Toyota, badly injuring her, and demolishing both cars. Bertha was on her way to pick up some office supplies for her husband's business at the time of the accident. Bertha was taken by ambulance to the hospital. She was treated and released a week later).

After picking up his mother, Stephan stopped at the local Staples (in a strip mall) to pick up some cellophane packaging for the office. When he came back out to the car, he

slipped and fell on some puddles in the parking lot and hurt his hip very badly. His mother, who had voluntarily relinquished her license after the bad accident, got him into the car, and drove him to Lawrence General Hospital. She was rear-ended at a stop light by a Federal Express truck driven by Randy McDowell. The truck's brakes failed. (Randy was heading home to check on his new-born son, who was very colicky. He wasn't on his scheduled route at the time). The accident pushed Jane's car into oncoming traffic, and Jane hit Moe Joe Jones, a new attorney walking with his briefcase to the courthouse. Moe was filing a huge class action case, and the deadline for filing was that very day. The briefcase went flying, and hit a young girl named Laura in the head, knocking her out cold. Moe died. The suit never got filed. Moe's fiancé, Rita, saw the whole thing, and when she fainted, she cracked her knee on the sidewalk.

So many ambulances showed up, it was hard to count them all. The one that took Stephan to the hospital got into an accident with a Home Depot truck, whose brakes had failed (might have been the rain, I am not sure) and ran through a stop sign. Stephan arrived at the hospital with a broken arm, a concussion, and two fractured ribs.

Later that day, Chrissy visited Stephan in the hospital. He told her about his awful morning, and also told her that he had an epiphany. The epiphany was that, since Chrissy was such a good teacher, and since she had taught Greg how to run the office and make sure the KidHealth, Inc. quality control procedures were followed, that he no longer needed her services. So he fired her. Chrissy slapped him across the face, and left to go back to the office to check her mail and clean out her office. In the mail was a copy of a complaint filed by her former employer against her for breach of the covenant not to compete she signed. It also named KidHealth, Inc. and Stephan, individually, as co-defendants.

When Greg got to the office, and learned of his promotion from Chrissy as she left the building (taking with her her personal computer, which had all sorts of KidHealth, Inc. proprietary information stored on it), Greg immediately ordered \$500 worth of champagne and chocolates on the company credit card, so that he could celebrate his promotion later that night.

At the hospital, Jane was treated by the esteemed Dr. Howard, who was given the wrong chart by a nurse, and who then managed to turn two badly bruised ankles into a hip replacement.

The hip replacement, by the way, was successful.

Four more things. It turns out that, unbeknownst to Stephan, Chrissy had misread the FDA's vitamin limits, and thus the KidHealth candies had to be recalled. And Stephan, or Chrissy, or Greg (or whomever was responsible for doing so), not only didn't keep proper corporate minutes over the last five years, they also forgot to file annual reports and renew the corporate liability insurance, which lapsed last month. Stephan and Jane got into an argument while they were recuperating in the hospital, and he fired her.

Finally, it turned out that KidHealth was deeply in debt, and has to file for bankruptcy.

THOROUGHLY DISCUSS ALL POSSIBLE CAUSES OF ACTION.

QUESTION TWO

Freddy, Benny, Sarah, and Pixie all met in college, and soon became BFFs. After college, they worked at various jobs, climbing the corporate ladders at their respective companies, but they were never satisfied with the glacial pace of their corporate progress. One Friday night, over drinks at a local bar, they all agreed to quit their jobs, pool their savings, and start their own company.

Their idea, after brainstorming over some rum? They would manufacture and sell ice cream cones. Not just any ice cream cones, by the way. Specialty ice-cream cones. How special? Special in two ways. First, the cone would have a lip on it, about $\frac{3}{4}$ of the way up the cone. This would act as a catch basin for all those nasty and sticky drips caused by summertime heat. Second, the cones themselves would come in many, many flavors.

So they all marched in and quit their respective jobs the very next Monday. Well, everybody but Freddy. He liked his job in a local accounting firm just a little too much, but he really wanted to stay with his friends. Later that day, they met in Benny and Pixie's house (they had been living together almost since right after college) and agreed to form a partnership, with each being a 25% partner. To save money, they did not hire an attorney to formalize the agreement, nor did they file any documents. All agreed that each would contribute \$25,000 to the partnership except for Freddy, who would contribute \$50,000, and who would only be a limited partner, because he wouldn't be around to make the day-to-day business decisions anyway. They called it Sticky Drips, LP.

The first thing they did was turn Benny and Pixie's basement into an office/manufacturing room. The next thing they did was sign a lease for some manufacturing machinery from Industrial Leasing Corp. Sarah signed the lease on behalf of the limited partnership. Then, after many unsuccessful attempts, they were able to come up with a workable ice cream cone prototype. Then they began selling. Their first big customer was Friendly's, Inc., which entered into a long term requirements contract (signed by Sarah only) with the limited partnership. Once that big score came in, they decided to do two things. First, they moved out of the basement and leased nearby industrial space. Next, they went to an attorney, Jesse Clammer, who helped them form an LLC, named ConeKing, LLC. All appropriate paperwork was filed. Each of the four friends was a "member," and each had the same voting rights. ConeKing, LLC borrowed \$20,000 for working capital from BigBank, Inc. The loan agreement was signed by Benny in his capacity as managing member, but all of the 4 orally agreed with the bank to be on the hook for the loan.

writing) an up-front signing bonus of \$10,000. At the time he was hired, Mark, a high school dropout, was working as a handyman.

Two weeks ago, attorney Sam Slade bought 5 shares of KingCone stock from Pixie, not knowing of the aforementioned right of first refusal. He then filed a derivative lawsuit against Sarah and Benny as directors.

THOROUGHLY DISCUSS THE RIGHTS AND LIABILITIES OF THE PARTIES.

QUESTION THREE

Bob and Carol and Ted formed a corporation in the late 1970's. It was called Ratkill, Inc. All three were given 400 shares. All were members of the board of directors, along with Rick Cheney, Ted's uncle, who joined as a favor to Ted. Rick promptly forgot about it, and went on to much bigger things. He never attended a single board meeting. The company, as you might have guessed, was in the pest eradication business, and was mildly successful, providing Bob (President), Carol (Executive VP), and Ted (Treasurer) with comfortable salaries. No dividends were ever paid.

Here are some things that happened.

1. In 2005, Bob hired his son Scott to be in charge of scheduling jobs. In 2006, Bob gave 100 shares of his stock to Scott, on the advice of his estate planning attorney.
2. In 2007, Carol became upset with how things were being run. She voiced her displeasure to Bob and Ted. Bob and Ted soon started avoiding Carol altogether, always outvoting her at board meetings.
3. In 2008, Bob told Carol to just stop complaining and do her job. They yelled at each other. At the board of directors meeting the following month, the board voted to fire Carol.
4. Carol had expected this turn of events, and had already begun preparations to go out on her own. Once fired, immediately started her own pest eradication company, with two of her friends, Maude and Gladys. Upon advice of their attorney (Moe!), they created a limited partnership, and since none of them wanted to be general partner, they also formed a corporation to act as the general partner. Carol and Maude and Gladys were limited partners, and all were shareholders in the corporation, with Carol acting as president. And, since her (unlistened-to) ideas were good ones, Ratkill's customers soon switched their business to the limited partnership.

5. In 2009, Scott was going through a nasty divorce, and wasn't paying enough attention to his job. He mixed up a customer's address, and sent one of the company employees, Zach, to place rat traps around the wrong residential address. The traps killed the homeowner's pet cat.

6. Upon learning of the mix-up, Ted fired Scott and the employee, Steve, who set the traps.

7. Scott sued, claiming a freeze-out.

8. Steve sued, claiming a wrongful discharge.

9. In 2010, short of funds (because of a bad gambling habit, and bad luck), Bob authorized the company to loan him \$50,000, payable in 10 years, with no interest. Ted found out about it, but he was placated with a \$30,000 distribution from company funds.

10. Last week, it was discovered that the company accountant had not only embezzled funds from clients who never got any work done, but that he also falsified tax returns, which has left the company with a huge tax payment, plus interest and penalties.

11. And, of course, there is no money left in the corporation.

THOROUGHLY DISCUSS THE RIGHTS AND LIABILITIES OF THE PARTIES.

Business Associations
Final Examination
Fall, 2008

Instructions:

This is a closed book, 3 hour examination, consisting of 4 questions, the first 3 worth 20 points each, the last one worth 10. Your 3 best quizzes, plus your 10 point research paper, plus your 5 point research paper, totals 100 possible points.

Good luck, and have a safe and happy holiday season.

QUESTION ONE

SplatterCorp is a duly organized corporation in Massachusetts. Its Articles of Incorporation states that it was organized for the purpose of providing fun toys, which children could either throw at walls or eat (or both). The toys are organic and non-toxic, and easily wash off walls and furnishings. It was authorized to issue 200,000 shares of stock. It was established in 2001 by James Gremlin, who was initially chosen president (he was also the sole shareholder, sole director, and only employee). James owned 900 shares. In the middle of 2003, he brought in Jane Splain, because business was beginning to really grow (get it?). To entice her, he gave her a pretty good starting salary (\$50,000), a nice title (Executive Vice President) and 100 shares of stock in the corporation. James retained his 900 shares. Jane had the responsibility of making sure that the office was running smoothly, while James was out and about, building the edible toys from his botanical gardens (the land on which he grew the botanical elements in the toys he co-owned with his brother, Rufus), and visiting local toy and grocery stores, trying to drum up business.

In late 2005, James also brought his son Francis and daughter Emily into the business. James learned from Rufus how to plow fields and mix chemicals in the lab, while Emily learned how to run the business operations smoothly. This she learned from Jane, who was an excellent teacher.

One fateful day last year, the following things happened.

First, some background. It was a warm morning, but that was to be expected in July. It had rained a little the night before, and the roads were still a little slick, and it was also very foggy. James was driving the company-owned SUV, and his 2 children were passengers (they still lived at home with mom and dad). Emily told her father that they needed staples and other office supplies for the office, so James pulled into Staples, and Francis hopped out to run into the store to get them. James left the SUV running.

Francis never made it into the store. He was hit and seriously injured by a teenager who had stolen a car from a local unlicensed carpenter, whose name is Max Beaumont. The teenager ran away on foot. Seeing this, James jumped out of the car to assist his son, and

Emily followed. The SUV, left running and unattended, rolled right through the Staples plate glass window, injuring Bill Johansen, who had just gotten fired from Staples less than 2 minutes earlier, for allegedly calling in sick. (The truth of the matter is that Bill was a salesperson, always on the road, and the calls came from his neighbor, who detested Bill and wanted to get him fired) . Francis and Bill were taken to the hospital, in separate ambulances. The ambulance Francis was riding in got into an accident with a Fedex truck on the way to the hospital emergency room, and it can be proved that Francis broke his right arm as a result of that collision. Clearly, it was not Francis' day. James and Emily called Jane, who picked them up to bring them to the office.

En route, James informed Jane that she had done a wonderful job training Emily, such a good job, in fact, that her services were no longer needed. So he fired her. He then asked her to stop at a local coffee shop, where he promised to buy Jane and Emily a coffee, and the donut of their choice. Emily chose a chocolate coconut cruller. Jane chose a jelly. While in the store, James was bumped by a customer who was leaving with his order. This customer, Fred Frolic, spilled his hot coffee on James, burning him badly, but not too badly.

It gets worse.

After they got to the office, Jane cleaned out her desk and left, but not before vowing to "see [James] in court." Emily moved into Jane's office, and immediately began ordering needed supplies, but also ordering champagne and flowers for herself, to celebrate her promotion. She gave the company credit card number to vendors.

At the hospital, Francis was treated by Dr. William Malfoyle, who managed to turn two badly bruised ankles (and the aforementioned broken arm) and a very sore hip into an appendectomy and an amputation of one of Francis's legs. Jeesh.

Two more things. It turns out that, unbeknownst to James, Rufus used pesticides on the organic crops, so they could not actually be sold as "organic," which was a big selling point to customers. (Apparently, Jane knew this, and tattled to the Boston Globe after she was fired.) And James (or Jane, or Emily, or whoever was responsible for doing so), not only didn't keep proper corporate minutes over the last five years, they also forgot to file annual reports and renew the corporate liability insurance, which lapsed last month.

THOROUGHLY DISCUSS ALL POSSIBLE CAUSES OF ACTION.

QUESTION TWO

PrintCo, a large conglomerate with offices worldwide which was incorporated (in the state of Newbraska) in late 1997 (the company is engaged mainly in shipping and publishing), had on its Board of Directors six people, Tom, Simka, Eve, Benny, ex-President Clinton, and Gerry Moneybags. Tom, Simka, Eve, and Betty each held the title of Executive Vice President. Tom was president. Tom and Benny were high school and

college buddies, who married their high school and college sweethearts, Simka and Eve, respectively. Each of the four owned 25 shares of stock in the corporation (Clinton and Moneybags did not own any of the stock). The Articles of Incorporation had a provision requiring any shareholder who wanted to transfer stock within 10 years of the date of incorporation had to first offer the stock to the corporation (the "right of first refusal").

Gerry Moneybags was on the board because his employer, Fleet Bank, required that he be put on the board as a condition of granting a \$1,000,000 loan to the corporation over the previous year. (Tom, Simka, Eve, and Benny orally agreed to act as sureties on the loan). President Clinton was on the board because the honorarium was high (\$100,000), and because the corporation wanted to be able to boast about its impressive Board of Directors. Over the last three years, the following occurred:

1. In 2006, Tom and Simka were divorced, and as part of the division of their marital assets, Simka gave Tom 23 of her shares of stock, and Tom gave her the house in the Poconos. Soon thereafter, the shareholders had a vote, and they ousted Simka as director and Executive Vice President.
2. In 2001, Benny hired his son, Greg, as marketing director of the firm, at an annual salary of \$150,000, for a ten year term. The contract was in writing, signed by Benny as director. Greg never made it out of college, by the way.
3. In early 2007, Eve sold one share of stock to her friend Betty's daughter, Wilma. Wilma hates Greg, because he jilted her at the altar a few years back, if that matters to you.
4. In 2002, President Clinton injured his back during a PrintCo golf outing. In addition, he assisted the company in hiring his former aide, George Stephanopolous, whose job it was to lobby Congress for legislation beneficial to PrintCo's interests. Stephanopolous duly registered as a lobbyist and incorporated himself.
5. In 2007, the shareholders voted to split off the shipping business into a separate corporation, whose stock was solely owned by PrintCo. The new shipping corporation, ShipShape, Inc., had many of the same (but not all, by any means, see Simka, supra) members on its board as PrintCo.
6. Later that year, the captain of one of the ShipShape oil tankers ran aground in Puget Sound, causing all sorts of environmental disasters. The captain was allegedly drunk at the time.
7. Six months ago, Jimmy Carter was elected to the PrintCo Board of Directors.
8. In 2008, the IRS audited ShipShape, and discovered a deficiency of \$1,250,000 in unpaid withholding and FICA taxes.

9. Finally, in March, 2000, (I apologize for not mentioning this earlier) the board of PrintCo voted to issue itself stock options, at the current market price (which was \$10 per share), in lieu of voting to increase their fees for acting as Directors. They did this with knowledge of impending favorable legislation which would be a boon to the company, because they had firm beliefs in Stephanopolous' continued influence in the halls of Congress.

Two weeks ago, attorney James Dullblade bought 5 shares of PrintCo stock from his (now) girlfriend, Simka, found out all that was going on, and filed a derivative lawsuit on behalf of the corporation.

THOROUGHLY DISCUSS THE RIGHTS AND LIABILITIES OF THE PARTIES.

QUESTION THREE

Tom, Bob and Fred worked on the loading dock in a local Lowe's warehouse. They had a lot of free time between loading and unloading deliveries, and they were always brainstorming about new ideas, something that would make them rich beyond their wildest dreams, or at least rich enough to quit their jobs and go fishing all day.

One day, they were tinkering with the platforms used to bridge the gap between the warehouse floor and the truck they were unloading or loading. A driver named Steve (who worked for a local contractor named Ed) who was at the dock to pick up a refrigerator for Ed's wife helped Tom grab the heavy metal platform to put it in place, but his finger got caught underneath the platform before it was placed between his truck and the loading dock, and it was crushed. Tom drove him to the hospital, in a hurry. Too much of a hurry, as a matter of fact, because the roads were icy, and Tom lost control of the car, smashing into Dolores Pumpnickel's car. Steve was hurt even further. Dolores died. Tom suffered whiplash.

Prior to that, Tom, Bob, and Fred came up with this brilliant idea to make the platform, which is usually made of very heavy steel and is thus extremely cumbersome to maneuver, out of a high grade polymer plastic. Actually, truth be told, they did not come up with the idea. One of the truckers, who had a bad back (and a Ph.D. in mechanical engineering) told them about it. It was his idea. He told them he was going to present the idea to their foreman, Nancy. I believe he actually did. I also believe that Nancy ignored him.

On the weekends, they built their prototype, going through reiteration after reiteration. Then they began testing it at work, much to the disgruntlement of the incoming drivers who wished to load or unload packages at the warehouse. Tom, Bob, and Fred were just too busy tinkering to help unload anything.

The new platform really seemed to work, so they went to an attorney, who patented the concept for them. Then they went to another attorney, fresh out of law school, named Moe Dribble, and he had them form a limited partnership, named the XYZ Limited partnership. Moe said it combined the best of both worlds, because it would limit their tax liability and their personal liability. Impressed, Tom agreed to be named general partner.

Tom got fired the next day. He said it was because he told Nancy's supervisor that Nancy was having an affair with one of the salesman, which was against written company policy. The other two men quit their jobs on the same day, even though it was in their contract that if they should leave, they had to give two weeks' notice. Lowe's lost \$3,000 worth of orders because there was no one to load the goods onto the trucks.

The patented platforms, called "E-Z Load" were an instant hit. XYZ Limited Partnership made an awful lot of money. But it soon became apparent that the new "E-Z Load" platforms were prone to cracking in low temperatures, and this resulted in many, many accidents and injuries in the winter months of 2004. One driver in particular, Gerry Fielding, was unloading a heavy crate of computers when the platform cracked in two. This caused the computers to (a) fall on top of him and kill him, and (b) push against his parked truck, which caused the truck's emergency brake to malfunction, which caused the truck to roll away from the dock, and right over a small girl named Debby (a child of one of the factory workers), who was playing in the snow outside. Both Debby and her pathetic attempt at a snowman were crushed.

THOROUGHLY DISCUSS THE RIGHTS AND LIABILITIES OF THE PARTIES.

QUESTION FOUR

Craig and Sue, husband and wife, came up with a great idea. Chocolate flavored, non-toxic (supposedly), clear nail polish. Their thinking was that people are always biting their nails, so they at least ought to be a tad edible. And, being clear, it would be ideal for both genders, of all ages. They went to see their favorite attorney, Moe Dribble (remember him?). This is what he ended up doing for them.

First, he duly formed a corporation, BMN, Inc. Then he duly formed a limited partnership, TBF Industries. Naming BMN, Inc. as general partner of the limited partnership. Craig and Sue were named as limited partners of TBF Industries, and each received 100 shares of stock of BMN, Inc. Craig was named the president of BMN, Inc., and Sue was named treasurer. Both were named to the corporation's board of directors. Craig and Sue were skeptical at first, but they trusted Moe. He was, after all, their attorney. He said it was to limit their liability in case something bad should happen.

Which it did. Three things, to be exact.

First, it turns out the nail polish, which sold like hotcakes when they were introduced, posed a health hazard to small children, who were painting their nails and then biting them, and then becoming violently ill. Apparently, their little tummies lacked the enzymes necessary to properly digest the polymer in the nail polish. TBF's contracts with its Chinese supplier (Chang Industries, Inc.) specifically required the enzyme to be added in the manufacturing process, but that never happened.

Second, Bigbank, Inc. loaned \$1 Million to TBF Industries to get the venture up and running. Moe acted as counsel to the lender in the transaction, but forgot to have Craig and Sue sign as sureties on the loan.

Third, when the lawsuits started appearing inevitable, Moe refused to turn over his files, because Craig and Sue never paid him for his services rendered in establishing either the corporation or the limited partnership.

THOROUGHLY DISCUSS THE RIGHTS AND LIABILITIES OF THE PARTIES.

Business Associations
Final Exam
Fall, 2004
Professor Devlin

Instructions: This is a 3 hour closed book exam, consisting of three essay questions, each equally weighted. Do not refer to prior essay answers when answering any particular essay. Please budget your time spent on each question accordingly.

Question One

Three college buddies, Hans, Franz, and Lemans, decided one day to go into business together, making cool t-shirts for college students. Since they all had taken a course in Business Law, they knew that if they incorporated, they would be able to limit their personal liability (this was especially important to Franz, as he was independently wealthy, and had the most to lose). But they also knew that if they formed a corporation, they would be faced with the possibility of double taxation (once on the corporate level, and the second time if the corporation paid dividends). Starting out as a partnership was not a good idea, because of the personal liability issue. And forming a limited partnership was not a good idea either, because all three men wanted to have a say in the running of the business. So they hatched the following scheme.

They went to an attorney, Joe White, whom they had heard was a tad shady, but he came at a good price. Attorney White formed a limited partnership for them, HFL Limited Partnership, and filed the necessary paperwork with the secretary of state's office. The general partner of the partnership was a corporation, LFH, Inc. By doing this, the buddies reasoned that only the general partner was personally on the hook, and, since the general partner was a corporation, none of the 3 men would ever be personally liable if something went wrong. All three men were officers and directors of LFH, Inc., and by doing this, they were able to manage the limited partnership by acting as officers of the corporate general partner. All three men agreed to contribute \$100,000 each as a capital contribution to the limited partnership, but only Franz actually put up any money, as Hans and Lemans had no money to put in (Hans did own some land, worth a fair chunk of change).

The first thing the limited partnership did was buy a run-down building in Lawrence, Massachusetts for \$25,000, which the men planned to use as their production, limited partnership, and corporate headquarters. They then hired a local masonry company, Velvet Masons, Inc., to repair the brickwork on the front of the building, for the contract price of \$10,000. While engaged in the work, an apprentice mason for Velvet accidentally let some of the loose bricks fall off the building's façade, and one of the bricks hit a visitor of the building, Bob Hatchet, injuring him severely. When Franz saw

what happened, he called Hans on his cell phone. Hans immediately lost control of his car and crashed into a little old lady named Gertie, causing her multiple injuries.

A couple of other things you should know about. Unbeknownst to the other officers of the corporate general partner, Hans entered into a long term supply contract with a cotton supplier. When Franz and Lemans found out about it, they went ballistic, and Lemans (who had a bit of a temper) took a swing at Hans, but hit the office secretary, Doris. She went to the hospital for minor injuries.

The three college buddies realized that they could no longer get along, so the next day they filed articles of dissolution for both the limited partnership and the corporation.

Discuss thoroughly all possible causes of action.

Question Two

John and Jake were good friends and professional investors, and having graduated from MSL with law degrees, were each able to amass a small fortune buying and selling stock in undervalued corporations.

Jake's mother died in 2001, and he inherited from her 10 shares of stock in BigCorp, a publicly traded corporation incorporated in Massachusetts. He told his good friend John that he thought it was a good buy, so John went out and bought 100 shares, at \$100/share. John then went online and read the corporation's SEC filings and found out all sorts of possibly objectionable things about the company, including how the members of the Board of Directors had been self-dealing for a long time. Incensed, he immediately filed a derivative action on behalf of the corporation against the directors.

The interesting thing about BigCorp was that its By-Laws required anybody wishing to pursue a derivative lawsuit on behalf of the corporation to post a \$100,000 bond to cover the costs to the corporation in defending the suit, if the suit was ultimately unsuccessful.

A few years ago, Jake entered into a \$10,000 contract to have his house painted by a local painter named Bob, who breached the contract. Jake got somebody else to do it, for \$11,000. When he sued, he found out in Bob's deposition the Bob was actually working as a franchisee for a corporation called CleanHouse, Inc.. Jake won the suit, but when he tried to collect his damage award, Bob filed for bankruptcy. So Jake has now filed suit against CleanHouse, Inc. as the principal.

Four other items worth mentioning. First, Jake's wife Sharon has her own small business corporation, a little boutique selling children's toys, located in downtown Andover. She leases space from a real estate trust, whose trustee and main beneficiary is a local politician, Peter Scumbaggio. Six weeks ago, Debby Dreed entered the shop to maybe purchase some toys for her 7 small children, and she slipped and fell (and broke her hip) on the just-mopped floor of the store. Second, the stockholders of BigCorp last week

agreed to merge with EvenBiggerCorp in a 2 for 1 stock transaction, under which each existing stockholder of BigCorp would receive 2 shares of EvenBiggerCorp. Every shareholder but one voted in favor of the merger. That shareholder is named Betty Sloop.

Third, Sharon told her husband that even though he was on the board of directors of her little corporation (Sharon is the sole stockholder and the other director), he was not authorized to enter into any transactions on behalf of the corporation. Ignoring her directive, he entered into a contract on behalf of the corporation to buy \$5,000 of useless closeout toys from a national toy liquidator. The toys have arrived, but they have not yet been paid for, and still sit in boxes out on the loading dock.

And finally, there is Jake's sister, a struggling law student who works part-time as an independent contractor doing research and odds and ends for the law firm of Coyne and Corsaro. Two weeks ago, she got her hand stuck in a malfunctioning elevator at the office of the local courthouse while delivering a complaint to the clerk of courts, and had to go to the hospital. Attorney Corsaro told her to keep the whole matter quiet and promised to pay her for her medical expenses, which he said he did not have to do, but she is wondering whether she might have a cause of action against somebody. Corsaro fired her yesterday.

Discuss thoroughly all possible causes of action.

Question Three

Jimmy Bingle worked as a stockbroker for MutualCorp, a nationally known and well-respected entity owned and operated by the Smith brothers, Dan and Dave. Since he worked as an independent contractor and was paid solely on commissions, and since he really wasn't such a good stockbroker, Jimmy moonlighted by driving a pizza delivery van. This he was pretty good at, and he made serious money on tips.

Last month, he delivered a pizza to a mansion, but the kid who answered the door forgot to go to an ATM machine that day. Jimmy asked the kid where his mom and dad were, and the kid told him that they were out of town on business. Nice guy that he was, Jimmy decided to let the kid have the pizza anyway. The kid thanked him profusely, and as Jimmy was heading back to his car, the kid yelled out something about how his dad owned a huge pharmaceutical company named DrugCo, and he had to go out of town to discuss a merger proposal with HugeDrugCo, but that he would be back tomorrow, and Jimmy could come back then for his money, plus a huge tip.

Jimmy said that he had already gotten a huge enough tip from the kid, and drove off. Unfortunately for the kid, he had ordered a plain cheese pizza, but he got a pepperoni pizza. This was unfortunate because the kid didn't know that he was deathly allergic to pepperoni, and he wasn't two slices into scarfing that pizza when he went into toxic shock and died. He wasn't found until late the next afternoon, when his parents came home.

Business Associations, Devlin, Fall 2003

QUESTION ONE

Quasar Corp., a duly organized Massachusetts corporation whose stock was publicly traded, was a distributor of computer chips to the semiconductor industry. It has over 1000 shareholders, and five members on its Board of Directors, and each are elected for 4 year terms.

At a meeting of its Board of Directors in July, 2003, the Board voted to grant the power over all sales and distributions in the New England area to its Vice President, James Jackson. The resolution, unfortunately, was never reduced to writing.

Jackson, after hearing of the vote, immediately hired the law firm of Starkis & Wolfe, LLC, to exclusively perform all legal work necessary to effectuate all real estate and sales contracts for Quasar Corp. Starkis & Wolfe were paid a \$10,000 nonrefundable retainer, and, in addition, they were to receive 1% of all revenue from contracts drafted by their firm. The agreement was in writing, signed by Jackson and Starkis, and provided that the contract would last "as long as revenues of Quasar Corp. increase on a 10% basis, yearly."

Jackson also hired his wife as an independent contractor to coordinate "all marketing activities of the company in the Northeast region." She had no prior marketing experience, and her written contract, at \$100,000 per year, required her to use her exclusive efforts on the firm's business. Two days after being hired, she was on her way to a local printing firm to get some bids on some catalogs for the upcoming Christmas season, when she was killed after she lost control of her car and hit a FedEx truck (the FedEx driver was also killed) on Route 28 in Andover because of too-hot coffee she bought at Dunkin' Donuts, which spilled on her lap, causing her to freak out and lose control of the vehicle. Jackson's wife was traveling with Mollie Bush, who also worked for Quasar, and who was taking a ride to work from Jackson's wife.

The Board of Directors found out about the contract with Starkis & Wolfe, and immediately fired the firm, as well as Jackson (but only after Jackson had signed a purchase and sale agreement to buy some land in downtown Lawrence). The Board of Directors vote was unanimous, with the exception of one member, Dollie Martin, who abstained, on the advice of her own counsel, as she had recently told her brother-in-law, Marty, to sell his stock in the company, because she had learned that the company's future prospects did not look good, if the recent, confidential consultant's report provided to each board member was to be believed. Marty immediately sold 100 shares of the company which he had inherited from his grandmother, Nellie.

DISCUSS THE RIGHTS AND LIABILITIES OF THE PARTIES

QUESTION TWO

Ralph Malph always loved flowers and flower arrangements, and thus it came as no surprise to his mother, Betty, that he dropped out of college to pursue his life-long dream of opening up a flower shop in the heart of downtown Boston. He contacted his childhood buddy (and college roommate), Freddy Fajolie, to tell him of his plans, and to invite him to go into business with him. They agreed to draw up a business plan the following week. The next day, anxious to get started, Ralph entered into a detailed, 5 year written agreement to supply fresh flowers every workday to Devlin & Associates, a huge downtown law firm known for its ideal working conditions. Ralph signed the contract, and underneath his signature, wrote: "Partner, Malph-Fajolie Partnership." The deliveries were to start the following month.

When they met next week, Ralph told Freddy about the contract, even showed him a copy of it, and they were both so excited that they orally agreed to enter into a partnership known as "Malph-Fajolie Partnership." Since Freddy really wanted to stay in college (he dreamed of someday becoming a lawyer), and since he came from a very wealthy family, the two agreed that Freddy's sole responsibility would be to fund the business until it reached sales of \$250,000 per year, and that Ralph would have sole responsibility for getting the business up and running. Profits were to be split 75%-25% in favor of Freddy, until all of his capital contribution was repaid. After that point, profits would be divided equally. Freddy immediately gave Ralph a check for \$100,000, and told him to get going. With the money, Ralph went out and purchased a cute little storefront right in the heart of Boston's Financial District for \$200,000, putting \$75,000 down, and taking out a mortgage in the name of the partnership for the amount of \$125,000. Only Ralph's signature, however, was on the loan documents. He then proceeded to spend the remaining \$25,000 on flowers and shelving and refrigeration units (and a cash register).

All went well for a month or two, but the law firm of Devlin & Associates suddenly went bankrupt, and the flower business lost its biggest client. Devlin & Associates paid \$10,000 for the flowers delivered to its offices, but left Ralph and Freddie high and dry on another \$5,000 in accounts receivable.

Since mortgage payments were due, and no money was coming in, Ralph called Freddie and asked him for the other \$150,000. Freddie was astonished. He demanded to know what happened, and when Ralph told him, Freddie asked whether Ralph had run a credit check on the law firm before agreeing to the contract. Ralph admitted that he hadn't. Freddie became irate, and told Ralph that there was no way he was getting any more money from Freddie.

Distressed by this setback, Ralph went back to the storefront, called his dad, Chico, and offered him his share of the partnership. Chico agreed (his son got his love of flowers from his father). Ralph then went home, disconsolate, drew up a legally valid will leaving his partnership interest to his sister, Mavis, took an overdose of sleeping pills, and died in his sleep. The partnership still owes a ton of money on the mortgage, and, in

addition, owes money to a bunch of flower growers in Argentina, who have come after Freddie for the money.

DISCUSS THE RIGHTS AND LIABILITIES OF THE PARTIES

QUESTION THREE

Jason incorporated Jasonics, Inc. in 1979. He was the company president. The corporation was authorized to issue 20,000 shares of stock. Jason owned 600 shares of the outstanding stock of the corporation. Jason's cousin, Jake, owned 300 shares, and the remaining outstanding 100 shares were owned by five different individuals, none of them related by blood to either Jason or Jake, and all of whom received their stock as an end-of-year employee bonus during their employment. The Board of Directors consisted of Jason, Jake, and both of their wives.

The corporate by-laws provided that the corporation, if it desired to do so, could repurchase all of an employee's stock should the employee terminate employment, or die. The price was set at the time the corporation had its first board meeting (right after incorporation) at the lower of book value (according to GAAP) or five times corporate net earnings for the year prior to the termination or death (this was known as the "redemption provision"). The bylaws also required that all corporate action be approved by a vote of 90% of the outstanding stock, except for the repurchase provision, previously discussed.

Since Jason was getting on in years, he decided to retire, but before doing so, he gave 100 shares of his stock to each of three long-time Jasonics employees, Ned, Babs, and Rico. He then named Jake as president. Jake's first action as president was to increase his salary to double what Jason's was (Jason had made a ton of money in the stock market over the years, so his salary requirements were not all that great). Because of his salary, and because of a general downturn in business (Jake wasn't the best businessman), Jasonics made very little money the following year.

That's when Ned, Babs, and Rico began to gripe. And that's when Jake fired all three of them, giving them no severance pay, only a letter demanding that they turn over their stock to the corporation, in exchange for the redemption price. He included a check in the amount of the redemption price with their pink slips.

Jason, though retired, still had a fondness for his workers, and was irate at Jake's treatment of Ned, Babs, and Rico. He demanded that Jake either rehire them or bring Jason back on as president, so that the ship could be righted. Jake refused.

DISCUSS THE RIGHTS AND LIABILITIES OF THE PARTIES

QUESTION FOUR

BigCo, a large, publicly held conglomerate with offices worldwide, had on its Board of Directors five gentlemen, Dan, Dave, Don, Darren, and Dred. All five men were high school buddies. In addition, the company had on its Board three women, Wanda, Wendy, and Wilhelmina, who did not know each other (except in their official capacities). Wanda was employed as the vice president of a pension fund which held a large bloc of BigCo stock, so she was on the Board to protect its interests. Wendy inherited a large bloc of stock from her father, Dennis, who knew all the other gentlemen from high school, but who had died recently in a fiery boat accident. Wilhemina was a former Congresswoman from Arkansas, who was elected to the Board for the influence she brought in Washington, D.C. In its recent annual meeting, the Board ratified the following acts, which had taken place over the previous year.

1. A contract between BigCo and SmallCo, a privately held corporation whose stock was owned by Dan and Dave. This contract was to provide consulting services to BigCo, though SmallCo had no employees, and simply outsourced the consulting work to a different company for less than what it was being paid by BigCo.
2. A contract between Dred's wife, Sandy, for her to provide marketing studies regarding the expansion of BigCo's product line to include cranberry farming, though BigCo did not currently engage in any type of farming (it being in the trucking industry, primarily). Sandy does possess a marketing degree, but has not worked in five years.
3. A contract between BigCo and Darren's father, Warren, a retired tree surgeon, under which Warren would agree to be "on call" in case any of the trees at corporate headquarters needed pruning or care.
4. A contract between BigCo and Wilhelmina, for her to lobby her ex-colleagues in Congress for legislation beneficial to BigCo (for this purpose, Wilhelmina duly registered as a lobbyist) and incorporated herself.
5. Finally, the board voted to issue itself stock options, at the current market price (which was \$20 per share), in lieu of voting to increase their fees for acting as Directors. They did this with knowledge of impending favorable legislation which would be a boon to the company, because they had firm beliefs in Wilhelmina's continued influence in the halls of Congress.

Two weeks ago, attorney John Sharp bought 5 shares of BigCo stock, and immediately began preparing to file a class action to rescind the above-contracts and the award of the stock options.

DISCUSS THE RIGHTS AND LIABILITIES OF THE PARTIES

The next morning, Jimmy went into work and started buying DrugCo stock, both for himself and his clients. The news about the merger leaked out to the press later that morning, from a phone call from an employee of DrugCo who found out about the proposed merger while emptying the trash over the weekend. DrugCo stock doubled in price almost immediately, and Jimmy was a millionaire by early that afternoon.

Jimmy decided to work one more night delivering pizzas. But, as you can guess, his mind was not where it should have been, and he got into an accident when he ran a red light. He ended up killing four nuns who were blissfully crossing the street. He was so preoccupied thinking about how he would spend the rest of his days drinking pina coladas on a private island somewhere, he didn't even notice the carnage.

The next day, he went back to work at the brokerage house, only to find his computer had been hacked into, and all of his files were copied. One file copied showed that a large corporation named LargeCo was in serious financial trouble. A week later, a homeless man named Charles was rummaging through the local landfill, found the files, and immediately robbed a little old lady of \$10,000 cash. He then took the money and invested it, selling LargeCo short. Within two weeks, he was a millionaire. He tracked down the old lady, and gave her \$20,000, telling her it was a gift from a stranger, and not telling her that he was the one who had initially robbed her.

Two other tidbits for you to think about. First, Jimmy's mother worked as a bookkeeper for Malaguti and Dickinson, LLP, a local, well respected law firm specializing in real estate closings, and she embezzled client funds, causing the firm to file for bankruptcy. All five partners and all eight associates and all of the paralegals and support staff at the now-defunct firm were shocked by this turn of events, and all agreed that Jimmy's mom would be the last person they would ever believe could do such a thing. Malaguti, maybe. But not Jimmy's mom. She has fled the country.

And, if you can even believe such a thing, it turns out that Jimmy's sister, Mavis, was at a Boston Celtics game, in MutualCorp's luxury box, when a fight broke out between the fans and the opposing basketball team, the Detroit Pistons. She got hit with a beer bottle over the head, and suffered a severe concussion. Videotape shows that it was one of the members of the Detroit Pistons who hit her over the head.

Discuss thoroughly all possible causes of action.

MASSACHUSETTS SCHOOL OF LAW
BUSINESS ASSOCIATIONS

PROFESSOR JOSEPH DEVLIN
FALL, 1996
FINAL EXAM

INSTRUCTIONS

There are two fact patterns on this final exam. You have 1 1/2 hours to answer each question, no more and no less. For the first 1/2 hour of each question, you are requested to outline your answer in the bluebook provided. The outline will be collected but not graded. You may not begin writing your answer to either question until the 1/2 hour has elapsed. You will be instructed when to begin writing the answer to each essay question.

My wife and I and our adorable kids wish you a safe and happy holiday season!

QUESTION #1

Pete, Tom, and Juanita were childhood buddies. They played hide and seek together. They ran track together. They did everything together. So it came as no surprise that one day Tom and Juanita announced to the entire world that they were engaged to be married. Everyone was so happy for them, and everybody had an enormously good time (at first) at the wedding, which was paid for by Juanita's parents, Ozzie and Harriet.

Everyone but Pete. (Pete had always held a torch for Juanita, but since he was shy by nature and she was not the most observant and discerning of persons, nothing ever came of it.)

Let's get back to the wedding. It was held at the Old Grange Hall, owned by a corporation, appropriately named Old Grange Hall, Inc ("OGHI"). The president of OGHI was Bob Blankton. He was also the treasurer and clerk. He was a director of OGHI along with his estranged wife, Judy. Bob owned 515 of the shares outstanding, and Judy owned 485 shares. Since they argued about everything these days, the Old Grange Hall was starting to get run down, because Bob and Judy fought tooth and nail over expenses. So Bob figured it was just easier not to spend any money on the upkeep of the building, so he wouldn't have to hear about it from Judy.

The Old Grange Hall was not covered by insurance. It seems that an employee of OGHI, Loretta Lascivious, was informed in writing by the Giganto Insurance Company that the policy was about to lapse unless the premiums were paid. She never got the chance to tell anybody about the letter, because she was fired by Bob because she threatened to tell Judy about Bob's scandalous relationship with Juanita's mom.

What scandalous relationship, you ask?

It turns out that Juanita's mom was having an affair with Bob, so he gave her a discount rate on the hall rental. The going rate to rent the hall was \$2,000 for a wedding, which included the hiring of one policeman, just in case things got out of hand. (Actually, this was a small, dying mill town, and weddings were always getting out of hand, so the town passed a law that required the hiring of a policeman for any event attended by more than 100 people.) There were at least two hundred people at the wedding of Tom and Juanita.

Bob charged Juanita's parents only \$500 for the hall rental.

The wedding was catered by Weddings R Us, a partnership formed many years ago by two sisters, Joan and Mary Tattalonia. Mary Tattalonia was Pete's mom, and she sometimes let him help out with preparing the food. On this occasion, for this wedding, Pete was assigned to help spoon the tuna and egg salad into those little rolls that people

actually seemed to eat.

Like I said, Pete was upset about the wedding. So it should come as no surprise to you that he used mayonnaise that had been sitting in the sun for five hours on those little tuna and egg salad sandwiches.

The band hired by Juanita's parents, the Milltown Trio, showed up in their powder blue tuxedos and played well. Everyone wanted them to succeed, because their lead singer Louie Fugooey, had had such a hard life. He was a cleanliness nut, and had recently served ten years into county prison for killing a man who spilled some amber colored beverage on his powder blue suit during a raucous high school reunion.

Can you guess what happened?

Let me give you the Reader's Digest condensed version. The wedding was going great, there was laughter and food being consumed by hordes of smiling people, and well that's when the problems started. Dino Saurus, who owned the town's only dry cleaning establishment, was the first to become sick (as a boy, his mother would later recall, he always had a weak stomach). He started projectile vomiting while doing the Macarena with Juanita. She, soaked from veil to toe with his mess, started vomiting also. This, as you can imagine, led to a rather disgusting chain reaction, which got really bad when some unsuspecting soul had the unfortunate luck of upchucking right into Louie's lap.

Louie went berserk, and started punching people. In the mad rush to the exits, the hired cop was valiantly trying to keep some semblance of order, lest the little ones get trampled. Jake Harding, the minister who performed the ceremony, started to fight with the cop.

The cop shot him dead.

In the melee, the wedding cake with all the pretty candles was knocked to the floor, and the Old Grange Hall was quickly consumed in flames. The building, valued at \$100,000, was a total loss. Luckily, nobody was burned. Well, not literally.

Then the lawsuits started flying.

DISCUSS THOSE LAWSUITS.

QUESTION 2

Fresh out of law school, and having passed the bar, Steve Williams and Gina Furness, sat around and puzzled out what to do next. It took them no time at all to decide to open up a law practice together.

Williams & Furness, Attorneys at Law, opened for business the very next week. Steve had very little money, having wiped out all his savings and his credit line long ago paying for his education. Luckily for him, he worked as a bartender at a golf course through law school, and made a lot of friends in the local business community, who promised to give him lucrative corporate work when he got his ticket.

Gina, on the other hand, was fairly well-to-do, and had plenty of money still kicking around after she graduated. She wanted to do personal injury work, but she had no ready client base lined up.

So Steve agreed to bring in all these clients, and Gina agreed to lend the partnership \$20,000, with the stipulation that she would be paid back her loan within two years, provided that the partnership was making money "after a small draw to each partner."

Each agreed that they would only do the work they were best suited for. Steve would only do corporate work. Gina would only do personal injury work.

Ah, even the best laid plans tend to go awry. It's a shame, really.

The \$20,000 was quickly used up. They both went on a shopping spree to furnish their offices in the best of taste, and then you've got letterhead, announcements, first and last month's rent, and Steve's bar bill.

Steve's bar bill? What's that all about?

As Steve explained it to Gina, it takes money to make money, and he was out smoozing those to-be corporate head honchos over at the golf course, buying them drinks, dinner, that type of thing.

But Steve's hoped-for clients never materialized. Gina was forced to put another \$10,000 into the partnership, but things went from bad to worse. The debts mounted. The phone never rang. Steve began coming into the office only occasionally, and even then, Gina smelled alcohol on his breath. One day, sitting in her office, she noticed a moving truck pull up. When they knocked on the door of the law firm, Gina was really worried.

The nice men from the moving company informed her that they had a default

judgment against the law firm for Steve's unpaid debts, and they had a court order allowing them to take the furnishings as payment. Gina rushed into Steve's office, and sure enough, she found on Steve's fancy desk many unopened letters from the court just piled up like newfallen leaves.

Gina asked what the debts were for. The movers told her that they came from unpaid bar tabs at the country club. And then they removed everything, right down to the staplers.

They didn't take the phones, though, saying they'd be back for them another day. And then they left. As she sat cross-legged on the floor, sobbing, a most wonderful thing happened.

The phone rang.

It was a client.

It was Mr. Fatfeathers, head of the local bank. He wanted the law firm to represent the bank in sensitive and urgent negotiations to take over a local flyfishing company. Without giving it a second thought, Gina arranged for the bank to pay the law firm of Williams & Furness a \$100,000 nonrefundable retainer. The funds were immediately wired into the partnership account, and Gina spent the next two weeks living at the bank, hammering out a fairly complex merger agreement.

She only took time out to hire her sister, Janet, a recent high school drop out, as a secretary for the law firm, and told her to answer the phones, answer the mail, and buy some new furniture charging it to the law firm.

Janet turned around and charged \$20,000 of white wicker furniture for the law office. Like I said, she was a high school dropout. She also purchased on credit \$5,000 worth of erasers, because she was always making mistakes.

Steve came in long enough to take a "small draw" of \$25,000, and also to advise his first client, who happened to call just as he was leaving. The client was a computer programmer named Mitch Mitchell, who wanted to set up a corporation to begin doing some computer consulting work. The attached sheets are Steve's handiwork, along with Steve's memo to the files.

Flushed with success, Gina returned to the office two weeks later. She fired Janet, sent back the white wicker furniture, ordered some mahogany furniture, and then discussed a business proposition with Larry Loungella, who wanted to set up a limited partnership to buy a piece of real estate that he wanted to improve and then resell. Gina sat back, listened to Larry, and then advised him about the best way to structure his limited partnership.

Discuss the rights and duties of all parties concerned, and also write for me Gina's

memo to the file about how she was going to structure the limited partnership.

MASSACHUSETTS SCHOOL OF LAW

BUSINESS ASSOCIATIONS

PROFESSOR JOSEPH DEVLIN

FALL, 1995

FINAL EXAM

INSTRUCTIONS

There are two fact patterns on this final exam. You have 1 1/2 hours to answer each question, no more and no less. For the first 1/2 hour of each question, you are requested to outline your answer in the bluebook provided. The outline will be collected but not graded. You may not begin writing your answer to either question until the 1/2 hour has elapsed. You will be instructed when to begin writing the answer to each essay question.

My wife and I and our adorable kids wish you a safe and happy holiday season!

QUESTION #1

Bartholomew Cassidy liked to describe himself to new acquaintances as a Mamas boy. And a Papas boy. Upon seeing a mixture of fear and loathing on the faces of these newcomers when given this information, Bartholomew informed them that what he meant was that he was actually a Mamas and Papas boy, whereupon he began belting out:

"All the leaves are brown (leaves are brown)
and the sky is gray (sky is gray)..."

He would then break out in gales of laughter, too misty eyed to see the now more virulent strain of fear and loathing on the faces of the newcomers. Needless to say, he didn't have a hell of a lot of people calling him on Friday nights to see what he was doing.

In short, no one cared. Bartholomew was a social misfit. And, like many social misfits, he had no clue about why he was so wildly unpopular. (This would all change soon, but there's no need to jump ahead so quickly.)

Alone on Friday nights, Bartholomew began to experiment in the kitchen. He soon found he was a natural born chef. Everything he concocted was delicious. I can attest to this. I was visiting his next door neighbor Barbara, who lived in Apartment 3-g, and whom I met through a mutual friend who was somewhat of a matchmaker, and she was not only stunningly attractive, she was also a great cook, and halfway through our first glass of Glen Ellen Private Reserve 1982 Chardonnay, I smelled something emanating from Bart's apartment, so I, seemingly transfixed, got up from the couch, spilled the rest of the wine on the floor, grabbed my coat, and walked out the door.

All because of the smell. Oooh oooh that smell. It drew me like a magnet to Bartholomew's abode, which was Apartment 4-g.

You should know that everything worked out well between Barbara and me. She came around to forgiving me, I swept her off her feet, and we were and still are married.

I knocked on Bartholomew's door, and we exchanged introductions. See above. After such an awkward start, I plowed on, remaining nice (as is my nature, by the way), and eventually I got invited in to sample a taste of what I could only smell. It was a heavenly pasta dish.

I asked Bartholomew what it was. He said it was just something he whipped up, a combination of layers of linguine interspersed with parmesan, ricotta and feta cheeses overlaid with a red sauce (homemade, from scratch) comprised of zesty plum tomatoes, herbs, a good dose of garlic, and sweet red and yellow peppers. It tasted phenomenal,

and it looked positively mouthwatering.

I asked him what is it that he called this delectable mixture of spaghetti and lasagna. He smiled, and told me he called it "Spagagna."

I immediately dragged him downtown to the office of an attorney friend of mine named Patty Lawless, who was working late on a Friday night (laugh all you want to now, you just wait and see), and we immediately incorporated (see attached documents). No changes have ever been made to the Articles of Incorporation.

Now five years later, Bart's Bistro's are a huge success, with 88 restaurants all over the country. I am still President of the corporation, and the stock is currently owned as follows:

Bart -- 10,000 shares
me -- 10,000 shares
Patty Lawless -- 3,000 shares (Patty got them as her fee for incorporating us.)
Various Investors -- 20,000 shares

Bart now has his own weekly cooking show, which pays him \$100,000 per show. He's even got his own hotline, 1-800-RECIPE. He gets flown to his many appearances via our corporate jet.

The Treasurer of the corporation is Johnny Paycheck, a long time acquaintance of Patty. (An aside. Johnny Paycheck, although his credentials checked out, with an MBA in Finance from Harvard Business School, never told us that he served four years in the federal penitentiary for embezzlement. Patty knew about the jail sentence, but never informed either me or Bart.) I took a look at the corporate books the other day, and it seems a realistic possibility that Johnny has been overstating income for some years now by booking sales before deliveries were shipped. Damn. Maybe I should sell my stock before the dung hits the fan.

Something you ought to know about the various investors. They are employees, family, friends, etc., who put up some money so we could start branching out into other states. They have not made any fuss whatsoever, and it's probably good business for them that they don't, because otherwise I would fire them or cut off dividends (In the case of Bart's father, who paid \$1,000.00 for his 1,000 shares of stock, and who is a quality control supervisor living on a fairly fixed income, I had to do both -- threaten him with being fired and telling him I would stop paying dividends -- that shut him and his wrinkled old mouth up right away.)

One reason I am wealthier than everyone else is the great idea I had years ago, when this whole thing began to take off. As soon as the corporation decided to buy a plot of land to build a new restaurant, I would buy up all the land surrounding the plot to be bought at bargain basement prices. A short time later, when the restaurant was up

and running and land values had thus increased, I would sell the surrounding parcels at a handsome (and sometimes outrageous) profit.

Maybe what I should do is buy out the various investors, because I heard from a friend (the well-connected head of the American Restaurateurs Association) that the McDonald's people are considering Bart's as a possible takeover candidate.

DISCUSS THE RIGHTS AND DUTIES OF THE PARTIES.

THE COMMONWEALTH OF MASSACHUSETTS

ARTICLES OF ORGANIZATION

GENERAL LAWS, CHAPTER 156B, SECTION 12

I hereby certify that, upon an examination of these articles of organization, duly submitted to me, it appears that the provisions of the General Laws relative to the organization of corporations have been complied with, and I hereby approve said articles; and the filing fee in the amount of \$ 200.00 having been paid, said articles are deemed to have been filed with me this

day of

December 23

19 85

Effective date

January 1, 1986

MICHAEL J. CONNOLLY
Secretary of State

FILING FEE: 1/10 of 1% of the total amount of the authorized capital stock, but not less than \$200.00. For the purpose of filing, shares of stock with a par value less than one dollar or no par stock shall be deemed to have a par value of one dollar per share.

PHOTOCOPY OF ARTICLES OF ORGANIZATION TO BE SENT

Telephone:

ARTICLE VII

The effective date of organization of the corporation shall be the date approved and filed by the Secretary of the Commonwealth. If a later effective date is desired, specify such date which shall not be more than thirty days after the date of filing.

The information contained in ARTICLE VIII is NOT a PERMANENT part of the Articles of Organization and may be changed ONLY by filing the appropriate form provided therefor.

ARTICLE VIII

a. The street address of the corporation IN MASSACHUSETTS is: (post office boxes are not acceptable)

200 Federal St., Andover, MA 01810

b. The name, residence and post office address (if different) of the directors and officers of the corporation are as follows:

	NAME	RESIDENCE	POST OFFICE ADDRESS
President:	Joseph Devlin,	2 Rich Man's St.,	Andover, MA
Treasurer:	John Paycheck,	1 Felony Way,	Boston, MA
Clerk:	Patty Lawless,	3 Card Monte Way,	Chelsea, MA
Directors:	Joseph Devlin	(as above)	
	Bartholomew Cassidy,	4 Pepper St.,	Cambridge, MA

c. The fiscal year (i.e., tax year) of the corporation shall end on the last day of the month of:

December

d. The name and BUSINESS address of the RESIDENT AGENT of the corporation, if any, is:

N/A

ARTICLE IX

By-laws of the corporation have been duly adopted and the president, treasurer, clerk and directors whose names are set forth above, have been duly elected.

IN WITNESS WHEREOF and under the pains and penalties of perjury, I/WE, whose signature(s) appear below as incorporator(s) and whose names and business or residential address(es) ARE CLEARLY TYPED OR PRINTED beneath each signature do hereby associate with the intention of forming this corporation under the provisions of General Laws Chapter 156B and do hereby sign these Articles of Organization as incorporator(s) this 23 day of December 1985

(Handwritten signature)

NOTE: If an already-existing corporation is acting as incorporator, type in the exact name of the corporation, the state or other jurisdiction where it was incorporated, the name of the person signing on behalf of said corporation and the title he/she holds or other authority by which such action is taken.

ARTICLE III

and classes of stock and the total number of shares and par value, if any, of each type and class of stock which the corporation is authorized to issue is as

WITHOUT PAR VALUE STOCKS WITH PAR VALUE STOCKS

TYPE	NUMBER OF SHARES	TYPE	NUMBER OF SHARES	PAR VALUE
COMMON:		COMMON:	30,000	\$2.00
PREFERRED:		PREFERRED:		

ARTICLE IV

more than one type, class or series is authorized, a description of each with, if any, the preferences, voting powers, qualifications, special or relative rights or privileges as to each type and class thereof and any series now established.

NONE.

ARTICLE V

restrictions, if any, imposed by the Articles of Organization upon the transfer of shares of stock of any class are as follows:

The stock of the Corporation is subject to a stock restriction agreement which, inter alia, provides for an eleven year voting trust agreement and also provides that upon termination of employment or otherwise the Corporation has the right to purchase any stock holder's stock for par value, less attorneys' fees.

ARTICLE VI

other lawful provisions, if any, for the conduct and regulation of business and affairs of the corporation, for its voluntary dissolution, or for limiting, defining, or regulating the powers of the corporation, or of its directors or stockholders, or of any class of stockholders: (If there are no provisions state "None".)

The preceding six (6) articles are considered to be permanent and may ONLY be changed by filing appropriate Articles of Amendment.

The Commonwealth of Massachusetts

OFFICE OF THE MASSACHUSETTS SECRETARY OF STATE
MICHAEL J. CONNOLLY, Secretary
ONE ASHBURTON PLACE, BOSTON, MASSACHUSETTS 02108

ARTICLES OF ORGANIZATION
(Under G.L. Ch. 156B)

ARTICLE I

The name of the corporation is:

BART'S BISTROS, LTD.

ARTICLE II

The purpose of the corporation is to engage in the following business activities:

- A) To engage in the restaurant business.
- B) To engage in any other lawful business activity directly incidental to the carrying on of a restaurant business which is allowed under the laws governing corporations in Massachusetts.

Note: If the space provided under any article or item on this form is insufficient, additions shall be set forth on separate 8 1/2 x 11 sheets of paper leaving a left hand margin of at least 1 inch. Additions to more than one article may be continued on a single sheet so long as each article requiring each such addition is clearly indicated.

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QUESTION 2

"Hello. Pleased to make your acquaintance. You come highly recommended by your former Business Associations professor. He was really quite surprised that you did so well on his final exam, given that he couldn't recall ever seeing you in class. I understand now that you've been practicing law now for a few years. It must be kinda nice to see your name always being mentioned as a possible appointee for Massachusetts Supreme Court Justice.

"What's that? You have already been nominated? Well, congratulations. I guess I am really fortunate that you have decided to help me with what I consider to be my minor problems, in your last act as a practicing attorney before donning the robes of the judiciary.

"My problems are really quite minor. You see, I am a computer consultant. I graduated with a degree in computer engineering from Bentley a few years back, and my friend Jamie and I started a consulting business immediately upon graduation. We earned a few bucks showing attorneys how to haul themselves in to the 20th century, and we split all profits 50-50. At least, we did until two years ago, when Jamie got married to some woman he met only two weeks earlier named Janet Planet, and took a four week honeymoon to the Himalayas, can you believe that? Since he's come back, he's really been doing little, he doesn't even seem to care, so since that time I have been keeping 90% of what I have earned, and have only been giving him spending money. He doesn't seem to mind.

"As a matter of fact, I was a little taken aback by your required \$10,000.00 nonrefundable retainer, and I don't keep that kind of money lying around, so I had to pay you out of business funds, which didn't leave me anything to pay Jamie this month. My guess is that he won't even notice.

"What's that? You cashed the check? Good.

"Let me tell you a little more of what has happened. You see, when we first started, it was just Jamie and me, and we worked out of my parents' house. Our office is still there, we've got a business line, a fax machine, a modem, etc. After a while, we hired Jamie's sister Jocelyn to do our typing for us. She just recently got out of the state penitentiary, where she was serving time for arson, and she needed a job. We began paying her \$100 bucks a week, under the table, and she was really a real good typist. She's been in the hospital the last few weeks, because of some really freaky accident. She was apparently making some coffee in my parents' kitchen when the stove blew up. She was burnt pretty badly, but she's likely to make a good recovery. The kitchen suffered massive damage. My parents don't know about it yet, because they have retired to Florida, and I just don't have the heart to call them. Before they left, they told me

that they had contacted their insurance guy, his name is Ned, to make sure that their policy would cover a home business like ours.

"A couple of other things. Jamie and I bought a van a few years back, so that we could travel around and visit clients comfortably, in style. We formed a corporation, complete with papers and everything, to own the van, for liability purposes. At least, that's what our old attorney told us. But I've been making the payments on it out of our business account all along. Two months ago, I told Jocelyn to run downtown to buy some fax paper, cos we were running low. She apparently was too busy or too lazy to run the errand, so she asked my younger sister Therese, to run the errand. Therese, you know, still lives in the house, she's a senior in college, and I feel real bad for her, because she's not that good a driver, and she accidently hit a little old blue haired lady, who suffered massive hemorrhaging, but is expected to live.

"Oh, one last thing, before I forget. Bill Gates called last week. Yup, that's right. The Bill Gates. He called on my parents' home phone, not the business phone, and he said he wanted to meet with me to discuss me doing some type of lucrative internet interfacing for Microsoft in my free time. I think I will need you to look over the contract. I have heard he's pretty ruthless.

"What should I do about all of this?"

Fall Semester, 1993
Professor Devlin
Business Associations Final Exam
December, 1993

Instructions

There are two fact patterns on this final exam. You will have 1 1/2 hours to answer each question, no more and no less. For the first 1/2 hour of each question, you are requested to outline your answer in the bluebook provided. The outline will be collected, but not graded. You may not begin writing your answer to the question until the 1/2 hour has elapsed. You will be instructed when to begin writing, and you will have 1 hour to write a clear, cogent well-reasoned answer to the question(s) asked.

QUESTION ONE

In 1987, Beavis & Butthead, Inc. (B&B) was organized and incorporated according to the attached articles of organization. Out of the original authorized capital stock of 10,000 shares, 7,500 were duly issued to Billy Beavis and Bobby Butthead, as joint tenants. 2,400 shares were issued to their corporate counsel, Larry Beeferman, as payment for services rendered, and the remaining 100 shares were issued to Tim Cagle, who paid \$5,000.00 for the stock, but who told everybody that he was really too busy pretending to practice law, and so could not be counted on to attend any meetings or participate actively as a director.

Not too long after incorporation, Butthead lent \$100,000.00 of his own hard earned money to B&B, taking back a demand note which paid quarterly interest at the rate of 15%. Beeferman caused his corporation, Beeferman & Cagle, P.C., to lend an additional \$50,000.00 to B&B. This loan was undocumented, no interest was ever paid, no principal was paid back, and Cagle never even knew the money was missing from the corporate coffers.

In 1991, at a specially called meeting of the Board of Directors, a quorum voted to pay a dividend to every stockholder but Cagle, since he had lived up to his word and hadn't done a blessed thing to help the company. Well, actually, that's not true. He was driving to the corporate offices one day to pick up some things which were being held for him and he did run over and negligently inflict bodily harm on one Gladys Nightingale, a reporter for the local newspaper, who had written some extremely unsavory (but, unfortunately, true) things about B&B, Inc. being a horrible corporate polluter.

On September 1, 1992, at their annual Labor Day company cookout, Beavis lit Butthead's little sister on fire. Butthead retaliated a week later, torching Beavis' parent's house, a modest bungalow (owned for tax purposes by the corporation) on the outskirts of town. Needless to say, Beavis and Butthead were really sore at each other, and their long-standing business and social relationship suffered. Beavis, fearful of being arrested, fled the state, but did not resign from his position(s) with B&B.

In August of 1988, Butthead had been approached by a guy named Ned Needle, who apparently had developed a new prototype device which would, if successful, significantly reduce the cost of inputting the interactive data necessary to interpolate computer fused peripherals. Butthead at first thought that the device sucked, but then upon careful reflection realized its almost revolutionary potential. After Beavis skipped town, Butthead and Beeferman formed a partnership, BeefButt Enterprises, which purchased the machine from Ned Needle. BeefButt began to manufacture and market the machine, making a ton of money.

B&B has always paid interest on the note it owes to Butthead, and has even paid back \$80,000.00 of principal. B&B has been scaled back significantly, what with Beavis gone, and Butthead and Beeferman busy working to make BeefButt a smashing success. As a matter of fact, B&B is currently insolvent, as accounts receivable are way up, collections are down, and nobody is minding the store. As president, Butthead has filed suit against all B&B customers whose accounts are 60 days overdue. Bankruptcy looms, and there are creditors out there who are mighty angry.

At a duly called director's meeting last week, which Cagle and Beavis failed to attend, the directors voted to place the company in bankruptcy. Prior to doing so, however, B&B paid off its remaining debt to Butthead.

Discuss the respective rights and duties of the parties.

The Commonwealth of Massachusetts

OFFICE OF THE MASSACHUSETTS SECRETARY OF STATE
MICHAEL JOSEPH CONNOLLY, Secretary
ONE ASHBURTON PLACE, BOSTON, MASSACHUSETTS 02108

ARTICLES OF ORGANIZATION (Under G.L. Ch. 156B)

ARTICLE I

The name of the corporation is:

DEAVIS + BUTTRICK, INC

ARTICLE II

The purpose of the corporation is to engage in the following business activities:

A. To manufacture and sell incendiary devices

B. In connection with its primary purpose, the manufacture and sale of incendiary devices, to do any other related business within the Commonwealth of Massachusetts

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Note: If the space provided under any article or item on this form is insufficient, additions shall be set forth on separate 8 1/2 x 11 sheets of paper leaving a left hand margin of at least 1 inch. Additions to more than one article may be continued on a single sheet so long as each article requiring each such addition is clearly indicated.

ARTICLE III

The type and classes of stock and the total number of shares and par value, if any, of each type and class of stock which the corporation is authorized to issue is as follows:

WITHOUT PAR VALUE STOCKS

WITH PAR VALUE STOCKS

TYPE	NUMBER OF SHARES
COMMON:	10,000
PREFERRED:	

TYPE	NUMBER OF SHARES	PAR VALUE
COMMON:		
PREFERRED:		

ARTICLE IV

If more than one type, class or series is authorized, a description of each with, if any, the preferences, voting powers, qualifications, special or relative rights or privileges as to each type and class thereof and any series now established.

ARTICLE V

The restrictions, if any, imposed by the Articles of Organization upon the transfer of shares of stock of any class are as follows:

*THE STOCK OF THIS CORPORATION IS SUBJECT TO A
 VALIDLY EXECUTED STOCKHOLDER RESTRICTION AGREEMENT,
 A COPY OF WHICH IS ON FILE AT THE PRINCIPAL
 PLACE OF BUSINESS OF THE CORPORATION*

ARTICLE VI

Other lawful provisions, if any, for the conduct and regulation of business and affairs of the corporation, for its voluntary dissolution, or for limiting, defining, or regulating the powers of the corporation, or of its directors or stockholders, or of any class of stockholders: (If there are no provisions state "None".)

*ANY JOINTLY HELD STOCK MUST BE VOTED UNANIMOUSLY, OR NOT
 AT ALL. A QUORUM IS 90% OF REMAINING STOCK. ALSO, ONLY*

Note: The preceding six (6) articles are considered to be permanent and may ONLY be changed by filing appropriate Articles of Amendment.

THE TREASURER IS AUTHORIZED TO SIGN CORPORATE CHECKS

ARTICLE VII

The effective date of organization of the corporation shall be the date approved and filed by the Secretary of the Commonwealth. If a later effective date is desired, specify such date which shall not be more than thirty days after the date of filing.

The information contained in ARTICLE VIII is NOT a PERMANENT part of the Articles of Organization and may be changed ONLY by filing the appropriate form provided therefor.

ARTICLE VIII

a. The street address of the corporation IN MASSACHUSETTS is: (post office boxes are not acceptable)

500 FEDERAL STREET ANDOVER MA

b. The name, residence and post office address (if different) of the directors and officers of the corporation are as follows:

NAME	RESIDENCE	POST OFFICE ADDRESS
President: <i>Bob Bullhead</i>	<i>PERIOD ROAD ANDOVER, MA</i>	<i>SAME</i>
Treasurer: <i>Bill Beavis</i>	<i>FLAME AVENUE ANDOVER, MA</i>	<i>SAME</i>
Clerk: <i>Tom Cable</i>	<i>MSL ANDOVER, MA</i>	<i>SAME</i>
Directors:		
<i>MR. BULLHEAD</i>	<i>SEE ABOVE</i>	<i>SAME</i>
<i>MRS. BULLHEAD</i>	<i>SEE ABOVE</i>	<i>SAME</i>
<i>MR. BEAVIS</i>	<i>SEE ABOVE</i>	<i>SAME</i>
<i>MRS. BECKERMAN</i>	<i>MSL, ANDOVER, MA</i>	<i>SAME</i>
<i>TOM CABLE</i>	<i>MSL ANDOVER, MA</i>	<i>SAME</i>

c. The fiscal year (i.e., tax year) of the corporation shall end on the last day of the month of:

DECEMBER 31

d. The name and BUSINESS address of the RESIDENT AGENT of the corporation, if any, is:

ARTICLE IX

By-laws of the corporation have been duly adopted and the president, treasurer, clerk and directors whose names are set forth above, have been duly elected

IN WITNESS WHEREOF and under the pains and penalties of perjury, I/WE, whose signature(s) appear below as incorporator(s) and whose names and business or residential address(es) ARE CLEARLY TYPED OR PRINTED beneath each signature do hereby associate with the intention of forming this corporation under the provisions of General Laws Chapter 156B and do hereby sign these Articles of Organization as incorporator(s)

this *901* day of *June* 19*73*

NOTE: If an already-existing corporation is acting as incorporator, type in the exact name of the corporation, the state or other jurisdiction where it was incorporated, the name of the person signing on behalf of said corporation and the title he/she holds or other authority by which such action is taken.

QUESTION TWO

Tina and Louise entered into a 12 year partnership agreement in 1990 under the name of Joyous Overzealous Educators ("JOE"). The primary business of the partnership is to produce subliminal motivational audiotapes for law students. Business soon boomed (apparently, law students are a notoriously insecure bunch), and, upon the advice of counsel, the partners dissolved the partnership in early 1992, and, one month later, with completely different funds borrowed from Tina's mother, Jane Hathaway, incorporated.

The name of their corporation was TinaLouise, Inc. The attorney was given 10 shares in TinaLouise, Inc. as payment for his services. Both Tina and Louise were to pay \$1,000.00 for their stock, but since Tina did not have her check book that fateful day, only Louise put up money for the stock purchase. As I stated previously, business boomed, so much so that, soon after incorporating, TinaLouise, Inc. was stiffed by a supplier, who informed the corporate clerk that he would not be delivering blank tapes to them, and he would not be returning their \$1,000,000.00 deposit. The corporate clerk who received this message failed to inform anybody of this dire turn of events.

Initially, most of the audiotape work was farmed out to independent contractor professors, who would prepare scripts for transcription and ultimate taping. The tapes were transcribed by Bob's Secretarial Service, which was a sole proprietorship run by, you guessed it, Bob. Bob's secretary, Gladys, did all the work, but she was old, and her eyesight and hearing were not what they once were.

Well, you guessed it. Gladys screwed up some of the tapes (apparently, some of the tapes were maliciously scripted by certain professors, so Gladys does not deserve all the blame in this matter). The subliminal message which was supposed to be read as "You are a conlaw aficionado" came out as "You are a con and the law is out to get you." Another message, which was supposed to be "Contracts are your life" came out "There is a contract out on your life." And another message, which was supposed to be "You will graduate at the top of your class" came out "You will have flatulence in front of the class."

The errors were never caught, not by Gladys, not by Bob, not by the professors (at least those who were not playing the joke), not by Tina, not by Louise. Nobody. Alas and alack, seventeen law students who purchased the tapes committed suicide. All left suicide notes saying that law school was hell, and claiming no person in their right mind would choose such a career. The representatives of their estates have discovered the offensive subliminal audiotapes and have banded together to research the possibility of filing suit.

In 1992, prior to incorporating, the partners purchased a new office complex, and took title in the name of the partnership. Tina, who was having marital problems with

her no-good bum of a husband Gilligan at the time, immediately transferred her interest in the property to Thurston Howell III. A few weeks after the transfer, Gilligan sued for divorce.

Also in 1992, and also prior to incorporating, Louise transferred half of her partnership interest to her brother Frank in exchange for \$250,000.00 (see attached contract). Frank showed this contract to the Hasbro Toy Company. Frank then agreed with the Hasbro Toy Company that JOE would ship it 100,000 tapes in time for the holiday season at discount rates. Hasbro paid Frank \$10,000.00 up front on the contract, but the tapes were never delivered. Frank, apparently, has since left the jurisdiction, and was last seen lounging around a Las Vegas resort's pool.

In early 1993, Louise decided to add another shareholder, and to do so she sold 1,000 shares of her stock to Gilligan. Gilligan immediately sold all 500 shares, at a substantial profit, to five hundred of his individual "little buddy" friends. All five hundred immediately (and I mean immediately) then bring a derivative suit against the supplier who stiffed the corporation for its \$1,000,000.00 deposit.

Finally, at the urging of Gilligan, Louise decides to fire Tina. At a duly called shareholders meeting, she conspires with Gilligan's friends and elects herself and Gilligan to the Board of Directors, refusing to count Tina's votes against such an arrangement. The new Board of Directors then fires Tina.

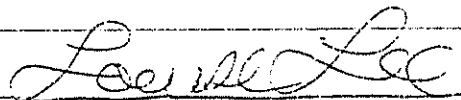
Discuss the rights and duties of the parties.

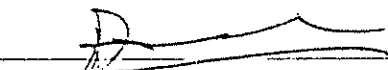
AGREEMENT

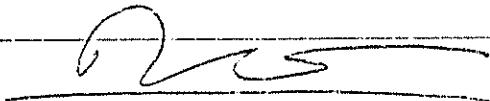
I, LOUISE LEE, AND I FRANK LEE, DO HEREBY AGREE
THAT IN EXCHANGE FOR FRANK PAYING \$250,000.00 TO
LOUISE, LOUISE GRANTS HIM A ONE-HALF (1/2) INTEREST
IN HER INTEREST IN THE PARTNERSHIP BEING OPERATED
UNDER THE NAME JOYOUS OVERZEALOUS EDUCATORS.

WITNESS OUR HANDS AND SEALS THIS 12TH DAY OF FEBRUARY, 1992

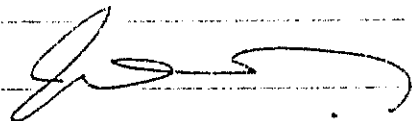

witness


LOUISE LEE


witness


FRANK LEE

SIGNED, SWORN, AND SUBSCRIBED TO BEFORE ME, A NOTARY
PUBLIC THIS 22ND DAY OF June, 1992.


NOTARY PUBLIC

Fall Semester, 1992
Professor Devlin
Business Associations Final Exam
December, 1992

Instructions

There are two fact patterns on this final exam. You will have 1 1/2 hours to answer each question, no more and no less. For the first 1/2 hour of each question, you are requested to outline your answer in the bluebook provided. The outline will be collected, but not graded. You may not begin writing your answer to the question until the 1/2 hour has elapsed. You will be instructed when to begin writing, and you will have 1 hour to write a clear, cogent well-reasoned answer to the question(s) asked.

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Question 1

Dmitri Kvartalnovski came to this country (and to this state) with his lovely but overworked wife Irina and their handsome son, Dmitri, Jr. in the Summer of 1990, after the fall of communism and the demise of their country. Dmitri came here, to this bastion of free enterprise capitalism, armed with only a hockey stick and an idea. The idea involved some rather complicated biophysics, the calculations alone being enough to boggle anyone's brain. Suffice it to say that Irina was a better hockey player than Dmitri, in fact, she certainly wore the hockey pants in the family.

Back to the idea. Stripped of its difficult-to-comprehend biophysics, it essentially was a way to package fresh Atlantic fish (such as salmon) in such a manner as to retain freshness and reduce the possibility of spoliation, thereby allowing for shipment of fresh fish to regions outside of New England (to the Midwest, for example, where the good corn-fed folks crave a little Atlantic fish as a break from the constant platters of beef and greens).

To implement the idea, Dmitri knew that he would have to develop and patent the biophysics gizmo, purchase a fleet of fishing boats, equip the boats with the biophysics gizmos, purchase (or lease) a warehouse to store the caught fish, and arrange for trucking and shipping companies to deliver the fish to the Midwest. Dmitri knew that once the fish arrived in the Midwest, it would have to be sold or consigned to restaurants, fish stores, and supermarket chains. Supervising all of this minutiae was well beyond even Dmitri's organizational abilities, and Irina, for all she was worth, was too busy practicing her backhand and reading the sports page to be of any assistance.

For this idea to get off the ground, Dmitri needed money, big time. He looked high and low for funding, but nobody would lend any money to a grimy Russian emigre whose wife was a better hockey player than he was. (She was also a better karaoke performer, in case you were interested.) Out of luck, down in the dumps, and all those other cliches that let you know it is always darkest before dawn, Dmitri started hitting the vodka bottle. Hard.

Finally, a ray of light burst upon Dmitri's pitiful world. Another Russian emigre, Boris Badanov, who earlier had made it big in animation, heard of Dmitri's plight, researched Dmitri's idea, and ultimately offered to contribute to Dmitri's new venture the sum of \$1 million dollars, as well as a new waterbed and a couple of paintings from Sears (which, in all honesty, were worthless).

Boris talked with Dmitri, and they agreed to the following terms: First, Boris would get his good friend Bobinski Fischer to chip in \$2 million dollars. To do this, Boris would have to lie to Bobinski, telling him that both Boris and Dmitri would also be contributing \$2 million dollars into the business. Next, Boris would put Dmitri in contact with Boris' own personal attorney, Ed ("Porpoise") Sharkey. Sharkey would draw up all of the corporate documents necessary to begin operations. The new corporation to be formed by Sharkey would issue to Boris Badanov, Inc. (Boris' wholly owned corporation)

10,000 shares of \$1.00 par value common stock in exchange for the waterbed and other stuff, plus a \$1 million dollar 12% convertible debenture (interest only for the first five years, then amortized over ten years) which would give Boris Badanov, Inc. the right to exchange the unpaid principal portion of the debenture for an equivalent number of \$1.00 par shares of stock. In addition, Dmitri and Boris made a secret agreement to only vote for themselves as Directors of the to-be-formed corporation. Dmitri and Boris agreed to vote for Boris as treasurer of the company and Dmitri as president for a period of 11 years (this agreement was never reduced to writing). Dmitri would receive 1,000 shares of common stock, while Bobinski would receive 10,000 shares.

Absolutely, positively, and unequivocally delighted, Dmitri went home to celebrate with his wife and son. They splurged that night on a delicious meal of beets and potatoes at Babushka's their favorite Russian restaurant. Dmitri ran up quite a tab and bar bill, charging the expense to his new corporate account.

The next day, Dmitri went to see Ed Sharkey. Ed drew up various contracts for Dmitri, incorporated him, and took 10,000 shares of the new corporation, DFF, Inc. as payment for his services. Shares of stock were issued to the stockholders according to the terms outlined above. In addition, Irina was issued 100 shares of stock. Sharkey also filed a bunch of other forms for the new corporation, including one electing S corporation status under the Internal Revenue Code. At Dmitri's request, Sharkey added other provisions to the corporation's articles of incorporation. The articles of incorporation filed by Ed in the Secretary of State's office are attached as Exhibit A to this exam.

The gizmos were produced, operations began, and business began to boom. The corn-fed Midwest cowpokes just couldn't get enough of Dmitri's fresh fish. In its first full year of operation (1991), DFF, Inc. had gross sales of \$500,000.00 dollars, and expenses of \$100,000.00 (everything was leased, nothing was bought outright). All money left over after payment of these expenses went into research and development. Dmitri began spending all of his time at the dock, and when he did come home he smelled like fish. One day in early February 1992, upon arriving at his house, he found the house completely dark, and on the kitchen table was a hastily scribbled note from Irina, in which she confessed to no longer loving him, and stating that it was useless to try and find her, as she had run away with a physical therapist. Dmitri, Jr. was sleeping upstairs, oblivious to the emotional turmoil roiling all about him. Dmitri sat down and began to cry. It was slowly becoming evident to him that making money in America was not achieved without great and even unbearable personal sacrifice. Dmitri right then and there decided to dedicate his life to finding Irina.

He began taking a lot of time away from work, checking out all of the hockey rinks on the east coast.

The business, as you would expect, began to suffer. Sales plummeted. In March, 1992, Boris decided something had to be done. First, he caused his corporation to immediately exercise the conversion feature of the debenture, giving him beneficial

ownership of approximately 99 % of DFF, Inc. As holder of approximately 99% of the voting stock of the company, he voted to fire Dmitri as president, and install himself. He also voted to replace Dmitri as director, voting in 5 of his cronies to a reconstituted board of directors. The new board and Boris Badanov, Inc. in accordance with all statutorily required formalities immediately agreed to sell all of the assets of DFF, Inc. to Boris Badanov, Inc. for \$500,000.

Completely demoralized, contemplating suicide (or at least a night of heavy drinking), Dmitri went home. On his doorstep he found (1) the IRS, which served him with a lawsuit; (2) Irina, who served him with a lawsuit; (3) Sharkey, who served him with a lawsuit; (4) an attorney representing DFF, Inc. who served him with a lawsuit; (5) Ivan Ivanov, owner of Babushka's; and (6) a heavy-lidded woman named Natasha, vice-president of Boris Badanov, Inc., who served him with a lawsuit.

Dmitri wondered what the hell was going on. He wondered what these lawsuits could be about. After the requisite night of heavy drinking, unshowered, smelling like a moth-eaten old bear, he comes to you, an attorney expert in corporate law. You make yourself a fresh pot of coffee, and attempt to begin to unravel this sordid tale. Why is Dmitri, poor Dmitri, being served with lawsuits? What are the causes of action? What defenses do you envision raising?

The Commonwealth of Massachusetts

OFFICE OF THE MASSACHUSETTS SECRETARY OF STATE
MICHAEL JOSEPH CONNOLLY, Secretary
ONE ASHBURTON PLACE, BOSTON, MASSACHUSETTS 02108

ARTICLES OF ORGANIZATION (Under G.L. Ch. 156B)

ARTICLE I

The name of the corporation is:

DFP, INC.

ARTICLE II

The purpose of the corporation is to engage in the following business activities:

- A. TO DO some PRETTY TECHNICAL STUFF REGARDING
BOATS, GIZMOS, FISH, AND COYPOKES
- B. TO ENGAGE IN ANY OTHER BUSINESS ACTIVITY WHICH
MAY BE LAWFULLY CARRIED ON IN THE COMMONWEALTH
OF MASSACHUSETTS.

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Note: If the space provided under any article or item on this form is insufficient, additions shall be set forth on separate 8 1/2 x 11 sheets of paper leaving a left hand margin of at least 1 inch. Additions to more than one article may be continued on a single sheet so long as each article requiring each such addition is clearly indicated.

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ARTICLE III

The type and classes of stock and the total number of shares and par value, if any, of each type and class of stock which the corporation is authorized to issue is as follows:

WITHOUT PAR VALUE STOCKS

TYPE	NUMBER OF SHARES
COMMON:	
PREFERRED:	

WITH PAR VALUE STOCKS

TYPE	NUMBER OF SHARES	PAR VALUE
COMMON:	5,000,000	\$1.00
PREFERRED:		

ARTICLE IV

If more than one type, class or series is authorized, a description of each with, if any, the preferences, voting powers, qualifications, special or relative rights or privileges as to each type and class thereof and any series now established.

ARTICLE V

The restrictions, if any, imposed by the Articles of Organization upon the transfer of shares of stock of any class are as follows:

THE STOCK OF THE COMPANY IS SUBJECT TO A STOCK RESTRICTION AGREEMENT, A COPY OF WHICH IS ON FILE AT THE OFFICES OF THE CORPORATION. THE STOCK RESTRICTION AGREEMENT REQUIRES ANY SELLING STOCKHOLDER TO FIRST OFFER TO THE CORPORATION THE RIGHT TO PURCHASE ANY SHARES BEING OFFERED FOR SALE TO THIRD PARTIES.

ARTICLE VI

Other lawful provisions, if any, for the conduct and regulation of business and affairs of the corporation, for its voluntary dissolution, or for limiting, defining, or regulating the powers of the corporation, or of its directors or stockholders, or of any class of stockholders: (If there are no provisions state "None".)

ANY ACTION REQUIRING A VOTE OF SHAREHOLDERS MUST BE UNANIMOUS.

Note: The preceding six (6) articles are considered to be permanent and may ONLY be changed by filing appropriate Articles of Amendment.

ARTICLE VII

The effective date of organization of the corporation shall be the date approved and filed by the Secretary of the Commonwealth. If a later effective date is desired, specify such date which shall not be more than thirty days after the date of filing.

The information contained in ARTICLE VIII is NOT a PERMANENT part of the Articles of Organization and may be changed ONLY by filing the appropriate form provided therefor.

ARTICLE VIII

a. The street address of the corporation IN MASSACHUSETTS is: (post office boxes are not acceptable)

500 FEDERAL STREET, ANDOVER, MA

b. The name, residence and post office address (if different) of the directors and officers of the corporation are as follows:

	NAME	RESIDENCE	POST OFFICE ADDRESS
President:	DMITRI KUARTALNOVSKI	ANDOVER, MA	SAME
Treasurer:	BORIS PADANOU	SALEM, MA	"
Clerk:	ED SHARKEY	BOSTON, MA	"
Directors:	DMITRI KUARTALNOVSKI	ANDOVER, MA	"

c. The fiscal year (i.e., tax year) of the corporation shall end on the last day of the month of:

December

d. The name and BUSINESS address of the RESIDENT AGENT of the corporation, if any, is:

N/A

ARTICLE IX

By-laws of the corporation have been duly adopted and the president, treasurer, clerk and directors whose names are set forth above, have been duly elected.

IN WITNESS WHEREOF and under the pains and penalties of perjury, I/WE, whose signature(s) appear below as incorporator(s) and whose names and business or residential address(es) ARE CLEARLY TYPED OR PRINTED beneath each signature do hereby associate with the intention of forming this corporation under the provisions of General Laws Chapter 156B and do hereby sign these Articles of Organization as incorporator(s) this 1st day of JANUARY 1991.

Dmitri Kuartalnovski

NOTE: If an already-existing corporation is acting as incorporator, type in the exact name of the corporation, the state or other jurisdiction where it was incorporated, the name of the person signing on behalf of said corporation and the title he/she holds or other authority by which such action is taken.

Question #2

The DooRonRon Company is a Massachusetts limited partnership, duly formed by five childhood buddies - Archie, Betty, Jughead, Reggie, and Veronica, all of whom are limited partners. The general partner is ABJRV Corp., a Massachusetts corporation whose president is Betty, whose treasurer is Archie, and whose clerk is Veronica. Each of the five friends owns 100 shares of stock in ABJRV Corp., which they each agreed to pay \$100 for. Only Reggie has actually paid the money as yet. The rest of the friends have been issued stock, and their unpaid capital contributions are listed as loans to stockholders on the books of the corporation. DooRonRon is in the business of manufacturing and publishing educational software games for children. The biggest seller is a video game named "Shoot the Law Professor," a silly little game which allows users to take potshots at a crusty old professor whenever the user answers a legal question correctly.

The gang did some brainstorming and came up with a truly ingenious interactive video called "Smell the Flowers", which emitted any number of a wide variety of scents when the user correctly guessed the answer to a question of general scientific interest. A disgruntled, geek-tech nerd DooRonRon employee named Joe slipped into the game a scent that none of the limited partners knew about - something he called "roadkill", a pungent, tart, slightly nauseating aroma guaranteed to make the user/smellerslightly queasy (to say the least). The game, when introduced, sold like hotcakes.

As a matter of fact, the DooRonRon Company experienced difficulty keeping up with demand for the product, and this problem was exacerbated by the fact that the company had difficulty in finding enough employees to keep deliveries of the video game on schedule. One day, when shipments were hopelessly behind, Archie, treasurer of ABJRV Corp., called the Chester Porter Independent Contractor Delivery Service, a well-respected and nationally known courier service, to make some deliveries. Chester told Archie that he was booked solid, and his company could not do the work. Archie however was insistent, and literally got down on his hands and knees to beg Chester to help him (Archie could do this fairly easily, because he had a speakerphone).

Chester finally relented. He agreed to make the deliveries personally, in his own car, after working hours. At the time, Archie knew that Chester had been imprisoned 10 years ago for various lewd and lascivious acts. He was so elated at Chester's agreeing to help him out that he never considered the matter when Chester dropped by after dark in a brown rumpled raincoat to pick up the videos and his dropoff destinations. While making a delivery of the new video product to an all-girl's school on the east side of town, Chester ran amok, committing sex crimes and other mayhem with absolute impunity. The mother of one of the girls, a Mrs. Brownsizer, sued Chester personally, not knowing (and quite frankly, not bothering to check, but, then again, put yourself in her shoes, she must have been absolutely devastated) that he was making deliveries for the DooRonRon Company. She recovered a judgment of \$1,000,000.00 against Chester, and he paid \$112.36 of the judgment against him before filing for bankruptcy protection.

Prior to Chester running amok, the five friends had been slowly but inexorably growing up and growing apart. (This kind of stuff happens in real life - look at the Beatles, for instance.) Reggie wanted to cash in his 1/5th ownership share in DooRonRon, as well as his 1/5th ownership interest in ABRV Corp. Seems he and Midge decided to elope to the west coast while Moose was off playing football. Betty wanted out also, because she and Archie (who wanted out also) were thinking of marrying and settling down, and wished to cash out in order to pay for (a) their wedding and honeymoon, and (b) a new waterbed and a couple of paintings from Sears. This left Veronica and Juggie in a bind, as they had no ready cash with which to redeem Reggie's, Betty's, and Archie's interests in the partnership or their stock ownership interests in ABRV, Corp.

The limited partnership had been plowing back all profits into research and development of a new educational toy which promised to have the excitement of SuperMario combined with the (totally excellent) graphics of Tron, two very popular video games. Any money that the corporation ever had was long ago loaned (at below market rates) to Ms. Grundy, a teacher in the local high school, for a facelift. Ms. Grundy was in actuality Jughead's mother, but no one knew this juicy bit of gossip except Ms. Grundy and Jughead.

Mr. Lodge, Veronica's father, was approached to assist in the buyout, but he turned the gang down flat. All of the (soon-to-be-ex-) friends were fresh out of ideas, so, after a few hours at the Chok'lit Shoppe, they all went home. Later that night, Jughead and Veronica met with a mysterious Mr. Weatherbee, president of Cybergraphics, Inc., DooRonRon's chief competitor. He agreed to fund their purchase of Reggie's stock. Without telling the others the source of their funding, Jughead and Veronica bought Reggie's stock for \$100,000.

The next day, Veronica and Jughead, now owning 60% of the ABRV Corp. stock, called a stockholder's meeting and elected Mr. Weatherbee to the board of Directors, taking the resigning Reggie's place. The new Board of Directors immediately fired Archie and Betty from their corporate positions. Feeling betrayed, Archie and Betty went and told everything to Pop, proprietor of the Chok'lit Shoppe. Pop, having been burned in an earlier franchising deal with Weatherbee, immediately went to his cash register, pulled out \$150,000, and bought Archie and Betty's partnership interests and stock interests. Once sad but now brimming with glee, Archie and Betty married (So did Gilligan and Mary Ann, but that is a different screenplay altogether).

Reggie, secretly in love with Betty (and whose child Betty was carrying, not Archie's) immediately died of a broken heart. Veronica, secretly in love with Reggie, gave her partnership and stock interests to Mr. Weatherbee, and then fled to Burma (where there is no such thing as extradition) with all of her money, intending to dedicate her life to working with the poor.

The new game, "Smell the Flowers", was, I repeat, a smash. Only one small (huge) problem. Seems that the smell the geek employee inserted caused over 15,000 glassy-eyed children to die painful and excruciating deaths. The smell was not just nauseating, it was deadly.

Discuss the rights and liabilities of Archie, Betty, Jughead, Reggie, and Veronica vis-a-vis each other.

Fall Semester, 1990
Professor Devlin
Business Associations Final Exam
December 12, 1990

QUESTION # 1

Leona came up with the brilliant and technologically innovative idea of selling fresh peaches to retail grocery stores using a new refrigeration method in distribution to preserve their freshness. Leona approached her friend The Donald to join forces with her in her proposed business. While Leona and The Donald were still making plans, Leona approached Imelda and entered into a long-term contract to supply peaches to her; Leona signed the contract as president of Perfect Peaches, Inc.

Leona then told The Donald of the contract and he, suitably encouraged, joined Leona in forming Perfect Peaches, Inc., as a Massachusetts corporation. The two were equal stockholders, with Leona serving as president (not queen), The Donald as treasurer(a mistake), and both of them as directors.

Later, Leona and The Donald brought Marla into the business, transferring to her 25% of the stock. Since Marla did not know Leona and The Donald very well, and since she feared that they might take some corporate action inimical to her interest, she insisted upon a provision in the by-laws of the corporation requiring an affirmative vote of 80% of the outstanding stock for any action affecting corporate policy.

While the business began to grow (Leona knew how to keep things cold), Leona and the Donald started fighting. Leona became difficult to deal with, causing discontentment among the company's customers. During this time, the corporation began to experience serious tax difficulties because Marla refused to vote to declare dividends.

Upset, The Donald wanted out, offering to sell his stock back to the corporation. His offer was refused, with Leona and Marla voting the proposal down. The Donald, absolutely livid, and not even bothering to resign as officer or director, started his own fresh peach delivery business. Several of Perfect Peaches, Inc. customers switched to The Donald's company. While The Donald's company prospered, Perfect Peaches began to slide toward bankruptcy, and has breached its contract with Imelda, who suffered substantial losses as a result of the breach.

What are the rights and liabilities of the parties?

QUESTION # 2

Harry is the president of Harry's Metal Shop, Inc., a Massachusetts corporation, primarily engaged in the production of specially-ordered sheet metal. Harry called up a good friend of his, John, who ran his own machine shop, Custom Metalworking, Inc., also a Massachusetts corporation. Harry asked if he could borrow John's expensive metal-bending machine for a job he needed to complete. John said he could borrow it, and Harry sent one of his employees, Jim ("Death Wish") Desoto over to John's business to pick up the machine.

When Jim got to John's business, he was met by John's employee Jake ("The Snake") Kravitz, who helped Jim load the machine onto the truck Jim was driving. Jake asked Jim to sign a receipt for the machine, which Jim did. Jake gave a copy of the receipt to Jim, who gave it to Harry when he got back to the shop. On the back of the receipt, in small print, was a clause requiring Harry to indemnify John for any damage the inherently dangerous metal bending machine might cause. (And, of course, it does cause damage, but first I want to tell you about Jim's ride back to the shop.)

Before going back, Jim stopped at the local greasy spoon for lunch, found a fellow patron to his liking, and after lunch stopped at a local motel for what can discreetly be described as a romantic interlude. While pulling out of the motel, Jim ran over 5 obnoxious teenagers. Unaware of the havoc he caused (he had the radio turned up real loud to his favorite country music station), he blissfully drove back to the shop.

Alas and alack, 2 days later, Jim inadvertently flipped the wrong lever on the metal bending machine, bending another of Harry's employees into a gory mess, the likes of which you should never live to witness.

Discuss the rights and liabilities of the parties to this saga.

QUESTION # 3

ABC Company, a Massachusetts partnership, was a toy manufacturer, formed by three childhood buddies, Alicia, Barbara, and Carol. Their main product was a very cute little doll which grew underarm hair at the press of a button. Sales boomed. Life was good. The partners agreed to share in profits as follows: Alicia, 75%; Barbara, 15%; and Carol, 10%.

Alicia finally got grossed out by the product they were marketing, and told her partners she wanted out. Barbara and Carol told her this was impossible, because she was not only the brains behind the whole affair, but also because all of the profits had been plowed back into the business, in the form of a huge downpayment on a manufacturing complex. Alicia demanded that they pay her what they owed her, and then went to lunch in Cambridge, wolfing down a vanilla yogurt and some Cheez-Doodles, and washing it all down with a raspberry lime rickey. The waitress was so nice, Alicia decided to go into the restaurant business with her, and they immediately (well, after paying the bill and leaving a generous tip) incorporated. As her capital contribution to the new corporation, Alicia assigned all of her interest in the profits of the ABC partnership to the corporation in exchange for 20,000 shares of \$5.00 par value stock. Her new friend contributed her life savings, \$100,000, in exchange for the same number of shares.

Barbara and Carol, by the by, were not just sitting around scratching their armpits. Barbara became insolvent, and fled the country. Carol, fearing unlimited liability, decided to incorporate, and called the new business CD Corp, Inc., transferring all of the partnership's assets into the corporate name, and adding a new member, Doreen.

Turns out the underarm hair in the dolls is toxic, and on one fateful post-holiday afternoon more than 4,500 screaming children need to be rushed to area hospital emergency rooms. Symptoms include vomiting, diarrhea, temporary (I sincerely hope) blindness, general agitation, and an uncontrollable desire to eat broccoli.

Discuss everyone's rights against everyone else.