

Section (Circle one)

DAY / EVENING

**BUSINESS ASSOCIATIONS – Starkis***Spring 2009***Final Exam**

This exam contains an extended fact pattern, with a summary of the participants and their roles at the end. I strongly advise you to **read over the fact pattern and all the questions** before starting any analysis, making any notes, or answering any of the questions.

The **time allocations** indicated are **suggested maximums** for your use of time, but you can spend your time as you wish, and the allocations do not necessarily reflect either the amount of time you should spend on a particular question or the scoring value of the questions. You may **answer the questions in any order you wish** so long as the answers are marked with the correct question number, but please be sure that if you do take the questions out of order you **check to make sure you have answered all the questions** before turning your exam in.

Clearly print your **social security number** at the top of **this page** and on the cover of **each bluebook** you use. **Number each of the bluebooks** in the order you use them and put the total number on at least the last book (e.g., “3 of 3” or “5 of 5”). ***Both the exam itself and the bluebooks must be turned in at the end of the exam.***

**You may not use your books or any other materials during the exam.**

In your **bluebooks**, please write on **every other line**, and write **only on one side** of each page.

*15 minutes To read through exam*

**Margo Kline** had been a busy woman, raising three kids – her good-for-nothing husband having left long ago for parts unknown with her used-to-be best friend – and operating her own public relations and management consulting businesses. But a crashing economy and reduced demand for her services had slowed everything down. Her kids were great – mostly. Then her eldest son, **Swift David**, nineteen and attending a local college, had been having some problems and was behaving badly. Some of his classmates had been calling him “Not-so-Swift,” and he had begun spending – wasting – a lot of time at his computer and online instead of doing his studying or the chores he, like the other two children, were assigned. He was consistently nasty to his two siblings and to Margo, who felt sorry for him and put up with it.

To get some relief from her troubles, Margo got together each week with her friend, **Janine Weatherby**. Janine was a completely wild, uninhibited character. Whenever the two were together, they would do crazy things and make each other laugh until they were in tears. Margo would change from the conservative, business-like persona she projected in her personal life to a complete clown. Their time together was marked by empty bottles of wine: the better the time, the more bottles.

One evening, Janine started making fun of Margo’s management consulting videos, which Janine had only recently got a look at. Margo had made them with and at the urging of another friend, **Jim Tedesco**. Jim was in the video business and had turned Margo’s business advice into an impressive product that had sold well to local businesses and was beginning to sell online through Jim’s business website. Jim had covered all of the expenses of making the videos and producing the DVDs, and there was hope that sales would soon cover those out-of-pocket expenses. Janine said, “You know what? We’re going to make a video, ourselves. I’ve got a camera and a tripod. Get yourself ready, girl!”

As **Margo** got herself dressed and made-up for the shoot, the two women wrote a script for

Margo using the Tedesco video as a model, but inserting the names of various people they knew – including many of Margo’s clients and Jim – as models of selfish, stupid, and even criminal behavior. When **Janine** had finished shooting, they popped another bottle – champagne this time – and watched the video. It was hilarious, or at least they, given the amount of wine they had consumed, thought so.

Several weeks later, **Swift** came across the video when he was snooping through his mother’s things looking for money. He watched the video and couldn’t believe what he was seeing. He’d never seen his mother like this. He had seen one of the Tedesco videos, or enough of it to bore him, but he watched this one to the end; it was hilarious. Then he got an idea. He had been onto the **Tedesco** website before and had been amazed at the low level of its security. He decided to go into the website and alter the link to purchasing the original videos to a page he set up for himself. Then he took some of the money he’d found in one of his mother’s underwear drawers and bought DVD blanks and made several hundred copies of the Janine video. He pulled clips of some of the more outrageous bits from the video and posted them to YouTube and other online video sites with links back to his page for the full video.

It took a couple of weeks, but business soon became brisk, and **Swift** was making more than enough money to get as many more DVDs made as he could sell. Meanwhile, **Jim Tedesco** just thought that because of the economy, demand for Margo’s videos had simply dropped to nothing, and that’s what he told Margo when she asked.

**Margo**’s own businesses continued to slide, despite her best efforts. She just assumed it was the economy and the hardships her clients were confronting, rather than anything to do with her, though occasionally the people she spoke with said things and gave her looks that were a bit strange, like they knew something she should know but didn’t.

Nevertheless, sales of the video **Janine** made with **Margo** continued to climb, **Swift** was taking in huge sums of money, and everyone involved (including **Jim Tedesco** and Margo's **three former clients** who had been mocked in the video) eventually found out about the video and all the money it was making. Threats by lawyers for Tedesco and the former clients led to a big conference among Margo, Janine, Jim, and the former clients and all their lawyers. After hours of wrangling, it was decided that all parties (not including **Swift**, who had been silenced by threats of criminal action and, more credibly, of the removal of certain of his vital body parts with a dull knife) that they should form **Margo Manages, L.L.C.**, to take control of the past profits and future sales of the Janine video. Margo would have a 45% share of ownership, Janine 35%, Jim 10%, and the three clients 5% each.

Shortly after that meeting, **Swift** got a phone call from **Jim**. Jim said that, as angry as he had been at Swift for breaking into his website and doing what he did, Jim had now decided that he needed someone with Swift's talents to help with the website and to build the online presence of **Tedesco Video Corporation**, Jim's business. When Swift asked what would be in it for him (Swift), Jim said, "Well, let's see how things work out. I'll make it worth your while in any case, and if things go as well as I think they will with your technical skills and marketing genius – not to mention your ethical instincts – we could both be rich men."

Swift, finally living up to his name, got to work quickly. He built up the Tedesco website, making it a marvel of user-friendliness, and maximized its hits and traffic by using every trick in the book – and some that weren't yet in the book – to boost its Google ratings. He got Jim to develop or buy the rights to video and other materials that would appeal to Jim's existing customer base and to the many new customers Janine's video had pulled their way. They were able to buy the video at wholesale prices and to resell it at a comfortable profit even though they were not officially the

exclusive outlet. Jim was so happy with what Swift was doing, he just stayed out of the way and basically let Swift take over, except for the bookkeeping and banking, which didn't seem to interest Swift at all. It was not the money, but the game of business that interested Swift. Every so often, Jim would give him a big check, and he was happy with that.

**Jim Tedesco** was putting much of the money to other uses: women and gambling. Unfortunately for him, this conflicted with his marriage, especially when his wife, **Betty**, found out. And the misfortune was more than interpersonal; to avoid creditors, he had put 100% ownership of **Tedesco Video Corporation** in her name. She kicked him out of the house and hired a lawyer. She then fired him from the corporation and had her lawyer hire a bookkeeper to take over handling the money from the business. After she got all the information about the business from the bookkeeper, Betty decided she could avoid paying any **corporate creditors** or meeting any other contractual obligations where Swift had signed or otherwise made the arrangements on behalf of the company, because, she decided, he was not an authorized agent of the corporation. **Swift** has heard from a couple of those creditors and is worried.

Things were going well for **Margo Manages**. The videos, new and old, were such a success and so popular that **Margo**, who was running the L.L.C. as its manager, decided to franchise the operation. Franchisees who took a short training course with her (or any of a number of other trainers the L.L.C. had hired for the purpose) and used her materials in providing management consulting services – or management – for client businesses would be able to use the “Margo Manages” name and benefit from a massive advertising campaign: clients of the franchisees would be able to use the slogan “Come work with us. *Managed by Margo*. We use only Margo-trained managers in our business affairs.” And in their places of business, they could display large, prominent certificates of managerial excellence, signed by Margo – or one of her designees.

Meanwhile, **Janine Weatherby** saw opportunity knock when she listened to **Jim Tedesco's** tale of woe one evening at the local tavern. She had already made eyes at and befriended **two** of Margo's **former clients** and sympathized with them about how badly they had been abused by **Margo**. Now she convinced Jim that Margo was the one who had told his wife about his philandering (when in fact it was Janine who had told), and she began to devise a plan to take over **Margo Manages, L.L.C.** With Jim and the two clients, she'd have over 50% and control of the business. Margo had not been distributing profits among the L.L.C. members, and there was a pile of money just waiting in the bank. Janine would talk to Jim and the two others and promise them money if they would vote to make her manager and to pay her a generous salary. She'd set the salary high enough so that she could pay the three men out of it and still have a good sum left for herself. That way she wouldn't be accused of distributing profits to some members and not to others.

**Janine** carried out her plan, took over the L.L.C., and assumed the business would run itself. About eight months later, real trouble hit. A trainer for one of the franchisees of **Margo Manages** working with the management of **Safe Home, Inc.**, a large non-profit shelter for abused women and children, traumatized many of the staff and clients when he went on a rampage. He started yelling about the "bleeding heart basket cases who worked [at the facility] because they couldn't hold any other job" and the "low-life, trailer trash, whining b\_\_\_\_\_s and their rug-rats" whom the shelter served. Security guards had to throw him off the premises, and counsellors had to be called in to provide therapy for many of those who experienced the event. Margo has now learned that Safe Home and some of its clients have been considering hiring lawyers to go after her and the L.L.C..

## DRAMATIS PERSONAE – THE PLAYERS

*Feel free to **remove this page** and the **questions page** for ease of reference, but be sure to **turn them in** with your exam and bluebooks when you're finished*

### The Klines:

- **Margo Kline** - A management and public relations consultant; mother of Swift; friend of Janine; made videos with Jim; managing member and 45% owner of Margo Manages.
- **Swift D. Kline** - Nineteen-year-old son of Margo; problem child; computer and marketing whiz; worked with Jim and his corporation.

**Three former clients** [of Margo] - Nameless gentlemen, each of whom was abused in a video by Margo and Janine and eventually received 5% ownership interests each in Margo Manages.

**Janine Weatherby** - “Friend” of Margo, who made a humorous video with her; owner of 35% and eventual manager of Margo Manages.

### The Tedescos:

- **Jim Tedesco** - Friend of Margo; operator of a video business (Tedesco Video Corporation); made management consulting videos with Margo; 10% owner of Margo Manages; philandering husband of Betty.
- **Betty Tedesco** - Wife of Jim; nominal owner of all the stock in Tedesco Video.

**Tedesco Video Corporation** - Video business run by Jim, but nominally owned by his wife.

**Corporate creditors** [of Tedesco Video Corporation] - [self-explanatory]

**Margo Manages, L.L.C.** - Company formed by agreement among Margo (45%), Janine (35%), Jim (10%), and Margo's three former clients (5% each) to market the video made by Margo and Janine and under which Margo began a franchise management training operation.

**Safe Home, Inc.** - A client of one of the Margo Manages franchisees, whose staff and clients were verbally abused by one of the franchisee's trainers.

## *Questions*

*You do not need to answer the following questions in order in your bluebooks so long as you clearly identify each answer with the proper question number. Deal with the questions in any order you choose.*

*For the questions that asks you to give legal advice, assume you represent only that party and no one else. If your advice would include any legal claim, be sure to explain the basis for the claim and the specific party or parties against whom the claim could be brought.*

*If any part of an answer you would give to any question is something you have already said in another answer, don't repeat what you've said but do give the question number where that discussion appears.*

Margo and Swift have come to you for legal advice and counsel and told you the preceding story. They have several questions.

- 45 minutes*     1. Should Margo be worried about the Safe Home claimants? If so, what legal grounds would they have, and could they succeed?
- 45 minutes*     2. What if anything can Margo do about Janine and the others who ousted her, and what are the prospects for success?
- 45 minutes*     3. What can Swift do about his situation with the Tedescos and their creditors? What is his situation, legally? Can the Tedescos fire him? Is he entitled to anything more than he's already gotten?
- 15 minutes*     *Optional*     Write any question you were prepared to answer on this exam but have not been asked (directly or indirectly) and then answer it. [You will get no credit if what you write here should reasonably have been included in your answer to an earlier question.]
- 15 minutes*     *Review*

*Good luck with your other finals, and enjoy the summer!*