

BUSINESS ASSOCIATIONS – Starkis*Spring 2001***Final Exam**

This exam contains an extended fact pattern. 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.

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10 minutes To read through exam

Buddy Gemelli had come a long way since his days driving a cement truck for Bickerson Cement & Stone. He had started a successful swimming pool installation business, “Buddy’s Pools,” in Adams, Massachusetts. By the time he was approached by a salesman from Splash, Inc., to become a Splash franchisee, Buddy had 14 employees, who were in the process of installing 4 pools and had 6 more on order.

One of those orders, unknown to Buddy, had been obtained by one of his cement finishers, Harvey Eager, looking to move up in the organization. Harvey had seen two pool deals signed for \$10,000 (of which the salespeople got \$1,000 in commission). So, dressed one day in his newly pressed green “Buddy’s Pools” uniform, he got an elderly couple in his neighborhood to pay him a deposit of \$500 (the standard for a \$10,000 pool) and promised to deliver a pool that, according to the specifications he took from the elderly couple, should have cost \$20,000. In the busy Buddy’s Pools office, no one had yet noticed Harvey’s error.

Things were going so well for Buddy, his old employers began to take notice. The Bickerson family had formed a corporation, Conglomerate Corp. (CC), as a vehicle for investing and getting involved in all sorts of businesses. They decided to make Buddy an offer to buy him out. They decided to have CC, the shares of which were then all held by family members, be the general partner of a limited partnership whose limited partners would also be various family members. CC would continue to use the “Buddy’s” name and would keep Buddy on, essentially as a client-relations and marketing gimmick, but Buddy was to have no executive or managerial authority. So they made the offer and kept upping the bid until Buddy finally agreed, in large measure because of the claims the Bickersons kept making that with their financial power and

Buddy's way with people "Buddy's" would soon be a name to reckon with nationwide and because the Bickersons included a 5% share in CC for Buddy, shares that would have to be sold back to CC if and when Buddy's employment with CC ended. The repurchase price would be the fair value of the shares based on the company's profitability at the time of Buddy's termination of employment.

Buddy's Pools Limited Partnership (with CC as general partner) bought all the assets and liabilities of Buddy's Pools. Shortly after the deal closed, CC signed a franchise agreement with Splash, Inc., and filed a certificate with the Adams town clerk to do business as "Buddy's Splash Pools." CC agreed to use only Splash products, to feature them in its advertising, to abide by a long list of Splash quality standards, and to permit quarterly inspections by Splash of Buddy's operations and pool installations.

Buddy himself was so eager, he got a little ahead of himself and went out and hired a marketing consultant who had been after Buddy for years to spend some money on advertising. The consultant, Skipper Facade, who had been instructed by Buddy only to negotiate the best deal possible for presentation to the Bickersons, signed in the name of Buddy's Splash Pools a two-year advertising commitment with Greylock Cable (Greylock), the local cable system. Skipper had shown Greylock a letter from Buddy saying that Skipper was his man, that Skipper was authorized to negotiate for Buddy's Splash Pools and that they should work out a deal with him. Greylock was so happy with the financial commitment, they began to make plans for a major expansion of their facilities. At a dinner meeting of the local chamber of commerce, Greylock's manager shared their plans with Sumner Bickerson, a shareholder in and a director of CC and one of the Buddy's Pools limited partners who had been dragged reluctantly to this dinner by his girlfriend, a real estate agent.

Once the Bickersons started exerting control, Buddy quickly became unhappy with the way they treated both their customers and their employees. Although Buddy didn't know what to do about the situation, the Bickersons noticed his unhappiness and decided to rectify their failure to get a non-competition agreement out of Buddy as part of the original deal. They threatened to fire him and to sue him in court, tying up his assets, unless he signed a covenant not to compete in any way with CC, the limited partnership or Buddy's Splash Pools for 10 years and within 150 miles. Buddy signed.

Buddy had been in touch with the Splash, Inc. salesman all along and was aware that Splash was getting concerned about the Bickersons as well. Buddy began to meet with several of the Buddy's Splash Pools employees about the possibility of starting a new company that could acquire the Splash franchise.

While this was going on, CC directed Buddy to attend a chamber of commerce dinner to address the gathering about the new Buddy's Splash Pools and what a great future it had. At the hotel where the dinner was being held, Buddy met secretly with some of the unhappy employees and lost track of the time. When he realized what time it was, he had less than 5 minutes to get down to the ballroom for the scheduled time of his speech. As he ran into the ballroom he smashed into Mabel Fortuna, who was on crutches, having survived a swimming pool accident allegedly caused by a defective installation by – you guessed it – Buddy's Splash Pools, a company she had gone to because of Splash's reputation, not Buddy's. Everything she had broken before was broken again. Buddy never delivered his speech.

Two days before the chamber meeting, Oliver Bickerson, a limited partner and family shareholder who had always had "a better idea" about how the company ought to be run, had

been made President of CC and had announced he was going to fire Buddy. He simply did not believe (but never said aloud) that anyone whose last name ended in a vowel ought to have a prominent position (even if it was powerless) in a Bickerson company. He directed the company's accountants that no dividends were to be paid to CC shareholders, that executive salaries were to be raised if necessary to avoid any corporate profit, and that profits of the pool business were to be divided among the limited partners. He also drafted a letter firing Buddy and offering him a nominal sum for his shares in CC.

Within months, Buddy had been fired (but refused to sell his shares), Greylock spent a fortune on its expansion, and CC then repudiated the advertising agreement signed by Skipper Facade. Sumner Bickerson has filed a derivative suit against his relatives on the CC board of directors for ratifying Oliver's firing of Buddy. Buddy has discovered that there was an employee handbook for CC that contained termination provisions that Oliver had failed to comply with when he fired Buddy.

Finally, Buddy, three employees of the pool company, Greylock Cable, Mabel Fortuna, Skipper Facade, and Sumner Bickerson have agreed to pool their assets, organize and do business as "Buddy Gemelli's New Splash Pools." Before his firing, Buddy had confirmed with an executive at Splash, Inc., that as soon as Splash could find a viable franchisee in the Western Massachusetts area it would terminate its relationship with CC and "Buddy's Splash Pools." Buddy was also told that Splash would be likely to approve any business that Buddy had a key role in running.

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.

- 35 minutes* **1.** Discuss Buddy Gemelli's causes of action, if any, against each of the following:
- a. Harvey Eager
 - b. Conglomerate Corp. (CC)
 - c. The limited partners in Buddy's Pools Limited Partnership
 - d. The shareholders of CC
 - e. Oliver Bickerson
 - f. Skipper Facade
 - g. Splash, Inc.
- 10 minutes* **2.** Can the elderly couple signed by Harvey Eager get the pool they bargained for (or equivalent damages), and if so, from whom? Discuss the reasons for your answer.
- 10 minutes* **3.** Discuss whether and against whom Greylock has any cause of action in connection with the repudiated advertising agreement.
- 20 minutes* **4.** Who else might have viable claims against Buddy, what are their chances, and why?
- 15 minutes* **5.** Name all the potential defendants (besides Buddy) to an action by Mabel Fortuna for her injuries, and explain how and why each defendant might be liable. What defenses might each raise?
- 10 minutes* **6.** Discuss the likely outcome of Sumner Bickerson's derivative suit and the reasons for that outcome.
- 10 minutes* **7.** Does Oliver Bickerson have any personal liability to anyone for anything he's done? If so, what and why? If not, why not?
- 30 minutes* **8.** What are the suitable forms of business association for each of the prospective participants in "Buddy Gemelli's New Splash Pools"?
- a. Buddy
 - b. The three employees of the pool company
 - c. Greylock Cable
 - d. Mabel Fortuna
 - e. Skipper Facade
 - f. Sumner Bickerson
- 10 minutes* **9.** Discuss the differences, if any, among "apparent authority," "implied authority," and "inherent power."
- 10 minutes* **10. Optional** Write any question you were prepared to answer on this exam but have not been asked (directly or indirectly) and then answer it.

*10 minutes Review **Good luck with the rest of your finals, and have a great summer!***

MASSACHUSETTS SCHOOL OF LAW

S.S. # _____

BUSINESS ASSOCIATIONS – Starkis

Fall 2001

Final Exam

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15 minutes To read through exam

A Dark and Stormy Night

It was 11:00 p.m.. **Clyde Armstrong** had just turned off the interstate and was headed toward the motel down a winding road through the fall rain. He had to be in bed by midnight to get enough sleep for the game the following afternoon. Stopping off to see his old friends and partying a bit had been good for him, as it always was before a game. Despite the coach's insistence on no alcohol or sex for 24 hours before a game, **Clyde** believed those were the best things for his body and mind if he was going to be at his best when the game started, and the Kings were paying him \$3 million a year to be at his best. He knew he had probably drunk more than he should have, but those hours with **Sarah** had been pure bliss and he just let himself go.

That's what he was thinking about when his Corvette slid on the wet leaves he'd been driving through, crossed the double solid line, and drove **Pam Reed's** minivan off the road, causing her facial lacerations, a concussion and a broken left ankle, effectively ending a promising career as a dancer.

Clyde was not hurt, but this was sure to take a toll on his career. He did not look to see what had happened to the car he almost hit. He was pretty sure it had gone off the road, but he couldn't see it from where he stopped. His car still functioned, and he decided to drive on to the hotel. He wasn't sure whether he'd eventually be found out, but he hoped it wouldn't be until after the game, and in any event, he figured he could talk his way out of any criminal charges and he knew he had protected himself from lawsuits.

Clyde's Business Arrangements

Clyde had a good head for business and the sense to listen to advice in areas he didn't know about. Almost everything he owned was protected. Not even his contract with the Kings was in his own name. He had set up **CA Enterprises, Inc. (CAE)** to handle all his business interests. In fact, **CAE** owned the rights to all **Clyde's** services, including his play for the Kings, and the money he earned from the Kings was paid over to **CAE** under **Clyde's** contract with **CAE**.

All the stock in **CAE** was held in an irrevocable trust whose sole beneficiaries were **Clyde's** three children, all minors. **Clyde** was merely the trustee and, as trustee, chairman of the board of directors of **CAE**. **Clyde's** contract with **CAE** specified that if he engaged in any tortious conduct, he would forfeit all but \$50,000 per year of the handsome salary he received as the primary employee of **CAE**. The money from the Kings was deposited directly into a **CAE** bank account. The Corvette, along with two other cars **Clyde** drove, was owned by **CACars, Inc. (CAC)** and was rented on a per diem basis to **Clyde**. **CAC** was a corporation set up to buy the cars on credit and pay the loans off with the rental fees. **CAC** had little capital, and its stock was also owned by the trust. (**CAE** paid the rent to **CAC** and deducted the amount from **Clyde's** salary as an employee of **CAE**.) All three cars had the lowest legal insurance coverage.

Clyde's house was owned by **CAE** and **Clyde's** wife, **Gina**, as tenants in common. **Gina** was also president and general manager as well as a director of **CAE**, from which she drew a generous salary. The third director was **Gina's** brother and **Clyde's** best friend, **Jim Gready**, an accountant, whose firm was under contract to handle all the bookkeeping for **CAE**.

The Kings

The Kings Football Club was the registered business name of **The Kings Football Limited Partnership (KFLP)**, which owned the team and the stadium it played in. **KFLP**'s only general partner is **KingDome, Inc. (KDI)**, a closely-held corporation among **Hugh Goh**, **Tryon Hyde**, and **Icahn Sikh**. Each of the three was an equal shareholder, a director, and a senior officer of **KDI**. They ran **KDI** and, through it, **KFLP** and the Kings Football Club. **KDI** received a small percent of operating expenses for its services, which included enough for small salaries for the three principals, but **Goh**, **Hyde** and **Sikh** benefited most because they each held a 30% limited partnership share. Among the other limited partners was **CAE**, which held a 4% interest in the team, an important – but not a major – part of **CAE**'s assets.. **Jim Greedy** had also acquired a 2% stake.

After the Accident

The police found out about **Clyde**'s involvement two weeks later, and as **Clyde** figured, he was able to convince them that the road had been slippery, that he had not known anyone went off the road, and that he had not criminally left the scene. The police did not then charge **Clyde** but are continuing their investigation.

Pam Reed sued **Clyde**, **CAC** and **KFLP** (through its general partner **KDI**). She added **CAE** as a defendant when she found out about **Clyde**'s agreement with it, and she added **Goh**, **Hyde** and **Sikh** as individual defendants when she learned that the team was heavily mortgaged and had almost no equity. (**Goh**, **Hyde** and **Sikh** each held a promissory note from **KFLP** for about 1/3 of the market value of the team.) And while the team was profitable, all profits had always been distributed annually to the limited partners. At bottom, **Clyde**, **CAC**, **KFLP** and **KDI** had no assets worth chasing. They were all “judgment-proof,” inasmuch as a judgment

against them would be worth about as much as the paper it was printed on.

A Side Deal

The week after the accident, **Clyde**, who, as usual, had been given a block of second-row, 50-yard-line tickets for the playoff game in which the Kings had already clinched a berth, decided to sell them for some quick cash (\$600) to **Igor Phan**, a sports enthusiast he had met at an autograph event. The newspapers and sports talk shows have begun to turn up evidence and to speculate about **Clyde**'s womanizing, drinking, and probable responsibility for the accident. **Igor** is now chasing **Clyde** and the Kings to give him his money back. He doesn't think the league will let **Clyde** play, and without **Clyde** the Kings don't have a prayer and **Igor**'s tickets may now be almost worthless.

Selling the Kings

While the case was proceeding, **Goh** and **Hyde**, who, like **Sikh**, knew about **Clyde**'s drinking, wanted to sell the team as fast as they could to **Sam Bigbucks**, who had been after **KDI** for years to sell him the team. A sale would make the notes come due, and **Goh** and **Hyde** could get away with a bundle of cash. (They don't see how they could possibly be held personally liable to **Pam Reed** for **Clyde**'s conduct, but they expected the value of the team to decline when **Clyde**'s behavior becomes fully known.) **Sikh**, as usual, wants nothing to do with a sale, which would trigger a big tax liability for him and cost more than it was worth. Unfortunately for **Goh** and **Hyde**, under the limited partnership agreement a sale would require approval by a 65% vote of the limited partners. **Clyde** (CAE's 4%) and his brother-in-law **Jim** (2%) have not wanted to give up the cash cow that the limited partnership interests represent; they would get less than one year's share of profits from a sale after the notes were paid off. And **Gina**, CAE's other

director, seemed to agree.

Meanwhile, **Sam Bigbucks** has been sensing there might still be an opportunity and has been trying to gather a group to buy the team. **Sam** is afraid that because of his poor reputation the people he needs will be reluctant to deal with him unless the sale of the team is a sure thing. He has hired **Mickey Frontman** to approach several people, **Harry Mogul** and **Ida Cash** among them, and say he (**Mickey**) represented a wealthy investor from out of state (not a lie, because **Sam** did originally come from elsewhere) who wanted to put together a group of partners to bid for the Kings. **Sam** specifically instructed **Mickey** that he was to tell no one anything about the identity of the investor – neither who it was nor who it was not. As an incentive, **Sam** has offered **Mickey** a 1% ownership interest in the team if a sale goes through.

Both **Harry** and **Ida** signed agreements with **Mickey** committing themselves to contribute \$1 million (each) to any successful bid for the team, for which they would each receive a proportionate interest in the team based on the final sale price, so long as that did not exceed \$125 million. The agreements were signed separately, and before **Ida** signed she got an assurance from **Mickey** that **Sam Bigbucks** had no part in this offer to buy the Kings. Two weeks later, about a month before the final bid package was put together, **Ida** learned about **Sam**'s involvement but said nothing to anyone, so she could get out of the deal at the last minute if she decided to.

What has finally made **Sam Bigbucks**' \$120 million package offer for the team work was his behind-the-scene maneuvering with Clyde Armstrong's wife, **Gina**, and her brother **Jim Gready**. **Gina** was attracted to **Warbucks**, recently divorced; she wanted to get back at **Clyde** when she found out about his girlfriend; and the \$4 million share of the team **Sam** offered **Gina**

if the **CAE** directors voted to approve the sale was a nice sweetener. **Jim** was happy to go along with **Gina**; he had a promised \$2 million share in the new team in return for his separate vote as a limited partner.

*(Feel free to **tear this page out** for reference, but **turn it in** with your final when you're done.)*

CAST OF CHARACTERS

Clyde Armstrong – Star professional athlete for the Kings; president and director of CAE and CAC; trustee of an irrevocable trust (for the benefit of his three children) that owned all the stock of CAE and CAC; and the principal employee of CAE.

Gina Armstrong – Clyde's wife and a director of CAE and CAC.

Jim Gready – Gina's brother; an accountant with his own company, whose major clients were Clyde and CAE; a director of CAE and CAC; and a limited partner in KFLP with a 2% share.

Sarah – Clyde's girlfriend and companion the night of his accident with Pam Reed.

The Kings Football Limited Partnership (KFLP) – The organization that owns and operates the Kings.

KingDome, Inc. (KDI) – A corporation formed to be the general partner of KFLP.

Hugh Goh, Tryon Hyde, and Icahn Sikh – The major limited partners in KFLP, each with a 30% share; the principal officers, the only directors, and equal shareholders of KDI; and each the holder of a note and mortgage from KFLP and KDI in an amount equal to about one-third of the market value of the Kings' franchise with all its assets.

CA Enterprises, Inc. (CAE) – A corporation set up to shield the income and assets of Clyde Armstrong; the holder of a 4% limited partnership share in KFLP.

CACars, Inc. (CAC) – A corporation set up to be the owner of the automobiles Clyde Armstrong wanted to have .

Pam Reed – An aspiring dancer injured when her car was run off the road by Clyde Armstrong.

Sam Bigbucks – A wealthy businessman who wants to own the Kings.

Mickey Frontman – The man hired by Sam Bigbucks to assemble a group of investors to buy the team.

Harry Mogul and Ida Cash – Two of the investors lined up by Frontman as part of the group to buy the Kings.

Igor Phan – A sports nut who paid Clyde Armstrong \$600 for some tickets that he now thinks

are worthless.

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.

- 25 minutes 1. Discuss Pam Reed's possible arguments for finding each of the following liable for her injuries, whether or not she is likely to succeed, and why.
- a. CAE
- b. Goh, Hyde and Sikh
- 15 minutes 2. Igor Phan's lawyer has told him that he *can't sue* Clyde Armstrong personally for deceiving him in the sale of the tickets because Clyde is an employee of the Kings but he *can sue* the Kings, for the same reason. Discuss the lawyer's advice and give the reasons for any conclusions you reach.
- 25 minutes 3. If Gina Armstrong and her brother Jim Gready vote as directors of CAE to approve the sale of the Kings to Sam's group over Clyde's objection, what recourse, if any, does Clyde have? Discuss the legal arguments for and against Clyde in any possible legal proceedings and the likely outcome.
- 15 minutes 4. Is Ida right that she can back out of the deal to buy the Kings, even at the last moment, based on Mickey Frontman's misrepresentation about who she was dealing with? If so, why? If not, why not?
- 20 minutes 5. Imagine that you are the lawyer for Goh and Hyde and a sale of the Kings to the Bigbucks group requires a unanimous vote of the directors of KDI (the general partner in KFLP) and a 70% vote of the shareholders. Advise them about and explain any possible legal recourse they may have against Sikh if Sikh blocks the sale by voting against it either (a) as a director or (b) as a shareholder.
- 30 minutes 6. Discuss the possible business associations for the new Kings if the team is sold to Sam Bigbucks' group. Focus on the likely interests and needs of each of the following:
- a. Sam Bigbucks
- b. Mickey Frontman
- c. Harry Mogul
- d. Ida Cash
- e. Gina Armstrong
- f. Jim Gready
- 10 minutes 7. Discuss the differences, if any, among "apparent authority," "implied authority," and "inherent power."
- 15 minutes 8. *Optional* Write any course-related question you wish based on the fact

pattern given in this exam and then answer it (provided the answer is not contained in responses to any of the previous questions).10

minutes Review Good luck with the rest of your

finals, and have a great holiday!

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Jenny Finds Work, Dreams of Something Better

Jenny was a great cook. She dreamed of having her own restaurant out by the lake. Life had not been bad to her, but it could have been better. Her temp job as a legal secretary allowed her to pay the bills for herself and her ailing father, but even with Dad's disability checks, the little money she'd been able to put aside was not going to amount to enough to set herself up in business.

Then she met **Buddy**, a successful businessman who had been represented by one of the partners in **Yales, Cream & Billum, LLP (YCB)**, the law office Jenny's temp agency, **Long-Term Temps, Inc. (LTTI)**, had sent her to. Buddy had asked **Jenny** out and took her to the finest restaurant in town, Chez Posh. The date went so well that when Buddy again asked her out, she offered to cook him dinner instead. He went, she cooked, they ate, he listened, and she had him – by the heart, the stomach, and the wallet. Never again would he go slumming at Chez Posh; after her cooking, it was like eating at McDonald's – for twenty times the price.

A restaurant with her cooking not only could not fail, he thought, but had to be worth a fortune. **Buddy** began to work on a business plan. He knew he could handle the business end and **Jenny** could certainly handle the kitchen, but it would be a good idea to find someone with a knowledge of how to run a restaurant. And they would need more money. Buddy had some he could put in, from his old pool business, but not enough. He had an old friend, **Arnold Klopp**, an ex-shoemaker who had married a wealthy widow, who Buddy was sure would be interested in a share. Then, as it turned out, Arnold's wife, **Emily**, had a wealthy, widowed friend, **Gina Bigbucks**, who wanted in as well.

Trouble at the Office

As Buddy was getting things organized, **Jenny** was having problems at the office. The

firm missed the filing deadline on a multi-million-dollar tort claim of one of their clients, **A. Dent Prone**. In fact, the last day for filing under the statute of limitations was the very day Buddy and Jenny first had dinner at her place. **Pete** (“Peaches ’n”) **Cream**, an associate in the firm and the son of one of the partners, who had been trying with no success to get Jenny to go out with him, claimed he had told Jenny to take the papers to court and file them that afternoon. Jenny denied it and said that she had been reminding Pete for two weeks of the filing deadline. At Pete’s request, **Charles Cream**, Pete’s father and a man with his own reputation for making sexual advances toward female staff and associates, not only told Jenny not to come back but insisted to the temp agency, **LTTI**, that Jenny be fired. LTTI’s manager apologized to Jenny, saying he had no choice, and fired Jenny.

Buddy to the Rescue

Buddy now began to move more quickly. He approached **Henri Fishman**, the manager at Chez Posh, and offered him twice the money to work for the new restaurant. Henri wanted to do it, but he had a problem: he said Chez Posh was run by **Che-P Restaurants, Inc. (CPRI)**, a corporation whose main business was restaurant management and of which he was vice-president. He said his contract with them had a clause that, if he left CPRI, he couldn’t compete with CPRI in any business for five years within 150 miles of any place where they did business. Buddy told him not to worry, that the lawyers could always take care of that stuff, and Buddy told him he was hired. At Henri’s insistence, Buddy even signed a written employment agreement with Henri in the name of the corporation that would be formed to own the new restaurant.

On the advice of **Quincy Yales**, with whom **Buddy** continued to do business, Buddy created **Gone to Heaven Dining, Inc. (GHDI)**, with ownership divided among himself (30%),

Jenny (25%), **Arnold Klopp** (15%), **Emily Klopp** (15%), and **Gina Bigbucks** (15%). Buddy became president and chairman of the board of directors. The other directors are Jenny and Gina Bigbucks. (Gina and the Klopps got to elect one director to represent their interests on the board.) Jenny would take care of the food and its preparation. Buddy would oversee the rest of the operation and look after all the paperwork. With Henri's help, Buddy found a great location, planned the space and, with Henri, began interviewing prospective staff. With the money from the Klopps and Gina, Buddy bought equipment and furnishings, and Jenny completed the kitchen, which she had designed herself. Henri even talked three of his favorite wait staff, **Laurene**, **Mo** and **Kur-lee**, into giving their notices at **Chez Posh** to come work at **Gone to Heaven**. Laurene and Mo were good producers, and Kur-lee had a rare capacity to provide Henri with such superb personal services that Henri had no trouble overlooking Kur-lee's record of larceny.

With a week to go before opening, and on the advice of **Mr. Yales**, **Buddy** gave in to the repeated threats of litigation from CPRI and told **Henri** there was no job. When Henri protested that he had certain rights under his written contract, Buddy told him it was a worthless piece of paper because there had been no corporation when it was signed. Buddy then quickly hired a replacement for Henri who had less business experience but a warmer personality and who cost a lot less.

Dreams Come True

For almost a year, things went very well indeed. On weekends, the **Gone to Heaven Restaurant** was fully reserved weeks in advance, and on weeknights, when reservations were not taken, the lines went well into the parking lot and people waited nearly two hours to be fed.

Then **Pete Cream** showed up. He'd been fired by the firm despite his father's status and

was living on a trust fund created by his grandfather. Pete meant no harm; he just wanted to taste some of the food he'd heard so much about, and he was even hoping he might catch a glimpse of **Jenny**. Jenny's feelings were a bit more intense. When she heard he was in the restaurant, she threw caution to the wind and prepared him a special meal. With his first bite, mild infatuation and regret grew into deep, longing love. Then something else happened – a sharp intestinal pain, followed by violent vomiting even before Pete could rise fully from his chair. Almost everyone else in the restaurant became aware of what was happening, even if they couldn't make out just what Pete was trying to say as he went down. The ambulance arrived quickly to take Pete away, but word of the incident was moving at nearly the same speed.

Oh, Well

It didn't take long for the news to lead to canceled reservations, slow bookings, and dwindling lines and for those effects to lead to financial losses and the need to close **Gone to Heaven Restaurant**. **Buddy** got an offer for the restaurant from a potential buyer and put the sale, which needed a majority of the board and two-thirds vote of the shareholders, before the board and the shareholders for a vote. Unknown to him – or to the **Klopps** – **Gina** had been thinking and scheming. She convinced **Jenny** that men were the source of all her troubles and that, as nice as **Buddy** was, he was just another source of grief, waiting to deliver. Gina told Jenny she was being cheated by owning just a quarter of the restaurant that only existed because of her talents. Gina offered her the prospect of a new restaurant, with Jenny owning 60% and Gina 40%, provided that Jenny would agree to let Gina run the show beyond the kitchen and never again resort to food poisoning as a method to settle old scores. All Jenny had to do was vote with Gina against any sale until Gina could arrange for someone to buy the assets on their behalf. Jenny and Gina voted not to accept the offer from **Buddy's** prospective buyer.

DRAMATIS PERSONAE – THE PLAYERS

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

Jenny – A great cook and dreamer, who works as a legal secretarial temp, then as the cook in a restaurant, Gone to Heaven Dining, Inc., in which she is a director and 25% shareholder.

Long-Term Temps, Inc. (LTTI) – Jenny's temp agency.

Yales, Cream & Billum, LLP (YCB) – The law office Jenny's been working at.

Quincy Yales – The partner with whom **Buddy** does business.

Charles Cream – Another partner and father of Pete, who gets Jenny fired and has his own reputation for making sexual advances toward female staff and associates.

Pete (“Peaches ’n”) **Cream** – an associate in the firm and the son of Charles, who, despite being infatuated with Jenny, pointed the finger at her for losing a multi-million-dollar claim and encountered her revenge in a moment of bliss.

A. Dent Prone – The law-firm client whose multi-million-dollar tort claim was lost by either Pete Cream or Jenny.

Gone to Heaven Dining, Inc. (GHDI) – A corporation created to operate the restaurant business based on Jenny's cooking.

Buddy – A successful ex-pool-businessman who sets up GHDI and is its president, chairman of the board, and 30% shareholder. He also runs the operation.

Arnold Klopp – An ex-shoemaker, friend of Buddy, and 15% shareholder.

Emily Klopp – Arnold's wife and also a 15% shareholder.

Gina Bigbucks – A wealthy, widowed friend of Emily's, a director, a 15% shareholder, and a woman with ambitions for a bigger share and say in a restaurant featuring Jenny's cooking.

Che-P Restaurants, Inc. (CPRI) – A corporation whose main business is restaurant management and which operated the Chez Posh restaurant.

Henri Fishman – the manager at Chez Posh and vice-president of CPRI who left there to go work at Gone to Heaven.

Laurene and **Mo** – Two of Henri's favorite wait staff at Chez Posh and good producers of satisfied customers and tips.

Kur-lee – Another wait staffer from Chez Posh with both a more personal connection to Henri and a record of larceny.

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.

- 25 minutes 1. Discuss the possible claims, if any, each of the following has against Jenny:
- a. Yales, Cream & Billum, LLP (YCB)
 - b. A. Dent Prone
 - c. Gone to Heaven Dining, Inc. (GHDI)
 - d. Buddy
 - e. Emily Klopp
- 15 minutes 2. If Jenny sues over her firing, discuss the liability of each of the following:
- a. Long-Term Temps, Inc. (LTTI)
 - b. YCB
 - c. Charles Cream
- 20 minutes 3. If Pete Cream decides to sue for the food poisoning he suffered, discuss the liability, if any, of the following: Jenny
- a. Buddy
 - b. GHDI
 - c. Arnold Klopp
- 20 minutes 4. If it turns out that Jenny was responsible for the loss of Mr. Prone's tort claim, discuss the liability of each of the following:
- a. Quincy Yales
 - b. Pete Cream
 - c. Jenny
 - d. LTTI
- 15 minutes 5. What bases, if any, are there for suing Gina Bigbucks, who could do it, and how would such a case be decided?
- 10 minutes 6. Discuss Henri's claims, if any, against:
- a. Buddy
 - b. GHDI
 - c. Jenny
- 10 minutes 7. Discuss the claims, if any, and likelihood of success of Che-P Restaurants, Inc. (CPRI) against:
- a. Henri
 - b. Laurene, Mo and Kur-lee
- 10 minutes 8. If Laurene, Mo and Kur-lee were not kept on at Gone to Heaven after Henri was let go, what grounds, if any, did they have for legal action against GHDI or Buddy and what defenses might they face.
- 25 minutes 9. If Gina and Jenny go forward with their plan, they will need to decide how to structure their business. Setting aside for purposes of this question any obligations Gina and Jenny might have to Buddy or the Klopps, review each of the business forms you have studied this semester

and discuss its benefits and drawbacks as those relate to the interests of the two women.

10 minutes **10. 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.]

10 minutes *Review*

Good luck with the rest of your finals, and have an enjoyable summer!

Section (Circle one)

DAY /
EVENING**BUSINESS ASSOCIATIONS – Starkis***Spring 2003***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”).

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.

10 minutes To read through exam

Jane Perkins had been on her way back to Massachusetts from her U.S. Army Reserve posting in the Persian Gulf when she had gotten the news that Capital Casinos would hire her to work in their accounting department. This was going to be a real step up for her from doing the books for a small construction company and from her Army accounting in Kuwait. She had been looking forward to not having to deal with the tricks of a small-time contractor or the nonsense of a huge bureaucracy. What she knew of Capital Casinos at that point was just that they ran a small casino in Connecticut and a couple of others elsewhere and that they were looking forward to getting the contract for a casino in Massachusetts as soon as the state government permitted one.

The fellow who interviewed **Jane** had told her she'd be guaranteed a job in Massachusetts as soon as they landed a contract there, but in the meantime, she'd have to move or commute to the casino in Happyland village in Preston, Connecticut, more than an hour's drive from her home. **Thomas Sharpe**, the "Assistant to the Assistant Vice President for Human Resources, Capital Casinos" who interviewed her at a job fair in Worcester, Massachusetts, told her that Capital Casinos was a "growing company, with great upside potential" and that she could look forward to "a bright and long future with Capital" if she were hired.

Once she had been working at Capital for about three months, she began to discover that in her earlier employment she had been dealing with amateurs, as far as tricks and nonsense were concerned. She learned that there was a **Capital Casinos Development Partners, Incorporated (CCDPI)**; a **Capital Ventures Limited Partnership (CVLP)**; a **CapCas Marketing, LLC (CapCas)**; a **Capital Casinos Management, Inc. (CCMI)**; and a **Capital Operations, LLP (COLLP)**. All her work was given to her by and she took directions from her

boss, **Frank Carpenter**, whose title was “Associate General Manager.” Her accounting dealt with all of the individual entities, but all the signs, stationery, and advertising she saw had only “Capital Casinos” and the company logo to identify the business. Her paychecks did say they were drawn on the account of “**Capital Operations, LLP.**”

Jane noticed that assets and liabilities would constantly be moved around among the various entities, but she had no way of knowing whether or not these changes reflected real, legitimate business transactions or, as she suspected, tricks of some sort. The assets would tend to flow into those entities for which she’d recently been asked to prepare financial statements and out again shortly after those statements had been sent off. She assumed they were playing fast and loose with tax returns as well, but she had had no direct involvement in preparing those. The job was paying pretty well, and she was supporting herself and her young son on what she was earning, so she tried to be careful to mind her own business and not ask too many questions at work.

But even the few questions **Jane** did ask apparently got her into trouble, because **Frank**, appearing very upset, called her into the office, said he’d heard that she had been asking questions, and told her that loyalty was considered “the highest virtue at Capital Casinos.” He gave her the idea that he had gotten into a lot of hot water with the head of the company because of her questions. Then he hesitated. He seemed to be thinking. He got a scary look on his face and told her that she could save her job by being “nice” to him. When she said she didn’t know what he meant, he reached out and touched her in a way that embarrassed and offended her and left no doubt about what he meant. When she struck his hand and told him he was “a pig,” he fired her. He called in one of the security guards and had her escorted out of the building and off the property while the two dozen or so other employees in the open office space watched her

being escorted out. None of them had seen or heard what went on inside Frank's office. Jane was permitted to take nothing but her handbag and a picture of her son she kept on top of her desk.

Meanwhile, at the casino itself, in another part of Happyland, **Augustina (Tina)** and **Teodoro (Teddy) Smolensk**, the principals of the Capital Casinos operation, were having difficulty with **John Martin**, head of the Tribal Council of the **Poquetanuck Tribe**, who owned the land and buildings of the casino operation and who had a contract with **CCMI (Capital Casinos Management, Inc.)** to run it. Tina, President and General Manager of CCMI, and Teddy, its Vice President and Treasurer, had both signed the contract, which gave CCMI the exclusive right to operate the casino for a period of ten years (of which three still remained) and options to extend for three additional five year periods. CCMI hired **CVLP (Capital Ventures Limited Partnership)** to do the actual management. CCMI was the sole general partner of CVLP, Tina had a 50% limited partnership share, Teddy had a 45% share, and CCMI held the last 5%.

Mr. Martin said the **Tribe** believed that **CCMI** was supposed to be acting as their agent in running the casino and was supposed to be looking out for the Tribe's best interests. They believed that **Tina** and **Teddy** were cooking the books and returning to the Tribe less than its fair share of the profits from gambling and related operations managed by CCMI. In a meeting among Mr. Martin, two other members of the Council, Tina, and Teddy, Tina tried to placate the Council members, but Teddy got angry at the suggestion that he and Tina were cheating the owners and demanded an apology. "Here's your apology," yelled **Sam Pierce**, one of the Council members, and he hit Teddy over the head with the golf club he'd been carrying.

On another front, **Larry Mogle**, who operates Mogul Advertising, has been shopping for

a new Mercedes and adding a wing onto his mansion since he landed the contract for all the New England advertising for Capital Casinos, a deal he signed with “**Timothy Smolensk**, authorized agent for **CapCas Marketing, LLC [CapCas]**.” “Tiny Tim” is the son of **Teddy** and the nephew of **Tina**. However, when Tina sold her interest in CapCas to Teddy, leaving him the sole owner, and he brought in Tiny Tim, she did not mention to either Teddy or Tim that CapCas’s authorization to represent **CVLP** (or any other Capital entity) had lapsed.

After he was clubbed, **Teddy** was taken by ambulance to the William Backus Hospital in Norwich. There, he encountered **Jane Perkins**, whose son, suffering from an acute attack of his chronic asthma, had also been brought in by ambulance. While waiting for his head wound to be attended to, Teddy struck up a conversation with Jane, who, when she learned who he was and his connection with Capital Casinos, offered to hit him again if someone would hand her a golf club. Teddy protested his innocence, and Jane gave him an earful about what had been done to her and the mischief and cheating she suspected was going on in the company. With Teddy’s eyes getting wider and wider as she told her story and detailed what she had seen going on in Capital Casinos’ books and accounts, she began to think that maybe Teddy, despite his high position, didn’t know what was going on with the company.

Teddy’s eyes got so wide his eyelids disappeared when **Jane** mentioned “**Capital Casinos Development Partners, Incorporated**” (**CCDPI**) and said that company seemed to be the biggest recipient (after the **Tribe**) of cash flowing through the enterprise. **Tina** had told Teddy to approve a transfer of **CCMI**’s income stream and options to **CCDPI**, an entity she said hadn’t been formed yet but which would just be another shell and would leave Teddy in the same financial position. Teddy had endorsed the transfer as Treasurer and approved it both as a director and a shareholder.

For his part, **Teddy** explained to **Jane** that **Capital Operations, LLP (COLLP)** was “the employer” of all Capital Casinos’ personnel except **Tina, Teddy,** and **Tim**. Teddy and Tina were COLLP’s only partners. COLLP had a contract with **CVLP** to supply CVLP with the personnel necessary to do the work of the casinos. The contract basically obligated CVLP to provide COLLP enough money to meet payroll and other operating requirements and little more. He said he and Tina were both directors as well as officers of **CCMI**, but that Tina, his older sister ran the show, as she had done their whole lives. His role, he said, was to make a lot of noise in business meetings and to play the bad guy so that Tina would seem to be the reasonable one and people would agree to what she wanted. He told Jane that Tina had ordered Frank to fire one of his employees who had been asking too many questions about the operation, an employee he now assumed was Jane.

Since these events, Teddy’s lawyer has learned that **Capital Casinos Development Partners, Incorporated (CCDPI)**, is a company wholly owned by **Tina** (80%) and **John Martin** (20%). In trying to verify what Teddy had told **Jane**, she has learned that **Teddy** holds only 45% of the **CCMI** shares. **Tina** has 51%, and **Tiny Tim** owns 4%. Jane has also discovered that “Capital Casinos” is a properly registered business name of **CVLP**.

Not content to wait for his lawyer to set matters right, **Teddy** decides to get back at **Tina**. He calls a local reporter and, after being promised that his identity would not be revealed to the public, gives the reporter enough damaging and embarrassing information for a series of articles that will destroy the casino’s business by driving away its customers. Much of the information is factual, but much of it is based on conclusions he has jumped to based on what **Jane** told him. When he tells his lawyer what he has done, the lawyer tells Teddy he’s the dumbest client the lawyer has ever had and threatens to quit. But nothing has yet come out in the newspaper or

leaked to anyone involved.

DRAMATIS PERSONAE – THE PLAYERS

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Jane Perkins – An experienced accountant/bookkeeper who gets hired to work at a casino and is later fired.

Thomas Sharpe, – The “Assistant to the Assistant Vice President for Human Resources, Capital Casinos” who interviewed Jane for the job and made certain representations.

Frank Carpenter – Jane’s immediate superior, the “Associate General Manager.”

Poquetanuck Tribe – The entity that owns the casino facilities and contracted with Capital Casinos Management, Inc., giving CCMI the exclusive right to operate the casino.

John Martin – The head of the Tribal Council and a minority shareholder in Capital Casinos Development Partners, Incorporated (CCDPI)

Sam Pierce – A Tribal Council member, who struck Teddy Smolensk with a golf club.

Capital Casinos – The casino operation that involved several entities:

Capital Casinos Management, Inc. (CCMI) – The corporation with an exclusive contract with the Tribe to operate the casino and the general partner and 5% owner in Capital Ventures Limited Partnership (CVLP).

Capital Ventures Limited Partnership (CVLP) – A limited partnership engaged by CCMI to run the casino operation.

Capital Operations, LLP (COLLP) – A registered partnership whose only partners are Tina and Teddy Smolensk and which provides to CVLP all of the personnel (except the Smolensks) who work for the casino operation.

CapCas Marketing, LLC (CapCas) – An entity formerly owned by Tina and Teddy Smolensk and now owned solely by Teddy. Its contractual authority to represent other Capital entities has lapsed.

Capital Casinos Development Partners, Incorporated (CCDPI) – The company that received a transfer of CCMI’s income stream and options; the corporation is owned by Tina Smolensk (80%) and John Martin (20%).

Augustina (Tina) Smolensk – President, Director, General Manager, and 51% shareholder in CCMI; 50% limited partner in CVLP; 80% shareholder in CCDPI; sister of Teddy Smolensk.

Teodoro (Teddy) Smolensk – Vice President, Treasurer, Director, and 45% shareholder in CCMI; 45% limited partner in CVLP; sole owner of CapCas; brother of Tina and father of Timothy Smolensk.

Timothy (Tiny Tim) Smolensk – Son of Teddy Smolensk; 4% shareholder in CCMI; and held himself out as “authorized agent for CapCas Marketing, LLC” in deal with Mogul advertising.

Larry Mogle – Operator of Mogul Advertising, who believes he has signed a lucrative

contract with Capital Casinos.

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 any question 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.

25 minutes 1. Timothy Smolensk has recently learned (a) that he owns stock in CCMI and (b) that Larry Mogle has been told he has no contract with the casino. Tim has come to you for legal advice. Advise him. (Assume you have learned about the contractual arrangements among the Tribe, CCMI, and CVLP.)

25 minutes 2. James Farwell, a Poquetanuck Tribal Councillor, comes to you to find out where the Tribe stands legally. They've learned about the general contractual arrangements among the Capital entities and about Mr. Martin's ownership interest in CCDPI. Advise him.

35 minutes 3. Why is Teddy Smolensk's lawyer so upset with him, and what will he tell Teddy about Teddy's possible claims and liabilities if the lawyer decides to continue representing him?

30 minutes 4. What should Jane Perkins lawyer tell her? (Assume the lawyer knows everything you know about the facts.)

30 minutes 5. If Jane, Teddy, Tim, James Farwell (Question 2), and Larry Mogle were to combine their talents and make a pitch to the Tribe to manage its casino, what would you advise each of them as to a good business organization to meet that person's interests (based on what you know of them and on reasonable assumptions beyond that point) and why? What organization, if any, would have the best chance of success for all of them? Explain.

15 minutes 6. *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.]

10 minutes *Review*

Good luck with the rest of your finals, and have an enjoyable summer!

Section (Circle one)

DAY /
EVENING**BUSINESS ASSOCIATIONS – Starkis***Spring 2004***Final Exam**

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20 minutes To read through exam

It was another hot, boring day, and **Alex “Chirpy” Musgrave** couldn’t stand the idea of spending the rest of another Saturday watching television or playing with his computers. He didn’t have a lot of friends – truth be told, he didn’t have any – but he had gotten used to that in 26 years, and it no longer bothered him. Today, he decided, he would spend the rest of the day and the evening at Eagle Park.

He called for a taxi from **Red Cab** and was assured the cab would be there in minutes. Almost an hour later, a pink cab with “**Sergei’s Limo Service**” on its door showed up. The driver said, “Sorry I late, vair going?” **Chirpy** swallowed his anger and told the driver, who had a companion with him in the front seat. Twenty minutes into the ride, **Chirpy** realized the taxi was not headed for Eagle Park and spoke up. The driver said, “You tell me you vant ‘Nagel Park’ and I go there.”

“No, you stupid foreigner, I said ‘Eagle Park’!”

“I no stupid, you *fat pig*! You vant go Eagle Park, I take you, but no call names!”

Deeply hurt by the insult but unwilling to deal with more delays, **Chirpy** sighed, “OK.”

After buying his ticket to get into the park, **Chirpy** checked the schedule and found that **The Flock** would be playing in the entertainment tent at 7:00 p.m., only a few hours away. He decided to get himself something to eat and then enjoy some of the rides before going over to the tent early and getting himself a good seat.

While **Chirpy** was getting his day organized, chaos was the order of the day for **The Flock**. Lead singer and dominant force, **Sarah Dunne**, was red with anger at **Betty Napier**, also a singer, but a talented bass player and songwriter as well, who in fact had written most of The Flock’s better songs. **Betty** had just announced that she was leaving the group; she had been offered a solo recording contract and a series of impressive concert dates by **Steve**

“**Windy**” **Poplar**, the “agent” who represented **The Flock** and had gotten them the gig at Eagle Park. Sarah turned to **Paul Parker**, the third member of the trio, and challenged him: “Did you know about this?” Paul, as usual unable to deal with Sarah’s anger, nodded yes.

“How long have you known?”

“About three weeks.”

“What? I just passed up a TV show offer because they didn’t want you two guys! That was the chance of a lifetime. You are such a worm!”

Windy missed the fireworks in **The Flock**’s trailer because he was making final arrangements with **Eagle Park**’s management for the lighting, sound, and other effects for the show in the tent that evening. He had dealt with **Chuck Pierce**, the “head” of **Eagle Entertainment** before, and they had a good working relationship; he’d get entertainers to work at various Eagle Parks for less than the entertainers’ going rates, and he and Chuck would share most of the savings themselves. Nobody but them ever read the paperwork anyway.

“We want this show to be something special, **Chuck**,” said **Windy**. “This may be their last show as a group and I want it to be memorable. I’m even having it filmed, but no one else knows, so don’t say anything. If we can make some money off it, I’ll cut you in for a piece.”

“Whatever you want, **Windy**, go for it. Just don’t tear the place down. Or if you do, make it worth my while.”

Chuck had about had it with **Eagle**. He wasn’t really “head” of anything. **Herb “The Boss” Oppenheimer** ran everything. **The Boss** was on him about almost everything and never seemed satisfied with what Chuck did for Eagle. **The Boss** ran this Eagle Park and another one about 85 miles away, for which **Chuck** also booked the entertainment and oversaw “the midway” portion of the park. **Chuck** was told that he was the “President” of “**Eagle Entertainment**,

Inc.," but he didn't even know if that was real or, if it was, who owned it, though he suspected it was probably **Melinda "Happy" Wentworth**, the only person in the world he knew **The Boss** was afraid of. The few times Chuck had seen her, she acted like she owned everything.

Chirpy, still shaking from his encounter in the taxi, found his way to the midway, where the smoke and the smell of food were almost overwhelming. He picked out a stand that was selling "**Jesus's Best Tex-Mex**" food and blaring the music to go with it. Never one for small portions, **Chirpy** picked out a dish that had some of just about everything in it, then ate it with gusto. Satisfied, he decided to make his way over to the Giant Coil, the main attraction at the park.

As he walked, however, he felt a sharp pain in his gut. He keeled over and lost consciousness. When he woke up, his head was above a puddle of his own vomit. (He could recognize much of his recent meal.) And a number of people were standing over him expressing their concern. After they helped him up and could see that he was able to move about on his own, he declined any further assistance and continued his journey to the Giant Coil. His stomach felt OK, but he had quite a headache. He thought the ride might help clear his head.

As **Chirpy** waited in line for the ride, he began to feel better and decided his decision was a wise one. When it came his turn to board, the attendant, **David Smart**, who wore an Eagle Parks jersey, took Chirpy's ride tickets and put him in the first car, telling him that it had longer seatbelts that would fit around his waist. **Smart** had been told not to let "obese" riders on, but he hated challenging people for being too fat, and the less he had to do with this guy, he thought, the better.

The attendant didn't seem to want to get near him – perhaps he still smelled a bit from the vomit – so **Chirpy** got himself in and pulled down the lap bar as far as he could against his

stomach. When the cars began the slow rise up the high starting hill, Chirpy could feel the exhilaration build. Then, over the top and down, it was sheer, frozen panic. Now he couldn't remember whether or not he had buckled the lap belt, and he couldn't let go long enough to check. He felt himself coming up out of his seat at the top of every rise, and he was desperately hanging on whenever he was on the outside of a turn. Others must have started noticing because he could feel hands from beside and behind him clutching at his clothing and belt at each turn. Then down, into a tunnel, and up, out, and into a sharp right turn, and no bar, belt, or hands could keep him in.

Chirpy had never flown before. It was not an unpleasant experience, actually. And the landing in an enormous pile of hay was, believe it or not, fun, even though he was pretty shaken up and had a few bruises. Thinking about his incredible luck, it didn't take him long to get in the right mood for **The Flock**.

Chirpy got to the entertainment tent early, but not early enough. All the good seats up front were taken. Word had gotten out that this concert was going to be something special. The best seat Chirpy could find wasn't at the very back, but he wasn't even at the middle. "Never mind," he thought. "At least it hasn't been another boring day."

Chirpy had never seen **The Flock**, though he had a couple of their CDs. But this performance was something completely different – it was alive! The members of the group almost seemed to be doing battle with each other through the music. The crowd was loving it. Then, during the third song, sparks started flying – literally. The pyrotechnics were wild. The crowd went wild. **Chirpy** went wild. And none of them saw the tent start burning. **Chirpy** got out. With third-degree burns, but he got out. **Windy** got out too, as did all of **The Flock**.

It turns out that **Eagle Entertainment, Inc.**, is a wholly owned subsidiary of **Eagle Park**

Fun Rides Limited Partnership, whose general partner is **Warp-Speed Amusements, L.L.C.**, owned by its two members **Melinda Wentworth** and **Herbert Oppenheimer**. The limited partnership is properly registered to do business as “Eagle Park” in all the places Eagle Parks are located.

Almost all the stands and rides within Eagle Parks are operated by other people or entities under contracts with **Eagle Park Fun Rides Limited Partnership** or **Eagle Entertainment, Inc.**. For example, the Giant Coil is operated by **Birds Eye View Maintenance Corporation**, and **Jesus’s Best Tex-Mex** is a name by which **Jesus Alvarez**, who is the President of **JBT-M, Inc.**, does business.

Stephen Poplar is the sole shareholder, director and officer of **Lyp-Sync, Inc.**, and all his contracts with clients and others identify him only as “President of Lyp-Sync, Inc.”

“Red Cab” is the registered name of **Red Cabs, Ltd.**. **Sergei Ironov** is a cab owner who has “**Sergei’s Limo Service**” printed on the side of his cab and handles overflow business for Red Cab.

DRAMATIS PERSONAE – THE PLAYERS

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Alex “Chirpy” Musgrave - Our star and hapless amusement park patron.

Red Cabs, Ltd. - Does business as “Red Cabs” and took the call from Chirpy for a ride to the park.

Sergei Ironov - Does business as “Sergei’s Limo Service” and picked up Chirpy.

The Flock - A rock trio.

Sarah Dunne - Lead singer.

Betty Napier - Singer, bass player and songwriter.

Paul Parker - Third member of the group.

Lyp-Sync, Inc. - Contracts as agent for entertainers, including The Flock and, now, Betty Napier.

Stephen “Windy” Poplar - President and sole shareholder and director of Lyp-Sync, Inc.

Eagle Park - Name of amusement park chain.

Eagle Park Fun Rides Limited Partnership (the LP) - Does business as “Eagle Parks.”

Warp-Speed Amusements, L.L.C. – General partner of the LP.

Melinda “Happy” Wentworth - One of two members and apparent head of Warp-Speed.

Herbert “The Boss” Oppenheimer - Other member of Warp-Speed and seems to run Eagle Park.

Eagle Entertainment, Inc. (EEI) - Wholly owned subsidiary of the LP; manages entertainment and the midway at Eagle Parks.

Chuck Pierce - “President” of EEI.

Giant Coil - Biggest ride at eagle Park.

Birds Eye View Maintenance Corporation - Operates the Giant Coil.

David Smart - Attendant at the Giant Coil.

Jesus’s Best Tex-Mex - One of several fine-food establishments on the midway.

Jesus Alvarez - Operator of Jesus’s Best and President of **JBT-M, Inc.**

Questions

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For any question 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.

- 20 minutes* **1.** Chirpy sues Red Cabs, Ltd., for defamation and intentional infliction of emotional distress based on what Sergei said to him. Advise Red Cab of its rights and liabilities.
- 60 minutes* **2.** What other claims does Chirpy have and against whom? Explain.
- 30 minutes* **3.** Choose either singer in The Flock and advise her of her possible rights and liabilities based on what you know of the facts.
- 20 minutes* **4.** Explain the Business Judgment Rule and how and when it operates. Include in your answer the circumstances under which it does not operate and what happens then.
- 15 minutes* **5. *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!

Section (Circle one)

DAY / EVENING

BUSINESS ASSOCIATIONS – Starkis*Spring 2006***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.

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15 minutes To read through exam

Mabel Underwood was depressed. She had just received word that her partners had decided to replace her. What her friend **Harriet Walker** said was that the executive committee had reviewed the status of all the junior partners and concluded that she (Mabel) and one other long-time junior partner were not as productive as some of the younger members of the design firm. Just as she was about to dial her lawyer on her cell phone, a **NatEx Ground** delivery truck driven by **Salvatore Fusco** ran a stop sign and crashed into the driver's side of her vehicle knocking her unconscious and causing severe bodily injuries.

After a two-month stay in the hospital and six weeks of doctor-ordered absence from work, Mabel returned to her office to discover that once her four weeks of sick leave had been used up, her things had been moved out of the space she had been occupying for five years and put in storage. She went in to protest to **Jim Margolies**, the Managing Partner, but was told that he was too busy to see her. His secretary gave her a letter signed by Margolies, dated about the time her sick leave ran out, saying that the Executive Committee had voted in accordance with the Agreement of Partnership to terminate her with two months' severance pay. Along with the letter she was handed a check for the three-months total, and a security guard soon appeared to escort her out of the building with a cart on which were piled all her personal belongings and effects. The guard, **Charles Hardcase**, led her, crying, out past the desks and worktables of most of the other partners and staff though he could easily have taken her out through a shorter and more private route. Then before they left the work area, the security guard added, loud enough for everyone to hear, "No wonder they fired this old woman. You know, we found a box of stolen supplies in her office when we cleaned it out."

Not long after that, Mabel met with her lawyer to get an update on her legal claims. The lawyer had good news and bad. He told her that she could easily win her case against **Today's**

Modern Design Partners, the 100-member firm that had terminated her. He said he had researched the law and found an old case that said partners owe one another the highest degree of loyalty. He said the case had been cited thousands of times and looked like good law to him. Given the way the Executive Committee had treated her, the case, he said, was going to be easy to win, even though they probably couldn't get any money for what **Hardcase** had done to her because he worked for the security company, **Parsons Security Service, L.L.C.**, not for the partnership and even the security company was off the hook because what Hardcase had done was an intentional tort and therefore couldn't be their fault. Suing Hardcase himself would probably be a waste of money and time.

The bad news, he said, was that she wasn't going to get fully compensated for the injuries she suffered in her car. He had done some research on that and found out that, although **NatEx**

Ground

(official name, **National Express Ground Services, Inc.**) was a wholly owned subsidiary of **National Express, Inc.**, one of the major national delivery companies, the NatEx Ground drivers are "independent contractors," who have to buy the trucks from another NatEx subsidiary, **National Express Equipment, Inc.**, usually by financing the purchase through **National Express Credit Services Corp.** The truck that struck Mabel had minimal insurance coverage, and the driver, **Salvatore Fusco**, owned the vehicle in name only since the outstanding balance owed to the NatEx credit company was probably more than the vehicle was worth, even before the accident. He had a home, but that was heavily mortgaged as well. Fusco, the lawyer said, was not an employee of anyone. He paid NatEx Ground for the routes he was granted, and they paid him for deliveries according to a schedule in their contract. Bottom line: take the meager insurance money and run.

For its part, the **NatEx** organization was having bigger problems. It had decided to expand into yet another area to compete with United Parcel Service (now UPS). UPS had gone into a variety of businesses, including computer repair, to better serve its customers. When customers of companies like Toshiba sent their computers back to Toshiba for repair, the computers got no farther than a UPS terminal in the midwestern U.S., where UPS personnel repaired it under a contract with Toshiba and shipped it back to the customer. UPS was doing this in all kinds of fields, even shipping lobsters from a big tank at the same UPS terminal to locations around the world on behalf of a Canadian company.

NatEx decided it could make money in the adult novelty business, by maintaining a supply of adult reading material and sex toys at a central warehouse and operating websites – under names other than its own – where these materials could be ordered. As soon as an order was placed, the automated shipping process would start, and **NatEx Ground** would deliver the material the following day. The high profit margins of the merchandise, coupled with the elimination of the retailer, would provide a great yield to the company.

But **NatEx** needed a site to construct the warehouse, somewhere near its own current central offices. If it were known that NatEx was seeking to expand, local real estate prices and opposition might both increase. **Jim Alvarez**, the Vice President for Facilities of National Express, Inc., called **Bob Hightower**, a commercial broker he knew, and asked Alvarez to get someone to find properties in the area that met NatEx's needs. Hightower, in turn, placed a call to **Alexei Todarescu**, an independent real estate broker, to whom he owed a favor. Hightower gave Alexei the particulars but never mentioned NatEx. He also told Alexei of the need both to keep the matter as quiet as possible and to lock in any particularly good prospects at a price that would not climb thereafter. Alexei understood the last instruction to mean that he was to pay

whatever might be necessary to get signed options on any such choice parcels. Though Bob had said nothing about the client's identity, Alexei was sure, based on the commercial realities of the area and Jim's close connections with NatEx, that NatEx was the client.

Alexei went to work immediately. He found one parcel, a piece of old farmland owned by the three **children of** a deceased farmer, **Wilbur Smith**, whose widow still lived in the old farmhouse. They signed a purchase agreement to sell the place and all the equipment to Alexei, who had convinced them he came from a farming family in the old country and wanted to try his own hand at the family trade. The farm had most recently been an economic failure, and the Smith children felt a little bit guilty about the "high" price Alexei had agreed to. The deal was to close in two months.

Not sure whether NatEx would be successful in getting the necessary permits to turn the farmland to commercial use, **Alexei** continued to look. He found another piece, this one without the use-regulation issues. The owner, **Earthbound L.P.**, was run by **Sidney Harcourt**, the general partner. Sidney was a wily old fellow who had been making a modest living but wanted to retire soon. He didn't buy any of Alexei's innocent, bumbling entrepreneur act, but took a liking to Alexei anyway. Alexei reminded Sidney of himself as a young man. After letting Alexei ramble on for a while, he interrupted and said, "Cut the act. We both know you're looking to make a commission from whoever you're fronting for, probably NatEx. I'll tell you what; you sign a binding deal with me for fifteen percent over whatever it is you were ready to pay and we'll split that amount between us when the deal closes. And you'll still get your regular commission above that."

Alexei, recognizing not only a kindred spirit but perhaps a master, quickly agreed and signed a purchase agreement as "authorized agent for **National Express, Inc.**" to buy the

property sixty days from the date of the agreement. As soon as he left Harcourt's office, he called **Bob Hightower** and told him of the two agreements. Bob knew one of the agreements would have to be dumped, and that might cost a bit, but the total outlay would probably be much less than if they had gone openly into the market on behalf of NatEx.

Bob then called **Jim Alvarez** and gave him the good news. Jim seemed delighted and told Bob he'd be getting back to Bob soon. Jim then reported back to NatEx's president, who seemed equally pleased that one more loose end in the project seemed to have been covered. The president directed Jim to review the signed agreements, to check out with the lawyers how costly and difficult it might be to get the necessary permits for the cheaper parcel, the farmland, and to report back within two weeks with a recommendation as to which parcel they should proceed on.

However, before the two weeks were up, a leak had developed, and the local paper and two national news organizations were reporting "rumors" that **NatEx** was going into the porn business. Large shareholders and some of the company directors, who had approved the project in the first place, began to complain loudly and publicly about the inappropriateness of any such doings and about the press's apparent willingness to entertain and publish such "unfounded, malicious, and demeaning rumors." The president called Alvarez and told him to "bury the deal. Now!" and to do it quietly."

Both the **Smith children** and **Earthbound L.P.** are threatening to take National Express, Inc., "and everybody else involved" to court.

DRAMATIS PERSONAE – THE PLAYERS

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Mabel Underwood – Junior partner in TMDP who was terminated and who got into a motor vehicle accident with a NatEx Ground truck..

Today's Modern Design Partners (TMDP) – A 100-member design firm.

Jim Margolies – The Managing Partner of TMDP.

Harriet Walker – A junior partner and friend of Mabel.

Parsons Security Service, L.L.C. – Provides security at TMDP.

Charles Hardcase – Security guard .

National Express, Inc. (NatEx) – A national delivery service that is the sole shareholder of a number of related corporate entities, including those listed below.

Jim Alvarez – the Vice President for Facilities of National Express, Inc.

National Express Ground Services, Inc. – Does business as NatEx Ground and focuses exclusively on ground deliveries.

Salvatore Fusco – Drives a NatEx Ground truck, which he owns.

National Express Equipment, Inc. (NEEI) – The supplier of NatEx Ground trucks, including the one owned by Mr. Fusco.

National Express Credit Services Corp. (NECSP) – The credit arm of NatEx that loaned Mr. Fusco the money to buy his truck.

Bob Hightower – A commercial broker contacted by Jim Alvarez to find a new warehouse site for NatEx.

Alexei Todarescu – Another real estate broker, contacted by Bob Hightower as a favor to find the warehouse site, who signed two deals for real estate parcels.

Smith children – Signed with Alexei to sell him their father's old farm and equipment.

Earthbound L.P. (ELP) – Owner of the second parcel, under agreement with Alexei as agent for NatEx.

Sidney Harcourt – The general partner of ELP who struck a deal with Alexei.

Questions

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- 50 minutes* **1.** Evaluate the advice given to Mabel Underwood by her lawyer. If she consulted you to replace that lawyer, what else if anything would you tell her?
- 60 minutes* **2.** What should National Express's lawyers be telling them about the possible claims by the Smith children, Earthbound L.P., and their own shareholders if the press confirms the rumors about NatEx's intentions and the share price falls?
- 30 minutes* **3.** How would you advise Alexei Todarescu?
- 10 minutes* **5. 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!

Section (Circle one)

DAY / EVENING

BUSINESS ASSOCIATIONS – Starkis*Spring 2007***Final Exam**

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15 minutes To read through exam

Things had been going well for the Baritone family. **Eaton Baritone**, the head of the

family, had long been a successful businessman, involved in everything from entertainment to car sales to construction. Having raised her now grown children, **Emily Baritone** had begun a couple of ventures of her own, most recently developing several house lots in their wealthy neighborhood. Their eldest, **Amelia**, was a college student, an aspiring singer, and a foods fanatic, who had her own internet weblog about food and health. Eaton, **Junior**, a college dropout and aspiring inventor, spent his days—and nights—in his parents basement working with a lot of expensive electronic equipment his parents had paid for. Nothing had yet come of the expense and time consumed, but the Baritone's were hopeful Junior's talent and efforts would one day pay off.

Eaton's car dealership, which he inherited from an uncle, was operated as "Baritone's Carriages of Excellence." Eaton owned 60% of the business, and two of his cousins, **Pete** and **Jack Baritone**, who had also got their shares from the uncle, had 20% each. Shortly after they inherited the business, on the advice of Eaton's lawyer, they set up **BCE Motors, Inc.**, to shield themselves from any personal liability from the business. When the corporation was set up, Eaton also had his lawyer draw up documents by which the individual ownership interests of each of the Baritones was transferred to the corporation in return for stock certificates in each of their names. At the same time, there were documents deeding the real estate to the **Baritone Family Trust**, Eaton Baritone, Trustee. The trust document gave Pete and Jack a ".20%" beneficial interest, each. Whether they understood at the time that they were getting a two percent interest in the real estate rather than twenty is not clear. Nor is it likely that they knew of the high rent BCE Motors, Inc., was paying to the Trust or that they would have questioned Eaton's ready explanation that it was a device to keep the dealership's taxes low.

Now the local economy has taken a hit. Housing prices in the neighborhood, as

elsewhere in the state, have taken a dive. Two of the lots **Emily** was developing, with half-built houses on them, have been foreclosed by the bank, and **Charles Lawton**, the new owner of one house Emily just sold is suing because of extensive contamination on the lot from an old nearby dump. The damages are likely to exceed the resources of **EmBar Real Estate, LLC**, the company Emily had set up as the owner and developer of all the lots. Emily and the **children** were the sole members of EmBar, but virtually all of the money other than bank loans used to buy and develop the properties came from **Eaton** personally. Lawton's lawyer is considering adding Emily, the children, and Eaton as defendants.

Meanwhile, **Amelia** was so successful with her blog that **Murdock Rupp** and his local media empire bought it, along with her services. Rupp signed her as an "independent contractor," and she agreed to continue generating the discussions that brought wide interest and the potential for high advertising revenue. But the deal came with the understanding that, in any area of interest to Rupp or his companies, she would do as she was told and to say what she was told. Although there was some news of the buyout in the local press, including Rupp's media outlets, most of the online participants and readers of the blog, who were spread around the country (and the world) knew nothing about it.

Things were going well for **Junior** too. After years of playing around with the electronics equipment – and a couple of suggestions from his friend **Dick Ashe** – Junior had perfected an invention that was guaranteed to make them billionaires: he had found a way to reverse the technology of long-distance pinpoint hearing devices and had invented a microphone that could direct a voice over great distances to an individual target. (The greatest market, they felt, would be drivers on the highway who would now be able to let the idiots with whom they shared the road know exactly what they thought of them without the need for eloquent but

imprecise hand gestures.) They needed legal advice as to how to protect the idea and spoke to a patent attorney who told them the legal work would be expensive because of a recent U.S. Supreme Court case that had announced a new tougher standard for patentable ideas. Any idea the courts found to have been “obvious” – like perhaps reversing long-distance sound technology – could be determined to be unpatentable and in the public domain even if the technology for accomplishing it was tricky and had never been achieved before. Junior got his father to advance him the money for the lawyer by promising dad “a piece of the action.”

Then things began to get bad for everyone. **BCE** was sued by the manufacturer, **Aooga International** (AI), of the line of cars BCE sold for six months of unpaid invoices covering 250 cars. **Eaton** then offered to buy out **Pete and Jack** for what they thought was an outrageously low price. Eaton showed them the books, which revealed very little money in the company. The principal asset was the inventory of cars, and most of their value was owed to the manufacturer. Two expenses in particular were keeping profits down, when not eliminating them completely: the rent to **the Trust** and the handsome salary Eaton had been paying himself. As the suit proceeded, AI’s lawyers discovered that BCE had been dissolved by the State Secretary for failing to file annual reports as required by law, though when they checked the Secretary’s corporate records all the correct filings seemed to be there.

Meanwhile, **Amelia**, frustrated by the new constraints on her freedom in operating the blog, crossed the line and accused local political boss **Harman Bigthorne** of being a thief and of cheating on his wife. **Rupp** fired Amelia and publicly apologized to Bigthorne, but Bigthorne is still not satisfied, even though before the apology he had no idea Rupp was involved. Rupp has also sent (through his attorneys) a letter to **Amelia** telling her she cannot blog anywhere on the internet under the terms of a non-competition agreement she signed at the time Rupp bought her

out. She herself does not remember signing it; there were so many papers she had to sign at the time.

And, if that were not enough, Dick was unhappy with the slow progress of marketing the new invention, he took the head buyer for a national electronics chain, **WhizBiz**, out for a test ride down the nearest interstate, where they had a ball driving the other drivers crazy. They were laughing so hard they never saw the four accidents and many serious injuries they caused. When they got back to the WhizBiz offices, Dick (on behalf of himself and Junior) and the buyer (on behalf of WhizBiz) signed an exclusive sales agreement.

DRAMATIS PERSONAE – THE PLAYERS

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Baritone family –

Eaton Baritone – Head of the family, President and 60% owner of BCE, and trustee of the family trust.

Emily Baritone – Wife of Eaton and principal of EmBar.

Amelia Baritone – Daughter of Eaton and Emily, developer of blog sold to Rupp, and “independent contractor” operator of blog under Rupp.

Eaton “Junior” Baritone – Son of Eaton and Emily and inventor of long-distance targeted microphone.

BCE Motors, Inc. (BCE) – Operator of auto dealership.

Baritone Family Trust (the Trust), Eaton Baritone, Trustee – Owner of real estate on which BCE operates.

Pete and Jack Baritone – Record owners of 20% each of BCE and .20% of beneficial interest in the Trust.

EmBar Real Estate, LLC (EmBar) – Company formed by Emily to own, develop, and sell residential real estate.

Charles Lawton – Purchaser (from EmBar) of a new house on which contamination problems have been discovered.

Murdock Rupp – Local media owner who has bought Amelia’s blog and employed her as an “independent contractor.”

Dick Ashe – Friend of and assistant to Junior, helping Junior develop and promote Junior’s invention.

Aooga International (AI) – Manufacturer of Aoogas, the finest cars from Sri Lanka, for which BCE was the exclusive local dealer.

Harman Bighorne – Local political boss defamed by Amelia.

WhizBiz – National chain of electronic-gadgetry stores, interested in buying the new invention.

Questions

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- 25 minutes 1. Can WhizBiz enforce the sales agreement? Against whom? Why? Why not?
- 25 minutes 2. If the accident victims decide to sue for their injuries, who are the potential defendants, what is their liability, and why?
- 25 minutes 3. Does Bigthorne have any recourse against Rupp for the defamation by his "independent contractor"? Explain.
- 20 minutes 4. What is likely to happen if Lawton sues the individual members of the Baritone family? Explain.
- 25 minutes 5. What if anything can Pete and Jack do about their interest in the dealership that they inherited from their uncle? Explain.
- 20 minutes 6. What are AI's chances of success if they sue Eaton individually? Why?
- 10 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*

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Section (Circle one)

DAY / EVENING

BUSINESS ASSOCIATIONS – Starkis*Spring 2008***Final Exam**

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15 minutes To read through exam

Victor Timm had always had problems with his teeth, and he didn't like dentists.

His visits inevitably involved a lot of pain, and his problems never seemed to be solved. Then one day, he was watching television, and on the screen came a distinguished-looking gentleman in a white coat who said,

“Don’t like dentists? Are you continuing to suffer from pain and being told it’s your fault? What if just a few soothing visits to a new kind of dental doctor could replace years of misery with years of newfound comfort? Would you be willing to pay a little extra for that kind of relief? Call now to schedule an appointment with a Dentist of Tomorrow.”

The ad closed with “A message from **Dentists of Tomorrow, LLP.**”

Victor called the number given and was referred to **Dr. Yunis Brush**. He scheduled an appointment and when he went saw on the door a sign that said, “Dr. Y. Brush, an independent practitioner, a Dentist of Tomorrow.” After three expensive visits that were no less painful than any he’d been to before, all his teeth fell out. He learned sometime later, after visiting another dentist, **Dr. Carl Righteous**, that his tooth loss was due to what Dr Righteous said was Dr. Brush’s negligence.

Sonnet James worked hard. She was a struggling single mom with two young kids, and she was determined to provide for them despite their absent fathers’ failure to do so. She was a dental hygienist, a good one. But better than that, she was great with people. The clientele of her boss, **Dr. Carl Righteous**, in the western Massachusetts town where she lived and worked had grown measurably since she started working there three years ago, and he had rewarded her with three successive raises during that time. She also impressed the salespeople who regularly visited the practice to sell dental supplies. One of them, **Harold Adonis**, frequently engaged her in conversation about his plans for striking out on his own and how there would definitely be a lucrative place for her in any organization he was a part of.

One day **Harold** told **Sonnet** he was in a company, “Terrific Tooth Safety,” in Boston, which had been started six months earlier by some of his friends and business acquaintances. They were looking to expand and wanted her to “open up the south coast of Massachusetts,” a

job that would pay three times what she was making as a hygienist. She had never heard of the company, but they discussed a job title and benefits, including health insurance with better coverage than her family had from Dr. Righteous. Harold and Sonnet discussed the specifics of the job as well, a job that would make the most of her engaging personality and people skills.

Sonnet gave her boss a month's notice and arranged to move with her kids to New Bedford, which she did. During that month, she had looked online and found that **Terrific Tooth Safety, LLC** (TTS) had added her name to its website as the "Director for Southeastern Massachusetts Operations." But when she arrived in Boston to meet with Harold and company officials, there was no job, and no explanation was forthcoming from **Harold** or **TTS**. Sonnet has incurred moving expenses, lost wages, and lost benefits, including health insurance and retirement.

Not depressed, but angry, she was determined to find another job. The real estate agent who had helped her find her new residence told her that a local company, **South Coast Education Dynamics, Inc.** (SCEDI), was looking for someone to be the public spokesperson for the company and that he thought she'd be perfect for it. What she didn't know, he said, she could learn, and the skills she had couldn't be taught. The company planned to start charter schools throughout the poorer parts of Fall River, Taunton, and New Bedford. The state would provide the funding, and SCEDI would provide the education. But they needed someone to help sell the idea to local residents and politicians and to overcome the resistance of the local educational establishment, then in charge of the underperforming schools.

When **Sonnet** realized how suited she was to this selling job and how much **SCEDI** needed her, she drove a hard bargain. She wanted a 10% ownership share in the company, and she got it, in addition to a salary that, while not as high as what she'd been promised by Harold,

was still more than she'd been earning as a hygienist. After some six months on the job, she learned that the fellow who hired her, **Chip Schott**, the president of SCEDI, was the brother of **Flip Schott**, the president of **Education Dynamics Corporation** (EDC), the parent and sixty-five percent shareholder of SCEDI. She didn't much care for Chip – she thought he was a bit sleazy – but she believed in the mission of the schools and wanted the kids to get the kind of effective education they deserved.

After the state approvals were gained for three schools and the funds awarded, **Sonnet** learned that **SCEDI** was paying what she thought was an excessive amount to **EDC** for all the schools' books, supplies, and facilities. That would leave far too little she thought for good teachers and virtually no profit for SCEDI. In fact, if SCEDI spent enough to do the job it had told the state it could do, SCEDI would surely lose money. Sonnet approached **Chip** and told him of her disagreements with what was going on. He told her **Flip** was not a guy to cross and that if she went public or made any further criticism of how SCEDI was being run she would likely lose her job and her shares of SCEDI would probably wind up being worthless.

DRAMATIS PERSONAE – THE PLAYERS

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

Victor Timm – A fellow with serious tooth problems.

Dentists of Tomorrow, LLP (DOT) – A partnership promoting and providing a referral service for certain dentists.

Dr. Yunis Brush – One of the “Dentists of Tomorrow,” who treated Victor Timm.

Dr. Carl Righteous – The dentist who diagnosed Dr. Brush’s malpractice and employed Sonnet James.

Sonnet James – Dental hygienist with expectations of a job with TTS, who thereafter landed a job with and 10% stock ownership in SCEDI.

Harold Adonis – Dental supply salesman who offered Sonnet a job with TTS.

Terrific Tooth Safety, LLC (TTS) – Dental supply company with whom Sonnet thought she had landed a lucrative job.

South Coast Education Dynamics, Inc. (SCEDI) – Company that got a state grant to open and run charter schools in southeastern Massachusetts.

Chip Schott – President of SCEDI, who hired Sonnet.

Education Dynamics Corporation (EDC) – Company that owns 65% of SCEDI and is its principal supplier.

Flip Schott – President of EDC and brother of Chip.

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 any question 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.

- 30 minutes* **1.** Dr. Brush has disappeared. Explain Vic Timm's legal options. What obstacles might he face in pursuing them?
- 45 minutes* **2.** Does Sonnet James have any legal recourse with respect to the job she thought she had with TTS? If so, what, and against whom? What is the likely outcome and why?
- 60 minutes* **3.** Sonnet has consulted you about her situation with SCEDI. Explain her options, giving the pros and cons of each in detail (as they relate to the material you've studied this semester) and advise her on her best course of action.
- 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!

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

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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!

Section (Circle one)

DAY / 6:00 PM / 7:30 PM

BUSINESS ASSOCIATIONS – Starkis*Spring 2010***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.

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Clearly print your **MSL ID 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

Beauregard loved excitement in his life. Even when he was little, he'd constantly be skirting the edge of trouble, sometimes failing and getting punished. Often enough to reinforce the habit, though, he'd get away with the risk. Sometimes, he'd even get rewarded, and that would double the rush of adrenaline that kept him going. His friends **Anthony** and **Charles** enjoyed being with him, but knew enough to back off whenever Beauregard got that look in his eye that said trouble might not be far away.

Right through high school, **Anthony** made the most of his limited talents by hard work and discipline. He was determined to make his way in the world, and he would do it by building up the little farm that became his to run upon graduation. His dad had died when he was little, and Mom always told him that she'd promised his dad that the farm would be Anthony's if he finished high school.

Charles was the genius in the group. There was nothing he couldn't figure out. In school, he worked half as hard as Anthony and still got straight A's. After high school he went on to college, where he studied business administration and finished at the top of his class in less than four years.

After high school (where he did just well enough to graduate), **Beauregard** went to work for Anthony, doing odd jobs around the farm and delivering produce to stores, markets, and farm stands. There wasn't much excitement in that job, but Beauregard did have his marijuana patch back in the woods across from the farm where Anthony wouldn't see it, and Beauregard enjoyed dealing with the dealers to whom he sold his crops. Being Anthony's driver made it easy for him to do his deliveries without anyone noticing what he was up to. Beauregard didn't want to

have Anthony find out or to get Anthony in any trouble, so Beauregard was unusually careful in handling the marijuana.

As **Charles** was going through his college studies, he began to talk to **Anthony** about helping Anthony build the farm into a much bigger, more successful operation. Anthony was all for it, knowing that Charles was successful at anything he did. Anthony mentioned this to **Beauregard**, who said he thought Anthony was on the right track. He suggested to Anthony that Anthony could start growing the business already by giving the farm a name and using Beauregard's people skills to sell more to existing customers and to find new customers. Anthony was a little skeptical given Beauregard's nature, and Anthony's new bride, **Sarah**, was very skeptical, but Beauregard had been good since he began working at the farm, and Anthony thought, "Why not?" He told Beauregard he would raise Beauregard's pay by \$50 per week when the first three new customers or increased orders came in. And he even let Beauregard paint the new name Beauregard had suggested – "*The ABC's of Farming*" – on to the side of the farm truck.

Beauregard got busy. He started contacting everyone he could think of that might be a customer for farm products. One of the first was **Harvey**, a fellow who had graduated from the high school a few years ahead of them, and was opening a restaurant called "*Extra-vegan-za.*" Beauregard introduced himself to Harvey as "the B in *ABC's of Farming*, and A is Anthony and C is Charles." Harvey knew about all three; they had become a legend in the high school as "the Three Musketeers." That meant he knew that Beauregard couldn't always be trusted but you could always count on Anthony and Charles. Harvey told Beauregard the restaurant would need a supply of various exotic vegetables, organically grown, during the upcoming growing season. Beauregard replied, "You need it? We'll supply it." The two put together a list of the vegetables

and delivery times, and Beauregard signed it, “Beauregard Loess, for The ABC’s of Farming.” When Beauregard got back to the farm, **Anthony** was a little concerned by the rarity of some of the vegetables on the list but figured that even if he couldn’t grow them he could buy whatever he needed to fill the gap. Beauregard didn’t tell him about the requirement that the vegetables be organically grown. “Who’s going to know?” he thought.

Over the next year, the business grew, and **Anthony** gave **Beauregard** several more raises, each time fending off Beauregard’s response, “That’s not necessary, partner. We’re in this together, and someday we’ll both be rich.” Then **Charles** finished college and got his degree. He headed straight for the farm, where he told Anthony his plans for making the business five times larger in two years and ten times larger in four. But, said Charles, they needed to organize like a real business, put together a business plan, and go out to raise some serious money. First, he said, they had to dump the name. “*The ABC’s of Farming* spells small-time. We need a more corporate sounding name, something like ‘*AC Agricultural Enterprises*’.”

Charles proposed they form “**AC Agricultural Enterprises Corporation.**” He said he considered an L.L.C., but he thought the “L.L.C.” made the operation he planned sound too small. He proposed a 60%/40% ownership split with **Anthony** having the majority, but with a supermajority requirement of 65% for major shareholder decisions. Anthony would continue to run the farm until they expanded, and then he would be the head of all farming operations. Charles would be the chief executive and handle all the larger business and money decisions. Together, they would form the board of directors. Anthony interjected that they needed to make some provision for **Beauregard**. “He’s been a loyal friend and a surprisingly hard worker, and he’s helped me build up the current business by quite a bit. I’d like him to have at least 10% of the new company, and we should make him a director too.” They agreed finally to Anthony

having 50%, Charles 40%, and Beauregard 10%, with a 65% supermajority for major shareholder decisions. When they told Beauregard, he griped but finally agreed to go along. Anthony signed leases of all the farm property to the new corporation and signed over all the equipment. And Charles filed the necessary papers and arranged the necessary financing, without having to transfer any ownership shares. They then registered both the names *The ABC's of Farming* and *AC Agricultural Enterprises* as d/b/a's of AC Agricultural Enterprises Corporation.

Two years later, things began to unravel. **Sarah** filed for divorce against **Anthony** and got all his shares in the **corporation** and half the farm. **Harvey** got an anonymous tip that the vegetables he'd been getting from the farm and serving to his customers were not organically grown. And law enforcement officials had discovered the marijuana fields and suspected the farm was conducting this illegal business on the side. The corporation has been doing well and growing, though not at the pace forecast by **Charles**, but it has little in the way of other assets, Charles and Anthony having taken generous salaries and benefits and another sizeable amount of money having been paid to Anthony as farm rent. Sarah, unbeknownst to Anthony, has been getting very close to **Beauregard** and has let Beauregard (who had been failing to attend the few board meetings that ever took place) know about the large sums of money flowing out of the corporation in the form of farm rent and salaries for Charles and Anthony.

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 Three Musketeers:

- **Anthony** - Inheritor of the family farm; married to Sarah until they divorced; original 50% shareholder, director, and farming executive in ACAEC.
- **Beauregard** - Worked on the farm with Anthony; came up with the original farm name; helped expand the business; grew and sold marijuana on the side; and became a 10% shareholder and director in ACAEC.
- **Charles** - College-educated smart guy and business whiz who became CEO, director, and 40% shareholder in ACAEC.

Sarah - Wife of Anthony; became half owner of farm property and 50% shareholder in ACAEC upon divorce from Anthony.

Harvey - Restaurateur and owner of *Extra-vagan-za*.

AC Agricultural Enterprises Corporation (ACAEC) - Formed by Charles and Anthony to take over the farm business *The ABC's of Farming*.

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.

- 45 minutes 1. Advise Harvey as to his options with respect to the others in the scenario?
- 45 minutes 2. Pick any one of the "Three Musketeers" and advise him as to his rights, risks, and possible liabilities. *(You don't need to repeat anything explained already in your answer to Question 1.)*
- 45 minutes 3. Pick another "Musketeer" and do the same. *(You don't need to repeat anything explained already in your answer to Questions 1 or 2.)*
- 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!