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The Battenrings were a well-known family and the subjects of a lot of well-earned gossip. Their prominence was based on the company, LaReal, started by Eugene Battenring, an inventor with an appreciation of vanity and the profits to be made from it. Starting with a secret formula for hair dyes that men and women alike found effective and easy to use, Eugene and LaReal expanded into other beauty and cosmetic products and built a family empire. The empire was controlled by a family holding company, Battenring LLC. Battenring LLC held a 40% controlling interest in LaReal Incorporated, the manufacturer and distributor of the LaReal product line. More recently, the company has been moving into women’s and men’s fashions as well.

When Eugene died a few years ago, his widow, Lillian Battenring, a crusty, self-assured 70-year-old, took his place as manager of Battenring LLC and chairman of the board of directors of LaReal Incorporated. Other members of Battenring LLC and of the board of LaReal Incorporated included Eugene and Lillian’s daughter, Frances Battenring-Meier, and her husband Charles Meier. Battenring LLC’s membership also includes the Meiers’ son, John Meier, as well as a handful of more distant relatives with small stakes.

After Eugene’s death, Frances became increasingly concerned about her mother’s behavior. Among other eccentricities, Lillian had taken up with a playboy fashion photographer, Frank Banyor, some thirty years her junior, an affair that didn’t escape the attention of the gossip media, which meant it was picked up by all the media. Lillian was lavishing money and gifts on Frank, her “baby cakes,” including deeding him a little island in the Caribbean. But what got Frances most concerned was Lillian’s having given Frank membership in Battenring
LLC. After going to court and alleging Lillian was suffering from an early case of alzheimers
disease, Frances managed to force a compromise wherein Lillian would (1) step down as
manager of the LLC and be replaced by Frances and (2) resign from the board of LaReal
Incorporated and allow **John Meier** to take her place as chairman of LaReal. She did so by
enlisting Lillian’s butler, **James**, to secretly make videos of the goings-on in Lillian’s mansion
with Frank and their wild circle of friends and then using those tapes to essentially blackmail
Lillian.

**Frances** immediately took charge, awarding herself a huge salary and generous benefits
as manager (out of which she rewards James), and setting about getting things running her way.

**John Meier**, now 25 and described recently in the press as “a sheltered, publicity-shy
scion with a taste for fashion but little experience in business affairs [whose] main qualification
is his family name,” has started his own fashion line. Though he’s nominally chairman of
LaReal, he defers to his mother’s wishes, does as he’s told, and lets her make the LaReal
decisions. He’d rather be spending his time with his fashionista friends and chatting with
grandma and **Frank** about good times and wild parties. Frank suggests to John that John
approach several of the LaReal designers to have them work exclusively for John in a new
company that John will fund and be the “creative director” of and which Frank, with a better
head for business—and a better eye for money—will run.

**Frank** then goes out to various **suppliers** and speaks to several potential **commercial
landlords**, telling all that he’s in a partnership with “John Meier, Chairman of LaReal,” to begin
a new fashion line. He also approaches a number of exclusive retail fashion **merchants**, telling
them the same thing. In the course of his discussions—Frank tells them it’s too soon to make
any deals yet—he drops a hint that he and John may be looking for “a few, well-connected, and
astute investors to become limited partners,” but that John insists that he won’t consider anyone without enough faith to advance $100,000 without lawyers and paperwork. Frank says he told John that’s unfair to potential investors but John is adamant. Frank says to each of them, “It’s a fantastic opportunity, but if I were in your shoes, I don’t think I’d have the nerve to do it.” Despite the admonition, five of the merchants and landlords cut checks to “Frank Banyor, Exclusive agent for Meier/Banyor” and noting on their checks “Limited partnership advance.” Frank, knowing John will not know how to react, goes back to John and tells him what he’s done. Frank tells John to “get busy designing; we’ve got the money now,” and John, excited, goes back to working on his design ideas.

When Eugene was starting LaReal, he financed the start-up in part by inviting Cozee Corp., a large coffee and chocolate company, whose principal officers he was acquainted with, to invest a substantial sum into LaReal in return for a 40% share of ownership, coupled with an agreement that Cozee would be a “sleeping shareholder” and refrain from challenging the Battenrings control of LaReal (aside from token membership on the board of directors) for a period of years that ends at the end of this year. Frances is concerned that Cozee may try to oust the family and take control of LaReal when the agreement expires. Others on the board and journalists for various business publications think her fears are unfounded. They believe Cozee would not be interested in adding another business so far outside the realm of its core businesses.

John has now been contacted by several of the would-be limited partners, who’ve asked, “What’s happening?” He’s put them off by telling them that he’s been working hard, that nothing’s been solidified yet, and that he’d have Frank get back to them. His attempts to reach Frank have, however, been unsuccessful. John talks to his mother, who says, “You idiot. You’d better get a lawyer.”
Dramatis Personae — The Players

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The Family

Eugene Battenring - Inventor and businessman; creates Battenring LLC and LaReal Incorporated, of which he becomes chairman; married to Lillian Battenring and fathered Frances before he died.

Lillian Battenring - Wife of Eugene and mother of Frances; member of Battenring LLC and a director of LaReal Incorporated; becomes chairman upon Eugene’s death; later replaced by John.

Frances Battenring-Meier - Eugene and Lillian’s daughter; wife of Charles; mother of John; member of Battenring LLC and a director of LaReal Incorporated.

Charles Meier - Husband of Frances; member of Battenring LLC and a director of LaReal Incorporated.

John Meier - Son of Frances and Charles; member of Battenring LLC; replaces Lillian as chairman of the board of LaReal Incorporated, contemplates own fashion business with help of Frank Banyor.

Battenring LLC (the LLC) - Battenring family holding company; holds a 40% share of LaReal; managed by Lillian, then by Frances.

LaReal Incorporated (LaReal) - Manufacturer and distributor of beauty and cosmetic products, expanding into fashions; controlled by the Battenring family through the LLC.

Frank Banyor - Playboy fashion photographer and boyfriend of Lillian; becomes a member of the LLC; “helps” John to start up John’s own fashion business.

James - Butler to Lillian; budding video artist.

Cozee Corp. (Cozee) - a large coffee and chocolate company with a 40% share of ownership in LaReal as a “sleeping shareholder” until the end of this year.

Prospective limited partnership investors - The prospective suppliers, landlords, and merchant buyers for John’s fashion business who advanced $100,000 each.
Questions

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75 minutes 1. You’re the lawyer John seeks out. Advise him.

30 minutes 2. Advise Cozee about its options with respect to LaReal.

30 minutes 3. Does Lillian have any options with respect to James? Explain.

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

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Final Exam

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Abe Wallace was always a determined, hard-working fellow. He took his work and his responsibilities seriously. Among his responsibilities, he felt, was looking after his younger brother, Bill—especially after their parents died when their house burned down in a fire thought to have been but never proven as arson. Some people believed Bill had done it, but they were careful never to say so in Abe’s presence. Abe knew Bill had problems and that he was not reliable, but he hoped Bill would outgrow his youthful irresponsibility, especially when he married Hillary, a woman who seemed to be all business.

Abe and Bill inherited their family’s travel business, “Big Ring Travel,” where Abe was already the general manager. Abe told Bill they were now partners, and he gave Bill jobs to do (to help Bill learn the business). Sometimes the jobs got done; sometimes they didn’t, but Abe believed the situation would eventually improve, and—eventually—it seemed to. Once Bill saw that the business was a way of generating money, he got a lot more serious about it.

As the business grew, Abe decided, based on advice he was getting from his accountant, that they needed to get more formal about the business. On the advice of a lawyer Abe consulted, they set up a limited partnership, **Big Ring Travel Limited Partnership** (Big Ring), and a corporation (**BRT, Inc.**) to be its general partner. Abe and Bill each became limited partners with a 49% share of the business. The corporation, as a general partner with a 2% ownership share, was owned 51% by Abe and 49% by Bill so that Abe could maintain management control. Abe was President and a director; his wife, Sally, Treasurer and a director; and Bill a director.

The business continued to grow, eventually allowing the purchase of a huge luxury cruise
ship, which they named the Vincent van Gogh. On the advice of a lawyer, they put ownership of
the vessel into a company they called **VvG Holding, LLC** (VvG), in which the brothers each
held a 50% interest. At the same time VvG Holding entered into a contract with **Big Ring** to
manage the vessel for $1/year. The vessel, with its luxury accommodations, became a big hit
cruising the South Pacific Islands, especially among the very rich, who enjoyed not having to rub
elbows with those who had to pay attention to the cost of things. **Bill**’s favorite job in the
business became dealing with these people. His social skills far outmatched his business skills,
and the more time he spent with the wealthy clientele, the more determined he became to
become one of them.

As **Abe** was growing older, he began to want to cut back on the business and the
incredible effort it took to keep it going. The time and effort needed to manage the vessel in
addition to the more localized core travel business was draining on him, and he began looking
into selling the ship. He thought he might be able to get $75-80 million for it. He discussed it
with **Bill**, who discussed it with **Hillary**, and they agreed that it would be a good idea but that a
sale should not be rushed if they wanted to realize maximum value. To ease the burden on Abe,
they eventually agreed on the following: (1) Abe would transfer 10% of the ownership of **VvG** to
Bill so Bill would own 60%, and they would cancel the management contract with **Big Ring**. (2)
Bill would transfer 9% of his limited partnership in Big Ring to Abe (reducing Bill’s share of
that business to 40%) along with all his shares of **BRT, Inc.**. Abe told Bill he was planning to
give his 40% ownership of the cruise ship to a charity, the **Andover Foundation**, because of his
fondness for that organization and because it would lower his income taxes a great deal, and as
soon as all of the papers were signed, Abe did just that, making the charity a co-owner and in
line for a huge cash windfall as soon as the vessel was sold.
It has now been about four and a half years since the ownership transfer, and there has been no sale of the vessel. Bill has told the Andover Foundation that the downturn in the economy has really hurt the cruise business, and as a result the value of the vessel has gone down, not up. He offered the charity $15 million for its share, but was turned down. He has since upped his offer to $17 million. The Foundation is thinking about the offer because if its interest is not sold within five years of the transfer—just a few months away—it will have to pay the IRS a penalty equal to 10% of the value of the gift at the time the Foundation received it, an amount that could be as high as $3 million, money it doesn’t have.

Since taking over the vessel, and with the help of Hillary, Bill has managed to live quite comfortably. Though bookings have declined a bit—and with it the value of the Vincent van Gogh—Bill and Hillary set up Vintage Luxury Travel, L.L.C. (Vintage), their own travel business, and its own wholly owned subsidiary, VinLuxTra Management, Inc., which now has the contract with VvG to manage the vessel, but not for $1/year. This contract has been paying VinLuxTra $80,000 per month, year round. And every three months Bill has been receiving another $120,000 consulting fee for his expertise. Bill and Hillary would still like to sell the vessel and are in negotiations with Caribbean Islander Corp., but they haven’t yet settled on a price and Bill would like to buy out the Foundation’s interest before they do.

In the meantime, Hillary has been working to expand Vintage’s travel business. She has turned it into one of Big Ring’s major competitors. She competes fiercely to sign deals and drops the ones that in hindsight don’t look too profitable, keeping only those that have the promise of a big profit. Recently, she underbid Big Ring for a contract with the Massachusetts School of Law (MSL) for a round-the-world trip for all its students with a GPA above 2.75. When she learned that she wouldn’t have enough students to fill even a small plane, she had Bill
inform the school that she had not been authorized to make the deal and that therefore there was no deal. When the school asked for the return of its “non-refundable” $5,000 deposit, Bill said he knew nothing about that. The school has checked corporate records on file with the State Secretary and found that the L.L.C. is manager-managed and that Bill is listed as the sole Manager.

And while that was taking place, a minor nuisance (for Bill and Hillary) occurred when the unfortunately named **Whoopie Slipp** lost her balance and broke her right arm after being bumped by one of the stewards aboard the Vincent van Gogh as the steward was on his knees searching for a diamond earring Whoopie said she thought she had dropped. Whoopie works on the floor of the Chicago commodities exchange, and her job consists largely of waving her arms and shouting to get the attention of traders on the floor of the exchange. This injury will make a severe dent in her very large income.

The **Foundation** has done some investigating on its own and has learned that **Caribbean** made Bill a $60 million offer almost a year ago and the offer was rejected. Time is getting short because of the impending IRS penalty and the Foundation’s trustees are getting very worried.
Dramatis Personae – The Players

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Abe Wallace - Inheritor with his younger brother, Bill, of a travel business; married to Sally; limited partner (49%, then 58%) in Big Ring; majority (51%, then 100%) shareholder and President and Director of BRT; member (50%, then 40%) of VvG.

Sally Wallace – Wife of Abe; Treasurer and Director of BRT.

Bill Wallace - Inheritor with his older brother, Abe, of a travel business; married to Hillary; limited partner (49%, then 40%) in Big Ring; minority (49%, then 0%) shareholder and Director of BRT; member (50%, then 60%) of VvG.

Hillary Wallace - Wife of Bill; helps with Bill’s business interests; no official title; may be a member of Vintage.

Big Ring Travel Limited Partnership (Big Ring) - Travel business inherited from Wallace parents and largely run by Abe Wallace. General partner BRT (2% ownership); limited partners Abe (49%, then 58%) and Bill Wallace (49%, then 40%). Held management contract with VvG before ownership exchange between Abe and Bill.

BRT, Inc. (BRT) - General partner of Big Ring (2% ownership). Owned by Abe (51%, then 100%) and Bill Wallace (49%, then 0%).

VvG Holding, LLC (VvG) - Formed by Abe (50%) and Bill (50%) Wallace to hold ownership of the Vincent van Gogh luxury cruise ship.

Andover Foundation (the Foundation) - A charitable organization favored by Abe Wallace, to whom he donated his 40% ownership interest in VvG.

Vintage Luxury Travel, L.L.C. (Vintage) - Travel business formed by Bill. 100% owner of VinLuxTra.

VinLuxTra Management, Inc. (VinLuxTra), - Held management contract with VvG after ownership exchange between Abe and Bill.

Caribbean Islander Corp. (Caribbean) - A potential buyer of the Vincent van Gogh.

Massachusetts School of Law (MSL) - Take a wild guess. Sold a deal and cheated by Hillary Wallace, acting for Vintage.

Whoopie Slipp - A commodities trader with a big voice and a broken arm.
Questions

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65 minutes 1. If the Trustees of the Andover Foundation come to you for advice, what will you tell them about their rights and possible options. Specifically, what claims if any do they have regarding their ship ownership, what obstacles do they face, and what are their chances of succeeding?

35 minutes 2. If the Dean of MSL comes to you for advice, what will you tell him about the school’s rights and possible options. Specifically, what claims if any does it have regarding the swindle by Hillary Wallace, what obstacles does it face, and what are their chances of succeeding?

35 minutes 3. Whoopie wants to know who might be liable for her losses. Tell her, and explain why each might be liable and what she would have to prove to succeed in any claim she might make.

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

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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

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Dramatis Personae – The Players

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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 - Restauranteur 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.
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.
BUSINESS ASSOCIATIONS – Starkis

Spring 2009

Final Exam

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DRAMATIS PERSONAE — THE PLAYERS

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The Klines:

- **Margo Kline** - A management and public relations consultant; mother of Swift; friend of Janine; made videos with Jim; managing member and 45% owner of Margo Manages.

- **Swift D. Kline** - Nineteen-year-old son of Margo; problem child; computer and marketing whiz; worked with Jim and his corporation.

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

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

The Tedescos:

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

- **Betty Tedesco** - Wife of Jim; nominal owner of all the stock in Tedesco Video.

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

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

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

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

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

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

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

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

45 minutes 1. Should Margo be worried about the Safe Home claimants? If so, what legal grounds would they have, and could they succeed?

45 minutes 2. What if anything can Margo do about Janine and the others who ousted her, and what are the prospects for success?

45 minutes 3. What can Swift do about his situation with the Tedescos and their creditors? What is his situation, legally? Can the Tedescos fire him? Is he entitled to anything more than he’s already gotten?

15 minutes Optional Write any question you were prepared to answer on this exam but have not been asked (directly or indirectly) and then answer it. [You will get no credit if what you write here should reasonably have been included in your answer to an earlier question.]

15 minutes Review

Good luck with your other finals, and enjoy the summer!
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 sayed 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.
BUSINESS ASSOCIATIONS – Starkis

Spring 2008

Final Exam

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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.

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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

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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!


**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 drop-out 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 Pee 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 by 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 Bigthorne – 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  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 Al’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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In your bluebooks, please write on every other line, and write only on one side of each page.

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 Todescucu, 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

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

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

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.

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 Todaescu?

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!
BUSINESS ENTITIES – Starkis

Fall 2004

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.

20 minutes To read through exam and questions
Jack’s wife Hazel came running into his office. “We could have big trouble. Did you see this headline? It says, ‘Many Massachusetts workers misclassified.’ The article says thousands of workers classified as independent contractors are really employees and the people who hire them are cheating the government. Once anything like this hits the Globe, you know the politicians, the police, and the bureaucrats won’t be far behind.”

Jack Hammer had spent years building up his construction business. He had had some lean years and close calls, almost losing his business and having to file bankruptcy when the housing market went belly-up in the late 1980s. Had he not switched from his old accountants to Gall, Urch & Ting, L.L.P., he probably never would have made it. After they got him through all the difficulties of his failed bank loans, they helped him set up a really professional operation. They helped incorporate him and turned all the people who did work for Hammer, Inc., (except for Jack and Hazel, who did the bookkeeping), into independent contractors so he wouldn’t have to pay withholding or any other benefits to them. And, on his accountants’ advice, he was able to hold on to all those people — and keep them happy — by increasing what they were paid. Not only was he not deducting anything from their gross pay; he added to the gross — though not by as much as he was saving now that he didn’t have to pay unemployment, health insurance, or workers’ compensation in addition to wages or salary. The workers were glad to be getting so much more money, even though they were told that they would be responsible for reporting their own incomes and paying their own taxes and social security each April.

Now Jack started to worry too. He called Reese Urch, who had given him the advice in the first place, and left a message that he needed to talk to him right away. Urch wasn’t able to take the call because he was on the phone with a bigger client who had the same concerns as Jack. In fact he and his partners Lee and Ry were doing almost nothing that day but taking calls from concerned clients who had read or heard about the Globe story. Lee Gall had made Ryman Ting a partner when Ry’s idea to sell their clients on the value of independent contractors over employees grew their business by nearly 30% after the recession of the late 1980s. Now, Lee thought, they might have to put the blame on Ry and get rid of him to limit the damage to the firm. It would be a while yet before the Globe story led to any crackdown by the government, but nervous clients might decide to drop the firm or — worse — to sue the firm for bad legal advice.
That evening Lee called Reese at home and they agreed to have a partnership meeting at which they would tell Ry that they were letting him go, that he should clear out his desk, and that they would pay him his partnership share under their written agreement. They also decided to fire Stuart Dent, the associate who worked for Ry in the office. Three days later, they had the meeting and voted to drop Ry Ting. Ry said he was not going to take it lying down and they’d be sorry for what they were doing. On his way out of the office, Ry took a computer disk he’d kept updated for just such an occasion. It had on it all of the clients of the firm, their addresses, e-mail addresses, phone numbers, and the status of all their business with the firm. Stu, who was also packing his things, saw what Ry was up to. Ry said to Stu that, if he kept his mouth shut and helped Ry deliver a file, he could count on having a job when Ry got settled in a new office. “It’s a deal,” said Stu.

That evening, on his way to deliver the file to Cleeve Urgai, a businessman and client of Ry Ting, Stu’s car clipped a light pole, which fell against Urgai’s office building, setting it on fire, a fire that was not extinguished until the building was a total loss.

While all this was going on, Jack and Hazel’s daughter, Mia, learned from her mother that they might be in deep financial trouble and Mia’s money for college might be in jeopardy. Mia called her boyfriend, Stu. (Yes, that one.) Stu said, “Look, I’ve had a rough day,” but Mia persisted. “You’ve got to help me find a way to get the money for college!” Finally, Stu said, “You own 40% of your dad’s company,” which was true. For tax reasons among others, 40% of the stock in Hammer, Inc., was in her name, though she’d never thought much about it. “You could sue your folks for mismanaging the company. You keep telling me you don’t like them anyway.” Even if the case doesn’t go anywhere, you might be able to squeeze out the money you need in a settlement.

Jack was having other problems too. Among the “independent contractors” working for him was Charles “Charr” Minguy. It was Charr’s job to scout new properties for development. Charr’s specialty was real estate. He had worked for years as a salesperson and was studying for the broker’s exam, and until he passed it, he could not work as an independent broker, which was his ultimate goal. Charr had apparently signed, “as authorized agent of Hammer, Inc.,” an agreement to buy (within six months and for an agreed price) 65 acres of land belonging to Salto V. Thierth. The deal looked like a good one, but Jack was concerned that he might not be able to swing it given the prospect of trouble with the government for following his accountants’ advice. Charr said to
in pain. “Get me to a hospital quick,” he moaned to Lee Gall. Gall raced to the emergency room at Peaceful General Hospital, where after an eternal intake interview and signing a bunch of forms that Urch had no patience to read, Urch had his stomach pumped and was kept in a bed for observation. Within an hour, Urch’s blood pressure began to drop and he lapsed into unconsciousness. He was rushed into surgery, where the unfortunate medical outcome at the hands of surgeon Shakeefin Gersman was the untimely death of Mr. Urch.

Since then, Mr. Urch’s widow, Sue Dann Urch, has had her lawyers investigating a possible lawsuit. They have learned that Dr. Gersman has several pending malpractice cases against him, is under investigation by the Board of Registration in Medicine, is part of a group of doctors called Hippocrates United, LLC, and was working at the hospital under a contract between the hospital and Hippocrates United. That contract contained a disclaimer that “neither [Hippocrates United] nor any person working on [Hippocrates’] behalf is to be considered an agent or employee of Peaceful General Hospital Corporation (PGHC) or [its parent corporation] Warm-Adjective Hospitals of America, Inc. (WAHAI).” In fact, two of the documents signed by Reese Urch at the emergency room said that by signing he acknowledged his awareness that in essence no one likely to come into contact with a patient – doctors, nurses, or staff – was an agent or employee of either PGHC or WAHAI.

While trouble seemed to fall like unwanted rain on his former partners, Ry Ting had a bright future. Old clients of the firm were flocking to him, and he was finishing up their old business and undertaking the new. He was also getting new clients, who had heard that he was a genius at protecting his clients, a reputation not hurt by the fact that almost none of the increased enforcement of employment practices by state and federal authorities was materializing. He had fired Stu Dent after milking him for all the free labor he could and sharing no fees with him because none had come in before Dent was terminated. Once Dent was gone, he hired several bright, well-educated foreign students who would work for less money and could be counted on to keep their mouths shut. Getting tossed out of Gall, Urch & Ting was the best thing that had happened to him in a long time.
**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.

**Hammer, Inc. (HI)** - A corporation in the construction business, principally owned and run by Jack Hammer; client of Reese Urch at Gall, Urch & Ting, L.L.P.. Forty percent of the ownership is in his daughter Mia’s name.

- **Jack Hammer** - Hardworking businessman; principal owner and operator of Hammer, Inc.
- **Hazel Hammer** - Wife of Jack and bookkeeper for Hammer, Inc.
- **Mia Hammer** - Daughter of Jack and Hazel; nominal 40% shareholder in Hammer, Inc.; girlfriend of Stu Dent.
- **Charles “Charr” Minguy** - Works for Hammer, Inc., as an “independent contractor” finding real estate to develop; signed agreement, as “authorized agent,” to purchase land from Salto Thierth.

**Gall, Urch & Ting, L.L.P. (GUT)** - Accounting firm under a partnership agreement among its three partners; among its clients are Hammer, Inc., and Cleeve Urgai.

- **Lee Gall** - Senior partner
- **Reese Urch** - Partner; accountant for Hammer, Inc.; fell ill after eating at a new Buzzy’s Burgers; died during surgery by Dr. Shakeefin Gersman at Peaceful General Hospital.
- **Ryman Ting** - Newest partner; brought in after his idea for changing clients’ employees to independent contractors increased firm revenues; ejected by partners after Globe story casting doubt on the legality of the scheme and panicked calls from clients; set up new business with former clients of Gall, Urch & Ting; used Stuart Dent as a go-fer and source of free labor.
- **Stuart Dent** - Boyfriend of Mia Hammer; employee of Gall, Urch & Ting; fired when his immediate boss, Ry Ting, was tossed out of the firm; caused major fire at Ting client Cleeve Urgai’s building when delivering a file to Urgai; took job with Ting in return for share of future fees.

- **Cleeve Urgai** - Businessman and client of Ry Ting at Gall, Urch & Ting; lost his building to a fire caused by Stu Dent’s driving.
- **Salto V. Thierth** - Signed a deal with Charr Minguy to sell some real estate to Hammer, Inc.
- **Buzzy’s Burgers** - National chain of burger joints owned and operated by franchisees.
- **Warm-Adjective Hospitals of America, Inc. (WAHAI)** - Corporate parent of hospitals, including Peaceful General Hospital.

- **Peaceful General Hospital Corporation (PGHC)** - Operates Peaceful General Hospital; has agreements with independent contractors, including Hippocraths United, who provide the services within the hospital.

- **Hippocraths United, LLC (HULLC)** - Organization of doctors who provide services to several hospitals in the area, including Peaceful General Hospital, under written agreements.

- **Dr. Shakeefin Gersman** - Member of Hippocraths United; performed the spectacularly unsuccessful surgery on Reese Urch.
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.

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.

15 minutes  1. If Hammer, Inc., loses a lot of money because it is found by government agencies to have misclassified its workers, can it successfully sue Lee Gall personally for its losses. What are the strengths and weaknesses of its claim?

15 minutes  2. If you were hired to represent Mia to carry out Stu’s advice to exercise her rights as a stockholder in Hammer, Inc., what legal claims could you assert, and who would have to prove what in court?

10 minutes  3. If you worked as a legal assistant in Ry Ting’s new office and were asked to advise Hammer, Inc. (now a Ting client) how to go about reclassifying the people who do its work, what would you tell Jack Hammer?

30 minutes  4. Assuming Lee Gall and Ry Ting wind up in court facing each other, what claims would each be asserting against the other, what do you think the outcome would be, and why?

15 minutes  5. Who might be liable for Cleeve Urgai’s lost building and why?

15 minutes  6. What claims if any does Stu Dent have against anyone? Explain.

10 minutes  7. Can Salto Thierthi successfully enforce his signed agreement against Hammer, Inc.? Why or why not?

20 minutes  8. Who can Sue Urch legitimately go after for the injury to and/or death of her husband? Explain why each may or may not be liable.

15 minutes  9. 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 holidays!
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 (CCDP), 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

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

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 Poquétanuck 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!
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
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:
   a. Jenny
   b. Buddy
   c. GHDI
   d. 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?
6. Discuss Henri’s claims, if any, against:
   a. Buddy
   b. GHDI
   c. Jenny

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

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.

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. 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.]

11. Review

Good luck with the rest of your finals, and have an enjoyable summer!
BUSINESS ASSOCIATIONS – Starkis

Fall 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.

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.

Please be sure to 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.
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 Gready 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-scenes 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.
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 Ieahn 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!
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.

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.

Please be sure to 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.
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'sSplash 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!
Social Security No. __________________________

MASSACHUSETTS SCHOOL OF LAW

BUSINESS ASSOCIATIONS

Fall 2000 - Course #322

Professor Starkis

Final Exam

This exam contains a single, extended fact pattern and ten questions. I strongly advise you to read over the fact pattern and all ten 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 time allocations do not necessarily reflect the scoring value of the questions.

Please clearly print your social security number on the exam and each bluebook you use and mark each as "1 of [total number of books]," "2 of ___," etc.

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

In your bluebooks, please write only on every other line, and write only on one side of each page.
When Mary Intuit awoke that summer Thursday morning, there were no signs of what a big
day it would turn out to be. She got up, showered, fixed herself some breakfast, got dressed and
headed off to work. She loved this job, working as the marketing director for SophWare, the new
company her boyfriend Harold had formed with one of his colleagues from Pro State University
(PSU). She wished she could do it year-round, instead of having to go back to working at the
university in September. She was amazed at how the challenges of this job got her brain working and
spinning out ideas for how she could help the company succeed.

One idea that had been born that morning in the shower and grew as she prepared for work,
an idea that would not only help the company but enhance her status at PSU, meant she would have
to swing back by her university office before going on to the SophWare office. She decided to pick
up muffins and doughnuts for her colleagues at PSU on her way.

As she was leaving the parking lot of the U-luv-M Donut Shop, owned by Herb Sibley and
part of a statewide franchise chain, she picked up one of the cups of coffee to have a sip, and the
plastic lid, which had not been put on securely, gave way. (The drive-up window attendant, Justin
Fornow, didn’t know about the problem, but his boss, the day manager, Busby Chase, did. He’d
spotted the problem days ago, but hadn’t got around to telling anyone yet or getting his boss to order
replacements.) When the top came off and the sides of the cup collapsed, the coffee flew everywhere,
scalding Mary and causing her to lose control of the car momentarily and clip Victor Tymme’s much-
repaiRed old Mercedes. But between her shock, the pain, and her preoccupation with her plans for
the morning, Mary didn’t notice the Mercedes’ door coming off its hinges, or Vic writhing on the
ground, or the gas now leaking out of her own car.

When she got to her office, she passed out what she could salvage of the food and coffee,
talked to her boss, Ida Bintop, the department chairman, about her new idea and how it could make
Ida rich – even if it wound up costing the university a fortune – and went to her office to pick up the
information she wanted. Mary didn’t see the car catch fire, but she did hear the explosion and
remembered later thinking those idiots in the chemistry department must be up to their old tricks
again. On Mary’s way out the door, Ida stopped her and said, “Count me in.”

Determined not to let anything interfere with turning her idea into reality, she borrowed a
university-owned vehicle, and after backing over her secretary, Becky Call’s, foot, she took off for
the SophWare office.

Mary’s boyfriend, Harold Hawk, had also worked for PSU, as the head of its information
systems, when he and his buddy Jack Pigeon had gotten the core idea for the software firm they
founded with some seed money from Pye Lomuney, an investor who agreed to settle for a 31%
ownership stake in the form of stock in SophWare Corporation, then in the process of formation.
Pye also agreed to underwrite the cost of any litigation if PSU came after Harold and Jim for stealing
intellectual property (their bright idea) that PSU might claim it had paid for. Harold and Jack had
also agreed on making Mary a partner with them in the enterprise, and they were planning to surprise
Mary with the news when she got in that day.
On the road between offices, Mary, ignoring her injury completely, remembered that to really get her idea off the ground she needed the student lists from the last three graduate seminars she had conducted. Using her cell phone, she called Harold to ask if he knew anyone he could trust at PSU to go into her office, get the lists and fax them to the company. Harold called Tim Midley, a disgruntled programmer looking to land a job with SophWare, and got Tim to fax the information. As Harold expected, he didn’t have to actually promise Tim anything in return; he knew Tim would do as he was told.

Harold thought to himself, “I really am bad.” His favorite book was Machiavelli’s “The Prince,” and Harold not only knew how manipulative he was but prided himself on it. He already had plans to squeeze Jack out of the business. In fact, bringing Mary in was part of his plan. And he wasn’t sure he even wanted to keep Mary. She was smart and a hard worker, but she was almost as greedy and manipulative as Harold himself.

Harold’s daydream was interrupted by the thought of Maxine Blass, the manager of Maxi Computer, whose computer systems they had messed up badly in their first contract. Though Harold would never admit it, he had caused the problem when he insisted Jack go ahead with an install that Jack had warned him was not ready. It irritated him that the one problem he hadn’t been able to talk his way out of kept popping up in his thoughts.

Maxine had been so gullible when they signed the deal that he never expected she’d turn into such a determined enemy. He remembered how impressed she had been at the Chamber of Commerce dinner when he’d introduced her to Charles Hansen, president of the largest bank in the city. He had been trying—unsuccessfully—to get Hansen or the bank to invest, but Hansen couldn’t stand Harold—though Hansen did his best to hide both his feelings and the unfortunate fact that Harold was his brother-in-law. “Meet my partner, Charlie, he’s gonna come in with me,” Harold had said, and Hansen had departed as quickly as he could after some polite conversation, during which he had said as little as possible. Now Maxine was looking to sue someone for the losses her company had suffered.

Harold knew he had to keep things moving. The SophWare Corporation papers were all ready to be signed. He would be president, treasurer and a director. Jack, who had no head for money, was going to be vice president and a director; Pye would just be a director, and a majority vote of the first meeting of shareholders would name a fourth director and one year later a fifth director. (Harold had made private arrangements with both Jack and Pye to name Mary the fourth director in return for supporting the other shareholder’s choice the following year.)

Besides Pye’s 31% share, Harold had 35% and Jack had 34%. Pye insisted on and got a shareholder agreement that no major deal could be entered into without the assent of 70% of the shareholders so long as he retained any stock. Pye also had an agreement that SophWare Corporation would have to buy back his stock in five years for 50% more than he had put in or 31% of the appraised value of the Corporation as of that date, whichever was higher. Harold had some plans to move the company in a direction he knew Pye didn’t like, but he figured the lawyers could get around the shareholder agreement if necessary once Harold had firm control of the board of directors.

Harold saw Jack as no problem. Jack had been borrowing small amounts of money from
Harold for years, and though Harold had never pressed him for repayment, Jack did agree to sign a pledge of his shares to secure the debt. Harold had made clear that he had no intention of ever using it except to protect himself “if anything ever happened” to Jack. But Harold knew he would soon control a majority of the board and he could basically grab Jack’s shares whenever he was ready. He didn’t want to hurt Jack; he liked Jack. But if someone was going to get hurt financially, it wouldn’t be Harold first, and if someone was going to get rich, Harold was going to be first in line.

The papers prepared by the lawyers also included “ratification” documents for all the contracts Harold and Jack (and Mary) had entered into in the corporate name, including the one with Maxi Computer. That, Harold believed, would make sure he got off the hook personally for any liabilities. He was no fool; he knew the importance of crossing “t”s and dotting “i”s.

Mary arrived at SophWare, got the fax and started to implement her marketing idea. Then she shared it with Harold and Jack, who immediately saw the genius in it and told Mary they were rewarding her by making her a full partner with them and naming her a director. They assured her that Pye would agree to cut back his interest to make room for her as soon as he heard what Mary was up to.

That’s where things stand.

Cast of Characters

**SophWare**
- Mary Intuit
- Harold Hawk
- Jack Pigeon
- Pye Lommney

**U-luv-M Donut Shop**
- Herb Sibley, shop owner
- Bushy Chase, the day manager
- Justin Fornow, drive-up window attendant

**Pro State University (PSU)**
- Ida Bintop, Mary’s department chairman.
- Becky Call, Mary’s secretary
- Tim Midley, unhappy programmer

**Maxi Computer**
- Maxine Blass, manager

**Other**
- Victor Tymme, passing motorist
- Charles Hansen, bank president
Questions:

In answering the following questions, you may assume, if it matters, that all of the events took place in Massachusetts; however, you will not be required to know specific statutory provisions to assist you in answering the questions. If you're aware that Massachusetts law (statutory or common) differs from other jurisdictions and you have the time and inclination to point that out, doing that will help your score – if you're right. Don't do it if you're not sure.

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

25 minutes
1. Briefly discuss the liability of each of the following to Mary for her injuries leaving the coffee shop.
   a. U-luv-M Donut Shop
   b. Herb Sibley, shop owner
   c. Busby Chase, the day manager
   d. Justin Fornow, drive-up window attendant
   e. Victor Tymme, passing motorist

10 minutes
2. Briefly discuss whether Sophware Corporation or PSU can make any agency-based claims against anyone on account of those injuries to Mary.

25 minutes
3. Briefly discuss the claims PSU may have against each of the following.
   (a) Sophware
   (b) Mary Intuit
   (c) Harold Hawk
   (d) Ida Bintop
   (e) Tim Midley

10 minutes
4. Briefly discuss whatever claims Victor Tymme may have against
   (a) SophWare
   (b) PSU

10 minutes
5. Briefly discuss whatever claims Becky Call, Mary's secretary, may have against
   (a) Sophware
   (b) PSU

10 minutes
6. Will Maxine Blass succeed if she sues the following people for the losses to Maxi Computer as a result of the malfunctions caused by SophWare? Why or why not?
   (a) Charles Hansen
   (b) Pye Lomuney
7. Is Harold right in thinking the SophWare Corporation ratifications will take him off the hook for the contract liabilities previously undertaken in the corporation's name? Why or why not?

8. Do Mary, Harold, Jack or Pye have any claims against one another, and if so, for what and why?

9. If you had been advising each of the following people, in terms of his/her self-interest alone, what alternative business organizations to incorporation might you have recommended and why?
   (a) Harold
   (b) Jack
   (c) Pye
   (d) Mary

10. If Harold succeeds in getting control of the corporation while Pye is still in it and gets the board of directors to go along with the plan Pye strenuously objects to as stupid and unnecessarily risky, what courses of action does Pye have available, and what objections or obstacles is he likely to encounter?

5 minutes  Review your work. Make sure your social security number is on the exam and all bluebooks and that the bluebooks are properly numbered.

Good luck with any remaining finals, and have a wonderful holiday.

Thanks for all your hard work and participation.
Final Exam

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The time allocations indicated should guide your use of time, but you can spend your time as you wish, and the time allocations do not necessarily reflect the scoring value of the questions.

Please clearly print your social security number on the exam and each bluebook you use and mark each as “1 of [total number of books],” “2 of ___,” etc.

You may (but you do not need to) use your copies of the partnership and corporation statutes during the exam, provided they contain no notes or other extra content. (Highlighting or underlining is okay.)

In your bluebooks, please write only on every other line, and write only on one side of each page.
Arnold Klopp was always a happy man. He loved working with his hands. He made his living as a shoemaker, having learned the trade from his father. Unfortunately, Arnold did not have much of a head for business. Fortunately, his good looks and cheerful disposition landed him a wife who did. Clara incorporated the little business he had inherited from his father (now Clip-Klopp, Inc.), gave herself the controlling interest (51% of the stock) and ran the corporation as president, treasurer and clerk, for which she received a handsome salary. Arnold was at first the only other employee, received a regular salary, and though a director of the corporation along with Clara, was content to do as he was told.

Clara made the most of Arnold's industriousness. And the same charm that had won him Clara earned Arnold a solid and ever-growing clientele of women who would look for any excuse to bring him the family shoes. Soon, Arnold had to hire one apprentice and then another. Arnold checked out the applicants' job skills, diligence and attention to detail; Clara made sure they met the clients' other expectations. As the money rolled in Clara would raise her own salary by three-quarters of the profit growth and Arnold's by whatever was left after small increases for the apprentices.

At Clara's insistence, Arnold told each of the apprentices as they were hired that they were independent contractors. Each signed a contract that said he would work in the shop in return for training as a shoemaker and a modest weekly payment, not tied to hours of work or to piecework turned out. Within six months if Arnold certified him as ready, each could conduct his own business for customers who sought him out and each was to acquire and use only his own tools, except for the large power machines, for the use of which each would pay at a fixed time rate. In addition, to
cover general overhead and a small profit, the shop would get a fixed percentage of the total charge to any such customer. For waiting on the shop's other customers and doing simple repair work, the shop would continue to pay the weekly amount. Any special jobs might lead to an extra payment, agreed with Arnold, either before or after the work was done.

One afternoon, Emily Swoon brought in three pairs of shoes, including an expensive ($500) pair her husband, Sid, had ruined running away from an angry farmer to whom Sid had sold some pills on an earlier visit in connection with his door-to-door pharmacy business. (It seems Sid, who is more than a little nearsighted, has a hard time telling the difference between the sleeping pills and the Viagra.) Not yet ready for the apprentices, Emily insisted on dealing directly with Arnold, whom she had known and with whom she had done business long before Clara arrived on the scene. In fact, Emily had never seen Clara, knew nothing of the corporation or of Clara's role in it, and knew from his ring only that the shoemaker was married.

At first, Arnold told Mrs. Swoon that he could do nothing with her husband's shoes. Not only was the stitching between the sole and the upper part of the left shoe torn, but the leather itself was ripped on the right shoe where the farmer's usually docile dog had gotten a good grip with his teeth. Arnold was under strict instructions from Clara not to take any repairs that required replacing more than soles or heels; more-involved work was inevitably a money loser. Emily took Arnold's refusal as a challenge. She was convinced she could get Arnold to do anything she wanted, once she set herself to the task. She was right. Arnold took the shoes.

He decided these shoes would be a challenge and a great learning exercise for Jim, the first of his apprentices, certified by Arnold just the month before, and Jim agreed to do the work for $150.
Jim, however, had other plans for the weekend and, without Arnold’s knowledge, passed the job off onto Pete, the other apprentice, with about half the detailed instructions he had received from Arnold (and the promise of $60). Pete botched the job of course, but being a man to whom appearances mattered a lot, he tucked all the loose ends in and polished the shoes until he could nearly see his reflection in them. Emily was thrilled, as much with Pete as with the shoes when she picked them up, and didn’t bother to make a close inspection – of the shoes. She paid Pete the $350 he had been told to charge her.

The shoes failed, unhappily during Sid’s rapid descent of the fire stairs in a 16-storey building where the husband of his married mistress had arrived unexpectedly just moments before. Most of what ailed him after the fall was taken care of with a two-week stay in the hospital and six months of recovery at home. Sid’s business had (for reasons that by now should be obvious) never been much of a success. Not, that is, until his six months at home, where he discovered the internet. With no personal contact to undermine his otherwise solid business instincts, Sid’s business boomed. Even Emily started paying attention to him. And three wealthy venture capitalists, who found Sid on-line, now want to capitalize his operation and make everyone rich.

Emily’s all for it. She even wants a piece of the action. She says she’ll contribute the money she collects from suing for breach of contract both Arnold Klopp and the corporation she heard about from the lawyer friend who had been helping her fill the lonely hours during Sid’s sales trips and hospitalization. Sid refuses to sue. He thinks the shoemakers were a heavenly gift.

Meanwhile, Clara fired Arnold and hired Jim, at Arnold’s old salary. The corporation has never declared – and probably now will never declare – a dividend. Arnold was heartbroken – and
poor - but he figured he'd find another job. He had to move out of the house because Clara showed him a piece of paper he had signed saying that if he no longer worked for the corporation for any reason he would not compete as a shoemaker for three years within 100 miles of the old shoe shop.

Unknown to Clara, Slinky Harris had for three years been bringing his shoes to Arnold at no charge on the vague promise that Slinky would one day cut Arnold in on one of Slinky's deals. When Slinky heard about Arnold's troubles, he gave Arnold one of five equal shares in a land development partnership. Things took off, and by the third deal Arnold had a little nest egg. When the fourth deal was about to go to market, the other four partners - over Arnold's strenuous objections - voted to turn the property into apartments for students from the local college (the highest and best use of the property for return on investment) and to run it. Slinky hired Pierre Pretentious away from his job as manager for a competing real estate company, but before Pierre could start work, Slinky was arrested by the feds and the three other partners vanished.
Questions:

In answering the following questions, you may assume that all of the events took place in Massachusetts, and you may – but you are not required to – use Massachusetts’ partnership and business corporation statutes to assist you in answering the questions. If you choose to cite a statute, indicate only the section (and sub-section, if applicable) as long as it’s clear which of the two laws you mean. If you’re aware that Massachusetts law (statutory or common) differs from other jurisdictions and you have the time and inclination to point that out, doing that will help your score – if you’re right. Don’t do it if you’re not sure.

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

25 minutes 1. Leaving aside domestic relations questions, what are Arnold’s options as to Clara and Clip-Klopp, and what are the possible outcomes?

10 minutes 2. Does Clara, individually or in her corporate capacities, have any claims against Arnold? If so, what? If not, why not?

25 minutes 3. If Emily sues for breach of contract, discuss the liability of each of the following (with particular focus on issues of agency):
   a.  Arnold
   b.  Clara
   c.  Clip-Klopp, Inc.
   d.  Jim
   e.  Pete

10 minutes 4. Is Emily the proper plaintiff? Isn’t she merely Sid’s agent with respect to the shoes? Discuss.

25 minutes 5. If Sid changes his mind and sues in tort, discuss the liability of each of the following (again, with particular focus on issues of agency):
   a.  Arnold
   b.  Clara
   c.  Clip-Klopp, Inc.
   d.  Jim
   e.  Pete

30 minutes 6. What are the business organizational possibilities for Sid, the venture capitalists, and Emily? Discuss in terms of the participants’ likely varying interest in ownership, control, management, liability, transferability of interests, structure, formation, and perhaps, taxes.

5 minutes 7. Does Arnold have to honor the deal with Pierre? Why, or why not?
8. Wholly apart from the Pierre and Clara problems, what if anything should Arnold now do with respect to the fourth partnership deal and why?

9. If Arnold Klopp had the power to bind Clip-Klopp, Inc., to Emily (or Sid) Swoon, it is most likely because:
   a. Arnold was acting as Clip-Klopp’s agent
   b. Arnold had the apparent authority to do so
   c. Clip-Klopp should be estopped from denying Arnold was its agent
   d. Arnold had the inherent power to do so
   e. Arnold was a director of Clip-Klopp
   f. Arnold was an employee of Clip-Klopp

10. Answer any question you were prepared to deal with on this exam that was not covered in answer to the questions above. You will not get credit here for any content that was either necessary for or included in your answers to the preceding questions.

5 minutes Review your work. Make sure your social security number is on the exam and all bluebooks and that the bluebooks are properly numbered.

Good luck with any remaining finals, and have a wonderful holiday.

Thanks for all your hard work and participation.