2008 Final Exam
Entrepreneur Law

Closed Book Exam
Professor Todd Cheesman

True/False
Indicate whether the sentence or statement is true or false. “A” = True and “B” = False

1. An officer is a fiduciary of a corporation.
2. Officers do not owe a duty of loyalty to their corporation.
3. Shareholders may vote to elect or to remove members of the board of directors.
4. Shareholder voting agreements are invalid.
5. Real property includes land and everything permanently attached to it.
6. In a fee simple absolute, the owner has the greatest aggregation of rights, privileges, and power possible.
7. When an obvious clerical error exists in a written contract, the contract may not be enforceable.
8. If the subject matter of a contract turns out to be more valuable than one of the parties believed it would be, that party can rescind the contract.
9. Under the Statute of Frauds, a contract that is not in writing is void.
10. A contract that by its own terms can be performed within a year must be in writing to be enforceable.
11. The first assignment in time is the first assignment in right is the rule most often followed in the United States.
12. Under the English rule the first assignee to give notice gets priority.
13. Concurrent conditions occur only when the parties to a contract are required to perform their respective duties simultaneously.
14. Complete performance occurs when conditions in a contract fully occur in all aspects.
15. Anything less than complete performance is a material breach of contract.

Multiple Choices
Identify the letter of the choice that best completes the statement or answers the question.

16. Attendance Question #1
   Professor Isler once worked for a franchise called
   a. Pizza Hut
   b. H & R Block
   c. Orange Julius
d. McDonalds
e. I don’t know because I missed too many classes!
17. Justin Chan and Simeon Dondero enter into an oral contract under which Justin agrees to work for Simeon’s construction firm for eighteen months. This contract is
a. enforceable by Justin only.
b. enforceable by Simeon only.
c. enforceable per autre vie.
d. not enforceable because of the Statute of Frauds

18. Rita agrees to assume a debt of Sam to City Credit Company. This promise is not for the benefit of Rita. To be enforceable, the promise must be in writing if the debt is for
a. $50.
b. $500.
c. $5,000.
d. any of the above.

19. In Case 14.1, *Raffles v. Wichelhaus*, the court held that a contract to deliver cotton on a ship called *Peerless* could be enforced even though one party thought that the contract referred to a ship that would arrive in October while the other party thought that the contract referred to a ship that would arrive in December.

The above statement is
a. True
b. False
c. False because the ship was called “Pure Form”
d. I don’t know because I missed too many classes.

20. Britney Spears gets her 95 year old mother to sign a contract that would give Britney her mother’s house in Louisiana. Britney’s mother is very frail and Britney has dominated her relationship with her mother for years. If Britney’s mother files a civil lawsuit against Britney alleging undue influence the court will:

a. Rule in the mother’s favor if she proves her case beyond a reasonable doubt
b. Rule in the mother’s favor if she proves her case by a preponderance of the evidence
c. Probably presume that the contract was made under undue influence
d. Rule in Britney’s favor since the contract was written.

**Fact Pattern 14-1**
George W. Bush offers to sell his typewriter to Hillary Clinton but mistakenly transposes some of the digits in the price so that the $420 price appears in the contract as $240. Hillary accepts the written offer.

21. Refer to Fact Pattern 14-1. Which of the following facts would have provided George Bush with his best defense against enforcement of the contract?

a. Hillary did not need a typewriter.
b. Hillary knew the price was far below the prices of comparable machines having fewer features.
c. Hillary knew George Bush was a notoriously inaccurate typist.
d. Hillary knew George Bush had recently rejected an offer of $390 for the same machine.

22. Refer to Fact Pattern 14-1. Hillary's acceptance will

a. not be enforceable.
b. not be enforceable because it was a scrivener's error.
c. be enforceable because George Bush should have read the copy of the offer more closely before sending it out.
d. be enforceable because George Bush must bear the responsibility for his mistake.

23. Sharon Jenkins owns Bevmo (short for “Beverages and More”) and persuades Steven to buy a new energy drink (that tasted like gasoline) by telling Steven that the drink “tastes fantastic.” Sharon’s statement is

a. duress.
24. Jaquim and LaKisha enter into an oral contract under which Jaquim agrees to provide delivery service for LaKisha for six months. This contract is
   a. enforceable by Jaquim.
   b. enforceable by LaKisha only.
   c. enforceable by either party.
   d. not enforceable.

25. Ed Norton and Nora Jones sign a contract that states, "No evidence of prior oral or written negotiations may be used to change the terms of this writing." This is
   a. the parol evidence rule.
   b. the Statute of Frauds.
   c. both a and b.
   d. none of the above.
   e. I don’t know but I do know Nora Jones is fine!

26. Steven Ho attempts to free himself from the duties of his contract with Jane Subroto by telling Jane to find someone else to perform them. This is
   a. an assignment.
   b. a delegation.
   c. a third party beneficiary contract.
   d. none of the above.

27. A contract may not be assigned when
   a. the assignment will materially increase the risk of nonperformance.
   b. the assignment is expressly prohibited by the terms of the contract.
   c. the contract is uniquely personal in nature.
   d. all of the above.

28. Which of the following contracts is not assignable under most circumstances?
   a. An oral contract
   b. A contract involving the sale of goods
   c. A contract that does not include language expressly permitting its assignment
   d. A contract involving personal services

29. Erik Meister assigns his right to payment of a loan to Nhun Tran. Erik owed Nhun $800 and everyone knows Erik is a “deadbeat.” Nhun Tran is a third party
   a. creditor beneficiary.
   b. donee beneficiary.
   c. incidental beneficiary.
   d. none of the above.

30. Lyla Kamimura takes out a life insurance policy that names her friend, Aleshni Singh, as the beneficiary. The insurance policy is
   a. an assignment of rights.
   b. a delegation of duties.
   c. a third party incidental beneficiary contract.
   d. a third party donee beneficiary contract.

31. Clive’s agreement to buy a sport utility vehicle subject to the condition that he be approved by a bank for the financing is an example of
   a. a condition precedent.
   b. a concurrent condition.
   c. a condition subsequent.
   d. an illegal condition.
32. Fred and Ed sign a contract by which Fred agrees to deliver a washing machine on July 31 in exchange for Ed's promise to pay the $500 purchase price on July 31. The delivery of the washing machine and the payment of $500 are examples of
   a. conditions precedent.
   b. concurrent conditions.
   c. conditions subsequent.
   d. illegal conditions.

33. Oscar agrees to paint Vinny's car but fails to put a pinstripe around each of the headlights as called for in the contract. The fact that Oscar has done everything else required under the contract constitutes
   a. complete performance.
   b. substantial performance.
   c. a material breach.
   d. none of the above.

34. Kevin Brown substantially performs his contract to build a spare bedroom for Courtney but has been unable to secure the building materials needed to finish the job despite his best efforts. Courtney is
   a. not required to pay Kevin until the job is completed.
   b. not required to pay Kevin until he obtains the needed supplies.
   c. required to pay Kevin the amount due under the contract.
   d. required to pay Kevin the amount due under the contract less the cost of completing the job.

35. Lew Smith contracts to sell his boat to Mo for $1,000. Both parties change their minds prior to performing and agree to cancel the contract. This is an example of
   a. a delegation.
   b. an anticipatory repudiation.
   c. a novation.
   d. a rescission.

36. Anne Marie Nobrega and Eppie Lau are parties to a contract. They subsequently agree that Mr. Ho should take the place of Eppie and assume all of her rights and duties under the contract. This is
   a. a novation.
   b. an accord and satisfaction.
   c. an assignment.
   d. a modification.

37. Benjamin Byram and Katianna Leonoudakis wish to discharge their obligations under a prior agreement by executing and performing a new agreement. They need to execute and perform
   a. an assignment.
   b. an accord and satisfaction.
   c. a modification.
   d. a novation.

38. Tommy Yu operates a scrap metal business and contracts to provide ten tons of scrap steel at $50 per ton to be delivered to Kara Anderson in six months. An unforeseen shortage of scrap steel suddenly develops, making it impossible for Tommy to fulfill his contract for less than $500 per ton. Tommy’s best defense against performing the contract would be
   a. the mirror image rule.
   b. impossibility of performance.
   c. commercial impracticability.
   d. none of the above.

39. On Friday Jack, a butcher, held 1,000 pounds of beef that he just purchased. The refrigerator that Jack was going to store the beef in broke and Jack decided to sell the beef for half-price during a Friday night sidewalk sale. This action is
   a. a mitigation of damages.
b. an attempt at mitigation that would probably be disallowed as mitigation by a court.
c. an attempt to realize a profit on the transaction.
d. larceny.

40. Dick and Jane sign an agreement that provides for the payment of “$1,000 by whichever party commits a material breach of the contract that creates damages difficult to estimate but approximately $1,000.” This clause is an example of
a. a penalty clause that is never allowed in contract actions
b. a liquidated damages clause.
c. a rescissionary clause.
d. a nominal damages clause.

41. For Paul to recover the benefit of his bargain from a breached real estate contract, the most appropriate remedy is
a. damages.
b. liquidated damages.
c. restitution.
d. specific performance.

42. Ann seeks to recover in quasi contract. She must show that
a. she has conferred a benefit on the other party with the reasonable expectation of being paid.
b. she did not act as a volunteer when conferring this benefit.
c. the other party would be unjustly enriched if she were permitted to retain the benefit without making payment.
d. all of the above.

43. Werner agrees to purchase an Oracle-brand computer from an electronics store for $1,500, but the store fails to deliver. Werner is forced to purchase the computer elsewhere for $1,700. Werner’s measure of damages is
a. nothing.
b. $200 plus incidental damages.
c. $1,500 plus incidental damages.
d. $1,700 plus incidental damages.

44. Amy wants to go into the business of construction contracting. Among the reasons that would probably convince Amy to set up her business as a sole proprietorship would be
a. its greater organizational flexibility.
b. its limited liability.
c. its perpetual existence.
d. the ease of transferring the business to other family members.

45. Bayside Restaurant is operated as a partnership. For tax purposes, Bayside
a. is required to file an information return but is not a tax-paying entity.
b. is a tax-paying entity.
c. pays 1/2 of the taxes if there are two partners.
d. pays 1/4 of the taxes if there are three partners.

46. Owen and Paula agree to operate an espresso stand. They purchase their supplies and split the costs equally. They agree to share profits equally, and decide that each of them will have an equal say in how the stand will operate. Nothing is put in writing. Owen and Paula have formed
a. a partnership.
b. a sole proprietorship.
c. a type of business firm that is not a partnership or a sole proprietorship.
d. nothing because their agreement was not reduced to writing.

47. Doug and Erin are partners in Ace Athletic Supplies, a limited partnership, which sells sports equipment. Erin is a limited partner. What must be true about this partnership?
 a. Doug can be a limited partner
 b. Doug must be a general partner and this is a limited partnership
c. This is a general partnership

d. none of the above.

48. Mike and Dorothy incorporate their business as American Products, Inc. The first board of directors may be appointed by American's
a. board of directors.
b. incorporators.
c. officers.
d. shareholders.

49. Bob and Jenny act as the incorporators for National Sales, Ltd. After the first board of directors is chosen, subsequent directors are elected by a majority vote of National's
a. board of directors.
b. incorporators.
c. officers.
d. shareholders.

50. George is a director of Washington Corporation. Which of the following describes George's position with regard to Washington?
a. Agent
b. Principal
c. Fiduciary
d. Trustee

51. As a corporation, Beta Company can pay its dividends from
a. accumulated surplus.
b. gross profits.
c. net profits.
d. retained earnings.

52. Midtown Development, Inc., owns a city block in Los Angeles. Besides the land, Midtown has relatively exclusive rights to
a. the air space above the land only.
b. the soil and minerals underneath the land only.
c. the air space above the land, and the soil and minerals underneath it.
d. none of the above.

53. Owen has possession of a parcel of land. Owen has the right to use the property, including extracting copper from the land through an existing mine, for life. Owen also has the right to lease the land for a period not to exceed his life. This ownership interest is
a. a fee simple absolute.
b. a leasehold estate.
c. a life estate.
d. none of the above.

Fact Pattern 47-1
Roy owns the Double-R Ranch in Texas. His ownership rights include the right to sell or give away the property without restriction, and the right to commit waste, if he chooses.

54. Refer to Fact Pattern 47-1. Roy's ownership interest is
a. a fee simple absolute.
b. a leasehold estate.
c. a life estate.
d. none of the above.

55. Refer to Fact Pattern 47-1. Roy deeds some of the Double-R land to Sue. The deed contains the following words: "To Sue, for life." Roy has given Sue
a. a fee simple absolute.
b. a leasehold estate.
c. a life estate.
d. none of the above.

56. Refer to Fact Pattern 47-1. Roy conveys some of the Double-R land to Tim with the right to possess and use the property for a certain period of time. Roy has given Tim
  a. a fee simple absolute.
  b. a leasehold estate.
  c. a life estate.
  d. none of the above.

57. Attendance Question #2
   Steven, Isler Jr. recently went to the prom and escorted a girl who looked like:
   a. Anita Baker
   b. Alicia Keys
   c. Nora Jones
   d. Beyonce Knowles

58. Attendance Question #3
   Professor Isler is really in favor of
   a. Marriage
   b. Pre-nuptial agreements
   c. The Death Penalty
   d. Yikes, missed another one!

59. What form does a Sub-Chapter S corporations use to get a federal identification number?
   a. Schedule C
   b. SS-4
   c. 1120S
   d. 1120S K-1

60. Where does tax information from a partnership go?
   a. From a 1065 K-1 to Schedule E
   b. From a 1120S K-1 to Schedule E
   c. To Schedule C
   d. To Schedule P

61. Extra Credit
   The current Chairman of the Joint Chiefs of Staff is:
   a. General Colin Powel
   b. General Paul Wolfowitz
   c. General Richard Meyers
   d. George W. Bush

62. Extra Credit
   The Fifth Amendment guarantees:
   a. Against unreasonable searches and seizures
   b. That no person shall be compelled in any criminal case to be a witness against himself
   c. That warrants shall not be given without probable cause
   d. That the government may not establish any religion

63. For tax purposes, how should a married couple should take title to property in California?
   a. As joint tenants
   b. As community property
   c. As tenants-in-common
   d. Hell, couples should not get married, that way you do not have to give up half!
TRUE/FALSE

1. ANS: T
2. ANS: F
3. ANS: T
4. ANS: F
5. ANS: T
6. ANS: T
7. ANS: T
8. ANS: F
9. ANS: F
10. ANS: F
11. ANS: T
12. ANS: T
13. ANS: T
14. ANS: T
15. ANS: F

MULTIPLE CHOICE

16. ANS: C
17. ANS: D
18. ANS: D
19. ANS: B
20. ANS: C
21. ANS: D
22. ANS: D
23. ANS: C
24. ANS: C
25. ANS: A
26. ANS: D
27. ANS: D
28. ANS: D
29. ANS: A
30. ANS: D
31. ANS: A
32. ANS: B
33. ANS: B
34. ANS: D
35. ANS: D
36. ANS: A
37. ANS: B
38. ANS: C
39. ANS: A
40. ANS: B
41. ANS: D
42. ANS: D
43. ANS: B
44. ANS: A
45. ANS: A
46. ANS: A
47. ANS: B
48. ANS: B
49. ANS: D
50. ANS: C
51. ANS: D
52. ANS: C
53. ANS: C
54. ANS: A
55. ANS: C
56. ANS: B
57. ANS: B
58. ANS: B
59. ANS: B
60. ANS: A
61. ANS: C
62. ANS: B
63. ANS: B
Entrepreneur Law
Professor Todd Cheesman
Final Examination

Student Number ____________
Massachusetts School of Law
Spring 2009

Instructions: **Read Carefully.**

Failure to adhere to these rules will result in loss of grade.

1. You have until 9:00 pm to complete and return this exam to my gmail account. *Late submissions will be penalized; therefore, it would be wise to plan to finish your exam, spell-check it and return it to me at least several minutes in advance of the deadline.*

2. This is an open book exam; however, you may only use materials on our website or those materials directly linked to from our website. You may not speak to other students for any reason during the exam. *You may not refer to any materials on our Westlaw forum during the exam.*

3. Submit your answers to me in .doc, .pdf or .rtf format only. **I will not accept .docx or other formats.**

4. Write your exam number on the front of your exam but do not include your name anywhere on the test.

5. Please use proper grammar and punctuation. If you reference any materials that are not your unique work product, indicate them as such. While I do not expect Blue Book formatting on a timed exam, you should at least indicate the name of the work and the author you are referencing (e.g., “John Smith’s treatise on E-Commerce taxation originally proposed the theories of X, Y and Z”). You can mention your reference in the body of your writing, as a footnote or endnote. Just make sure you give credit where credit is due!

6. Cheating of any form will not be tolerated and will be reported to the school administration. **Do not discuss this exam with other students after the exam as there may be other students who have not yet taken it.**

7. This exam consists of one section. Each question you answer is worth 1/4 of your grade. You should allot your time accordingly although you should have ample time to complete the exam. Therefore, do not write a full answer for one part and a short answer for another.
8. Where appropriate, you should carefully analyze the situation and choose the best answer to each of the questions. As you think through the problem, try to think through it methodically. Consider all the elements and possible defenses or counter-arguments.

9. You should state the legal rule(s) on which your answer is based and why you think that rule or those rules apply. Answer each question as fully as you can, citing any appropriate cases, industry standards, and statutes that are relevant. Be sure to state any assumptions you make and the bases for your conclusions.

Good luck!
Essay Questions (180 Minutes)

There are four essays below to answer. Each answer has a maximum value of 25 points. Make sure to allot your time so that you do not go over.

1. Your client is Smarty Aleck, a senior manager at Device Inc., a leading manufacturer of medical diagnostic equipment. You report to the CEO, Ms. Top Dog. Top is a brilliant engineer whose main strength is product design, but she is a bit heavy-handed and combative. You are a stronger general manager, and Top relies heavily on your advice.

Device’s main product is a scanner that produces cross-sectional images of the human brain. Brain tissue requires especially sensitive readings. Device is working on a new model which will be even more sensitive and which may permit the early diagnosis of Alzheimer’s disease. Device has also been trying to build a relationship with Dr. Look at Metropolis Teaching Hospital (MTH). Dr. Look is a leading authority on the early diagnosis of Alzheimer’s.

Device’s main competitor is WestCoast Co., a California manufacturer. WestCoast has never marketed a scanner designed specifically for the brain. However, WestCoast has recently brought out a new model of its general use scanner, and it is a big advance. Some neurologists are saying it might be a substitute for the current Device machine, and Device is worried that it might even be as good as the newest Device scanner that is still in the development stage.

Device would like to get a good look at the new WestCoast machine, but WestCoast sells machines only to health care providers under contractual arrangements which discourage resale, so there is no secondary market. WestCoast would not sell a machine directly to Device.

Top came up with the idea of entering into a contract with MTH and Dr. Look for a “sponsored research project.” The contract for the project provides that Device will make payments to MTH for a total of $2 million, and MTH will use some of those funds to purchase the latest model WestCoast machine for use in Dr. Look’s research at MTH. Dr. Look’s lab already has a Device machine, and Device technicians are frequently in Dr. Look’s lab. Under the terms of the sponsored research contract, Dr. Look will give Device access to “all research data” (other than data which would violate rules of medical confidentiality). Top is hoping that Device technicians will get a good look at the new WestCoast machine. Dr. Look understands what Device is doing, but the MTH managers are not aware of the competitive implications of Device gaining access to a WestCoast machine through Dr. Look.

Device has made a first payment to MTH of $1 million. MTH has ordered the WestCoast
machine. MTH has signed a purchase agreement with WestCoast which specifies that the
machine is to be used “exclusively for medical diagnosis and research.” The machine costs
$700,000. The machine is delivered and installed in stages. Most of the heavy hardware is
already in Dr. Look’s lab, but certain key parts including the computer “brain” have not yet been
delivered or installed. MTH has paid $500,000 to WestCoast, with the remainder due when the
machine is fully installed and operating.

You and Top just learned that yesterday Dr. Look received what he described as a “nasty phone
call” from an executive at WestCoast. The WestCoast executive cited the contract language
about “exclusively for medical diagnosis and research” and asked if Dr. Look was “working for
Device.” He also said he would need more information about how the machine would be used by
Dr. Look. Dr. Look said “I just told him that I didn’t know what was bothering him, and that if he
had questions about the research he should take that up with MTH.” The WestCoast executive
implied that the remaining components would not be delivered or installed until this was cleared
up. Dr. Look is very worried that “This isn’t going to look very good to MTH.” Against that
background you receive the following memo from Top. How are you going to respond to the
questions in her memo?

MEMORANDUM
To: Smarty
From: Top
Re: WestCoast
I’ve called in our lawyer for a meeting tomorrow morning. I’d like to sit down with you this
afternoon to think through this WestCoast problem so that we are primed for that meeting.
Assume MTH decides to insist that WestCoast deliver the machine, that WestCoast refuses, and
that MTH sues WestCoast on the sales contract. If WestCoast says MTH was in breach of the
“research and treatment” clause, what are the arguments each side is going to make? If MTH
does win the lawsuit, does that mean MTH gets the machine? If MTH only gets damages, how
large are they likely to be? (Because I’m going to want all our money back.) What can MTH do if
WestCoast says “We will give you your money back and we will come pick up the machine”?
Assume MTH is not inclined to push WestCoast on delivering the machine, and we try to push
MTH by threatening that we will sue MTH under the sponsored research contract. What are the
arguments for and against us in that suit?

2. Floyd Rhinehart owns the rights to the popular Tubby the Tuba musical cartoon character,
which appears on a children’s TV show and feature motion pictures, as well as on screen during
multimedia children's concerts. Floyd found financial backing to open a chain of retail stores targeting children in shopping malls across the country, and to launch a Web site for Tubby fans, www.tubbytuba.com. All of the Tubby programs encourage children to sign up to use the website and become a part of the "Tubby Community". The Web site has bulletin boards and chat rooms for live online interactions among fans. David Wanns has called you with concern that his young son has been using these bulletin boards without his permission. His son signed up for the Tubby community, intercepted the parental consent form sent to his house by regular mail, forged David's signature on the consent forth, and returned it to Floyd without telling his dad. David found out about all this when he discovered $250 in charges on his most recent credit card statement that showed purchases his son had made using the site. David asks you whether Tubby can entice his son into participating in this online community without David actually having consented to it.

(A) What action can David take against Rhinehart, if any?

(B) Is the conduct of any of the parties in this case subject to any of the terms of the Children's Online Privacy Protection Act? If so, which sections of the Act are involved, and how will they affect the outcome of any complaint filed?

(C) What procedures should be followed by Floyd in response to David's complaint?

3. Jason Roberts is a teller/cashier at the local branch office of Big Money Bank. Big Money markets itself as "treating each customer as a person, not a number." Big Money emphasizes customer service, and has more tellers and fewer automated machines than other banks of its size.

Jason has been with Big Money for about 5 years. He is considered one of Big Money's best tellers because he rarely calls in sick and has never been short more than $3 at the end of the day. Jason also consistently receives outstanding reviews, though in each of his first two years he was written up once for arguing with difficult customers. Jason was not informed of these write-ups because his supervisor "didn't want to make a big deal out of it." He has not been written up in over two years.

Jason was frequently asked to explain Big Money procedures to new employees because he was considered more patient than other experienced employees. On March 1, 2001, Jason was busy training Sam, a new teller/cashier who had started the day before. On this day several Big Money
tellers had called in sick, and at lunchtime the line of customers had grown 20 people long. Sam was extremely slow, and Jason frequently had to listen to customers insult both of them for "wasting" time. Finally, an irate customer walked up and said, "What are you, idiots? This is unacceptable." In response, Jason said calmly, "I'm sorry for your wait, sir." The man responded, "I don't have time for this. You need to find a new line of business -- you aren't cutting it as tellers." Jason replied, "There are other banks you can go to, sir." The man then identified himself as Worthington Parker, III, a member of Big Money's Board of Directors, and asked to speak to Jason's supervisor.

Jason's supervisor, Cindy Thomas, who had overheard the entire exchange, went to her office to speak privately with Worthington Parker, III. At the end of the day, she called Jason to her office and told him he was being terminated for his "unacceptable customer service." He protested, but she told him the decision was final.

Over the next several weeks, Jason applied to 6 banks in the area, looking for a teller position. On his applications he indicated that he had been fired for "unacceptable customer service." None of the other banks hired him, though one bank HR Department contacted Cindy Thomas to ask about Jason's application. After hearing that Jason had listed the reason for his termination on an application, Cindy tried to explain the circumstances to the HR Manager of the other bank. She noted that Jason had been one of their best cashiers, that his termination happened under very unusual circumstances, and that she doubted customer service would be a problem in his next position.

After his sixth application is rejected, Jason comes to you because he wants to file a claim against Big Money. Please describe the claims Jason might have.

4. MINKO, Inc. was formed to operate a restaurant in downtown San Francisco. The corporation is owned equally by Ann, Bob, Catherine and Doug, who comprise the board of directors. Although the business has lost money in each of the last three years, the land on which the restaurant is located is owned by the corporation and has appreciated dramatically over those three years.

Emily is the owner of a successful "dot com" company and considers the land owned by the corporation to be a highly desirable location for her company headquarters. She hires an appraiser who estimates the value of the land at $850,000. In addition, the appraiser, who is a knowledgeable real estate investor, tells her that he believes that the property will increase in
value about 20% per year for the indefinite future. The property was purchased by the corporation for $350,000 three years earlier, and is carried on the balance sheet of the corporation at that figure in accordance with generally accepted accounting principles.

Emily then telephones Ann, an old friend, and offers to buy the stock of Ann, Bob, and Catherine for $1 million dollars and an agreement that they will each resign as directors and replace themselves with Emily's nominees. When Ann asks Emily why she is not buying Doug's stock, Emily tells her that she and Doug had had a serious falling out several years ago and she is unwilling to cut him in on this deal. Ann thereupon conveys the offer to Bob and Catherine. At the request of Emily's attorney, Ann prepares a profit and loss statement for the past three years and sends it to Emily. The profit and loss statement falsely shows the restaurant as making significant profits for the two most recent years. Ann does not show the statement to Bob or Catherine.

About a week later, Bob happens to see a copy of the profit and loss statement and asks Ann about it. She tells him that this was a statement from a different restaurant (despite the fact that it was prepared on MINKO's letterhead). Bob makes no further inquiries. After receiving the profit and loss statement, Emily reaffirms her offer which is accepted by Ann, Bob and Catherine. A Board of Directors meeting is called at which Ann, Bob and Catherine resign seriatim and Emily's nominees are elected by a vote of 2-1, with Doug voting no in each case.

Shortly thereafter, Emily creates a corporation for the purpose of merging MINKO into it and cashing Doug out. At a MINKO shareholder's meeting, the cashout merger proposal is presented, with Doug's stock being valued at $125,000. The proposal is approved by a vote of 75% to 25%, with Doug voting his stock against the merger. (i) What, if any, cause or causes of action does Doug have? Discuss. (ii) What, if any, cause or causes of action does Emily have? Discuss.

End of Exam
Have a Great Summer!
Instructions: Read Carefully

1. You should receive this email around 6:00 PM Wednesday, May 11th. You have three (3) hours from the sent time to complete this exam. When you are done, email your exam to toodcheesman@gmail.com. Do not wait until the last minute to do so. Late papers will be penalized. I will send confirmation once I have received it along with the time of receipt. Make sure to allow enough time for your exam to be transmitted. It is not considered received until I send you email confirmation. No time exceptions will be granted due to computer, equipment or power failures, or for failures transmitting the exam.

Of course, students with medical exemptions who have been cleared with the registrar’s office will be allotted additional time as permitted. When I have received your exam I will send you an email confirmation once I have confirmed the document is printable and that you have followed the instructions properly. Your exam is not considered officially received until I send this email confirmation. You should allot sufficient time for equipment and Internet delays in submitting your answer.

2. This is an open book exam; however, you may only use materials on our website or those materials directly linked to from our website. However, during the exam, you may not communicate about the exam or your answer with anyone (orally, electronically or otherwise). Do not use any materials other than these in preparing your answers. If you refer to any material that is not your unique work product, it must be properly cited. Failure to reference quoted, paraphrased or otherwise unoriginal material on your exam is an honor violation and will be dealt with accordingly.

3. Submit your answers to me in .doc, .docx or .rtf format only. I will not accept other formats.

4. Make sure to include the call of each question with your answer.
5. Write your exam number on the front of your exam but do not include your name anywhere on the test.

6. Please use proper grammar and punctuation. If you reference any materials that are not your unique work product, indicate them as such. While I do not expect Blue Book formatting on a timed exam, you should at least indicate the name of the work and the author you are referencing (e.g., "John Smith’s treatise on E-Commerce taxation originally proposed the theories of X, Y and Z"). You can mention your reference in the body of your writing, as a footnote or endnote. Just make sure you give credit where credit is due!

7. Cheating of any form will not be tolerated and will be reported to the school administration.

8. Each question indicates its point value and will be graded individually. You should allot your time accordingly although you should have ample time to complete the exam. Therefore, do not write a full answer for one part and skip or write a short answer for another.

9. Where appropriate, you should carefully analyze the situation and choose the best answer to each of the questions. As you think through the problem, try to think through it methodically. Consider all the elements and possible defenses or counter-arguments.

10. You should state the legal rule(s) on which your answer is based and why you think that rule or those rules apply. Answer each question as fully as you can, citing any appropriate cases, industry standards, and statutes that are relevant. Be sure to state any assumptions you make and the bases for your conclusions.

Other guidance:

- Unless stated otherwise, assume that all relevant parties are, and all relevant actions take place, in the US.

- Spend adequate time reading the question and outlining a response.

- Read each question very carefully. Answer the questions actually asked. Do not answer questions that I did not ask.

- Prioritize your discussion. Extensive discussion of irrelevant issues may hurt your score.
If you think additional information would help your analysis, explain what information you would like (and why it would help) and then state your assumptions to continue with your analysis. Similarly, if you need to assume any further information in order to answer a question, explain what information you are assuming and the consequences this has for your answer to the question.

Ironically, bullet points, short citation forms and abbreviations are not acceptable. Use your best legal writing.

Please quote statutes or cases only as necessary to make your point. However, if you do reference any material that is not your own work product, you must reference it in proper Blue Book format.

While generally your answer should be based on legal principles, you are also welcome to address other perspectives and concerns.

If you have questions or concerns during the exam, please email me and I will reply ASAP.

Failure to follow the instructions, of course, will adversely affect your grade.

Good luck and have a great Summer!
Part I: Short Essay Answers (40% of your grade)

Select 4 of the 6 questions below to answer. In your response, identify the question you are answering by listing the number and call of the question (e.g., “Question Number 1”) followed by your well-reasoned answer.

**Question Number 1**

Bernstein owns a lot and wants to build a house according to a specific set of plans and specifications. She solicits bids from building contractors and receives the following three bids: one from Chavez for $60,000, one from Freda for $58,000 and one from Samir for $53,000. She accepts Samir’s bid. One month after construction of the house has begun, Samir contacts Bernstein and informs her that because of inflation and a recent price hike in materials, he will not finish the house unless Bernstein agrees to pay an extra $3,000. Bernstein reluctantly agrees to pay the additional sum. After the house is finished, however, Bernstein refuses to pay the additional $3,000. Whereupon Samir brings a lawsuit in order to require Bernstein to pay the additional amount.

**Discuss the decision reached by the Court in Samir v. Bernstein.**

**Question Number 2**

Masud, an expert computer programmer, is a highly valuable employee of Artificial Intelligence, Inc. He has recently been transferred to the company’s new Austin, Texas facility. Masud wishes to enter into a six month lease with Townhouse Apartments for a luxury townhouse. As Masud is new in town, Townhouse’s manager calls Artificial for a reference on Masud. An Artificial vice-president, wanting a smooth transition for Masud, tells the Townhouse manager, “Please do not worry about Masud’s credit. If he does not fulfill his rental obligations, we will.” Townhouse then rents to Masud, who is unhappy with his new location and soon defaults. Whereupon, Townhouse sues Artificial.

**A. Discuss the decision reached by the Court in Townhouse Apartments v. Artificial Intelligence, Inc.**
B. Townhouse seeks to enforce Artificial's promise to pay in the event of a default for Masud. Townhouse would argue that Artificial entered into a guaranty agreement, which is a contract to assume the debt of a debtor in the event of a default.

Question Number 3

New Products, Inc. hires Tanyar, an online marketing expert, to create and to implement a Web strategy for marketing its products. Tanyar signs a contract that includes a clause that prohibits him from competing directly or indirectly against New Products for two years in the “virtual” world after his employment is terminated with New Products for any reason. Before the strategy is implemented, Tanyar resigns from New Products employ, and opens a competing business. New products seeks a court injunction against Tanyar to stop him from competing and sues him for damages.

A. Discuss the decision reached by the Court in New Products v. Tanyar.

Question Number 4

On July 1, Maria signs a note as maker in the amount of $1,000, payable 90 days after date. She issues it to Pietra, payee in payment for the purchase of Pietra's motorcycle. One month later, Pietra, needing cash to pay a debt, negotiates this note to Harvey, who pays Pietra $600 cash, and agrees orally to pay an additional $400 within 30 days. Before the 30 days are up, Harvey learns that Maria has rescinded the motorcycle purchase, claiming that the motorcycle has serious engine problems, and that Pietra knew of this at the time of the sale.

Discuss the Court's decision involving the three parties.
Question Number 5

Able, Baker and Calleti form a corporation. The state laws governing the incorporation require that the articles of incorporation be signed by three incorporators. A corporate charter is issued, and the corporation begins to do business. Thelma extends credit to the corporation. Because of a national recession, the corporation becomes insolvent. At this time, Thelma learns that Able failed to sign the articles of incorporation. Thelma claims that the corporation's formation was improper, and that Able, Baker and Calleti are personally liable.

Discuss the Court's decision in Thelma v. Able, Baker and Calleti.

Question Number 6

Piccolo is one of several partners in Palermo Pizza. The partnership agreement specifies that Piccolo's contribution to the partnership would be his van, which would be used for delivery, and his grandmother's pizza oven from the "old country." Title to the van remains with Piccolo for insurance purposes, but the partnership pays for insurance and all van expenses and improvements. The van displays the "Palermo Pizza" sign, and is listed as a partnership asset. Piccolo incurs very heavy personal debts which he is unable to pay. One of his creditors obtains a judgment against him. The creditor attempts to satisfy the judgment by seizing the van.

Discuss the Court's decision in Creditor v. Van.

Short Answer Questions

Each question below is worth 3 points, with the exception of question 15 which is worth 8.

Questions 1 - 3 relate to the following common facts.
Dash, Tide and Cheer agreed that opening a new laundromat near campus would be a profitable venture. Dash obtained a commitment from Sudsy to lease a building near campus for a one-year term. The agreement was signed, "Cheer, on behalf of a corporation to be formed, which will be the lessor." A provision in the agreement obligated Cheer to use his best efforts to form a corporation and to have the corporation execute the lease agreement.

The three investors then formed "Clean Cat, Inc." They filed articles containing the minimum provisions required by law. Each contributed $1,000 in exchange for a one-third share of Clean Cat stock. They agreed that Dash would be the sole director and President, and that there would be dividends declared annually out of profits to the fullest extent permitted by law.

Consider the facts in each of the following questions independently.

1. Tide located a better site for the laundromat at a cheaper rent than the Sudsy deal, and the corporation repudiates the agreement with Sudsy. Sudsy sues Cheer for damages for breach of contract. Will Sudsy win or lose and why?

2. Dash obtains a loan from Bluegrass Bank, and signs the loan agreement "Clean Cat, Inc., by Dash, President." The next day, the Secretary of State informed the three investors that the articles had not been approved for filing because the name they had chosen was already taken. They subsequently corrected the problem and filed articles under the name "Wildcat Wash, Inc." which were accepted. When Bluegrass Bank learned of the error, it repudiated the loan. Wildcat Wash sues Bluegrass Bank for damages for breach of contract. Will Wildcat or Bank win and why?

3. The three shareholders agreed that no sale of shares would be permitted unless Dash approved. Over the years, Dash and Tide had a falling out, and each time Tide wanted to sell his shares to Ajax, who had made bona fide offers, Dash refused to authorize it. Which of the following remedies might Tide be entitled to: voiding the transfer restriction as "manifestly unreasonable" and/or dissolution of the corporation on the grounds of illegality?

Questions 4 - 10 relate to the following common facts.

Hall, Gibson and Scrooge formed a general partnership to print custom greeting cards. Hall and Gibson each invested $10,000, and Scrooge contributed printing machinery worth $20,000. The three agreed to split any profits equally. The company solicits small individual and family orders through advertising in national magazines and on the internet. Hall and Gibson handle the advertising, marketing, development, and billing. Scrooge keeps to himself in the print shop and only handles production.

Consider the facts in each of the following questions independently.

4. A potential new customer stops Scrooge as he is on his way to the print shop one morning. Scrooge invites him in, explains that he only runs the print shop but would be glad to show samples of the firm's
work. The customer is impressed and places a large order. Unfortunately, Scrooge has little experience in such matters and accidentally uses the 1995 price list, which makes the order very unprofitable to the firm. Hall later finds out and calls the customer to cancel the order. In a suit by the customer against the partnership for damages, which party will win and why?

5. Assume the same additional facts as in question 4, but instead assume (for this question only) that the business was organized as a manager-managed Limited Liability Company with Hall appointed as the manager. In the same suit by the customer against the LLC for damages, who will win and why?

6. Hall books a large order from a customer for holiday cards. However, Gibson refuses to book the customer's subsequent order for Independence Day cards because he finds the customer personally objectionable. In a suit by the customer against the partnership for damages for breach of contract, who will lose and why?

7. The partnership concludes its first year of operations with a loss of $30,000. Scrooge wants to have the partnership liquidated. Is he entitled to do so and why or why not?

8. The partnership concludes its first year of operations with a loss of $30,000. Assume that a creditor of the partnership has successfully sought a liquidation. There remains $10,000 to be distributed to the partners after all the creditors have been paid. According to the UPA, now what happens with the proceeds (i.e., how much do Hall, Gibson and Scrooge each get)?

9. The partnership concludes its first year of operations with a loss of $30,000 but is not liquidated by a creditor. Instead, Hall and Gibson determine that Scrooge's inept production and sour demeanor have made profits impossible. May either Hall or Gibson have the partnership liquidated and recover further damages from Scrooge for injury to the business caused by his conduct? Answer yes or no and explain why.

10. Over the years Scrooge becomes even more curmudgeonly and antisocial. Hall and Gibson would like to expel him and find someone else with whom to continue the business. May they do so? Why or why not?

11. L, M and N are individuals. They want to go into business as the sole co-owners and managers of a limited liability entity that pays no federal income tax. Each wants to be assured of having full authority over every aspect of the business. In addition, N wants to be allocated first rights to any distributions, if there are any. Which, if any, of the following entities will meet their requirements and why: (1) a limited partnership; (2) a limited liability partnership; (3) a manager-managed limited liability company; (4) a corporation.

12. P, R and S are individuals. They want to go into business as the sole co-owners of a limited liability entity that pays no federal income tax. Each wants to be assured complete legal freedom to transfer his or her entire ownership interest without limitation. In addition, R is a nonresident alien.
Which of the following entities will meet their requirements and why: (a) a limited partnership; (b) a limited liability partnership; (c) a manager-managed limited liability company; (d) a corporation.

13. How may jurisdiction be established between parties when conducting online/e-commerce transactions?

14. List 5 concerns you would have as the owner of a business when considering the sale of your company.

The following question is worth 8 points:

15. Your client, Davy Jones, is a software developer for an optical engineering company specializing in correcting atmospheric distortions affecting imaging of government (spy) satellites. He is considering leaving his present employer and forming a new company with the partnership of several co-workers at his current employer. What are some issues that Davy should be aware of in considering this move?
Select 2 of the questions below to answer. In your response, identify the question you are answering by listing the number and call of the question (e.g., “Question Number 1”) followed by your well-reasoned answer.

Make sure to allot your time so that you do not go over. Credit will be given only for the questions you answer so do not expect to answer two or three questions brilliantly and let the other(s) go with weak answers. Your grade will suffer if you do.

**Question Number 1**

First cousins James and Samantha worked together in operation J&S Roofing from January 2008 until a few weeks ago. They are no longer on speaking terms, being seriously at odds with one another. The business was founded and entirely capitalized by James Smith for the duration of the business’s existence. Samantha described J&S Roofing as a local, home-based roofing repair business, and characterized her former working relationship with James as “rather informal.” The business card that they both used read “J&S Roofing Specialists and General Contractors,” and listed James’ cellular telephone number and state contractor’s license number.

Samantha is not a licensed contractor but has assisted James with office management and on-site client contacts. She has also routinely prepared J&S’s business account information and books and records on a computer program at Data Business Services (DBS), where she also worked part-time as a bookkeeper and word processor.

J&S’s clients are homeowners, condominium associations, and small business firms. Overall, James and “J&S Roofing” has a good business reputation throughout the community. However, Samantha is now especially concerned about two client matters, as well as the dispute that she has with James.

The first client matter concerns Cesar Birdwell’s threatening January 15, 2010 letter claiming that “J&S” caused over $25,000.00 in water damage to his home, after Samantha momentarily used his upstairs bathroom and failed to turn off the water faucet. The letter also acknowledges that the purpose of her visit was to deliver to Cesar J&S’s bid to repair his home’s roof. In any event, it is clear that after leaving
the bathroom, Samantha entered the garage, handed Cesar J&S's written estimate, and left. Apparently Cesar remained in his garage and continued to repair a classic motorcycle for several hours, and until he realized that hundreds of gallons of water had covered the upstairs bathroom floor, and collapsed it into the downstairs living room.

The second client matter concerns five seriously overdue equipment lease payments to Roofer’s Supply Company totaling $10,000.00. The lease contract was negotiated and signed by James only, and expires on December 31, 2010.

The personal dispute concerns their respective interests in the business. Consequently, Samantha now refuses to give James access to J&S’s business information and books and records, until several financial questions are resolved. The financial issues concern their potential liability for unsatisfied business debts, and interests in about $25,000.00 of collected “J&S Roofing” accounts receivable. Samantha also disputes James’ claim to $10,000.00 for unpaid weekly compensation, and his demand that she pay into the business one-half of the $15,000.00 that he invested to start J&S Roofing in 2008.

James’ and Samantha’s business and financial relationship is not documented in a written agreement, but asserts a 50% business ownership.

Discuss fully the agency and partnership issues.

Question Number 2

In February 2009, Cramer, the owner of a large underdeveloped parcel of Boston land near the city’s civic center, sought to find a buyer before the economy slowed further, but was unsuccessful. He then decided to develop the parcel himself, if he could obtain the assistance of Arnold, a business acquaintance who was then a senior manager at Bigg Realty Development, Inc. To secure Arnold’s commitment Cramer promised him 25% of the post-development business profits.

While negotiating with Arnold, Cramer arranged for land grading services from Gregg Land Grading Company, Inc., a statewide contractor. However, Gregg was concerned about Cramer’s ability to fully pay for the grading services, and therefore asked him for payment assurances and to identify the source of funds for payment of the services to be rendered. Cramer promptly informed Gregg’s local
representative, Heathcote, in detail of his efforts to attract several successful local entrepreneurs as investors in a new corporation that would have significant assets, including title to the Boston parcel.

Gregg’s representative stated that his company would therefore rely on Cramer’s promises, in part, because the undeveloped parcel was very valuable. In April, Cramer and Higgins signed and executed an agreement for Gregg to immediately commence full grading services, after Cramer discussed the terms of the grading agreement with Arnold. Cramer signed and executed the agreement “as agent for Cramer Development Corporation.” This convinced Arnold to immediately leave BC.

After joining Cramer, Arnold assumed responsibility for supervising all of Gregg’s grading services. Grading progressed smoothly until the site was picketed by “Q Street” neighbors, who protested the destruction of a cherished centuries old oak tree, which may have been protected by local ordinance barring the killing, uprooting, damaging, or destruction of old oak trees – without the city’s approval, following prior public notice and a public administrative hearing.

Although unintended, the oak tree died after sustaining serious damage when impacted by Gregg’s five-ton earth mover. Now merely a stump remains, the neighbors are aggrieved and the neighborhood association is threatening a lawsuit. Because of the threatened lawsuit, Cramer has not paid the final installment to Gregg for grading.

On May 1, the Office of the Secretary of State issued to Cramer a certificate of incorporation for Oak Tree Villa, Inc. (OTVI). Later that month, the OTVI board of directors issued the corporation’s first common stock as follows: Cramer, 5,000 shares for land title and promotional services; Arnold, 2,250 shares for services rendered; and to the recently retained local accountant, Cepia, 1,000 shares (upon her promise of professional accounting services through March of 2012). However, Cepia’s involvement with OTVI was brief – as she died of a heart attack while appearing with another client at an IRS audit in June.

Progress of the new business is now stalled, company books and records are incomplete, disputes with neighbors and the neighborhood association fester (and will go to administrative hearing in January), Gregg’s installment claim in unresolved, and Cepia’s widower demands that the shares promised to his wife be issued to him.

**Discuss the issues, applicable law and your conclusions.**
Miller Glue, Inc. (Miller Glue) is organized under the laws of an East Coast state. The company has 100 shareholders, 80 of whom have properly transferred their voting rights to four voting trusts. The voting trust beneficiaries are all descendants of the company’s founder, Jethro “Wildhorse” Miller. The voting trusts were all formed to perpetuate close family ties, ownership and business control. They were also formed to enhance the name, reputation and traditions of the company’s founder.

Altogether, the four voting trustees control 80% of the Miller Family’s shareholder voting rights. The 20% minority shareholder interest is not subject to a voting trust and is owned entirely by the descendants of “Wildhorse’s” first business partner, Smeeth. The Smeeths have orally promised each other that they will never sell their Miller Glue shares, unless it is to another “Smeeth” relative.

Miller Glue’s product is a colorless and odorless glue that is sold mainly to customers in the Mideast. However, in recent years the company has operated at a substantial loss because its Mideastern market for glue is saturated (no pun intended). At a special board meeting, Miller Glue’s majority directors approved the “Beyond the Mississippi Expansion Plan.” The sole dissenting vote was that of the fifth director, David Burrows, who was elected by and who represents the minority shareholders, the Smeeths.

The plan requires the formation of a closely-held subsidiary corporation, Horse Glue, Inc. (Horse Glue), based in California. Although its capitalization would be nominal, the expansion plan projects significant profits in the first year through clever Internet promotions and high-volume sales to major Midwest and southern California discount stores that sell children’s school supplies. The plan projects substantial subsidiary profits from extremely low operating overhead – including the cost-free California warehouse operations in a building owned by a Miller shareholder, and by employment of three to five part-time, minimum-wage high school and college students.

The plan also provides for overlapping management, in that the subsidiary would have a total of four directors, all being the current majority directors of the parent company, Miller Glue. Further, the Horse Glue directors would be the only Horse Glue company shareholders, and would therefore elect themselves. The rationale is that this would streamline the subsidiary’s management structure, and enable the overlapping directors to optimize their management functions at both the parent and subsidiary companies. Horse Glue efficiencies would be further enhanced by the four shareholder-directors’ execution of a shareholders’ agreement among themselves authorizing and delegating full
management powers to one of their own members, Elbert. Elbert has agreed to this arrangement in exchange for 20% of Horse Glue’s first three years’ profits.

Horse Glue was formed in accordance with Massachusetts’s general corporation law. At its organization meeting the four Miller Glue majority directors also became Horse Glue’s directors and sole shareholders for nominal cash consideration. Horse Glue is now operating, but not successfully. It appears that Horse Glue’s employees have suffered permanent ill-effects from constant exposure to the company’s products while working in its inadequately ventilated warehouse.

David, as Miller Glue’s minority director, and acting on behalf of the shareholders that he represents, requests your legal advice. At a minimum, discuss the following:

1. Is the expansion plan lawful?
2. Is the shareholders’ agreement enforceable?
3. Can David or the Smeeths, or both, bring a derivative suit?
4. If so, against whom, and for what?
5. And, are there other available remedies?

Question Number 4

Ann contributed $60,000.00, Bo $30,000.00, and Chip, $10,000.00 to start a catering business. Ann duly filed Articles of Organization on behalf of “ABC, LLC,” a limited liability company. Bo and Chip did the cooking in Ann’s well-equipped kitchen. The first year’s profits for ABC totaled $50,000.00. Ann wants to spend $20,000.00 on marketing and distribute the rest to Bo, Chip and herself. Bo and Chip want to buy a catering truck. There is no operating agreement.

A. How should the $50,000.00 be distributed? Discuss.
B. Assume, for this subpart B only, that Articles of Organization were not filed. How should the $50,000.00 be distributed? Discuss.

Thereafter, Bo contracted with Dealer to purchase a used catering truck on behalf of ABC, LLC for $30,000.00. Ann was angry when she found out, but calmed down as Bo agreed to make all deliveries. Eventually, Bo grew tired of the long delivery hours. When his request for compensation was denied, Bo accepted a full-time job as caterer for ULV, one of ABC, LLC’s biggest clients. After Bo left ABC, LLC, Ann stopped making payments on the catering truck, claiming that Bo had no authority to purchase it. ABC, LLC is valued at $100,000.00.

C. Discuss the legal effect of Bo’s withdrawal on ABC, LLC, including any claims Bo may have against ABC, LLC and ABC, LLC against Bo.

D. Is ABC, LLC liable on the catering truck contract with Dealer? Discuss.

Dealer repossessed the catering truck. After losing ULV’s business and Bo’s services, ABC, LLC goes out of business. ABC, LLC creditors are owed $50,000.00. ABC, LLC is insolvent and has no assets.

E. What is the liability of Ann, Bo and Chip for the ABC, LLC debts? Discuss.

A year later, Ann and Chip open AC Catering. Ann contributes $50,000.00 and Chip contributes his cooking skills. After 6 months of operation, AC Catering goes out of business. AC has no assets and owes outside creditors $30,000.00.

F. What is the liability of Ann and Chip? Discuss.

Question Number 5

Ben and Jerry are old friends from summer camp in Vermont. Ben’s grandfather died and gave him a $100,000 inheritance. Jerry does not have any money, but he has a great deal of experience serving ice cream at large events. In 2006, Ben and Jerry decide to start a business with Ben’s inheritance funds and Jerry’s expertise. They both believe they can make a lot of money when the 2008 Winter Olympics come
to Vermont in two years. They decide to create a business specifically to serve ice cream at the 2008 Winter Games. Both agree they will go their separate ways immediately after the Olympics.

They each sign a written agreement with a provision that they will put all of their efforts into making the business successful for two years. Ben believes the business will soon make a profit, and therefore agrees to furnish all funds necessary to build the business and keep it running. Jerry agrees to manage the day-to-day operations of the business. Neither expects the business to fail.

Ben contributes $20,000 to start the business. They spend $10,000 on start-up costs, including obtaining permits as food vendors for the Olympics and signing contracts with ice cream suppliers.

To make money before the Olympics, Ben and Jerry’s business is serving ice cream at weekend street fairs in Vermont. Unfortunately, Jerry is grumpy with customers, and the street fair vending is not earning a significant profit. The business has already lost $10,000, and owes an additional $5,000 to ice cream suppliers.

Jerry is concerned that the business has no assets and owes $5,000 in debt to ice cream suppliers. He asks Ben to contribute an additional $20,000 to keep the business afloat. Ben does not want to sink any additional funds into a struggling business, but he wonders whether he can avoid personal liability if the business fails. Ben is also concerned that if he leaves the business, he will be liable to Jerry and the creditors.

Ben comes to your law firm and asks for advice. Assume you are working in a jurisdiction that has adopted neither the UPA nor applicable caselaw, but is willing to consider such authorities.

What risks does Ben face if he chooses not to invest further in the business? What claims can be brought against Ben if he (1) refuses to contribute further funds and/or (2) leaves the business? What are Ben's potential defenses? Who is likely to prevail and why?

Question Number 6

On May 5, 2006, Ajax Corp., which was engaged in the manufacture and sale of telecommunications products, filed a petition for relief under chapter 11 of the Bankruptcy code. In the course of the case, the
debtor in possession (DIP) sued XYZ Corp. (XYZ) in the bankruptcy court to recover damages for an alleged breach of contract. XYZ filed a motion to dismiss the complaint based on the bankruptcy court's lack of jurisdiction. The court granted the motion and the DIP appeals to the district court. Decide the appeal.

The DIP's headquarters was in the Helmsley Building at 230 Park Ave., New York City. The lease had another seven years to run at the time the petition was filed. Not having determined whether it wanted to stay in such expensive digs, the DIP filed a motion in the bankruptcy court to extend the time it had to determine whether to keep the premises. The motion was filed on July 3, 2006 and the court entered an order granting it on September 15, 2006. The extension of time was for two years from September 15, 2006. The landlord appeals this order to the district court. Decide the appeal.

On April 15, 2006, Chase Bank, which was owed $5,000,000 secured by Ajax's equipment, filed a motion to obtain the collateral and to sell it in satisfaction of the debt. At the hearing in the bankruptcy court, Chase's expert witness testified that the equipment was worth $3,750,000 and depreciates at the rate of about $50,000 per year. Chase also submitted evidence of what it would earn if it had and could invest the $3,750,000 now. To keep the equipment, the DIP offers to pay Chase $50,000 per year in equal monthly installments until the chapter 11 plan is confirmed.

How should the court decide the question and what factors should it take into consideration?

(Questions 7-8 are a set. If you answer one, you must answer the other):

FACTUAL BACKGROUND TO QUESTIONS 7-8

You are O.P. Hotshot, the CEO of Healthtech Co. (“HTC”). HTC is a publicly held company with $200 million in sales and a very solid balance sheet. It is a regional market leader (with a 40% market share) in a four-state region in the provision of kidney dialysis services (a long-term life-saving treatment for persons with failing kidneys). Patients receiving dialysis travel several times a week to one of Healthtech’s chain of clinics, or receive the treatments on Healthtech equipment installed in their
homes, with the assistance of a visiting nurse from Healthtech who visits the home several times a week. A competing dialysis company, On The Skids, Inc (“OTS”) is in cash-flow trouble after an ambitious expansion program. OTS is about half the size of HTC. OTS is closely held, with top managers and a few outsiders owning all the stock. Humble Pie, the OTS CEO, is also the largest shareholder.

Question Number 7

You are about to sit down with Humble to talk about a deal. You know from two quick phone calls with Humble that he will put the following options on the table: (1) HTC could extend a credit line to OTC, with the loan very generously secured by a mortgage on all of OTC’s dialysis clinics; (2) HTC could make a cash infusion into OTC by purchasing a minority interest in OTC; (3) OTC could sell a substantial portion of its assets to HTC. Even if one of the options is implemented, OTC will still be at risk of not being able to pay its creditors.

A. What would be the bankruptcy-related risks to HTC under each of the options if OTC were to later go into bankruptcy?

B. It is a year later. After long negotiations, HTC purchased all the shares in OTS and has merged OTS into HTC.

(i) Business for the merged companies has been disappointing, especially at what had been OTS operations, and you have not been impressed with the managerial talent from OTS. Large layoffs are now planned, to be concentrated in the employees from OTS. There are no unions. OTS was strongest in the biggest metropolitan area in your region, as a result of which most of the African American employees of the merged companies came from OTS. Will this complicate the layoffs? Some female middle managers from OTS have met with your vice president to say that most women at OTS had viewed OTS as unreceptive to promoting women to top management, and expressed the hope that HTC would be more enlightened. What legal issues does this raise for the planned layoffs?

(ii) Some dialysis equipment can be reused until it degrades below technical standards set by the government. The use of excessively degraded equipment is a
possibly lethal health threat, and probably a criminal violation of several federal regulations. You have just learned that during its last months, OTS was more aggressive than you would ever be in reusing equipment. You suspect that some equipment testing was “stretched” if not fraudulent. You are confident that current testing is proper, but you can’t be sure any improper practices stopped the moment HTC acquired its controlling interest. You are about to meet with the Executive Committee of your Board of Directors. You expect that some Committee members will ask about their personal legal exposure. How do you address that concern? You are worried about your own personal legal exposure. How do you address that concern?

Question Number 8

John Schroeder, CEO of an instrument company, feels that his employees spend excessive time surfing the Internet while at work and supposedly on the job. John ordered some employee surveillance software and had it installed on the computer network at his company, hoping to monitor the computer activity of the employees. Soon thereafter, he learned that Jules Potochny (a valued instrument guy) was downloading graphics files from the Internet. John learned from the software that the names of the sites from which Potochny downloaded the files indicated that Potochny had a taste for hardcore adult photography. John went to speak with Potochny at his desk, told him to clear out his workstation. With another employee, Andrei Boston, John discovered that Boston had similar hardcore tastes, but John discovered that by examining the cookies left on Boston’s hard drive that showed his interactions with Web sites.

Does John Schroeder have anything to fear from any possible retaliation from Potochny under the Electronic Communications Privacy Act? (B) Does Schroeder have anything to fear from Andrei Boston under the Electronic Communications Privacy Act? (C) Does Schroeder have anything to fear under the Stored Communications Act?
Question Number 9

Doy'sToys is sued in a class action by consumers upset with alleged defects in the toy trombones he's sold from his Web site, www.doytoys.com. Doy Pradle, the proprietor, requires all customers that purchase toys to click specifically on a button that indicates their agreement to be legally bound by Doy'sToys terms of sale, which include a limitation of liability, a disclaimer of warranty and an arbitration clause. The class action claims that the clause is invalid because the Federal Arbitration Act requires such terms to be in writing.

(A) Assuming that the Federal Arbitration Act does say that, is the arbitration clause from the Web site agreement enforceable under the Electronic Signatures in Global and National Commerce Act (E-SIGN)?

(B) Would it affect your answer if Doy'sToys does not give customers an opportunity to print or save the agreement, but simply displays the agreement on their screen? Does the format affect the enforceability of (i) the arbitration clause, and (ii) the entire agreement, under the Uniform Electronic Transactions Act?

(C) The plaintiffs claim that the contract is not enforceable because they did not understand they were signing a contract. The contract has a notice at the top that says "By clicking 'I accept' at the end of this Agreement, you understand and accept the terms and conditions of this Agreement." To reach the "I accept" button, you must scroll down through the Agreement, and then use your mouse to click on that button before any further business is possible on the Web site. Do plaintiffs have a good argument here?

Question Number 10

A new online bookseller, TUBULAR BOOKS, has contacted you for advice regarding several e-commerce questions. How do you respond?
a. In connection with their contracts with book publishers to buy books for resale on their website, what methods are available to certify the authenticity of e-mailed contracts?

b. As to each method you identify, what are the weak points and strengths of the method?

c. Does the Statute of Frauds still apply to e-commerce done via electronic communications? Explain how the rule has been adapted to fit e-commerce situations.

d. What methods of electronic payment are available, or will soon be available, to consumers who purchase books from the site?

e. In addition to mailing out actual books to purchasers, TUBULAR BOOKS also proposes to send purchasers their books via e-mail as files to be downloaded. What intellectual property law issues does this method present?

End of Exam
Have a Great Summer!
Instructions: Read Carefully

1. You should receive this exam by 6:30 PM Wednesday, May 9th. I will also post a copy of this exam to our website in case your spam filter rejects my email.

You have three (3) hours from the sent time to complete this exam. When you are done, email your exam to cheesman@mslaw.edu. Do not wait until the last minute to do so. Late papers will be penalized. Any lateness will result in a minimum deduction of one full letter grade.

I will send confirmation once I have received your exam. Make sure to allow enough time for your exam to be transmitted. Exams are not considered received until I send you email confirmation. No time exceptions will be granted due to computer, equipment or power failures, or for failures transmitting the exam.

Of course, students with medical exemptions who have been cleared with the registrar's office will be allotted additional time as permitted. If you have been allotted extra time or if you have been cleared by the Dean's office to take the exam on a different date, you should notify me ASAP. I do not expect to be notified the day of (or the week of) the exam.

When I have received your exam I will send you an email confirmation after I have confirmed the document is printable and that you have followed the instructions properly. Your exam is not considered officially received until I send this email confirmation. Again, you should allot sufficient time for this process as well as equipment and Internet delays in submitting your answer.
2. This is an open book exam; however, you may only use materials on our website or those materials directly linked to from our website. However, during the exam, you may not communicate about the exam or any of your answers with anyone (orally, electronically or otherwise). If you refer to any material that is not your unique work product, it must be properly cited. Failure to reference quoted, paraphrased or otherwise unoriginal material on your exam is an honor violation and will be dealt with accordingly.

While I do not expect Blue Book formatting on a timed exam, you should at least indicate the name of the work and the author you are referencing (e.g., “John Smith’s treatise on E-Commerce taxation originally proposed the theories of X, Y and Z”). You can mention your reference in the body of your writing, as a footnote or endnote. Just make sure you give credit where credit is due!

3. Submit your answers to me in .doc, .docx or .rtf format only. **I will not accept other formats.**

4. Write your exam number at the top of this exam.

5. Leave the call of all questions as-is but boldface or change the font color of your answer to help me more easily identify and read your work product.

6. Answer all questions to the best of your ability. Allocate adequate time for each question. A great answer on question one will not make up for your leaving question two blank.

7. **Do not address material we did not cover in class. If you talk about legal issues we did not discuss, I will deduct points from your exam. You could lose a lot of points this way.**

Other guidance:

- Unless stated otherwise, assume that all relevant parties are, and all relevant actions take place, in the US.

- Spend adequate time reading the question and outlining a response.

- Read each question very carefully. Answer the questions actually asked. Do not answer questions that I did not ask.

- Prioritize your discussion. Extensive discussion of irrelevant issues may hurt your score.

- If you think additional information would help your analysis, explain what information you would
like (and why it would help) and then state your assumptions to continue with your analysis. Similarly, if you need to assume any further information in order to answer a question, explain what information you are assuming and the consequences this has for your answer.

• Bullet points and abbreviations are not acceptable. Use your best legal writing.

• Please quote statutes or cases only as necessary to make your point. However, if you do reference any material that is not your own work product, you must reference it.

• While generally your answer should be based on legal principles, you are also welcome to address other perspectives and concerns such as public policy.

• If you have questions or concerns during the exam, please email me and I will reply ASAP.

• Failure to follow the instructions, of course, will adversely affect your grade.

• Where appropriate, you should carefully analyze the situation and choose the best answer to each question. As you think through the problem, try to think through it methodically. Consider all the elements and possible defenses or counter-arguments.

Good luck and have a great Summer!
Question One (25% of your grade)

On a dark and stormy night in the State of Ada, during an unusually cruel and frigid winter, George Vaubel and Bruce French sat down together at their regular table in the Regal Beagle and decided to create a corporation. "We'll call it French-Vaubel Enterprises," said Bruce; "it'll make a fortune." "What'll we sell?" asked George. "Anything we need," replied Bruce. "How about high speed transcription machines for a start? People can't keep up with a normal conversation anymore."

"Just think of the cheap source of labor at the law school," George mused. "Do you think we could sell umbrellas and key rings that beep when their owner whistles? Even if the whistle is tuneless?" "Of course!" said Bruce. "We'll expand as we identify new target markets and products." "Just so I don't have to deal with the paperwork," said George.

Bruce said he'd take care of all the corporate formalities.

Bruce's first task was to negotiate a lease with Sherry Young, a well-known Ada slumlord, for a decrepit downtown office building to use as their corporate headquarters. Sherry drove a tough bargain, insisting on the right to inspect the premises monthly and providing that, at her option, the rent could be increased each year by a factor that reflected any increase in the corporation's annual profits. Bruce initially resisted these terms, but finally capitulated. He figured that Sherry had no right to inspect the corporation's books, and thus would never know how well the business was doing.

Bruce also signed the lease in his own name, without any reference to the corporate entity.

Two weeks after the lease on the building was signed, Bruce mailed the incorporation papers to the Secretary of State's office, where they were duly accepted and filed. The corporation was authorized to "engage in any lawful activities," and to issue up to 500,000 shares of common stock and 250,000 shares of preferred. French-Vaubel
Enterprises ("F-V") was off and running. Bruce was appointed President, and George was the Secretary and Treasurer. The corporation issued 100,000 shares of common stock, which were divided equally between George and Bruce.

F-V Enterprises operated very simply. Bruce and George would decide what products they wanted to offer and which markets to target. They located a variety of vendors to manufacture those products cheaply. They then sold the products by mail order, targeting their catalog to small university communities. Law students created and published the catalog, and packaged the products for shipment to customers.

F-V Enterprises took off, largely due to the fabulous success of the umbrella line. It seemed that every professor in America wanted an umbrella that beeped in response to a tuneless whistle. Within 2 years, the corporation was bringing in net profits of $85,000 annually.

At this point, Bruce and George decided that it was time to take the corporation public. They arranged for a public offering of the corporation's shares, issuing 200,000 new shares of common stock and 100,000 shares of preferred. These shares were registered under Section 12 of the Securities Exchange Act of 1934.

When the public offering was announced, popular interest ran high. And in fact, the new stock sold like wildfire. CREF, the College Retirement Investment Fund that managed assets of $400 million bought 30,000 shares. Within 5 years of the public offering, the corporation's annual sales rose to $450,000. A Board of Directors was elected, consisting of local community leaders and officers of various Massachusetts corporations. Bruce and George continued as President and Secretary/ Treasurer, respectively.

Bruce and George were beginning to enjoy their position as corporate executives of a successful, growing organization. Bruce decided that the corporation should make two substantial charitable bequests: one to his alma mater, Babson College, and a second to the Democratic Leadership Committee. Both bequests were over $75,000. Bruce and
George also voted themselves a generous retirement package, including $50,000 annual "consulting fees" payable over their lifetimes, and stock options to purchase 20,000 shares of the corporation's common stock at the then-current market price of $30/share. The Board of Directors approved both of these matters without question or discussion.

About one year after the public offering, George was approached by Richard Haight, a local businessman, who indicated that he knew where to find a warehouse full of umbrellas that could be purchased for pocket change. Apparently, the Pentagon had ordered 300,000 umbrellas for military personnel. The Government Supply Office (GSO) had then changed the relevant specifications to require that all umbrellas had to be a larger size than the type the Pentagon had ordered. The Pentagon was now stuck with these useless umbrellas, and was eager to get rid of them. Richard Haight offered these umbrellas to George at 25 cents apiece. This price was three dollars cheaper than what the corporation was paying. George purchased the umbrellas from Richard, and, without saying anything to Bruce or anyone else, sold them directly to London Fog, making a profit of 3 dollars per umbrella.

Six years after the company went public, on May 1, 1994, George was approached by T. Boone Pickens, on behalf of Mesa Petroleum, who was interested in taking over French-Vaubel Enterprises. Pickens told George that he was willing to pay $65/share for the company's stock, which was still selling at a market price of $30/share. Pickens also told George that he would break up the company, and sell off all the product lines, keeping only the umbrella line, which would then be wholly controlled by Mesa. Pickens promised to keep George and Bruce on as company officers, in charge of the umbrella product line, and said he would quadruple their current salaries. He also indicated that the company's corporate headquarters would be moved to Dallas, Texas, where Mesa was headquartered.

George and Bruce were thrilled with this prospect. They hurriedly directed Walter Skyrider, an L-2 law student, to prepare a press release indicating that merger
negotiations were "pending" with Mesa. The announcement disclosed the offered price of $65/share. Before passing the announcement along to the papers, Walter cashed in his student loan checks for the school year and bought all the F-V stock he could afford. He also told his girlfriend Suzi (a fifth-year pharmacy student) about the proposed merger, and Suzi passed the news on to her mother. Both Suzi and her mother bought 4,000 shares of F-V stock on May 1. The press release was made public early in the morning of May 2. Public trading in F-V Enterprises was heavy all day, and the stock closed up at $36/share. Bruce decided that this was a good time to increase his stakehold, purchasing 1,000 shares just before the close of trading.

At this point, Sir James Goldsmith, the well-known British raider, became interested in F-V Enterprises and purchased 10,000 shares. On May 6, Sir James approached George and Bruce on behalf of Crown Zellerbach Corp, and offered to pay $70/share for a controlling block of F-V stock. He indicated that his intention was to sell off F-V's assets and liquidate the company, and that George and Bruce would have no further connection with Crown Zellerbach after the merger was completed. George and Bruce conferred briefly, and told Sir James that they felt they had to honor their arrangement (which they described as a "deal") with Pickens.

Bruce and George called an emergency meeting of the Board of Directors on May 8. Five of the nine Board members were able to attend this meeting; the remainder did not attend and did not submit proxies. Bruce described the terms of the Mesa deal, and indicated that he thought it was an excellent offer and would be in the best interests of the corporation. One director asked if there had been any other offers; Bruce's response was "nothing worth mentioning." One Board member left during Bruce's presentation, indicating that he had to pick up his daughter from day care. He said that whatever the others wanted to do was fine with him. The remaining members of the Board debated for fifteen minutes, considered no written documentation and voted unanimously to approve the merger.
Bruce and George then prepared a proxy solicitation seeking shareholder approval of the merger. They described the deal as the "best available offer" for the company's stock and a "once-in-a-lifetime opportunity" for the shareholders. The proxy solicitation indicated that "the business of the corporation would continue unchanged after the merger," and that there would be "no effect" on the company's "leadership, salaries, product lines or employees."

At this point, Sir James decided to take his case directly to the public and to the shareholders of F-V Enterprises. He prepared a press release, announcing his interest in the company and indicating the share price he had been willing to pay. He told a reporter from the Wall Street Journal that the offer was "still open." He then prepared his own proxy solicitation, indicating that he was willing to pay $70/ share for F-V Enterprise stock, and indicating his willingness to make a tender offer for 51% of the corporation's outstanding stock. He accurately described his intentions regarding the corporation's future direction after his takeover. Sir James submitted his proxy solicitation to Bruce and George, indicating that they should include it with whatever proxy solicitation they intended to distribute to their shareholders.

Bruce and George sent out their own proxy solicitation on May 10. They did not include Sir James' proposal. While Sir James' press release was noted by a few shareholders, the majority of F-V’s shareholders relied on the proxy solicitation materials and voted to approve the Mesa offer.

The Mesa deal was finalized on July 3. The New York Stock Exchange suspended trading in F-V and Mesa stock for 48 hours, to stabilize trading. To celebrate the deal, Bruce and George went out to dinner at the Beagle and discussed their futures. "I've cashed in," said Bruce. "Half my stock options were exercised just before the market closed. I'll cash in the rest as soon as the market opens up, when the stock hits its peak. No more 8 a.m. classes for us, George!"

"Can we do that?" asked George? "Who's to stop us?" queried Bruce. "After all, we're lifetime consultants!" The following morning, Pickens fired both George and Bruce, and
refused to honor their consultancy agreements. That same day, a group of disgruntled shareholders filed a derivative suit, naming Mesa, F-V Enterprises, F-V's Board of Directors, George and Bruce as defendants. No demand was made upon the corporation prior to filing this action. Sherry Young also filed suit, seeking to enforce the terms of her lease agreement.

Discuss the probable bases of these law suits, their chances for success and the type of relief that may be available. You should also discuss any other potential liability that George, Bruce, Mesa, F-V Enterprises or F-V's Directors might encounter.

Question Two (25% of your grade)

Hurtin’ 4 Certain, Inc. is a Massachusetts corporation (“HC”). HC produces widgets that are a critical component of mobile telephones. Four (4) members of the Gates family hold 80% of the outstanding shares of HC. 2,500 small investors unrelated to the Gates hold the other 20% of the shares. Grenadine Gates is the CEO and Chair of the Board of Directors. Philbert Gates, Eden Gates, “Jersey” Gates and Mr. Dykstra (the Gates family banker) comprise the rest of the board of directors.

Your clients, Abel Abramson (“A”), Betty Boop (“B”), and Chloe Carmichael (“C”), are interested in purchasing HC. For that purpose, they have formed LowBall Corp., a Massachusetts corporation. A and B each own 30% of the common stock of LowBall and C owns the remaining 40% of the outstanding stock of LowBall. A, B, and C are the sole members of LowBall’s Board of Directors.

A, B and C are not sure how to best structure the transaction. They would like to spend as little cash as possible. A and B are indifferent to using shares of LowBall or debt to purchase HC, but C has made it clear that she is opposed to using ANY LowBall common stock to purchase HC, because she doesn’t want her interest in the company diluted. You understand from Grenadine Gates that the shareholders of HC other than
the Gates family have been dissatisfied with management and would likely seek cash in any sale transaction. Moreover, your investigation of HC has revealed that its largest bank loan is subject to a provision that prohibits HC from engaging in any merger or combination in which it is the extinguished corporation.

Write a memo to A, B and C explaining with appropriate detail, the best way to structure the transaction to minimize the risk of liability or loss to the resulting company and to eliminate the voting and/or dissenters rights of the shareholders of HC and LowBall.

**Question Three (25% of your grade)**

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

Jake’s mother died in 2010, and he inherited 10 shares of stock in BigCorp, a publicly traded corporation incorporated in Massachusetts. He told his good friend John that he thought it was a good buy, so John went out and bought 100 shares at $100/share. John then went online and read the corporation’s SEC filings and found out all sorts of possibly objectionable things about the company, including how the members of the Board of Directors had been self-dealing for a long time. Incensed, he immediately filed a derivative action on behalf of the corporation against the directors.

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

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

Four other items worth mentioning. First, Jake’s wife Sharon has her own small business corporation, a little boutique selling children’s toys, located in downtown Andover. She leases space from a real estate trust whose trustee and main beneficiary is a local politician, Peter Scumbaggio. Six weeks ago, Debby Dreed entered the shop to maybe buy some toys for her two small children when she slipped and fell, breaking her hip in the process, on the just-mopped floor of the store. Second, the stockholders of BigCorp last week agreed to merge with EverBiggerCorp in a two-for-one stock transaction, under which each existing stockholder of BigCorp would receive two shares of EverBiggerCorp. Every shareholder but one voted in favor of the merger. That shareholder is Betty Sloop.

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

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

Question Four (25% of your grade)

Your college roommate, Pat, who recently started an E-Commerce business, has hired your law firm to conduct the company’s legal affairs. Pat’s company has developed a software technology called WebNotes, which allows web surfers to post small “notes” on any web page much like “Post-It” notes that could be placed on a real-world page of a book or magazine. A note posted by a WebNotes user can be seen by anyone who downloads and uses the WebNotes software, and can include text, graphics, or hyperlinks. These notes do not actually exist on the third-party web page; rather, the WebNotes software connects to a large central database hosted by Pat’s company, which contains the content of the notes as well as the web sites they are “posted” on. When a WebNotes user visits any website, the software checks the central database to find and display any notes available for that site. Presently, about 120,000 people use WebNotes, a number that grows by 10,000 people per month.

Pat calls you to discuss two legal questions:

First, some WebNotes users are using the software to post disparaging remarks about the web sites upon which their notes appear. Because of this, some major websites like Amazon.com are threatening lawsuits against Pat’s company unless the company removes all associated notes and prevents users of WebNotes from posting to those sites. Pat notes that complying with such demands would greatly diminish the value of WebNotes to its users, and would this be very undesirable for the company. Also, the company does not at this point have the technological capability to block posting to certain web sites – though with some some significant rewriting of the software, such a feature could, in theory, be developed.
Second, Pat has noticed that a competitor company has developed a nearly identical software application called NetPost. This software allows NetPost users to see all of the WebNotes “notes” as well as the notes created by NetPost users. Apparently, the NetPost software accesses the WebNotes database if the user checks a box in the software’s preferences – a box that is unchecked by default. Because of its compatibility with WebNotes, Pat suggests that NetPost, although developed later, may be able to attract more users to its service, seriously harming WebNotes. Thus, Pat wants to know if they can do anything about NetPost from a legal perspective.

Write Pat a memorandum addressing both legal questions. Discuss the possible legal challenges that might be faced and/or initiated by the company, and what the arguments for each side would be. Be sure to express a view on the likely outcome for each question. If additional facts would alter your analysis, state what information you would request from Pat, and its relevance.

Question Five (Optional for Maximum Bonus of 10%)

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

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

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

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

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

The next day, he went back to work at the brokerage house only to find his computer had been hacked into and all of his files were copied. One file that was copied showed that a large corporation named LargeCo was in serious financial trouble. A week later, a homeless man named Charles was rummaging through the local landfill, found the files, and immediately robbed a little old lady of $10,000 cash she had in her oversized purse. He then took the money and invested it, selling LargeCo short. Within two weeks, he was a millionaire. He tracked down the old lady, and gave her $20,000, telling her it was a gift from a stranger, and not telling her he was the one who initially robbed her.
Two other nuggets for you to think about. First, Jimmy’s mother worked as a bookkeeper for Malaguti and Dickinson, LLP, a local, well respected law firm specializing in real estate closings, and she embezzled client funds, causing the firm to file for bankruptcy. All five partners and all eight associated and all of the paralegals and support staff at the now-defunct firm were shocked by this turn of events, and all agreed that Jimmy's mom would be the last person they would ever believe would do such a thing. However, she has fled the country.

Also, Jimmy’s sister, Mavis, was at a Boston Bruins game in the MSL luxury box when a fight broke out between the fans and the opposing team, the Washington Capitals. She got hit with a beer bottle over the head, and suffered a severe concussion. Videotape shows that it was one of the members of the Washington Capitals team who hit her over the head.

Discuss thoroughly all possible causes of action.