ST. MARY'S UNIVERSITY
SCHOOL OF LAW

Fall term
December 8, 1988

FINAL EXAMINATION
AGENCY AND PARTNERSHIP
MR. FLINT

____
Id. Number

Essay--12 pages

PLEASE READ CAREFULLY

ALL ANSWERS ARE TO BE WRITTEN ON THE PAGES PROVIDED WITH THIS EXAMINATION. THE EXAMINATION IS TO BE TURNED IN WITH THE ANSWERS AT THE END OF THE EXAMINATION AND ARE NOT TO BE KEPT BY THE TESTEE. NO COPY OF THIS EXAMINATION MAY BE REMOVED FROM THE EXAMINATION ROOM DURING THE EXAMINATION.

There are two questions of indicated value. The time for completing the examination is two hours.

1. This examination is "closed book." Statute books and/or calculators may not be brought into the testing room. Assume that all action takes place in a jurisdiction in which the Texas Uniform Partnership Act is in effect.

2. Be sure to answer the specific question that is asked. Information supplied relating to some unasked question will not increase your score, consumes your time needed to answer the asked questions, and could lower your score if erroneous.

3. If additional facts are necessary to resolve an issue, specify what additional facts you believe to be necessary and why they are significant. You may not make an assumption that changes or contradicts the stated facts.

4. Quality, not quantity, is desired. Think through and briefly outline (in the margin, on the question, or on the back of a page, if need be) your answer before you begin to write.

5. Write legibly. Be sure to formulate your anwers in complete sentences and paragraphs with proper grammar. Failure to so do will result in an appropriately lower score.

6. Do not seek an interpretation of language in the questions from anyone. If you sense ambiguity or typographical error, correct the shortcoming by shaping the question in a reasonable way and by recording your editorial corrections in your answer.

Under the Honor Code, when you turn in this examination, you affirm that you have neither given, received, nor obtained aid in connection with this examination, nor have you known of any one so doing. If you cannot make this affirmation, you shall note such fact on your examination and must immediately advise the Dean of the reason therefor.

I.

[50%--60 minutes]

For seven years Arunah Hubbell has been operating a brick factory in Teague, Texas. One of his biggest customers is Arthur Cary & Sons, a partnership composed of Arthur Cary and his sons Edward, Francis, George, and John that is involved in construction of houses in Mexia, Texas. The partnership agreement provides that Arthur Cary is to be the managing partner and only he has the authority to act on behalf of the partnership. Arthur Cary always sends his youngest son Francis Cary to buy the bricks pursuant to a power of attorney dated February 14, 1982, that states:

> "I, the sole managing partner of Arthur Cary & Sons, constitute and appoint Francis Cary as the attorney in fact for the partnership to purchase up to twenty truckloads of bricks from Arunah Hubbell's brick factory in any one thirty-day period.
>
> Arthur Cary & Sons
> by Arthur Cary, managing partner

The purchases are normally handled through a telephone order from Francis Cary followed by a trip to the factory by Francis Cary to pick up a truckload and sign a purchase order containing credit and payment provisions extending over the next ninty days.

On January 5, 1987, Arthur Cary & Sons pursuant to an effort to expand the business was awarded the contract to construct the new Federal Building in Waco, Texas. That same day Arthur Cary visited his attorney because he was angry at his sons for expanding the business out of homebuilding. The next day he tried to obtain Francis Cary's document representing his power of attorney but Francis would not surrender it. Consequently, Arthur Cary published in the newspaper on January 9, 1987, that no one had any authority to act on behalf of the partnership other than himself.

The expansion of the business required additional truckloads of brick and on February 27, 1987, Francis Cary telephoned to purchase fifty truckloads of brick. That day Arunah Hubbell, who many times had been told by Arthur Cary that only Arthur Cary had authority to speak on behalf of the partnership, visited Edward Cary, his usual contact at Arthur Cary & Sons. Arunah Hubbell inquired of Edward Cary that since this was a larger than usual order whether it was authorized by the partnership. Edward Cary said "Yes, hasn't he [meaning Francis] always been our man to buy brick."

Subsequently, Francis Cary arrived to cary off the brick and signed the usual purchase order for the brick, signing "Arthur Cary & Sons, by: Francis Cary, attorney in fact" as he always had before. The process took ten days since this load was larger than those in the past.

Arthur Cary watched all the brick arrive and then on April 4, 1987, sent a note to Arunah Hubbell to come and take back his brick since the contract under which they had been purchased was not legally binding on Arthur Cary & Sons.

Since Arunah Hubbell had incurred considerable extra expense to fullfill the order and doesn't have sufficient trucks to reclaim the brick without considerable expense, he has come to you, his attorney at Suem and Stickem, P.C., to determine whether he should retrieve the brick. What theories of liability would your advice pursue that is suggested by the above facts and agency and partnership law? Is any such theory likely to succeed legally? Why or Why not? What practical considerations would your advice contain? What is your recommendation to Arunah Hubbell as to his course of action (or yours on his behalf) to make sure he doesn't suffer a large loss (or to minimize his loss) on this transaction and why?

II.

[50%--60 minutes]

In January 1980 Arunah Hubbell, John Hartt, and Amos Buck formed a partnership to buy an automobile sales and service business. Arunah Hubbell contributed $80,000, John Hartt contibuted $10,000 and Amos Buck contributed $10,000. They all signed a ten-year note for $400,000, interest only until the tenth year and secured by the assets of the partnership among other things, to the former owners of the business, which they purchased.

The partnership agreement provided that (1) the partnership was to last 20 years; (2) Amos Buck would receive $300 a week for devoting his full time to the management of the business; and (3) profits after the payment to Amos Buck and other expenses would be divided in the ratio of the capital contributions of the partners.

In January 1983, Amos Buck suffered a heart attack, and became unable to manage the business. Arunah Hubbell, since he was the big investor in the business, took over the executive authority of the business, but did not devote his full time to management. Amos Buck continued to receive his $300 weekly fee. Arunah Hubbell through his attorney filed a petition in the appropriate court requesting the court to order the partnership dissolved because of Buck's inability to perform his part of the agreement, and to permit him to continue the business without liquidation until a suitable opportunity to sell the business should arrive. Amos Buck through his attorney opposed the petition on the ground that his disability was temporary.

In January 1984 John Hartt was killed in a car crash. Since Arunah Hubbell continued to operate the business, the representative of the estate of John Hartt requested that its interest be ascertained and accrue profits until paid.

During the first four years of operations the partnership had approximately $1,900,000 in revenues and $1,700,000 in expenses each year. This type of business in this area normally returned 20% on invested capital, which the partners had kept the same since the formation of the partnership by paying out any excess profits to the partners and by paying in any deficiencies due to losses. This pay-in and payout procedure was discontinued in January 1984.

In January 1985 Amos Buck died and his executor filed a supplemental answer to Arunah Hubbell's petition, joining in the request for dissolution, but asking that the partnership affairs be wound up. The partnership stopped the $300 weekly payments to Amos Buck that same month. Litigation on the subject continued until January 1987, when the court ordered the partnership dissolved and liquidated. The liquidation process brought in $450,000.

An accounting showed that the partnership had had a book value of $100,000 in January 1983 but had a negative book value in January of 1987 of $200,000. (NOTE: the book value of a partnership is the total assets less the total debt and is also equal to the partners capital accounts plus retained earnings.) The business had managed to stay open only by additional contribution of funds by Arunah Hubbell of approximately $200,000, $190,000 of which was represented by a promisory note. (Arunah Hubbell hoped to share as a creditor of the partnership by reason of this note.) Although the partnership had made money in 1983, without the efforts of John Hartt in referring buyers to the business, it had cash outflows of approximately $100,000 a year in each of 1984, 1985, and 1986. Arunah Hubbell's $200,000 contribution only covered the cash outflows for 1984 and 1985. The book value of the assets did not change between January 1983 and January 1987.

According to Arunah Hubbell, the obligation of the partnership, to which Buck's estate must contribute, include the business debts of the partnership incurred prior to January 1987, the advances of Hubbell in the years after 1983, and the expenses incurred by Hubbell in seeking the judicial settlement of the partnership problems, comprising accountants' fees of $8000 and attorneys' fees of $10,000. He asserts that Buck's estate is jointly liable for these amounts and must pay back all the $300 monthly management fees received for January 1983 to January 1985. Buck's executor says that none of these amounts are obligations of either the partnership or Buck's estate, and that Buck's estate is entitled to half of the book value that the partnership had in January 1985.

You are the master appointed by the judge for the partnership's dissolution. Determine who is to receive what portion of the liquidation proceeds and explain why. Do any of the partner's have to contribute additional cash? If so, how much and why? It may be helpful to construct the balance sheet of the partnership both in 1983 and 1987 the distributions can be ascertained without so doing. In 1980 at formation of the partnership the balance sheet was as follows (all numbers in 1000s):

assets	$500	debts		
		note to original owners	$400	
		Total debts		$400
		Capital accounts		
		Partner's capital accounts		
		Amos Buck	10	
		John Hartt	10	
		Arunah Hubbell	80	
		Total partner's capital accounts	100	
		Retained earnings	0	
		Total capital accounts		100
Total Assets	$500	Total debts and capital accounts		$500

NOTE: Total assets must equal Total debts and capital accou[illegible] an adjustment to an asset or addition of an asset must have [illegible] offset either under debts or capital accounts. Similarly a adjustment to a debt or the addition of a debt must have an [illegible] either under assets or capital accounts. The same holds for changes under capital accounts. Retained earnings is where [illegible] profit or loss for each year enters the balance sheet.