ST. MARY'S UNIVERSITY
SCHOOL OF LAW

Fall 2005
Exam No. __________

FINAL EXAMINATION
BUSINESS ASSOCIATIONS
PROFESSOR G. FLINT

ESSAY
PLEASE READ CAREFULLY

ALL ANSWERS ARE TO BE WRITTEN ON THE BLUE BOOKS PROVIDED WITH THIS EXAM

There are four questions (time and percent indicated). The Time for completing the examination is four hours.

1. This examination is "open book". You may use your casebook, statutory supplement, and class notes. Use of calculators and cleansed laptops is permitted.

2. **Be sure to answer the specific question that is asked. No question calls for a general recitation about a topic from your notes.** Information supplied relating to general material from your notes or some unasked question will not increase your score and consumes your time needed to answer the asked questions.

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. Assume you are in the State of Texas and Texas law applies, unless otherwise clearly denoted.

4. Quality, not quantity, is desired. Think through and briefly outline your answer before you begin to write.

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

6. Do not seek an interpretation of language in the question 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 correction 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 therefore.

I. (25 %--1 hour)

The stock price of a public company, Davis Flint Manufacturing, Inc., a Texas corporation located in Bexar County, has risen significantly over the last six months, from $5 to a high of $90 per share, in reaction to the following income. Nine months ago Davis Flint Manufacturing, Inc., began selling the company's solar panels as a tax shelter. The tax partnerships would purchase numerous panels, have them installed in large arrays on the premises of the end user, and lease the resulting hot water to the end user. The solar panels are sold to the partnerships on the installment plan, with 10 % of the cost down, and the rest paid in 9 equal installments over 9 years. For these transactions Davis Flint Manufacturing, Inc., on its quarterly financial statements submitted to the Securities and Exchange Commission and released to the public and at the direction of Davis Flint, President of Davis Flint Manufacturing, has reported the entire cash received plus the account receivable, less manufacturing cost and overhead costs, as income. Naturally enough, for the successful effort in causing a price rise in the stock, Davis Flint and the other officers have received incentive stock options during the initial price rise, exercisable at the prices of the stock on the day of issuance of the options, generally near $10 per share. Arunah Hubbell, leader of a notorious bear raider group, after reading these financial reports, got his group to start shorting (borrowing shares from brokers and selling it, with the intent to repurchase and return the shares later) the stock of Davis Flint Manufacturing, Inc. Arunah Hubbell recently has released a press release explaining the defect in Davis Flint Manufacturing, Inc.'s, financials. They should only report the cash portion as income as they receive it. As a result the stock price of Davis Flint Manufacturing, Inc., has declined to $60. Davis Flint has consulted with his auditors, Bateson Crampton & Associates, P.C., who are just now preparing the annual financials of Davis Flint Manufacturing, Inc. Bateson Crampton & Associates, P.C., agrees that income for an installment deal of this sort should be reported as cash is received, unless the tax partnerships have substantial financial backing insuring payment in the future. This is not the case. Davis Flint has also received telephone calls from major shareholders of Davis Flint Manufacturing, Inc., expressing dismay over the recent decline in stock price.

Davis Flint has entered your associate's office at Blue Stocking Law Firm, P.C. Davis Flint's concern is the potential liability of Davis Flint Manufacturing, Inc., and Davis Flint if this matter leads to lawsuits. What are your conclusions about that liability, and recommendations on what needs to be done to minimize any adverse result? Be sure to include your reasons and support?

II. (25%--1 hour)

Francis Burpee Life Insurance Company owns 70 % of a bank, Robert Lee State Bank. Francis Burpee Life Insurance Company, with 3000 shares outstanding, has a value approximately the same as Robert Lee State Bank, with 1000 shares outstanding.. Francis Burpee, President of Francis Burpee Life Insurance Company, would like to expand into other businesses by creating Burpee-Lee Financial Holding Company, with 13,000 shares outstanding, that owns as two of its subsidiaries, Francis Burpee Life Insurance Company and Robert Lee State Bank. The board of Robert Lee State Bank is not in favor of the reorganization and expansion.

Francis Burpee has entered your associate's office at Silk Stocking Law Firm, P.C. Francis Burpee wants to know what has to be done in order to carry out this reorganization. What are your recommendations on what needs to be done and how to carry them out? Be sure to include your reasons and support?

III. (25 %--1 hour)

Otha Gasaway, President of Otha Gasaway Corporation, needed venture capital two years ago. Otha Gasaway owns 60 % of the common stock of Otha Gasaway Corporation. Otha Gasaway obtained moneys from James Rogers Venture Capital Group, in a deal structured by James Rogers Venture Capital. The amount was $100,000. James Rogers Venture Capital Group obtained 1000 shares of Preferred Stock with $1000 par value each, and each share paying a 7 % fixed, cumulative dividend. The Preferred Stock has a liquidation preference to the extent of their par value. The articles authorize 10,000 shares of Preferred Stock. The Preferred Stock has the right to elect 75 % of the Board of Directors of Otha Gasaway Corporation. There presently are four directors, Garrett Voshell, John Lynch, and James Rogers, all representing James Rogers Venture Capital, and Otha Gasaway. Garrett Voshell, John Lynch, and James Rogers have proposed that Otha Gasaway Corporation be liquidated, so that James Rogers Venture Capital can get its money out of Otha Gasaway Corporation, presently worth about $1,100,000. Otha Gasaway wants to continue the business and his job as its president.

Otha Gasaway entered your associate's office at Suem & Stickem Law Firm, P.C. Otha Gasaway wants to know how he can save his company and what to do in order to carry that rescue. What are your recommendations on what needs to be done and how to carry them out? Be sure to include your reasons and support?

IV. (25 %--1 hour)

George Justice and Frank Stiner operate a law business. They share an office and divide the expenses of operating the office in the ratio of 2:3. They also shared revenues from legal fees in the same proportion. One day George Justice came to work and his key would not open the door. Frank Stiner had changed the locks. Frank Stiner then told George Justice to go work elsewhere and that Frank Stiner need the entire office space to operate his burgeoning legal business. George Justice requested the files George Justice was working on and to come into the office to exam the time records files on the office computer to determine George Justice's share of the unbilled legal fees and to get the addresses and phone numbers of his clients. Frank Stiner refused, saying that such information was confidential and those clients belonged to Frank Stiner.

George Justice entered your associate's office at Steelum & Cheatem Law Firm, P.C. George Justice wants to know how he can obtain the requested information and his portion of the legal fees. What are your recommendations on what needs to be done and how to carry them out? Be sure to include your reasons and support?