ST. MARY'S UNIVERSITY
SCHOOL OF LAW

Summer 2007
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)

Davis Flint, John Hartt, both dentists licensed in Texas, and Ananias Carll, an accountant licensed in Texas, desire to form a partnership to provide dental services to clients in Texas. Davis Flint, being more experienced than John Hartt, wants to insulate himself from any mistakes that the partners might make in rendering dental services. Ananias Carll wants to handle the billing and collections for 5 percent of the amount of the bills.

Davis Flint, John Hartt, and Ananias Carll have entered your associate's office at Blue Stocking Law Firm, P.C. They seek your assistance in setting up this dental business. What is your advice concerning what needs to be done to set up the business? Be sure to include your reasons and support.

II. (25%--1 hour)

Michael Sweetman has solicited Arunah Hubbell, a local dentist, to invest in Michael Sweetman Incorporated, a Texas company that has been manufacturing solar panels sold through distributorships for three years. Michael Sweetman has promised Arunah Hubbell that he can sit on the board of Michael Sweetman Incorporated, which presently has 3 directors, and have the right to an annual dividend equal to 7 % of Arunah Hubbell's total investment in Michael Sweetman Incorporated. Arunah Hubbell wants some mechanism to insure his position on the board and his dividend. Arunah Hubbell also would like to have someway of getting his investment back out of Michael Sweetman Incorporated in the event he is forced off the board or is not paid his dividend or ten years have elapsed.

Michael Sweetman has entered your associate's office at Silk Stocking Law Firm, P.C. He wants to know how to do this transaction. What is your advice concerning what needs to be done to carry through with this investment? Be sure to include your reasons and support.

III. (25 %--1 hour)

Francis Burpee wants to gain control of Joseph Lee Incorporated, a public company. So Francis Burpee bought just under 5 % of the outstanding shares of Joseph Lee Incorporated on the open market. Francis Burpee then made a public announcement that his group of investors would buy up to 55% of the outstanding shares of Joseph Lee Incorporated at 150% of the prior day's closing price. Francis Burpee stated that his group would keep this offer open for 30 days.

Joseph Lee is President of Joseph Lee Incorporated. Joseph Lee is concerned that Francis Burpee will remove Joseph Lee from his presidency, if Francis Burpee gains voting control of Joseph Lee Incorporated. So Joseph Lee called an emergency meeting of the board of Joseph Lee Incorporated one day after Francis Burpee's announcement to amend the articles of Joseph Lee Incorporated and to submit the amendment to the shareholders of Joseph Lee Incorporated for their approval within 12 days. The amendment would provide that a shareholder holding more than 20% of the outstanding shares of Joseph Lee Incorporated may not vote those shares held in excess of the 20%, unless the other shareholders vote at a shareholder meeting to allow that shareholder to vote the shares in excess of the 20%. After the board announced their action, Joseph Lee received a call from Francis Burpee. Francis Burpee threatened to bring a derivative action against the board unless the board rescinded their action.

Joseph Thomas Lee has entered your office at Suem and Stickem, P.C. He wants to know whether the company can successfully defend this potential lawsuit. What is your advice? Be sure to include your reasons and support.

IV. (25 %--1 hour)

Otha Gasaway is negotiating with George Christian about purchasing George Christian Incorporated, a corporation owned by George Christian. The George Christian Incorporated is a construction company with several employees. George Christian Incorporated adopted a defined benefit plan for its employees. This defined benefit plan is subject to the Employee Retirement Income Security Act of 1974 (ERISA). ERISA requires that George Christian Incorporated make certain contributions to the defined benefit plan each year. In the event these contributions are not made the Pension Benefit Guaranty Corporation, a federal agency, can obtain a lien on the assets of the corporation to secure the payment. George Christian is willing to represent that George Christian Incorporated has made all the required pension payments. Never-the-less Otha Gasaway is concerned enough about the potential liability that he would like his acquisition of George Christian Incorporated to be isolated from any liability resulting from violations of ERISA. Otha Gasaway also desires that the employees will continue working for him and that they have a defined benefit plan.

Otha Gasaway has entered your associate's office at Readem & Billem, P.C., for advice about how to carry out this acquisition. What is your advice about what needs to be done? Be sure to include your reasons and support.