ST. MARY'S UNIVERSITY
SCHOOL OF LAW

Spring 2006
Exam No. _____

FINAL EXAMINATION
SECURITIES REGULATION
PROFESSOR G. FLINT

ESSAY
PLEASE READ CAREFULLY

ALL ANSWERS ARE TO BE WRITTEN ON THE BLUE BOOKS PROVIDED WITH THIS EXAM. BE SURE TO NUMBER EACH RESPONSE.

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

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

2. **Be sure to answer the specific question that is asked. No question asks 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.

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. (33.3 %)

The board of directors of Otha Gasaway, Inc., a closely-held company, desire to acquire its primary supplier, Garrett Voshell, Inc., a closely-held corporation. This acquisition will eliminate the threat of a supply cut-off. Both companies operate in Houston, Texas. Otha Gasaway, Inc., makes solar panels for which Garrett Voshell, Inc., provides copper plates in a configuration designed by Otha Gasaway, Inc. The deal is being negotiated by James Madison Rogers, Financial Vice President of Otha Gasaway, Inc., who despite a conviction four years ago for selling viatical insurance interests that the Securities and Exchange Commission deemed securities, is a financial genius. Otha Gasaway, President of Otha Gasaway, Inc., estimates that the acquisition will require $8 million in cash. Otha Gasaway proposes to raise this cash by selling common stock to a group of local investors that he personally knows on the following basis. Each member of the group will receive Otha Gasaway, Inc. common stock for cash and a guarantee at the Joseph Moon National Bank of Otha Gasaway, Inc., borrowings from that bank in an amount of three times the cash. So the investors will put up $2 million in cash and guarantee $6 million. The group consists of nineteen Houston businessmen and lawyers in your firm, both partners and associates.

Otha Gasaway has entered your associates's office at the SilkStocking Law Firm for advice as to the least expensive course of action. Explain to him how you would structure this transaction to comply with the securities law.

II. (33.3%)

Davis Flint was employed as the financial office of Lucy Holmes, Inc., a wholly-owned subsidiary of John Hartt, Inc., a privately-held technology firm. Lucy Holmes, Inc., is a New Jersey corporation doing business in Texas. John Hartt, Inc., is a German corporation. Shortly after his employment at Lucy Holmes, Inc., in 2002 John Hartt, president of John Hartt, Inc., allowed Davis Flint to purchase shares in John Hartt, Inc. One condition of the purchase was that he execute an employee stock purchase contract. The contract provided that if he severed service with any affiliate of John Hartt, Inc., for any reason prior to four years after the date of the contract, John Hartt, Inc., had the option to purchase Davis Flint's shares at cost. This was the only information he was given concerning John Hartt, Inc., and its shares. In 2004 John Hartt, Inc., sent a report and financial statement to its shareholders, including Davis Flint. The report indicated that the value of the shares had risen by a factor of 5 since 2002. In 2005 John Hartt, Inc., was reorganized and John Hartt terminated the employment of Davis Flint at Lucy Holmes, Inc., in accordance with that reorganization. Shortly thereafter John Hartt, Inc., sent a letter to Davis Flint exercising its right to repurchase its shares held by Davis Flint pursuant to the 2002 contract at $30,000.

Davis Flint has entered the law office of Suem & Stickem, P.C. Davis Flint is greatly angered. He claims that his repurchased shares of John Hartt, Inc., which cost him $30,000 in 2002, were worth $200,000 at the time of repurchase on the basis of the most recent sale to another employee. The financial statements of John Hart, Inc., indicates that several other employees may have been treated similarly. There are line items for shares sold to employees and for shares repurchased from employees, aggregating in the millions. One of the law firm's law clerks wrote a memorandum concluding that Texas law permits terminating employees at will. For those employees terminated without cause Texas law implies a "good faith" provision into employee benefit contracts that voids any forfeiture provision.

Ananias Carll, the managing partner fo Suem & Stickem, P.C., has walked into your associate's office and related the above story, while Davis Flint remains in Ananias Carll's office. Ananias Carll wants to determine whether the firm should take this case or not. What is your advice and support.

III. (33.3 %)

The board of directors of Arunah Hubbell, Inc., a manufacturer of solar panels, have decided to expand the business of Arunah Hubbell, Inc., to include manufacturing photo-voltaic cells. These directors have directed Arunah Hubbell, president of Arunah Hubbell, Inc., to investigate the possibility of making a tender offer of the shares of John Maclannachan, Inc., a manufacturer of photo-voltaic cells. Arunah Hubbell has hired the Blue Blood Law Firm, P.C., to prepare the documents for the tender offer. Meanwhile John Gilmore, a director of Arunah Hubbell, Inc., who learned of the upcoming tender offer at a board meeting of Arunah Hubbell, Inc., has mentioned the proposed tender offer to his broker and personal friend, Michael Sweetman. Michael Sweetman has recommended stock of John Maclannachan, Inc., to several of his institutional clients, who purchased an aggregate of 100,000 shares at an average price of $35 a share. During the two-week period in which the institutions were buying, their transactions accounted for 60% of the trading volume and the price of John Maclannachan, Inc., rose from $30 to $40 a share. Arunah Hubbell, Inc., then announced the tender offer for John Maclannachan, Inc., stock at $50 a share, having determined that the offer would have to be at least $10 above the current market price to be successful. After Arunah Hubbell, Inc., made the tender offer but before it has expired, management of John Maclannachan, Inc., issued a statement to its shareholders describing Arunah Hubbell, Inc.,'s offer as "inadequate" without giving any reasons for that conclusion. John Maclannachan, Inc., also caused John Maclannachan, Inc., Employees' Stock Ownership Plan to purchase large quantities of John Maclannachan, Inc., common stock, apparently with the intent of pushing the price up and making Arunah Hubbell, Inc.,'s offer seem less attractive.

Arunah Hubbell, discovering these matters after Arunah Hubbell, Inc., completed the tender offer at $55, has entered your associate's office at the Blue Blood Law Firm, P.C., demanding to know whether anything can be done about these actions. What is your advice and support?