ST. MARY'S UNIVERSITY
SCHOOL OF LAW

Spring Term 2000
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 EXAMINATION.

There are four questions of equal value (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 classnotes. Use of calculators and laptops are permitted.

2. Be sure to answer the specific question that is asked. Information supplied relating to 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 addition 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 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.

[25%--60 minutes]

Arunah Hubbell, a former employee of John Hartt, Inc., a telecommunications company, has entered your associate's office at Suem & Stickem, P.C. Mr. Hubbell seeks your advice on whether he should sue John Hartt, Inc. and how much he is likely to recover in such a lawsuit. What is your advice. Be sure to provide reasons with support such as appropriate regulations, statutes, and cases.

Arunah Hubbell is angry about his recent termination at John Hartt, Inc., and the subsequent forfeiture of his rights under the John Hartt, Inc., 1995 Employee Stock Bonus Plan and the John Hartt, Inc., 1996 Employee Incentive Stock Option Plan. Arunah Hubbell was hired by John Hartt, Inc. in 1995 as the southwest district manager. In 1995 Mr. Hubbell was allowed to purchase 1,000 shares from the 1995 Employee Stock Bonus Plan at $10 per share. The shares are currently trading at $190 per share. In connection with this purchase, Mr. Hubbell was required to sign a call agreement with John Hartt, Inc. Under the call agreement, John Hartt, Inc. had the right to repurchase the shares at a strike price. The strike price was the employee's cost, if employed less than five years, and the open market price, if employed more than five years. In 1996, Mr. Hubbell was granted an option to purchase 500 additional shares at $15 commencing in 2001 and ending in 2006. The option has a provision providing that it expires within 60 days of termination, if employed less than five years, and expires in 2006, if employed more than five years. Prior to the fifth anniversary of his hire, John Hartt, Inc. was restructured and Mr. Hubbell's position was eliminated. So John Hartt, Inc., terminated Mr. Hubbell. John Hartt, Inc. in the severance papers exercised its call on the 1000 shares, gave Mr. Hubbell a check for $10,000 plus interest at 5% over the four years, and indicated the option on the 500 additional shares would expire worthless.

Your law clerk, Bateson Crampton, has found a line of Texas labor law cases that say when an employee is terminated by will of the employer (not on the employee's will or by act of God), the employer may not exercise its rights under forfeiture provisions in employee benefit plans. Limit your advice to lawsuits under corporate law, and do not include this labor law case as a separate ground on which to sue John Hartt, Inc.

II.
[25%--60 minutes]

Otha Albert Gasaway and Garrett Voshell are the only two directors of James Madison Rogers, Inc., a printing concern. Mr. Gasaway and Mr. Voshell have come into your associate's office at Silk Stocking Law Firm, P.C., seeking advice on how to cast their votes on the restructuring transaction that you have been working on for James Madison Rogers, Inc. What is your advice. Be sure to provide reasons and support.

Otha Albert Gasaway and Garrett Voshell want to split off James Madison Rogers, Inc.'s, internet business. The internet business is very risky, but has the potential for rapid growth and significantly increased values. You have organized the reorganization as follows. Mr. Gasaway and Mr. Voshell, will turn in their shares in James Madison Rogers, Inc., and receive an equal number of shares in Printing.Com, Inc., the proposed former internet business of James Madison Rogers, Inc. The remaining shareholders, including the rank and file employees and the James Madison Rogers, Inc. Employee Stock Ownership Plan (ESOP), will retain their shares in James Madison Rogers, Inc. The net effect is that Mr. Gasaway and Mr. Voshell will be out of James Madison Rogers, Inc. and James Madison Rogers, Inc. will no longer own the internet business. Mr. Gasaway currently owns 20% of James Madison Rogers, Inc., Mr. Voshell owns 20%, the ESOP owns 40%, and the other officers and the employees own 20%. All the employees, including Mr. Gasaway and Mr. Voshell, have accounts in the ESOP. Mr. Gasaway's account is 30% of all such accounts, and Mr. Voshell's account is 30%. Mr. Gasaway and Mr. Voshell are the only two trustees of the ESOP and so will also cast the ESOP's votes. After the transaction, Mr. Gasaway and Mr. Voshell will no longer be employees of James Madison Rogers, Inc., and so the ESOP will pay out their two accounts to them in cash.

Rebecca Turner, your law clerk, has found that the Employee Retirement Income Security Act of 1974 (29 U.S.C. sec. 1000) provides that the ESOP trustees must operate the ESOP in the best interest of all employees, and this interest is to provide moneys for their retirement years.

III.
[25%--60 minutes]

Joseph Erwin of the Francis Burpee Insurance Co. has entered your associate's office at the Blue Blood Law Firm, P.C. Mr. Erwin wants to know whether his insurance company has any exposure for the following incident. What is your advice. Be sure to provide reason and support.

Francis Burpee Insurance Co. insured two doctors, Joseph Thomas Lee and Joseph Ferguson, for medical malpractice. Dr. Lee and Dr. Ferguson ran several clinics throughout San Antonio to serve Elizabeth Foley Health Maintenance Organization clients. Each clinic had two doctors and a physician's assistant. Each clinic was incorporated as professional associations with Dr. Lee and Dr. Ferguson as the sole shareholders, directors, and officers. Each clinic corporation received the Elizabeth Foley Health Maintenance Organization fees, paid the two doctors and staff and other expenses of the clinic, including malpractice insurance on the two doctors and physician assistant. All excess moneys went to the two shareholders, Dr. Lee and Dr. Ferguson. Dr. Lee and Dr. Ferguson worked only at the clinic located in Alamo Heights. The bank and accounting records of each clinic were separately maintained, but there are no corporate minutes beyond the organizational minutes. Some of the clinics even began operations before their incorporation, including Northwest Lee-Ferguson, P.A., the clinic in the medical center.

In March 1998, Julia Hartt, the physician's assistant at Northwest Lee-Ferguson, P.A., misdiagnosed a patient, Lucy Holmes. Ms. Hartt was under the supervision of Dr. Rachel Jewell and Dr. Mary Peltier, the two doctors employed by Northwest Lee-Ferguson, P.A. Lucy Holmes one week later returned in much worse condition and was referred by Julie Hartt to the emergency room at a nearby hospital. Dr. Martha Davis performed surgery on Lucy Holmes. Ms. Holmes required additional subsequent corrective surgeries.

In July 1998 Dr. Lee and Dr. Ferguson decided to liquidate their various clinics due to a significant drop in patients in the Elizabeth Foley Health Maintenance Organization. Upon termination each doctor and physician assistant was given the opportunity to purchase a tail malpractice policy at their own expense. The tail would cover claims resulting from malpractice committed before the policy's inception. Julia Hartt was the only employee of the clinics not to purchase the tail.

In February 1999 Lucy Holmes hired Rebecca Turner, a plaintiff's attorney, to recover the costs of the surgeries and punitive damages. Ms. Turner has sued Julia Hartt, Dr. Jewell, Dr. Peltier, Northwest Lee-Ferguson, P.A., Dr. Lee, and Dr. Ferguson.

IV.

[25%--60 minutes]

Dr. Stephen Jewell has entered your associates office at Stickem & Stabem, P.C. seeking advice on his options concerning his partnership with Dr. Ananias Carll. Be sure to provide reasons and support.

Dr. Stephen Jewell and Dr. Ananias Carll operate psychological clinics in rural doctors' offices in the San Antonio area. The partnership agreement, dated in 1996, provides that they will share in the expenses and most revenues equally. A significant amount of the revenue is generated by the staff personel with masters degrees. Each partner sends out and collects his own bills for his own work. Dr. Carll suspected that Dr. Jewell was not reporting all the revenues he charged clients and has had numerous shouting matches with Dr. Jewell over this issue in front of the other employees. Dr. Jewell, according to the partnership agreement, has the right to keep all revenues generated by Dr. Jewell serving as an expert witness in court. Dr. Carll claims that instead of generating partnership revenues with his time, Dr. Jewell is concentrating on expert witness work. In April 2000 Dr. Carll changed the locks on the partnership offices and instructed

.ne staff not to let Dr. Jewell in the offices. He has also refused to provide billing information to Dr. Jewell concerning Dr. Jewell's patient since that is on the same computer as are Dr. Carll's records and Dr. Carll seeks to maintain the confidentialty of his own records. Dr. Carll also refuses to collect any bills generated by Dr. Jewell.