

**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)

Otha Gasaway and George Christian formed an investment partnership at will orally. The only assets of the partnership are cash or securities readily convertible into cash. Otha Gasaway contributed \$2000 in cash and George Christian contributed \$5000 in cash. The partnership made a net profit of \$9,000 the first year, which was not withdrawn by the partners. Then George Justice joined the partnership, contributing \$7000 in cash. During the second year of operations, Otha Gasaway was paid \$2000 by the partnership for keeping the partnership's accounting books. George Christian on partnership business injured a pedestrian with his automobile. The legal settlement of \$8000 was paid by George Justice. During the second year of operations the partnership lost \$15000 (calculated by excluding the expense of the \$2000 payment to Otha Gasaway). The three partners now want to dissolve the partnership, although there are outstanding bills to partnership creditors in the amount of \$2000.

Otha Gasaway, George Christian, and George Justice have entered your associate's office at The Blue Blood Law Firm. They want to know how to terminate and how much each partner will get? Prepare your memorandum on the subject, providing citations to your authority.

II. (25%--1 hour)

Justus Buck, Bateson Jewell, and Roswell Flint have agreed to purchase Fun Time Vans, a Texas partnership, from Isidore Peltier and Julia Rivard on the following terms: The sellers will transfer all the assets of Fun Time Vans to Fun Time Incorporated, a Texas corporation to be formed for this purchase, which will assume all the debts of the business of Fun Time Vans. The corporation will be owned entirely by Justus Buck, Bateson Jewell, and Roswell Flint. The corporation will pay Isidore Peltier and Julia Rivard \$50,000 in cash now and issue to them a written promise to pay \$50,000 in ten years. Isidore Peltier and Julia Rivard will receive annual payments of \$6,000. If the corporation fails to make the annual payment when due, then the entire \$50,000 will be due immediately. Isidore Peltier and Julia Rivard will have no vote in the affairs of the company, and no right to receive any payments except as just described.

Roswell Flint will invest \$60,000 in cash in the corporation. Roswell Flint will have 20% of the voting power on all matters. Roswell Flint will be entitled to receive \$7,500 a year before any payments (other than salaries) are paid to Justus Buck and Bateson Jewell in any year, and in addition, he will be entitled to a 20% share in any amounts (other than salaries) that are paid out each year. In the event the company liquidates, Roswell Flint will be entitled to receive \$50,000 before Justus Buck and Bateson Jewell receive anything and 20% of any additional amount that is paid out thereafter.

Justus Buck and Bateson Jewell will each invest \$20,000. They will each be entitled to 40% of the vote on all matters, to receive 40% each of all amounts that may be paid each year after all priority amounts have been paid, and to receive 40% of any amounts paid out to the owners if the company liquidates after all prior claims have been paid. One of the pieces of paper they would like to receive from the company, in return for their investment, is a promise to pay \$10,000 upon demand of the holder. They will not be entitled to any assured or preferred annual payments.

The senior partner in your law firm, The Silk Stocking Law Firm, P.C., has entered your associate's office. After reciting the above facts concerning his clients Justus Buck and Bateson Jewell, the senior partner has requested that you prepare draft articles of incorporation and organizational minutes for Fun Time Incorporated. Prepare such drafts and be sure to explain each provision in the articles of incorporation and each resolution in the organizational minutes, by following each provision and each resolution with a paragraph in brackets with the explanation that includes support of appropriate code sections and relevant case law.

III. (25 %--1 hour)

Draper Voshell, chief executive officer of Draper Voshell, Inc., a diversified Delaware construction company, desires to purchase Andrew Melvin Incorporated, a local Texas construction company. Andrew Melvin Incorporated is engaged in bidding on certain Texas construction projects requiring less than two years to complete and hires about 100 employees for each project but refuses to rehire them for the next project, thereby terminating the employees. Andrew Melvin has a pension plan for its employees with the statutorily permissible two year qualification period before any employee becomes vested. As a result of the qualification period, the only employees participating in the pension plan are the long term management employees. Andrew Melvin Incorporated also has assets consisting of an office building, cars, trucks, and construction vehicles, and various construction materials stored in rented space.

Timothy Irons, Andrew Melvin Incorporated's general counsel and the senior partner in your law firm, Slamem and Stickem, P.C., has entered your associate's office. Timothy Irons wants you to prepare a check list (a list of everything that needs to be done to accomplish the transaction) for the acquisition by Draper Voshell, Inc., so that the appropriate associates in the firm can begin to prepare the documents. Timothy Irons has expressed to you Draper Voshell's concern about this acquisition: the Internal Revenue Service might determine that Andrew Melvin Incorporated should have required additional employees to become participants in the pension plan and require Andrew Melvin Incorporated to pay additional contributions to the plan for violating the anti-discrimination provisions of the Employee Retirement Income Security Act of 1974 (ERISA). Prepare such check list and be sure to explain each item in the check list by following each item with a paragraph in brackets with the explanation that includes support of appropriate code sections and relevant case law. NOTE: ERISA plans are separate entities, not corporate assets.

IV. (25 %--1 hour)

Arunah Hubbell Incorporated, a Texas corporation, was formed with Arunah Hubbell owning 4500 shares, Moses Smith owning 4500 shares, and Michael Sweetman owning 1000 shares, all three serving as directors, and Arunah Hubbell serving as president, Moses Smith as vice president, and Michael Sweetman as secretary. Recently, Arunah Hubbell has been quarelling with Moses Smith about how to run the operations of Arunah Hubbell Incorporated and has approached Michael Sweetman about terminating Moses Smith as a director and vice president.

Michael Sweetman and Moses Smith have entered your associate's office at Suem and Stickem, P.C. Michael Sweetman is concerned if he participates in Arunah Hubbell's scheme to render Moses Smith's investment in Arunah Hubbell Incorporated worthless (no salary, no dividend, no market for privately held stock), the same will happen later to Michael Sweetman. Moses Smith believes he and Michael Sweetman, a local millionaire, can operate Arunah Hubbell Incorporated without Arunah Hubbell. Michael Sweetman and Moses Smith want your recommendation on a course of action to remove permanently Arunah Hubbell and to prevent either one from losing their positions at the company. What is your advice and its reasoning. Be sure to provide your support of code provisions and appropriate case law.