

Professor Matthews
Spring 2000

Exam. Number _____

BUSINESS ORGANIZATIONS FINAL EXAMINATION

Instructions:

1. You have 3 hours and 15 minutes to complete this exam. Your answers will be collected in the room in which the exam is handed out at 11:45 a.m. Late bluebooks will be appropriately penalized.
2. All answers must be written in bluebooks (except if typed as provided in #3). MATERIAL WRITTEN ON THE TEST ITSELF WILL NOT BE CONSIDERED. Please consecutively number your bluebooks. Write on only one side of a page, but you do not need to double space. Number your answers to correspond to the question and sub-part you are answering, but you need not answer in any particular order.
3. This exam may be typed using a manual typewriter, but no computers or memory typewriters are permitted. The exam shall be typed on paper provided by the law school.
4. For this final, you may use the statutory supplement and handouts provided to you by the Professor during the semester. You are NOT permitted to use the casebook, your notes, or any other materials. Materials other than those permitted should be placed at the front of the room before the exam begins.
5. Assume that current Arkansas law applies to the transaction.
6. **Please turn in the copy of the test along with your answers, and label both with your exam identification number.**
7. If any ambiguity or typographical error appears in any question, state the problem, make your assumption, and proceed accordingly.
8. This exam consists of the following parts, divided into subparts as indicated. Please budget your time carefully. You should apportion it approximately as follows:

<u>Question</u>	<u>Points</u>	<u>Time (Approx)</u>
I	33	60 min.
II (A-E)	11 ea.	20 min. ea.
III. Short Answer	12	20 min.
TOTAL	100	180 min.

Question I. (1 Hour, 33 Points)

Anderson and Baker each owned 50% of the shares in a small closely held corporation (Allgoods, Inc.) formed for the purpose of operating the Allgoods department store. After a rash of shoplifting thefts, President Anderson contacted Ace Security Services, LLP in regard to hiring some plainclothes in-store detectives. Ace was a general partnership established in 1990 by partners Curtis and Duncan, which had been registered as a limited liability partnership in 1998.

Anderson and Ace Security Services entered into an arrangement by which Curtis would provide security services for Allgoods on a half-time basis. Curtis would monitor Ace-installed in-store cameras and patrol the store in plain clothes for twenty random hours a week, exercising his own expertise and discretion in maintaining the operation. Allgoods, Inc. paid a flat rate to Ace Security for these services, although Allgoods set two restrictions. These were the right to override Curtis' decision to detain a particular suspect, and a prohibition on carrying firearms.

Last week, Curtis detained Edwards on the store premises on suspicion of shoplifting. An altercation developed, during which Edwards was shot in the foot with a gun carried by Curtis. Allgoods, Inc. has since discovered that the two men had a history of disagreements, and that the charges of shoplifting were groundless. Edwards intends to bring suit for false imprisonment and battery. Evaluate the potential liability of the following based on the legal principles discussed in this course:

1. Curtis
2. Duncan
3. Ace Security Services, L.L.P.
4. Allgoods, Inc.
5. Anderson
6. Baker

Question II. Shorter Essay (20 Minutes, 11 Points Each)

A. Ambiance, Ltd. was a traditional limited partnership formed with 3 general partners (Morgan, Norton, and Oliver) and one limited partner (Porter) to operate a restaurant. At a partner meeting in April of 2000, Morgan proposed that the limited partnership enter into a requirements contract with Tyson's, Inc. to purchase all of the restaurant's chicken and pork products for the following year. (This was a substantial portion of the restaurant's yearly purchases). Norton and Oliver consulted with Porter (who had some expertise in the industry), and decided to oppose the proposal. However, Morgan thought it was such a good opportunity that on May 1, 2000, he signed the contract with Tyson's on behalf of Ambiance, Ltd. At this point, discuss the rights and obligations as to Tyson's and among themselves in regard to:

1. Morgan
2. Norton
3. Ambiance, Ltd.
4. Porter

B. Garrison and Harmon were in the process of forming a corporation to operate a lumber mill. In order to prevent their chosen site from being leased to another, Garrison entered into a contract to lease the property from lessor Isaacs before the corporation's Articles of Incorporation were filed. Garrison signed the contract "Garrison, as agent for a corporation to be formed, which will be the party to this contract." After the Articles were filed, Lumber, Inc.'s board passed a resolution adopting the contract. Lumber, Inc. has missed several lease payments, and it is clear that the corporation was inadequately capitalized. At this point, discuss the liability of the following to Isaacs:

1. Garrison
2. Lumber, Inc.
3. Harmon

C. Luxor Limited Liability Company filed its Articles of Organization on July 1, 1998 in Arkansas. The LLC has 20 members, and management was vested by its Articles in member/manager Hilton. Hilton has engaged in a multitude of transactions with third parties on behalf of the LLC from its inception. Hilton comes to see you because a friend at a cocktail party told Hilton that he ought to ask you about franchise taxes. Hilton has no idea what they are or to whom they are owed. The LLC has never paid any franchise tax, nor received any notice that Hilton can recall. However, the LLC changed addresses immediately after its formation and any mail to the old address might never have caught up. Educate Hilton on franchise taxes, and advise him as to the status of an LLC, its members, and managers in regard to them. Hilton wants to know if the problem, if it exists, can be fixed. How much will the LLC have to pay? Does it matter WHEN the relevant transactions took place? Would he have had this problem if the entity was a limited partnership?

D. Jenkins, King and Lambert want to form a close corporation, with the shares to be issued 1/3 to each. They want the corporation to have the following characteristics. Can they achieve these objectives under Arkansas corporate law? If so, explain HOW to implement them.

1. Insure that the shareholders have the right to maintain the 1/3 proportions even if more shares are issued.
2. Insure that Jenkins will be elected corporate President.
3. Prohibit the transfer of shares for two years.
4. Insure that Lambert has a veto over the sale of substantially all the assets of the corporation.

E. Kelley was one of 5 directors of Arkansas Farms, Inc., a closely held corporation. After full disclosure at a board meeting, Kelley sold to the corporation a piece of equipment that he owned for a price of \$20,000. The vote was 3 to 2 (with Kelley voting in favor) to approve the purchase. One of the shareholders

thereafter sought to have the corporation avoid the transaction, or hold Kelley liable for damages for breach of fiduciary duties, because the property was only worth \$10,000. Assess the validity of the transaction and Kelley's liability. What if Kelley had instead been a general partner in a 5-person general partnership formed after 2000, and the vote was a vote of the partners?

III. Short Answer (20 Minutes, 12 Points)

EXPLAIN your answer to each of the following based on the legal principles discussed in this course. (2 points each)

1. How does the consideration which can be paid for corporate shares vary from that which can be paid to purchase interests in other business entities in Arkansas? Why?
2. How does the apportionment of distributions by a limited partnership vary from the apportionment of distributions by general partnerships or LLCs in Arkansas? Why?
3. How does the procedure triggering voluntary dissolution of a corporation differ from other business entities in Arkansas? Why?
4. Staggering is a device to undermine cumulative voting. Explain.
5. Are the shareholders of the combining corporations entitled to appraisal rights in a triangular merger? In a sale of substantially all the assets? Explain.
6. Are the members of an unincorporated nonprofit association liable for torts committed by other members of the association?