

Professor Matthews
Spring 2001

Exam. Number _____

BUSINESS ORGANIZATIONS FINAL EXAMINATION

Instructions:

1. I have drafted the test to be completed in 3 hours, but I will give you 4 hours in which to complete it. Your answers will therefore be collected in the room in which the exam is handed out at 12:30 p.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	33	60 min.
III. Short Answer	34	60 min.
TOTAL	100	180 min.

Question I. (1 Hour, 33 Points)

Anderson, Baker and Carver in 1990 formed an Arkansas general partnership (Ace Equipment Sales) for the purpose of selling construction machinery. They have made no election to be covered by the Revised Uniform Partnership Act. Their written agreement provided that all partnership liabilities would be borne solely by Anderson. Baker has assigned his entire partnership interest to his wife in settlement of an obligation for back child support. Carver has loaned \$50,000 to the partnership which remains unpaid.

The partnership hired Davis as a salesman for the business in 1995. The training session conducted for employees specifically instructed employees that they had no power to vary the terms of the written sales contract.

In January of 2001, Davis sold a \$10,000 dirt mover to Xerxes to be delivered on a particular date. Davis varied the written contract by writing on the invoice "Delivery absolutely guaranteed on the date stated or Ace will double your money back." Xerxes paid the \$10,000 in advance, but the dirt mover was not delivered on time, nor has it been delivered since. Xerxes was forced to cover by buying a replacement elsewhere. Xerxes has brought suit on the contract guarantee for \$20,000. It appears that the partnership assets will be insufficient to satisfy any judgment, and Carver asserts that he has a prior claim to those assets based on his loan to the partnership.

Discovery reveals that guarantees like the one in issue have been given in the construction equipment industry, although they are rare. Furthermore, Davis had written similar guarantees on 5 other contracts in the past 3 years, one of which was a prior contract with Xerxes. None of the guarantees have ever been litigated.

At this point, discuss Xerxes' rights against the following based on the principles discussed in this course. EXPLAIN YOUR CONCLUSIONS:

1. Ace Equipment Sales
2. Anderson
3. Baker
4. Baker's wife
5. Carver
6. Davis
7. Assume that the partnership filed as a registered limited liability partnership in 1998. How would that affect your answer in regard to Anderson?

Question II. (1 Hour, 33 points)

Reynolds and Sawyer in 1995 incorporated Hawk, Inc. for the purpose of renting airplanes for general purposes and for the sale of flying lessons. The corporation issued 1000 shares of \$100 par value common shares to each of them (for a total of 2000 shares). In return, Reynolds paid \$10,000 to Hawk, Inc. and Sawyer executed a written promise to provide \$10,000 worth of management services to the corporation over the next five years. By borrowing funds, the corporation was able to purchase 3 airplanes, rent a facility, and hire the services of pilot Chris Ward to provide instruction.

Ward provided his own plane, and was paid a set salary by Hawk, Inc. The written contract between them provided that Ward was an "independent contractor." The corporation withheld taxes and provided employee benefits, selected the students, and mandated flight schedules and hours. The course of instruction was completely left up to Ward.

On February 15, 2001, student pilot Young was seriously injured during a training session as the result of Ward's negligence. The training session took place outside the hours mandated by Hawk, Inc.

Young comes to see you, with injuries totalling millions of dollars. You learn that Reynolds and Sawyer through the years have held regular shareholder and director meetings, appropriated corporate funds and used corporate airplanes for their own purposes, and failed to pay franchise taxes so that Hawk, Inc.'s charter was forfeited in January of 2001. The back taxes and penalties were paid in March of 2001 and the charter reinstated. Finally, Hawk, Inc. on April 15, 2001 sold all of its assets to Turner Flying Services Limited Liability Company, an LLC owned solely by member Turner. The sale was the result of negotiations begun two years ago, and the consideration of \$100,000 was paid at the closing on that date. Hawk, Inc. will remain in existence simply to manage the funds. Turner Flying Services LLC thereafter continued the flying service business at the location and with the same employees (except Ward) utilized by Hawk, Inc.

At this point, advise Young as to the potential liability of the following parties to Young based on the principles discussed in this course. EXPLAIN YOUR CONCLUSIONS.

1. Chris Ward
2. Hawk, Inc.
3. Reynolds
4. Sawyer
5. Turner LLC
6. member Turner

Question III. Short Answer (1 Hour, 34 Points Total)

A. Polk gave Taylor the following letter: "To Whom it May Concern: Taylor is hereby authorized by me to take any and all action in regard to the sale of my motorcycle. Polk." Taylor showed the letter to Fillmore, and thereafter contracted on Polk's behalf to sell the motorcycle to Fillmore on Tuesday. What is the legal effect on Polk's authority of the following actions, assuming that each took place on Monday? EXPLAIN YOUR CONCLUSIONS. (6 points)

1. Polk told Taylor that he no longer wanted Taylor to sell the motorcycle.
2. Polk died, and Taylor knew it.
3. Polk became permanently mentally incapacitated, and Taylor knew it.
4. Answer the same three questions assuming that the letter included the additional statement that "This is a durable power of attorney."

B. Sylvan Corporation has five directors. A special directors' meeting was held without notice. None of the directors objected to holding the meeting. The board thereafter voted to sell a piece of property to director Adams for \$10,000. The vote was 4 in favor (including Adams) and 1 against. The price is grossly below the property's value. Shareholder X wishes to bring suit to invalidate the transaction. Evaluate the likelihood of success on any alternative grounds the shareholder might assert to attack the transaction. Explain your conclusions. (6 points)

C. Compare the fiduciary duty of care owed by the following. What is the standard? Is it reducible in the entity documents? Can the courts reduce it further? (6 points):

1. A director in a corporation.
2. A general partner in a limited partnership formed in 2001.
3. A member in an LLC.

D. Howard, Ickes, and Jacobs wish to form a closely held corporation. They have a list of the following devices that they have been told should be included in the Articles of Incorporation. Briefly explain the function of the following, and the advantages of utilizing them in this type of corporation. (6 points)

1. Cumulative voting.
2. Pre-emptive rights.
3. Share transfer restrictions.

E. Sally cleans brushes for Jeannette's Beauty Salon after school. Last Thursday, Peterson, who owns the bookstore next door, asked Jeannette if Sally could also sweep the bookstore's front walk. While doing so, Sally tripped a bookstore customer with the broom. Who is liable for Sally's act -- Jeannette or Peterson? (Both are sole proprietors). Explain. (3 points)

F. Gordon and Hunt formed a corporation to develop a subdivision. Articles of Incorporation were filed on April 15, 2001. On April 1, 2001, however, Gordon had already contracted on behalf of the corporation to hire an engineer to develop a plat for the subdivision. Gordon at that point thought that the Articles had been filed, although Hunt knew they had not been. The corporation approved the contract at its first board meeting held on April 16. Which of the following are liable on the contract with the engineer? Explain your conclusions. (3 points)

1. Gordon.
2. Hunt.
3. The corporation.

G. Miscellaneous

1. Who does a real estate broker represent -- the buyer? the seller? neither? Explain. (2 points)
2. How does a limited partnership vary from a general partnership in the way its profits are divided in the absence of agreement? WHY? (2 points)