

READ CAREFULLY

Name (Please Print) _____

DO NOT WRITE YOUR EXAMINATION NUMBER ON THIS PAGE.

BUSINESS ASSOCIATIONS

Final Examination

December 6, 1995

Professor Claxton

This examination is composed of four sections. The examination has an overall time limit of three hours and fifteen minutes. **YOU MUST NOT EXCEED THE OVERALL TIME LIMIT.** When you complete the examination, **PLEASE HAND IN YOUR ANSWERS AND THE COVER SHEET (PAGE A) THAT NOW IS IN FRONT OF YOU.** The cover sheet is to be placed in a separate box from the box in which you will place your answers. Your name should be printed on the cover sheet. Your examination number should appear only on your answers.

It is important that you follow these instructions carefully. TO REPEAT:

1. You are to return the cover sheet that now is before you.
2. Your name should be printed on the cover sheet (Page A).
3. The cover sheet is to be placed in a separate box from the box in which your answers will be placed.
4. DO put your examination number on your answers, but DO NOT put your examination number on the cover sheet.

I suggest that you quickly scan the entire examination before you begin writing.

Finally, please read the notice on Page A1. That notice was distributed to you on November 20. You must be in compliance with the terms of the notice.

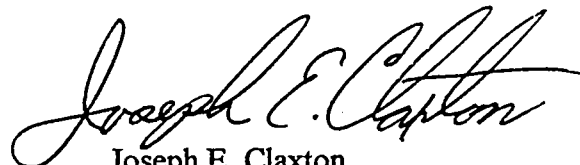
November 20, 1995

BUSINESS ASSOCIATIONS

(Professor Claxton)

You are permitted to bring two pages of notes written *in your own hand* to the final examination. You are to use long legal pad sheets (8½" x 14"). The color of the sheets does not matter. The term "two pages" means "page 1 and page 2." *It does not mean the front and back of two separate legal pad sheets.* You are free to write on the front of two legal pad sheets. You are free to write on the back of two legal pad sheets. You are free to write on the front of one legal pad sheet and the back of one legal pad sheet. You are free to write on the front of one legal pad sheet and the back of the same legal pad sheet. You are free to write sideways, upside-down, in ink or in pencil. Just make sure that when all is said and done you have a "page 1" and a "page 2," *but no more*, and that each of the two pages is written *in your own hand*. You are *not* permitted to bring your statutory supplement to the final Examination.

This notice repeats the terms of an announcement made orally during the class held on Thursday, November 16, 1995. Remember: You may bring page 1 and page 2 of notes written in your own hand, but *NOT* page 1, page 2, page 3, and page 4. If you have any doubts about what these instructions mean, please see me.



Joseph E. Claxton
Professor of Law

Is the chief executive officer of the Coca-Cola Company subject to any restrictions on his conduct posed by federal short-swing profits legislation? If not, why not? If so, why so and with what consequences? *Explain your response.*

Stanley J. How & Associates (the Architect) is a leading architectural firm in the city of Macon, which is located in the state of Mercer. In 1994, the Architect entered into a contract which contained the following pertinent provisions.

This agreement made as of the twentieth (20th) day of April in the year Nineteen Hundred and Ninety-Four by and between Boss Hotels Company, Inc., hereinafter called the Owner, and Stanley J. How & Associates, Inc., hereinafter called the Architect .

The Owner agrees to pay the Architect for such services a fee of six (6) per cent of the construction cost of the Project, with other payments and reimbursements as hereinafter provided .

The Owner and the Architect each binds himself, his partners, successors, legal representatives and assigns to the other party to this Agreement and to the partners, successors, legal representatives and assigns of such other party in respect to all covenants of this Agreement.

Except as above stated, neither the Owner nor the Architect shall assign, sublet or transfer his interest in this Agreement without written consent of the other.

IN WITNESS WHEREOF the parties hereto have made and executed this Agreement the day and year first above written .

Owner:
/s/ Edw. A. Boss
By: Edwin A. Boss,
agent for a new Mercer
corporation to be formed
that will be the obligor.

Architect:
Stanley J. How and Associates, Inc.
/s/ Stanley J. How

The contract was on the standard printed form of agreement between the "Owner" and the "Architect" prepared by the American Institute of Architects. Originally, the blanks were filled in by a representative of the Architect, and the place of signature as well as the introductory

paragraph referred to "Boss Hotel Company, Inc." as the Owner. When the contract was presented to Edwin Boss, however, he erased the words "Boss Hotel Company, Inc." and substituted "By: Edwin A. Boss, agent for a new Mercer corporation to be formed that will be the obligor," (as indicated above in the quoted provisions of the contract). The Architect approved this change, and the contract was then executed.

Boss caused a Mercer corporation, the Deer-Hunter Construction Company, to be formed to carry out the building project. The total fee to which the Architect ultimately was entitled was \$38,250. Checks in the amount of \$14,500 were sent to the Architect in partial payment of the contract obligation, and the checks bore the name of the Deer-Hunter Company. Unfortunately, the project eventually was abandoned by its promoters and the Architect never received the balance of the fee. The Architect brought suit against Edwin Boss for the unpaid balance. At the trial, the extent to which the Deer-Hunter Company actually came into being was not made clear in the record. No corporate charter, by-laws, or resolutions were offered into evidence. At any rate, there are no Deer-Hunter assets out of which the amount due to the Architect on the contract could be paid.

The trial court granted summary judgment to Boss, and the Architect (your firm's client) appealed to the Mercer Court of Appeals. Prepare a memorandum of law for your senior partner analyzing all possible approaches to the issue of the liability of Boss.

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XYZ, Inc. has an active interest in acquiring widgets. One of its directors, Jack Armstrong, learned of the availability of one million widgets at a very low price. He bought the widgets and then sold them to XYZ, in the process receiving a profit of twenty percent on his investment. Even with this profit margin included in the amount that XYZ paid to Armstrong, the overall price paid by XYZ was quite reasonable by industry standards. A particularly unpleasant shareholder, Elvira Scrooge, brought a derivative action challenging the legality of Armstrong's conduct and the transaction between Armstrong and XYZ. In private, off-the-record conversations the members of the board of XYZ began referring to Scrooge as "that witch" and in other less-than-flattering terms.

In the matter of Elvira Scrooge's lawsuit, what result and why? A SPECIAL NOTE: You are hereby instructed not to discuss the procedural aspects of derivative suits when responding to this problem. Instead, go directly to the merits of the case. This problem is not intended to test your knowledge of the procedural aspects of derivative suits.

Abby, Buddy, Cabot, and Dandy Dave were "career students" at Western Suwanee State University (WSU), known far and wide as "The Flagship University of the Nouveau Riche Riviera." The four young scholars, all of whom were 26-year-old juniors at the time of the events set forth in this little tale, were talented but frustrated musicians. All of them had been members of assorted bands since they were in their early teens, but none of those bands made any impact on the musical scene in the state of Suwanee (the fifty-first state of the United States) or anywhere else. The failures of the early bands supposedly were the consequence, in Cabot's words, of "artistic differences."

Last spring, the four budding Phi Beta Kappas began to play together for the first time. All of them served as vocalists, and they enjoyed trading instruments and singing funny, impromptu lyrics. The "Fab Four," as the band members jokingly called themselves, had no expectations of any financial return from their efforts. They just hoped to get plenty of free beer as payment for on-campus performances. In June, however, a student in the MBA program at WSU, Donnie Ray Trump, heard the foursome practicing. Donnie Ray possesses absolutely no musical ability, but he apparently has a great ear for what the public will buy and a bloodhound's nose for money. He suggested to Abby, Buddy, Cabot, and Dandy Dave that they try adding lyrics to some of the instrumental hits of the late 1950s and early 1960s.

The "Fab Four" quickly produced creative and memorable lyrics to such diverse golden oldie instrumentals as *Apache*, *Wipeout*, *Let There Be Drums*, *The Theme from Peter Gunn*, *Baby Elephant Walk*, *Last Date*, and *Raunchy* (arguably the greatest of all the instrumental hits of its era). At Donnie Ray's suggestion, the band also adopted an official name: Flootie & The Bugfish. ("Listen, guys," said Donnie Ray, "the media will be doing stories *forever* on the deep inner meaning of that name--mostly because it has no deep inner meaning. They'll try to figure out which one of you is Flootie, but all of you are Flootie, just like all of you are Bugfish!")

In July, Flootie & The Bugfish made an extraordinarily successful appearance at an afternoon tea party sponsored by the Kappa Alpha chapter at WSU. In August, the band won the coveted Platinum Cheeseburger With Bacon Award at the Elvis Presley Memorial/Hormel Company Festival of Bands held annually in the little town of Spamland, Mississippi. In October, when Flootie & The Bugfish performed during the halftime of a football game between WSU and one of its traditional athletic and academic rivals (the Middle Georgia School of Technology, Taxidermy, and Animal Vivisection) the crowd stormed the field in an expression of mass enthusiasm and alcoholic ecstasy.

In November, the four members of Flootie & The Bugfish, along with Donnie Ray, went to the offices of the law firm of Reddy, Greedy, and Pompous. Donnie Ray, the newly-designated business manager for the band, served as the principal spokesperson in a meeting with Mr. I. M. Pompous, the most active of the law firm's three name partners. Donnie Ray indicated that he and the band members expected that the band would enjoy huge success upon the release of their first CD, tentatively entitled *Flootie & The Bugfish Go Bonkers*. He stated that he and the four band members wanted to divide all profits into five equal segments and to divide control of all the band's enterprises among the five. Donnie Ray then summarized his concerns as the business leader of the group:

I.M., we think we need some sort of formal business structure, but we are not sure what it should be. These guys are gonna make a lot of money, and I will be their financial guru and make sure that they take it to the max. All five of us want a voice in this gig, man. We are gonna be an industry, man, and we're gonna sell everything from T-shirts to condoms under the Bugfish label. We've got to be on guard at all times, because in the music business everyone wants to take a bite out of the biggest pumpkin. Just a couple of years ago, some smuck dropped so much acid at a concert featuring the Flaming Anal Retentives that the guy fried his brain -- and then a hot shot lawyer won a judgment of \$950,000 against the Rententives for him! Can you believe that?

Mr. Pompous called his law firm's grooviest associate, J.W. Farnsworth, into his office. He briefly explained what Donnie Ray had told him and asked J. W. to prepare a detailed memorandum discussing how the band and the band's business manager should proceed. J. W., whose wingtips gleamed so brightly that the band members sitting near him could see the stripes of the young attorney's navy blue pinstripe suit reflected in the leather of his shoes, was gleeful at the prospect of direct involvement in the firm's representation of Flootie & The Bugfish. J. W. was ready to rock 'n roll!

Your assignment is exactly the same as the one given to J.W. by Mr. I.M. Pompous. Please proceed.