

PROFESSOR SHIRLEY MAYS  
BUSINESS ASSOCIATIONS FINAL EXAMINATION  
FALL 1998

This is an open book examination. You may use any materials that you have prepared (either alone or in a group) to answer the questions on this exam. This exam is worth a total of 150 points and consists of three questions that are equally weighted. You have three hours to complete the exam. I would suggest spending one hour on each question. You must turn in this exam, along with your blue books. Be certain that you put your exam number on this sheet, and on each blue book that you use.

You are not limited as to the number of blue books you may use to answer the questions. Please write legibly. Write on every other line of the blue book and on only one side of the page.

Take time to organize coherent answers. You should discuss all relevant issues even though resolving one issue might dispose of the case. Merely stating legal principles is insufficient. Analysis is imperative. Analysis includes applying the stated rule(s) of law to the particular facts of the problem you have been given. It also includes supporting your assertions by citing to relevant codes and case law and, where appropriate, discussion of applicable Public policy considerations. Do not state conclusions prematurely.

Do not assume facts not specified in the material. If you feel you must make assumptions, state what they are and how they affect the outcome of the question. Do not assume away the issue.

I have enjoyed this class immensely. Good luck and have a joyous holiday season.

EXAM NUMBER

MEMORANDUM

FROM: ME  
TO: YOU  
DATE: TODAY  
SUBJECT: YOUR ANALYSIS OF 3 CASES

Attached is information gathered by a junior associate on three different cases our firm has been retained to handle. Please review the materials and this memo. I am leaving for vacation tomorrow, so I must have your response within the next three hours. I will wait to hear from you.

CASE 1

Our firm has been retained to represent Apeman in this matter. Please review the complaint and other materials gathered by the junior associate. Give me your analysis of her work. Additionally, I want to go to court with an alternate theory of liability. Give me your assessment and analysis of our strongest alternative claim on this case.

CASE 2

We represent Sea, Heer, Speak & Noevil Law Firm in this case, as well as Case 3. Carefully look over all the materials we have thus far, and analyze the claims made, their respective theories, and the likelihood of success.

CASE 3

As I previously indicated, we have been retained to represent Sea, Heer, Speak & Noevil Law Firm in this case. Carefully look over all the materials we have thus far, and analyze the claims made, their respective theories, and the likelihood of success.

# CASE 1

Page 2 of 22

May 2, 1997

Dear Aunt Zira,

It was so good to see you last week at the family reunion. How long has it been? At least 3 years, I would think. Time certainly does pass quickly when you are busy with professional life endeavors.

As I explained to you at the reunion, I have decided to leave the firm I have been working with and strike out on my own. Large firm life just isn't for me, and I believe that I could do much better in a solo practice. Quality of life issues and all that since you were also in a large firm at one time I know that you can understand.

Anyway, I could use a bit of mentoring from a seasoned professional like you. Do you have any words of wisdom for me? What pitfalls should I avoid? Any advice you can give would be greatly appreciated.

Take it easy and say hello to your side of the family. I'll give you a call the next time I'm in town. Can't wait to hear from you. Write soon!

Much Love,

[signature handwritten in exam]

Cornelius

May 12,1997

Dear Cornelius,

You are so right; time truly does fly when you're having fun! I couldn't believe all the folks and how they've grown!! Especially you, with your big self. I know that you always wanted to be a lawyer, so I'm glad that you have realized your dream. Remember to stay focused, and never stray from your true goals. You can't go wrong if you believe in yourself, and in a higher power, to guide you through right and wrong.

In honor of your decision to make it alone, I would be happy to present you with a set of the Simian State Revised Code. Your grandfather did the same for me when I started my solo practice, and I believe that it's **the best** gift I ever received. By the way, you should do what you can to get as many of your own law books as possible. They will be a great asset in your attempt to control your own destiny.

Keep the faith and keep in touch!

Lovingly,

[signature handwritten in exam]

Aunt Zira

September 20, 1997

Dear Aunt Zira,

Thanks so much for sending those clients my way! Your guidance up to this point has been invaluable. With every question I have brought to you, my respect for your knowledge grows and grows. Your experience has truly made you a good teacher, and I am willing to do just about anything for you.

Also, I think we should set up that joint bank account. That way, we can both use the fees that we each generate with respect to the referred clients (particularly the Apeman tobacco account) to pay our respective bills. As you said, that way we won't become embroiled in arguments over money and who owes what to whom.

Finally, I have no problem with you sharing the use of my paralegal when I'm not using him to the fullest. Once again, it makes sense to permit you to utilize his talents when he's not busy here. You and he can make your own payment arrangements for those times when he's working for you.

Thanks again, and I'll talk with you soon.

With all my love,

[signature handwritten in exam]

Cornelius

April 6, 1998

Dear Cornelius,

I can understand that you are having some financial difficulties; however, you mustn't panic. Every solo practitioner gets into some difficulty at some point or another. Remember, you are new to the business and you will experience failures as well as successes.

You must do exactly as I explained to over the phone with respect to the Apeman account. Do not deviate at all from the script I gave you when you have your conversation with them. Stay calm and don't let them upset you. My advice hasn't failed you yet, and it won't his time, either.

Apeman has been a longtime client of mine; I have developed a good relationship with them over the past 10 years. They can sometimes be difficult, but they are basically reasonable people. With my current case load, I simply don't have the time to stroke them the way I should, so I'm turning them over to you. I have told them that you will not steer them wrong. I know you'll do great job. Call me after the meeting and let me know how it goes.

Many Hugs,

[signature handwritten in exam]

Aunt Zira

IN THE COURT OF COMMON PLEAS  
APELDOORN COUNTY, SIMIAN

CASE NO. 1

JUDGE \_\_\_\_\_

APEMAN, INC., :  
Plaintiffs, :  
v. : Complaint  
ZIRA AND ASSOCIATES, :  
Defendants. :

Plaintiffs, by and through their attorneys, bring this complaint against the above-named defendants, and in support thereof allege the following:

- I. Jurisdiction
  1. The jurisdiction of this court to hear the above-styled complaint is established pursuant to the Simian Revised Code.
- II. Parties
  - A. Plaintiffs
    2. Plaintiffs are Apeman, Incorporated, a corporation organized under the laws of the State of Simian. Apeman is registered to do business as a domestic corporation in the State, and is permitted to receive service at its offices in Apeldoorn County, Simian.
  - B. Defendants
    3. Defendants are Zira and Associates, a partnership organized to conduct a law practice under the laws of the State of Simian.
- III. The Statutory Scheme
  4. This complaint is governed by the law as set forth in the Uniform Partnership Act of the State of Simian, which is an exact replica of the Uniform Partnership Act passed in 1914.
- IV. Background
  5. Plaintiffs have been a client of Zira since 1988. In June of 1997, Zira introduced plaintiffs to her nephew, Cornelius. Cornelius began to do much of Plaintiffs' work including, but not



limited to, representing Plaintiffs in court on legal matters, drafting Plaintiffs' legal forms and documents, and advising Plaintiffs on various legal matters.

6. In February, 1998, Plaintiffs were sued by a foreign corporation, Manfred Enterprises. Manfred Enterprises purchases its tobacco from Plaintiffs.
  7. The gravamen of Manfred's lawsuit was that Plaintiffs had treated the tobacco with a formaldehyde/clorox mixture prior to their purchase. The treatment was to protect against pathogens bacteria and the spread of airborne diseases during transport and storage. Instead, the treatment produced a toxic combination, and various users of Manfred's products died.
  8. The users filed suit against Manfred, who settled the suits for \$1.7 million. Manfred, in turn, sued the Plaintiffs for indemnification of the settlement amount.
  9. The deadline for responding to the claim that Manfred filed against the Plaintiffs was March 22, 1998. Failure to respond by that date meant that Plaintiffs admitted all allegations made by Manfred, and agreed to indemnify them for the entire settlement amount.
  10. Plaintiffs forwarded all documents and information about the lawsuit to Cornelius. Due to his negligence, Cornelius failed to timely respond to the Manfred lawsuit.
- V. Causes of Action  
Plaintiffs incorporate by reference paragraphs 1 - 10 above.

#### First Cause of Action

Due to the failure of defendant Cornelius to adequately represent the Plaintiffs in the lawsuit filed by Manfred, Cornelius is guilty of malpractice, and is liable as a matter of law to indemnify Plaintiffs for the money owed to Manfred.

#### Second Cause of Action

12. Defendant Cornelius was involved in a partnership with Defendant Zira. Therefore, as a matter of law, Zira is guilty of malpractice, and also is liable to indemnify Plaintiffs for the money owed to Manfred,

Wherefore, Plaintiffs ask this court to hold Defendants Zira and Associates liable as a matter of law, and direct that they must pay the sum of \$1.7 million to the Plaintiffs.

IN THE COURT OF COMMON PLEAS  
APELDOORN COUNTY, SIMIAN

APEMAN, INCORPORATED,	:	CASE NO, I
	:	
Plaintiffs,	:	JUDGE_____
	:	
v.	:	<u>MOTION OF DEFENDANTS FOR</u>
	:	<u>SUMMARY JUDGMENT RE</u>
ZIRA AND ASSOCIATES,	:	<u>PLAINTIFFS' INABILITY</u>
	:	<u>TO PROVE THEIR CLAIMS</u>
Defendants	:	

Pursuant to Rule 56(C) of the Simian Rules of Civil Procedure, defendant Zira moves for summary judgment on the ground that there is no genuine issue of material fact and that as a defendant, she is entitled to judgment as a matter of law based on the plaintiffs' inability to prove their case against her.

Page 9 of 22

**[CASE 2 was not included in the final Professor Mays submitted for the exams on the website]**

# CASE 3

Page 15 of 22

DEPOSITION OF MILO

Q. WHEN DID YOU BEGIN TO WORK FOR THE PARTNERSHIP OF SEA, HEER, SPEAK & NOEVIL?

A. ON JUNE 2, 1990.

Q. WHAT WAS YOUR POSITION WITH THE FIRM?

A. I WAS HIRED AS AN ASSOCIATE, THE ONLY ASSOCIATE IN THE OFFICE. IN AUGUST OF 1997 I MADE PARTNER. AFTER I MADE PARTNER, OUR PRACTICE GROUP CONSISTED OF THREE PARTNERS AND A SECRETARY.

Q. WHO ELSE WORKED IN THE PRACTICE GROUP WITH YOU?

A. TAYLOR WAS THE MANAGING PARTNER OF THE OFFICE AND MY PRACTICE GROUP, AND BRENT WAS THE OTHER PARTNER IN THE GROUP. WE ALSO HAD A SECRETARY, NOVA, WHO WORKED THERE.

Q. WHAT HAPPENED IN SEPTEMBER OF 1997?

A. WELL, TAYLOR'S CLIENT, URSUS, INC., IS VIRTUALLY OUR PRACTICE GROUP'S ONLY CLIENT. WHEN I BECAME A PARTNER, I STARTED RECEIVING THE INTERNAL OPERATING REPORTS OF THE NUMBER OF HOURS EACH ATTORNEY WORKED, BILLED, AND COLLECTED. BASED ON THOSE REPORTS, I BECAME CONCERNED THAT THE AMOUNT OF WORK TAYLOR PERFORMED FOR URSUS, INC. DID NOT MATCH THE HOURS HE REPORTED.

Q. SO WHAT DID YOU DO?

A. I DISCUSSED MY CONCERNS WITH BRENT. WE FOUND TAYLOR'S "DAILY DIARY", A RECORD OF HIS WORK TIME, AND MADE COPIES OF THE ENTRIES FOR THE PREVIOUS TWO MONTHS. ONCE I SAW THESE DIARIES, MY SUSPICIONS WERE INCREASED EVEN MORE.

Q. WHAT HAPPENED NEXT?

A. EVIDENTLY BRENT SPOKE TO TAYLOR ABOUT MY CONCERNS. AFTER THEIR DISCUSSION, TAYLOR TOLD ME, FOR THE FIRST TIME I MIGHT ADD, THAT URSUS, INC. WAS NOT SATISFIED WITH MY WORK AND WANTED MY WORK SUPERVISED. SUBSEQUENT TO THAT, TAYLOR TOOK AWAY ALL OF URSUS INC.'S WORK FROM ME, SO THAT I HAD VIRTUALLY NOTHING TO DO.

- Q. DID ANYTHING ELSE HAPPEN?
- A. YES. TAYLOR TOLD ME THAT IT WAS IN MY BEST INTEREST TO LOOK FOR OTHER EMPLOYMENT. I WAS TOLD THAT THE FIRM WOULD ASSIST ME BY GIVING ME A RECOMMENDATION; CONTINUING MY MONTHLY DRAW; ALLOWING ME TO CONTINUE TO USE THE OFFICE; AND PROVIDING ME WITH INSURANCE COVERAGE.
- Q. DID YOU RECEIVE ANY MORE WORK AFTER THAT?
- A. NO. THIS HAPPENED IN SEPTEMBER OF 1997. AFTER THAT CONVERSATION, I NEVER RECEIVED ANY MORE WORK FROM ANY OF THE PARTNERS IN THE FIRM.
- Q. DID THE FIRM GIVE YOU THE SUPPORT THAT THEY PROMISED?
- A. YES. THEY DID EVERYTHING THEY SAID THEY WOULD DO. I CONTINUED TO RECEIVE MY MONTHLY DRAW, AND I WAS GIVEN ALL THE SECRETARIAL ASSISTANCE I WANTED IN MY NEW JOB SEARCH.
- Q. WHAT HAPPENED IN JUNE, 1998?
- A. I RECEIVED A NOTICE THAT I WOULD NEED TO VACATE MY OFFICE BY NOVEMBER 1998. I WAS FORTUNATE ENOUGH TO GET A JOB WITH ANOTHER FIRM IN SEPTEMBER 1998.

DEPOSITION OF TAYLOR

Q. HOW LONG HAVE YOU WORKED AT THE FIRM?

A. I WAS ONE OF THE FOUNDING PARTNERS; I'VE BEEN WITH THE FIRM SINCE 1959. I CURRENTLY SERVE AS ITS MANAGING PARTNER.

Q. WERE YOU INVOLVED IN THE DECISION TO HIRE MILO?

A. YES, I WAS IMPRESSED WITH HIS RECENT WORK RECORD, AND HE RECEIVED AN EXCELLENT RECOMMENDATION FROM A GOOD PERSONAL FRIEND OF MINE NAMED ZIRA.

Q. WHAT WAS THE QUALITY OF MILO'S WORK?

A. OVERALL, IT WAS SLIGHTLY BELOW AVERAGE. I DECIDED NOT TO SAY TOO MUCH ABOUT IT, BUT WHEN URSUS, INC. TOLD ME THAT THEY WEREN'T SATISFIED WITH THE LEVEL OF HIS ANALYSIS, I DIDN'T FEEL THAT I COULD KEEP QUIET ANY LONGER.

Q. WHY NOT?

A. BECAUSE IT WAS BEGINNING TO IMPACT OUR CLIENT RELATIONS. URSUS, INC. SAID THAT THEY WANTED ALL OF MILO'S WORK SUPERVISED, AND WHEN I TOLD HIM THIS, HE WENT BALLISTIC.

Q. WHAT DO YOU MEAN?

A. WELL, HE SAID THAT THE ONLY REASON THAT I WAS MAKING THIS ALLEGATION WAS BECAUSE I DISCOVERED HE HAD SOME TROUBLE WITH MY TIME SHEETS.

Q. IS THAT A TRUE STATEMENT?

A- NO, NOT AT ALL. AS A MATTER OF FACT, THE FIRM LAUNCHED AN INTERNAL INVESTIGATION AND CONFIRMED THAT URSUS, INC. HAD PROBLEMS WITH MILO'S WORK, AND THAT URSUS, INC. WAS SATISFIED WITH MY BILLING PROCEDURES.

DEPOSITION OF BRENT

Q. HOW DID YOU COME TO KNOW ABOUT THE SITUATION WITH TAYLOR AND MILO?

A. IN SEPTEMBER 1997, WHILE WE WERE ATTENDING THE FIRM'S SUMMER PARTY, MILO TOLD ME THAT TAYLOR WAS OVERBILLING URSUS, INC., OUR PRACTICE GROUP'S MAJOR CLIENT. MILO AND I DECIDED TO INVESTIGATE.

Q. WHAT DID YOU DO?

A. WE FOUND TAYLOR'S DAILY DIARY AND MADE COPIES OF IT. AFTER THAT, I LOOKED AT THE ENTRIES AND TALKED PRIVATELY WITH TAYLOR ABOUT MILO'S ALLEGATIONS. AT THAT TIME TAYLOR TOLD ME THAT URSUS, INC. WASN'T SATISFIED WITH MILO'S WORK AND WANTED TO HAVE HIS WORK SUPERVISED.

Q. DID YOU EVER TALK TO URSUS, INC. ABOUT WHAT HAPPENED?

A. YES. URSUS, INC. CONFIRMED THAT THEY HAD PROBLEMS WITH MILO'S WORK AND WANTED IT SUPERVISED. URSUS, INC. ALSO SAID THAT THEY WERE SATISFIED WITH THE FIRM'S BILLS.

Q. DO YOU BELIEVE THAT MILO'S ALLEGATIONS WERE MADE IN GOOD FAITH?

A. ABSOLUTELY. HE HAD A GOOD FAITH BELIEF THAT TAYLOR WAS OVERBILLING URSUS, INC. FORTUNATELY, HE WAS SIMPLY MISTAKEN ABOUT THAT FACT.

General Partnership Agreement of  
Sea, Heer, Speak & Noevil

This is a general Partnership Agreement, made and entered into by and between Milo, Taylor, and Brent, et. al. (collectively, the "Partners").

SECTION I

FORMATION OF PARTNERSHIP

The Partners hereby form a partnership (the "Partnership") pursuant to the Simian Uniform Partnership Act. The rights and duties of the Partners shall be as provided in that Act except as modified by this Agreement.

SECTION 2

NAME

The business of the Partnership shall be conducted under the name Sea, Heer, Speak & Noevil or **such other name as the** Managing Partner shall hereafter designate in writing to the Partners.

SECTION 3

BUSINESS OF THE PARTNERSHIP

The business of the Partnership is to practice law in the State of Simian and to engage in any and all activities related or incidental thereto.

....

SECTION 9

EXPULSION OF A PARTNER

The expulsion of a partner does not cause a dissolution of the Partnership. When a partner is expelled, the Partner shall be so informed at least thirty days prior to the actual expulsion.

....

IN WITNESS WHERE OF, the undersigned have executed this Agreement as of this 1st day of August, 1997.



IN THE COURT OF COMMON PLEAS  
APELDOORN COUNTY, SIMIAN

CASE NO. 3

JUDGE \_\_\_\_\_

MILO,

Plaintiff,

v.

Complaint

SEA, HEER, SPEAK & NOEVIL LAW PARTNERSHIP,

Defendants.

Plaintiff, by and through his attorney, brings this complaint against the above-named defendants, and in support thereof alleges the following:

I. Jurisdiction

1. The jurisdiction of this court to hear the above-styled complaint is established pursuant to the Simian Revised Code.

II Parties

A. Plaintiffs

2. Plaintiff is Milo, a partner in the law firm of Sea, Hear, Speak & Noevil Law Partnership.

B. Defendants

3. Defendants are the Sea, Heer, Speak & Noevil Law Partnership, a partnership organized to conduct a law practice under the laws of the state of Simian.

III. The Statutory Scheme

4. This complaint is governed by the law as set forth in the Uniform Partnership Act of the State of Simian, which is an exact duplicate of the Uniform Partnership Act passed in 1914.

IV Causes of Action

Plaintiff incorporates by reference paragraphs 1 - 4 above.

First Cause of Action

5. Defendants have breached their fiduciary duty to Plaintiff by expelling him from the firm.

Second Cause of Action

6. Defendants have breached the terms of their partnership agreement by expelling Plaintiff from the firm.

Wherefore, Plaintiff asks this court to hold Defendants liable, and direct that they must pay the sum of \$1.7 million to the Plaintiff.