

# Capital University Law School

ENTREPRENEURSHIP LAW: THEORY AND PRACTICE  
Spring Semester 2003  
FINAL EXAMINATION

Dean Steven C. Bahls  
May 20, 2003

## INSTRUCTIONS

1. **THIS EXAM IS DUE TWO HOURS AFTER THE EXAM STARTS.**
2. There are 120 possible points. The questions are weighted as indicated.
3. This is an open-book exam. You are not, however, to connect to the internet during the exam or access the law library.
4. **AMBIGUITIES:** If you find the facts given to be insufficient to answer a question, state any additional factual assumptions you deem necessary and answer the questions as if your assumptions were part of it. **DO NOT MAKE THE MISTAKE OF CHANGING THE QUESTION BY CHANING THE FACTS.**
5. **IDENTIFICATION:** Write your exam number on the first page and on every succeeding page. **Neither your name nor any other identifying mark, other than your exam number, should appear anywhere on your answer.**
6. Take time to organize your answers. **You should discuss ALL RELEVANT ISSUES even if one issue might dispose of the case.** This exam requires you to do **ISSUE-SPOTTING** and **ANALYSIS.**
7. **REPETITION:** When I grade these, I will look at Question One in ALL of the exams and then look at Question Two in ALL of the exams. Merely because you have said something in Question One does not mean that you will get credit for it in Question Two should the same point be relevant in both questions. **DO NOT CROSS REFERENCE.** (I don't want my judgment of how you are doing in Question Two to be affected by my judgement of how well you did on Question One.)

**GOOD LUCK!**

QUESTION ONE  
(60 points)

TO: Judicial Law Clerk  
FROM: Sandra Jones, Court of Common Pleas Judge in the State of Superior  
DATE: May 20, 2003  
RE: Semco, Inc. v Hildreth

Our senior judicial law clerk (Laurie Boles) has been unexpectedly called to Rock Island, Illinois to care for her ailing father. She started my written trial court opinion in the case of Semco, Inc. v Hildreth, which is attached. The attached opinion includes a statement of facts and cites the applicable State of Superior Revised Code, but does not include the decision or reasons for the decision. Ms. Boles (but did not complete) sat through the 5 day trial with me. Because of the significance of this case we have also transcribed the record of testimony.

I am still undecided about whether there has been a misappropriation of confidential information. Please write a memo to me analyzing the following:

- ? Based on Ms. Boles' statement of the facts, what are the strongest arguments for a finding of a misappropriation of confidential information?
- ? Based on Ms. Boles' statement of the facts, what are the strongest arguments against a finding of a misappropriation of confidential information?
- ? Based on Ms. Boles' statement of the facts and the arguments you made for and against a finding of a misappropriation, who should win and why?
- ? I plan to read the transcript of the 5 day trial over the weekend. What more should I be looking in the transcripts for that might be relevant and add further clarification to the facts as stated by Ms. Boles? Why are these facts relevant?

QUESTION TWO  
(25 points)

Since September of 2002, Dave Delap has been the night manager of the Subway Sandwich franchise near the Law School. He signed this covenant not to compete:

“Employee acknowledges that his position with the Company is special, unique and intellectual in character and his position in the Company will place him in a position of confidence and trust with employees and clients of the Company.

Non-Competition. Employee agrees that during the Term and for a period of two (2) years thereafter Employee will not directly or indirectly: (i) (whether as director, officer, consultant, principal, employee, agent or otherwise) engage in or contribute Employee’s knowledge and abilities to any business or entity in competition with the Company; (ii) employ or attempt to employ or assist anyone in employing any person who is an employee of the Company or was an employee of the Company during the previous one year period; or (iii) attempt in any manner to solicit from any client business of the type performed by the Company or persuade any client of the Company to cease doing business or reduce the amount of business that such client has customarily done with the Company”.

He was fired from his employment earlier this week. Is the covenant enforceable and why?

QUESTION THREE  
(35 points)

Ann Cornwell is an evening student at Capital University Law School. She anticipates graduating in May of this year.

On the evening of her first final this Spring, she ate dinner at the Subway sandwich shop in the same block as the law school. She often ate dinner there. She ordered, as she often did, a chicken filet sandwich with cheese and all the vegetables, holding the hot peppers. Shortly after eating the sandwich, she became quite ill, with food poisoning. Her illness was sufficiently serious that she required hospitalization and suffered substantial economic damages.

Barb Beattie, the 17 year old employee who made the sandwich, later admitted that a box of chicken filets had been left on the counter in the backroom for 48 hours, without refrigeration. There can be no doubt that using the spoiled meat caused Ms. Cornwell's illness.

Ms. Cornwell retains you as her lawyer. You have learned that the subway restaurant is a franchised restaurant of Subway International, Inc. The franchise is owned by Subway of Columbus, LCC. The franchise agreement between Subway of Columbus, LLC and Subway International, Inc. is identical to the franchise agreement found in Unit Eight. You have also recently learned that Subway of Columbus, LLC has closed all of its stores and is filing for bankruptcy. The only "deep pocket" remaining is Subway International, Inc.

The depositions of the franchising officials at Subway International, Inc. and the deposition of the owner of Subway of Columbus, LLC (Mike Devine) are scheduled for next week. What are the most important factual issue to explore in the depositions in order to build a case that Subway International, Inc. is liable for the actions of employees of the franchisee? Why?