

CAPITAL UNIVERSITY LAW SCHOOL

ENTREPRENEURSHIP LAW: THEORY AND PRACTICE
SPRING SEMESTER, 1999
FINAL EXAMINATION
TAKE HOME

Dean Steven Bahls
April 26, 1999

INSTRUCTIONS

1. THIS EXAM IS DUE NO LATER THAN 5:00 P.M. ON THURSDAY, MAY 13 IN THE DEAN'S OFFICE. For convenience, the exam may be turned in earlier. Please give your exam to Helen Cook, the Dean's secretary. Late papers are marked down by one full grade (e.g. a B to a C) for each day or fraction of a day they are late. Plan to get the exam done early. Computer or printer problems are not a valid excuse.
2. The exam must be TYPED and DOUBLE SPACED on 8 1/2 by 11" paper. There should be ONE-INCH MARGINS, and the print should be between 10 and 12 characters per inch (10 pci-12 pci). Most students should be able to answer these questions in 20 pages. **THE EXAM MUST NOT EXCEED 25 PAGES.** You may only write on one side of each page. Number your pages. You may allocate the pages as you see fit. However, **YOU MUST BEGIN YOUR ANSWER TO EACH QUESTION AT THE TOP OF A NEW PAGE. THE FAILURE TO FOLLOW THESE DIRECTIONS WILL RESULT IN A LOSS OF POINTS.**
3. There are 100 possible points. The questions are weighted as indicated.
4. This is an open-book exam. However, you are not permitted to consult with anyone about the questions or answers until all papers have been submitted. **YOU SHOULD BE ABLE TO DO VERY WELL ON THIS EXAM WITHOUT ANY OUTSIDE RESEARCH, BUT CONSULTING OTHER WRITTEN MATERIAL IS PERMITTED.**
5. **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 CHANGING THE FACTS.**
6. **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.**

7. 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**.

8. 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 judgment of how well you did on Question One.)

9. **ETHICAL ISSUES.** If the questions raise ethical issues for attorneys, please identify those issues in your answers.

Question One

(40 points)

You represent the City of Columbus. Mayor Lashutka asks you to outline the components of a new program to increase the number of city contracts going to African-American businesses. Assume that the population of Columbus is 30 percent African-American and that 15 percent of the city's businesses are owned by African Americans. Assume there is currently no set-aside program for minorities. In 1998, minority-owned businesses received 7 percent of the city's contracts.

Outline, in detail, the most aggressive plan you believe the state and federal courts will sustain, and explain why. If you don't believe the courts will sustain any type of set-aside program, explain why and outline another program to increase the number of contracts received by minority-owned businesses that is likely to be sustained.

The mayor has also asked you to work with Dynometrics, Inc., a research firm, to research the degree of past discrimination in city contracting. Prepare guidance for the firm on how to develop a study that courts will give deference to should the minority set-aside program you propose be challenged on legal grounds.

Question Two

(60 points)

Your client, Dave Delap, age 50, has just inherited \$1 million from his rich uncle. He is a doctor at Grant Hospital. His wife, Emily, is also a doctor, age 49. They have a 22-year-old daughter, Fran, who will receive her MBA soon from Capital University. Dave and Fran Delap are great doctors, but inexperienced in business matters. The Delaps practice together as a professional corporation. Your firm has represented the professional corporation for 10 years.

The Delaps have decided to use part of their inheritance to buy part of Ohio Cyber Auction, (OCA), an online auction service. Currently, the sole proprietorship is owned by Ned Smith. The financial statements are attached. The first column of the financial statement shows the value of the assets in the business's books and records and the second column shows the fair market value, as determined by Ned Smith.

OCA is in the business of Internet auctions. Once an item is auctioned, OCA receives a commission of 10 percent of the purchase price. OCA is a relatively small online auction business, compared to several giants in the business. Its market niche is auctioning items belonging to Ohio residents who feel more comfortable doing business with an Ohio company. Buyers, however, are from around the United States and the world.

Dave and Emily Delap have no desire to run the company. Instead, they view it as an opportunity to supplement their income and, perhaps, provide an opportunity for their daughter Fran to gain experience in a technology-related business. At least in the short run, they want Ned to run the company.

The Delaps have agreed to purchase a 50 percent interest in the business from Ned Smith, who will continue to own the other half of the business. Ned Smith, who founded the business, is 24 years old. He is a graduate of Bexley High School and had one year of college at The Ohio State University before flunking out. He is brilliant but undisciplined. Fortunately, he hired his sister, Claire Smith, age 26, who is a Harvard MBA and a CPA. She has run the financial and operational side of the business while Ned has been the “idea man” and the technical expert. This business can’t succeed without Ned.

Ned and the Delaps have signed the following letter:

Letter of Intent

We, David and Francis Delap, agree to purchase half of Ohio Cyber Auction (OCA) for \$500,000 from Ned Smith. After the purchase is completed, we will form a new limited liability company to operate OCA.

We will agree on an attorney to draft the necessary papers. Ned Smith will receive a ten-year employment agreement.

You are the attorney the parties agreed on. Please write a memo to the senior partner of your firm addressing the six most significant legal issues or drafting problems the clients are likely to face in “drafting the necessary papers” to effectuate the letter of intent.

Ohio Cyber Auction, a sole proprietorship

Unaudited

	Assets	Fair Market Value
Cash	\$ 50,000	\$ 50,000
Accounts Receivable	200,000	195,000
Computers—Long-term lease	450,000	
Less depreciation	<u>150,000</u>	
	300,000	250,000
Office Equipment	50,000	40,000
Goodwill	<u>0</u>	<u>500,000</u>
	\$600,000	\$1,035,000

Liabilities and Owner's Equity

Accounts Payable	\$100,000
Owners' Equity	<u>500,000</u>
	\$600,000