BACKGROUND FACTS:

After Cinderella married the Prince of CooCoolandia, Prunella and Drucilla, Cinderella's step-sisters, and Luanda, Cinderella's step-mother, descended into a long-term funk of astounding proportions. In particular, Luanda could not understand how her daughters, creatures of such elegance and breeding, could have failed to win the prince's heart. After all, Luanda had over fifty years of extensive experience in manners, charm and flirting, and, by using her unique training methods, had produced two quite "finished" young women -- that is, her daughters -- each capable, Luanda believed, of holding her own in any society. Alas, what to do with two aging (unmarried) daughters, and all that money (about $1,000,000.00 in money market accounts) that Cinderella's father left to her when he died?! Well, one thing was to move to Mongo City, the capital of the adjoining country -- the Kingdom of Mongo. The laws of the Kingdom of Mongo are identical to those of the United States. One morning, while reading the Sunday Supplement of the Daily Mongo, Luanda spotted an ad, which read as follows:

**Turn a Sow's Ear into a Silk Purse. Swine School of Charm, Inc.** owner seeks to retire; is currently looking for persons interested in purchasing the business. Business is well established and quite profitable. Only serious offers considered.

On the basis of this ad, Luanda decided to call the owner, a Mr. Grunt T. Pigge II, and find out more about this opportunity. During the course of a dinner on April 1, 1993, Luanda discovered the following.

1. The Swine School of Charm, Inc. ("SSC") was founded in 1963 by Grunt T. Pigge, Sr., the father of Grunt T. Pigge II. In his day, Mr. Pigge Sr. had been quite famous as the arbiter of taste of Mongo society, especially after the rumors about his dalliance with the daughter of the Emperor Ming of Mongo appeared to have some substance. All of the first families of the Kingdom have sent their sons and daughters to the SSC.

2. When Mr. Pigge Sr. died in 1989, he left all 1000 issued and outstanding shares of SSC to Pigge II. While Mr. Pigge II was committed to continuing the operation, he had relied on the reputation and connections made by his family, and on the assumption that the next generation of the leading families of the Kingdom would attend SSC.
3. Unfortunately, all things must come to an end. On December 31, 1992, the Emperor Ming was deposed by a group calling itself the Moral Majority ("MM"). The leader of the MM, Terry Tallwell, had for years denounced as frivolous, the existence of the aristocracy. It was Tallwell's contention that reliance on charm and manners had led to the decadence widely perceived to have sapped the strength of the ruling class. In his first news conference, however, Tallwell urged all of the classes of the Kingdom of Mongo to join together for the greater good of the state.

4. As of yet, the revolution has not affected enrollment. The only person to withdraw has been the daughter of the Princess of Mongo. Indeed, applications from children of the non-aristocratic classes has increased since the beginning of the year.

5. Enrollment has traditionally been limited to no more than 50 students in each class, although the facilities could accommodate double that number in each class. It generally takes three (3) years to complete the program.

6. Tuition has not increased since 1979, although inflation has run at an average annual rate of 8% since 1979. Tuition is $10,000.00 per year. In addition, SSC sells its students a host of beauty products at roughly a 50% mark-up from cost. Most retail stores in Mongo normally mark up their products 100% to 150% over cost, but their costs are slightly lower than those of SSC. Mr. Pigge II has also indicated that he has been a bit remiss in replacing worn equipment, and generally updating the facilities, but noted that "This is a conservative kind of place . . . . What was good enough for dad is good enough for me." He did, however, mention, that it might be nice for the SSC finance department to have a computer system and copy machines -- none of which the company now has.

7. Mr. Pigge II, is willing to sell his entire interest in SSC for $10,000.00 per share. Mr. Pigge II, however, is willing to finance up to 90% of the sale to the right party. He would not be willing to accept preferred stock under any circumstance.

8. To aid Luanda in her consideration, Mr. Pigge II provided Luanda with financial statements of SSC for the prior year. The financial statements have never been audited. Traditionally, such statements have been prepared by the financial staff of SSC. Mr. Pigge II suggested to Luanda that the SSC's low earnings in the prior two years were not indicative of the profit potential of the company, but reflected minor problems that the company had overcome.

Luanda is quite enthusiastic about this business and comes to see you. In addition to relating to you the gist of her conversation with Mr. Pigge II, she tells you that this appears to be a fabulous means of employing her daughters. She believes that this school presents the perfect means of employing the only talents her daughters have. She believes that Mr. Pigge has not taken full advantage of the income potential of the
enterprise, and that she could make the school far more successful. For instance, both enrollment and the price of the beauty products sold could be substantially increased. Prunella and Drucilla are also enthusiastic. Prunella is eager to teach singing and dancing. Drucilla will teach charm and male and female make-up, and flirting. Luanda would also like to fire all of the current teaching staff, which consists of four people, all over forty years of age. Luanda wants to hire a number of people recommended to her by her friend Modonna; all of these people are citizens of CooCoolandia and do not have immigration papers yet. Also, Luanda is unsure whether the current teaching staff is unionized.

Luanda is willing to use all of her money (derived substantially from the estate of her late husband), but will need to borrow the rest. She may a little problem, however, because she recently received a letter from Cinderella wondering about when she would get her inheritance from her father (she has yet to receive a penny). Cinderella intimated that she believes that she is entitled to half the money her father left on his death, and that the prince's underemployed legal staff might be used to secure this result for her if Luanda was uncooperative. For the moment, all of the funds at issue are invested in Mongo. There are no treaties between Mongo and CooCoolandia. If Luanda must give Cinderella her inheritance, she is sure that she would be able to persuade Cinderella to invest at least $250,000 in the business, or, if all else fails, she can induce the prince's father, the King, to invest a like amount.

On January 1, 1993, the Kingdom of Mongo adopted the entire corporate law of Delaware as its own corporate law. In a similar move, the Kingdom of CooCoolandia adopted the entire Revised Model Business Corporation Act as its corporate law.

**Question 1**

(15 minutes; 7%)

On the basis of her initial consultation with you, Luanda, Prunella and Drucilla have decided to purchase SSC. Cinderella is still a problem. In the course of conversation with Cinderella, Luanda got Cinderella interested in SSC. Cinderella agreed to put the question of her inheritance in abeyance during the pendency of the SSC purchase negotiations. In return, Luanda agreed to give Cinderella and the Prince an interest in SSC. Cinderella and the Prince also intimated that if all went well, they might be inclined to put in a good word about SSC to the King of CooCoolandia, and obtain permission to open a branch in CooCoolandia.

Luanda, Cinderella, the Prince, Prunella and Drucilla have decided to operate SSC as a corporation, to be named the Evil Stepmother Corporation ("ESC"), and have asked you to handle the incorporation. You have represented Luanda in the past; however, you have been attempting to get business in CooCoolandia for a number of
years and believe that representing Cinderella and the Prince in this transaction may be your entree into the CooCoolandia market.

**IS THERE ANY REASON YOU SHOULD NOT PROCEED WITH THE REPRESENTATION? IF NOT, WHY NOT?**

**Question 2**

(30 minutes; 15%)

Assume that you have agreed to prepare and file the articles of incorporation of Evil Stepmother Corporation ("ESC"). You anticipate that Luanda, Prunella and Drucilla will be officers of ESC, but are unsure of their job responsibilities. Your clients are still negotiating the job responsibilities, if any, of Cinderella.

**Part A**

You have submitted the articles of incorporation of ESC for filing with the secretary of state, and told Luanda and Prunella, but not Drucilla, Cinderella or the Prince, that the articles should be filed effective that day. However, because of the oversight of your newest associate, the incorrect filing fee amount was submitted with the articles. You anticipate that the articles will not be accepted for filing.

Two days later, before you inform your clients of this oversight or determine what to do, Drucilla calls you. She informs you that, the day before, she had placed an order for the three hundred record collection, "Disco and Hustle Mania," from Tower Records, for $75,000. Drucilla could not wait to try the record collection out. She begged the delivery person to stay long enough to try some new steps. Unfortunately, Drucilla can't dance. Her partner suffered extensive foot damage as a result.

1. **ASSUME THE RMBCA IS APPLICABLE. IF ESC FOR SOME REASON IS UNABLE TO PAY FOR THE RECORD COLLECTION, OR FOR THE INJURY TO THE DELIVERYPERSON, ARE DRUCILLA, PRUNELLA, LUANDA, CINDERELLA OR THE PRINCE PERSONALLY LIABLE?**

2. **WOULD YOUR ANSWER CHANGE IF GENERAL PRINCIPLES OF COMMON LAW APPLIED?**

**Part B**
Assume that the events related in Part A, above, occurred after ESC was duly and validly incorporated. Assume further that Drucilla had been named as ESC’s Vice President - Finance, that Drucilla executed a written contract for the records, and that she executed the contract in her own name as "Vice President." ESC has denied liability under the contract, claiming that it was unaware of the contract, and that Drucilla purchased the records for her own use. You have reason to believe that ESC is in possession of the records and is using them as part of its curriculum.

YOU HAVE BEEN RETAINED TO ADVISE TOWER RECORDS AS TO ITS LEGAL RIGHTS. YOU ARE CONSIDERING FILING A BREACH OF CONTRACT ACTION IN MONGO. ON WHAT THEORIES MIGHT YOU PROCEED? WHAT ADDITIONAL INFORMATION WOULD YOU LIKE TO HAVE, AND HOW WOULD YOU GET IT?

QUESTION 3
(15 minutes; 8%)

Luanda, Prunella, Drucilla, Cinderella, and the Prince have agreed to purchase shares of ESC. ESC has authorized but not issued 100,000 shares of common stock, $1.00 par value. The parties have decided that each of the prospective shareholders will purchase 100 shares of ESC common stock. By resolution duly adopted by Luanda, the sole incorporator of ESC, ESC will issue 100 shares of stock to Prunella for services to be rendered during the course of the coming year as an officer of ESC. Cinderella will pay $100 for each share of stock (because Luanda believes they can afford it), Luanda will pay $10 per share, and Drucilla will pay $12 per share by paying $200 in cash and delivering an unsecured promissory note to ESC for $1,000. None of the shareholders, except Luanda, know what any other shareholder is paying for his stock, but everybody knows the identity of all of the people purchasing shares. ESC will accept certain real estate from the Prince, which has been appraised at $500, but which ESC has valued at $1,000, in full consideration for the 100 shares of ESC stock to be issued the Prince.

ASSUME DELAWARE LAW APPLIES. IF ISSUED, WILL ALL OF THE STOCK BE VALIDLY ISSUED. IF NOT WHO IS OR MAY BE LIABLE TO WHOM AND ON WHAT BASIS DOES THIS LIABILITY ARISE?

DOES YOUR ANSWER CHANGE IF THE APPLICABLE LAW WAS THE RMBCA, AND IF SO, HOW?

QUESTION 4
(60 minutes; 30%)

Assume that ESC has authorized 100,000 shares of common stock, $1.00 par value, of which an aggregate of 500 shares have been issued for a cash payment of $100
per share. The shareholders, Luanda, Prunella, Drucilla, Cinderella, and the Prince, have agreed that a shareholder agreement would be helpful to set forth the understandings between them respecting the manner in which authority for the operation of ESC is to be distributed amongst the parties. An associate at your law firm has drafted an agreement with the following provisions, all of which reflect the intent of the parties.

1. The stockholders agree to vote their stock and conduct their affairs as follows:

   (a) Each stockholder agrees that he or she will vote their shares to elect Luanda, Prunella, Drucilla, Cinderella and the Prince as the sole directors of the corporation.

   (b) Each stockholder agrees that he or she will appoint Luanda President and Chief Executive Officer, Prunella Sr. Vice President Operations, Drucilla Sr. Vice President Finance, Cinderella Secretary and Treasurer.

2. All of the stockholders shall be employees of the corporation. If, for any reason, any stockholder is terminated, or terminates his or her employment with the corporation, for any reason, the corporation, or if the corporation is legally unable, the shareholders, either individually or pro-rata, shall purchase from the terminated shareholder all of such shareholder's shares in the corporation for a price of $1.00 per share.

3. The stockholders agree that Luanda shall receive as compensation $100,000 per annum. Luanda's annual compensation shall be increased by 10% on January 1 of each year.

4. Luanda and Prunella shall have the sole right to manage the operation of the Swine School of Charm, and shall have in connection therewith, absolute and sole authority to make all final decisions, including, but not limited to: (a) the hiring and firing of all employees of SSC; (b) all monies generated by SSC; (c) all expenditures by or on behalf of the operation of SSC; and (c) the determination to sell or otherwise dispose of the assets of SSC, or any portion thereof.

5. Any other action which is required to be taken by the directors or the shareholders shall require unanimous approval, including, but not limited to, the issuance of any additional shares of corporate stock, dissolution, or changes to the articles of incorporation. No shareholder shall sell, transfer or otherwise dispose of his or her stock without the
unanimous approval of the remaining shareholders, which approval may be withheld with or without cause.

6. The corporation shall spend no less than 20% of its gross tuition revenues on advertising.

7. Any contract or other transaction between the corporation and one or more of its directors shall be valid for all purposes, notwithstanding the presence of the director or directors at the meeting of the Board of Directors of the Corporation that acts upon or in reference to the contract or transaction, and notwithstanding his or their participation in the action, if the fact of such interest shall be disclosed to the Board of Directors, the interested director or directors to be counted in determining whether a quorum is present and to be entitled to vote on such authorization or ratification.

Part A

1. COMMENT ON THE VALIDITY OF THE DRAFT YOUR ASSOCIATE HAS PREPARED, ASSUMING THAT DELAWARE LAW IS APPLICABLE.

2. WOULD YOUR ANALYSIS CHANGE IF THE APPLICABLE LAW WAS THE RMBCA, AND IF SO, HOW?

3. ARE THERE MEANS UNDER EITHER THE RMBCA OR DELAWARE LAW TO OVERCOME CONCERNS WITH THE VALIDITY OF ANY OF THE PROPOSED PROVISIONS?

4. WOULD YOUR ANALYSIS CHANGE IF CINDERELLA REFUSED TO EXECUTE THE AGREEMENT?

5. ARE THERE ALTERNATIVE MEANS OF REQUIRING THAT THE SHAREHOLDERS OF ESC VOTE TO ELECT THE DESIGNATED INDIVIDUALS AS ESC DIRECTORS? IF SO, DISCUSS THE BENEFITS AND DETRIMENTS TO THEIR USE IN THIS CASE.

Part B

Two years after ESC acquires SSC, Luanda files an action seeking to validate her claim to all of the property left by Cinderella's father upon his death, terminates Cinderella's employment, and assigns the Prince all of the janitorial functions of ESC.
The Prince immediately resigns in protest. Thirty days thereafter, and in accordance with the shareholders' agreement, Luanda causes ESC to purchase all of the shares owned by Cinderella and the Prince for $1.00 per share. Two days later, Luanda issues a press release, announcing the sale by Luanda and Drucilla, of all of their ESC stock (67% of the outstanding stock of ESC) to Ming Enterprises, a large publicly held corporation, for $500 per share. Cinderella, the Prince and Prunella are furious. They come to consult with you about their rights under Mongo (i.e. Delaware) law.

YOU ARE CONSIDERING LEGAL ACTION ON BEHALF OF YOUR CLIENTS. ON WHAT THEORIES MIGHT YOU PROCEED? WHAT ADDITIONAL INFORMATION WOULD YOU LIKE TO HAVE, AND HOW WOULD YOU GET IT?

QUESTION 5
(60 minutes; 30%)

Ming, formerly Emperor of Mongo, has been bored since he was deposed. At a party held at his palace, he met Cinderella. Cinderella spoke long and positively about SSC, and long and negatively about Luanda, who seemed yet again to have attempted to take advantage of Cinderella and the Prince. As a result of his conversation with Cinderella, Ming resolves to purchase ESC. As Chairman of the Board of Ming Enterprises, a large publicly held corporation, and the holder of 15% of the stock thereof, Ming believed that he could convince the directors of Ming Enterprises to effect the purchase.

Part A

AS COUNSEL TO MING ENTERPRISES, YOU HAVE BEEN ASKED TO ADVISE ON ALTERNATIVE WAYS OF STRUCTURING THE COMBINATION BETWEEN MING ENTERPRISES AND ESC. IDENTIFY THE ALTERNATIVES AND WITH RESPECT TO EACH DISCUSS THE MECHANICS REQUIRED TO ACCOMPLISH THE COMBINATION, THE EXTENT TO WHICH SHAREHOLDERS' WOULD BE ENTITLED TO DISSENTERS' RIGHTS, AND THE POSSIBILITY THAT A SHAREHOLDER MIGHT BE ABLE TO ENJOIN THE COMBINATION.

Part B

One month after his conversation with Cinderella, Ming secretly married
Luanda. Luanda wants to retire and get rid of her interest in ESC, but wants to live on the profits from the sale of her interest in ESC. She calculates that she will need to get $10,000 per share to make this dream come true. One night, during pillow talk, Luanda broaches the subject to Ming. Ming agrees to the purchase of ESC for $10,000 per share. Two months after the wedding, Ming called an emergency meeting of the Ming Enterprises Board of Directors. The Board consists of Ming, Ming’s daughter, Terry Tallwell, Geraldo Winfrey, and Mother Goose. Geraldo Winfrey is the general counsel of Ming Enterprises, and is solely dependent on the income from this job for his livelihood. Terry Tallwell and Mother Goose have other occupations and are considered outside directors. Ming’s daughter functions as the Chief Financial Officer of Ming Enterprises.

At the meeting of the Board, at which all directors were present, Ming announced that he had arrived at an agreement of merger between Ming Enterprises and ESC. Pursuant to the terms of the merger, each share of ESC stock was to be converted into a right to receive $10,000 in cash. While the agreement called for ESC to make certain representations respecting the condition of the company, liability for breach of these representations terminated upon the consummation of the merger. The Board approved the transaction after a brief discussion based on financial statements prepared by ESC’s financial staff, a detailed study of ESC and the benefits of acquisition prepared by Ming’s daughter, and a half hour oral presentation by Ming. Ming was unable to answer several questions posed by Tallwell, but refused to put off the Board’s decision on the matter. Tallwell did not register any objection to acting on the merger proposal at the meeting. Ming never disclosed the nature of his relationship with Luanda.

The Board approved the merger by a vote of 3-1-1. Winfrey abstained and Mother Goose voted against the merger on the grounds that there was not sufficient information on which to base a decision. The transaction was ultimately approved by the shareholders of Ming Enterprises and ESC, and was consummated.

Within a month after the merger was consummated, the employees of ESC filed a suit against Ming for breach of the Employee Retirement Income Security Act alleging that ESC failed to fund its retirement plan as required under the act for a number of years prior to the merger. The potential exposure, including interest and penalties is roughly $5,000,000. The next day, a class action was filed by all current and former students of SSC, alleging that contrary to its advertisements, SSC, failed to properly train the students in the ways of charm. The complaint seeks the return of all tuition paid, plus consequential and punitive damages. The potential exposure id $50,000,000.

A COMMITTEE OF DISSIDENT SHAREHOLDERS HAS ASKED YOU FOR YOUR ADVICE ON THE FEASIBILITY OF A DERIVATIVE SUIT AGAINST ONE OR MORE OF THE DIRECTORS OF MING
ENTERPRISES. BRIEFLY DESCRIBE ON WHAT THEORIES, A
PLAINTIFF MIGHT SUE UNDER DELAWARE LAW. DISCUSS THE
STRENGTHS AND WEAKNESSES OF EACH OF THE THEORIES
PROPOSED.