1972

Business Organization I (January 18, 1972)

William & Mary Law School
On New Year's Eve 1971 a group of affluent residents of Williamsburg were invited to a party given by the Director of Colonial Williamsburg. The evening was a social success with the main topic of conversation being the growth and economic development of the area. Four members of this elite group were especially vocal. Byron Cuspid the dentist, J. P. Scribe, Jr. a medical practitioner, Peter Sellers an insurance agent and Uriah Creep a local attorney. As the evening progressed the above four became more and more enthusiastic about the possibility of cashing in on the projected boom. They resolved to meet early in the new year and discuss some form of enterprise.

On January 6, 1971 our four heroes met at the Hmg and, over a cup of warm weak coffee, they decided the following. That there was a great deal of money to be made by buying large tracts of land, and building houses to the specifications of prospective purchasers, as well as houses that they would design, build and sell. They decided that each member should put $100,000.00 into the enterprise and that if the scheme was to fail, each member should only be liable to the extent of his investment.

It was also agreed that Bet, the wife of Sellers, an M.D. graduate from Hilliam and Mary, should contribute $50,000 and receive a salary of $20,000 P.A. as general manager. Net profits were to be divided according to the amount of the investment.

They decided to call the enterprise 'Professional Builders of Williamsburg' and resolved that although their names would not appear on the letterhead they would not actively hide their interest in the business.

The operation began and Bet investigated the purchase of a number of estates. She finally settled on a beautifully wooded area between Williamsburg and Jamesstown. An intense advertising campaign was undertaken over WMBG radio and orders began to pour in.

As the months went by problems began to arise. The President's freeze on salaries tended to inhibit large capital outlay by middle income wage earners. The soil of the estate was not altogether suitable for cheap housing because it was necessary to drive foundation piles some four feet into the ground. A late spring and a wet summer resulted in delays which cost thousands in late completion payments and Bet made some serious miscalculations as to the projected cost per unit. By November, 1971 there were some fifty units in various stages of completion. Some had been already sold and others were owned by the enterprise. Two of the entrepreneurs 'went out' and hired you as an attorney to advise as to the various liabilities that have arisen. Having spent some weeks pouring over documents and after asking many questions, the following incredible sets of facts appear.

Soon after the enterprise got under way Miranda, Cuspid's dental nurse, suggested to Wilson, a patient, that he should purchase a house in the development. Wilson was skeptical but when Miranda informed him that Cuspid had a considerable interest in the scheme, he changed his mind. Miranda showed him a set of plans which included costs and payments and he decided to buy. He gave Miranda $1500 deposit. Miranda disappeared. She has since been located working in the opal mines of Mt. Tsa in Australia. Wilson was naturally very upset by this turn of events and went straight to Cuspid. Cuspid in turn went to Bet and tried to convince her that it would be in the best interests of the business if they credited Wilson with the $1500 and allowed the sale to proceed. Bet was concerned that Cuspid may withdraw his support as she agreed. With the house almost complete, Wilson has discovered that some of the specifications that had been given to him by Miranda have not been carried out and he wants either damages or rescission.

Bet decided that a particular lumber yard will offer the best service and she wished to make a contract that would ensure regular deliveries. She asked Creep to negotiate the contract. Creep did not expect any payment. The manager of the lumber yard asked Creep about the credit rating of the firm. Creep replied that in reality he [Creep] was the firm. The
contract was signed. While returning home from the lumber yard, Creep decided to visit a promiscuous lady of the town and after his visit he was in a car accident which resulted in his inability to work and an estimated loss of income of $50,000 and injury to the property of a nearby building owner to the extent of $20,000.

Shortly after the order for lumber had been placed, the first load arrived at the developmental site. While the unloading was taking place, the truck driver received a call over his two-way radio. The manager informed him that his wife had been taken to the hospital. The foreman at the building site was anxious that the truck driver be able to leave as soon as possible and he asked two men who were inspecting the area with the view to purchasing a house if they would "lend a hand." They hesitated but when the sum of $5.00 per hour was suggested by the foreman, they readily agreed. They had worked for about two hours when one of the new workmen accidentally dropped a section of lumber on the back of his fellow newcomer thus rendering him permanently paralyzed. You would expect damages for such an injury to be in the vicinity of $500,000.00

As is usually the case in operations which employ salesmen, commission is paid by the firm for each sale. In order to extend their area of contact these salesmen regularly offer a "spotter's fee" to anybody who introduces them to a client who subsequently buys. When payment of the commission is made by the firm to the salesman, the salesman customarily asks for a separate check to be made out to the "spotter." Mrs. Sharpe had earned three such commissions but on the fourth try she slipped on a cross beam at the building site and damaged her ankle, tore her mink coat which she values at $1000.00.

Creep had been granted power of attorney by G. O. Libble who was going overseas. The power included the authority to purchase real estate which Creep believed would increase in value. Acting in good faith, Creep purchased two lots on the estate for a total of $20,000. Libble has returned from overseas and he doesn't like Creep's choice of investment, especially as it now appears that the land is worth approximately half the purchase price. At the time when Creep was purchasing the land for Libble, he began to investigate the possibility of purchasing an estate which adjoined the development site. He found that the land was extremely cheap, but he thought that if the development was a success, then this land would automatically increase in value. He purchased the estate for $150,000 and even though the development is floundering the value of the purchase is now about $400,000.00

Sellers is at present contemplating running for municipal office. At a rally [which was reported in the press] Sellers was asked about the economic growth of the community and problems of fly-by-night investors. He was reported as saying, "I am so sure of the future of this area that I have personally invested large sums of money in its development. I believe that banks should encourage men such as [he then named his "partners"] to come together as we have. You can be quite sure that men of our integrity keep a keen eye on any operation in which we are involved".

It now appears that the firm is in debt to the tune of $400,000.00 and has dissipated most of the original investment.

Set out any claims that could be made against our five investors, the firm or anyone associated with the firm. Give any defenses which might reasonably be made and the results of any possible litigation.