Student Number ______

University of Illinois College of Law
Examination Cover Sheet

Business Associations I
Professor Amitai Aviram
Fall Semester 2007: Dec. 10, 2007
Number of Pages: 8 (including this page)
Time Allotted: 4 hours

Exam Instructions

1. **Permissible material**: This is an open book exam. You may use any materials you want, whether in hardcopy or electronic format.
2. **Anonymity**: The exams are graded anonymously. Do not put your name or anything else that may identify you (except for your student number) on the exam.
3. **Legibility**: If you handwrite your exam, please write legibly. I will do my best to read your handwriting, but will have to disregard (and not give you points for) writing that is too small to read or otherwise illegible.
4. **Confidentiality**:
   a. Once you receive this exam form, you are not allowed to discuss the exam with anyone until after the final day of the exam period for this semester (which may be later than the day of the exam).
   b. Students who are enrolled in this course are not allowed to solicit or receive information on the exam if the source of this information (directly or indirectly) is a person who has seen the exam.
   c. After the last day of the exam period for this semester, you are allowed to freely discuss the exam.
5. **Writing the exam**
   a. Cite relevant case and statutory authority.
   b. Within the constraints of the length limit, answer all relevant issues that arise from the fact pattern, even if your conclusion on one of the issues is dispositive to other issues.
   c. If you think a question cannot be answered without additional facts, state clearly what facts you believe to be necessary to answer the question.
6. **Applicable law**
   a. If a question specifies the applicable law, then assume that the relevant jurisdiction applies that law.
   b. If a fact pattern specifies the applicable law (and the specific question does not specify applicable law), then assume that the relevant jurisdiction applies that law.
   c. If neither the question nor the fact pattern specified the applicable law, then apply the law we addressed in the course. If the issue was addressed differently in different jurisdictions, then state the rule, application and result in each jurisdiction we addressed.

7. **Length limit**: The total length of your answers is limited as follows:
   a. If you type the exam on a computer, it should not exceed 1,600 words. If you handwrite your exam, it should not exceed 160 lines. These limits are for the entire exam, not for each question.
   b. **For every 10 words (typed exams) / 1 line (handwritten exams) in excess of the length limit (rounded up), one point will be taken off the exam's raw score**.
   c. If you type your exam, please write at the end of it the word count (e.g., "Word Count: 1,519 words"). If you handwrite your exam, please do a similar line count. The words/line used in reporting the word/line count are not calculated in the word/line count itself. **Failure to follow this sub-section will result in a reduction of one point from the raw score**.
8. **Choice**: The exam contains three questions. Answer any two of them. I will grade only the two questions you answered first.
9. **"Fact" patterns are fiction**: The "facts" presented in the exam were constructed for an educational purpose, and were not intended to refer to or inform about any real person or event.

Good Luck!

<u>Essay Fact pattern (answer TWO of the three questions)</u>

<u>Colbert</u>: "The Colbert Report" ("TCR") is a satirical television program that is shown on cable television. TCR satirizes personality-driven political pundit shows. Its anchorman, Stephen Colbert ("Colbert"), discusses current events, interviews guests (typically book authors), and spurs viewers into activism for various bizarre or self-aggrandizing causes. For example, when the Hungarian government launched a website that solicited public suggestions to name a bridge it was building over the Danube River, Colbert urged his viewers to vote to name the bridge after him. On another occasion, Colbert asked viewers to edit Wikipedia's page on elephants so that it claimed that the population of elephants had tripled in six months. Colbert often refers to his viewers as the "Colbert Nation".

<u>Colbertnation.com</u>: Jamelle, a fan of TCR who lives in South Carolina, created a website called Colbertnation.com ("Colbertnation"). This website, which styles itself "The #1 and #2 Colbert Report Fan Site", offers a blog on TCR, video clips and pictures from past episodes, an online store for Colbert-related paraphernalia, and a letter from Colbert welcoming fans to the website and describing the website as "the vehicle through which my wisdom will reach your ears" (the letter was actually written by Jamelle; Colbert was not involved in writing it).

As Colbertnation's popularity rose, it was brought to the attention of Colbert. He looked at the website and enjoyed its aggrandizing of his character. Colbert began making many references to Colbertnation in each episode of TCR, and ended every episode thanking the operator of Colbertnation for his good work. TCR's official website, which is operated by Colbert, has a prominent link to Colbertnation. Colbert regularly checked out Colbertnation, and would contact Jamelle by e-mail with requests to convey on the blog messages Colbert had for his fans, to remove pictures Colbert felt were unflattering to him, or to place on the site video clips that Colbert thought were particularly funny. Jamelle always accommodated Colbert's requests.

<u>Colbert for Prez</u>: In early October 2007, Colbert met with Jamelle and told him that he is about to publish a book as an opening shot for his bid to run for president. He asked that Jamelle help the book's sales by conspicuously referencing it on Coblertnation. Jamelle said he would gladly help.

Initially, Jamelle then placed on Colbertnation links to websites of online booksellers that would sell the book. Later, he replaced these links with a notice that offered: "Buy the book directly from the author", and took orders for the book online, charging the buyers' credit cards $25 per book (which was the book's retail price in other bookstores). By November 1, Jamelle received orders for 1,000 books, and confirmed to the buyers his acceptance of their orders, promising to deliver the book by November 10. Jamelle planned to get the books directly from Colbert, but had not mentioned to Colbert his plan to sell the book directly.

<u>Crash and Burn</u>: Throughout October, Colbert repeatedly mentioned his book on TCR and pressed readers to buy it. Later that month, he announced on TCR that he is running for president, but only in his home state of South Carolina (his goal, he explained, was to run for president, not to be president). He applied to be on the ballot for the South Carolina primaries of the Democratic Party. On November 1, the South Carolina Democratic Party executive council ("the council") voted to refuse Colbert's application onto the ballot because they determined that he was not a serious candidate.

Colbert, in a fit of rage, decided to take his book (which portrayed South Carolina in a light that he now thought was too positive) off the shelves. His contract with the publisher enabled him to stop printing the book, acquire all of the books the publisher had in its inventory, and even acquire all of the books held by bookstores and not yet sold to the public. Thus, Colbert managed to acquire all copies of his book, except for about 20,000 copies that were already purchased and held by individual readers.

Colbert then organized, on November 5, a public book-burning event, in which he set fire to all the copies of his book that were in his possession. He called on the readers that purchased copies of his book to join him and destroy their copies. However, with so few copies surviving, their value skyrocketed (a few copies sold on eBay for $10,000), and very few readers answered Colbert's call to burn his book.

<u>Egg on your face</u>: Nov. 1 was a devastating day for Jamelle, too. After hearing of the council's decision, he immediately removed from Colbertnation the link to purchase the book directly from the author.

He went out to shop for groceries and blow off steam. As he loaded his purchases in the store parking lot, he saw Jane, whom he knew as a member of the council, pull her car into the parking spot next to him. He grabbed an egg from his cart and threw it at Jane just as she got out of the car. The egg hit Jane, irreparably staining her expensive dress but not injuring her.

On November 5, witnessing the book burning event, Jamelle realized that he would not be able to acquire the 1,000 books that were ordered on his website. He informed all purchasers them that he could not acquire the book and therefore is revoking the orders, and refunded their $25. This did not go well with the people who placed the orders, many of whom would have bought the book at a bookstore (while it was still available) if they had not ordered the book on Colbertnation. Each copy of the book was now worth $9,975 more than the price they paid for it.

Nicola, who ordered a copy of the book on Colbertnation, sued Colbert for failing to deliver the book. Jane sued Colbert alleging that he is vicariously liable for the damage to her dress from the egg that Jamelle threw at her. Assume Jamelle is liable to both Nicola and Jane.

I. **Discuss Nicola's and Jane's suits**.

<u>Busboy</u>: The book burning event and the violence by a Colbert fan against a council member did not sit well with some people, who called for a boycott of Colbert and TCR. This upset Jon Stewart ("Stewart"), a director in the company that produces and owns TCR, and himself the anchor of a satirical television program called The Daily Show ("TDS"), which is shown every day just before TCR on the same cable TV channel. TDS is produced by Stewart Productions, Inc. ("SPI"), a corporation wholly-owned by Stewart and governed by the Model Business Corporation Act. SPI has a board of directors consisting of one director: Stewart.

TCR is produced and owned by Busboy Productions, Inc., ("Busboy"), a publicly-held Delaware Corporation. Busboy has three directors on its board: Stewart, Colbert, and Jimmy (TCR's producer).

<u>Colbert and Stewart clash</u>: As public protests mounted, Stewart voiced increased concern that Colbert's actions are alienating potential fans. Colbert, on the other hand, argued that his actions increased the loyalty of TCR's most fanatic fans (who now considered Colbert a martyr), and that this was more important than appealing to the largest number of viewers.

When Colbert announced during a TCR episode that "South Carolina is dead to me" and presented a map of the United States in which a void replaced South Carolina, many Carolinians complained. Stewart lost his patience and decided to replace Colbert. He knew he had no chance of persuading Colbert to resign, but he hoped to persuade Jimmy to vote to replace Colbert as anchorman, in which case Stewart and Jimmy would outvote Colbert on Busboy's board of directors.

<u>Stewart maneuvers to oust Colbert</u>: Stewart met with Jimmy to persuade him to replace Colbert. Jimmy listened carefully to Stewart, but responded that he could not imagine that TCR would be successful without Colbert. Stewart took a few days to consider his options, then met with Jimmy again and said that he (Stewart) was interested in having SPI undertake a leveraged buyout of Busboy, cashing out Busboy's current shareholders for $100 a share (a significant premium over the price Busboy shares were trading on the stock exchange, which was $60). By having SPI take over Busboy and merging the two companies' activities, Stewart argued, he could unlock synergies that would result from more coordination between TCR and TDS, which he described as complementary shows. Stewart expressed his intention to fire Colbert as soon as he took over Busboy. Jimmy asked whether Stewart would consider buying Busboy and leaving Colbert as TCR's anchorman, and Stewart said he would never do that.

In Busboy's next board meeting, Stewart presented SPI's official offer to acquire Busboy's shares in a leveraged buyout for $100 a share. For various reasons, Stewart had to structure the buyout in a way that required approval by the board of directors or its authorized committee. It was clear that both Colbert and Stewart suffered from a conflict of interest (Stewart's company was offering the buyout, and Colbert knew he would lose his job if the buyout succeeded). With a majority of the board conflicted, the deal had to be approved by an authorized committee.

Stewart proposed to appoint Jimmy as the sole member of a board of directors' committee ("the committee") that the board will authorize to evaluate SPI's offer, negotiate the offer with Stewart and SPI, and approve it on behalf of the board if it is found to be in the best interest of Busboy's shareholders. The board voted 2-1 to create and authorize this committee (Colbert voted against this proposal).

Jimmy studies the issue: Jimmy, acting for the committee, hired Anna, an expert in business strategy and business valuation with particular expertise in cable television programming. He thoroughly checked Anna's background to confirm that she had no affiliation with Colbert, Stewart or SPI. He did not find any information that suggested Anna would have a conflict of interest advising on SPI's offer. He then asked Anna to assess the expected value of Busboy's shares, with alternative valuations for: (1) Busboy's current value per share; (2) Busboy's value per share including synergies from merging operations with SPI; (3) Any change in these valuations if Colbert is replaced as anchorman.

Anna conducted a thorough analysis and concluded, in a detailed report, that currently Busboy is worth about $70 per share, and that merging the operations of SPI and Busboy would unlock synergies that would increase Busboy's value by $50 per share (to $120 per share). In a separate and equally detailed report she determined that Colbert is likely the best anchorman available, and that replacing him with the next best candidate would likely result in a reduction of $20 per share, so that a Busboy share would be worth $50 without the synergies and $100 with them.

Never-ending negotiations and investigations: Jimmy read the report carefully, questioned Anna about various assumptions and was satisfied that the valuations were made based on sound assumptions, the best available information, and widely-accepted valuation techniques. He met with Stewart and pointed out that according to his valuations, $100 per share would be below the value of the company if Colbert was not replaced. Stewart told him that the first thing he intends to do upon buying Busboy is firing Colbert, so he doesn't care what Busboy's valuation would be with Colbert. Stewart warned Jimmy that he needs to decide on the offer quickly, because some analysts were expecting an economic downturn that would make it difficult for SPI to obtain financing for the buyout. He pointed out to Jimmy a clause in SPI's offer that allowed SPI to revoke the offer without penalty at any time prior to Busboy's acceptance of the offer, if it could not obtain financing. Stewart said that right now there's no problem with financing, but this could change very quickly.

Jimmy returned to Anna and asked her to examine whether Busboy could achieve synergies by merging operations with other cable show producers who might want to keep Colbert. It took Anna two months to examine various possibilities. When she concluded the investigation she handed Jimmy a report that indicated that of over 50 companies she has considered, only two offered any significant synergies, and the best of those would only add $10 per share (making a Busboy share worth $80). Thus, she concluded, it was unlikely that any other bidder could offer $100 per share.

Jimmy returned to Stewart and told him that with Colbert Busboy is worth $120 a share, and since SPI could decide after the buyout not to fire Colbert, he expects SPI to pay at least $115 per share. Stewart repeated that he wants to fire Colbert and would not pay more than $100. Jimmy told Stewart he (Jimmy) thinks Stewart was bluffing. Stewart denied this, and warned that an economic downturn was already beginning, and financing may dry up "any day now."

Jimmy went back to Anna and asked her to examine whether other companies (outside the cable TV industry) might be interested in purchasing Busboy for over $100. Anna said it would take her another two months to complete this task, and Jimmy authorized it.

Offer withdrawn, shareholders angry: A week later, well before Anna could return with results, the spiraling economic downturn caused a British bank to collapse. SPI's financiers told Stewart that they were withdrawing from financing the takeover, and Stewart informed Jimmy that SPI is withdrawing its offer.

In an article on SPI's withdrawal of the bid for Busboy, the Wall Street Journal publicized an e-mail sent from Jimmy to Anna while Jimmy was negotiating with Stewart, in which Jimmy confided that he believed "Stewart is not bluffing when he says that the most he would pay is $100. Stewart hates Colbert and would take a $20/share loss to fire him. However, firing Colbert would ruin The Colbert Report, I care about that show and won't let Stewart ruin it." The article, however, offered no evidence that Jimmy was beholden to Colbert or that Jimmy would otherwise benefit from protecting Colbert's job.

Jaime, a Busboy shareholder, was enraged that Jimmy missed an opportunity to sell Busboy to SPI at $100 a share, well above the market price. She sued him derivatively, claiming that Jimmy breached his fiduciary duties by failing to approve SPI's offer even as it became clear that worsening economic conditions would likely result in SPI withdrawing its offer if it were not approved.

II. **Discuss Jaime's suit**.

Colbert and Stewart bury the hatchet: With a full-blown banking crisis taking place, it became clear to Stewart that SPI would not obtain financing to buy Busboy any time soon, so the leveraged buyout plans were shelved. Stewart wanted, however, to merge Busboy's and SPI's operations and benefit from the synergies. He offered that Busboy and SPI produce TCR and TDS together and offer them to cable companies as a package. Because SPI was financially stronger than Busboy, they agreed that SPI will bear 60% of production expenses and receive 60% of the payments from the cable companies that show TCR and TDS. Stewart specifically agreed that Colbert would remain the anchorman of TCR.

Busboy's board of directors discussed Stewart's offer. Stewart presented his offer and then left the board room to allow Jimmy and Colbert to discuss the offer. Jimmy and Colbert then voted 2-0 to accept Stewart's offer. They also voted to appoint Colbert as CEO of Busboy.

Producing both shows together proved to be a hit. Colbert would occasionally appear in TDS and Stewart in TCR, recurring themes would appear in both shows, and both shows' popularity skyrocketed. However, Colbert was clearly becoming more popular than Stewart, and he increasingly resented that SPI was receiving 60% of the revenue (by this point, profits have sufficiently enriched Busboy that it could now easily cover all production costs for both shows).

<u>Problems with South Carolina, again</u>: Colbert was approached by executives of Comedy Central ("CoCe"), a cable TV company that has been purchasing both TDS and TCR. CoCe offered Colbert to produce a sitcom called "Lincoln", in which the Colbert character from TCR was the President of the United States on the eve of the Civil War, just as South Carolina declared it was succeeding from the union.

Colbert signed a deal with CoCe to produce Lincoln for them. Because he was the CEO of Busboy, Colbert felt morally obligated to tell Jimmy about the deal. Jimmy made Busboy sue Colbert, claiming that the deal should be made with Busboy, not with Colbert personally.

III. (1) **Discuss Busboy's suit**.

Before the suit was litigated, Colbert sheepishly agreed to have CoCe cancel its contract with him and sign an identical contract with Busboy. When SPI learned of this contract, it sued Busboy claiming that SPI should also be a party to the deal with CoCe.

III. (2) **Discuss SPI's suit**. Note: If you choose to answer question III, you must answer both III(1) and III(2).

<u>Business Associations – Fall 2007</u>
<u>Memo on the Exam</u>

<u>Grades</u>:

	Average	Median	Lowest	Highest
Entire Exam	56.21	55	10	93
Question 1	29.86	32	3	47
Question 2	23.44	23	5	45
Question 3	35.65	35	22	46

Below is an example of what would constitute a good exam. This is only <u>an</u> example, not <u>the</u> example; i.e., some students received credit for very different, but well explained and correct responses.

I. **Discuss Nicola's and Jane's suits**.

1. Nicola's suit

(a) Is Jamelle Colbert's agent? Under Restatement §1.01, Jamelle would be an agent if: (1) Colbert manifested that Jamelle acted on his behalf – this may be the case here: Colbert asked Jamelle to help sell his book, and more generally manifested appreciation for Jamelle's popularization of TCR (through Colbertnation); (2) Colbert manifested that Jamelle be subject to Colbert's control – this is a close call: Colbert asked Jamelle for help specifically regarding selling his book and asked for changes in Colbertnation. It isn't clear if this was just a friendly request or if Colbert expected Jamelle to comply; (3) Jamelle's assent – seems to exist here (Jamelle complies with Colbert's requests). Conclusion: Close call, but Jamelle may be Colbert's agent.

(i) Colbert may be estopped from denying Jamelle's agency/authority to Nicola under Restatement 2.05:

(1) Nicola was justifiably induced to make a detrimental change in position because the transaction was believed to be on Colbert's account – her credit card was charged and she passed on an opportunity to purchase the book at a bookstore (detrimental change in position). Reliance was justified because Colbert publicly endorsed Colbertnation and his official website linked to Colbertnation.

(2a) Colbert intentionally/carelessly caused Nicola's belief – Colbert knew of Colbertnation, frequently checked its contents (and asked for changes), and didn't ask to remove the remove the "buy directly from the author" link;

(2b) Having notice of the belief, Colbert didn't take reasonable steps to notify them of the facts – no evidence Colbert had notice of Nicola's belief, but if he saw Colbertnation's offer to buy directly from the author, he may be on notice that readers may believe this was authorized by him, in which case it would be easy to notify readers by disclaiming this on TCR or his official website.

Conclusion: Colbert is estopped from denying Jamelle's agency/authority to Nicola.

(b) Authorization – Actual Authority: Colbert asked Jamelle to "help the book's sales by conspicuously referencing it on Coblertnation." Jamelle couldn't reasonably believe that this included authorization to directly offer books for sale on Colbert's behalf, so there is no implied actual authority.

(c) Authorization – Apparent Authority: To have apparent authority, Nicloa would need to reasonably believe, based on Colbert's manifestations, that Jamelle had actual authority to sell Colbert's book (Restatement 3.03). Colbert pressed readers to buy his book, endorsed Colbertnation on TCR and linked to it on his official website, so Nicola may reasonably believe that Colbertnation (and Jamelle, as its operator) was authorized to sell the book. Jamelle's "letter from Colbert" isn't a relevant manifestation, because it comes from Jamelle and not from Colbert. Colbert likely saw it and didn't object, but Nicola doesn't know that Colbert saw it.

(d) Conclusion: Colbert is likely liable to Nicola by estoppel, and may also be liable because Jamelle was his agent and had apparent authority.

(2) Jane's suit

(a) Respondeat Superior (Restatement 2.04): Colbert would be vicariously liable if Jamelle was his employee and committed the tort against Jane within SoE. Jamelle may be Colbert's agent (see I.1.a), though he wouldn't be an agent by estoppel because Jane made no detrimental change in position because of a transaction believed to be on Colbert's account (for rule see I.1.a.i).

(b) Employee? Under Restatement 7.07(3)(a), an employee is an agent whose principal controls/has the right to control the manner/means of the agent's performance. Colbert controls the means of Jamelle's performance if there is an understanding between them that Jamelle abides by Colbert's requests regarding the content of Colbertnation. Jamelle isn't paid to do so, but a gratuitous agent may be an employee (Restatement 7.07(3)(b)). This would make Jamelle an employee under *Butler*. However, under *Vandemark* Colbert must control the 'instrumentality' that caused the harm – in this case, Jamelle's behavior when he buys groceries. Colbert doesn't control this behavior, so with respect to this tort Jamelle isn't Colbert's employee.

(c) SoE? Under Restatement 7.07(2), Jamelle is within SoE when acting to serve a purpose of Colbert's, engaging in conduct subject to Colbert's control or assigned by Colbert. The activity related to the tort wasn't subject to Colbert's control (see I.2.a.i), wasn't assigned by Colbert, but may have a remote relationship to Colbert's instruction to help his presidential bid– but this is very remote (unlike *Manning*, *Lyon*). Under the foreseeability test (*Bushey*) the tort is within SoE if some harm (not necessarily the particular harm) is foreseeable – perhaps Colbert should anticipate angry fans would respond violently, but Jamelle didn't pose a greater risk to Jane than any other TCR fan, and his motivation was personal.

Conclusion: No liability. Jamelle isn't an employee under *Vandemark* (is under *Butler*), and tort isn't within SoE.

(d) Rest. 7.08 is irrelevant: Jamelle didn't use apparent authority – Colbert made manifestations about Colbertnation, not Jamelle; Jamelle's role in Colbertnation didn't affect the tort's commission/concealment.

II. **Discuss Jaime's suit**.

1. Jimmy, acting as a BoD committee, either failed to decide about SPI's buyout offer, or decided to seek other buyers and stall until another buyer is found. Authority: DGCL 141(c)(2) allows the creation of one-director committees, and allows BoD to delegate to the committee any of its powers. DGCL 141(b) states a majority vote is considered the act of the board, so the 2-1 vote properly authorized the committee. [Note: An exception in DGCL 141(c) restricts the power of a BoD committee to approve certain M&A activity, but this point addresses material we did not study in the course, and references DGCL sections we did not cover, so you were not expected to address this point.]

2. BJR
    a. Fraud/Illegality? No.
    b. CoI? No evidence that Jimmy has an interest in Colbert's well being; only in TCR's reputation.
    c. Lack of Business Judgment? If Jimmy failed to decide/act, then BJR is rebutted (*Francis*, *Caremark*). But Jimmy's didn't decide because he was looking for alternatives, so in effect it is a decision to neither approve nor reject the deal until a better deal (with another buyer) is found.
        i. Importance of decision: Extremely important – this is an attractive cash-out merger; approval means endgame for SHs (*Van Gorkom*). So, highest standards required.
        ii. Knowledge/expertise required: valuation of businesses, locating potential buyers
        iii. Jimmy does not seem to possess these skills. Can he rely on Anna's reports under DGCL 141(e)?
            1. Expertise: Anna has it
            2. Independence: Yes. Jimmy confirmed this.
            3. No abdication of decision: Jimmy asked Anna specific questions related to his decision, but did not ask Anna to decide about the approval. He proactively questioned her in her areas of expertise, but never left to her the decision whether to approve the deal.
    d. *Dodge* Exception/Irrationality/Corporate Waste? Jimmy seems to care about the show's character rather than SHs' profits. Since SPI cashed out Busboy's SHs, they don't care if the show is good after the buyout, so firing Colbert then does not affect them. This may be a rare situation in

which the decision is irrational, or directors wrongly decide the ends which the company serves rather than the means (*Dodge*).
But in *Shlenski*, the court went out of its way to find a business justification. It's possible (though contradictory with the e-mail that appeared in the Wall Street Journal) that Stewart was bluffing, and stalling the decision would have led him to keep Colbert and pay more than $100/share – which is in the SHs benefit.
   e. Conclusion: BJR may be rebutted either due to lack of a decision (unlikely) or irrationality/*Dodge* rule (possible).
3. Ratification: None. BoD is conflicted and SHs didn't ratify.
4. DoC breached?
   a. If Jimmy failed to decide, standard is whether circumstances would alert a reasonably attentive director to the need to decide
      i. Notice of a problem (*Francis*) – Stewart warned Jimmy about the risk of a financial crisis causing the offer's withdrawal.
      ii. Very important aspect of firm's activity (*Caremark*): Buyout is very important (see I.c.i).

      But Jimmy did not fail to decide – he decided to stall until another buyer was found (see I.c).
   b. If Jimmy decided to stall, standard is whether he was informed to an extent the director reasonably believed appropriate in the circumstances – here he was very informed due to reliance on Anna's reports (see I.c.iii). However, decision would be struck down if irrational (*Brehm* dicta) or not motivated by SHs' welfare (*Dodge*).
5. Conclusion: Conclusion possibly struck down under *Dodge*/irrationality exception, otherwise, no breach of fiduciary duties.

III. **Discuss both Busboy's and SPI's suits**.

1. Busboy's suit
   a. Colbert is an officer of Busboy, a Delaware corporation. Producing Lincoln is a business opportunity. Whether it belongs to Busboy depends on the *Guth* test:
      i. The corporation is financially able to take the opportunity: Yes; Busboy can cover production costs of both TCR and TDS, but only pays 40%, so it should have money to cover production of Lincoln.
      ii. The opportunity is in the corporation's line of business: Probably. Sitcoms may not be in the same line of business as a satirical news shows, but customer is the same, and both Lincoln and TCR are based on Colbert's personality. Also, producing all cable TV comedy shows may be a single line of business.
      iii. The corporation has an interest or expectancy in the opportunity: Probably not. Both Lincoln and TCR are based on Colbert's personality, which he developed in his work for Busboy. But Colbert's personality may be his own to develop. More likely, the

Colbert personality belong to the SPI/Busboy partnership, since the partnership, not Busboy alone, is in the business of producing TCR.

iv. By embracing the opportunity the officer/director would create a conflict between his/her self-interest and that of the corporation: Maybe, if Colbert needs to develop his character in different directions for Lincoln and TCR. Also, Colbert's sense of moral obligation to tell Jimmy about the deal suggests that he sees a conflict.

Conclusion: The SPI/Busboy partnership likely has the expectancy (see II.2), so the business opportunity doesn't belong to Busboy. If the partnership doesn't have the expectancy, it's a close call whether the opportunity is Busboy's or Colbert's, likely leaning toward Busboy.

b. If Business opportunity belongs to Busboy under Guth, then BJR rebutted for CoI and Colbert breached his DoL, unless action was ratified.
    i. No ratification by either BoD or SHs.

2. SPI's suit
    a. SPI is suing Busboy for seizing a business opportunity that belonged to the partnership between them, like *Meinhard* and *Meehan*.
    b. Did SPI and Busboy form a partnership. A partnership is the association of two or more persons to carry on as co-owners a business for profit (RUPA 202(a)). Co-owners mean shared profit and shared control. Here, Busboy and SPI share profits (60/40), and share control over producing TCR and TDS. So, they formed a partnership.
    c. Did Busboy violate DoL in seizing the deal with CoCe? Under RUPA 404(b)(3) prohibits a partner from competing with the partnership, and RUPA 404(b)(1) prohibits a partner from appropriating a partnership opportunity.
    d. Did the deal with CoCe amount to competing with the partnership, violating RUPA 404(b)(3)? Probably not, because a sitcom is not in direct competition with satirical news shows. But both shows have the same customer (CoCe), and both are in the same line of business (producing shows; see II.1.ii).
    e. Did the deal with CoCe belong to the partnership, violating 404(b)(1)?
        i. The very lean (and apparently, verbal) partnership agreement did not address corporate opportunities. Narrowly construed, producing Lincoln is different from the subject of the partnership (producing TCR and TDS). Under a contractual standard (*Lawlis*) the lack of specification regarding producing other shows may suggest parties did not prohibit partners from pursing these opportunities.
        ii. A fair fight standard (*Meehan*) would require Busboy not to have an unfair advantage over SPI in seizing the opportunity. Here, Colbert told Jimmy but not Stewart, so Busboy knew (and seized the opportunity) while SPI was in the dark. CoCe contacted

Colbert not because they wanted to deal with Busboy, but because they were interested in his character – it the Colbert character belongs to the show producers and not to Colbert, it should belong to the partnership, not just Busboy.

iii. A selfless standard (*Meinhard*) requires the at least the managing partner to put the other partners' interests first. Here, Busboy is not more of a managing partner than SPI, but it does have an informational advantage in that Colbert told it, and not SPI. Being selfless may require it to give the partnership the opportunity, if it is within the scope of the partnership business.

iv. Which standard applies? Partners are sophisticated (like *Meehan*/*Lawlis*, unlike *Meinhard*), and TV show production tends to be individualistic and star driven ("eat what you kill", analogous to *Meehan* and *Lawlis*). However, the contract is verbal and very brief, so the omission of addressing business opportunities is unlikely to raise a negative inference, but rather is a result of the contract addressing very few issues and leaving the others implied. Conclusion: Neither pure contractual nor selfless standards seem appropriate. Fair fight more likely applicable.

f. Applying fair fight standard, opportunity belongs to partnership unless it belongs to Colbert personally. Opportunity probably does not belong to Colbert – see III.1.a.iii/iv. Conclusion: SPI likely wins its suit.