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**THE UNIVERSITY OF BRITISH COLUMBIA  
PETER A. ALLARD SCHOOL OF LAW**

**FALL EXAMINATION – DECEMBER 2018**

**LAW 459/508D  
Business Organizations**

**Section 3  
Professor Hutchison**

**TOTAL MARKS: 100**

**TIME ALLOWED: 3 HOURS**

**NOTE:**

1. This is a limited open book examination. Candidates may have with them a CAN/outline and printed statutory materials. Laptops are only permitted for the use of Exemplify/Examsoft.
2. ANSWER ALL QUESTIONS.

THIS EXAMINATION CONSISTS OF 3 QUESTIONS (with sub-questions).

**QUESTION 1**  
**MARKS 50**

Unisoft Inc., a publicly-traded federal corporation (“Unisoft”), is an international video game developer with significant operations in Quebec. Unisoft has 100 million shares outstanding, which trade at a consistent market price of approximately \$25 per share. Among its investments, Unisoft owns 35% of the shares of GameRocket Inc., a publicly-traded federal corporation (“GameRocket”), which develops mobile games in Europe and North America. GameRocket has 20 million shares outstanding, which trade at a consistent market price of approximately \$10 per share. Unisoft and GameRocket have a close business relationship and often collaborate on each other’s projects. The chief executive officer (and chairman of the board of directors) of both Unisoft and GameRocket is Guillaume Yverneau, who also owns 15% of the shares of each company.

Vivre S.A., a publicly-traded French *société anonyme* (“Vivre”), is a media conglomerate controlled by Baptise Vincennes, a business rival of Yverneau. In a series of transactions, Vivre acquires 15% of the shares of GameRocket on the open market. Vincennes states that he would like to acquire both GameRocket and Unisoft, and investors begin to speculate that Vivre is planning a hostile takeover. In response, the directors of GameRocket adopt a shareholder rights plan that would significantly dilute Vivre’s equity position if Vivre were to acquire 20% or more of GameRocket’s shares. The directors state that any takeover bid from Vivre is unwelcome and that the business relationship between GameRocket and Unisoft would be destroyed if Vivre were to acquire GameRocket. The directors then submit the plan to GameRocket’s shareholders, who approve it by a 70% vote (including shares held by Yverneau and Unisoft). Undeterred, Vivre launches a cash tender offer for 50% of the GameRocket shares it does not currently own at a 20% premium to GameRocket’s current market price, contingent on (1) waiver of the shareholder rights plan and (2) tender of least 50% of the GameRocket shares it does not already own. It also publicly states its intent to launch a second tender offer at a lower price for the remainder of the shares following completion of the first offer.\* In response to the tender offer, the directors of GameRocket convene a special committee of independent directors to evaluate the offer. The special committee does not assess the value of the Vivre offer in comparison to GameRocket’s share price, intrinsic value, or any other valuation metric, but reemphasizes that the business relationship between GameRocket and Unisoft would be destroyed if the tender offer were to go forward. The special committee recommends rejecting the offer and maintaining the shareholder rights plan, but states that GameRocket should seriously consider any higher bids from alternate buyers (without, however, taking any specific actions to encourage such bids). In a public statement, Yverneau says he will use his control over Unisoft to ensure that it “never” sells its 35% stake in GameRocket to Vivre.

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\* Assume that Vivre’s tender offer is in compliance with Canadian securities regulations.

**CONTINUED FROM PAGE 2**

At the same time, Vivre launches a similar tender offer for Unisoft.\* Many industry analysts believe that Vivre seeks to acquire Unisoft's popular video game franchises in order to convert them into films and television series, and that if Vivre's offer is successful, most of Unisoft's Canada-based employees (programmers, artists, etc.) will be laid off. In order to prevent this eventuality, Unisoft enters into negotiations with the federal government of Canada and the provincial government of Quebec to issue both governments 25 million shares each at a price of \$10 per share. If consummated, these transactions will dilute the equity of Unisoft and make it a less attractive takeover target. Yverneau justifies the proposed transactions on three grounds: (1) by discouraging the Vivre takeover, they will ensure good technology jobs remain in Canada and Quebec; (2) since Unisoft has received past tax subsidies from the Canadian and Quebec governments, the transactions are a way of "giving back" to Canadian taxpayers and increasing the likelihood of future subsidies; and (3) keeping Unisoft (and GameRocket) independent from Vivre is in the long-term interests of Unisoft shareholders. In response, the directors of Unisoft convene a special committee of independent directors to evaluate the proposed transactions. After careful consideration, the special committee approves the transactions, emphasizing the potential loss of Canadian jobs and the desirability of maintaining good relations with government authorities. Unisoft also asks its customers to "save Unisoft" by sending e-mails to Members of Parliament encouraging them to approve the government investments. This campaign is surprisingly successful, and the Parliament of Canada is deluged with e-mails supporting Yverneau and Unisoft.

As a final defensive measure, Yverneau enters into executive employment agreements with both GameRocket and Unisoft whereby each company agrees to purchase Yverneau's shares for 1.5x their current market value if Yverneau is terminated as CEO without cause at any time within the next five years. Yverneau argues that the agreements are necessary to ensure his commitment to GameRocket and Unisoft, and to align his interests with the economic interests of shareholders. The nine directors of Unisoft approve Yverneau's agreement by a five-to-four vote, with Yverneau casting the deciding vote. The directors of GameRocket, on the other hand, do *not* approve Yverneau's agreement. In response, Yverneau calls an emergency meeting of shareholders to ratify the agreement. Given the unexpected timing of the meeting, voter turnout is low, and Yverneau is able to secure 80% shareholder approval of the GameRocket agreement by voting his own shares in the company and causing Unisoft to vote its shares in the company. During a news interview, the Premier of Quebec states that he approves of the arrangement because of Yverneau's "commitment to Canada." Certain shareholders of GameRocket and Unisoft, however, complain that the arrangement is an unwarranted "golden parachute."

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\* Assume that this tender offer is also in compliance with Canadian securities regulations.

**CONTINUED FROM PAGE 3**

- (a) Assume Vivre does not intend to increase its offer for GameRocket and no alternative bids are forthcoming. Eastern Bank is an Ontario-based institutional investor that owns shares in GameRocket (“Eastern”). Eastern originally voted in favor of the shareholder rights plan, but now opposes it. Seeking to terminate the shareholder rights plan and sell its shares to Vivre, Eastern decides to take legal action against GameRocket and its directors. Assess the various legal claims available to Eastern and their likelihood of success.
- (b) Even if the GameRocket shareholder rights plan is invalidated, the Vivre tender offer will not be successful without the cooperation of Yverneau. Can Eastern sue to force Yverneau to tender his shares (and the shares held by Unisoft)? Assess the various legal claims available to Eastern and their likelihood of success.
- (c) Toronto Capital Limited Partnership, an Ontario limited partnership (“Toronto Capital”), is a major shareholder of Unisoft. Toronto Capital opposes the issuance of shares to the Canadian and Quebec governments and decides to take legal action against Unisoft and its directors. Assess the various legal claims available to Toronto Capital and their likelihood of success.
- (d) The Ryan Institute is an American research institute that promotes free-market economic policies. Through its endowment, the Ryan Institute owns five percent of Unisoft’s shares. The Ryan Institute opposes the proposed investments by Canada and Quebec, which it considers unjustified government intervention in the economy (in addition to dilutive of the Ryan Institute’s stock). To prevent the transactions, the Ryan Institute proposes a shareholder resolution prohibiting Unisoft from accepting any government equity investments (other than by anonymous stock market purchases below a specified threshold). The Ryan Institute fears the government transactions may occur prior to Unisoft’s next annual shareholder meeting. How can the Ryan Institute present the resolution to shareholders before the next annual meeting? What issues might hinder the Ryan Institute’s strategy?
- (e) La Caisse d'investissement is a Quebec-based institutional shareholder of both Unisoft and GameRocket (the “Caisse”). The Caisse is opposed to the executive employment agreements with Yverneau and sues to enjoin them in Canadian court. The Caisse claims that the agreements constitute a violation of Yverneau’s fiduciary duties as a director. With respect to each of Unisoft and GameRocket, assess the Caisse’s likelihood of success in bringing this specific claim.

**QUESTION 2**  
**MARKS 30**

Mary Das is an investment professional who decides to start her own investment firm in Vancouver. She plans on soliciting investments in a pooled investment fund from financial institutions, not-for-profit organizations, and high-net-worth individuals in Canada and the United States. The investors will provide the money, and Mary will manage the fund's investments on their behalf. The fund will invest in a number of alternative asset classes, including real estate projects, oil and gas development, and cannabis production. Although Mary is a savvy investor, she expects the investments will be risky—the fund may suffer annual losses. She retains you as legal counsel and asks you the following questions by e-mail:

- (a) "What structure (i.e., type of business organization) should I use?"
- (b) "One of my not-for-profit investors is concerned about politically sensitive investments and wants final approval over all investment decisions. What legal issues does this raise? How can I deal with this investor?"
- (c) "I want to make sure my investors are able to sell or redeem their investment interests, but only with my permission in my sole discretion. How do we do that?"
- (d) "I haven't decided how to compensate myself. Different investment firms use three main forms of compensation: (1) flat annual salary for the investment manager (e.g., \$150,000 per year); (2) percentage fees based on total assets under management (e.g., 1.5% of total assets under management); and/or (3) a percentage of the total return of the fund (e.g., 15% of the fund's annual return). What are the advantages and disadvantages of these compensation structures in terms of fairly compensating myself, but also attracting investors? What should I do? There's a lot of competition for funds and many of my potential investors are fee-sensitive."
- (e) "I have some money saved that I want to co-invest in my fund. I also want the fund to invest in my ex-husband's business. Finally, I want to make sure the fund avoids any opportunities I want to invest in personally in the future—for example, there's a beautiful house in Point Grey I've got my eye on. Does any of this raise any issues?"

Write Mary a memo answering her questions. Assume that Mary (1) would appreciate business as well as legal advice, (2) is not particularly knowledgeable about business law, and (3) is not particularly concerned about economizing on legal fees.

**QUESTION 3**  
**MARKS 20**

Parliament is considering adding the following section to the *Canada Business Corporations Act*.

**122.1** The “best interests of the corporation” referred to in section 122(1)(a) shall be interpreted to mean the long-term interests of the corporation. In determining the corporation’s long-term interests, directors shall have regard to the interests of shareholders, creditors, employees, consumers, the environment, and government policy.

As a prominent corporate attorney, your views have been solicited by the responsible parliamentary committee. The committee asks you the following questions:

- (a) Explain how section 122.1 alters (or does not alter) Canadian corporate law.
- (b) Discuss the advantages and disadvantages of adding this section to the CBCA.
- (c) Do you recommend Parliament add this section to the CBCA? Why or why not?

**END OF EXAMINATION**