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

FINAL EXAMINATION – APRIL 2020

LAW 461.001
Corporate Transactions

Professor Camden Hutchison

EXAMSOFT PASSWORD:
EXAMSOFT RESUME CODE:

TOTAL MARKS: 100

WRITING TIME ALLOWED: 3 HOURS
PREPARATION TIME ALLOWED: 10 MINUTES

Preparation Time has been given to download/print/set up for your exam once the exam has been made available online through Canvas. This time cannot be used for writing exam answers. All exam answer uploads will be monitored to ensure that typing of answers only occurred for the allotted Writing Time.

This is an open book examination, meaning that you can refer to class notes, casebooks and other class readings. The use of library books is not permitted.

Any exam answers that raise suspicion of breaking any restrictions outlined on this cover page may be subject to being processed through academic integrity software.

If you think you have discovered an error or potential error in a question on this exam, please make a realistic assumption, set out that assumption clearly in writing for your professor, and continue answering the question.

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PART 1
MARKS 40

Answer the following questions in approximately three sentences or less. Each question is worth two marks.

1. Why do principal-agent relationships give rise to moral hazard?

2. Explain how and why due diligence can benefit *sellers*.

3. Between February 18, 2020 and March 22, 2020, the S&P500 (a broad index of American stocks) decreased by nearly 34%. Considering the efficient market hypothesis, what is the most likely explanation for this decrease?

4. On March 16, 2020, the S&P/TSX Composite Index declined from 13,716.33 to 12,360.40 points. The same day, the stock of a large Canadian bank declined from $70.77 to $62.01 per share, while the stock of a Canadian information technology company declined from $6.02 to $4.76 per share. Which of these two stocks has a higher beta?

5. The capital structure irrelevance theorem states that capital structure is irrelevant to firm value. Provide three real-world exceptions to this theory.

6. Acme Inc. is a publicly-traded manufacturing company. Upon expiration of Acme Inc.'s executive employment agreement with its chief executive officer, Acme Inc. enters into a new, renegotiated agreement with the chief executive officer whereby his salary is reduced but he receives significant stock options in Acme Inc. Upon announcement of the new agreement, Acme Inc.'s stock price increases by three percent. Explain why.

7. Aarav purchases a SAFE in Biotechnology Inc. Assume the purchase amount is $50,000, the valuation cap is $2,500,000, and the discount rate is 80%. Assume also that the corporation capitalization is one million shares. If the price per share in Biotechnology Inc.'s Series A financing is four dollars per share, how many shares will Aarav receive under the SAFE?

8. Describe a situation in which an investor would exercise tag-along rights.

9. Founders and venture capitalists often have conflicting interests regarding who should control the board of directors. What is a common solution to this conflict?

10. Describe the significance of tax basis in choosing how to structure an acquisition.

11. Clarion Inc. and Harrison-Parish Inc. (both British Columbia companies) are amalgamating. Pursuant to the Amalgamation Agreement, the Class A voting common shares of Harrison-Parish Inc. will be exchanged for cash and the Class B non-voting preferred shares of Harrison-Parish Inc. will be exchanged for newly issued bonds of Clarion Inc. The common shares of Clarion Inc. will be unaffected. What specific shareholder approvals must the companies obtain to approve the amalgamation?

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12. International Travel Inc. and International Tours Inc. (both federal corporations) are amalgamating under a plan of arrangement. Pursuant to the interim order, International Tours Inc.'s shareholders approve the transaction by a 51% vote. A minority shareholder of International Tours Inc. sues to enjoin the transaction, claiming that the shareholder approval is invalid under s 183 of the *Canada Business Corporations Act*. Does the minority shareholder have a valid claim?

13. Do you think the COVID-19 pandemic constitutes a "material adverse effect" under most outstanding purchase agreements? Why or why not?

14. What does "fiduciary out" mean?

15. Entertainment PLC, an English public limited company, seeks to acquire Games Inc., a Quebec corporation, in a leveraged acquisition. Entertainment PLC proposes a non-simultaneous signing and closing. The directors of Games Inc. want to do the deal, but are worried that Entertainment PLC will be unable to secure the necessary financing. Give three ways Games Inc. can try to mitigate this risk.

16. What is the threshold for mandatory review under the *Competition Act*?

17. What is the most common indemnification survival period?

18. National Instrument 62-104 was revised in 2016. What has been the general effect on take-over bids in Canada?

19. What is a "just say no" defense and how does its treatment differ under Canadian and Delaware law?

20. Canadian corporate law allows directors to consider the interests of shareholders, employees, pensioners, creditors, consumers, governments, and the environment, as well as the long-term interests of the corporation. Which of these interests are directors most likely to favor and why?

END OF PART 1

PART 2
MARKS 60

Answer the following questions. To the extent relevant, consider business as well as legal issues. Each question (1., 2., and 3.) is worth 20 marks.

1. Minnesota Energy, Inc., a publicly-traded Delaware corporation (the "Purchaser"), seeks to acquire Pipeline Services Inc., a privately-held British Columbia company (the "Seller"), in a friendly transaction valued at $900 million. Legal counsel to the Purchaser drafts the initial purchase agreement, which includes standard indemnification provisions and the following "full disclosure" representation:

   Full Disclosure. None of the disclosures, statements, communications, representations, or warranties made by the Seller or any of its Subsidiaries, Affiliates, or representatives (or any exhibits, schedules, or other documents related thereto) contain any untrue statement of material fact or omit any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they are made, not misleading. The Seller does not have knowledge of any fact that may adversely affect the assets, business, prospects, financial condition, or results of operations of the Seller, or that could potentially prevent, prohibit, or interfere with the acquisition of the Seller by the Purchaser, that has not, in each case, been set forth in the Agreement.

   a) Imagine you represent the Seller. How would you respond to this provision?

   b) Now switch roles and imagine you represent the Purchaser. How would you respond to the answer you just gave above?

   c) What is the economic function of this provision?

2. Canadian Gold Inc., a publicly-traded federal corporation ("Canadian Gold"), seeks to acquire Atlin Gold Inc., a publicly-traded British Columbia company ("Atlin"). Canadian Gold believes it can achieve significant synergies with Atlin's mining operations. Canadian Gold proposes a friendly amalgamation transaction, which is rejected by Atlin's management. In frustration, Canadian Gold threatens to launch a hostile take-over bid for 100% of Atlin's outstanding shares at a 20% premium to Atlin's market price. Atlin has recently acquired a promising gold claim and the directors of Atlin believe this offer price would be grossly inadequate given the company's long-term value. They are also concerned that Canadian Gold may reduce Atlin's workforce following the acquisition. Although Atlin is publicly-traded, it is a relatively small company, and 50% of its shares are owned by three large institutional investors. Atlin does not currently have a shareholder rights plan.

   a) Imagine you represent Atlin. The directors of the company tell you they wish to oppose the take-over bid. What are Atlin's options and how should the directors proceed?

   b) Imagine you represent Canadian Gold. How can Canadian Gold increase its chances of successfully acquiring Atlin?

(Continued from Page 3)

c) Imagine you represent one of Atlin's three major institutional shareholders. How might you respond to this situation to protect your interests?

3. Imagine that the federal Government of Canada is preparing structural legislation to protect the Canadian economy during the COVID-19 pandemic and prepare for the eventual economic recovery. The initial policy draft circulated among cabinet ministers includes the following features:

a) In order to protect the Canadian economy from supply chain disruptions and ensure Canadian self-sufficiency, no corporation in an "essential industry" may be acquired, directly or indirectly, by a non-Canadian purchaser or investor without the consent of the target corporation's board of directors. "Essential industry" is defined in the legislation to include the pharmaceutical, medical equipment, retail, agricultural, transportation, and oil and gas industries.

b) In order to encourage the development of innovative equipment, therapies, and patient management services, the federal Government will create the "Biotech Fund," a one billion dollar tax-financed investment fund. The fund will essentially act as a venture capital fund focusing on biotechnology and life-sciences firms. In order to ensure a fair distribution of capital and to promote the development of a wide variety of new technologies and start-up companies, the Biotech Fund will allocate its investments equally across the provinces.

c) In order to save lives, protect equitable access to healthcare, and prevent the economic exploitation of Canadians, no company that develops a COVID-19 vaccine may sell it at a profit (i.e., at a price greater than cost).

d) In order to reduce the hardship of the COVID-19 pandemic, the federal Government will pay $2,000 to any resident Canadian whose life has been "materially disrupted" by COVID-19. The legislation will define "materially disrupted" to include suffering severe medical, psychological, emotional, economic, or family hardship as a result of the pandemic. In order to receive the benefit, Canadians must self-declare whether they have experienced these adverse effects.

e) In order to support Canadian businesses during the COVID-19 pandemic, any company that is forced to reduce its workforce by 25% or more will be eligible to receive low-interest emergency lending from the federal Government.

Imagine you are legislative staff in the Ministry of Finance and are asked to provide your views on the proposed legislation. What is your assessment of each of the legislation's five major features?

END OF EXAMINATION