

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

FINAL EXAMINATION – APRIL 2020

LAW 463.002
Securities Regulation

Gary Sollis and Michael Waters

EXAMSOFT PASSWORD:
EXAMSOFT RESUME CODE:

TOTAL MARKS: 100

WRITING TIME ALLOWED: 2 HOURS
READING TIME: 15 MINUTES
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. Reading Time has been given to review the exam prior to writing. This time also cannot be used to writing 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, excerpts from the *Securities Act* (British Columbia), and the Johnston, Rockwell and Ford, *Canadian Securities Regulation* textbook. No other texts are permitted. 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 ONE**(20 Questions – 1 Mark Each – 20 Marks Total)****(approximately 24 minutes)**

TRUE OR FALSE QUESTIONS: Please answer the following questions TRUE or FALSE.

Please only indicate an answer of TRUE or FALSE for each question in this Part One

1. The definition of “private issuer” includes every company that is not a reporting issuer.

TRUE or FALSE?
2. A director of a reporting issuer who sells securities of such issuer through the facilities of the Toronto Stock Exchange, who is aware of a material fact or change with respect to the issuer, and where all material facts or material changes with respect to the reporting issuer have been generally disclosed, and who does not file an insider report on the System for Electronic Disclosure by Insiders (SEDI) within five days of the sale, has contravened section 57.2 of the *Securities Act* (British Columbia).

TRUE or FALSE?
3. The purchase of a security is not a trade.

TRUE or FALSE?
4. An offeror must allow securities to be deposited under a take-over bid for an initial deposit period of at least 105 days from the date of the bid, unless the initial deposit period is shortened by a deposit period news release, in which case the offeror must not allow securities to be deposited under its take-over bid for an initial deposit period of less than 35 days from the date of the bid.

TRUE or FALSE?
5. The issuer certificate in a prospectus filed by a company in British Columbia must, in every case, be signed by the CEO, CFO and all of the directors of the company.

TRUE or FALSE?

6. A reporting issuer may be liable for damages to a purchaser of the issuer's securities for an untrue statement of a material fact in a prospectus where the purchaser acquired securities directly from the reporting issuer, but not for an untrue statement of material fact in an annual information form where the purchaser acquired securities from another investor through the facilities of the Toronto Stock Exchange.

TRUE or FALSE?

7. The resale restrictions applicable to the prospectus exemptions listed in Appendix D to National Instrument 45-102 are more onerous than the resale restrictions applicable to the exemptions listed in Appendix E to the Instrument.

TRUE or FALSE?

8. In British Columbia, Administrative and Civil enforcement proceedings are governed by the *Securities Act* (British Columbia) while Quasi-Criminal and Criminal proceedings are governed by the *Criminal Code* (Canada).

TRUE or FALSE?

9. The distribution of a security pursuant to the accredited investor exemption does not require the filing of either a prospectus or an offering memorandum.

TRUE or FALSE?

10. The announcement of a private placement of securities by a reporting issuer following the announcement of a hostile takeover bid for such issuer may be reviewed by the British Columbia Securities Commission under National Policy 62-202.

TRUE or FALSE?

11. A trade in a security does not occur until the transfer of the security is completed.

TRUE or FALSE?

12. A reporting issuer is not required to prepare and deliver a management information circular if proxies are solicited by management of the issuer from less than 15 shareholders.

TRUE or FALSE?

13. A person who purchases securities of an issuer pursuant to a prospectus has a right of action for damages against all of the directors and officers of the issuer if the prospectus contains an untrue statement or omission which constitutes a misrepresentation.

TRUE or FALSE?

14. The Supreme Court of Canada has affirmed the general principal that where a reporting issuer is “in play” (subject to a hostile takeover bid), the duty of the directors is to maximize shareholder value by attempting to secure the highest possible offer for the securities of the issuer.

TRUE or FALSE?

15. If after the filing of a preliminary prospectus and before the filing of the final prospectus, a material change occurs, the issuer is required to file an amendment to the preliminary prospectus.

TRUE or FALSE?

16. Both venture and non-venture issuers are required to appoint an audit committee.

TRUE or FALSE?

17. The registration requirements in British Columbia securities regulations only apply to registered brokers, dealers, underwriters and advisors.

TRUE or FALSE?

18. Where a person acquires, beneficial ownership of, the power to exercise control or direction over, or securities convertible into, voting or equity securities of any class of a reporting issuer that, together with such person’s securities of that class, would constitute 10% or more of the outstanding securities of that class, the acquiring shareholder is required to immediately issue a press release containing particulars of its holdings and intentions with respect to the further acquisitions; and within 2 business days, file a report containing the same information as contained in the press release.

TRUE or FALSE?

19. An issuer becomes a reporting issuer when it files and obtains a receipt for a preliminary prospectus.

TRUE or FALSE?

20. A venture issuer must file its annual information form on or before the earlier of (i) the 120th day after the end of its most recently completed financial year; and (ii) the date of filing, in a foreign jurisdiction, annual financial statements for its most recently completed financial year.

TRUE or FALSE?

END OF PART ONE

PART TWO**(15 Questions – 2 Marks Each – 30 Marks Total)****(approximately 36 minutes)**

SHORT ANSWER QUESTIONS: Please provide responses to each of the following questions.

Please briefly explain your responses and provide regulatory citations where relevant

1. What are the primary objectives of securities regulations in Canada, and how do Canadian securities regulations attempt to achieve those objectives?
2. You are a director of a reporting issuer. Your company has just announced that its major factory has burned down and revenues will be negatively affected for the next 12 to 18 months. You want to sell shares of the issuer as soon as the news is released. Should you have any concerns?
3. Identify two prospectus exemptions used for raising capital and the principal conditions that need to be satisfied in order to rely on them.
4. Following the announcement of a hostile takeover bid for a reporting issuer, would the British Columbia Securities Commission be likely to cease trade a shareholder rights plan that was put in place by the issuer subject to the bid before the announcement of the takeover bid, if the shareholders rights plan will automatically expire 100 days after the announcement of the hostile takeover bid?
5. What is an investment contract?
6. You hold 18% of the securities of a reporting issuer. A friend holds 4% of the securities of the same issuer. You would like to purchase her shares at a 10% premium to the current market price. Can you purchase her securities without delivering a takeover bid to all security holders of the same class of securities?
7. Explain the meaning of “control person” and the ramifications of becoming one.
8. You hold securities of a reporting issuer. A friend working at a national law firm suggests that now would be a good time to sell those securities, but provides no further information. Would it be problematic if you decided to sell securities of the reporting issuer in question?
9. Briefly describe the closed system.
10. The Chief Executive Officer of a reporting issuer has just announced to its board of directors that she is resigning as the FBI has announced an investigation into some of her outside business activities, and she believes that she would be a distraction to the company

going forward. What must the company do under securities law in connection with this decision? Why?

11. What is the meaning of the term “full, true and plain disclosure” when it is used in connection with a prospectus?
12. What information regarding the compensation paid to a reporting issuer’s Chief Executive Officer and Chief Financial Officer must be provided to shareholders? How is this information provided, and how often must it be provided?
13. Identify two categories of persons that are subject to statutory civil liability for misrepresentations contained in a prospectus and the principal defenses which are potentially available to each.
14. You are the Chief Executive Officer of a reporting issuer. The Chief Financial Officer has just informed you that the finance team has been “absolutely swamped”, and the company will not be able to file its annual financial statements by the prescribed filing deadline under National Instrument 51-102. Should you be concerned personally? If so, why?
15. Describe the areas of securities regulation that are within the jurisdiction of the Parliament of Canada and the current types of regulation of securities by the Canadian federal government.

END OF PART TWO

PART THREE**(25 Marks Total)****(approximately 30 minutes)**

You are a lawyer at a Canadian law firm. You are approached by a client who has asked for your advice. Your client holds 7% of the outstanding common shares of a Toronto Stock Exchange listed reporting issuer. Your client has been increasingly dissatisfied with the issuer's performance, in particular the performance of the issuer's senior officers. Your client has reached out to the issuer's Chairman of the board on numerous occasions to discuss a change in the issuer's CEO and certain changes to the issuer's business strategies, but the Chairman has not been willing to enter into any discussions with your client. Your client sees a lot of potential to generate additional value on its substantial investment in the issuer, and would like to orchestrate a change in the board of directors.

Your client has the following specific questions. **Please respond to each of these specific questions as directly as possible.**

1. Your client is thinking of launching a hostile takeover bid for 100% of the common shares of the company at a 30% premium to its current share price. Your client's main concern with launching a hostile bid is the cost of acquiring all of the outstanding shares of the issuer. Given this concern, your client has asked you if there is any other way that your client could take control of the board of directors. **(5 marks)**
2. Turning back to the idea of launching a hostile takeover bid, your client has heard that the 90% and 66 and 2/3% thresholds are important when considering the total number of shares acquired under a takeover bid. They have asked you to explain why these thresholds are important. **(5 marks)**
3. Your client thinks that it is unlikely that they will be able to acquire 66 and 2/3rds % of the outstanding shares of the issuer under the bid since approximately 37% of the outstanding shares are held by existing management and shareholders who are supportive of existing management. However, if your client can acquire 43.1% of the outstanding shares under the bid, then combined with their existing 7%, they would have more than 50% of the outstanding voting common shares. Your client thinks that it is very likely that shareholders holding at least 43.1% of the outstanding share would tender to the bid. Should your client have any concerns with its plans if it turns out that shareholders holding only 43.1% of the outstanding shares tender to the bid? **(5 marks)**
4. If your client decides to proceed with a takeover bid, in order help its chances of success, your client plans to let a good friend know about its plans regarding the bid (and the expected premium under the bid) and suggest that their friend acquire as many shares as possible before the bid is announced. Should your client have any concerns with this plan? **(5 marks)**

5. Your client is also aware of another investor who owns 12% of the issued and outstanding securities of the issuer, and they expect that this investor would be supportive of its plans to launch a takeover bid. Your client does not think that they this investor would be willing to enter into a formal lock up agreement, but they think that this investor would be willing to enter into an informal arrangement with your client whereby both parties would work to acquire shares through the facilities of the Toronto Stock Exchange before the bid is announced in order to increase the likelihood of the bid's success. As part of your client's proposal to this investor, and to help entice the investor, your client is willing to offer the investor a seat on the board of directors and an officer position if the bid is successful. Are there any issues with this proposal. **(5 marks)**

END OF PART THREE

PART FOUR**(25 Marks Total)****(approximately 30 minutes)**

A partner in your firm has been retained by two entrepreneurs who are seeking to raise capital to fund the development of a new CRM (customer relations management) platform. They propose to raise the capital required for the project from friends and family, as well as from wealthy investors who will be introduced to them by one or more financial advisors. The partner has asked you to prepare a memo responding to the following questions from the clients:

1. Can the financing be structured in such a way as to avoid the application of securities regulations and, if so, how can this be achieved? Your clients have suggested that it may be possible to avoid the need to comply with securities regulations if they structure the financing as an offering of utility tokens. Please comment on this suggestion.
2. Assuming that the financing is an offering of securities, what steps will your clients need to take in order to ensure that it complies with applicable securities regulations?
3. What other sources of capital could your clients readily access for the financing (in addition to friends, family and wealthy investors), and what steps would be required to raise capital from these other sources?
4. What can your clients do to raise additional capital for the business in the future, if and when required, and to provide liquidity to the investors who participate in the initial financing? Your clients have heard that an IPO (initial public offering) is a good method to achieve both of these objectives. Please explain what an IPO would involve and provide advice regarding the pros and cons of same.
5. What are the potential risks to your clients associated with each of the foregoing?

— **END OF EXAMINATION** —