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

FALL EXAMINATION – DECEMBER 2019

LAW 459/508D
Business Organizations

Section 1
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 Examplify/Examsoft.

2. ANSWER ALL QUESTIONS.

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

QUESTION 1
MARKS 40

Mountainside Limited Partnership, a British Columbia limited partnership ("Mountainside"), is formed by a small group of Vancouver-based real estate investors to pursue international investment and development opportunities. Mountainside has three limited partners: Jian Xu, Denis Tremblay, and Agathe Miller. The general partner of Mountainside is Mountainside Management Inc., a British Columbia company ("Management"), of which Jian is the sole shareholder, director, and chief executive officer. Pursuant to Mountainside's partnership agreement, the economic interests of the partners are as follows: Jian, 33%; Denis, 33%; Agathe, 33%; and Management, 1%.

(a) Denis asks his personal friend and sometimes attorney Renaud Guillain to explore investment opportunities in Ukraine on behalf on Mountainside. Renaud and Denis have a long history of working together on business projects, though they currently have no formal economic relationship. At a partnership meeting, Denis informs Jiang and Agathe of Renaud's efforts on behalf of Mountainside, and they agree that Renaud's involvement may be helpful. The next day, Renaud tells Denis that doing business in eastern Europe sometimes requires "making payments, if you know what I mean." Denis does not acknowledge whether he knows what Renaud means, but simply responds: "Renaud, you're a warrior. I know you'll do what's best for Mountainside." Following his discussions with Denis, Renaud travels to Kiev, where he bribes a government official to secure the construction and zoning permits necessary to build a Mountainside residential tower. Assume a competitor of Mountainside that had been planning to build a real estate project in the same location brings a lawsuit under a Canadian alien tort statute that imposes civil liability for foreign bribery. Can Denis be held personally liable? Can Agathe be held personally liable? Can Jian be held personally liable? Explain your answers.

(b) Agathe is friends with Edward Mason, a competitor of Mountainside. Edward asks Agathe to use her connections to help him develop "inside information" regarding the Vancouver real estate market, and Agathe agrees. Agathe learns that Mountainside is planning a real estate project in downtown Vancouver that will increase the value of the surrounding property. She informs Edward of Mountainside's plans, and he proceeds to buy up the land surrounding the future real estate project. In return, Edward buys Agathe a Bentley Bentayga worth $175,000. If Mountainside had purchased the surrounding property instead of Edward, it would have made a profit of $500,000—unfortunately, Mountainside was unable to buy the property due to liquidity constraints. When Jian and Denis learn of Agathe and Edward's arrangement, they become furious and prepare to file a lawsuit. Can Jian and Denis recover against Agathe? If so, how much? Can they recover against Edward? Explain your answers.

(c) Despite the strained relationship between Agathe, Jian, and Denis, Mountainside plans to build a new real estate project in West Vancouver. Jian enters

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negotiations with Vancouver Construction Supplies Inc., a British Columbia company ("Vancouver Construction Supplies"), to purchase the necessary construction equipment. During the negotiations, Jian tells Vancouver Construction Supplies that he is the president of Mountainside and that Agathe and Denis are his business partners. Jian also boasts to Vancouver Construction Supplies' sales representative that he, Agathe, and Denis are each high net worth individuals. He provides no other information regarding the organizational structure of Mountainside or the existence of Management. Following the negotiations, Jian executes a contract on behalf of Mountainside with Vancouver Construction Supplies for one million dollars of equipment and supplies. Jian signs the contract "Jian Xu, as President of Mountainside Limited Partnership." The next month, Mountainside cancels the project and repudiates its contract with Vancouver Construction Supplies. The company sues to recover under the contract. Can Vancouver Construction Supplies recover against Mountainside? Can it recover against Jian personally? Can it recover against Agathe and Denis personally? Explain your answers.

(d) Assume that Agathe, Jian, and Denis resolve their various legal issues and that Mountainside eventually becomes highly profitable. Unfortunately, Jian and his wife Lanying divorce due to irreconcilable differences—pursuant to their divorce settlement, Jian is required to pay Lanying significant spousal support payments. Partly to avoid these payments, Jian stores all of his partnership profits in a cash deposit account belonging to Management. In exchange, Management issues Jian call debentures secured by a valid security interest in the deposit account. Two years after Jian's divorce, Management enters into a real estate management agreement with a group of Chinese investors, whereby Management agrees to provide property management services with respect to residential properties jointly owned by the investors. However, in order to pursue another, more lucrative business opportunity, Jian causes Management to breach the real estate management agreement, resulting in significant losses for the Chinese investors. Both the investors and Jian's ex-wife file lawsuits: The investors sue Management and Jian for one million dollars under the management agreement. Jian's ex-wife sues Jian and Management for one million dollars of unpaid spousal support. At the time of the lawsuits, Management's only asset is the deposit account, which contains one million dollars. Management owes Jian one million dollars under the secured debentures. Jian is independently wealthy, but assume that all of his assets except for the debentures and stock of Management are in unreachable foreign accounts. Can the investor group successfully recover against Management? Can it successfully recover against Jian? Can Lanying successfully recover against Jian? Could she successfully recover against Management?

QUESTION 2
MARKS 40

Prince Rupert's Corporation, a publicly-traded federal corporation ("Prince Rupert's"), is a Canadian retail chain. Like many brick-and-mortar retail chains, Prince Rupert's business has been struggling in the face of online competition and the market price of its common shares has fallen from $12 to $8 per share. Unlike many brick-and-mortar retail chains, Prince Rupert's holds title to many of its retail locations in prime urban markets in Canada and the United States. Some analysts have speculated that these real estate properties may be worth more than the underlying retail business itself. In addition to its publicly-traded common shares, Prince Rupert's has issued a significant amount of Class A preferred shares, Class B preferred shares, and secured debentures to various financial institutions. These three classes of securities are *not* publicly-traded and do not have voting rights.

Ronald Burton is the chairman and CEO of Prince Rupert's. Ronald believes Prince Rupert's business can be reinvigorated, but only if the company goes private and adopts a long-term strategy free from public disclosure requirements. Ronald enters an agreement with Toronto Capital Inc., an Ontario corporation that manages a large private equity fund ("Toronto Capital"), to take the company private in an amalgamation transaction, with Burton remaining as CEO. The amalgamation will be structured as follows: Prince Rupert's Acquisition Inc., a federal corporation controlled by Toronto Capital ("Acquisition"), will amalgamate with Prince Rupert's. The surviving corporation will be named Prince Rupert's and will inherit all of the assets, liabilities, and other characteristics of the existing Prince Rupert's. All of Prince Rupert's common shares will be redeemed and cancelled in exchange for $10 (cash) per share. Prince Rupert's Class A preferred shares will be unaffected. Prince Rupert's Class B preferred shares will be redeemed and cancelled in exchange for $20 (cash) per share. Prince Rupert's secured debentures will be repaid in exchange for their face value of $100 (cash) per debenture. All of Acquisition's outstanding shares will be redeemed and cancelled in exchange for 100% of the newly issued shares of Prince Rupert's, and Acquisition will cease to exist. Toronto Capital will then distribute an agreed-upon percentage of Prince Rupert's newly issued shares to Ronald and other members of the management team. Ronald and the other managers stand to personally benefit from the transaction, as they will receive significant equity in the reorganized Prince Rupert's.

(a) Imagine you are outside legal counsel to Prince Rupert's. What specific legal actions (approvals, votes, etc.) are required on the part of Prince Rupert's to approve and consummate the amalgamation? What additional legal advice might you give to Prince Rupert's directors?

(b) Agentic Capital Limited Partnership, an Ontario limited partnership ("Agentic Capital"), owns 17% of Prince Rupert's common shares (representing 11% of its total shares). Agentic Capital and other minority shareholders believe that Prince Rupert's would be more valuable if it were broken up and its real estate assets were sold separately. Agentic Capital commences a tender offer for all of Prince Rupert's common shares at a price of $11 (cash) per share. Agentic Capital

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does not have sufficient capital to fund the transaction, but communicates to Prince Rupert's shareholders in its take-over bid circular that it is currently in the process of securing third-party financing. Market commentators are skeptical that Agentic Capital will actually be able to raise enough financing. In response to the tender offer, Prince Rupert's convenes a special committee of independent directors. Following a rushed, two-hour meeting, the special committee implements an emergency poison pill that would make it nearly impossible for Agentic Capital to acquire the company. In a press release, Prince Rupert's gives three reasons for opposing the tender offer: (1) Management's long-term strategy values the company at much more than $11 per share; (2) Agentic Capital's financing is uncertain, which could cause the tender offer to fail; (3) Breaking up Prince Rupert's and selling its real estate would cause a massive loss of retail jobs. These arguments are based on management's own internal financial analysis—although it retains its own legal counsel, the special committee does not obtain an outside valuation of the company. Prince Rupert's does not submit the poison pill to a shareholder vote and does not seek any alternative bids for the company. Rather, the Prince Rupert's board states that they will submit the poison pill to a shareholder vote when "the time is right." Agentic Capital sues Prince Rupert's directors in Ontario court for violation of their fiduciary duty and their duty of care. At the same time, Agentic Capital also seeks a cease trade order from the Ontario Securities Commission. Assess the merits of both the court action and the securities commission action.

(c) Real Estate Investment Limited Partnership, an Ontario limited partnership ("Real Estate Investment"), is a minority shareholder of Prince Rupert's. Real Estate Investment purchased its common shares in Prince Rupert's four years ago, when Prince Rupert's was led by a different CEO, Heather Fitch. Anticipating the decline in Prince Rupert's competitive position, Heather had publicly stated on several occasions that Prince Rupert's would explore all strategic options for maximizing shareholder value, including "monetizing Prince Rupert's portfolio of premier real estate holdings." After making these statements, Heather was replaced by inside directors (including Ronald) who disagreed with her as to the future of Prince Rupert's. Real Estate Investment strongly supports the Agentic Capital tender offer. Together with other minority shareholders, Real Estate Investment brings an oppression remedy claim against Prince Rupert's demanding that the company withdraw its poison pill and allow the tender offer to go forward. Assess the merits of this claim.

(d) Assume that Agentic Capital abandons or delays its tender offer and the original amalgamation is set to go forward. Assume further that the vote(s) to approve the amalgamation hinges on the voting decision of Thomas Martin, a Canadian financier who owns one percent of the common shares of Prince Rupert. Thomas and many other minority shareholders believe that the amalgamation is not in the best interests of Prince Rupert's common shareholders. However, Toronto Capital agrees to pay Thomas $5 million to vote his shares in favor of

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the amalgamation. The amalgamation goes forward and shareholders of Prince Rupert's sue Thomas in Ontario court for violating his duties to the other common shareholders. Assess the merits of this claim.

QUESTION 3
MARKS 20

The United States does not have federal corporate law *per se*—rather, each state has its own corporate law. A prominent U.S. senator has introduced legislation that would require all American corporations with over one billion dollars of revenue to reincorporate under a new federal corporation act. The new act would impose a number of requirements on these corporations, including the following:

(1) Forty percent of a corporation's directors must be elected by employees;

(2) Directors have a duty to create a "general public benefit" with regard to shareholders, consumers, suppliers, employees, the environment, and the long-term interests of the corporation;

(3) Any political expenditures by a corporation (lobbying, political advertisements, etc.) must be approved by a supermajority shareholder vote.

Imagine that the Parliament of Canada is considering similar legislation and that you are an attorney advising the relevant parliamentary committee. Please draft a brief memorandum outlining the arguments for and against enacting similar legislation in Canada.

END OF EXAMINATION