

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

FINAL EXAMINATION – DECEMBER, 2020

LAW 508D.001
Business Organizations

Professor Camden Hutchison

EXAM PASSWORD: 6mUw2G
RESUME CODE: ABB4FD

TOTAL MARKS: 100

(8:50 A.M. PST) **PREPARATION TIME ALLOWED: 10 MINUTES**

(9:00 A.M. PST) **WRITING TIME ALLOWED: 3 HOURS**

8:50-9 A.M. Preparation Time (exam writing not permitted) – This time is given to students to download/print your exam questions once the exam has been made available online on Canvas, to read the exam password on this exam coversheet, to enter the exam password for the exam in Exemplify, and to progress in Exemplify until you see the **STOP SIGN**, where you will **WAIT until 9 a.m. DO NOT proceed past the STOP SIGN. DO NOT begin typing your exam answers in Exemplify until 9 a.m.!**

9 A.M. Exam Writing Time – At 9 a.m., you may proceed past the **STOP SIGN** in Exemplify and begin typing your exam answers. Students are required to calculate and monitor their own time for writing exams. All exam answer uploads will be monitored to ensure that typing of answers only occurred during the allotted exam writing time.

This is an open book examination, meaning that you can refer to your textbook, your CAN, and any statutory materials.

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. Do not email your professor or anyone else about this while the exam is in progress.

ACADEMIC INTEGRITY

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. Students typing exam answers before or after the allocated exam writing time may receive a grade penalty.

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Your answer file should be named, and the coversheet of your answers should be titled with:
Your Exam Code, Course Number, Name of Course, and Instructor Name
i.e., **9999 LAW 100.001 Law of Exam Taking - Galileo**

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END OF COVER PAGES

QUESTION 1
MARKS 40

Westcoast Capital Limited Partnership, a British Columbia limited partnership (“Westcoast Capital”), is an investment fund that specializes in alternative assets. Westcoast Capital is managed by its general partner, Front Management Inc., an Ontario corporation (“Front Management”). According to its partnership agreement, Westcoast Capital has three limited partners, York Capital Limited Partnership, an Ontario limited partnership (“York Capital”), Brown & Clark LLP, a British Columbia limited liability partnership (“Brown & Clark”), and Atlantic Capital, L.P., a Delaware limited partnership (“Atlantic Capital”). The partnership agreement provides that Westcoast Capital may not invest in any “corporation, partnership, or other business entity” without the unanimous written consent of York Capital, Brown & Clark, and Atlantic Capital. Each of York Capital, Brown & Clark, and Atlantic Capital has contributed \$5 million to the limited partnership, while Front Management has contributed only a nominal amount to the limited partnership.

- (a) The by-laws of Front Management specify that only the chief executive officer may sign investment contracts on behalf of the corporation. Jackson Scott, the chief investment officer of Front Management, signs a contract on behalf of Westcoast Capital to invest one million dollars in Okanagan Vineyards Inc., a British Columbia company (“Okanagan Vineyards”). The managers of Okanagan Vineyards are relying on the one million dollars to produce and market the company’s latest vintages. Brown & Clark is the sole shareholder of Columbia Vineyards Inc., a British Columbia company and a competitor of Okanagan Vineyards (“Columbia Vineyards”). To protect Columbia Vineyards’ business, Brown & Clark refuses to consent to the investment in Okanagan Vineyards. Without Brown & Clark’s consent, Westcoast Capital cannot make the one million dollar investment and disavows the contract — Westcoast Capital also claims that Jackson was not properly authorized to sign the contract. Assume the cancellation of the investment contract causes \$1 million of losses to Okanagan Vineyards (due to its inability to produce and market an entire year’s worth of wine), \$300,000 of lost investment profits for Westcoast Capital (due to a high likelihood the investment in Okanagan Vineyards would have been successful), and \$500,000 of extra profits for Columbia Vineyards (due to an absence of competition from Okanagan Vineyards). Can Okanagan Vineyards successfully sue Front Management? Can Okanagan Vineyards successfully sue York Capital? Can Atlantic Capital successfully sue Brown & Clark? Discuss issues of damages, if appropriate.
- (b) Kai Hummel is a shareholder and director of Okanagan Vineyards. Immediately after Okanagan Vineyards signs the investment contract with Jackson, Kai tells his neighbor Desmond Liu “just between you and me, Okanagan Vineyards is going to receive a one million dollar investment and we’re absolutely guaranteed to have a successful year.” Assume the contract has been kept confidential from the company’s shareholders for business reasons. On the basis of Kai’s information, Desmond buys \$50,000 worth of shares from Okanagan Vineyards shareholders who have not yet been informed of the contract. As a token of his appreciation, Desmond gives Kai a bottle of Screaming Eagle sauvignon blanc worth \$5,000. When the investment falls through, Desmond loses his entire \$50,000 investment. Can Desmond successfully sue Okanagan Vineyards? Can shareholders of Okanagan Vineyards successfully sue Kai and/or can Okanagan Vineyards itself successfully sue Kai? Discuss issues of damages, if appropriate.

- (c) Brown & Clark has four partners, Noah Chan, Musa Ibrahim, Evelyn Johansson, and Warren Clark. Pursuant to the limited liability partnership agreement, each partner has a 25% interest in the limited liability partnership, with Warren acting as the managing partner. Warren makes a secret payment of \$100,000 to Front Management to cause Westcoast Capital to divert \$3 million of its capital to Clark Investments Limited Partnership, a British Columbia limited partnership (“Clark Investments”). Over drinks, Warren reveals his scheme to Noah, who responds “that’s pretty messed up, but I’m not going to stand in your way.” Immediately following this conversation, Warren gets in a bar fight and stabs another patron at the bar. Noah looks on in shock, too surprised and fearful to restrain his partner. Fortunately, the bar patron survives. Noah never reveals Warren’s scheme to Musa or Evelyn and the \$3 million is diverted to Clark Investments. Assume the transfer causes \$3 million of financial losses to Westcoast Capital, and derivatively, \$1 million of financial losses to each of York Capital, Brown & Clark, and Atlantic Capital. Assume also that Clark Investments is a family investment fund and that Warren earns no personal profits from the transfer. Can Atlantic Capital successfully sue Noah? Can Musa and Evelyn successfully sue Noah? Can the injured bar patron successfully sue Noah? Discuss issues of damages, if appropriate.
- (d) York Capital is managed by its general partner, Eastern Management Inc., a British Columbia company (“Eastern Management”). Sylvia Marston is the president and sole shareholder of Eastern Management. Most of Eastern Management’s assets are in the form of cash, though the company holds other assets from time to time (Sylvia has a history of using the corporation to store her personal assets). Eastern Management also owes \$2 million to Toronto Bank. Sylvia is married to Robert Anderson, a (currently unemployed) fitness instructor, with whom she has two young children. Sadly, their marriage falls apart when it is revealed that Robert has been having an affair with a fitness model. Sylvia and Robert divorce, and the court awards joint custody and equal division of the family property. In order to frustrate the court order, Sylvia shields certain assets from Robert, including a second home held in her name that she transfers to Eastern Management for fair value in cash (one million dollars). Robert fears that Sylvia will orchestrate additional transactions to further shield both the second home and the one million dollars cash. Can Robert recover the home from Eastern Management? Assume that Sylvia transfers all of Eastern Management’s remaining cash to her personal bitcoin wallet, causing the corporation to go bankrupt. Can Toronto Bank recover from Sylvia?

QUESTION 2
MARKS 40

Canadair Inc., a publicly-traded federal corporation (“Canadair”), is seeking to acquire TransPacific Inc., a publicly-traded federal corporation (“TransPacific”), pursuant to an amalgamation. Canadair is a large international airline, while TransPacific is a smaller airline that focuses on flights between North American and Asia. TransPacific has three classes of shares outstanding: 20% of the shares are Class A voting common shares (which are primarily held by members of TransPacific’s management team), 60% are Class B nonvoting common shares (which are primarily held by public investors), and 20% are Class C nonvoting preferred shares (which were privately issued and are not publicly-traded). Canadair has a single class of common shares. Approximately 50% of TransPacific’s Class B shares are owned by institutional shareholders (mutual funds, insurance companies, etc.) that also own shares of Canadair.

Canadair and TransPacific enter into an amalgamation agreement pursuant to which each Class A share of TransPacific will be converted into 0.5 shares of Canadair, each Class B share will be converted into 0.3 shares of Canadair, and each Class C share will be redeemed for \$13 cash. On the date of the amalgamation agreement (October 10, 2020), Canadair's shares traded at a market price of \$17.50 per share, while TransPacific's Class A and Class B shares traded at a market price of \$5 per share. As of January 2, 2020, TransPacific's Class A and Class B shares traded at a market price of \$10 per share, but the share price has decreased by 50% due to the negative impact of COVID-19 on the airline industry. TransPacific's revenues have fallen by over 90% and its future as an independent firm is in question.

A special committee of independent directors of TransPacific has approved the amalgamation agreement and recommends that shareholders of TransPacific approve the amalgamation at the upcoming shareholder meeting. The special committee was given only 48 hours to review the amalgamation agreement, however, as it was presented by Canadair on a "take it or leave it" basis. The special committee's independent financial adviser has communicated that the total purchase price to be paid in the amalgamation "is within the range of fairness," but will not deliver a fairness opinion.

Many holders of Class B shares feel the consideration they will receive in the transaction is inadequate. TransPacific defends the transaction on the following grounds: first, the transaction was approved by the special committee of independent directors; second, without access to Canadair's financial resources, TransPacific will be forced to lay off thousands of employees; and third, without access to Canadair's financial resources, TransPacific may be forced to cease operations entirely.

- (a) Describe the shareholder approvals required of Canadair and TransPacific to approve the amalgamation.
- (b) Assume the amalgamation receives shareholder approval. A minority holder of TransPacific's Class B shares sues TransPacific's directors under *Canada Business Corporations Act* s 122. Assess the merits of this lawsuit.
- (c) Assume the amalgamation receives shareholder approval. A minority holder of TransPacific's Class B shares sues TransPacific under *Canada Business Corporations Act* s 241. Assess the merits of this claim.
- (d) Assume the amalgamation receives shareholder approval. A minority holder of TransPacific's Class B shares claims the amalgamation transaction is against the public interest and requests that the British Columbia Securities Commission issue a cease trade order preventing the amalgamation. Assess the merits of this claim.

QUESTION 3

MARKS 20

Pursuant to the *Broadcasting Act*, licensed broadcasters are subject to certain Canadian ownership requirements (in order to broadcast media content in Canada, all broadcasters must obtain a federal broadcasting license). Among other things, these requirements provide, with respect to any licensed broadcaster, that (a) at least 80% of the broadcaster's voting shares must be owned by Canadians, (b) at least 80% of the broadcaster's directors must be Canadians, and (c) the chief executive officer of the broadcaster must be Canadian (the term

“Canadian” is generally defined to mean Canadian citizens and permanent residents). A corporate shareholder of a licensed broadcaster qualifies as “Canadian” if Canadians own at least 80% of its voting shares. The ownership requirements do *not* apply to companies that only distribute media content over the internet.

Parliament is considering legislation that would remove these ownership requirements. As an expert on corporate law, you have been consulted to advise members of Parliament with respect to amending the *Broadcasting Act*. Prepare a brief memo outlining the arguments for and against removing the requirements. You may address issues of corporate law as well as Canadian ownership requirements more broadly.

END OF EXAMINATION