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

FINAL EXAMINATION – April 2021

LAW 463.002
Securities Regulation

Professor Cristie L. Ford

EXAM PASSWORD: C4t66P
RESUME CODE: B14400

TOTAL MARKS: 80

(8:50 AM PDT) **PREPARATION TIME ALLOWED:** 10 MINUTES
(9:00 AM PDT) **WRITING (INCLUSIVE OF READING) TIME ALLOWED:** 2.5 HOURS

8:50-9:00 AM 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 Examplify, and to progress in Examplify until you see the **STOP SIGN,** where you will **WAIT until 9:00 AM**. **DO NOT proceed past the STOP SIGN**. **DO NOT begin typing your exam answers in Examplify until 9:00 AM!**

9:00 AM Exam Writing Time – **At 9:00 AM**, you may **proceed past the STOP SIGN** in Examplify 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.

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.

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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 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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NOTES:

1. This is an open book examination.

2. Assume that British Columbia law in effect as of April 1, 2021 applies.

3. This examination is worth 80% of your final grade. Your exam will be 2.5 hours long.

4. You are strongly advised to read through the whole exam and all questions before preparing your answers. For all questions, please organize your answers as well as you can to respond to the particular questions asked. Please be as specific as you can, referring to statutory/regulatory language and cases as relevant. If you are missing facts that you consider necessary to your analysis, identify the facts you are missing and state how those facts would affect your answer.

5. The exam comprises three fact patterns, each with sub-questions. You must answer all questions. Each question is weighted, and given an approximate time, as set out below. Students are cautioned to allocate their time accordingly.

EXAM PART	**MARKS**	**SUGGESTED TIME**
1: Fact Pattern #1	52	78 minutes
2: Fact Pattern #2	28	42 minutes
3: Fact Pattern #3	20	30 minutes
TOTAL	**100** marks	150 minutes (2.5 hours)

Good luck!

FACT PATTERN #1 (52 points)

Background

2020 was an extraordinary year for the international shipping industry, and 2021 is bringing more changes. The first quarter of 2020 began with a supply shock as China shut down, followed by a demand shock as much of the rest of the global economy shut down. By the end of summer 2020, however, as online consumer purchasing ramped up, the industry was enjoying a strong rebound. A global container shortage further caused shipping costs to spike. Faced with this crunch, many shipping companies devoted resources to digitizing and optimizing their operations, which allowed them to cut costs and improve the efficiency of the just-in-time delivery and lean inventory business model on which global shipping relies. By the end of 2020, the global shipping industry had substantially outperformed the broader market.

There are also clouds on the horizon. There have been two major cyberattacks on shipping companies in the last eight months. As well, in March 2021, the world became more aware of how fragile long supply chains could be, thanks to a random and disruptive accident, as the enormous Ever Given ship blocked the Suez Canal for six days.

Economic nationalism has also been on the rise. Some industry observers have suggested that in the coming years, manufacturers will be under greater political and competitive pressure to increase domestic production and jobs, and to rethink the cost and hidden risks associated with long global supply chains. Such changes in manufacturing patterns, if they came to pass, would have major implications for container shipping companies.

Another factor that could contribute to a genuinely fundamental transformation of the industry is increasing concern about the climate emergency, and the shipping industry's contribution to the problem. In April 2018, the International Maritime Organization (IMO), which is the UN specialized agency that governs world's maritime shipping industry, adopted a non-binding agreement to curb carbon emissions from ships by at least 50% below 2008 levels, by 2050. In November 2020, the IMO approved a new set of mandatory measures to cut the carbon intensity of ships, including by imposing fines, imposing taxes on "dirty" ships, and developing a publicly available rating system for ship efficiency (a naming-and-shaming approach). Those measures were forwarded to the UN's Marine Environment Protection Committee for proposed adoption at its meeting in June 2021.

Slipper Shippers Inc.

Slipper Shippers Inc. is a small, publicly-traded Canadian container shipping company with its head office in Vancouver. Slipper has 1,000,000 common shares which, over the first quarter of 2021, traded at an average price of $50.00/share. Its fiscal year-end is December 31.

Slipper has not been all that profitable over the last decade, as consolidation in the shipping industry made it harder to compete with increasingly large competitors. On the other hand, looking ahead, Slipper's straight trans-Pacific routes mean that it can avoid some risks, like the risk that the Suez or Panama Canals will become blocked, or that clearly worsening hurricanes in the North Atlantic will disrupt its operations. With its Chief Executive Officer Misha Brown at the helm, Slipper has developed a business strategy based on being the "shipper of choice" for high-margin manufactured products moving across the Pacific, using its small and nimble fleet to deliver goods more quickly and flexibly than its competitors.

2020 was a very good year for Slipper. It managed the challenging business environment well, and its earnings exceeded expectations. It filed and released its annual disclosure documents on February 1, 2021. In its MD&A, Slipper describes plans to focus on its key advantages, the fleet's speed and efficiency. Slipper also describes its intention to devote the extra revenue it earned in 2020 to digitize its fleet of ships, including introducing a blockchain-based system for real-time tracking and tracing of goods, to become "the most efficient fleet in the world". Slipper's Management Discussion &Analysis and its Annual Information Form include fairly boilerplate lists of risks to which Slipper is subject, including regulatory change, climate change, and economic change. Its annual financial statements project earnings over the next three fiscal quarters to be in line with, or better than, the excellent results from the fourth quarter of 2020, due to increasing efficiency and the blockchain strategy's anticipated attractiveness to Slipper's main customers.

On March 1, Misha Brown receives a first draft of an environmental scan and strategic planning report that Slipper's Board of Directors commissioned from a high-profile management consulting firm, Omni Group. The report notes that in terms of carbon emissions, Slipper's ships are dirtier than most. If IMO-style regulations come in, adjusting to them will be more challenging for Slipper than for many other shippers. Especially compared to other trans-Pacific operators, Slippers could be looking at 15% higher remediation costs than its main competitors. The report closes with a recommendation that Slipper consider using its 2020 revenue to make a substantial start on retrofitting and commissioning of new ships, in anticipation of potentially having to meet new potential IMO regulatory standards.
CEO Misha Brown doesn't buy it. In Misha's view, the chance is low that meaningful regulation will actually come into effect. Shipping is and has always been a bit of a "wild west" business, and Canada is free to drag its feet in implementing the new IMO measures. Moreover, Slipper's chief advantage is the speed and nimbleness of its fleet – a strategy that requires a lot of fossil fuel – and its customers will not care about emissions so long as they continue to receive fast, flexible service. Misha makes the decision to allocate Slipper's 2020 profits to the planned blockchain tracking system, rather than to retrofitting its fleet to reduce its carbon intensity. Misha plans to bring that strategic decision to the Board for its approval, at its next meeting on April 1. The Board has always supported Misha's proposals in the past.

Slipper's Chief Operating Officer, Sam Law, is the only other officer of Slipper to see the Omni Group draft report in this time period. He knows of Misha's reaction to it. Over several days between March 5 and 15, Sam sells a total of 1,000 Slipper common shares. In keeping with s. 87 of the BC *Securities Act* and with NI 55-102, Sam files insider trading reports for each trade, which reports are posted on SEDI. In conversation with a friend, Kelly Gill, on March 10, Sam says, "I'm just not feeling great about our prospects. Sure, it's been a good year, but I think we have our priorities mixed up. We're thinking about short term issues like digitization, when we need to be thinking about the long-term". After they get off the phone, Kelly sells 500 common shares of Slipper.

Subsequent Events

A few months later, in June 2021, the UN's Marine Environment Protection Committee adopts the IMO's mandatory measures around carbon emissions from shipping. Canada moves immediately to ratify them. Canada adopts the publicly available rating system for ship efficiency, imposes a tax on dirty ships, and imposes heavy fines on shipping lines that are not making meaningful progress toward meeting the new CO_2 limits. The entire regime is in line with the IMO measures, but is far more rigorously enforced than Misha or Slipper's Board anticipated. In the second half of 2021, Slipper's operating costs go up by 15% from fines and taxes alone, without commissioning any new ships or retrofitting the ones it has.

Meanwhile, several of Slipper's largest clients announce plans to shorten their supply chains and to "on-shore" work once again. Clients show a renewed interest in warehousing goods in Canada to weather supply chain disruptions, and a few clients demand that shippers, including Slipper, insure against their business disruption risk if they insist on continuing to rely on the just-in-time delivery model. Reduced trans-Pacific shipping traffic lowers Slipper's revenue, and increased insurance costs raise expenses. Things are looking bleak.

Questions for Fact Pattern #1:

It is December 2021. Slipper has signaled that it will be posting a substantial loss in its upcoming financial reporting. The news attracts the attention of the BC Securities Commission, as well as of Slipper's shareholders. Its Board comes to you for legal advice. (Misha Brown has been fired, and has hired separate counsel.) Assume you know everything above. Analyze the situation objectively, and identify and consider the ***regulatory issues***, including relevant enforcement provisions, arising out of conduct in the first quarter of 2021, with respect to:

a) Slipper (12 points), and

b) COO Sam Law (8 points).

Then,

c) Identify the strongest defenses available to Slipper, in defending against the potential regulatory liability above (on its own and potentially for anything related to Sam Law's activity). Advise Slipper's Board, objectively, about how strong these defenses are. (8 points)

The BC Supreme Court certifies a class of Slipper investor plaintiffs under the *Class Proceedings Act*. Still considering conduct in the first quarter of 2021, explain the ***civil liability*** risk, factoring in any possible defenses, for each of:

d) Slipper (10 points),

e) COO Sam Law (9 points), and

f) Slipper’s external auditor, Jody Jeffs of Shoreline Accountants LLP, who helped prepare the company’s annual financial statements (5 points).

FACT PATTERN #2 (28 points)

A restaurant chain, Sempre Experience Ltd., is incorporated under the *Canada Business Corporations Act* and operates in several provinces across Canada. Its head office is in Vancouver. Sempre’s restaurants cater to a very high-end clientele; they are “see-and-be-seen” venues, with private rooms that can be booked for small, exclusive events. Many of the events at Sempre’s restaurants end up being covered by the fashion, financial, and gossip media. For years, it has been hard for a normal person to get even a bad table at any Sempre restaurant. In particular, the Maitre D’ at the Toronto restaurant, Avanti, is notoriously obsessed with the status of the guests that are permitted to dine there.

Sempre’s business model has been successful for years. At the moment, however, Sempre needs to raise money to survive. Sempre’s marketing department comes up with a plan: Sempre restaurants will offer takeout food! Customers will be required to pay for their meals using “Sempre Support”, a sort of coupon. The takeout food purchased with Sempre Support costs about 50% more than it otherwise would, compared to the restaurants’ in-dining menus. The additional cost is designed to help keep the restaurants afloat. In return, along with high-end takeout food, “Sempre Supporters” will receive visibility and recognition on the restaurant’s heavily-followed social media accounts – even more so if they tip well – as well as loyalty points that may be redeemed for actual cash after the pandemic, assuming that Sempre recovers. The marketing department wants to pilot its plan at the Avanti restaurant in Toronto, because it is the most profitable and high-status restaurant in normal times.

Sempre comes to you to understand its legal options. Advise it on the following:

a) Would creating and issuing Sempre Support make Sempre subject to securities regulation? Explain why or why not. (6 points)

b) Assuming (without deciding) that the Sempre Support plan would trigger securities regulation, which securities regulator would most likely be responsible for this matter, and why? (4 points)

c) As the marketing team envisions the plan (and over the Toronto Maitre D’s strong objections), anyone can purchase Sempre Support and obtain takeout food from its celebrated restaurants. What are the implications, in securities regulation terms, of allowing anyone to purchase Sempre Support? (5 points)

d) Would you recommend any other options for Sempre, which could allow the company to offer Sempre Support without dealing with all the implications in (c) above? Explain. (5 points)

e) Describe for Sempre the trouble it could find itself in, if the company fails to file necessary documents, or is not careful in producing the content of any necessary documents. (8 points)

FACT PATTERN #3 (20 points)

You are a lawyer in Vancouver, with a private practice specializing in securities law. You have a lot of clients doing business in the wellness sector.

Borealis Pharmaceutics Board member Seth Garcia schedules a meeting with you. Borealis Pharmaceuticals is a private issuer operating in the cannabis space. Garcia is interested in learning more about buying shares in one of Borealis's smaller rivals, publicly-traded Cannifarm Organics, which is based in Vancouver. Garcia tells you that Borealis and/or its subsidiaries collectively own 7% of Cannifarm's outstanding common shares, "so far". Garcia is somewhat vague about what Borealis's intentions are. Possibly, Garcia and/or Borealis do not yet actually know what they hope to accomplish by buying shares in this upstart rival.

Explain to Garcia:

a) Can Borealis and its subsidiaries continue to buy as many Cannifarm shares as it likes, without any legal or regulatory implications? Are there any limits or concerns they should be aware of? (2 points)

b) What would it look like, if Borealis were to undertake a takeover bid for Cannifarm? Identify five main elements of a takeover bid that you think Garcia should understand. (5 points)

c) Is there any way that Borealis can acquire a substantial volume of Cannifarm shares, without triggering takeover bid regulation? (4 points)

d) What responses, mandatory and optional, are available to Cannifarm if Borealis continues to purchase Cannifarm shares? (6 points)

e) At the end of your description, it is clear that Garcia is not impressed with the limits the regulatory regime imposes on Borealis's conduct. Explain why this regulatory regime exists and operates the way it does. (3 points)

END OF EXAM