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

FINAL EXAMINATION – APRIL 2021

LAW 553C.001
CORPORATE TRANSACTIONS

PROFESSOR CAMDEN HUTCHISON

EXAM PASSWORD: c9K38t
RESUME CODE: B154E4

TOTAL MARKS: 100

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

(9:00 A.M. PDT) **WRITING (INCLUSIVE OF READING) TIME ALLOWED:** 3 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, 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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PART 1
MARKS 40

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

1. Provide an example of how transactional attorneys can add value for their clients.

2. What are the two types of agency costs?

3. Canadair Inc., a publicly-traded federal corporation, and TransPacific Inc., a competing publicly-traded federal corporation, announce an arrangement transaction whereby Canadair Inc. will acquire 100% of the stock of TransPacific Inc. in exchange for $20 cash per share. According to the terms of the Arrangement Agreement, the transaction will close once all necessary regulatory approvals have been obtained. Prior to the announcement of the transaction, TransPacific Inc. was trading at five dollars per share. Following the announcement, TransPacific Inc. is now trading at nine dollars per share. How likely is it do you think the transaction will close? Please give a precise estimate.

4. Briefly describe the difference between “firm-specific” and “systematic” risk.

5. Imagine the risk-free interest rate is 0.6% and the total stock market return is 31.29%. Infosec, Inc., a publicly-traded Delaware corporation, has a beta of 0.89. What is the return on Infosec, Inc. stock?

6. Charles purchases a SAFE in Fintech Inc., an Ontario corporation. Assume the purchase amount is $100,000, the valuation cap is $4 million and the discount rate is 80%. Assume also that the corporation capitalization is one million shares. If the price per share in Fintech Inc.’s Series A financing is $4.10 per share, how many shares will Charles receive under the SAFE?

7. Provide three economic motivations for acquiring a company in a leveraged buyout (as opposed to an unleveraged transaction).

8. In an asset purchase, may the buyer exclude a collective bargaining agreement from the liabilities to be transferred by the seller?

9. What are vesting stock options?

10. What is the economic purpose of drag-along rights?

11. Global Computing Devices Inc., an Ontario corporation, has two primary businesses: a computer hardware and software business (approximately 70% of the company) and an information-technology consulting business (approximately 30% of the company). Global Computing Devices Inc. is selling its computer hardware and software business to Legend Holdings Limited, a Chinese buyer, in an asset purchase transaction. Global Computing Devices Inc. has three classes of shares: Class A voting common shares; Class B non-voting common shares; and Class C preferred shares. What specific shareholder approvals must Global Computing Devices Inc. obtain to approve the sale?

12. Gold Mines Inc. and Copper Mines Inc. (both federal corporations) are amalgamating. Copper Mines Inc. has Class A voting common shares and Class B non-voting common shares outstanding. Gold Mines Inc. has Class A voting common shares and Class B non-voting subordinate shares outstanding. Pursuant to the Amalgamation Agreement, Copper Mines Inc.'s Class A shares and Class B shares will be exchanged for newly authorized and issued Class A shares of Gold Mines Inc. The existing Class A shares and Class B shares of Gold Mines Inc. will be otherwise unaffected. What specific shareholder approvals must the corporations obtain to approve the amalgamation (assume both corporations' articles of incorporation are silent as to amalgamations)?

13. Northern Cannabis Inc. and Prairie Cannabis Inc. (both publicly-traded Alberta corporations) are amalgamating under a plan of arrangement. Pursuant to the plan of arrangement, Prairie Cannabis Inc.'s shares will be exchanged for newly issued shares of Northern Cannabis Inc. (whose shares will be otherwise unaffected). Prairie Cannabis Inc.'s outstanding bonds will be forced to take a 20% discount to their principal amount. Northern Cannabis Inc.'s outstanding bonds will not take a discount, but are expected to decline in market value. Pursuant to the interim order, the shareholders of both corporations must approve the transaction by a 2/3 vote. The bondholders of both corporations sue to enjoin the transaction, claiming that they should also be allowed to vote. Do the bondholders of either corporation have a valid claim?

14. Under the *Investment Canada Act*, what is the (approximate) threshold of review for purchases by private parties from World Trade Organization member countries?

15. In a purchase agreement, is it market for the seller's compliance with law representation to include a knowledge qualifier?

16. Why might a buyer choose not to seek a "pro-sandbagging" provision?

17. What is the generally permissible range of breakup fees?

18. What is the economic purpose of an earnout provision?

19. In the context of a tender offer, what is a lockup agreement?

20. What is the difference between a "strategic" and a "tactical" poison pill?

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. Cascadian Timber Inc., a privately-held federal corporation, seeks to acquire all of the stock of Vancouver Timber Inc., a privately-held British Columbia company, in a stock purchase transaction for a total purchase price of $60 million (implying an EBITDA multiple of 9). Buyer's counsel prepares a stock purchase agreement including, *inter alia*, the following provisions:

   (A) full disclosure representation;

   (B) no undisclosed liabilities representation;

   (C) 24 month survival period for standard representations and warranties;

   (D) closing condition that the sellers' representations must be true and correct "in all material respects";

   (E) $300,000 tipping basket;

   (F) $30 million cap;

   (G) $3 million escrow.

   i) Imagine you represent Vancouver Timber Inc. and its controlling shareholders. How would you respond to these proposed terms?

   ii) Now switch roles and imagine you represent Cascadian Timber Inc. How would you respond to the answer you just gave above?

   iii) How and why would your answers change if the purchase price was $40 million (implying an EBITDA multiple of 6)?

2. Nile, Inc., a publicly-traded online retail and logistics corporation (the "Purchaser"), seeks to acquire Backbone, Inc. a publicly-traded fiberoptic communication corporation (the "Corporation"), in a friendly transaction valued at $1.6 billion. Legal counsel to the Purchaser drafts the initial purchase agreement, which includes the following definition of "Material Adverse Effect":

   "Material Adverse Effect" means any change, event, occurrence, effect, state of facts, and/or circumstance that, individually or in the aggregate with other such changes, events, occurrences, effects, states of facts, or circumstances is or could potentially be material and adverse to the business, operations, results of operations, assets, properties, financial condition, liabilities (contingent or otherwise), or reputation of the Corporation and its Subsidiaries, taken as a whole, or any change, event, occurrence, effect, state of facts, and/or circumstance that would reasonably prevent the Corporation or the Purchaser from performing its obligations under this Agreement and consummating the Transaction; *provided*, *however*, that any such change, event, occurrence, effect, state of facts, or circumstance resulting from or arising in connection with the following shall not be a Material Adverse Effect:

(A) changes, events, or occurrences in general economic, political, or financial conditions in any jurisdiction in which the Corporation or its Subsidiaries operate;

(B) any change in Law, GAAP, or changes in regulatory accounting or tax requirements, or in the interpretation, application, or non-application of the foregoing by any Governmental Entity;

(C) any natural disasters, acts of war, uprisings, riots, civil unrest, or acts of terrorism or sabotage;

(D) any action taken (or omitted to be taken) by the Corporation or any of its Subsidiaries to the extent required by this Agreement;

(E) any change in the market price or trading volume of the Shares (it being understood that the causes underlying such change in market price or trading volume may, to the extent not otherwise excluded from the definition of Material Adverse Effect, be taken into account in determining whether a Material Adverse Effect has occurred); or

(F) the execution, announcement, performance, or consummation of this Agreement or the Transaction, including any loss or threatened loss of, or adverse change or threatened adverse change in, the relationship of the Corporation or any of its Subsidiaries with any Governmental Entity or any of its or their current or prospective employees, customers, securityholders, financing sources, vendors, distributors, suppliers, partners, licensors, or lessors.

i) Imagine you represent the Corporation. How would you respond to this proposed definition?

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

iii) In a typical purchase agreement, in which provisions does the defined term Material Adverse Effect appear and how/why does it matter?

3. Bytecoin Inc., a publicly-traded Ontario corporation ("<u>Bytecoin</u>"), seeks to acquire Cryptowallet Inc., a publicly-traded British Columbia company ("<u>Cryptowallet</u>"). Bytecoin believes there are significant synergies between its cryptocurrency trading platform and Cryptowallet's security services. Cryptowallet's management refuses to entertain purchase negotiations, however, despite Bytecoin's stated willingness to offer a very high premium.

   Assume Cryptowallet has a single class of common stock. Without disclosing its equity position, Bytecoin slowly acquires 15% of Cryptowallet's shares on the open market at an average price of eight dollars per share. Bytecoin then launches a hostile take-over bid for 40% of Cryptowallet's outstanding common stock (other than the common stock held by Bytecoin) at a price of nine dollars per share, with the exception that Bytecoin will not purchase any common stock held by Cryptowallet's managers. The take-over bid will be held open for 120 days and will provide a 5-day extension period for any non-tendering shareholders to change their decision and tender. No shareholders who tender during the 120-day period will be allowed to withdraw their tendered shares during the 5-day extension period, however. Assume that Bytecoin and Cryptowallet satisfy their respective circular requirements (with Cryptowallet's board of directors recommending that shareholders do not tender their shares).

Shareholders holding 60% of Cryptowallet's shares (other than the shares held by Bytecoin) tender into the bid, and Bytecoin purchases 40% of the tendered shares. While the bid is open, Bytecoin purchases an additional two percent of Cryptowallet's shares on the open market at a price of eight dollars per share (Bytecoin issues a series of press releases disclosing these market purchases). Five days after the bid closes, Bytecoin enters into a private agreement with an institutional investor in Cryptowallet to purchase an additional four percent of Cryptowallet's shares at a price of ten dollars per share (Bytecoin also issues a press release disclosing this transaction).

Cryptowallet's management is livid and requests that the British Columbia Securities Commission issue a cease trade order enjoining the entire take-over bid. Will the British Columbia Securities Commission grant a cease trade order? Discuss any potential problems with Bytecoin's bid.

END OF EXAMINATION