

THIS EXAMINATION CONSISTS OF 5 PAGES (INCLUDING THIS PAGE).
PLEASE ENSURE THAT YOU HAVE A COMPLETE PAPER.

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

FINAL EXAMINATION – APRIL 2022

LAW 459
BUSINESS ORGANIZATIONS

SECTION 1
PROFESSOR CAMDEN HUTCHISON

TOTAL MARKS: 100

TIME ALLOWED: 3 HOURS

- NOTE:**
1. THIS IS A LIMITED OPEN-BOOK EXAMINATION. STUDENTS MAY HAVE WITH THEM (1) THE TEXTBOOK, (2) PRINTED STATUTORY MATERIALS, AND (3) THEIR CAN/OUTLINE. LAPTOPS ARE ONLY PERMITTED FOR THE USE OF EXAMPLIFY/EXAMSOFT.
 2. ANSWER ALL QUESTIONS. THIS EXAMINATION CONSISTS OF 3 QUESTIONS.

QUESTION 1
MARKS 40

False Creek Development Limited Partnership, a British Columbia limited partnership (“False Creek Development”), is a real estate investment and development firm. False Creek Development is managed by its general partner, False Creek Management Inc., a British Columbia company (“False Creek Management”). False Creek Management is owned and controlled by three shareholders, Robert Hai, Céline Levesque, and Gordon Stephens (all three shareholders are independently wealthy). Although each shareholder holds an equal number of shares, Robert currently serves as the sole director. In addition to his role as director, Robert serves as the Chief Executive Officer, Gordon serves as the Chief Financial Offer, and Céline serves as the Chief Marketing Officer. Pursuant to s. 12(2) and s. 137 of the *Business Corporations Act*, the articles of False Creek Management require that any investment decision be made with the unanimous approval of the three shareholders. False Creek Development’s limited partners include Pedro Hernadez, Western Capital Limited Partnership, a British Columbia limited partnership, and Creekside Development Inc., a British Columbia company (“Creekside Development”).

- (a) Lindsay Mitchell is an investment broker who occasionally works with False Creek Management on commission. Without the prior consent or authorization of False Creek Management, Lindsay purchases waterfront property owned by Yaletown Investments Limited Partnership, a British Columbia limited partnership (“Yaletown Investments”), on behalf of False Creek Management. The sale price is fair given prevailing market prices and all three shareholders of False Creek Management vote to approve the purchase. However, Lindsay and Céline are both limited partners in Yaletown Investments, a relationship they fail to disclose to False Creek Management. Is Lindsay potentially liable to False Creek Management? Briefly explain why or why not.
- (b) Assume the same facts as above. Assume also that Lindsay admits to taking kickbacks (in the form of luxury designer handbags) from real estate sellers she has introduced to False Creek Management in her capacity as an investment broker. Gordon is outraged and demands that False Creek Management take legal action against Lindsay. Robert and Céline are generally happy with Lindsay’s brokerage services (despite the kickbacks), however, and refuse to allow False Creek Management to take any action against Lindsay. Does Gordon have any legal recourse against Lindsay? Briefly explain Gordon’s available legal options.
- (c) Assume the same facts as above. Assume also that, following the transaction with Yaletown Investments and the disclosure of Lindsay’s kickbacks, Gordon tells Lindsay she’s “fired” as a broker and she’ll never do business with False Creek Management again. Robert and Céline have no knowledge of this conversation. Lindsay then proceeds to enter into another real estate purchase agreement with Harbourfront Development Inc., an Ontario corporation, on behalf of False Creek Management. If False Creek Management does not approve the purchase, can Harbourfront Development Inc. hold False Creek Management liable under the terms of the purchase agreement? Briefly explain the relevant legal issues.
- (d) Assume the same facts as above. Assume also that, in her role as a limited partner of Yaletown Investments, Céline commits tortious interference with the business of a competing investment fund. Is Lindsay potentially liable as well?

- (e) Assume the same facts as above. Is Céline potentially liable to Robert and Gordon with respect to the purchase from Yaletown Investments? Briefly explain the relevant legal issues.
- (f) Assume the same facts as above. Assume also that, in her role as Chief Marketing Officer, Céline induced Pedro to invest in False Creek Development. Although she did not disclose her relationship to Yaletown Investments, she made no affirmative misstatements to Pedro. Is Céline potentially liable to Pedro? Briefly explain why or why not.
- (g) Assume the same facts as above. Pursuant to its articles, Creekside Development may only invest in commercial real estate. Assume at least some (if not most) of False Creek Development's investments are residential real estate. After learning of the controversy surrounding Céline and Lindsay, Creekside Development demands the return of its investment, claiming the investment was not authorized under the company's articles. Will Creekside Development prevail? Briefly explain the relevant legal issues.
- (h) Assume the same facts as above. Assume also that Michael Blum is the sole shareholder of Blum Investment Management Inc., a British Columbia company and the general partner of Yaletown Investments. Assume that, following a series of unsuccessful investments, Yaletown Investments defaults on a loan owed to Dominion Bank. Michael signed the loan agreement (as the "investment director" of Yaletown Investments), though he in fact has no formal position with Yaletown Investments. Can Michael be held liable to Dominion Bank? Briefly explain why or why not.

QUESTION 2
MARKS 40

Meridian Pipeline Inc., an Alberta corporation ("Meridian Pipeline"), is a publicly-listed pipeline construction and maintenance firm. Meridian Pipeline has two classes of publicly-traded shares: 10% of its outstanding shares are Class A voting shares (primarily held by management) and 90% of its outstanding shares are Class B nonvoting shares. Pursuant to the corporation's articles of incorporation, immediately following the consummation of any *bona fide* acquisition of more than 50% of the Class B shares by any person, *all* Class B shares convert into Class A shares. The corporation also has a small amount of nonvoting noncumulative preferred shares outstanding, which are held by creditors. The corporation currently has in place a strategic poison pill that is similar in substance to that of other publicly-listed Canadian corporations (including Telus Corporation).

Eau Claire Capital Limited Partnership, an Alberta limited partnership ("Eau Claire Capital"), is an institutional investor that owns nine percent of Meridian Pipeline's outstanding Class B shares. Eau Claire Capital launches an unsolicited take-over bid for 60% of the Class B shares that it does not already own. The offer price is \$75 per share, a 25% premium over the Class B shares' trading price of \$60 per share. Assume the take-over bid meets all the requirements of National Instrument 62-104 and the "permitted bid" definition of the strategic poison pill. In announcing the take-over bid, Eau Claire Capital commits to following a successful bid with an amalgamation in which each of Meridian Pipeline's remaining shares will be exchanged for a \$75 unsecured note issued by the amalgamated corporation. Meridian Pipeline convenes a special committee of independent directors to evaluate the bid. The special committee rejects the offer, claiming that it is inadequate and coercive.

In response to the take-over bid, Meridian Pipeline deploys a second, tactical poison pill that specifically excludes any take-over bid for less than 100% of the corporation's Class B shares from the definition of "permitted bid." Meridian Pipeline does not seek or obtain shareholder approval of the second poison pill. The special committee retains Canadian Securities Inc., a federal corporation ("Canadian Securities"), as its financial advisor and announces that it is seeking an alternative transaction.

Following outreach from Meridian Pipeline and Canadian Securities, Macdonald Global Inc., a Nova Scotia company ("Macdonald Global"), enters into negotiations to purchase Meridian Pipeline pursuant to a plan of arrangement with an Alberta subsidiary of Macdonald Global. Pursuant to the arrangement agreement, each Class A share will be exchanged for new shares in the amalgamated corporation and each Class B share and preferred share will be exchanged for \$70 cash. For its part, the merger subsidiary's 1,000 common shares will be exchanged for new shares in the amalgamated corporation. Under the proposed transaction, Meridian Pipeline's officers will remain with the business and keep their current management positions. Given the perceived threat of the Eau Claire Capital deal, the Macdonald Global transaction is quickly negotiated in less than 24 hours. Canadian Securities issues an opinion that the transaction with Macdonald Global is fair, though it does not opine as to the fairness of the transaction with Eau Claire Capital. Creditors of Meridian Pipeline prefer the Macdonald Global deal, as the issuance of the unsecured notes pursuant to the Eau Claire Capital deal will increase the risk of Meridian Pipeline's outstanding debt.

At the direction of the special committee, Meridian Pipeline waives its tactical poison pill for the Macdonald Global deal, but not the Eau Claire Capital deal. The arrangement agreement with Macdonald Global grants the buyer a \$250 million breakup fee (approximately 4% of the purchase price of \$6 billion) and an option to purchase 15% of Meridian Pipeline's Class B shares if the transaction with Macdonald Global is not completed.

- (a) Describe the shareholder approvals that will likely be required to approve the plan of arrangement between Meridian Pipeline and Macdonald Global.
- (b) Assume a holder of Meridian Pipeline Class B shares sues the board of directors under s. 122(1)(a) [the fiduciary duty] and s. 122(1)(b) [the duty of care] of the *Business Corporations Act*. Assess the merits of this lawsuit.
- (c) Assume a holder of Meridian Pipeline Class B shares sues Meridian Pipeline under s. 242 of the *Business Corporations Act* [the oppression remedy]. Assess the merits of this claim.
- (d) Assume a holder of Meridian Pipeline Class B shares claims that the tactical poison pill and the plan of arrangement are against the public interest and requests that the Alberta Securities Commission issue a cease trade order forcing Meridian Pipeline to retire the poison pill. Assess the merits of this claim.

QUESTION 3
MARKS 20

Pursuant to s. 51.993(1)(a) of the *Business Corporations Act*, a director or officer of a benefit company, when exercising the powers and performing the functions of a director or officer, must act honestly and in good faith with a view to (i) conducting the business in a responsible and sustainable manner, and (ii) promoting the public benefits specified in the benefit company's articles. Pursuant to s. 51.993(1)(b), this duty is to be balanced with the fiduciary duty set forth in s. 142(1)(a). Despite s. 51.993(1), pursuant to 51.993(2), (a) the directors and officers of a benefit company have no duty under s. 51.993(1) to (i) a person whose well-being may be affected by the benefit company's conduct, or (ii) a person who has an interest in a public benefit specified in the benefit company's articles, and (b) no legal proceeding may be brought by any such person against a director or officer of a benefit company in relation to the duties under s. 51.993(1).

Assess the arguments for and against this policy choice in light of the purposes of Part 2.3 of the *Business Corporations Act*. How does Part 2.3 intersect with the Supreme Court of Canada's decision in *Re BCE Inc.*?

END OF EXAMINATION