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 461
CORPORATE TRANSACTIONS

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 THE TEXTBOOK (MERGERS, ACQUISITIONS, AND OTHER CHANGES OF CORPORATE CONTROL) AND THEIR CAN/OUTLINE. LAPTOPS ARE ONLY PERMITTED FOR THE USE OF EXAMPLIFY/EXAMSOFT.

2. ANSWER ALL QUESTIONS. THIS EXAMINATION CONSISTS OF 2 PARTS.

PART 1
MARKS 40

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

1. How do guarantees mitigate adverse selection?

2. How do stock options mitigate moral hazard?

3. Precision Biochemicals Inc., a publicly-traded Ontario corporation, announces the sale of one billion dollars of newly-issued common stock. Following the announcement, Precision Biochemicals Inc.'s stock price decreases by three percent. Assume nothing has changed about Precision Biochemicals Inc.'s business prospects. Why might the stock price have decreased?

4. Blockchain Entertainment Inc. is a publicly-traded British Columbia company that develops blockchain applications for video games. Blockchain Entertainment Inc. launched its initial public offering late last year. The company has never made a profit and is burning cash, yet its stock trades at a price of over $100 per share. A political commentator claims this is clearly evidence that markets are inefficient. Why might this claim be wrong?

5. Imagine the risk-free interest rate is 0.65%. Canadian Bread Inc., a publicly-traded Ontario corporation, has a beta of 0.68 and a return of 7.28%. What is the total stock market return?

6. Why are convertible notes considered less pro-company than SAFEs?

7. Raymond purchases a SAFE in EnergyTech Inc., an Alberta corporation. Assume that the purchase amount is $50,000, the valuation cap is $5 million, and the discount rate is 80%. Assume also that the corporation capitalization is two million shares. If the price per share in EnergyTech Inc.'s Series A financing is four dollars per share, how many shares will Charles receive under the SAFE?

8. What is the function and purpose of a registration rights agreement?

9. Provide three business reasons that companies engage in acquisitions.

10. Briefly explain the tax advantages of an asset purchase.

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

12. Fraser Valley Gaming Inc., a British Columbia company, enters into an arrangement agreement with Mississauga Gaming Inc., an Ontario corporation. Fraser Valley Gaming Inc. has two classes of shares: Class A common shares and Class B nonvoting preferred shares. Mississauga Gaming Inc. has three classes of shares: Class A voting common shares, Class B nonvoting common shares, and Class C nonvoting preferred shares. Pursuant to the arrangement, Fraser Valley Gaming Inc.'s Class A shares and Class B shares are being converted into newly-issued Class A shares of Mississauga Gaming Inc. What specific shareholder approvals are likely to be required?

13. A large Ontario pension fund enters into a plan of arrangement with Alexander Inc., a publicly-traded federal corporation. Alexander Inc. has 10 million Class A common shares, 10,000 Class B nonvoting preferred shares, and $1 billion of bonds outstanding. Pursuant to the plan of arrangement, each Class A share will be converted into $80 cash, each Class B share will remain outstanding, and the bonds will be converted into newly-issued Class B shares. What specific approvals are likely to be required?

14. What is a SPAC?

15. What are the economic thresholds for *Competition Act* preclearance review?

16. Briefly explain who makes decisions under the national security review provisions of the *Investment Canada Act*.

17. Are anti-sandbagging provisions “market” in Canada?

18. What is the purpose of a breakup fee?

19. What are the restrictions on open-market bidder purchases before, during, and after a take-over bid?

20. What is the primary purpose of a directors’ circular?

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. Ontario Capital Inc., an Ontario corporation, seeks to acquire all of the stock of Cascadian Medical Inc., a British Columbia company, for a purchase price of $40 million (implying an EBITDA multiple of 5). Cascadian Medical Inc. is a cannabis producer and distributor with distribution licenses in several Canadian provinces and American states. It is well known in the cannabis industry that the company has been struggling to earn a profit and faces financial distress. Buyer’s counsel prepares a share purchase agreement with the following provisions:

   (a) unqualified compliance with laws representation;

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

   (c) $100,000 tipping basket;

   (d) $20 million cap;

   (e) $4 million escrow;

   (f) closing condition that the sellers’ representations and warranties must be true and correct, “except for such failures to be true and correct that are *de minimis*.”

i. Imagine you represent Cascadian Medical Inc. and its controlling shareholders. How would you respond to these proposed terms?

ii. Now switch roles and imagine you represent Ontario Capital Inc. How would you respond to the answer you gave above?

iii. Imagine that prior to the closing, it is revealed that, due to cash-flow problems, Cascadian Medical Inc. has defaulted on a material contract, in violation of its material contracts representation. What is the most likely consequence?

2. Roberts Communications Inc., a publicly-traded British Columbia company, seeks to acquire Scott Communications Inc., a publicly-traded Alberta corporation, pursuant to a plan of arrangement. Assume the arrangement agreement includes the following representations and warranties (among others):

(a) <u>Governmental Authorization</u>. The Company is not required to obtain any authorization or other action by or in respect of, or filing with, or notification to, any governmental entity in connection with the execution, delivery, and performance by the Company of this Agreement and the consummation by the Company of the Arrangement other than: (i) the Interim Order; (ii) the Final Order; (iii) filings with the Director under the *Business Corporations Act*; (iv) any required actions or filings with the Securities Authorities or the TSX; and (v) any required consents, waivers, approvals, actions, filings, or notifications that are not material.

(b) <u>Licenses</u>. (i) All Licenses that are necessary for the Company and its subsidiaries to own their assets or conduct their business as presently owned or conducted have been obtained and are in full force and effect in accordance with their terms; (ii) the Company and its subsidiaries have performed the obligations required to be performed by them, as applicable, to date under all such Licenses; (iii) the Company and its subsidiaries are not in default under any such License; (iv) the Company and its subsidiaries have not received notice of any alleged breach of, or alleged default under, any such License or of any intention of any governmental entity to revoke or not renew any such License; (v) no governmental entity is planning to revoke or not renew any such License; and (vi) no proceedings are pending or threatened that could reasonably be expected to result in the revocation of any such License.

(c) <u>No Undisclosed Liabilities</u>. There are no liabilities or obligations of the Company or any of its subsidiaries of any kind whatsoever, whether accrued, contingent, absolute, determined, determinable or otherwise, other than liabilities or obligations: (i) disclosed in the audited consolidated financial statements of the Company for the year ended December 31, 2021; or (ii) disclosed in the unaudited interim consolidated financial statements of the Company for the 3 and 6 months ended June 30, 2022.

i. Imagine you represent Scott Communications Inc. How would you respond to these proposed terms?

ii. Now switch roles and imagine you represent Roberts Communications Inc. How would you respond to the answer you gave above?

iii. Explain the role of representations and warranties in this transaction.

3. Emon Lusk is an eccentric billionaire and active user of Tweeter, a Canadian social media platform. Tweeter is operated by Tweeter Inc., a publicly-traded Ontario corporation. Tweeter Inc.'s shares are owned roughly 60% by retail investors and 40% by institutional investors, including Assurance Inc., a Quebec corporation, and Ontario Venture Finance Inc., an Ontario corporation, each of which owns just over 10% of Tweeter Inc.'s shares. Emon begins to advocate for changes to Tweeter Inc.'s business model and speculates publicly about acquiring the company. Many of Emon's recommended changes are considered questionable by business and legal experts, but are popular among Tweeter's user base. Several weeks later, Emon acquires nine percent of Tweeter Inc.'s common stock on the open market and issues a press release announcing his position. Immediately following the announcement, Twitter Inc.'s stock price increases 20%, from $40 to $50 per share. In response, Tweeter Inc.'s board of directors announces they are not interested in selling the company.

   i. Emon desires to acquire control of Tweeter Inc. Imagine you are a partner at a leading corporate law firm hired by Emon to advise him as to his acquisition options. What strategy and specific tactics do you recommend Emon implement? Discuss the legal rules that Emon will need to follow. Consider pricing and transactional expenses as well as legal requirements.

   ii. Assume Emon follows your recommendations above. Now assume that you are corporate counsel to Tweeter Inc.'s special committee of independent directors, who view an acquisition by Emon unfavorably. Assume further that Emon implements the acquisition strategy described in your answer above. How would you recommend Tweeter Inc. respond?

   iii. Imagine a prominent Member of Parliament, outraged by Emon's combination of extreme wealth and childish antics, proposes a law that would prevent corporate takeovers that are opposed by management. What are the policy arguments for and against such a law?

END OF EXAMINATION