THIS EXAMINATION CONSISTS OF 4 PAGES

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

FINAL EXAMINATION – APRIL 2023

LAW 459/508D

Business Organizations

Section 3

Professor Maziar Peihani

**TOTAL MARKS:** 100

**TIME ALLOWED:** 2 HOURS PLUS 15 MINUTES OF READING TIME (Students may not begin to type or write during the reading time).

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**NOTE:**

1. This is an open book examination. Students may take any materials they wish into the examination room including dictionaries.

THIS EXAMINATION CONSISTS OF TWO QUESTIONS. ANSWER BOTH QUESTIONS.

**Question One: 40 Marks**

After the untimely death of his partner Miles Archer, Sam Spade continued his Vancouver agency under the name of Sam Spade. Several years later, one Sarah Spade visited his office claiming to be his daughter. Sarah demanded that Sam make him a partner in his agency, but Sam refused. “Archer and his wife were such a nuisance. I’ll never take on another partner as long as I can walk. But if you want to work for me, I’ll buy you a yellow trench coat and all the cigars you want, and pay you 20 bucks a week plus expenses and 20% of the profits.”

Sam Spade continued to carry on the agency’s business in the name of Sam Spade. Nevertheless, when occasional bills arrived in the name of Spade & Spade, he was as likely to pay those bills as any others. Sarah never complained. “Maybe someday he’ll really treat me like a partner after all,” she mused.

Ten years later, Sam had taken to drink. Business fell off and creditors called. After Sam had hounded Sarah for weeks to pay the creditors (“You’ll find it pays off, kid, we’ll work together to make sure it’ll pay off for you once business picks up again”), Sarah began paying the creditors with her personal funds. One day when Sam became particularly abusive, Sarah finally left. On her way through the door, she yelled, “You were never a father to me, you faked the agency books for years, and you never do any work—though you were never any good anyway, you rat. I know you’ve siphoned off thousands to Archer’s widow for you two to use later, and I’ll get my share of it. You’ll send my lawyer a certified check for my share of this filthy business or I’ll see you in court.”

Answer the Following Questions:

1. Does Sarah have any share coming to her? How big a share?
2. The agency has no funds that a court can locate, and Sam has disappeared with Archer’s widow. Can the creditor that sent its bills to Spade & Spade collect from Sarah?
3. If Sarah were a partner, would she be liable for Sam’s liquor bills? What if Sam charged the liquor to the office account?

**Question Two: 60 Marks**

From 2005 to 2007, Mr. Saeed, was the President, the Chief Executive Officer (“CEO”), a significant minority shareholder and a director of Backer Corporation (“Corporation”), a technology company incorporated under the *CBCA*. Prior to the events leading to the instant litigation, he held 2 million common shares, 1 million Class A Convertible Preferred Shares (“A Shares”) and 1.5 million Class B Convertible Preferred Shares (“B Shares”) in the Corporation. The respondent was the sole holder of the A and B Shares, which were issued to him as performance-linked incentives. The A Shares were convertible into common shares if the Corporation met certain financial targets in the 2006 fiscal year, and the B Shares were

(Question 2 – continued)

convertible into common shares if certain financial targets were met in the 2007 fiscal year. If the targets were not met, the shares were to be converted into a reduced number of common shares prorated according to the shortfall. The Corporation also issued Class C Convertible Preferred Shares (“C Shares”) as an incentive to those involved in finding financing for it. Like the A and B Shares, the C Shares were convertible into common shares if the Corporation met a financial target laid out in its articles of incorporation. Mr. Wilson, was one of the C shareholders and beneficially owned or controlled 100,000 C Shares through YTW Growth Capital Management Corp. (“YTW Corp.”). Like the A and B Shares, the C Shares were non-participating, non-voting, non-transferable and non-assignable.

In March 2007, as a result of recurring cash flow issues, the Corporation began to seriously consider merging its operations with those of another business, Mitec Telecom Inc. (“Mitec”). While negotiating the merger, Mr. Saeed was also separately negotiating with Mitec the sale of his own shares in the Corporation in order to alleviate personal financial difficulties. Without notifying the Corporation’s Board, the respondent agreed to sell some of his common shares to Mitec, and he signed a share purchase agreement to that effect on April 2, 2007. On May 31, 2007, when the Corporation’s Board finally learned of the Mr. Saeed’s personal share purchase agreement, he was censured for concealing the deal and failing to disclose the potential conflict of interest. This triggered his resignation as President, CEO and director of the company on June 1, 2007. After Mr. Saeed’s resignation, the Mr. Wilson became Backer’s President and CEO. The Corporation’s Board consisted of seven remaining directors. However, its audit committee comprised only two directors: Mr. Wilson and Dr. Hans Black — the chairperson of the audit committee.

During the months following the Mr. Saeed’s resignation, further negotiations were conducted Mr. Wilson, the Corporation, and Mitec, but none materialized into a merger or a share purchase agreement. In September 2007, the Corporation’s Board decided to issue a private placement of convertible secured notes (“Private Placement”) to its existing common shareholders in response to its continuing financial difficulties. Under the terms of the issuance, each shareholder was entitled to subscribe for $1.00 of notes for every two common shares the shareholder had in the Corporation. The notes were convertible into common shares at the rate of 50,000 common shares per $1,000 principal amount of notes. The Private Placement would therefore substantially dilute the proportion of common shares held by any shareholder who did not participate in it.

Prior to the Private Placement, the Board accelerated the conversion of 100,000 C Shares, beneficially held by YTW Corp. for Mr. Wilson, into common shares. It did so despite doubts expressed by the auditors as to whether or not the test for the C Share conversion had been met. The other two holders of C Shares did not benefit from their expedited conversion. On the other hand, Mr. Saeed’s A Shares were never converted into common shares. The Board never approved the 2006 audited financial statements, which contained a note stipulating that, on the basis of the financial test laid out in the articles of incorporation, the A Shares were convertible into 1 million common shares at the option of the holder. In Board meetings, both Mr. Wilson and Dr. Black expressed doubts as to whether it was appropriate to permit the conversion of the A Shares in light of the Mr. Saeed’s conduct, particularly his involvement in parallel share purchase negotiations with Mitec. Consequently, Mr. Saeed’s A Shares were never converted into common shares,

(Question 2 – continued)

despite his requests for conversion at Board meetings, in emails, and otherwise. Similarly, Mr. Saeed’s B Shares were never converted into common shares, notwithstanding that, based on the approved 2007 financial statements, the respondent’s B Shares were convertible into 223,227 common shares. As a result of the Private Placement, the Mr. Saeed’s proportion of common shares, and the value thereof, were significantly reduced. Consequently, the value of the respondent’s A and B Shares — convertible as they were into common shares — was also greatly reduced.

Assume the current year is 2008. Please answer the following questions:

a) Mr. Saeed comes to you with this problem for advice. What is your legal advice to him based on what you have learnt in the course? In your advice, consider potential arguments by the other side as well as whether the current directors can be personally liable for any of the impugned events.

b) Now assume that the board had approved the conversion of Mr. Saeed’s A Shares into common shares but it turns out that the financial test for the conversion had not been met. Who will bear liability in this scenario?

**END OF EXAM**