THIS EXAMINATION CONSISTS OF 7 PAGES

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THE UNIVERSITY OF BRITISH COLUMBIA

PETER A. ALLARD SCHOOL OF LAW

FINAL EXAMINATION – DECEMBER 2022

LAW 460

Advanced Corporate Law -

Advising Public Companies

Section 1

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**TOTAL MARKS:** 100

 **WRITING (INCLUSIVE OF READING) TIME ALLOWED:**

2 HOURS AND 30 MINUTES

**NOTES:**

1. This is an open book examination. This means that in addition to the materials provided herein, candidates may refer to their class notes and course materials. However, the course textbook and any other textbooks may NOT be brought to or utilized during the exam.
2. ANSWER ALL QUESTIONS
3. READ ALL PAGES FIRST TO BUDGET YOUR TIME.
4. 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 professors, and continue answering the question.

**THIS EXAM CONSISTS OF 4 QUESTIONS**

**(Questions 1, 2(a), 2(b) and 2(c))**

# Law 460, Section 1

**QUESTION 1 – 40 MARKS**

**Glossary**

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| **Board** | Board of SCo, which is comprised of the following seven directors:* Director A – The CEO of SCo.
* Director B – Chairman of the Board and the retired managing director of one of the world's biggest investment banks. He is a non-employee director of SCo.
* Director C – A non-employee director. He is an engineer and one of the original inventors of the cellular phone.
* Director D – A non-employee director. She is the former Minister of Technology of the South Korean government.
* Director E – A non-employee director. He is the Chief Executive Officer of SCo's largest microchip supplier.
* Director F – A non-employee director of SCo. She was formerly global head of accounting at one of the world's largest accounting firms.
* Director G – A non-employee director. He is managing partner of Apples, Apples & Oranges, an international law firm with offices across Canada. Apples, Apples & Oranges has been lead counsel to SCo for the past 10 years.
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| **CEO** | Chief Executive Officer of SCo. (Director A). He has personally led SCo's push into the smart phone business.  |
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| **SCo** | Founded in 1959, SCo is a South Korean company and one of the largest home and consumer electronics makers in the world. Since it entered the cellular phone market in 2005, it has quickly grown to become the second largest smart phone maker globally, with 30% global market share based on sales. Its shares are listed on the Toronto Stock Exchange in Canada. For the purposes of this exam, please assume that it is subject to the continuous disclosure rules covered in class. SCo's revenues are approximately $190 billion per year and its net income is approximately $35 billion per year. Its smart phone sales comprise about 30% of its revenues and net income.  |
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You are a lawyer at Pearson, Specter and Litt. The Chairman of SCo calls you to seek your advice.

The Chairman tells you that SCo launched its new and highly-touted Exclamation 7 smart phone at the end of 2021. Many industry pundits believe that the Exclamation 7 is the best and most-advanced smart phone on the market and is potentially the product that will allow SCo to capture enough sales from its competition to finally become the world's number one smart phone maker. Initial sales of the phone have been great and they seem on track to overtake the competition. In SCo's first three months since it launched the phone, it generated revenues of $10 billion from sales of 50 million Exclamation 7 phones.

However, several days ago, SCo's audit committee received a "whistleblower" complaint from an employee in its manufacturing and procurement division. The complaint alleged that, in order to meet SCo's aggressive expectations to bring the phone to market quickly, lower-level management had rushed the development of the Exclamation 7 battery and not conducted extensive testing necessary to ensure that quality and safety standards had been met. Further, in order to cut costs, these managers had also utilized a low-cost supplier that provided irregular sized batteries, which did not match the Exclamation 7's specifications properly. As a result of the foregoing, the whistleblower complaint expressed a serious concern that these deficiencies could result in the Exclamation 7 phones catching fire and/or exploding.

The Chairman said he has reviewed statistics on consumer complaints regarding the Exclamation 7 and there appear to have been five cases of the Exclamation 7 phone catching fire when in use.

The Chairman has spoken with management, including the CEO, who have all assured him that the whistleblower complaint is exaggerated and that the five incidents involving the Exclamation 7 are not representative of a bigger problem, representing only 7 phones out of 50 million. The Chairman has also spoken with SCo's head of product safety who told him that the Exclamation 7 met all minimum safety requirements for the countries in which it has been sold.

The CEO further told the Chairman that, for good measure, he has asked the law firm of Apples, Apples and Oranges to "look into things" and report to him regarding its findings on the whistleblower complaint.

Despite the foregoing, the Chairman has some continuing concern. If the complaint is true, then SCo could have to recall or replace the Exclamation 7 phones and halt sales of the product. This would result in a loss of at least $9 billion and could hurt SCo's position as a smart phone maker. It also may affect its "brand" and other factors.

**QUESTION 1:**

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| **MARKS** |  |
| **40** | The Chairman asks what are his and the Board's duties and what should SCo and the directors be doing now and going forward? Also, he asks for your thoughts on whether SCo needs to disclose these events by news release?  |
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**QUESTION 2 – 60 Marks**

**Glossary**

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| **ABC Co.** | A Canadian oil and gas company whose shares are listed on the Toronto Stock Exchange. It is incorporated under the British Columbia *Business Corporations Act*. ABC Co. grew quickly over the last several years from a small exploration company to a mid-tier Canadian oil and gas producer. Its stock price hovers around $45 per share, representing total market capitalization of $2.0 billion. |
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| **Big Oil Co.** | A publicly traded company and one of the largest oil and gas producers in the world, with assets located in the United States, the Middle East and South America.  |
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| **Board** | The Board of Directors of ABC Co., comprised of seven individuals:* Director A – Chairman of the Board and a non-employee director who is a retired executive of a large Canadian oil and gas company.
* Director B – Non-Employee director, who was previously the head of a large Canadian oil and gas engineering firm.
* Director C – CEO of ABC Co.
* Director D – Non-employee director with past broad business experience.
* Director E – Non-employee director, who is also an executive with the Fund.
* Director F – Non-employee director, who was previously an executive at a large manufacturing company.
* Director G – Non-employee director, who is also the Chief Executive Officer of I-Bank.
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| **CEO** | Chief Executive Officer of ABC Co. |
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| **Chairman** | Chairman of the Board (Director A). |
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| **Fund** | The largest shareholder of ABC Co., owning approximately 9% of the ABC Co. shares. |
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| **I-Bank** | A Canadian investment bank, which has acted as lead manager of most of ABC Co.'s recent financings.  |
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| **Knight Oil** | A publicly traded oil and gas company. Knight Oil is one of the larger Canadian oil and gas companies and has assets in British Columbia and Alberta. |

**Background**

* ABC Co. has been a success story for the Canadian oil and gas industry. Since its creation in 2005, it aggressively drilled and explored in Northern British Columbia, an area generally overlooked by many oil and gas explorers and producers. Its efforts finally paid off in 2015 when it discovered the Tarzan Oilfield in Northern British Columbia, which is believed to be one of the largest and lowest cost oilfield's in North America.
* As a result of its significant success, ABC Co. has received many enquiries from larger oil companies, who had generally overlooked Northern British Columbia but now want to gain a foothold in the area because it looks to be one of the world's best oil and gas development plays. To date, ABC Co. generally dismissed such offers under the belief that, with sufficient financing, it could lead the development of the Tarzan Oilfield on its own through its current five-year drilling program, which it believes would be far more accretive to shareholder value than selling the company now.
* ABC Co. currently has $75 million in cash. Based on current projects, the cash is sufficient to fund about half of the estimated costs of its planned five-year drilling program. I-Bank has assured ABC Co. that it would raise the additional funds required through an equity financing at current market prices.
* Big Oil Co. was established over a hundred years ago and is a United States based oil and gas producer. Like others in the industry, it overlooked the potential of Northern British Columbia for oil and gas development. Big Oil Co. is constantly looking for new projects and areas in order to replace its oil reserves that have been depleted over time. Big Oil Co. views the Tarzan Oilfield as a development play that could not only replace such depleted reserves, but also lower its average production costs and allow it to meet its production targets for the next two decades.
* Yesterday, CEO received a call from Big Oil Co.'s Chief Executive Officer. During the call, Big Oil Co.'s Chief Executive Officer informed CEO that Big Oil Co. now owned 9.9% of the outstanding ABC Co. shares and wanted to acquire the rest. He outlined an offer that Big Oil Co. was prepared to make at a price of $55 cash per share, representing a 22% premium to the current trading price of the ABC Co. shares. Big Oil Co.'s Chief Executive Officer further stated that if the offer was not pursued on a "friendly" basis, Big Oil Co. was prepared to proceed with a hostile takeover bid for the outstanding ABC Co. shares.
* Director E mentioned to CEO that Big Oil Co. had approached the Fund seeking to buy its ABC Co. shares at current market prices. However, the Fund does not want to sell its shares at the price offered. However, it would be willing to consider a transaction at around $65 per share.
* The Board met late last night. They are pretty unanimous that they think the offer from Big Oil Co. does not provide sufficient value. The Board also thought it would be best to continue their five-year drilling program and build value instead of selling at Big Oil Co.'s offered price. While thoughts vary as to what value would be sufficient, most of the Board members believe ABC Co.'s shares are worth at least $60 to $70 per share. The Board also has some concern that Big Oil Co. may not be the best fit for ABC Co. as it has no presence or experience in Canada.

**QUESTION 2(a):**

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| **MARKS** |  |
| **25** | You are a lawyer working in Vancouver and you receive a call from the Chairman, who asks you for advice regarding what ABC Co. and the Board should do in response to Big Oil's overtures. He also specifically wants you to address the duties and obligations of the Board in the face of the Big Oil offer.  |

**QUESTION 2(b):**

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| **MARKS** |  |
| **20** | ABC Co. formally responded to Big Oil Co. three days ago that it was not interested in a transaction. Yesterday, Big Oil Co. announced a takeover bid for all of the outstanding ABC Co. shares at a price of $55 cash per share.The Chairman contacts you again informing you of the situation. He also provides that:* Over the past week, he has been in touch with representatives of the Fund, who have stated that they are still not prepared to tender to an offer from Big Oil Co. The Fund believes that the Big Oil Co. offer should be used as the basis for an auction with the goal of selling ABC Co. in the range of $65 per share to the highest bidder.
* Other than Director E, the members of the Board generally still think that the best option for ABC Co. is to remain independent. I-Bank recently issued an analyst report to public investors stating that it believes ABC Co. shares are worth $60 per share.

The Chairman asks you to advise as to what to do in the face of this public offer. He appreciates your advice on board duties / process previously provided and tells you the Board is already familiar with their duties because of your great work. He asks that you limit your discussion to potential defensive measures that ABC Co. may have available. Further, he mentioned that I-Bank has suggested that they should immediately adopt a shareholder rights plan (i.e. a poison pill) and asks you to comment on whether that would be a useful option. |

**QUESTION 2(c):**

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| **MARKS** |  |
| **15** | A week has passed. Yesterday, CEO and Chairman had a meeting with Knight Oil. Knight Oil is prepared to pay $62 cash per share to acquire ABC Co. Knight Oil has suggested that the deal be completed on a friendly basis, using a "plan of arrangement" structure. However, Knight Oil would like some deal protections in order to proceed.The Fund has indicated that it would be supportive of this bid and the Board is generally unanimous that they should take this offer.Chairman calls you and asks you to explain how the plan of arrangement structure would work and what would be the key steps and timing. Further, he asks you for suggestions as to what type of deal protection measures could be included in a deal with Knight Oil.  |

**END OF EXAMINATION**