

FACULTY OF LAW

LAW 451:B2 — CORPORATIONS LAW (PALMER)

FINAL EXAMINATION - APRIL 23, 2007

Time Allotted: 3 hours (180 minutes) - no additional reading time.

Code Number: DO NOT ENTER YOUR NAME ON ANY ANSWER SHEETS OR BOOKLETS. A list WILL be circulated and your name is to be entered opposite a number on that sheet. That number shall be your code number FOR THIS EXAMINATION ONLY and should be entered on THIS EXAMINATION in the space provided above. Following these procedures will ensure anonymity during marking.

Special Instructions:

1. This examination consists of **7** questions on **4** pages (including this page). Check to ensure that the examination is complete before starting.
2. Answer **ALL** questions and parts of questions. **READ ALL INSTRUCTIONS IN QUESTIONS. IN YOUR RESPONSES, REFER TO ALL PERTINENT CASES AND STATUTES.**
3. This is an **OPEN BOOK** examination. Electronic devices (including but not limited to laptop computers, cell phones, iPods and messaging devices) of any kind are **NOT** permitted in the examination room.
4. The examination is graded out of **120** marks, and is worth 100% of the marks for your final grade. Questions are not of equal value. Apportion your time accordingly.
5. Do not make up facts.
6. **Write legibly.**
7. Adhere to the time limitation imposed on this examination strictly. Failure to stop writing at the end of the examination may lead to a reduction of grade or a refusal to accept the examination paper.
8. To avoid disrupting students finishing the examination, no person shall leave the examination room during the last 15 minutes of the examination period.
9. If you use more than one booklet, (a) ensure that your “pink sheet number” is on each booklet, (b) indicate the number of the booklet out of the total number of booklets (e.g. 1/3, 2/3); and (c) put additional booklets inside the first.

1. 6 Marks

What are the main differences between an Alberta Unlimited Liability Corporation and an Alberta Limited Partnership.

2. 10 Marks

- i. What structures would you suggest to a client that wishes to operate a non profit group that will raise funds throughout Alberta to teach adults to read, and not pay out any funds to the group members?
- ii. What are the main documents required to create each such structure?
- iii. What would your answers be to (i) and (ii) above if the group wished to pay out any excess funds to the group members?

3. 10 Marks

Assuming no conflicts with existing business names or trademarks, are the following suggested names acceptable for registration with Corporate Registry for an Albertan corporation (or other business type if so specified) under the Business Corporations Act? Why or why not?

- i. Kelly's Judo Donuts
- ii. General Incorporated
- iii. International Business Consulting @Kelly.com Ltd.
- iv. a Partnership that carries on under the name "Kelly & Partners Ltd."
- v. Alberta Heritage Trust Fund Advisors Corporation

4. 12 Marks

Your client owns an Alberta corporation that has a successful business. It has been approached by another Alberta corporation that wishes to purchase your client's corporation for both cash and shares of the Purchaser. Your client wants to proceed with this sale, and they have the following requirements:

- i. your client believes that the Purchaser corporation will grow substantially in the future, and wants to be able to take part in this growth;
- ii. your client wants to be able to have some control or say in the new business;
- iii. at the same time, your client wants to be able to have any of their shares in the Purchaser capable of being bought out by the Purchaser at specific times;
- iv. however, your client also recognizes that there is substantial risk in the corporation's industry, with the result that the Purchaser Corporation may enter financial difficulty in the future. In this case, your client would like to be able to be able to be paid out before other shareholders or alternatively claim as a creditor of the Purchaser corporation.

Suggest an appropriate share structure for the shares to be issued to your client, and any other requirements for the purchase.

5. 10 Marks

Why can third parties rely on the decisions taken by directors of a corporation, and are there limits on simply relying on the directors powers without requiring further proof that they were exercised properly?

6. 12 Marks

Describe (i) three circumstances under which a director of a corporation cannot take personal advantage of a financial opportunity presented to that director through the course of their duties; and (ii) the steps that the director may take in order to be able to take advantage of the opportunity.

7. 60 Marks

Tatami Corporation is an Alberta corporation which makes mats that are used in martial arts. The founders of the corporation, Harry Goshi and Tom Nage currently each own 40% of Tatami's common voting Class A shares, and are the only directors of Tatami. After several years of operation, Harry and Tom raised funds by selling 20% of Tatami to the Kagami Biraki Society of Alberta, a group dedicated to the preservation of traditional Japanese festivals. Kagami had excess cash, and wanted to place their funds in an investment that would provide long term dividends as a method of financing the ongoing operations of the Society into the future. Accordingly, Tatami issued to the Society 10,000 Class B non-voting preferred shares that carry an annual preferred dividend of \$10 per share, and capable of receiving payout prior to the Class A shares upon liquidation of Tatami.

Judo Jane (JJ to her friends) is looking for a good investment, and approaches Tatami. JJ wants to buy shares not so much for a regular dividend stream or to be involved in the management of a corporation, but for appreciation in the shares' price over time. She feels that the market for mats is ready to take off, and tells this to Harry and Tom. She also thinks to herself that in a few years, Tatami would be an excellent candidate for a takeover by a large public company, where there would be a large payout when the public company overpays for the Tatami shares.

Based on what JJ has to say Harry and Tom amend the articles of Tatami to provide for a new class of preferred shares for JJ (Class C Preferred): non-voting, non-dividend, but capable of receiving payout first upon either liquidation or sale of Tatami. 1000 Class C Preferred shares are issued to JJ.

Time passes, and Tatami is doing well financially – in fact, so well that Tatami has received some unsolicited inquiries from several large public corporations about a possible sale of Tatami to them. However, Tom and Harry are happy continuing to operate Tatami as they are paid large salaries and get to travel around the world on their jobs, which they both enjoy. Accordingly, they ignore these inquiries, and do not bring them to the attention of JJ or the Society.

JJ is killed in an unfortunate accident, and her will provides that her executor, Mr. Sensei, is to distribute her shares in Tatami to the Society. However, her will is being contested by her brother, Brian Judo Joe (BJJ to his friends). Shortly thereafter, Harry and Tom pass a directors resolution authorising a payment of a dividend on the Class A shares only in an amount equal to all of the funds in Tatami's bank account. They quickly leave Tatami without notice, and also leave Tatami's large bills unpaid, and head for the airport. Fortuitously, they are stopped by Customs for unpaid littering tickets and are imprisoned.

Advise what steps the Society and JJ (or those representing JJ) may be able to take against Harry, Tom and Tatami.

END OF EXAMINATION