

FACULTY OF LAW

FINAL EXAMINATION – APRIL 23, 2003

LAW 613: Y5 CORPORATE SECURITIES (ANDREW J. CHAMBERLAIN)

Time Allotted: THREE (3) hours

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

- Special Instructions:
1. This examination question paper contains ten (10) questions on five (5) pages (including this page). Check to ensure it is complete before starting.
 2. Answer ALL questions noting alternatives where offered.
 3. Questions are not of equal value. Apportion your time accordingly.
 4. This is a CLOSED BOOK examination. No notes statutes or other material will be allowed in the examination room.
 5. Cell phones, pagers, beepers and related equipment are strictly forbidden. These items must be turned off and stowed. Except by permission of the instructor, which will not routinely be given, lap top computers are not allowed in examinations.
 6. Adhere to the time limitation imposed on this examination strictly. Failure to stop writing at the end of the examination may lead to a deduction of grades or a failure to accept the examination paper.
 7. To avoid disturbing your classmates, please do not leave the room during the last 15 minutes of the examination.
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VALUE	QUESTION
18 marks (40 minutes)	1. A client, Joshua, comes to you for advice about carrying out a private placement financing. About two years ago his company, Josco Ltd., (which is not a reporting issuer) had done a financing through an offering memorandum. He would like to raise additional money through an offering memorandum, and has heard that there is a new type of offering memorandum, but that it is still possible to use the old type. Please discuss and compare the “old” Offering Memorandum exemption provided for in sections 131(1)(q) and (r) of the Securities Act and section 4.1 of Multilateral Instrument 45-103.
8 marks (18 minutes)	2. Your client, Joshua, has done a number of private placement financings in Josco Ltd., using various prospectus and registration exemptions under the Securities Act. He feels that he has adequate capital for his short and medium term needs, but he is interested in taking his company public. One of his reasons for doing so is to permit his many investors to sell their shares in the company. Joshua has an associate, Gladys, who has recently completed a prospectus financing and has obtained a TSX Venture Exchange listing for a Capital Pool Corporation (CPC) called Glimmer Acquisitions Inc. At the present time Glimmer Acquisitions Inc. has cash resources of approximately \$250,000, but does not have any other assets or business. At the present time Joshua believes that his company is worth about \$5 million. Joshua owns 70% of the total outstanding shares of Josco Ltd. Gladys has suggested to Joshua that he do a “reverse take-over” of Glimmer Acquisitions Inc. in order to take Josco Ltd. public. Explain to Joshua how such a transaction may be structured and what the steps in the process would be.
8 marks (18 minutes)	3. After considering a possible reverse take-over transaction, Joshua has decided to do an initial public offering for Josco Ltd. through a standard long form prospectus offering. Explain to Joshua the steps involved in the prospectus filing process, including the steps to be taken before and during the filing process.

1 mark
(3 minutes)

4. Joshua has had discussion with a number of brokerage firms regarding their acting as the underwriter for Josco Ltd.'s prospectus. One of them has offered to do the offering on an "underwritten" basis, and another has offered to do the offering on a "best efforts" basis. Explain to Joshua the difference between these two offers.

6 marks
(13 minutes)

5. In order to strengthen the board of directors of Josco Ltd., Joshua has asked some of his friends and business associates to join the board, but they are concerned about the risks associated with being a director of a company involved in the prospectus filing process. Ignoring the general corporate and business issues of directors' liability, explain to the potential board members what the liability issues are for them and the company that arise from the filing of a prospectus.

6. During the planning process for the filing of a prospectus for Josco Ltd., Joshua has asked you to advise him on the trading and other restrictions that would apply to the existing shareholders of the Corporation. Advise Joshua of the trading and other restrictions, and reporting requirements, that would apply to each of the following persons:

5 marks
(11 minutes)

- (a) Joshua. He is the President and a director of Josco Ltd. and received his shares when he founded the Corporation (at which time it was a "private issuer"). After the public offering is complete, he will own 55% of the then total outstanding shares of Josco Ltd.

2 marks
(5 minutes)

- (b) Joshua's wife, Miranda. She is a director of Josco Ltd. and received her shares at the same time as her husband. After the public offering is complete, she will own 12% of the then total outstanding shares of Josco Ltd.

3 mark
(7 minutes)

- (c) Kevin Jones. He invested money in one of Josco Ltd.'s private placements and, after the public offering is complete, he will own 2% of the then total outstanding shares of Josco Ltd. He is not an officer, director or employee of Josco Ltd.

4 marks
(10 minutes)

7. Josco Ltd. has completed its public offering, and it is now a reporting issuer under the Securities Act. Its final prospectus was dated Friday, March 28, 2003 and it received a receipt for the final Prospectus on Monday, March 31, 2003. The financial (fiscal) year of Josco Ltd. is December 31 of each year. The final prospectus contained audited financial statements for the year ended December 31, 2002. The Chief Financial Officer of Josco Ltd. asks you to explain to him what obligations the company has to prepare and distribute financial statements. What do you tell the Chief Financial Officer?

10 marks
(22 minutes)

8. Sometime after the completion of the public offering of Josco Ltd., Joshua comes to see you and tells you that the Corporation has just signed a new contract with a major customer that could double the sales and double the profits (presently at about \$1 million per year) of the Corporation. However, he will only be able to fill the new sales orders if he is able to negotiate a long term fixed price contract with the supplier of his raw materials, which he is hoping to accomplish within the next 30 days. Joshua tells you that if the supplier knew about the contract with the customer, then the supplier would charge the Corporation an exorbitant price that would eliminate its profits on the new sales. Explain to Joshua the Corporation's continuous disclosure obligations, and choices, with respect to this development.

10 marks
(22 minutes)

9. It is time for Josco Ltd. to hold its first annual general meeting (AGM) of shareholders after becoming a public company. Because he has never held a formal AGM before, Joshua is not familiar with the process. Explain to Joshua the steps and notice procedures, and the document and filing requirements, involved in Josco Ltd., as a public company, calling and holding an AGM.

5 marks
(11 minutes)

10. You attend the AGM of Josco Ltd. to assist Joshua in running the meeting. A person, Ms. Tiffany Shades, shows up at the meeting and says that she purchased shares of Josco Ltd. as part of its prospectus offering (and shows you the statement from her broker confirming the purchase), and wants to vote her shares at the meeting. However, you review the list of registered shareholders of Josco Ltd., and Ms. Shades's name is not on the list. Ms. Shades is upset that she is not being allowed to vote her shares at the meeting. Explain to Ms. Shades why she is not a registered shareholder, where her shares are, and what she should do to insure that she would have been able to vote her shares at the meeting.

TOTAL: 80 Marks
(180 minutes)

END OF THE EXAMINATION