

**FINAL EXAMINATION**  
*CORPORATIONS*  
**Professor J.L. Bader**  
**Spring 2005**

**INSTRUCTIONS**

1. You have **three (3) hours** to complete this exam.
2. This is a **closed** book exam.
3. This examination consists of 3 questions, each with the weight indicated. Although it appears long, you ought to have adequate time in which to complete it and do a good job. Please remember that I want and value short, *not long*, answers. **Please just answer the call of the question; do not give me anything that I have not asked for.** If there is any fact that you believe is either missing or ambiguous, and without which you cannot answer the question, please assume whatever you believe is necessary, tell me what your assumption is, and answer the question.
4. Please answer these questions in the blue books provided to you. Write only on the right hand side of the page (skipping a page each time) and double-space your work. Please write legibly.
5. Write your **exam number** on your exam envelope. Put student exam # at the top of this page, each page of questions, and each blue book. **Do not** use your name, student ID number, Social Security Number, or in any other way identify yourself on any exam materials.
6. At the conclusion of the exam, return all exam materials to the exam envelope and submit it to the proctor. **Do not** seal the envelope. Students who do not return all exam materials at the end of the exam may not be graded.

**GOOD LUCK!**

**QUESTION I (30%)**

Dynamics, Inc., was formed on January 1, 1992. At its formation, Dynamics issued 100,000 shares of \$1 par value stock for an aggregate consideration of \$100,000. During its first year of operation, Dynamics lost \$25,000, and (having incurred no liabilities) ended the year with a deficit of \$25,000. Based on these facts, please tell me whether each of the following is correct or not. Please give me a short explanation of why you have come to your conclusion.

1. On January 1, 1993, Dynamics was insolvent in the balance sheet sense.
2. It is clear that on January 1, 1993, Dynamics was insolvent in the equitable sense.
3. Under dominant American law, Dynamics, on January 1, 1993, had the theoretical right to declare a dividend.
4. Under California law, Dynamics, on January 1, 1993, had the theoretical right to declare a dividend.
5. From the facts it is clear that under dominant American law Dynamics, on January 1, 1993, had the right to declare a nimble dividend.
6. The book value of Dynamics, on January 1, 1993, was 75 cents.
7. It is unclear from the facts as to what the book value of Dynamics stock was as of January 1, 1993.
8. It is impossible, on the facts given, to calculate the book value of Dynamics stock.
9. Under dominant American law, Dynamics, on January 1, 1993, had the theoretical right to declare a stock dividend.
10. Under dominant American law, Dynamics, on January 1, 1993, had the theoretical right to declare a stock split.
11. If Dynamics has the right to declare a dividend as of January 1, 1993, but has no cash, it has the theoretical right to pay the dividend through the distribution of assets other than cash.

## QUESTION II (30%)

The following (edited) Article was printed on page C7 of the New York Times on Tuesday, April 19, 2000:

” SAN FRANCISCO, April 18 - Adobe Systems, a leading seller of software for editing and managing documents, announced on Monday that it had acquired Macromedia for \$3.4 billion in stock.

The deal combines two well-known brand names in software at a time when both are facing increasing competition from Microsoft in the market for electronic document management programs.

Adobe, based in San Jose, Calif., is the maker of Acrobat, the leading program for sharing documents, as well as desktop publishing and photographic software for use by graphic design professionals. Macromedia is known for Flash, a software program for animating Web pages, and Dreamweaver, a program for designing Web pages.

The acquisition, first reported in The Wall Street Journal, is also intended to bolster

Adobe's presence in the market for design tools for the Web and document management software for mobile phones and other wireless devices, markets in which Macromedia has gained an early lead.

"This combination is all about growth," said Bruce Chizen, Adobe's chief executive, who will head the combined company, in a conference call on Monday with financial analysts. Mr. Chizen said the deal would either break even or result in a small profit in the first year.

In the deal, Macromedia shareholders will receive 0.69 share of Adobe stock for each Macromedia share. The purchase price of \$41.86 a share is 25 percent higher than Macromedia's closing price of \$33.45 on Friday. After the deal closes Macromedia investors will own about 15 percent of the combined company. Adobe also announced it would repurchase \$1 billion in stock in the 12 months after the deal closes in the fall. But many investors saw the deal as posing a substantial risk to Adobe's stock value as the two companies attempt to integrate their businesses. Shares of Adobe fell \$5.89 on Monday, to close at \$54.77. Macromedia's shares rose \$3.27, to close at \$36.72, then fell slightly in after-hours trading. ..."

If California law has application to the proposed transaction, what rights under the California GCL will the shareholders of (i) Macromedia and (ii) Adobe have with respect to the transaction?

### QUESTION III (40%)

Paul is an experienced promoter. His newest venture involves the incorporation of Web to Go ("Web"), an automated Web design service. Paul lives in the State of New California, which has adopted as its Corporations code all of the provisions of the California GCL, including that section which reads as follows:

"For all purposes other than an action in the nature of quo warranto, a copy of the articles of a corporation duly certified by the Secretary of State is conclusive evidence of the formation of the corporation and prima facie evidence of its corporate existence."

In connection with his promotion of Web, Paul enters into the following 4 transactions:

1. Before filing the Articles, Paul enters into a three year employment agreement that is between him and "Web to Go, a corporation in formation." The agreement provides that he will be paid in stock, rather than cash;
2. Before filing the Articles, Paul causes Web, as a tenant, to enter into a three year lease agreement of office space with his nephew, the lessor. The lease agreement is signed by his nephew and by "Web to Go, a California corporation." The nephew believes that Web is a fully formed and functional corporation;
3. Paul then instructs his attorney to file the articles. Several weeks later, believing the articles to be filed (they are not) he causes Web (which he, Paul, believes to be fully formed and functional) to purchase 20 computers from IBM, for \$1,000 each;

4. Several weeks later, the articles now in fact having been filed, Paul causes Web to sell 40,000 shares of stock for \$10 per share, in two separate transactions. In the first transaction, 20,000 shares are sold to Peter in consideration of a promissory note secured by the shares sold, and in the second transaction 20,000 shares are sold to Randy for the rights to a software patent related to the technology that Web proposes to use;

Several months go by. Web has not been able to raise any money, or to sign up any business. IBM is pressing for payment for the computers. Peter and Randy are pressing for the issuance of their stock. With respect to the four transactions set forth above:

1. Is Paul's employment agreement valid?
2. If Web can make no further payments under the lease agreement to Paul's nephew, is Paul likely to have some kind of liability to his nephew?
3. If IBM sues Paul for the cost of the typewriters, are they likely to succeed? And
4. are (i) Peter and (ii) Randy entitled to the stock that they believe that they have purchased from Web?

**END OF EXAM**