

**Final Examination**

**Corporation**

**Professor Bader**

**Fall 2005**

1. You have **three (3)** hours to complete this exam.
2. This is a **closed** book exam. Students may not use any outside materials or confer with each other during the exam.
3. This examination consists of **three (3)** questions. Please note that they are not of equal weight. Please answer all questions in the blue books provided.
4. Write your exam number on your exam envelope. Put your correct class section and student exam # at the top of this page, each page of questions and each blue book. **Do not** use your name, student ID number or Social Security Number on any exam materials.
5. If you think that any question is ambiguous, or that some fact is missing which is necessary to answer the question, please make whatever assumption you think is necessary to clear up the ambiguity or to supply the fact that you believe is missing, tell what your assumption is, and continue to answer the question
6. Please answer the call of the question, but do not discuss abstract principles of law, which do not directly relate to the issues raised by the question. I want short, not long, answers. Although the examination appears long you should have adequate time in which to do a good job.
7. At the conclusion of the exam, return all test materials, including the blue books, scratch paper, and this exam packet to the 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

(45%)

Collin, a recent law school graduate, tires of the law and decides to become a developer, a decision which coincides with his inheriting a 250 acre prime developable parcel of land. Collin's idea is to form a Corporation to be called Collincorp, Inc. (Collincorp), transfer his land to Collincorp., sell shares to friends and relatives, and then have Collincorp sell small subdivided parcels to persons who want to build custom homes in a country setting. To implement his plan, he does the following:

1. Retains Daniel, a law school classmate, to form Collincorp. Daniel prepares the articles, and, at a meeting with Collin, oversees the execution of the articles by Collin. Daniel tells Collin that he will put the articles in the mail that day, and that Collin can rely on their being filed with the Secretary of State in 3 weeks. Daniel cautions Collin about purporting to do anything in the name of the Corporation until then. As with California, the corporations code in Daniel's jurisdiction contains a section (but no other) that 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.

2. Collin, the next day, has the land appraised; unfortunately, it turns out that the land was dedicated for open space by his grandfather, who had left it

to him, and cannot be developed; the appraiser says that the land has a value of \$0.

3. Collin then - knowing full well that the articles have not yet been filed enters into two agreements on behalf of Collincorp (signed Collincorp by Collin, President) with his Uncle Michael, and his nephew Ernest. The agreements obligate Collincorp to sell 10 acres to each of Michael and Ernest. Michael has been advising Collin with respect to his development plans and knows that the articles have not yet been filed; not so Ernest, who believes that Collincorp is a viable corporation.
4. Three weeks go by. Now believing that the articles of Collincorp have been filed, Collin in the name of the Corporation enters into an agreement with Harold, a landscape architect, to provide architectural services, in the amount of \$100,000. What Collin does not know is that Daniel dropped the articles behind the water cooler, and as a result they have never been filed with the Secretary of State.
5. After entering into Harold's agreement, Collin has Collincorp issue 10,000 shares to himself in return for the transfer to the Corporation of 150 acres of land; Collin, in the corporation's authorizing resolution, values the land at \$150,000.
6. Daniel finds the articles behind the water cooler and, by hand, files them with the Secretary of State. Daniel tells Collin of the late filing.

7. Collin, now figuring that the jig is up, sells all of his shares to Zeno, telling Zeno (who, at the moment was in Nevada) that they are worth not less than \$150,000. Zeno takes over and Collin leaves town. Zeno soon comes to the realization that the shares he purchased are worthless.
- A. You, a new attorney, you are now consulted, in turn, by Michael, Ernest, Harold, and Zeno, who each ask you whether Collin has any liability to them on account of any of the transactions described above. Does he? For what?
- B. May Zeno, as the sole shareholder of Collincorp, cause the Corporation to bring any kind of action against Collin? If so, for what and how?

## QUESTION II

(15%)

You graduate. You get a job (as a lawyer, of course). On your first day Harold, your boss introduces you to Chris, a good client. Harold explains that Chris is going into business with a good and old friend, Troy, and that Harold is about to prepare the articles of incorporation for a corporation to be called Chris and Associates. Chris is to own 80% of the shares of Chris and Associates, and Troy is to own the other 20%. Harold intends to represent both Chris and Troy with respect to the formation of Chris and Associates. Harold, after a few pleasantries, asks you to write a brief memorandum for him dealing with the question of whether Chris and Associates ought to be formed as a statutory close corporation, or not, and why, pronto. He also

tells you to let him know if there are any issues he ought to be concerned with in connection with the project.

What response?

### QUESTION III (40%)

Identify functionally each of the following terms. Do **not** write abstract definitions. Be concrete, dealing with such questions as what is going on? who is doing what? to whom? in what circumstances? for what purpose? involving what problems?

1. 2 aspects of a derivative action.
2. Defensive merger.
3. 5% acquisition of target's stock as preliminary to a tender offer.
4. Stock split v. stock dividend.
5. Market information.
6. Section 12 of the 34 Act.
7. Economic equivalency doctrine.
8. No par stock.
9. Materiality.
10. Smolowe rule.

11. Nimble Dividend.
12. Paid in Surplus.
13. Quo Warranto
14. Reverse piercing.
15. Combination of MBA 139 and MBA 50.
16. Tippor.
17. LLP
18. Complete fairness
19. Business purpose.
20. Stock dividend

**END OF EXAM**