

**FINAL EXAM**  
**CORPORATIONS**  
**PROFESSOR GREENBERG**  
**Fall 2007**

1. You have **four (4) hours** to complete this exam. You are not required to spend the entire time working on the exam - the average time for completion is between slightly over three hours. I recommend that you spend ninety minutes on the multiple-choice questions, and two-and-one-half hours on the essay question. Try to avoid the temptation to second-guess yourself on the multiple-choice questions – your initial instinct is often the most accurate.
  
2. **THIS IS A CLOSED BOOK EXAM.** You may **not** bring in or use any notes, books or other materials to assist you in responding to the questions.
  
3. The exam has two components.

**Part I** consists of 40 multiple-choice questions. The multiple-choice questions are each worth one (1) point, for a total of forty (40) points. You must use the ParSCORE form to enter your answers. You may use a pen or pencil. Follow the directions on the score form. Please be careful not to make any stray marks.

**Part II** consists of one (1) essay question. The essay question is worth 60 points. Answer the essay question as fully as you can, citing any appropriate cases, model rules, industry standards, and statutes that are relevant. **DO NOT WRITE ON BOTH SIDES OF THE PAGE. WRITE LEGIBLY OR PRINT IF YOUR HANDWRITING IS DIFFICULT TO READ.** If I cannot read your response to a question, your grade will be adversely affected.

On the essay question, I recommend that you first spend about one hour issue-spotting and outlining your response, before you start writing. Outline to the answer to each issue in the question – don't do a quick outline. This way you are less likely to miss

issues or to submit a disorganized response. Support all conclusions. Points are deducted if you miss an issue. The essay question contains numerous issues. Each issue is worth the same amount of points (for example, if there are ten (10) issues, they are each worth 6 points towards the total of 60 points). To obtain a high score, you will need to properly identify and respond to all of the issues.

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, each blue book, and the "ParSCORE TEST FORM." **Do not** use your name, student ID number or Social Security Number on any exam materials.
  
5. . At the conclusion of the exam, return all test materials, including blue books, ParScore answer sheet, 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.

## **Part 2 – Essay Question**

### **Sixty (60) points**

It is November 29, 2008, a year from today, and you have graduated from law school, passed the bar exam, and become a staff attorney with the SEC. A new file has been assigned to you for review. According to the file materials, the SEC has recently received a tip from ALEX, an in-house corporate counsel for DRAX Corporation, (a publicly traded company worth 10 billion dollars, and which manufactures ocean liners and submarines) that on November 1, 2007, Mr. PIPPIN, CEO of the corporation, and Ms. MOON, CFO of the corporation, made statements to the press and to shareholders at the annual public meeting of shareholders, that the corporation is expected to show a slight (2%) gain in profitability for the next year. This statement, says ALEX, was false – company analysts had told the BOD of DRAX that a 1.9% increase was likely, but not a 2% increase.

ALEX also tells the SEC that the statements made by PIPPIN and MOON also omitted the fact that recent trials on a new submarine line for the company had failed, and that the company was going to have to issue a restatement of earnings that would reveal a 5.2 billion loss for the previous year, because of this product failure.

As a result of these statements by PIPPIN and MOON, the stock price of DRAX stock went up from \$20 per share to \$25 per share. Having shared their planned comments with the rest of the BOD of DRAX a week before making their public statements, PIPPIN, MOON, and the other five members of the Board, all bought an additional \$20,000 worth of the stock at \$20 per share, and then sold off their stock in December 2007, making a profit of \$5 per share. Concurrently, two vice-presidents in the company, without any knowledge of the statements to be made, happened to cash in their stock options for the purchase of company stock at \$18 per share, and two months later they too sell their stock, making a profit of \$7 per share. All purchase and sale transactions are done online.

In addition to the tip from ALEX, these same claims of misrepresentation by these DRAX board members have also been disclosed to the SEC by a group of shareholders who want to file a shareholder derivative suit.

PIPPIN and MOON also signed off on annual consolidated reports which also contain the same false statements and omissions made in their public statements. The corporation's counsel, who discovered this course of conduct, reports it up the ladder to PIPPIN, who takes no action. The attorney then resigns from the company and contacts the SEC and tells them what is going on, which triggers their investigation.

The DRAX shareholders who plan to bring the derivative action believe that only two of the seven board members are involved in these false statements, and that some members of the BOD are not involved.

What violations of the law have occurred? Who can state a claim as to these violations? What is the proper procedure for the shareholders to follow to assert their claim? What defenses are available as to all claims and violations of the law? What is the likely outcome of each of the claims identified?

**End of Exam**

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