

FINAL EXAM
BUSINESS ASSOCIATIONS
PROFESSOR MARC GREENBERG
FALL 2006

1. You have four hours to complete this exam. You are not required to spend the entire time working on the exam - the average time for completion is 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 – a set of 40 multiple-choice questions, and a single essay question. The multiple-choice questions are each worth one (1) point, for a total of 40 points. The essay question is worth 60 points, and has two separate but related sub-parts.
4. With respect to the multiple choice question section, 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.
5. With respect to the essay question, answer it as fully as you can, citing any appropriate cases, model rules, industry standards, and statutes that are relevant. Please label each sub-part of your answer, ie: “Answer to Part A”, and “Answer to Part B”.
6. **WITH RESPECT TO THE ESSAY QUESTION, 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. Be sure to write your exam number on your blue books and on the exam question. Turn in all questions, scratch paper and blue books after the conclusion of the exam.
7. On the essay question, I recommend that you first spend about one hour issue-spotting and outlining your response, before you start writing. This way you are less likely to miss issues or to submit a disorganized response. 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.

8. 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.
9. 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.

GOOD LUCK

Part 2 – Essay Question – Sixty (60) points**Part A**

After graduating from Golden Gate University and passing the California bar, you have been working for a year as an associate in a San Francisco law firm, practicing corporate law and representing start-up companies. Pat, a corporation promoter, has come to you for advice regarding the following situation: In her capacity as a promoter, she recently was working with a group of investors who were planning to form a new drug company, to be called Dozer, Inc., and whose main product is going to be a new sleeping pill which will be called LITEZOUT. The investors asked her to locate a suitable office building for their corporate offices. Pat found a great building South of Market in San Francisco, and signed a five-year lease in her own name, and wrote under her name, "Promoter of Dozer, Inc., a to-be-formed California Corporation". Two weeks after she signed the lease, the investors filed Articles of Incorporation for Dozer, Inc., and issued their first shares of stock. At their first Board Meeting, the investors, now the Directors of Dozer, Inc., rejected the South of Market space, because they want to lease office space south of San Francisco, in Silicon Valley, where their suppliers and other similar drug companies are based. Now, the landlord at the South of Market space has sent a demand letter to Pat because the first month's rent for the space is past due. What are the rights of the initial investors in Dozer, Inc., the Board of Directors of Dozer, Inc., Pat, and the landlord, in this situation? Discuss.

Part B

Twenty years have now passed, and you are now the managing director of the SEC's legal division in San Francisco. You have just received an anonymous tip regarding problems with Dozer, Inc., which is now a nationally known, publicly traded corporation, which has consistently maintained for the past five years, over 500 shareholders of record and 15 million dollars in assets. You have verified the following facts based on the tip:

Dozer, Inc.'s patent on its popular sleeping pill, LITEZOUT, is about to expire, at which time it will go into the public domain and Dozer, Inc., will suffer a significant drop in revenue unless it can successfully patent a new product to fill the gap in its income stream. The new product it planned to start marketing as a replacement, which was to be called DROWZY, is awaiting patent approval. On September 15, 2006, the Board of Directors of Dozer, Inc., got a tip from an employee of the Patent Office, that the patent application for DROWZY was going to be denied, and that the news of the denial would remain confidential and non-public until December 15th. It is expected, and likely, that when the news of the patent denial is made public, Dozer, Inc., will be forced out of business and into bankruptcy, which will cause the loss of all of the value in the companies' stock.

Acting on this information, on September 20th, all five of the Directors of Dozer, Inc., sell all of their existing stock holdings. In these sales, two of these Directors, Able and Baker, each sell

10,000 shares of Dozer, Inc. stock that they purchased on July 10, 2006, which results in a \$50,000 profit for each of them. Carey and Dave, the CFO and Vice-President of Dozer, Inc., and Edie and Frank, two Dozer, Inc., shareholders, hearing rumors that these Directors have been selling their stock, also sell off their holdings. Of these sales, the stock Carey sells on October 1st was purchased on June 10th. The stock Dave sells was purchased on January 20th. Both of these sales result in profits to Carey and Dave of \$20,000 and \$30,000, respectively.

Shareholder Edie at the time she bought, and now has sold, her stock, was already the holder of 12% of the company's stock. Her recent sale of stock, which took place on December 1st, resulted in a \$40,000 profit for her. Frank, the other shareholder who recently sold his stock, was at all times the holder of 9% of the stock of Dozer, Inc. His stock sale on December 1st results in a profit of \$45,000.

On October 2nd, Director Able, concerned that the upcoming possible failure and bankruptcy of Dozer, Inc., will leave him unemployed, discloses the information about the patent denial to Upjon, Inc., a rival company, and in exchange Upjon hires Able to be its new CEO, and immediately launches a campaign to market Upjon's competing products to the key customers of Dozer, Inc., using a confidential customer list Able took from Dozer, Inc. Able resigns as a Director of Dozer on October 15th, the day before he starts his new job at Upjon.

What claims may be initiated against any of the parties to these transactions? What defenses are available for each party? What is the likely outcome of any claims filed by the SEC in this situation?

END OF EXAM