

FINAL EXAM
BUSINESS ASSOCIATIONS
PROFESSOR MARC GREENBERG
Spring 2007

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

Xander Corporation is a publicly traded corporation specializing in building construction (they build office buildings all over the world). Xander has, for the past ten years, had over 700 shareholders of record, and \$12 million in assets.

On May 1, 2006, Rupert Giles, the CEO of Xander Corporation, decided that the Board of Xander should launch a hostile takeover bid for Dawn Corporation, a building supply company that is also publicly traded, and which has had, for at least the past five years, a shareholder of record base of 600 shareholders, and assets of 11 million dollars. Giles is personally the holder of 2% of the outstanding and issued shares of Dawn.

Giles advises the Board that he has received confidential information from an undisclosed source that Dawn Summers, CEO of the Dawn Corporation, has been supervising an illegal program of spying on her fellow board members, to try to stop information leaks. He tells the Board that he has leaked this information to the press, which is going to run the story in 24 hours, per his agreement with the press that they hold the story for one day. At the same time, Giles plans to announce Xander's hostile takeover bid. Giles doesn't tell the Board that the information about Summer's spying activity is not only false, but that Giles knows it is false, and that he is making the statement in the hope that negative publicity and distrust it will create for the Dawn Board will help Xander's hostile takeover bid to be accepted by the shareholders of Dawn Corporation.

Giles asks for, and receives, approval from the Xander Board of Directors to send out a proxy solicitation to the shareholders of Dawn, offering to buy their stock at 20% over the current market price, and encouraging shareholders to accept the offer because the Dawn Summers' spying controversy will severely damage the Dawn corporation and their Board's effectiveness.

Giles also encourages the Board members to buy more Xander stock in the next 24 hours, since once the stories of the takeover bid and the Summer's spying controversy are published, Xander stock is likely to go up in anticipation of the successful takeover.

Each of the ten members of the Board follow that recommendation, each buying 10,000 shares of Xander stock on May 2, then trading at \$10 per share.

Xander sends the proxy solicitation the next day, without bothering to register the solicitation with the SEC, on the advice of Xander's counsel, who says registration is not necessary. The two news stories are published, and Xander's stock goes up by \$5, and is now trading at \$15 per share. The shareholders of Dawn, upset by the spying scandal, accept the proxy offer from Xander, and Xander takes over Dawn.

Two months later, on July 20, 2006, Buffy Summers, former CFO of Dawn, gets an anonymous tip revealing Giles' conduct, and Buffy notifies the SEC, which begins an investigation. When news of the investigation is reported in the Wall Street Journal on July 26th, each of the Xander Directors sold the stock they bought on May 2d, for which they received the new value of \$17 a share.

Identify all possible violations of the law which the SEC or private parties may assert in this case, and discuss the available defenses and the likely outcome of the case or cases.

END OF EXAM