

FINAL EXAM
CORPORATIONS

PROFESSOR GREENBERG

SPRING 2006

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

Don, the Chairman of the Board of Directors of X FACTOR, a publicly traded corporation that manufactures and sells computer printers, tells Vincent, the corporate vice-president of the company, that a major positive announcement about the company is going to be made in the near future stating that company earnings for the year are up 40%. Don suggests that Vincent buy stock now, because the stock is going to greatly increase in value after the announcement. Don calls his broker and buys 100,000 shares of the stock. Vincent calls his broker and buys 10,000 shares of the stock, which is presently trading at \$30 per share. Vincent also tells Lara, his lawyer, who e-mails her broker and also buys 10,000 shares. Lara then tells Clare, her cousin, who faxes her broker with instructions to buy 5000 shares.

Two weeks later, Don makes a speech at a company meeting announcing the increase in earnings, and encourages the employees to buy company stock. Over the next week, 200 employees invest their entire pension savings in the stock. Don's speech is reprinted in the Wall Street Journal the next day, and the company's stock goes up 50%, to \$45 per share. Two weeks after the newspaper story and increase in the value of the stock, Don, Vincent, Lara, and Clare all sell their stock, making a profit of \$15 per share.

Don uses the profit he made on his recent stock purchase to invest in buying out ABC Corporation, a company which manufactures the plastic carrying case used by X FACTOR for its printers. He considers presenting the idea of buying this company to the X FACTOR board, and discusses it with Sue, another X FACTOR board member. Sue tells him she doesn't think X FACTOR can afford to buy ABC, but that she would like to personally invest in the deal. The CEO accepts her opinion, and he and Sue buy the assets of ABC corporation without discussing it with the X Factor Board.

One month after all of the above matters have taken place, X FACTOR announces a restatement of its earnings, which reveals that instead of earnings going up 40%, they actually were down 50%. The company's banks and investors, in response to this news, call in all outstanding debt financing, and over the next week, the value of X FACTOR's stock drops to 10 cents per share. All of the employees who invested their pension funds lose their entire investment. The SEC investigates, and discovers emails that indicate that Don was aware of the error in the earnings statements before he made any of his statements to any of the parties in this matter.

You are an SEC associate attorney reviewing a file which contains this set of facts. Draft a memo for your supervisor identifying what claims may be asserted by the SEC against any or all of the parties in this matter, summarizing the elements necessary to establish the claims, what defenses are available, and who is likely to prevail as to each claim.

End of Exam