CORPORATIONS
Final Examination
Spring Semester 2004
Professor Backer

FINAL EXAM INSTRUCTIONS: PLEASE READ CAREFULLY

This final examination consists of FOUR (4) questions consisting of 3 essays and one question with Ten short answer subparts. The exam should have FOUR (4) questions on SIX (6) pages. Please be sure NOW that you have all of the pages.

THIS IS A TAKE-HOME EXAM:

YOU WILL HAVE 24 HOURS TO COMPLETE THE EXAM;
EXAMS MAY BE PICKED UP AT MY OFFICE AND DROPPED OFF AT MY OFFICE ON THE NEXT DAY NO LATER THAN TWENTY-FOUR (24) HOURS AFTER PICK UP.

EXAMS MAY BE PICKED UP ON ANY DAY FROM THE FIRST DAY OF THE EXAMINATION PERIOD TO THE DAY BEFORE THE LAST DAY OF THE EXAMINATION PERIOD.

Put your exam number on each page of the paper you will be submitting. You do not need to put any other information on the papers you turn in. Do not write your name on the examination or on any of the papers you submit to me --I REALLY DO NOT WANT TO KNOW WHO YOU ARE AS I GRADE THE EXAMS!!!!
This is an open book exam. Instructions on answering the essay questions are underlined and are found at the end of each question. Follow these instructions carefully and discuss the issues presented fully. **BE SURE TO ANSWER ONLY THE QUESTION ASKED OF YOU. YOU DO NOT HAVE TO ANSWER THE QUESTIONS IN ANY PARTICULAR ORDER, AS LONG AS YOU IDENTIFY THE QUESTION YOU ARE ANSWERING.**

Plan and organize your answers before starting to write them out. Please keep the following in mind as you write your answers. The most important thing you can remember is this: **answer the question asked and only the question asked.** A good rule to follow is to read the question before reading the facts presented. Do not discuss legal doctrines that are not pertinent to the questions asked; likewise long introductory paragraphs which are not directly responsive to the questions asked will receive no credit. Points will be deducted for erroneous statements of law. Please be sure to apply the law to the facts of the question as presented. If you think additional facts are necessary for a complete answer, state those facts and the reasons you believe such additional facts are necessary. An answer containing only a statement of your conclusions will receive no credit. Where this may be helpful to support your arguments, refer to specific cases by name (complete names and citations are not required) and to articles, statutes and otherwise by number (Bluebook form citations are not required).

**EXAM REQUIREMENTS -- PLEASE READ CAREFULLY!!!!!**

1. **EXAMS MUST BE:**
   (A) DOUBLE SPACED,
   (B) ON STANDARD AMERICAN 8.5X11 PAPER,
   (C) ONE (1) INCH MARGINS ON ALL SIDES OF THE PAGE
   (D) NO SMALLER THAN 11 POINT 'TIMES NEW ROMAN' FONT
   (E) NO FOOTNOTES; ENDNOTES; OR OTHER NOTES

2. **MAXIMUM LENGTH OF EXAM IS FOUR (4) TYPED PAGES PER QUESTION (TOTAL EXAM MAXIMUM LENGTH SIXTEEN (16) PAGES).**

   **FINAL RULE OF THUMB:** **KEEP IT SHORT AND TO THE POINT!!!**
   Though I was saddened by the circumstances that brought us together, I am glad for the opportunity to have shared a portion of this semester with you. I wish you all well!
ADDITIONAL INSTRUCTIONS FOR LL.M. STUDENTS:

1. LL.M. STUDENTS ARE GIVEN AN ADDITIONAL 24 HOURS TO COMPLETE THE EXAM.

2. LL.M. STUDENTS MAY USE ANY ADDITIONAL MATERIAL THEY DESIRE TO THE EXAM, INCLUDING TRANSLATING DICTIONARIES AND OTHER MATERIALS.
QUESTION 1

The Stinky Cheese Corp. has been in business for 70 years. Traditionally, the corporation devoted all of its energies to the food industry – principally producing cheese and cheese products. But over the last 20 years the company has diversified considerably. Today, it operates a number of subsidiaries – (1) Cheese, Inc., (2) Lunch Meats, Inc., (3) Dog Food Mania, Inc., and (4) Kuality Clothing Shoppes, Inc. ("Kuality") While most of the subsidiaries operate within the food and food services sector, Kuality consists of a chain of retail outlets selling clothing primarily to people in the 15-27 age group. All of the corporations are incorporated in a state adopting the Model Business Corporation Act.

Contributions to consolidated revenues for the last year was as follows:
Cheese 25%
Lunch Meats 25%
Dog Food 26%
Kuality 24%

Pre-tax contributions to earnings for each of the subsidiaries was as follows for the last year:
Cheese 25%
Lunch Meats 25%
Dog Food 24%
Kuality 26%

Consolidated assets of the company last year was divided as follows:
Cheese 25%
Lunch Meats 25%
Dog Food 25%
Kuality 25%

The board of directors of Stinky Cheese want to get out of its food sector businesses. BigDog, Inc., has recently approached Stinky Cheese with an offer to buy the Cheese, Inc., Lunch Meats, Inc., and Dog Food Mania, Inc. subsidiaries for slightly more than the current book values of those subsidiaries. As part of the agreement, the Stinky Cheese board would like to dissolve Stinky Cheese immediately after the closing of the sale to Big Dog and liquidate the company, distributing both the proceeds of the sale and all of the shares of Kuality to the Stinky Cheese shareholders in proportion to their share ownership in a liquidation of Stinky Cheese. Thus, as contemplated by the agreements, at the conclusion of all of the transactions Big Dog would own the three food sector subsidiaries currently owned by Stinky Cheese, and the shareholders of Stinky Cheese would receive a pro rate portion of the consideration received from Big Dog plus a pro rate portion of the shares of Kuality now held by Stinky Cheese. Stinky Cheese would then cease to exist.
A majority of the board of directors has indicated a desire to accept this offer. While it is clear that the holders of at least 47% of the shares are also in favor of this transaction, it is not clear whether the rest of the shareholders would vote to approve. Moreover, it is clear that shareholders holding at least 35% of the shares are strongly opposed to any sale of the food sector subsidiaries.

While the board is reasonably confident of their ability to obtain the necessary shareholder votes to approve the transaction, they are worried about the potential negative effect of a large 'no' vote as well as the possibility that dissenting shareholders might seek appraisal rights.

The board would like to take the position that no shareholder vote is required. The parties require the sale to close in 140 days.

You are Stinky Cheese's corporate general counsel. The Chair of the board has asked what procedures must be followed to effectuate the sale of the Stinky Cheese subsidiaries to Big Dog. She wants to know, in particular, (i) if you are prepared to opine that shareholder approval is not required and (ii) assuming you reach this conclusion, how likely is it that a Stinky Cheese shareholder nonetheless could assert a claim that would survive a motion to dismiss for failure to state a claim and/or a motion for summary judgment, thus preventing the sale from closing within 140 days.

WRITE A MEMO TO THE CHAIR OF THE BOARD EXPLAINING FULLY YOUR ANSWERS TO HER QUESTIONS.
QUESTION 2

You represent ABC, Inc., a corporation incorporated in a state adopting the Model Business Corporation Act. ABC’s board is made up of eight (8) directors. ABC’s bylaws provide that special meetings of the board of directors may be called at the request of the board chair or any three directors on three days notice in writing specifying the purpose of the meeting. The bylaws further provide for a quorum of no less than a majority of the board and that a majority of the board must approve any action binding on the corporation. Three of the directors include ABC’s CFO, COO, and its Comptroller. The other five directors are independent members of the board. The bylaws also provide that members of the board of directors can only be removed for cause.

Bob Iguana, the President of ABC has just called you to let you know that he has negotiated a great deal – ABC, through him, has agreed to purpose the Lunch Meats, Inc. subsidiary of Big Dog Corp. This deal was negotiated without prior notice to the ABC board, but as Iguana tells you, “don’t worry, I’ve done this before and its no big deal – the board tends to follow my lead; even if they are mad they will come around.” In response to a question from you, Iguana tells you that he has not done any investigation of Lunch Meats, Inc., but that (1) he had a long conversation with Big Dog CEO A. Woof about the company and Mr. Woof said that the financial reports of the company prepared by its internal accountants fully and accurately described the financial condition of Lunch Meats, Inc., (2) that though Iguana had not reviewed the financial statements given to him, Mr. Woof had told him that Lunch Meats was a net contributor to the income of Big Dog (so what could be so bad), and that (3) although Iguana had not calculated the value of Lunch Meats, Inc., he had asked the ABC CFO, Howdy Doody, to calculate how much ABC could afford to pay for a corporate acquisition and it turns out that Lunch Meats will cost less than the maximum ABC can afford. Iguana has read the acquisition agreement, prepared by counsel to Big Dog, and has found nothing objectionable in the document. Iguana, however, sees no reason to hold up the deal by having ABC’s inside counsel review the document; after all, he tells you “I’ve done a million of these acquisitions.”

Bob Iguana wants to call a meeting of the board of directors to consider the acquisitions of Lunch Meats, Inc. He does not believe that the board will need more than a few hours to consider the issue. While he has no intention of distributing copies of the acquisition agreement prior to the meeting, he would make copies available if board members asked to see it. He contemplates giving the board an oral synopsis of the agreement, permit them to ask questions, and then have the board vote. He can count on the votes of the three inside board members. “Why not,” he jokes, “after all I can make their lives pure misery if they make me mad.” He also thinks a majority of the board will come around.

Iguana has announced his intention to have a board meeting called for the purpose of acquiring
Lunch Meats, Inc. Scaredie Cat, an independent member of the board, comes to see you. She is mad about Iguana’s actions and suggests to you that Iguana had no authority to enter into any agreement for the purchase of any company, and that ABXC could walk away from this deal. She is also worried about her own liability if she participated in a board meeting that approved this transaction.

**WRITE A MEMO TO MS. CAT DISCUSSING (1) ALL ARGUMENTS RELATING TO IGUANA’S AUTHORITY TO BIND THE CORPORATION, AND (2) THE NATURE OF ANY POTENTIAL EXPOSURE OF MS. CAT TO LIABILITY WERE SHE TO APPROVE THE ACQUISITION IN THE WAY CONTEMPLATED BY IGUANA.**
QUESTION 3

For purposes of answering the questions below, assume the same facts as in Question 2.

Please provide short answers to the following questions:

1. Does Iguana have the power to call a special meeting of the board of directors.

2. What alternatives exist for calling a meeting of the board of directors if Iguana wants them to meet?

3. Will actions at a meeting attended by all of the board members be valid if the notice of meeting was by telephone and did not specify the purpose of the meeting?

4. Can the board of directors validly approve the acquisition of Lunch Meats if 4 members of the board attend the meeting and unanimously vote in favor of the acquisition?

5. Do all of the board members have to be physically present for the board of directors to validly transact business?

6. Could the shareholders call a special meeting to approve the acquisition of Lunch Meats if the board of directors fails to act?

7. Could the shareholders, at a special meeting, remove all directors who voted in favor of the acquisition?

8. Could the shareholders remove directors without holding a meeting?

9. Could the shareholders meet to compel the board to fire Iguana?

10. Assume Iguana has an employment agreement with ABC, Inc., that provides in part that his contract can only be terminated for cause (defined as a conviction for a criminal felony offense). Can the board of directors fire Iguana, and if they do what are Iguana's rights?
QUESTION 4

Your classmate tells you the following:

Piercing the corporate veil is easy. The one thing I am sure of is that courts never look at undercapitalization when they engage in veil piercing analysis.

**Please comment fully on this statement.**