INSTRUCTIONS
ESSAY--4 Pages

PLEASE READ CAREFULLY

ALL ANSWERS ARE TO BE WRITTEN ON THE BLUE BOOKS PROVIDED WITH THIS EXAMINATION.

There are four questions of equal value (time and percent indicated). The time for completing the examination is two hours.

1. This examination is "open book." You may use your casebook, statutory supplement, and classnotes. Use of calculators is permitted.

2. Be sure to answer the specific question that is asked. Information supplied relating to some unasked question will not increase your score and consumes your time needed to answer the asked questions.

3. If additional facts are necessary to resolve an issue, specify what additional facts you believe to be necessary and why they are significant. You may not make an assumption that changes or contradicts the stated facts.

4. Quality, not quantity, is desired. Think through and briefly outline your answer before you begin to write.

5. Write legibly. Be sure to formulate your answers in complete sentences and paragraphs with proper grammar. Failure to so do will result in an appropriately lower score.

6. Do not seek an interpretation of language in the questions from anyone. If you sense ambiguity or typographical error, correct the shortcoming by shaping the questioning a reasonable way and by recording your editorial corrections in your answer.

Under the Honor Code, when you turn in this examination, you affirm that you have neither given, received, not obtained aid in connection with this examination, nor have you know of any one so doing. If you cannot make this affirmation, you shall note such fact on you examination and must immediately advise the Dean of the reason therefor.

5353

I.

[25% --30 Minutes]

Flint Corporation, a reporting company, is involved in a lawsuit concerning its Employee Stock Ownership Plan and its voting for incumbent directors at the annual shareholder meeting. You are the associate at Blue Stocking Law Firm, Flint Corporation's lawyers, working on preparing the proxy statement for the current annual meeting. Your senior partner, who is also the Secretary and a Director of Flint Corporation, has entered your office and wants to know whether the following three matters need to be disclosed in the proxy statement and accompanying materials.

First, the dissident shareholder has made four proposals for inclusion in the company's proxy statement, only one of which management intends to include. The dissident shareholder has indicated that he will present the rejected proposals at the meeting. The proxy card will have the standard statement about voting on other matters brought up at the meeting at the discretion of the proxy holder. Will this card mandate any disclosure about the rejected matters?

Second, the dissident is upset that the stock is illiquid since the Flint family controls 90 % of the shares. He claims the stock as a result the market price of the stock is discounted by 15 % from its true value due to the lack of a viable market. Does this fact require disclosure?

Third, during the course of the lawsuit, the President of the company to avoid service of process waived a gun at the service processor, who reported the incident to the sheriff, who has said he will refer the matter to the district attorney. Does this fact require disclosure?

II.

[25%--30 Minutes]

Arunah Hubbell has come into your office at Suem and Stickem, P.C., a notorious litigation firm. He wants to sue Rockwell Inc. on a contingency fee basis. Your firm manager, before allowing the firm to take a case on a contingency basis, requires a report on the likelihood of success. Your task is to determine whether the firm should take Hubbell's case.

Hubbell owned 25 % of Rockwell Inc., a reporting company, while Chauncy Smith and Benjamin Belden owned 57 %, the remaining 18 % was held by public shareholders. Smith and Belden wanted to take the company private to avoid the cost of annual reporting. They obtained Hubbell's participation by representing that Hubbell's employment at Rockwell Inc. and his positions as director and senior executive officer would continue for as long as Hubbell wished and would be unaffected by the going private transaction.

Rockwell Inc. went private through its freeze out merger with Newco, Inc., a company formed by Hubbell, Smith, and Belden by exchanging their Rockwell Inc. stock for Newco Inc. stock so that Hubbell owned 31 % of Newco Inc. and Smith and Belden 69 %. In the freeze out merger, the public shareholders were paid cash for their stock and Rockwell, Inc. was the survivor.

Shortly, after the merger, Smith and Belden informed Hubbell that his employment contract would not be renewed, and that he would not be reelected as a director or reappointed as an officer of Rockwell. Is Hubbell likely to succeed in obtaining damages for his lost positions?

III.

[25%--30 Minutes]

Gilmore Corporation issued at par some 6.25 % convertible debentures in July of 1993. The debentures had a provision that in the event of a takeover, the debenture holders could tender the debentures to the company at 1.06 % of par unless a majority of Independent Directors approved the takeover transaction. "Independent Director" was defined to be a non-employee director, or a director selected by such Independent Directors.

The prospectus for the offering explained that this debenture provision would provide a safety feature to protect the debentures from a takeover situation when the debentures might be selling below par. Several financial institutions bought 34 % of the debentures.

In January of 1995 Gilmore Corporation merged into MacClannachan Corporation. The board unanimously approved the merger. At the time the debentures were trading at 47 % of par so the financial institutions tendered their debentures to the surviving corporation for payment at 1.06 % of par. Payment was refused because the board approved the transaction, but the corporation offered to buy the debentures at 51 % of par.

Stung by this serious reversal in their investment, representatives of the financial institutions have entered your office at Suem and Stickem, P.C. They want to sue for damages and recover the 1.06 % of par, if possible. What is your advice concerning whether they might successfully pursue this matter in the federal courts?

IV.

[25% - 30 Minutes]

Burpee Corporation, a financial services company and member of NASD, chose to issue $20 million in short-term notes through a subsidiary. NASD rules prohibit members from using an affiliated company as its underwriter without first retaining an independent company known as a "qualified independent underwriter" to perform due diligence on the registration statement and recommend a minimum yield. Burpee Corporation obtained Lee & Turton, Inc. as its qualified independent underwriter. Lee & Turton, Inc. agreed to assist in preparation of the registration statement and received $80,000 for their services. But Lee & Turton at no time agreed to buy, sell, distribute, or solicit orders for the Burpee Corporation notes.

The registration statement contained the following statements:

(1) If the registrant's plans to restore profitability are not successful, the registrant's equity will continue to erode.

(2) The registrant is seeking insurance from the FDIC and its application is pending. There is no assurance that the application will be approved.

Management of Burpee Corporation prior to the effective date of the registration statement knew that the application would be denied. Shortly, after the insurance application was denied, Burpee Corporation declared bankruptcy.

The purchasers of the Burpee Corporation notes filed a class action against Lee & Turton as underwriters for a false and misleading registration statement. Representatives of Lee & Turton, Inc. have entered your office at Slick and Slippery, P.C., to represent them in defending this action. What defenses would you propose to present to the court on their behalf? What are the chances of successfully defending this action?