ST. MARY'S UNIVERSITY
SCHOOL OF LAW

Fall term
Dec. 12, 1990
ID. No. ________

FINAL EXAMINATION
SECURITIES REGULATION
MR. FLINT

Essay--4 pages

PLEASE READ CAREFULLY

ALL ANSWERS ARE TO BE WRITTEN ON THE BLUE BOOKS PROVIDED WITH THIS EXAMINATION. THE EXAMINATION IS TO BE TURNED IN WITH THE ANSWERS AT THE END OF THE EXAMINATION AND IS NOT TO BE KEPT BY THE TESTEE. NO COPY OF THIS EXAMINATION MAY BE REMOVED FROM THE EXAMINATION ROOM DURING THE EXAMINATION.

There are six questions of equal value (time and percent indicated). The time for completing the examination is three 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, consumes your time needed to answer the asked questions, and could lower your score if erroneous.

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 question in 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, nor obtained aid in connection with this examination, nor have you known of any one so doing. If you cannot make this affirmation, you shall note such fact on your examination and must immediately advise the Dean of the reason therefor.

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I.
[16.7%--30 minutes]

Texas Solar King, Inc., ("Solar King"), a closely-held company, desires to acquire one of its closely-held distributors, Centex Plumbing, Inc. ("Centex"). Both companies operate in Waco, Texas. The deal is being negotiated by John Gilmore, Financial Vice President of Solar King, who, dispite a conviction three years ago for filing fraudulent statements with the Securities and Exchange Commission ("SEC"), is an expert financial wizard. Arunah Hubbell, the President and Chief Executive Officer of Solar King, estimates that the acquisition will require cash of $6 million. He proposes raising this cash by selling Solar King Stock to a group of local investors that he personally knows. The group consists of nineteen Waco businessmen and the widow of the former president and 30% shareholder of Solar King, who recently died unexpectedly. The widow is not currently a shareholder of Solar King since the former president's will left his stock to his sons. She now lives in New Orleans.

Arunah Hubbell has entered your associate's office at The Bluestocking Law Firm for advice. Explain to him how you would structure this transaction to comply with the securities laws.

II.
[16.7%--30 minutes]

Your handling of the sale of securities was so expert that Arunah Hubbell now wants to issue and sell $10,000,000 worth of common stock of Solar King to the public to provide for plant expansion and working capital. Again Arunah Hubbell has hired you, still an associate in The Bluestocking Law Firm struggling for recognition by the partners, to handle the matter. You begin working on Solar King, Inc.'s registration statement on Form S-1 covering the proposed issue of common stock. What disclosures are required in the text of the registration statement or in the financial statements, and what documents would have to be filed as exhibits, with respect to each of the following matters? What additional facts, if any, would you need to answer each question?

(a) Profits of Solar King during the last five years were substantially lower than profits during the preceding five years.

(b) Solar King has borrowed from an insurance company under an agreement which requires it to maintian an excess of current assets over current liabilities of not less than a specified dollar amount.

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III.
[16.7%--30 minutes]

In the course of your work on the transaction described in problem II, the following events occur for which Arunah Hubbell requests your advice. For each event, advise the client, explaining to the client your reasons.

(a) Prior to filing anything with the Securities and Exchange Commission, Mr. Hubbell proposes posting a notice in the Solar King plant, advising employees that a public offering of Solar King stock is planned, and that the underwriters, MacClannachan & Co., will make arrangements to make shares available to employees who indicate to the company an interest in purchasing stock at the public offering price.

(b) After filing with the SEC but before the effective date, a dealer writes to one of his customers soliciting an offer to buy shares of Solar King stock at $11 a share on a when-issued basis but does not enclose a preliminary prospectus, since he knows the customer has already received one from another source.

(c) Two months after the effective date, the lead underwriter, which is making a secondary market in Solar King stock, asks whether it must deliver a prospectus to customers to whom it sells Solar King stock which it has purchased in the market.

IV.
[16.7%--30 minutes]

After the highly successful initial public offering, Arunah Hubbell decided to expand Solar King's business. Solar King presently only manufactures flat plate solar panels. So Solar King hires you, an overworked but promising associate at The Bluestocking Law Firm, to prepare the documents for a tender offer for the shares of Photo Cell Incorporated ("Photo Cell"), a public company that manufactures photovoltaic cells. Meanwhile John Hartt, a Solar King director, who learned of the upcoming tender offer at a Solar King board meeting, has mentioned the proposed tender offer to his broker and personal friend, Amos Carll, a stockbroker with Gasaway & Co. Amos Carll recommended Photo Cell stock to a number of his institutional clients, who purchased an agregate of 100,000 shares at an average price of $35 a share. During the two-week period in which the institutions were buying, their transactions accounted for 60% of the trading volume and the price of Photo Cell stock rose from $30 to $40 a share. Solar King then announced the tender offer for Photo Cell stock at $50 a share, having determined that the offer would have to be at least $10 above the current market price to be successful. Arunah Hubbell requests your advice on what should Solar King do to rectify its overpayment in the tender offer. What is your advice?

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V.
[16.7%--30 minutes]

With respect to the tender offer described in problem IV, after Solar King made the tender offer but before it has expired, management of Photo Cell has issued a statement to its shareholders describing Solar King's offer as "inadequate" without giving any reasons for that conclusion. Photo Cell's management has also caused Photo Cell's pension fund to start purchasing large quantities of Photo Cell shares on the open market, apparently with the intent of pushing the price up and making Solar King's offer seem less attractive. Arunah Hubbell has marched into your office, that of the most promising workaholic associate at The Bluestocking Law Firm, demanding to know whether anything can be done about these actions. What is your advice?

VI.
[16.7%--30 minutes]

Arunah Hubbell has come into your office, now that of a partner in The Bluestocking Law Firm, with the following complaints. Dispite his instructions to his personal broker, Garrett Voshell, that he wanted "safe" investments that would yield a high rate of return, Garret Voshell recommended highly speculative stocks and frequent switches from one stock to another. Many of the stocks were local over-the-counter stocks in which Garrett Voshell's firm, Stainer & Co., was the sole or principal market-maker. Some of Garrett Voshell's recommendations were made on the basis that he had an "inside tip" about a company's new products, but Arunah Hubbell now believes the Garrett Voshell had no reliable information about most of the stocks he recommended. Over the past year, Arunah Hubbell was charged $30,000 in commissions, and the value of his account dropped from $80,000 to $5,000. He asks you what bases he has for a claim against Stainer & Co, with which he had signed a standard form of customer agreement with a clause requiring arbitration of all disputes between the customer and the firm. What is your advice?