

Empire College School of Law  
Professor Viveka A. Rydell  
Business Organizations – Spring Final  
Monday, April 14, 2014

Student ID \_\_\_\_\_

**FINAL EXAM**  
**3 Hours**

This examination will test your knowledge of the materials that we covered in class. Please answer each question concisely. Please use headings, underline issues and rules, as this will help you organize your thoughts, spot and frame the legal issues, and present the rules and doctrines clearly. Try to answer all questions with complete sentences. Do not use abbreviations, other than those commonly used for each business organization (like LLP). Answer all questions presented. If you cannot answer a question completely, answer as best you can. If not all facts are present, by all means, address scenarios. Partial answers will be given partial credit. Please write clearly. **Good luck!**

PART I (50 POINTS)

Nancy Smith and Linda Cohen are colleagues at Radiant, a large Santa Rosa company headquartered in Silicon Valley. Linda, an engineer, also serves the Board of a small DNA testing lab. Nancy is in marketing and travels nationwide and abroad on behalf of Radiant. They both own stocks in Radiant, which is traded on the New York stock exchange ("RAD"). Long-time friends from the Empire Running Club, Linda and Nancy make it a point to have lunch together when Nancy is in town. At their most recent lunch at *Yum* in Railroad Square, Linda confided in Nancy that she is growing increasingly frustrated with her boss who she feels is not open to her innovative ideas even though Linda has a proven track record in creating new products and testing schemes. Linda is getting tired of what she calls the "corporate Rat Race" and she would like to start her own company. She thinks she has come up with a new idea for some products and testing protocols that Radiant to date is not offering. Nancy, on the other hand, is a bit weary from all her travelling. In her late 30s, she would like to settle down and start a family, and travel less. Nancy is worried, however, about not having enough money to start a business. On the other hand, she also has a lot of belief in her friend Linda. Nancy does have a rich uncle, Willie Moore, however, who is willing to invest in a new business venture. Willie, more interested in golfing, does not want to be involved with day to day operations, but would like some return on his investment, if possible.

Bob Cohen is married to Linda. He also serves on the Board of Directors of Radiant, and he too owns stock in Radiant. When he heard of his wife's lunch meeting, he offered to meet with both Nancy and Linda. He has also asked that you, a lawyer for Radiant, be there, and that you prepare a memo advising them on the new business idea.

Please discuss (1) whether it be advisable for you to be at the meeting, and if not, why not and what other ideas you would suggest; (2) whether it be advisable to have Bob involved with the new business venture and, if so why, or why not; (3) which business forms exist as alternatives for Nancy and Linda, and what the pros and cons of each of them are; (4) what duty, if any, Nancy and Linda owe as employees and shareholders of Radiant, and what duties, if any, Bob owes as a director and shareholder.

PART II (20 POINTS)

Answer the following questions.

1. Please discuss the various levels of indemnification officer and directors enjoy from a corporation, including when officer/director indemnification is mandatory, permissive, or prohibited. Please include discuss what limitation or elimination of liability may properly be included in Articles, and which kinds of acts may not be thus limited or eliminated.
2. When seeking minority shareholder approval for a proposed cash-out merger, which test must a corporation comply, and what do those two prongs entail:  
Fair dealing – which impose a duty on the corporations to completely disclose to the shareholders all information germane to the merger; and  
Fair price – which requires that the price being offered for the outstanding stock be equivalent to a price determined by an appraisal where “all relevant non-speculative factors” were considered. Weinberger.
3. Define the term *limited liability*.
4. List as many factors you can that are considered in deciding whether to “pierce the corporate veil.”
5. What is the difference between a limited partnership and a limited liability partnership?
6. List the 6 elements of a securities fraud action, and which Act that applies.
7. Explain the difference between a sole proprietorship and a partnership.
8. What is a POISON PILL?
9. What is the “Misappropriations Theory”?
10. What is a Tender Offer?

END OF EXAMINATION