

Business Organizations

Issue Outline Final April 2011

Essay Question

Prof. McCann

The question called for a discussion of the following issues:

Did MM breach a duty owed to the shareholders of MayCo? What was the duty (loyalty/care/both)?

Did MM have a particular responsibility by virtue of being a controlling shareholder?

Is there a *Feldman* issue regarding control premium?

Did MM have a duty to the directors of MayCo to disclose what he was doing? Did Draper likewise have a duty when he also learned of the scheme?

Did either MM or DD violate Rule 10b-5.

Did DD violate Rule 16, the “Short Swing Sales” Rule.

Who has standing to raise 10b-5 issues?

Who has standing to recover for Rule 16 gains?

Is there a violation of Rule 14 with respect to tender offers? If so, what is the nature of the violation?

Is there a causation argument with respect to the losses suffered by JayCo?

Breach of duty with respect to “entrenchment” requirement in sales agreement?

Is there a potential shareholder derivative action available to Paul Plaintiff and, if so, would it be wise to prosecute that action ?

Would a demand be futile due to lack of disinterested directors?

Would you advise Paul Plaintiff to investigate the availability of insurance?