Empire College School of Law
Professor McCann
Business Organizations – Final
April 11, 2011

Student ID#_________

Essay Question – 1 Hour

In June of 2010 JaxCo, a publicly-traded corporation, entered into an agreement with the majority shareholder (and a director) of MayCo (a publicly-traded corporation) whose name was Mike May. The agreement said that provided none of the MayCo directors lost their seats on the board of directors, May would sell his 60% interest (or 600,000 shares of MayCo stock) to JaxCo for $100 per share, giving JaxCo control of MayCo. At the time, MayCo stock had a value of $50/share.

The sale would almost certainly make the other 40% of MayCo stock substantially less valuable because JaxCo was famous for borrowing heavily using the assets of companies it acquired, then paying its own shareholders large dividends.

One night, over drinks, Mike May told his friend and fellow director, Don Draper, in confidence, of his plan to sell the shares. He told Don that in order not to alert the public or other shareholders to the fact that he was selling all of his stock, May was planning to transfer the shares in small quantities over a period of months. Don owned some of the MayCo stock himself and, knowing what was bound to happen to the value of his stock when JaxCo took over, he promptly sold his shares for the then-market price of $50/share. He had paid $20/share for the stock.

Mike May was the subject of an interview in the Wall Street Journal shortly after he made the agreement with JaxCo. In the course of the interview he was asked about the future of MayCo. He told the reporter that he was so optimistic about MayCo's future that he would buy more of the stock if he could. He did not disclose that he was, in fact, selling all of his stock.

The stock price started to climb as a result of the Wall Street Journal article and Paul Plaintiff, who had read the interview, promptly purchased 100 shares of MayCo at $60/share.

Three months later, JaxCo issued a press release confirming that it now owned the majority of MayCo. Two days later, MayCo stock fell to $20/share. Coincidentally, earlier that week, JaxCo reported that another division of JaxCo had caused a massive oil spill in the Mississippi River.

Paul Plaintiff has lost $40/share in the value of the stock. He has called you for advice as to whether any laws were broken in the transactions and events decribed here and, if so, what remedies he and other MayCo shareholders might be able to pursue. What do you tell him?

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Short Answers – 2 Hour

1. What is the Business Judgment Rule?
2. What is meant by the term "Fiduciary Out" and when would one be required?
3. What duties does the manager of a limited liability company owe to a member?
4. Why was Martha Stewart not technically liable under Rule 10b-5?
5. How does the role of the board of directors change when the board determines that the corporation is "in play" and that a change of control is imminent as a result of a takeover?
6. What are some common anti-takeover strategies and what is their purpose?
7. What is the Williams Act and what policy objectives is it intended to serve?
8. What are some questions you would ask a client who was considering forming a business and wanted advice on what form of entity to use, and why would you ask those particular questions?
9. Under what circumstances may a director personally avail herself of a corporate opportunity, that is an opportunity that might be of some value to the corporation?
10. What tools are used to insulate directors and officers from personal liability for actions (or failures to act) arising from their position as directors or officers of the corporation?