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Empire College School of Law
Business Organizations
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ANSWER OUTLINE

- Knowledge of the materials that we covered in class.
- Answer question concisely.
- Used headings, underlined issues and rules
- Organize thoughts, spotted and frame the legal issues, and presented the rules and doctrines clearly.
- Answered questions with complete sentences.
- Didn't abbreviations, other than those commonly used for each business organization (like LLP).
- Answered all questions presented.
- Couldn't answer a question completely, but answered best he/she could.
- If not all fact were present, addressed scenarios.
- Partial answers = partial credit.
- Wrote clearly.

PART I (60 POINTS)

- A. Memo on which business forms to consider, the pros and cons of each, and whether advisable for Bob to be their lawyer, and if not, why not.
- Business forms: sole proprietorship – no;
 - i. general partnership
 - ii. limited partnership
 - iii. limited liability partnership

- iv. corporation (public or closely held)
 - Pros/cons – costs/formalities-exposure to liability; ability to get additional funding
 - Red flags re personal Esq./family conflict of interest

B. Whether any laws were broken in the above scenario and, if so, what remedies Plaintiff and other Sono-bags shareholders might be able to pursue.

- Liability of Nancy as Director
- 10b-5 5 elements
- Which element may be missing (causation)
- Duty of Care. Caremark.
- BJR
- Enhanced BJR
- Duty of Loyalty
- Derivative Suit
- Linda as shareholder
- Shield of Limited Liability
- Piercing Corp Veil
- Liability of Sono-bags
- Tender Offers
- Liability of Linda
- 16b Cause of Action

PART III (40 POINTS)

1.
 - Private Action/Civil Case/Civil Liability
 - Securities & Exchange Commission (SEC): Criminal Investigation/charges/liability
 - Department of Justice (DOJ): Criminal (and Aiding and Abetting charge is possible)
2.
 - Mandatory Indemnification
 - Permissive Indemnification
3.
 - One or more incorporators need to file the signed Articles of Incorporation with the Secretary of State and pay the required fee.
 - After filing, the Board of Directors need to hold an organizational meeting where they select officers, adopt any bylaws, and conduct other appropriate business.
- 4.

- §14(e) of the Williams Act is a law that prohibits deceit, fraud and manipulation in connection with tender offers. The purpose is to protect investors, not tender offerors. Piper v Chris-Craft (takeover bidder lacks standing under W Act). Policy reason is to help ensure solicitees have access to the information needed to make a considered appraisal of the proposal put before them. Hanson Trust.

5.

- Pooling Agreements (allows minority shareholders to influence election of directors of the board)
- Voting Trusts (rarely used)
- Buy-Sell Agreements (usually in Closely Held Co; give shareholders control of who purchases shares when shareholder wants to sell)

6.

- BJR is doctrine relieving D&Os from liability from decisions honestly and rationally made in corp's best interest
- Piercing of Corp veil will occur (BJR protections will be lost) if a combination of some of these factors:
 - Absence or inaccuracy of corporate records;
 - Concealment or misrepresentation of members;
 - Failure to maintain arm's length relationships with related entities;
 - Failure to observe corporate formalities in terms of behavior and documentation;
 - Failure to pay dividends;
 - Intermingling of assets of the corporation and of the shareholder;
 - Manipulation of assets or liabilities to concentrate the assets or liabilities;
 - Non-functioning corporate officers and/or directors;
 - Significant undercapitalization of the business entity (capitalization requirements vary based on industry, location, and specific company circumstances);
 - Siphoning of corporate funds by the dominant shareholder(s);
 - Treatment by an individual of the assets of corporation as his/her own;
 - Was the corporation being used as a *façade* for dominant shareholder(s) personal dealings; *alter ego* theory. (not all of these factors need to be met in order for the court to pierce the corporate veil. Further, some courts

might find that one factor is so compelling in a particular case that it will find the shareholders personally liable.)

7.

- Poison Pill. (One of the most common mechanisms used to defend against a hostile takeover. Shareholders in target co are given right to be bought out by the corp at a substantial premium on the occurrence of a stated triggering event).

8.

- Tippee
- Tipper
- Chiarella (printer case #1)
- Materia (printer case #2)
- Dirks v. SEC

9.

- Person acting on behalf of CO not yet formed; i.e. arranges everything before there is a business (lease, partner ships, bringing in money, people, knowledge, ideas, etc.)
- P liable for their actions on behalf of pre-incorporated corp until there is novation (corp replaces Ks). Corp liable for pre-incorporation Ks if later adopted.
 - Express Adoption. Board of Director resolution
 - Implied Adopion. Corp accepts benefits of K

10.

- Purpose (general or specific/"lawful Business purpose ok)
- Names & addresses of incorporators & registered agents
- Business Name (Inc, Co, LLC, LLP, etc).
- Financial Structure (authorized/issued/outstanding stock/# of shares; prefs of classes; as applicable.