

LAW 7145-02, CORPORATIONS

MID-TERM EXAMINATION, SPRING 2010

Prof. Tom W. Bell

Wednesday, March 10, 2010, 1:15 p.m. to 2:30 p.m.

Please write your exam number here: _____ and turn in this exam with your answers. If you fail to turn in your exam you may forfeit some or all of your grade.

This is a partial open book exam of two essay questions. You may use your casebook, any material that I handed out for class, and any notes that you or your study group prepared. You may not use other materials, such as nutshells or commercial outlines.

You have 60 minutes to complete this exam. Before you begin writing any essay answer I suggest that you: 1) read the question carefully; 2) think about exactly which issues you need to address; and 3) outline your answer. Good organization and good analysis almost always go hand-in-hand.

Write on only one side of each page, on every other line. If you use more than one bluebook, please number the booklets so that I can easily follow their intended sequence. Please write as clearly as possible. I cannot grade what I cannot understand.

Unless otherwise indicated, all events described below take place in a generic common law jurisdiction.

If you have any procedural questions about taking this exam, please contact the Registrar. If you think it necessary to assume an unstated fact in order to answer a question you may do so, but you should clearly indicate that you are making an assumption and briefly explain why you consider it reasonable to do so.

Do not turn the page until told to begin the exam.

Essay Question 1

1/3rd of exam's total grade
(suggested time: 20 minutes)

Frank started a dog-walking business. After some months of building up a client base, he found that he had more work than he could handle, so he hired Cindy to help out. In addition to having a knack with dogs, Cindy also had a background in accounting. Frank thus let Cindy manage the accounts of the business and often sought her advice on management issues. Worried that she might not act in his interest unless she had the same incentives, Frank arranged to give Cindy a 35% share in the profits of the business rather than a regular salary.

Although this arrangement served Frank well for some years, he recently approached you, his attorney, with a problem: Despite a steady clientele, his dog-walking business has in recent months seen a decline in profits. Cindy has explained this as due to an increase in various overhead costs, such as insurance and taxes, but Frank suspects that Cindy has been tampering with the books and pocketing more than her fair share of the profits. He thus wants to fire her and more generally restructure his business in order to take advantage of an opportunity, which came to him by way of one of his clients, Dr. Vet, to branch out into dog boarding.

Please write Frank a short memorandum drawing on material we have covered in our course and advising him on how best to deal with this problem.

Essay Question 2

2/3rds of exam's total grade
(suggested time: 40 minutes)

Thanks in part to the excellent advice you gave him when he faced the problems described in question one, above, Frank went on to found Dogcare, Inc., a closely-held corporation formed under Delaware law. Frank serves as the firm's CEO, as one of three members of its board of directors, and as its majority shareholder. (Dr. Vet and Frank's wife, Tessa, are the corporation's other directors and also among its minority shareholders. The other minority shareholder is Dr. Vet's ex-wife, Patty.)

Having helped Frank set up Dogcare, Inc., you now serve as the firm's attorney. Frank recently approached you with a legal problem. Dogcare, Inc. leases kennels from Dr. Vet under an agreement reached not long after the establishment of the firm and when all the present officers, board members, and shareholders were already in place. Given the small size of the corporation, everyone of course knew of Dr. Vet's potential conflict-of-interest. All trusted Dr. Vet to give Dogcare, Inc. a good deal, however, and nobody scrutinized it too closely. (Here as in other instances, Dogcare, Inc. operated in a much more casual fashion than a large, publicly-traded company would have done.)

Since those happy days, however, Dr. Vet and Patty have divorced. Patty now complains that Dr. Vet leased the kennels to Dogcare, Inc., at well above the market rate. Nor is her complaint entirely unfounded, as evidence she presented to the board indicates. Patty has demanded that the corporation's board rescind the lease agreement with Dr. Vet and sue him for damages. She has hinted that failure to so act will prompt her to sue.

Please write Frank a short memorandum drawing on material we have covered in our course and advising him on how best to deal with this problem.