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Advanced Business Associations
The University of North Dakota School of Law
Spring 2017
Kit Johnson, Associate Professor of Law
FINAL EXAMINATION

Notes and Instructions

1. The total duration of this exam is two hours.
2. The first 30 minutes of this exam is a reading period. **You may not begin typing or entering into bluebooks any response during this first half hour.** This is your time to carefully read the question(s) and organize your thoughts about how to respond. During the reading period you may: make notes on this exam sheet and/or scratch paper; reference notes and materials and make notes thereon; outline your response on scratch paper (which I encourage). Marks or notes made during the reading period will not be evaluated or counted for your grade.
3. The subsequent 90 minutes of this exam is your writing period. Note that only your response recorded in the proper place (ExamSoft or bluebooks) will be graded.
4. This is an open-book exam. You may use any notes or books you like. You may not use or reference electronic or interactive resources including, but not limited to, the internet, iPads, tablet computers, cell phones, or any other digital device or network. You may, of course, use a laptop to write your exam, but you may not reference files stored thereon during the examination session.
5. Do not turn the page until instructed to begin.
6. You may be denied credit for the exam if you do not return this booklet at the end of the period with your exam number written above.
7. Your goal is to show your mastery of the material presented in the course and your skills in analyzing legal problems within the scope of the course's subject matter. It is upon these bases that you will be graded.
8. During the exam: You may not consult with anyone – necessary communications with the School of Law staff being the exception. You may not view, attempt to view, or use information obtained from viewing other student examinations or from viewing materials other than those you brought in.
9. After the exam: You may not communicate regarding the exam with any enrolled member of the class who has not yet taken the exam, and you must take reasonable precautions to prevent disclosure of exam information to the same.
10. You may not copy, transcribe, or distribute the material in this booklet or attempt to do the same.
11. Base your exam answer on the general state of U.S. law, including statutes and cases discussed in class. It may be appropriate to note issues from Business Associations in order to provide analysis of material from Advanced Business Associations. That said, focus your analysis on issues studied during this semester. Do not dwell on issues relating to last semester's content.
12. Organization counts.
13. Please clearly label your answers to each subpart.
14. Keep in mind: Not all subparts will be given equal weight. Thus, it may be entirely appropriate for one issue to be dispensed with considerable brevity, while another might require very detailed analysis. You should divide your time according to which issues require the most discussion and analysis.
15. **Bluebooks:** Make sure your handwriting is legible. I cannot grade what I cannot read. Skip lines and write on only on one side of the page. Please write in pen using blue or black ink.
16. Do not write your name on any part of the exam response or identify yourself in any way, other than to use your examination I.D. number appropriately. Self-identification on the exam will, at a minimum, result in a lower grade, and may result in disciplinary action.
17. Good luck.

Interseed Industries was a Delaware corporation, publicly traded on the New York Stock Exchange, with 1,000,000 widely-held shares outstanding. It was a software company, focused on developing cutting-edge software technologies (computer programs, etc.) for use in social media platforms.

The four members of Interseed’s board of directors were Astrid Aaronston, Baron Bumble, Chuck Carstillo, and Darin Durgess. Each owned 2% (that is 20,000 shares) of Interseed’s outstanding stock. None were related to each other or had any ties to each other outside of their work for Interseed.

Although Interseed had developed several promising new software programs, it failed in its efforts to commercialize them. Its stock price in late December fell to \$25/share.

Darin Durgess believed that Interseed’s stock price was low relative to its anticipated high future value. This differential was of particular interest to Darin because, in addition to serving on the Interseed board, he was the CEO and majority shareholder of Ourtown Online, a tech company offering a well-liked social media platform. Darin believed that if the Ourtown and Interseed companies were combined, and if Interseed’s software technology was devoted solely to Ourtown, then Ourtown would hurtle to new heights of success.

On January 1, Ourtown hired Harold Heartkins, a financial consultant, to help develop a price point at which it would be optimal for Ourtown to merge with or takeover Interseed. During Harold’s January 10 session with his therapist, Dr. Kendra Knudsson, Harold spoke about his work for Ourtown. They discussed his inexplicable anger over the project. Together, they determined that Harold’s anger could be attributed to his own thwarted passion for computers, which was harshly subjugated by his domineering parents that pushed him to study accountancy instead of coding. After their session, Dr. Knudsson called her broker and purchased 100 shares of Interseed at \$25/share.

On January 15, Ourtown published this announcement in the Wall Street Journal:

Notice of Offer to Purchase for Cash
485,000 shares (48.5% of shares outstanding)
of
Interseed Industries
at
\$50.00 per share
by
Ourtown Online

This offer is open for 10 days on a first-come first-served basis.

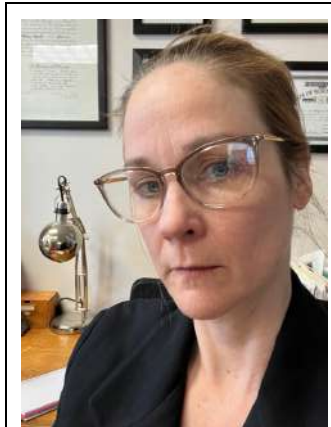


FIG. 1: Dr. Kendra Knudsson earned her M.D. from Texas Tech University. On her website, Dr. Knudsson identified herself as a therapist “with experience in the unique challenges and stressors faced by Wall Street professionals.”

Having seen the announcement, Interseed’s board called an emergency same-day meeting to discuss the company’s response. The first order of business was to ask Darin to leave the meeting, which he did.

Astrid, Baron, and Chuck ran the rest of the meeting like a high-level inquiry. They brought in three people—Interseed’s in-house counsel, its president, and its head of development—to answer questions about Interseed’s long-term and short-term viability. They consulted telephonically with Interseed’s outside lawyers and financial advisors. After hearing from these individuals, the board concluded that, given more time, Interseed could turn its profitability problems around. The board also concluded that a merger with Ourtown would limit Interseed’s future growth since they saw Interseed’s software as having the potential to transform all of social media, not just the limited format of Ourtown’s platform.

And so the board members drafted a Rights Plan, which they then voted to approve with immediate effect. The Rights Plan gave Interseed shareholders rights that would vest if 20% of Interseed’s shares were acquired by anyone. If Interseed were ultimately merged or consolidated with another entity, those rights would entitle Interseed shareholders to purchase \$200 of the common stock of the acquiring entity for \$100, in amounts proportional to their holdings in Interseed.

On January 17, Quarkle Quantitative, a competitor of Interseed, placed its own announcement in the Wall Street Journal, offering to purchase 51% of Interseed shares at \$75/share in cash.

Again, Astrid, Baron, Chuck, and Darin met that same day to discuss how to respond. The board unanimously voted to repeal the January 15 Rights Plan but took no further action.

On January 20, Ourtown issued a final announcement in the Wall Street Journal, offering to purchase 48.5% of Interseed shares at a cash price of \$100/share. Quarkle did not make a counteroffer, and Ourtown was able to purchase the desired shares.

The Interseed board met again on February 15. Darin proposed a merger whereby all minority Interseed shareholders would receive, in exchange for their Interseed stock, \$100/share in bonds (in this case, heavily subordinated debt securities). Darin and Ourtown would receive a better deal: Ourtown shares in exchange for their Interseed shares. Ourtown would end up with all of Interseed’s assets and liabilities.

Astrid, Baron, and Chuck told Darin they would approve the deal if they received the same treatment as Darin himself – shares of Ourtown in exchange for their Interseed stock. Darin agreed, and the board approved the merger.

The four then drafted a proxy statement and distributed it to all shareholders. It read, in relevant part: “The Interseed Board of Directors has approved the proposed merger with Ourtown and advises its shareholders to do the same. The offer to purchase Interseed shares at \$100/share in bonds is fair, given that shareholders will receive the same compensation as those who sold to Ourtown last month per the terms of the January 20 announcement.” The merger was ultimately approved by 90% of the minority shareholders.

The synergy between Ourtown and Interseed ended up being dramatic. Ourtown, which sold for \$50/share in January was selling for \$150/share by the end of April.



QUESTION

Assess the legal issues that arise from the above facts, organizing and confining your response according to the subpart structure set out below, clearly labeling each of the subparts. Note that the subparts will not be given equal weight. The subpart structure is provided for organizational purposes only. Some of these subparts are relatively simple and may require only a short explanation; others are more complex and will require more attention. Pace yourself appropriately, and plan ahead to put information where it belongs.

- Subpart A: Discuss any issues relating to Dr. Kendra Knudsson.
- Subpart B: Discuss any issues relating to Ourtown's January 15 announcement.
- Subpart C: Discuss any issues relating to Interseed's January 15 board meeting.
- Subpart D: Discuss any issues relating to the January 17 Quarkle Quantitative announcement and Interseed's January 17 board meeting.
- Subpart E: Discuss any issues relating to Interseed's February 15 board meeting.
- Subpart F: If any of the Interseed shareholders who were paid for their Interseed shares in bonds were unhappy with their compensation, what would their options be? Would it matter if they voted in favor of or against the Ourtown-Interseed merger?

Some suggested abbreviations for your answer:

- AA: Astrid Aaronston
- BB: Baron Bumble
- CC: Chuck Carstillo
- DD: Darin Durgess
- HH: Harold Heartkins
- II: Interseed Industries
- KK: Dr. Kendra Knudsson
- OO: Ourtown Online
- QQ: Quarkle Quantitative

END OF EXAMINATION