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Advanced Business Associations
The University of North Dakota School of Law
Spring 2018
Kit Johnson, Associate Professor of Law
FINAL EXAMINATION: PART TWO

Notes and Instructions

1. Write your exam number on the top right corner of this exam booklet. Do not write your name on this exam booklet or your exam response or otherwise 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.
2. You may be denied credit if you do not return this booklet at the end of the period with your exam number written above.
3. The total duration of this portion of the exam is one-and-a-half hours (90 minutes).
4. The first 30 minutes of this portion of the 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.
5. After the conclusion of the thirty-minute reading period, you may begin recording your exam response.
6. Note that only your response recorded in the proper place (ExamSoft or bluebooks) will be graded.
7. 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.
8. 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.
9. Base your exam answer on the general state of U.S. law, including statutes and cases discussed in class.
10. Organization counts.
11. Keep in mind: Not all questions 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 those issues that require the most discussion and analysis.
12. **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 put answers to each question in a separate blue book and label the blue books accordingly. Please write in pen using blue or black ink.
13. **Computers:** Please clearly label your answers to each question.
14. During the exam: You may not consult with anyone – necessary communications with the School of Law and/or 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.
15. 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.
16. You may not copy, transcribe, or distribute the material in this booklet or attempt to do the same.
17. **Do not turn the page until instructed to begin.**
18. Good luck.

Varia Vásquez’s life changed forever when her twin sister died of renal cancer, more specifically renal cell carcinoma or RCC,¹ at the age of 17. Up until her sister’s death, Varia had planned on being a theater major in college. But instead, she threw herself into the hard sciences, determined to become a medical scientist in order to help those diagnosed with RCC. She ended up pursuing a M.D./Ph.D., focusing on oncology.² Her thesis, naturally, concerned RCC.

After graduation, Varia founded ESP Eranza,³ a drug discovery company incorporated in Delaware. She worked tirelessly on her RCC research, taking lab discoveries through FDA-approved drug trials, until she finally had a marketable product: CaboCanto. CaboCanto is a kinase inhibitor⁴ for the treatment of patients with advanced RCC. With CaboCanto, ESP Eranza was finally able to live up to its stated mission: “To help cancer patients recover stronger and live longer.”

That mission didn’t change when Varia took ESP Eranza public. Selling shares and getting listed on the New York Stock Exchange was Varia’s way of raising capital. Her initial public offering of ESP Eranza raised nearly \$100 million, all of which went straight into research and development in the hopes of making even more breakthroughs on RCC. ESP Eranza continued to make significant strides on RCC treatment, and the company flourished.

The success of ESP Eranza caught the eye of Martin Mreli, head of Phrama Plexus. Martin started contacting individuals that he knew to be owners of ESP Eranza stock. He offered premiums of between 10% and 50% above market price if they’d be willing to sell within 24 hours, more if the seller would pass along his offer to other shareholders. After executing a number of private deals, Martin had accumulated a 10% ownership in ESP Eranza, and it looked like his ownership would keep growing.



FIG. 1: The ESP Eranza logo.

¹ St. Jude Children’s Research Hospital provides the following context: “The kidneys are bean-shaped, fist-sized organs whose main role is to filter the blood and remove waste and excess liquid and salt from the body. The thin, long channels (tubules) of the kidneys are important to help filter out waste and to help the body reabsorb certain substances. Cancer in the lining of these tubules is called renal cell carcinoma[.]”

² “Oncology” means the study of cancer as well as the medical specialty focused on its diagnosis, prevention, and treatment.

³ Varia wore the letters “ESP” on a bracelet and inscribed the letters in the corners of her textbooks to inspire her throughout medical school: The letters stood for “Effort Saves Patients.” The word “esperanza” means hope in Spanish.

⁴ According to the National Cancer Institute at the National Institutes of Health, a kinase inhibitor is “[a] substance that blocks a type of enzyme called a kinase. Human cells have many different kinases, and they help control important functions, such as cell signaling, metabolism, division, and survival. Certain kinases are more active in some types of cancer cells and blocking them may help keep the cancer cells from growing. Kinase inhibitors may also block the growth of new blood vessels that tumors need to grow.”

At this point, Varia got wind of Martin's efforts. She convened an emergency meeting of the ESP Eranza board of directors. "As Chief Executive Officer and President of ESP Eranza, I'm worried," Varia began. "We need to learn more about Martin Mreli and his plans for our company." The board agreed, immediately hiring outside counsel to investigate Martin and his company.

When counsel reported back in two days, presenting at another emergency meeting of the ESP Eranza board, the information wasn't good: Pharma Plexus wasn't in the business of developing and bringing its own drugs to market. It was in the business of creating closed-distribution pharmaceutical networks. That is, Pharma Plexus would tightly control the distribution of drugs, making it virtually impossible for a competitor to obtain samples in order to develop improved versions of the same drug. Once this system was in place, Pharma Plexus would ratchet up the price of a drug as much as 5,000%.

The ESP Eranza board unanimously decided to prevent Martin from gaining control of the company. The first line of defense was straightforward: ESP Eranza authorized counsel to approach Martin and offer to buy all of his ESP Eranza shares for 30% above whatever he had paid to acquire them. While this would be expensive, the company thought it was well worth the investment.

"Are you kidding me?," Martin replied to ESP Eranza's emissary. "Y'all are sitting on *millions*. Do you know how much people are willing to pay for cancer drugs? The sky's the limit. I can see the advertisements now. We'll feature some old people, but, you know, not too old. Still good looking. They'll be playing with their grandkids. *Seasons of Love* from the musical *Rent* will be playing in the background.⁵ It's genius. You can keep your 30%."

A few nights later, Varia was at a medical school reunion talking about her Martin problem to the classmates at her dinner table. "I just don't know what to do," she confided. "This is my life's work. This is what the company is all about - *advancing* the state of research into RCC. Creating new treatment options. Saving people. Not bleeding patients dry and pricing folks out of recovery."

One of her classmates, Alexander Asgard, took Varia aside and made the following proposal: "Why don't you find a new partner? My company, Bona Bedic, is committed to the development of new medical breakthroughs as well as making those breakthroughs affordable. We've made strides on difficult-to-treat cancers including metastatic medullary thyroid cancer. We'd have terrific synergies, I know



FIG. 2: Martin Mreli saved this picture as inspiration for the kind of advertising he had in mind for CaboCanto.

⁵ The lyrics to this Broadway classic include: "Five hundred twenty-five thousand six hundred minutes / Five hundred twenty-five thousand moments so dear / Five hundred twenty-five thousand six hundred minutes / How do you measure, measure a year? / In daylight, in sunsets / In midnights, in cups of coffee / In inches, in miles / In laughter, in strife".

it. And if you give us the right to purchase the patent on CaboCanto, I'm confident Martin will get out of the ESP Eranza share-buying business."

On his way home from the reunion, Alexander called his brother and Bona Bedic's general counsel, Frode Frigard, to fill him in on the conversation with Varia. "I'm so excited, Frode," said Alexander. "I think we may have the opportunity to do something big with ESP Eranza. This could really move us forward in our company's mission to 'preserve lives, affordably.'"

Froda agreed. Then Froda hung up on his brother and called his broker, purchasing his very first call options – securing 50 contracts on ESP Eranza stock at \$50/share (that is, the right to purchase 5,000 shares at \$50/share). A few weeks later, when the ESP Eranza / Bona Bedic deal was announced, the price of ESP Eranza stock jumped to \$100/share. Froda profited by \$225,000 after accounting for the \$25,000 cost of the options.

QUESTIONS

Provide legal analysis for the following:

Question 1: How would you assess Martin Mreli's strategy for purchasing ESP Eranza stock?

Question 2: How would you assess ESP Eranza's initial response to Martin Mreli – the offer to buy his shares?

Question 3: If you were advising the board of ESP Eranza, how would you assess Alexander Asgard's offer?

Question 4: How would you assess Froda's purchase of options?

Keep in mind the questions will not be given equal weight. The questions are provided for organizational purposes only. It may be entirely appropriate for one question to be answered with considerable brevity, while other questions might require very detailed analysis. Pace yourself appropriately, and plan ahead to put information where it belongs.

Finally, avoid needless repetition. Do not repeat the exact same analysis with substituted parties. You may incorporate analysis by reference to another portion of your exam answer to the extent appropriate.

Some suggested abbreviations for your answer:

AA: Alexander Asgard
BB: Bona Bedic
CC: CaboCanto
EE: ESP Eranza
FF: Frode Frigard

MM: Martin Mreli
PP: Pharma Plexus
RCC: Renal Cell Carcinoma
VV: Varia Vásquez

END OF EXAMINATION