

Write your exam
number here:

Business Associations
The University of North Dakota School of Law
Fall 2017
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 for this portion of the exam if you do not return this booklet at the end of the period with your exam number written above.**
3. The total duration of Part Two of this exam is two hours.
4. The first 30 minutes of Part Two 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. Note that only your response recorded in the proper place (ExamSoft or bluebooks) will be graded.
6. Part Two 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.
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. Base your exam answer on the general state of U.S. law, including statutes and cases discussed in class.
9. Organization counts.
10. Keep in mind: Not all questions will be given equal weight. Thus, it may be entirely appropriate for one question to be dispensed with considerable brevity, while another might require very detailed analysis. You should divide your time according to which questions require the most discussion and analysis.
11. **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.
12. **Computers:** Please clearly label your answers to each question.
13. 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.
14. 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.
15. You may not copy, transcribe, or distribute the material in this booklet or attempt to do the same.
16. **Do not turn the page until instructed to begin.**
17. Good luck.

Cellular Charm Co., a publicly-held Delaware corporation, is in the business of making cell towers beautiful. Its wholly owned subsidiary, Delaware-based Titanium Topiaries LLC, is in the business of making home security systems beautiful.

Cellular Charm designs faux trees to serve as cell towers in forested areas – not the ordinary tower with a few tree branches that you’re used to seeing off the interstate but artful faux trees designed for the native landscape that would fool any but the most astute observer. For desert landscapes and prairies where towers cannot be easily camouflaged, Cellular Charm designs towers that are wonders of architectural beauty. The advances made by Cellular Charm in the aesthetics of tower infrastructure have made it easier for telecommunications companies to convince private landowners to house cell towers on their property.

Eddy Elity is on the board of directors for Cellular Charm. He is an outside director whose main job is running Synthetic Suppliers, a wholesaler of synthetic building materials including polymer-based substitutes for wood, glass, and brick. Eddy created Synthetic Suppliers with Roscoe Royalton nearly five years ago. There is no written agreement governing Synthetic Suppliers, but Eddy and Roscoe have been co-running the business since it first started and they’ve been splitting profits 50-50. Lately, Roscoe has been something of a thorn in the side of Eddy. Roscoe went on a personal retreat a few weeks back “to find himself,” and what he found instead was a commitment to the environment. His post-retreat mission has been to change the focus of Synthetic Suppliers from polymer-based products to all-natural products. So far, Eddy’s been able to hold off Roscoe’s efforts and keep Synthetic Suppliers pursuing its regular business.

The Cellular Charm board has five directors total. Apart from Eddy, the others are Deely Davison (an outside director who, for the past 10 years, has also served with Eddy on the board of Arboretum Alliance, a non-profit entity), Fern Fenkel (an outside director who is a manager of Cellular Charm’s wholly owned subsidiary Titanium Topiaries LLC), Gray Grader (an outside director who is also a manager of Titanium Topiaries), and Harley Haugway (the Chief Executive Officer of Cellular Charm and Eddy’s husband).

Eddy pitches the Cellular Charm board on a long-term supply contract between it and Synthetic Suppliers. The deal would increase Cellular Charm’s costs by just 1% but it would give stability to the company’s supply chain that has been lacking in recent months and which has been a constant threat of suddenly ballooning costs. The deal would be a tremendous boon to Synthetic Suppliers, increasing its revenue by 25%. Before this deal, Synthetic Suppliers had been operating in the red, losing substantial business to the “going green” building movement that Roscoe so wants to join. The Cellular Charm board unanimously approves the deal with Synthetic Suppliers.

When Cellular Charm shareholder Vance Vindal learns of the company’s deal with Synthetic Suppliers, he is aghast. He considers raising his concerns with the company itself,



FIG. 1: This cellular tower/palm tree combo monstrosity is exactly the type of eyesore Cellular Charm is looking to eliminate with its tower models.

Photo: Praditya Setiawan R, [Base Trainciever Tower with Tree Camouflage](#), CC BY-SA 4.0, via Wikimedia Commons

but, he figures, what would be the point? The entire board voted for this deal, which Vance considers insane. He files suit against all five directors of Cellular Charm in Delaware's Court of Chancery.

Cellular Charm isn't just having trouble with Vance. Things also aren't going great with its wholly owned subsidiary, Titanium Topiaries LLC. Titanium Topiaries, with a customer base of high-net-worth individuals, specializes in creating home security systems that seamlessly blend with home landscaping – typically disguised within topiaries.

Mel Maderos, Titanium Topiaries' "Gold Star Salesperson of the Year" (a moniker that appears under Mel's name and photo on the Titanium Topiaries website), has disappeared. It's not clear yet exactly what happened with Mel but it appears that he had substantial gambling debts and fled the country to avoid people to whom he owes large amounts of money.

The loss of Mel would be bad enough under ordinary circumstances (His sales numbers! His hilarious jokes around the water cooler!). But Titanium Topiaries learns that the 10 new clients Mel brought to the company in the past month (A company record!), each gave Mel a \$100,000 deposit check made out personally to "Mel Maderos" as the representative for Titanium Topiaries, and the monies are not in Titanium Topiaries' accounts. Clients do not normally pay a deposit to Titanium Topiaries. Rather, they're billed as services are completed. Clients are certainly never asked to write checks out directly to salespeople – but all of these new clients did.

Unfortunately, Titanium Topiaries doesn't have \$1,000,000 in ready cash to pay the clients Mel defrauded. In fact, the company only has about \$100,000 in ready cash – enough to carry the company through three months of operating expenses. Nor can Titanium Topiaries make these new clients whole by providing the services to each individual at what would be in substance a \$100,000 discount. Truth be told, charges for Titanium Topiaries' services, which are uniformly set and non-negotiable, run about \$50,000 for a typical acreage, exclusive of supplies and installation labor. Of course, new clients could not have known this, as the Titanium Topiaries website doesn't include price sheets or estimates (which they believe their high-net-worth clientele would find gauche) but rather leaves discussion of numbers to its salespeople. These leaves Titanium Topiaries in a tough spot: Unless new clients show up (which is unlikely given the onslaught of bad press Titanium Topiaries is going to experience when Mel's situation goes public), the company will be folding in just a few months.

Once they understand what has happened, the 10 new swindled clients band together and file suit against Titanium Topiaries, Titanium Topiaries' managers, and Cellular Charm. The complaint alleges multiple causes of action and seeks return of the plaintiffs' collective \$1,000,000 payment to Mel. Titanium Topiaries moves to dismiss, disavowing legal



FIG. 2: Topiaries are bushy plants carefully grown and trimmed into sharply defined shapes. These security topiaries are featured in the latest Titanium Topiaries catalog.

Photo: PookieFugglestien, [Longwood Gardens Topiary, Kennett Square, Pennsylvania](#), CC0, via Wikimedia Commons

responsibility for Mel's felonious conduct. And the Titanium Topiaries managers move to dismiss on the grounds that they're exempt from liability due to the following provision in the operating agreement of Titanium Topiaries:

2.10. *Duties.* To the fullest extent permitted by applicable law and notwithstanding any other provision of this agreement or any other agreement contemplated herein or applicable provision of law or equity or otherwise, the parties hereto hereby eliminate any and all fiduciary duties that any manager may have.

Finally, Cellular Charm moves to dismiss, noting that while Fern and Gray both manage Titanium Topiaries, they are just two of the company's ten managers. The other eight managers have no connection to Cellular Charm.

QUESTIONS

Provide analysis for the following:

- Question 1: Eddy would like to kick Roscoe out of Synthetic Suppliers due to their widely divergent views of the business' future. Discuss what options, if any, Eddy might have.
- Question 2: Discuss any issues, procedural and substantive, surrounding Vance's suit against the Cellular Charm directors.
- Question 3: Discuss the motion to dismiss filed by Titanium Topiaries.
- Question 4: Discuss the motion to dismiss filed by the managers of Titanium Topiaries.
- Question 5: Discuss the motion to dismiss filed by Cellular Charm.

Keep in mind the questions will not be given equal weight. The structure is provided for organizational purposes only. It may be entirely appropriate for one question to be answered with considerable brevity, while others 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:	Arboretum Alliance	HH:	Harley Haugway
CC:	Cellular Charm Co.	MM:	Mel Maderos
DD:	Deely Davison	RR:	Rosco Royalton
EE:	Eddy Elity	SS:	Synthetic Suppliers
FF:	Fern Fenkel	TT:	Titanium Topiaries LLC
GG:	Gray Grader	VV:	Vance Vindal

END OF EXAMINATION