Kern County College of Law

Business Organizations II

FINAL EXAM

Spring 2024

Prof. J. Harvey

Instructions:
This examination consists of three separate "fact patterns." Each one builds on the one prior, and each concludes with two or three questions. Some of the questions can be reasonably answered with "short answers" of three paragraphs or less. Others require a more in-depth analysis.

KCCL
Business Organizations II
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FACT PATTERN 1

Wayne Enterprises is a publicly traded corporation with more than $1 billion in assets. Bruce Wayne, the CEO and chairman of the board, owns 49% of the outstanding shares. The other members of the board are Alfred Butler and Richard Grayson. Neither Butler nor Grayson owns any shares, and neither is employed by Wayne Enterprises in any capacity.

Following a series of poor quarters in which the board had attempted to diversify the company's holdings, Mr. Wayne came to believe that the company's best path to success was to return to its roots manufacturing high-tech crime-fighting equipment for mercenary groups.

But almost immediately, a new opportunity arose. Prof. Harvey—who, in addition to teaching at the Kern County College of Law, occasionally moonlights as a mask-wearing lucha libre wrestler under the pseudonym "Hurricane Harvey"—contacts Mr. Wayne to set up a meeting. When Mr. Wayne asks about the purpose of the meeting, Prof. Harvey tells him the Kern County Lucha League is interested in purchasing a series of high-tech uniforms for its roster of wrestlers. Prof. Harvey indicates the League is ideally looking to partner with Wayne Enterprises on research and development and to co-own the suit designs—but that the League is also open to simply purchasing the suits if Wayne Enterprises bears 100% of the research and development costs.

Mr. Wayne feels certain that his organization's background in developing crime-fighting equipment will give it an advantage in the development process, and that partnering with the League will not be in the ultimate best interest of Wayne Enterprises. He indicates to Prof. Harvey that he is prepared to recommend that the Board begin developing the suits for sale to the League, with Wayne Enterprises to retain full ownership of all intellectual property rights involved.

Somehow, Vince McMahon—President of the World Wrestling Federation—learns of the meeting. He is not pleased that Wayne Enterprises will be outfitting another wrestling organization. McMahon immediately hatches a plan to scuttle the deal.

The next day, McMahon offers to purchase Wayne Enterprises' research, manufacturing, and product development divisions. He offers to pay a 10% premium over the fair market value of the divisions.

If Wayne Enterprises goes through with the sale, its only remaining lines of business will be in commercial real estate—Wayne Enterprises owns several large office complexes in which it rents space to commercial tenants—and a single legacy project in the renewable energy space.

Mr. Wayne decides the offer is too good to pass up. He calls McMahon and tells him Wayne Enterprises will agree to sell its research, manufacturing, and product development divisions to McMahon.

1. Jim Gordon, a Wayne Enterprises shareholder, learns of the agreement. He is not in favor of the sale and asks you for advice. Does Gordon have any recourse? What legal theories might he assert, and how likely will he be to succeed?

2. In addition to the facts given above, assume that before Wayne signs any contract, the shareholders all receive notice of a special meeting in 20 days for the purpose of approving the sale. Gordon remains opposed but hears rumors that Wayne may have enough shareholder support to approve the deal. Frustrated with his fellow shareholders, Gordon wants nothing more to do with Wayne Enterprises. What would you advise him to do next and why?

FACT PATTERN 2

Bruce Wayne, the CEO of Wayne Enterprises, wakes up in his bed. He realizes he has just had the strangest dream of his life. For some reason, after coming home from his meeting with Prof. Harvey, his mind apparently conjured up an elaborate scenario in which he agreed to sell several divisions of Wayne Enterprises to Vince McMahon.

Grateful that it was only a dream, Mr. Wayne contacts Prof. Harvey. The two formalize an agreement that provides: Wayne Enterprises will develop lucha suits for the League; the League will pay $5,000 per suit; Wayne Enterprises will retain all intellectual property rights; and Wayne Enterprises will not sell the suits or any substantially similar product to any other wrestling organization for a period of 10 years.

Everything appears to be going well. But one day, Joseph Kerr—global director of sales for Wayne Enterprises—receives a phone call from Prof. Starr. Suffice to say Prof. Starr is not a fan of the Kern County Lucha League, which previously banned him from competition for life for using his signature finishing move, the "Death Starr," on an unsuspecting audience member. He has since found success as an executive for a competing circuit, the Kern County Fighting Federation.

Prof. Starr, having heard an industry rumor that Wayne Enterprises was manufacturing lucha suits, offers on behalf of the Fighting Federation to purchase 100% of the lucha suits

manufactured by Wayne Enterprises for the next five years. Although Prof. Starr does not know Wayne Enterprises has already formalized an exclusive contract with the League, his offer is higher—$6,000 per suit.

Kerr immediately approached Wayne with Prof. Starr's proposal, but Wayne is concerned about potential liability to the League. He takes a moment to consider and instructs Kerr not to make a deal with the Fighting Federation.

Kerr, whose bonuses are based on product sales, is furious. He instructs a subordinate in the sales division—Ping Nguyen, the regional head of sales for North America—to get in touch with Prof. Starr and formalize an agreement to sell 50 lucha suits to the Fighting Federation for $6,000 per suit. Nguyen does as instructed.

Mr. Wayne learns of the deal a few days later. He immediately fires Kerr and Nguyen. He then calls Prof. Starr, explains that Kerr had been specifically instructed not to sell lucha suits to the Fighting Federation, and indicates that Wayne Enterprises will be unable to fill the order. Prof. Starr indicates that if Wayne Enterprises does not fill the order, the Fighting Federation will have to obtain replacement suits from another manufacturer at a higher cost and intends to sue for the difference.

Mr. Wayne comes to you—newly-hired in-house counsel for Wayne Enterprises—for advice. Specifically, Mr. Wayne wants to know:

1. Is Wayne Enterprises liable for breach of contract if it does not sell lucha suits to the Fighting Federation? Why or why not? (You can assume that if Wayne Enterprises is bound by the contract, then it would be liable for breach if it did not sell the suits.)

2. Does Wayne Enterprises have any potential recourse against Kerr? What theories might Wayne Enterprises assert, and how likely would they be to succeed?

3. Does Wayne Enterprises have any potential recourse against Nguyen? What theories might Wayne Enterprises assert, and how likely would they be to succeed?

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FACT PATTERN 3

Ping Nguyen was extremely upset by his firing. How was he supposed to know that Wayne instructed Kerr not to sell lucha suits to the Fighting Federation? He swears revenge.

After hatching a plan, Nguyen contacts Ed Nashton, an old friend in the research and development department at Wayne Enterprises. Nashton has been frustrated with Wayne Enterprises for years, having been passed over for a number of promotions due to an unfortunate and annoying habit of responding to questions with other questions. Although generally disliked, Nashton has remained too valuable an asset to let go, due to his invention of several prototype weapon designs that yielded significant profit.

After the two spend some time discussing their grievances with Wayne Enterprises, Nguyen makes his proposal: They should exact revenge on Wayne Enterprises by selling their own weapons based on prototype technologies Nashton and his team had been developing.

Nashton likes the idea, and he immediately identifies several early-stage designs that Wayne's R&D team is not likely to complete for several years. Most of their resources have been re-directed to lucha suits for the time being, and weapons development has become less of a focus.

Initially, the plan seems to work. The two form a corporation, Arkham Armaments, and appoint themselves as initial directors. Next, they launch a highly successful initial public offering, fueled primarily by the promise of several pending weapons patents. Nguyen and Nashton each acquire 30% of Arkham's shares, and the rest are purchased by investors and traded on public exchanges.

A few weeks later, however, Nashton receives a letter from an attorney representing Wayne Enterprises, seeking information on the research and development timeline for Arkham's pending patents. Nashton—whose Wayne Enterprises contract provided that the company owned anything he invented in the course of his employment or using company resources—was initially nervous. If Wayne Enterprises made a claim to the patents, Arkham stock would likely drop quickly.

But Nashton came up with a plan. Nobody else had seen the letter, and the next SEC quarterly report was not due for several weeks. Reasoning that there is nothing unusual about company founders selling out and moving to tropical islands after their IPOs succeed, Nashton decides he will simply sell all his Arkham stock. That way, whatever the fate of the patent, his fortune would be secure.

Unfortunately for Nashton, it's hard to keep anything secret for long. Selina Kyle, a former Wayne Enterprises colleague who worked in the research and development department before quitting several years ago, recognized that some of Arkham's prototypes incorporated Wayne technologies that she and Nashton had previously worked on together. Hatching her own plan, she sees an opportunity to earn a small fortune "short trading" Arkham stock. (A "short trade" is essentially a bet by an investor that a stock will go down. If the price drops below the "short" price, the investor is owed the difference. If the stock price does not drop below the "short" price, the investor owes the difference. Short trades are considered securities transactions for purposes of federal and state securities laws.) Recognizing as Nashton did that a claim by Wayne Enterprises to the pending Arkham patents would likely devastate Arkham's stock price, Kyle realizes she can ensure the success of her short trades by notifying Wayne Enterprises of Nashton's misappropriation, thereby prompting Wayne Enterprises to claim ownership of the Arkham patents and causing the Arkham
stock drop Kyle is banking on.

Kyle immediately meets with her stockbroker to place the shorts. Unbeknownst to Kyle, however, the walls of her broker's office are thin and Patti Irving, who works in the frozen yogurt shop next door, overhears. Patti doesn't understand much of the conversation, but the bit about stolen weapon designs sounds interesting and she decides to ask her sister Paula—who works as a dentist but regularly day-trades as a hobby—what "short trades" are. Patti relays the entire conversation to Paula in detail. Paula makes a mental note to visit her own stockbroker the next day to copy Kyle's plan of "shorting" Arkham stock.

1. What is your legal advice to Nashton with respect to his plan to sell his Arkham stock before news breaks of a potential issue with Arkham's patents? Explain your analysis.

2. What is your legal advice to Kyle regarding her plan to short trade Arkham stock? Explain your analysis.

3. What is your legal advice to Paula Irving regarding her ability to trade on the information her sister Patti overheard? Explain your analysis.

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COURSE: KCCL 343B Business Organizations

GIVEN: Spring 2024

GRADING CONSIDERATIONS FOR FACT PATTERN 1

Student answers should ideally discuss all of the following:

Question 1

As a Wayne Enterprises shareholder, Gordon has standing to enjoin the sale.

The following general rules are relevant as a starting point:

1. Fundamental changes in the structure of a corporation have to be approved by the shareholders.
2. A sale of substantially all of a corporation's assets or lines of business amounts to a fundamental change in the structure of the corporation.
3. A shareholder who dissents from an action amounting to a fundamental change will normally have dissenters' appraisal rights—that is, they have the right to force the corporation to purchase their shares for fair value.
4. Corporate actions are normally not subject to challenge by a shareholder who, under the circumstances, has appraisal rights. But exceptions arise in cases of fraud, misrepresentation, or improper procedure.

Here, the transaction at issue involves a sale of substantially all of WE's assets. Such transactions amount to fundamental changes in the structure of the corporation and must be approved by the shareholders. But the shareholders were never given the opportunity to vote. Accordingly, the "improper procedure" exception to the general rule regarding dissenters' rights applies here, and Gordon can enjoin the sale.

Question 2

As with question 1, the problem involves sale of substantially all of WE's assets. But here, a shareholder meeting has been noticed for 20 days. Shareholders must be given notice of special meetings no less than 10 and no more than 60 days in advance, so the amount of notice here is sufficient. Shareholders must also be given notice of the purpose of any special meeting, which occurred here. The meeting appears to be duly noticed.

Given that Gordon is not in favor of the proposed transaction but it appears primed to pass, his main recourse would normally be to invoke his appraisal rights and demand that the corporation purchase his shares for their fair value. In this instance, however, we are told that the shares of Wayne Enterprises are publicly traded. As a result, Gordon's appraisal rights are subject to a market-out exception and he will not be able to require the corporation to repurchase his shares.

If Gordon wants out of Wayne Enterprises, his best move is to sell his shares on the public exchanges.

GRADING CONSIDERATIONS FOR FACT PATTERN 2

Student answers should ideally discuss all of the following:

Question 1

Wayne Enterprises is most likely bound to perform the contract with the Fighting Federation.

As a general rule, a principal is bound by a contract its agent entered on the principal's behalf as long as the agent acted with actual or apparent authority. Actual authority to contract with a third person exists when the agent has been expressly or impliedly authorized by the principal to enter the contract. Apparent authority to enter a contract with a third person exists when the third person reasonably believes—based on the objective manifestations of the principal, or the manifestations of the agent within the scope of the agent's actual authority—that the agent has authority to bind the principal to the contract.

Here, Nguyen is WE's agent because he is employed by WE. He at least *purported* to enter the contract on WE's behalf. Accordingly, WE will be bound as long as entering the contract was within the scope of Nguyen's actual or apparent authority.

> Actual authority. Whether Nguyen had actual authority is questionable, but he will likely be found to have actual authority. From his perspective, he certainly believed he did—he was given a direct order by his superior to enter the contract. His position—regional manager of sales for an entire continent—also strongly suggests that he has actual authority to enter contracts of this magnitude on his own discretion. Even though it appears Kerr *lacked* actual authority to enter the contract—due to the express directive from Wayne—Nguyen's own actual authority does not appear to be exclusively derivative of Kerr's; that is, Nguyen has an independent basis for his actual authority (his position) that does not rely on the fact he is following Kerr's orders.
>
> Apparent authority. Nguyen almost certainly had apparent authority, from Prof. Starr's position, to bind WE to the contract with the Fighting Federation. As mentioned, an agent has apparent authority to bind his principal to a contract with a third person when the third person reasonably believes—based on the objective manifestations of the principal, or the manifestations of the agent within the scope of the agent's actual authority—that the agent has authority to bind the principal to the contract. Here, there is only one objective manifestation of the principal worth discussing: its act of appointing Nguyen regional director of sales for the North American region. That fact alone is likely sufficient to find apparent authority existed, but even if not, additional support can be found in the fact that Nguyen appears to have had *actual* authority to enter the contract, and held himself out to Prof. Starr to have such authority. To the extent those representations were within the scope of Nguyen's actual authority, they support a finding of apparent authority as well.

Question 2

WE is likely entitled to indemnity from Kerr.

In general, an agent is liable to indemnify the principal when the agent causes the principal to be bound to a contract despite the agent lacking actual authority to do so.

Here, Kerr was given an express directive from Wayne *not* to enter the contract with the Fighting Federation. Accordingly, he lacked actual authority to bind WE to the contract.

Causation is somewhat attenuated here because Kerr did not personally place the phone call to Prof. Starr or sign the contract himself. It still seems appropriate to say he caused it to happen, however, because Nguyen—Kerr's subordinate—bound WE to the contract on Kerr's express directive.

Because Kerr caused WE to become bound to a contract despite his lack of actual authority to bind WE to the contract, he will most likely be liable to indemnify WE.

(Another way of looking at the situation, along the same lines, arises from Kerr's lack of actual authority to direct Nguyen to enter the contract with the Fighting Federation in light of Wayne's express directive. "Don't enter that contract" fairly includes "don't order your subordinate to enter that contract." Instead of discussing the problem in terms of the harm Kerr caused by "causing WE to enter the contract," students could also discuss the harm in terms of Kerr giving the instruction in the first place. Either way, it's likely Kerr will have to indemnify WE.)

GRADING CONSIDERATIONS FOR FACT PATTERN 3

Question 1

Securities fraud

Under rule 10b-5, Nashton's plan could subject him to liability for securities fraud. Such liability arises when a person (i) makes a fraudulent statement or omission of material fact (ii) in connection with the purchase or sale of a security, (iii) with intent to deceive or reckless disregard for the truth or falsity of a statement, (iv) causing loss.

> Fraudulent statement or omission of material fact. A fact is material if a reasonable person would consider it important in deciding whether to purchase or sell a security. Here, anyone considering a purchase or sale of Arkham stock would want to know about the risk of a Wayne Enterprises claim to Arkham's pending patents. But it isn't clear if Nashton has made any affirmative statements, and liability for omission only arises where disclosure would be necessary to make whatever statements *were* made *not* misleading. Nashton may not have a duty of disclosure here unless he has previously made positive statements about Arkham's rights to the patents. (It doesn't necessarily matter what students conclude, but they should identify that there is a question regarding Nashton's duty to disclose the information and that it turns on whether the omission renders some affirmative statement misleading.)
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> Connection with securities transaction. If Nashton goes forward with his plan, his omission will have been made in connection with his sale of Arkham securities.
>
> Intent to deceive. Nashton's motivation in *not* disclosing the potential issues with Arkham's patents is evidently to protect the price of his stock from dropping. The intent element appears to be met.
>
> Causing loss. This element will be met, as to any purchaser of Nashton's Arkham stock, if the stock price subsequently drops as a result of Wayne Enterprises making a claim to Arkham's patents.

In some circumstances, the plaintiff must also prove his reliance on the fraudulent statement or omission, but an exception applies under a "fraud on the market" theory when the shares are publicly traded; that is, traders of publicly traded securities generally presume and rely on the integrity of the market price when they trade. Here, Arkham securities are publicly traded so a plaintiff would not need to prove reliance.

Finally, the plaintiff must prove that the defendant made use of the mails or some other instrumentality of interstate commerce to perpetuate the fraud, unless the securities are publicly traded. Here, the securities are publicly traded so this element is met.

For purposes of rule 10b-5 securities fraud, Nashton should abstain from selling his stock or disclose what he knows about the threat to Arkham's patents, unless he has not made any affirmative statements that would give rise to a duty to disclose.

Insider trading

Even if Nashton would not be liable for a fraudulent omission under rule 10b-5, his plan to sell Arkham stock appears to constitute prohibited insider trading.

Under rule 10b-5, insiders—like directors, officers, employees, and controlling shareholders—have a duty to refrain from trading on the basis of material information not disclosed to the public.

As a director, Nashton is clearly an insider. And the potential threat to Arkham's patents is not known to the public. Accordingly, Nashton is prohibited from trading on the basis of his knowledge of WE's potential claim if a reasonable investor would consider the information important in deciding whether to buy Arkham stock—which certainly seems to be the case.

Nashton should either abstain from selling his stock or disclose what he knows about the threat to Arkham's patents.

Short-swing trading

Under rule 16b, directors, officers, and persons owning more than 10% of a publicly traded company's stock are prohibited from selling shares within six months of purchasing them. The facts indicate that "weeks" have passed since Nashton acquired his 30%, which would satisfy the "within six months" requirement if he sells. Students may point out that the transaction by which someone *becomes* a controlling shareholder is not a covered purchase for purposes of Rule 16b, but the distinction is irrelevant here because Nashton was a director at the time of the purchase. Nashton should abstain from the sale to avoid liability for earning an illegal short-swing profit. Otherwise, he would have to disgorge his profit to the corporation.

Question 2

The rules governing rule 10b-5 securities fraud, insider trading, and short-swing trading are the same as for Question 1.

Kyle, an employee of Wayne Enterprises, is not an Arkham insider. The facts do not indicate that she has made any affirmative statements about Arkham stock, so she is not likely subject to any duty to disclose information in connection with her plan to short trade Arkham stock. Accordingly, Kyle does not appear to have any potential liability for securities fraud under rule 10b-5.

Kyle also does not appear to have any liability for insider trading. Under rule 10b-5, outsiders can only be held liable for insider trading where they misappropriate information, thereby breaching a duty owed to the source of the information. Here, Kyle knows that Arkham's patents are based on Nashton's designs from working at Wayne Enterprises because she helped design them in her capacity as a Wayne Enterprises employee. There is no indication that she obtained the information illegally, and the facts do not suggest she owes any duty to Wayne Enterprises or Nashton to refrain from using her knowledge of WE's research for purposes of making investment decisions (except in connection with buying or selling WE stock, which could amount to insider trading due to her prior employment there).

Kyle does not appear to be risking liability to anyone by proceeding with her plan.

Question 3

The rules governing rule 10b-5 securities fraud, insider trading, and short-swing trading are the same as for Question 1.

Paula is not an Arkham insider. The facts do not indicate that she has made any affirmative statements about Arkham stock, so she is not likely subject to any duty to disclose information in connection with trading Arkham stock. Accordingly, Paula does not appear to have any potential liability for securities fraud under rule 10b-5.

She also does not appear to have any liability for outsider trading on a misappropriation theory. Like Kyle, there is no indication Paula obtained her information about the source of Arkham's patents illegally or in breach of any duty owed to anyone.

Paula, in this circumstance, is a tippee. She received information not disclosed to the public by what amounts to happenstance, without being an insider or misappropriating anything. Tippees can be held liable for insider trading, but their liability is derivative of the tipper's liability, and only attaches where (i) the tipper breached a duty in giving the tip; and (ii) the tippee knew the tipper was breaching the duty.

Here, Paula's information comes from her sister—who overheard a conversation between Kyle and Kyle's stockbroker. The facts do not indicate that Kyle was under any duty not to disclose what she knew about the source of Arkham's patents, or that Patti was under any duty not to disclose what she overheard, so Paula will not have tippee liability for insider trading.

Paula does not appear to be risking liability to anyone by trading on the information.

1)

1.) Wayne Enterprises

Jim Gordon is a shareholder of Wayne Enterprises. Wayne Enterprises is a publicly traded corporation de jure, with over $1 billion in assets. Wayne Enterprises is comprised of its Shareholders, its Board of Directors and its Officers. Unique to Wayne Enterprises is the Board of Directors being comprised of only Bruce Wayne, Alfred Butler and Richard Grayson. Both Butler and Grayson are outside directors, holding no shares and no employment within the corporation. Upon learning of the sale that Bruce Wayne, on behalf of Wayne Enterprises plans to enter into with Vince McMahon of the World Wrestling Federation, Gordon has the position and authority to exercise his shareholder rights. If Wayne Enterprises sells the research, manufacturing, and product development divisions of the corporation, it will fundamentally change the corporation altogether.

Fundamental Changes

When a corporation is going to fundamentally change its infrastructure, four elements must be adhered to.

1.) There has to be a written Resolution with Consent

2.) It has to be approved by a quorum of shareholders by vote

3.) It has to be adopted and filed with the secretary of state, and

4.) Proper notice must be provided within 10-60 days.

Gordon and his dissent, poses a problem for element number one being that he doesn't agree with Bruce Waynes plans to sell and he will not consent. Gordon may be a major shareholder, the facts don't state specifically. Gordon will be allowed to vote in favor or opposition during the special shareholders meeting and he will cast a vote for every share that he is entitled to. The first step for Gordon, in his disagreement with Bruce Wayne, is to vote against the fundamental change at the shareholder meeting.

Bruce Wayne is one of only three directors on the board for Wayne Enterprises. As a shareholder, and knowing that Bruce Wayne is the leader of the decision to sell a majority

part of the corporation to McMahon, Gordon can initiate a vote to remove Wayne from the Board of Directors. Bruce Wayne has 49% of the current shares so in order for Gordon to be successful with this attempt at removing him from the board, he would need everyone else to vote like him. A quorum would be required, over 50%, and since Wayne owns 49%, that leaves everyone but him to vote the same.

Based on the large amount of shares that Bruce Wayne has, and the fact that he represents 1/3 of the board of directors, it is unlikely that Gordon would succeed in his removal of Wayne from the board and in opposition of the fundamental change to the corporation.

2.) Shareholder Meeting

If the rumors that Gordon is privy to are true, and in fact, Bruce Wayne does have a majority shareholder approval, I would advise Gordon to pursue any/all options afforded to him in the corporations bi-laws. At the basic minimum, I I would suggest calling a special meeting.

Like any shareholder, Jim Gordon is accustomed to attended the annual meeting. However, in times of necessity and change, such as this, Gordon has the authority to request a special meeting. In order for special meeting to be approved/authorized, Gordon will have to give 1.) a minimum of 2 days notice, 2.) time, 3.) date, 4.) location and 5.) purpose of the meeting to all shareholders. Once the proper notice has been given to all shareholders and the time of the meeting arrives, there must be quorum present. Quorum is required in order to have a majority present with over 50% of the shares represented at the meeting. Bruce Wayne holds 49% of the shares, so at a minimum, there will need to be at least 2% more there share wise. Prior to the special meeting, if Gordon plans to vote against selling to McMahon, Gordon will need to follow the proper procedure for invoking his dissenter appraisal rights as a shareholder of the corporation.

Dissenter Appraisal Rights

If Gordon was able to express dissent with the direction the corporation is headed, he could invoke his dissenter appraisal rights. Gordon would need to:

A.) Provide written notice to the corporation that he intends to invoke his dissenter appraisal rights.

B.) Object to the motion at the special meeting.

C.) The Corporation would provide a written notice, within 2 weeks of the meeting, offering to buy Gordon's shares and

D.) Gordon could accept the offer, or counter their offer.

E.) If the corporation rejects Gordon's counter offer, the corporation could sue him to have the courts establish fair market value for his shares.

Under the above guidelines, the corporation could buy/absorb Gordon's shares due to him dissenting with selling a large portion of the corporations operations. However, because Wayne Enterprises is subject to the open, public market place, the corporation would just force him to sell his shares on the open market.

Market Exemption Rights

Due to the publicly traded nature of Wayne Enterprises, Gordon is not in a position to force the corporation to buy his shares. The Market Exemption Rule forces shareholders in situations liked Gordon's to sell their shares on the publicly traded marketplace.

Gordon is unlikely to succeed in asserting Dissenter Appraisal Rights and will need to sell his shares to dissolve his involvement with Wayne Enterprises Corp.

2)

1. Is Wayne Enterprises liable for breach of contract if it does not sell lucha suits to the Fighting Federation (FF)? Why or why not?

Agency

An agency relationship exists when the principal has given the agent authority to act on the principals behalf in dealings with third parties. Agency relationship will occur when there is an agreement between the principal and agent, for the benefit of the principal, and the principal has control over the agent. A principal will bound by a contract if the agent acted with actual, implied, or apparent authority. A corporation will be bound to a contract, under agency laws, if a director or officer acted with actual or apparent authority. Here, WE will liable for breach of contract if K had the actual or apparent authority to do so.

Actual Authority

Express actual authority exists when the principal expressly grants the agent authority. This can be done orally, or by writing should the Statute of Fraud require. Implied actual authority exists when the agent reasonably believes the principal has granted them authority based on past customs, traditions, or prior-dealings. Here, BW gave express orders to K not to enter into contract with FF and PS. K could argue that due prior-dealings or custom of his job entitled he had the implied, actual authority to enter into contract with PS and FF. However, the fact that BW expressly told K not to do so, trumps any prior-dealings or customs.

Therefore, K did not have actual authority.

Apparent Authority

A principal will be bound to a contract an agent entered into is principal gives the agent the appearance of authority, which a third party reasonably relies on. Here, K can argue that he had apparent authority because his job titled is the director of sales for WE and he the corporation incentivizes him by giving him bonuses based on product sales. Prof. Starr (PS), as the third party, reasonably relied on the fact that K was in a position to be taking offers and accepting them from based on his job title alone. A reasonable person could infer that K was in the position to be accepting these kinds of transactions based on his job title. Although, BW gave K express orders to

not go through with the sale to FF, FF was unknown of this fact but reasonably relied on the fact that K and N were acting on behalf of WE due to their positions.

Therefore, K did have apparent authority to enter into contract with PS and the FF.

In conclusion, WE is liable to FF for breach of contract because K, acting on behalf of WE with apparent authority, entered into contract with WE.

2. Does Wayne Enterprises have any potential recourse against Kerr (K)? What theories might Wayne Enterprises assert, and how likely would they be to succeed?

Indemnification

Indemnification is the when the corporation is found liable to a third party because the agent director/officer with apparent authority, the corporation can indemnify (make liable) the director/officer. Here, K was acting out of the scope of the BW's wishes. BW as the principal in the agency relationship has the authority to control the agent's action. Indemnification would allow for K to be liable for the breach of contract between WE and FF. Since FF reasonably relied on the contract entered into with WE, indemnification would allow for K to be liable for the different in prices that FF would have to pay getting their lucha suits from another company.

Therefore, K would be liable for the monetary difference in the price of the suits that FF would have to get from someone else.

Fiduciary Duty

Directors/officers have a fiduciary duty to the corporation, which include duty of loyalty, duty of disclosure, and duty of care. Under a duty of loyalty, the director may not be involved in business that would cause a conflict of interest, usurping the corporation, and/or unfair competition. Here, K breached his fiduciary duty because there was conflict of interested between his own interests and the best interest of the corporation. BW, as the CEO and chairman, decided that it was in the best interest of the corporation to continue with the sale of the suits to Hurricane Harvey (HH), however, K acted in self-dealings because he decided to go ahead with the sale to FF because it would create a monetary, personal gain for him. In this moment, K put his interests above the interest of the corporation.

Therefore, K breached his fiduciary duty.

3. Does Wayne Enterprises have any potential recourse for Nguyen (N)? What theories might Wayne Enterprises assert, and how likely would they be to succeed?

Indemnification/Reliance

Indemnification is the when the corporation is found liable to a third party because the director/officer with apparent authority, the corporation can indemnify (make liable) the director/officer. It is not unlikely for an officer/director to act on behalf of the corporation because they reasonably relied on another directors/officer's orders. Here, N will argue that he was a subordinate employee, under the direction of K. He will argue that it is not unlikely for him to take orders from K, the director of sales. N will also argue that it is within the scope of his employment to oversee regional sales in North America. Typically, K as the director of sales, is a liaison for the WE's wishes, which are then instructed to employees such as N, to execute.

Due to N's reasonable reliance on K's orders and the fact that he was acting within the scope of his employment, it is unlikely that WE will be able to indemnify N.

3)

1. What is your legal advice to Nashton with respect to his plan to sell his Arkham stock?

Rule 10b-5

Rule 10b-5 prohibits the fraudulent scheme of the sale of securities. Liability occurs when there is (1) a fraudulent statement or omission of a material fact, (2) in connection to a sale of a security, (3) with intent to deceive or with reckless disregard of the truth, and (4) causing loss.

Fraudulent Statement or Omission of a Material Fact. Nashton, prior to the sale of his securities, received a letter from Wayne Enterprises warning that the inventions were patent pending and they would make a claim to the patent of the weapons Arkham Armaments would create. Nashton, knowing this letter would cause people to sell their stocks, omitted from informing anyone of the letter. This letter is material to the loss of the company and by omitting this letter, Nashton is allowing many people to severely lose money in the market.

Connection to Sale of Security. The omission of this letter is in connection to the sale of Nashton's securities as it scared him enough to make him sell, but made him omit the letter so others would not sell.

Intent to Deceive or Reckless Disregard for the Truth. Nashton showed a reckless disregard for the truth by reasoning that the sell of his stocks, prior to a crash in the market, would allow him to move to tropical islands. There is no concern for Nguyen or any other shareholders, and the truth was omitted so Nashton could buyout early.

Causing Loss. There is no proof of loss, but omission of the letter may cause many shareholders a significant loss within the stock market.

Tipper/Tippee

A "tipper" is an insider who gives information to a "tippee" regarding potential effects on the shares/stocks of the corporation. A tipper may be liable when the information is shared for an improper purpose, and the tippee acts on the information shared to them.

Here, Nashton shared the inside logistics of Wayne Enterprises weapon making and used his information to share with Nguyen to make Arkham Armaments. Nashton, prior to the release of the information, expressed

frustration with Wayne Enterprises, because he was continually passed up on promotions. Nashton used this reasoning to improperly share information on weapon creations by Wayne Enterprises.

Nashton acted as a "tipper" and committed insider trading.

Misappropriation

Where a tippee owed a duty to the tipper, and violated that duty by improperly acting on the information from the tipper, misappropriation applies. Duty is owed when: (1) there is an express agreement, (2) there is a history of duty, or (3) there is a familial relationship.

Here, Nashton having worked with Wayne Enterprises for years and had a history of owing them a duty of good faith and fair dealing, misappropriated against Wayne Enterprises by spreading insider information. Further, Nashton's contract expressly stated that the company owned anything Nashton invented in the course of his employment or using company resources. Nashton had an express duty to honor the contract made with Wayne Enterprises and failed to do so.

Rule 16b

Rule 16 prohibits officers, directors, or shareholders who own more than 10% of shares to profit off of short-swing trading. Short-swing trading is the purchase and sale or sale and purchase of corporate stocks within a six-month period.

Position. Here, Nashton is a director and acquired 30% of stock in Arkham Armaments. Nashton may not short-swing trade.

First Transaction. No evidence of transaction. If he sells his stock, this would be the first transaction.

Second Transaction. As a board member, the selling of stock does not mean that there is no longer liability. If he buys back stock, he may be found liable of short-swing trading.

Liability. Not liable, but could be if he sells his stock, then buys stock within six months.

Rule 16b does not apply.

Conclusion

Nashton should stop any and all creations of any Wayne Enterprise materials, as he not only committed insider trading over the prototypes, it would also be the best way to save his company. By making new weaponry that does not belong to Wayne Enterprises, Nashton may be able to save the company from insolvency.

Additionally, if he wanted to buy back in, he would violate Rule 16b, so by keeping his stock, he avoids risk of violation.

2. What is your legal advice to Kyle regarding her plan to short trade?

Rule 10b-5

Rule 10b-5 prohibits the fraudulent scheme of the sale of securities. Liability occurs when there is (1) a fraudulent statement or omission of a material fact, (2) in connection to a sale of a security, (3) with intent to deceive or with reckless disregard of the truth, and (4) causing loss.

Fraudulent Statement or Omission of a Material Fact. Here, Kyle fails to warn any other shareholders that she is aware of the prototypes belonging to Wayne. However, Kyle decides to warn Wayne Enterprises that Arkham is using their prototypes. Yet, she omits that she is "short trading" and that the loss to Arkham would result in a lot of money for her.

Connection to Sale of Security. This is in connection to the sell of a security as she is Kyle is betting on securities transactions.

Intent to Deceive or Reckless Disregard for the Truth. Here, Kyle refuses to tell other shareholders of the prototypes belonging to Wayne, because she is betting that the stock will go down and does not want anyone else being entitled to the difference.

Causing Loss. There is no proof of loss, but this will likely lead to shareholders losing in the stock market and Arkham will lose everything.

Tipper/Tippee

A "tipper" is an insider who gives information to a "tippee" regarding potential effects on the shares/stocks of the corporation. A tipper may be liable when the information is shared for an improper purpose, and the tippee acts on the information shared to them.

Kyle, unintentionally, while talking to her stockbroker, allows Patti to hear her plan to short trade, and Patti passes this information on to Paula. Kyle may not be liable, because Patti's actions on the information were not improper. Patti passed the information on to her sister, and in turn became the tipper, Kyle is no longer responsible for the information given to Paula. Kyle will further argue that the information was spread to Patti unintentionally, because Patti overheard through the wall. Although, if Patti were to trade on the information, or the stockbroker were to, Kyle would be liable for insider trading.

Misappropriation

Where a tippee owed a duty to the tipper, and violated that duty by improperly acting on the information from the tipper, misappropriation applies. Duty is owed when: (1) there is an express agreement, (2) there is a history of duty, or (3) there is a familial relationship.

No relationship between Patti and Kyle exists.

Rule 16b

Rule 16 prohibits officers, directors, or shareholders who own more than 10% of shares to profit off of short-swing trading. Short-swing trading is the purchase and sale or sale and purchase of corporate stocks within a six-month period.

Position. Kyle does not hold a position that makes her liable for short-swing trading.

Rule 16b does not apply.

Conclusion

Kyle should report the prototype to Wayne Enterprises, and not try to short trade on the corporation, because she will be found in violation of Rule 10b-5. If there will not be a loss , Kyle may be able to short trade without any violation of law.

3. What is your legal advice to Paula Irving regarding her ability to trade on the information her sister overheard?

Tipper/Tippee

A "tipper" is an insider who gives information to a "tippee" regarding potential effects on the shares/stocks of the corporation. A tipper may be liable when the information is shared for an improper purpose, and the tippee acts on the information shared to them.

Here, Patti became a "tipper" by passing along to Paula the information she overheard at the frozen yogurt shop. Patti passed this information, without having knowledge of what it meant, however Paula still makes a mental note to visit her stockbroker. There is no indication that Paula has met with her stockbroker or acted upon the information passed from Patti.

In order to avoid liability for both her and Patti, Paula should not act on the information heard from Patti.

Misappropriation

Where a tippee owed a duty to the tipper, and violated that duty by improperly acting on the information from the tipper, misappropriation applies. Duty is owed when: (1) there is an express agreement, (2) there is a history of duty, or (3) there is a familial relationship.

Here, if Paula were to act on the information given from Patti, she would violate her duty to avoid misappropriation. Patti is Paula's sister and, in acting on the information passed from Patti, Paula would violate her duty established through her familial relationship.

Conclusion

In order to avoid misappropriation and insider trading, Paula should refrain from acting on the information gathered from Patti.

END OF EXAM