

BUSINESS ASSOCIATIONS

TAKE-HOME EXAM

Try to show thought and critical analysis of the materials and issues dealt with in the course.

DO read the questions carefully and think about your answers before beginning to write.

DO refer to statutory provisions, cases and other materials where appropriate. If you make general statements, try to back them up with specific references.

DO NOT use abbreviations unless you explain what you are using them to stand for.

DO NOT make assumptions in answering the hypothetical.

DO explain what further information you might need in order to answer the question properly.

DO write legibly and clearly.

You will get credit for following these instructions, and may be penalized for failing to do so.

Zedcorp is a corporation which carries on business, and is incorporated, in Arcadia, a state in the US. Zedcorp is in the sustainable lifestyle business, and sells products such as recycled clothing, gardening equipment, and sustainable food products. A part of Zedcorp's business involves providing an online marketplace where members of Zedcorp's Community can trade with each other. Zedcorp also publishes an online newsletter with sustainable lifestyle advice. All of Zedcorp's public announcements and publications express its deep commitment to sustainability and doing what is best for the planet. In particular, Zedcorp's webpage includes a link to the Zedcorp Supply Chain Management Code, which describes in detail the steps Zedcorp takes to ensure that its products are sourced responsibly.

Zedcorp has a number of shareholders who have decided to invest in Zedcorp because of these public announcements and publications.

Anna is the founder and CEO of Zedcorp and is a 15% shareholder. Bee is the Chief Financial Officer and Con is the Chief Sustainability Officer (and editor of the newsletter). Bee and Con each own 5% of the shares in Zedcorp. Anna, Bee and Con all met at college fifteen years ago and spend much of their time together at work and outside the work environment. Their families are also close. Anna, Bee and Con are also directors of Zedcorp. For a number of years the other three directors have been Dee, Ed and Farah. Dee is Anna's cousin. The Board has always been determined to make sure that Zedcorp treats employees well, and that they benefit from generous pay and working conditions.

Ed is in the investment business and a while ago he introduced Gray, who is a friend of his, to the Zedcorp Board. Gray works for Ycap, an investment fund that is always looking for profitable opportunities. The Board and Gray negotiated terms on which Ycap would invest in preferred stock in Zedcorp. The terms included a provision that Ycap would have the right to nominate a director to the Zedcorp Board of directors. Ycap has nominated Gray to be its director. Unknown to the rest of the Board, Ed had agreed with Gray that he would look out for Ycap's interests. Gray has often in the past given Ed useful tips about investment trends and ideas and Ed feels grateful to him

(and also hopes for more useful information in the future).

Ycap wants its investments to be profitable, and Board meetings have recently been devoted to discussing how Zedcorp might become more profitable, including limiting benefits to employees. Anna has resisted most of these suggestions and the other Board members, apart from Ed and Gray, have supported her. However, one initiative resulting from these discussions was a decision by the Board to source gardening products more cheaply. Zedcorp arranged to buy seeds and plants from a company in Ruritania, a developing country that has a large agricultural sector. Gray recommended a particular Ruritanian company as the company Zedcorp should deal with, without disclosing to Zedcorp that Ycap owned a significant investment in the company.

Unfortunately the timing of the new sourcing of garden products coincided with the departure of the Zedcorp employee who had been responsible for implementing the Zedcorp Supply Chain Management Code. The employee left because of the change in atmosphere at Zedcorp after Ycap became an investor. At the same time, Anna, Bee and Con were distracted by preparations for Zedcorp's 10th anniversary celebrations. Some of the plants and seeds Zedcorp imported from Ruritania were affected by a parasite that can easily spread and which can cause people who eat vegetables produced by the affected plants to become very sick. Some Zedcorp employees were affected by this sickness early on, but it took some time for anyone to realize what the source of the sickness was. At two Zedcorp Board meetings the issue of the sickness was discussed briefly, but no steps were taken to begin an investigation, or to stop selling garden products.

Gradually the sickness spread and a number of Zedcorp's customers became seriously ill. The Arcadian Agriculture Department began an investigation and discovered what had happened. Sickened Zedcorp customers filed a class action claiming damages for their injury. Zedcorp shareholders who invested in Zedcorp because they believed it was genuinely committed to sustainability and safe products are disappointed and they believe that the Board breached their duties to Zedcorp.

Answer the following questions, explaining what further facts you would need to know and giving reasons for your answers:

1. (35 points) Discuss whether the directors and officers of Zedcorp have breached their duties to Zedcorp under corporate law.

2. (30 points) If shareholders of Zedcorp wish to sue the directors and officers of Zedcorp, what claims should they bring and what difficulties do you expect them to encounter?

3. (10 points) How should the actors in this story have behaved differently? To what extent are your conclusions a matter of legal requirements, or do they follow from ethical principles?

4. (25 points) You do not need to link your answer to this question to the hypothetical facts set out above. Answer part (a) or part (b) of this question.

EITHER:

(a). Write a critical assessment of any case we studied this semester.

OR

(b) Discuss the extent to which contracts, rather than mandatory rules, should regulate the relationships between the participants in business organizations.