

BUSINESS ASSOCIATIONS

TAKE-HOME EXAM

ANSWER PART A AND PART B

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.

PART A

Zedcorp is a corporation which is incorporated, in Arcadia, a state in the US. Arcadia's corporations statute is modeled on the Delaware General Corporation Law. Zedcorp is in the transportation business, and although the Covid-19 pandemic meant that many businesses found that they lost customers, Zedcorp found a number of new customers and new market niches, including delivering food from farms and restaurants to people isolating at home, and delivering personal protective equipment and other medical supplies. Zedcorp's business is in the process of evolving from being a transportation company to being a marketplace for certain types of goods and services.

XY LLC, an investment fund and the owner of a 25% shareholding in Zedcorp, which has the power to appoint one director to the Zedcorp Board of Directors, has been encouraging the Zedcorp Board to speed up this evolution. Neil is the director appointed by XY. The other members of the Zedcorp Board are Amy (CEO), Brett (CFO), and Clarence (Chief Compliance Officer), as well as Elena and John, who, like Neil, are not officers of Zedcorp.

Amy, Brett and Clarence are the children of the original founders of Zedcorp, which has been in business for 40 years. They all used to hang out at Zedcorp's offices when they were young because their parents all spent a lot of time at work. And all three used to help out with the business from a young age. A few years ago, when Zedcorp was in need of capital, Amy met Sonia, one of the member-managers of XY. They got on well together, and Amy introduced Sonia to the Zedcorp Board. After some negotiation XY became a shareholder in Zedcorp. Over time Amy has become increasingly reliant on Sonia's advice about the management of the business because Brett and Clarence tend to get distracted by their mutual interest in golf and they do not like to be too bothered with the details. Elena and John attend Board meetings and read all the materials they are provided with. But they tend to be impressed by Amy's confidence (which has increased since she has had the benefit of Sonia's advice) and they don't like to cause trouble.

Sonia likes Amy and supports the changes to Zedcorp's business model. But she is also aware that the land on which Zedcorp's premises are based is worth much more

than anyone at Zedcorp realizes because the land has features that are particularly well suited to the needs of a property developer she knows. Sonia has not informed Amy of this fact.

One of Zedcorp's new business lines is the delivery of liquid natural gas. Zedcorp did not have expertise in this sort of transportation of flammable materials, but Neil encouraged Zedcorp to expand into this market because, he argued, it would be very profitable. The Zedcorp Board decided to move forward on Neil's recommendation without obtaining any outside advice, believing that they could trust the advice of a Board member who was appointed by one of their own significant shareholders. XY also helped Zedcorp acquire a number of cheap tankers for the purpose of transporting the liquid natural gas. XY learned about the availability of these tankers when another company XY had invested in suffered from financial problems. Arranging the sale of the tankers to Zedcorp at a good price reduced XY's losses on its investment in the company that originally owned the tankers. Unfortunately they are not in good condition, and on a recent journey one of the tankers sprung a leak which contaminated an area of protected marshland in Arcadia. The Arcadian Environment Agency has charged Zedcorp with criminal offences relating to this oil spill.

Because of the likelihood of large fines in the near future, Zedcorp needs to find some money quickly. Sonia sees an opportunity for XY to increase its ownership interest in Zedcorp and offers to increase XY's investment if XY can increase its ownership interest to over 50% of the company. Sonia writes up a proposal for Neil to present to the Zedcorp Board under which XY would acquire enough shares from the existing shareholders of Zedcorp to give XY a 52% ownership interest in the company. This ownership interest would allow XY to appoint more than half of the directors of Zedcorp in future. The proposal does not disclose the information Sonia (and therefore XY) has about the value of Zedcorp's land. The price offered to Zedcorp's shareholders (many, but not all, of whom are family members of the original founders) reflects Zedcorp's need for capital because of the forthcoming fines, but not any revaluation of Zedcorp's assets, including the land. The Board approves the proposal, and the Board then asks shareholders to approve the proposal, which they do because they are worried that large fines may ruin the company.

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

1. (35 points) The tankers: explain what issues of corporate law are raised by Zedcorp's move into the transportation of liquid natural gas, including the purchase of the tankers and the leak. In your answer please explain what claims unhappy shareholders might bring and what difficulties they would likely encounter.
2. (40 points) XY acquisition of additional shares in Zedcorp: explain what issues of corporate law are raised by this transaction. In your answer please explain what claims unhappy shareholders might bring and what difficulties they would likely encounter.

PART B (25 points)

Answer 1 of the following questions, using examples from the course materials to illustrate your arguments:

1. If you could change one rule you learned about in this class, what would it be, and why?
2. Does corporate law require directors to maximize profits for the benefit of shareholders? Should it?
3. Many concepts of business organization law are not defined in a clear or determinate way: they may be described as fuzzy rules. Discuss the advantages and disadvantages of indeterminate or uncertain concepts in business organization law.