

BUSINESS ASSOCIATIONS

TAKE-HOME EXAM

ANSWER PART A (all 3 questions) AND PART B (1 question)

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 clearly.

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

PART A

Zedcorp and Xcorp are corporations incorporated in Arcadia, a state in the US. Arcadia's corporations statute is modeled on the Delaware General Corporation Law.

Zedcorp's business involves the development and sale of robots to perform various tasks. Some of Zedcorp's robots are designed for industrial use and others are for use in the home. One recent example is the homebot, a floor-cleaning robot which can be programmed to vacuum clean or wash floors. Zedcorp's engineers are also working on a line of solar-powered gardening robots. Zedcorp's common stock is traded on the Arcadian Stock Exchange.

Aretha is Zedcorp's CEO, Bruce is the CFO and Drake is the Chief Innovation Officer. All three have worked closely together for 10 years. They are all founders of Zedcorp and members of the Zedcorp Board of Directors, together with Elton, Freddie, Josephine, and Lana.

Yfund is an investor in Zedcorp, and owns 23% of the common stock in Zedcorp and all of Zedcorp's Class A preferred stock. The preferred stock gives Yfund the right to appoint one director to the Board, and Yfund appointed Elton to the Board. The preferred stock also entitles Yfund to appoint one (and no more than one) additional Director to the Zedcorp Board if any of certain events occurs. These events include the failure to pay a dividend in any calendar year, a 10% decline in the Zedcorp stock price, and a finding of liability by any state or regulatory authority involving a fine of \$100,000 or more.

Xcorp is in the renewable energy business, focusing on developing improved battery technology for the storage of energy from renewable sources. Rihanna is the CEO of Xcorp, Lana is the CFO, and Nicki is the Chief Innovation Officer. The other members of the Xcorp Board of Directors are Drake, Elton, Selena and Taylor. Yfund owns 10% of the shares in Xcorp and has appointed Elton as a Director of XCorp.

Elton is a Vice President of Yfund, and his job at Yfund requires him to manage relationships with a number of Yfund's investee companies. His responsibilities do not expressly include looking out for new investment opportunities for Yfund, although all Yfund employees understand that Yfund is always interested in new and promising investment opportunities. All employees of Yfund are required to sign confidentiality agreements which require them to keep confidential any information they learn in their work for Yfund.

Homebots turn out to have a problem: a number have exploded while in use, and have caused fires and, in some cases, serious injuries to people living in the premises in which the homebots were operating. Whereas Zedcorp had an innovation committee of the Board, it never had a product safety committee. Early reports of the problems reached engineers working at Zedcorp and they tried to fix the problems but did not disclose them to Drake. Eventually the Arcadian Product Safety Commission (APSC) investigated these issues and Zedcorp agreed to pay \$250,000 to the burns unit of a hospital in Arcadia City and to implement a series of new safety and governance policies at Zedcorp, including a Board committee to focus on product safety, under a deferred prosecution agreement. Yfund argued that this agreement gave it the right to appoint an additional Director to the Zedcorp Board. Zedcorp's officers did not agree.

Elton got to know a number of young engineers as a result of his involvement in the Boards of Zedcorp and Xcorp. He began to attend scientific conferences on issues relating to robotics and artificial intelligence. At one of these meetings he learned that Starcorp, a company whose shares are traded on the Arcadian Stock Exchange, was moving into robotics and had some very interesting plans, although these were not at that time public. Elton bought a number of options to buy Starcorp shares. Soon after he did so, Starcorp made a public announcement about its new initiatives and the price of its shares increased significantly.

Yfund concluded that a merger between Zedcorp and Xcorp would make strategic sense, and believed that by providing additional funding and improving governance in the merged corporations the combined businesses could be much more successful than each corporation was likely to be separately. Yfund also believed that it could structure the transaction to allow it to become the controlling stockholder in the combined entity (to be called Newcorp). Yfund believed that Elton, Lana and Drake could be relied on to support the merger. But in order to improve the likelihood of the merger succeeding Yfund negotiated with the two CEOs, Aretha and Rihanna, offering them attractive remuneration packages for future work for Newcorp. Neither disclosed these remuneration packages to their Boards when the merger proposal was discussed. Both Boards and the shareholders of both corporations approved the merger.

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

1. (25 points) Homebots: explain what issues of corporate law are raised by the exploding homebots. In your answer please explain what claims unhappy shareholders might bring and what difficulties they would likely encounter.
2. (20 points) Elton's investment in Starcorp options: explain what liability Elton may have incurred as a result of his purchase of the Starcorp options
3. (35 points) The Zedcorp-Xcorp merger: 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 (20 points)

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

1. Is the business organization law you have studied this semester sufficiently attentive to the need to facilitate compliance?
2. If you could change one rule you learned about in this class, what would it be, and why?
3. Form or substance?