

**University of Illinois College of Law
Examination Cover Sheet**

Business Associations II

Professor Amitai Aviram

Spring Semester 2008 [**Practice Exam**]

Number of Pages: 4 (including this page)

Time Allotted: Until 10am on the day following the day you received the exam

Exam Instructions

1. **Permissible material:** This is an open book exam. You may use any materials you want, whether in hardcopy or electronic format.
2. **Anonymity:** The exams are graded anonymously. Do not put your name or anything else that may identify you (except for your student number) on the file that contains your answer to the exam.
3. **Receiving and submitting the exam:** You must personally pick up a copy of the exam from Angela Martin (Room 338) between 9-10am on the day of your choice among the following: April 30, May 1, 2, 5, or 6. You must submit the exam, by e-mail to Angela Martin (aymartin@law.uiuc.edu), no later than 10am on the day following the day you received the exam.
4. **Confidentiality**
 - a. Once you receive this exam form, you are not allowed to discuss the exam with anyone until after the final day of the exam period for this semester (which may be later than the day of the exam).
 - b. Students who are enrolled in this course are not allowed to solicit or receive information on the exam if the source of this information (directly or indirectly) is a person who has seen the exam.
 - c. After the last day of the exam period for this semester, you are allowed to freely discuss the exam.
5. **Writing the exam**
 - a. The exam contains two questions. Answer one of them. I will grade only the question you answered first.
 - b. Cite relevant case and statutory authority.
 - c. When writing anything the source of which is neither your original thought nor part of the course material, you must give a complete citation of the source in a footnote.
 - d. Within the constraints of the length limit, answer all relevant issues that arise from the fact pattern, even if your conclusion on one of the issues is dispositive to other issues.
6. **Applicable law**
 - a. If a fact pattern or question specifies the applicable law, then assume that the relevant jurisdiction applies that law.
 - b. If neither the fact pattern nor the question specified the applicable law, then apply the law of each jurisdiction we addressed in the course.

7. **Length limit:** If you answer question 1 –
 - a. The total length of your answer should not exceed 1,000 words. Footnotes are not included in this count.
 - b. **For every 10 words in excess of the length limit (rounded up), one point will be taken off the exam's raw score.**
 - c. Footnotes may only contain citations and descriptions of the content of cases and statutes that are not in the course material.
 - d. This section does not apply to students answering question 2.
8. **“Fact” patterns are fiction:** The “facts” presented in the exam were constructed for an educational purpose, and were not intended to refer to or inform about any real person or event.

Good Luck!

Question 1

Gucci, Inc., a corporation in a jurisdiction following the MBCA and Massachusetts common law, has 100 shares outstanding. Originally, brothers Aldo and Rudolfo each owned 50 of Gucci's shares. Rudolfo passed his 50 shares to his son Maurizio. Aldo kept 41 of the shares, and transferred 3 shares to each of his 3 sons: Roberto, Paolo and Giorgio.

When Aldo distributed the shares to his sons, he signed a shareholder agreement with them. Key terms in the agreement include:

- The parties will vote their shares to elect three directors on Gucci's board: one will be Aldo, and the other will be one of the three sons, rotating every year (so Roberto would be director in year 1, Paolo in year 2, Giorgio in year 3, Roberto again in year 4, and so on). The third director will be whomever Aldo and Maurizio agreed on (Maurizio appoints the remaining two directors).
- The parties will do everything in their power to appoint and maintain Aldo's position as either President of Gucci or Chairman of Gucci's board (which of these roles he would have was subject to negotiations with Maurizio).
- The parties will do everything in their power to appoint and maintain Roberto, Paolo and Giorgio in chief executive positions in Gucci, at ranks no lower than Vice President.

Aldo was appointed President of Gucci, Paolo was appointed Vice President of Design, Giorgio was appointed Vice President of Marketing, and Roberto was appointed Vice President of Finance. A few years later, Aldo and Paolo had a falling out. Paolo, who became fascinated with finance, wanted Gucci to expand into the carry trade, which is a form of speculation on foreign currency. Roberto felt that Paolo was encroaching on his territory. Despite multiple arguments during board meetings (during one of which Roberto threw a tape-recorder that hit Paolo's head), the board never determined whether to expand into the carry trade.

Paolo directed some of the funds in the design department to an investment in British bonds. Alas, the British Pound collapsed and this investment resulted in a \$10 million loss to Gucci.

When Aldo learned of the loss, he sent Paolo a letter stating that Paolo has breached the shareholder agreement by undermining Roberto's position as Vice President of Finance, and therefore Paolo is fired and no longer works for Gucci.

Paolo immediately sued Aldo claiming that Aldo's action of firing Paolo is in breach of the shareholder agreement, and that even without the agreement, Paolo had a right to the position of VP of Design. Aldo counterclaimed, demanding \$10 million in damages for Paolo's breach of fiduciary duties in investing Gucci money in British bonds without being authorized.

Discuss Paolo's suit and Aldo's counterclaim.

Question 2

Acme Corp., a Delaware corporation, has 10 shares outstanding. 6 of them are owned by Alice, and 4 are owned by Charles. Acme's board of directors, which includes 3 directors, is elected through cumulative voting. Acme's current directors are: Alice, Alice's friend Brenda, and Charles.

Charles has persuaded Brenda that Alice is mismanaging Acme. Brenda agreed to help Charles seize control of Acme. While this gives Charles current control of the board of directors, such control is temporary. Once Alice finds out that Brenda has switched sides, she will try to use her majority position as a shareholder to remove Brenda and replace her with a new director that is loyal to her.

Charles has hired you to find a way to use the current, secret majority on the board of directors to seize permanent control of Acme (i.e., own a majority of Acme's shares). **Please suggest one or more plans to do so, considering all steps required (and the legal considerations and risks involved). Anticipate actions Alice may take to thwart this plan, and Charles' best response to Alice's expected actions.**