

BUSINESS LAW II
Midterm – Part 2

1. Alpha, Beta and Gamma, is a partnership formed under the laws of Maryland. Alpha, Beta and Gamma are equal partners. As a result of Beta's bankruptcy filing, Beta has assigned his interest in the Partnership to his creditors. Alpha and Gamma have remained in partnership together and continue to work with Landmark, a project that was only 50% complete when Beta filed for bankruptcy. Beta stopped working on the Landmark job and all other Partnership jobs the day he filed for bankruptcy. Since then, Beta has attempted to loot the Partnership of three of its oldest clients. Beta has already succeeded in getting Benchmark to terminate its contract with the Partnership and to work directly with Beta. (10)
 - a. **Beta's creditors have demanded Beta's 1/3 share from the Landmark job and all other jobs of the Partnership. Must the Partnership pay? Why or why not?**

Answer: No. By filing for Bankruptcy Beta became a Disassociated partner. Normally the Partnership assets would be included but Beta's personal debt is not a part of the Partnership.

- b. **The Partnership has sued Beta for violating the Partnership agreement. Does the Partnership have any bona fide claims? Why or why not?**

Answer: Yes, Betas interest in the business should have been sold to the partners and not given to his creditors. Also, Beta did not exercise his duty of loyalty or duty of care by taking the Partnership clients like Benchmark.

2. Smith Services, Inc. a trucking business owned by Tony Smith, charged its fuel expenses to an account at Laker Express. When Smith Services was not paid on several contracts, it ceased doing business and was dissolved. Smith continued to provide trucking services, however, as a sole proprietor. Laker Express sought to recover Smith Services, Inc.'s unpaid fuel charges, which amounted to \$25,000, from Tony Smith. Tony argued that he was not personally liable for a corporate debt. (5)

a. Should the Court pierce the corporate veil? Why or why not?

Answer: Yes, only if Mr. Smith continued to charge his fuel expenses to the Laker Express account when he became a sole proprietor and if he commingled his personal funds.

3. Astro, Inc. has 500 shareholders. Its Board consists of five Directors. At a regular Board meeting, only three of the Directors were present. A vote was held to elect McCain as CEO of Astro. McCain is elected by a 2-1 vote. The minutes of the vote register that Directors Brown and Blue approved; Red cast the dissenting vote; and Black and White were absent. Later, an audit reveals that McCain is a convicted felon and has embezzled \$500,000 from Astro. (5)

a. Which, if any, of its Directors may Astro hold personally liable? Why or why not?

Answer: Since there was a quorum, at the meeting where McCain was elected CEO, all of the Board can be held liable . They have a Duty of Care to attend meetings where important decisions are being made.

4. Ben owns 1,000 shares of Ajax, Inc. Comet, Inc. desires to acquire Ajax. Both Boards approve a merger. Ajax's shareholders have also approved the merger. Ajax calls for a shareholders' meeting to approve the merger. The day before the vote, Ajax trades at \$20/share. The day that Ajax's shareholders approve the merger, the stock price drops to \$10/share and remains unchanged for the next week. Ben voted against the merger. (10)

a. What rights, if any, does Ben have?

Answer: Ben owns 1,000 shares and has the right to express his disapproval and vote against the merger. He also has the right to get information about the merger.

b. On the day after Ajax's shareholders vote to approve the merger, how much are Ben's shares worth?

Answer: Ben still has a thousand shares but the value has dropped from \$20 per share to \$10 per share and remained unchanged for the next week after the shareholders approved the merger.

5. Pharma, Inc., a publicly traded corporation, is a pharmaceutical company which owns patents and medications. Its core brand is Oxy, which accounts for 70% of its sales. Pharma received reports that some consumers suffered immediate addiction after one treatment of Oxy. Four lawsuits were filed seeking damages from Oxy based on it being a defective product. In its public statements, related to revenues and product safety, Pharma did not reveal this information. The SEC filed a lawsuit against Pharma claiming that its statements were misleading because it did not disclose the information regarding the product liability cases. Pharma argued that the four pending suits were immaterial and did not require disclosure.(10)

a. What is the legal standard that Pharma must satisfy regarding disclosure?

Answer: I need more clarification on this scenario. What information did Pharma not reveal. The reports that some consumers suffered immediate addiction after one treatment of Oxy or information about the four pending lawsuits. Assuming they are referring to the lawsuits, then I will say that Pharma satisfied the disclosure legal standard when they registered the company. Pending lawsuits are immaterial.

b. Did Pharma satisfy the legal standard for disclosure? Why or why not?

Answer: Yes, Before becoming a publicly traded corporation Pharma had to register the company and provide all known disclosures.

c. If the SEC is successful in its suit against Pharma, what liabilities could Pharma face?

Answer: Assuming that Pharma has at least \$10 million dollars in assets and 500 shareholders the following remedies can be sought.

1. Criminal
 - a. Prosecution by DOJ
 - b. 5 years imprisonment
 - c. \$10,000 fine
2. Civil sanctions
 - a. Injunction
 - b. Refund profits
3. Private suits