

15.615/647--MANAGER'S LEGAL FUNCTION--SPRING '01—MIDTERM

**DO NOT TURN OVER THIS PAGE UNTIL THE EXAM BEGINS,
BUT REVIEW THESE INSTRUCTIONS**

I. Exam format: There will be two questions. Answer both. They will be weighted equally.

You can bring into the exam any of the course readings and any notes or outlines prepared entirely by you. Any notes you wish to consult during the exam should be in the form of paper copy. You should not call up any notes from your computer during the exam.

I recommend typing your answer. Your answer must consist entirely of material typed during the exam period – you cannot cut and paste and you should not have on your computer screen at any time during the exam any materials but the answers you are typing. If you type, you must hand in at the end of the class either hard copy, or a floppy marked with your name and containing just one file which has your answers.

You may also handwrite your exam, and bluebooks will be provided.

Start the answer to the second question on a fresh page or fresh bluebook.

If English is your second language, please put “ESL” after your name.

II. General advice: You aren't supposed to be a lawyer, and I don't expect you to have definitive answers to legal questions. You are supposed to be a manager with educated instincts about legal problems, including an understanding of broad legal doctrines, the ability to spot where legal issues will have an impact on a business arrangement and the individuals involved, and the ability to evaluate in a preliminary way how legal considerations shapes risks and opportunities. Each exam question will ask you to address legal issues in a business context from the point of view of a manager. It will not be necessary to cite specific cases or statutes. Make sure that, in your answer, you show that you understand general legal principles AND can apply them to specific facts. If the exam question has subquestions (every subquestion will end with a “?”), be sure to respond to each subquestion, preferably in the order in which they are asked. The time constraints in this exam are tight. If you are running out of time, start outlining. I don't try to trick people in these exams. Look for the main issues and get to them.

III. General background: You graduated from Sloan seven years ago. For four years, you worked for BigCo, a large publicly-traded provider of business tax software. Three years ago, you left to help form PlannerCo, where you are the CEO. PlannerCo is not publicly held. PlannerCo's one product is an unusually sophisticated tax-modeling software package used in international M&A to anticipate the tax consequences of transnational acquisitions and the different locational and supply-chain patterns that can be constructed around these transactions.

Question #1. PlannerCo's software incorporates assumptions about tax treatment in a variety of countries. In the first version of the software, these assumptions were much simpler than in the current version. The first version was used by ConsultingCo, a consulting firm who advised DevourCo, a publicly-held U.S. company, on an aggressive series of transnational acquisitions. DevourCo has since gone into bankruptcy. Those acquisitions are the focus of some messy lawsuits brought by different shareholders and creditors alleging that the acquisitions were mishandled, including allegations of misrepresentations by DevourCo under the securities laws. There is a lot of money involved and, with DevourCo in bankruptcy, there is a zealous hunt for other possible defendants. ConsultingCo was named as a defendant in several of the suits. ConsultingCo takes the position that it acted properly, but that if there were any errors in its advice or estimates these were due to defects in PlannerCo's software. ConsultingCo is now suing PlannerCo for breach of contract. The contract between ConsultingCo and PlannerCo provided that PlannerCo was not responsible for any inaccuracies in any estimates generated by the software, and that all users should consult a tax attorney. However, PlannerCo's sales force often emphasizes the sophistication and skill in tax matters of the people who designed the software.

- A. How would you assess the risk to PlannerCo under the contract claim, and what other facts would you want to know to better assess that risk?
- B. In addition, several of the shareholder groups have added PlannerCo as a defendant in their lawsuits, claiming PlannerCo's negligent design of the software contributed to their loss. How would you assess the risk to PlannerCo under these negligence claims, and what other facts would you want to know to better assess that risk?

Question 2: Two years later (after all the lawsuits relating to Question #1 have been settled), BigCo has approached you to express an interest in buying PlannerCo. You want to explore this, but you want these discussions to go forward in complete secrecy until a deal is reached. Your main concern is that PlannerCo has a group of key employees who are hard at work on another product which would be dropped if BigCo acquires PlannerCo, and these employees will be hard to keep if there is any public announcement about the negotiations.

- A. Under what circumstances might BigCo be required to disclose the discussions with PlannerCo?
- B. When you worked at BigCo you acquired a substantial block of BigCo stock, and you have since occasionally bought and sold BigCo shares. Can you trade your BigCo stock now, and on what other facts might this depend?