

SPRING '02 / 15.615 / THE MANAGER'S LEGAL FUNCTION / MIDTERM EXERCISE

1. *Schedule and timing.* The midterm exercise will be available beginning Thursday at noon, and must be completed by Saturday, at 5pm. Each student will make arrangements with the TA to have the exam e-mailed to him or her at a mutually convenient time, and the student will e-mail back to the TA the completed exam within five hours of having received it. Students are responsible for keeping a hard and computer-readable copy of the exam.

2. *Sources and communication among students:* During the period the exercise is available, students may not consult with each other about the course. During the exercise, a student may consult the text and the readings, and any notes prepared by that individual student, but no other sources. (Since your answers will be evaluated in terms of those readings and lectures, especially the readings, consulting other sources would not likely do much good in any event.) You are expected to make use of the course materials through the class of Thursday March 7th (on venture capital).

3. *Weighting and strategy:* There are three questions. Answer all three. They will be weighted equally. Each particular point you should address appears in a sentence or clause ending with a “?” Don’t neglect to respond to any “?”

4. *Format and submission of answers:* You should submit your answers by email within five hours after you have been given the exam. Your answer should have a cover sheet which includes your name, “ESL” if English is your second language, and the exact word count for the entire document. Please start each of the three questions on a fresh sheet. **Your entire submission should not exceed 1,500 words.**

5. *Some general advice:* You aren't supposed to be a lawyer, and I don't expect you to have definite 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 shape 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. I don't try to “trick” people in these exams. Look for the main issues suggested by the facts and questions and get to them. Your answers should be well-organized and clearly written.

6. *Grading:* If your exam is over the length limit, or submitted late, there will be a downward adjustment to your grade.

Question I. Your name is Hot Shot. You have a background in environmental engineering, and, after picking up an MBA from Sloan 5 years ago, you went to work for We Are So Smart (“WASS”), a large consulting firm. WASS claims to be interested in serving clients of all sizes, but in fact focuses its energies on, and does a really good job for, only its big clients. The smaller clients get low priority, and their problems are left in the hands of relatively junior people like yourself. You prefer to work with small clients, and in the past six months you have been talking to three classmates from Sloan about joining together to start your own company. One of the three, Smarty Aleck, also works at WASS. The new company will be called the New Little Consulting Group (“NLCG”). NLCG will concentrate on the problems of smaller clients, and you think you can outperform firms like WASS in that market.

The discussions have become more serious in the last month, and you and the other three have now agreed to leave your current jobs in time to launch NCLG in eight weeks. You plan to tell WASS in six weeks that you are leaving, and give them 2 weeks notice.

There are several small clients at WASS for which you or Smarty have had primary responsibility. You are hoping to take them with you to NLCG. There are two very junior analysts at WASS who have worked a lot with you and Smarty, and you think they would probably like to come with you.

Yesterday, a senior partner at WASS called you into her office. She said “Hot Shot, I want you to know I think highly of your work. One of our biggest clients, VeryBig Co., has just sent us a project that they want done in the next six months. It is a very big piece of work, and it is going to be hard to get it done in just six months. I’m going to be the partner-in-charge, but in fact I have too much to do to really run this. I want you to be in charge day-to-day. There is a meeting with VeryBig Co next Monday afternoon, and I want to bring you along, introduce you, and explain your role. Monday morning come by my office and you and I will plan how to approach the project and the client.”

With respect to the clients you are hoping to bring with you to NLCG, what are the legal risks associated with trying to recruit them, and how should you conduct yourself in light of those risks?

With respect to the junior associates you are hoping to bring with you to NLCG, what are the legal risks associated with trying to recruit them, and how should you conduct yourself in light of those risks?

With respect to next Monday’s meetings on the project for VeryBig Co., how would you assess the legal risks of not disclosing your plans to leave?

Question II. It is a year later, and NCLG has been successfully launched, although the company is very tight financially. One of your biggest projects this past year was for Trouble Co. NCLG was engaged to provide consulting support to Trouble in connection with Trouble's purchase of another business. The purchase went through, but the final deal was rushed and though you tried to meet Trouble's accelerated schedule there were some delays in the deal while Trouble waited for your input. Now Trouble is claiming that your response time undermined Trouble's bargaining power in the deal and cost Trouble "a whole lot" of money. Trouble has told you that none of the bills from NCLG, which total about \$170,000, will be paid. You have also learned that Blast Off, the CEO of Trouble, has been openly critical of NCLG in industry circles, and you are worried about damage to your reputation. In fact, just last week you were talking to a potential client who said "I heard from my friend Blast that you folks had a rocky relationship."

What are the different possibilities for taking legal action against Trouble, and realistically which of such possibilities do you think NCLG should pursue and why?

Question III. When you were at WASS, you got to know a lobbyist named Backroom Bob ("BB"), who did a good job for several WASS clients who had local political concerns. After NCLG got launched, one of your new clients, SwampDrainer Inc., became involved in politically sensitive negotiations with local authorities around land-use issues. At your recommendation, SwampDrainer hired BB as its lobbyist and political consultant.

NCLG and SwampDrainer both operate in the state of Happy Valley. Elected officials in Happy Valley often hold campaign fundraising dinners. Typically, a ticket to a dinner costs \$100, which is a contribution to that official's campaign fund. One of the ways BB maintains his political influence is that he helps these officials sell tickets, using his contacts with his clients. Happy Valley has a law against contributions to campaigns by corporations. Violating that law is a criminal offense. But individual executives can buy as many campaign fundraising tickets as they like from their personal funds. BB made it his job to get to know all the top managers at SwampDrainer, and he would occasionally ask some of them to buy a ticket or two to one of the campaign fundraising dinners. After a while, some of the managers began to complain that BB was asking for money just about every month. You had heard about that problem.

You have developed a friendly relationship with SwampDrainer's CEO, Big Talker. Last weekend, Big Talker invited you over to his house for dinner, and, after a few beers, told you "how that problem with BB always asking for money went away." A few months ago, SwampDrainer announced a policy that the ten top non-director managers should show up at the beginning of every board of directors meeting to "be able to answer questions from directors." Prior to this policy, non-director managers only showed up when specifically invited, which wasn't a regular practice and rarely involved more than two or three managers. For the extra responsibility of attending each board meeting, each manager is now paid \$300 per meeting. Prior to the new policy, there were no special payments to managers for attending board meetings. When BB goes around to the top managers selling campaign fundraiser tickets, he seems to expect that each manager should buy 2 or 3 tickets every two months or so, and the managers generally do. As Big Talker said to you after he explained all this, "Pretty damn clever."

What are the legal risks to NCLG? What are the risks to you? What do you do?