

BUSINESS ASSOCIATIONS

THREE HOURS.

THIS IS A CLOSED-BOOK EXAM.

Try to show thought and critical analysis of the materials and issues dealt with in the course.

DO read the question 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 legibly and clearly.

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

Arcadia and Urbania are states in the US. The Arcadian partnership statute is based on RUPA (1997 version) and its corporations statute is based on the Revised Model Business Corporation Act (RMBCA). The Urbanian partnership statute is based on UPA and its corporations statute is the same as the Delaware General Corporation Law.

Medmark Inc. is a pharmaceutical company incorporated in Arcadia, and its shares are traded on the Arcadian Stock Exchange (ASE). Albert, Betty and Cody founded Medmark twenty years ago. They became friends while they were graduate students at the University of Arcadia (UA) and founded Medmark after they became dissatisfied with the research positions they had taken after leaving UA. Albert, Betty and Cody are directors and officers of Medmark. Betty is Medmark's Chief Executive Officer (CEO), Albert is the Chief Financial Officer and Cody is the Chief Communications Officer (CCO). All three are actively involved in the UA alumni association. As Medmark has expanded over the years they have been increasing the size of their personal donations to UA. Two years ago the UA advancement office contacted Albert and asked whether Medmark would be interested in funding some research fellowships at UA. Albert knows that Betty and Cody like to support UA and he did not feel that he needed to consult them before agreeing that Medmark would fund a number of fellowships in his, Betty's and Cody's names. The UA Vice President for Advancement asked Albert if he would be interested in serving on the University's Board of Trustees and helping with the University's new capital campaign. Albert said he would be happy to serve on the Board and he is now discovering that the capital campaign is taking up increasing amounts of his time.

David, Eric and Fiona are Medmark's non-management directors. David is married to Cody's sister, Georgie. David and Georgie run an agribusiness, D.G. Farm Supplies, LLP, (DG LLP). Eric is a Professor of Botany at the University of Arcadia who taught Albert and Betty when they were students. Fiona is the President of the Arcadian Medical Technologies Association (AMTA) which is a trade association for health care businesses. Medmark is one of AMTA's largest members.

A part of Medmark's research agenda focuses on investigating traditional herbal remedies to try to develop commercially viable drugs. A year and a half ago Medmark funded an expedition which Eric led to Ruritania, a country in Latin America which was reputed to have a number of plants not known in other places and which could be used to treat different conditions. Eric and his team discovered a number of potentially useful

plants and brought samples of the plants and seeds back to the US with him. Under Arcadian law it is illegal to import plants and seeds into Arcadia without phytosanitary certificates issued by the country of export which specify that the plants and seeds are free from pests and disease. It is very expensive to obtain such certificates in Ruritania so Eric decided not to do so. The savings allowed him to take a larger number of researchers with him than he would otherwise have been able to take. As CFO of Medmark, Albert approved Eric's budget for the trip without reading it because he was preoccupied with the UA capital campaign at the time. When Eric returned to Arcadia he handed over almost all of the plants and seeds he discovered on his expedition together with some notes on what he and his team had discovered. Cody immediately issued a press release which described the "dramatic" discoveries a Medmark research expedition had made in Ruritania. Medmark's share price increased significantly after the press release was issued.

Eric omitted to tell anyone at Medmark about a particular plant which people he spoke to in Ruritania described as a miracle plant. Eric suspected that the plant might have very useful antibiotic properties, and he thought that it could be very valuable given the recent increase in the number of drug resistant bacteria. Eric persuaded Helen, a colleague of his at UA, to help him with the work and to agree that the work could be done at her lab at UA. The initial tests were very promising and Eric negotiated an agreement to sell the rights in the plant to Worldwide Pharmaceuticals, Inc., which is incorporated in Urbania. Under the agreement Worldwide agreed to fund Eric's next two research expeditions and to provide some funds for the support of Helen's lab. The agreement contained a clause committing Eric and Helen to keep the discovery confidential. Worldwide has begun to test a drug developed from the plant on mice. So far there appear to be no adverse side effects of the new drug. Immediately after signing the agreement with Worldwide Eric invested in Worldwide shares. He thinks that Worldwide's share price will increase dramatically when Worldwide announces the new drug. Helen told her mother about the way in which she had obtained new funding for her lab, and Helen's mother also decided to buy some Worldwide shares.

In order to investigate properly the new plants Eric handed over to Medmark, Betty and Cody decided that it would be useful to grow more plants. Betty and Cody spoke to David and agreed that if DG LLP would commit to producing as many of the new plants as Medmark needed for its research Medmark would pay to DG LLP half of the costs of growing the plants and 25% of any profits made from any drugs eventually developed from the plants.

The plants DG LLP is growing for Medmark are infected with various pests and plant viruses. The plants are not growing well and the pests and viruses are spreading to crops grown by farmers near to DG's land and causing much damage. DG had borrowed from BigBank to be able to afford new equipment to grow these plants and has very little money. In fact, DG may have difficulty repaying the loan. BigBank is trying to decide whether to (1) cut its losses on this loan, (2) enter into a new longer term agreement with DG under which BigBank would have enhanced rights to information about DG's business and would have the right to advise DG about how to run its business, or (3) sue David and Georgie personally for the amount DG owes to BigBank. Bigbank did not ask David and Georgie for personal guarantees of the loan at the time DG borrowed the money. David and Georgie both have significant personal assets. Local farmers want someone to pay for the financial losses they are incurring as their crops fail. They want to know whether they can obtain a remedy for their losses from DG LLP, David, Georgie, BigBank and/or Medmark.

The Arcadian Plant Protection Authority (APPA) is concerned about the viruses and pests spreading from DG's land and is investigating how the viruses and pests came into Arcadia. APPA is considering prosecuting Medmark for its failure to obtain phytosanitary certificates on the import of the plants. When APPA announces this proposed prosecution Medmark's share price falls. Medmark's shareholders are very unhappy about this and want to know what they can do. Some of these shareholders bought their shares after Medmark announced the dramatic Ruritanian discoveries.

Iris, an investigative journalist with the Arcadian Examiner, who has been researching commercial exploitation of traditional herbal remedies just published an article describing the dramatic differences between Medmark's situation and Worldwide's position. In the article she describes how Medmark and Worldwide obtained their plant specimens from Eric. The Arcadian Teachers' Pension Fund (ATPF or "Fund"), which owns shares in Medmark, decides that it wants to sue all of the directors of Medmark for breach of their fiduciary duties.

Discuss the legal issues raised by these facts. In your answer, consider the options available to BigBank, the farmers and ATPF. Consider also the risks of liability of Medmark, Albert, Betty, Cody, David, Eric, Georgie, Helen, and Iris. What actions can they take or what arguments can they make to limit these risks?