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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been served electronically through the electronic-filing manager on this the 11st day of December, 2017, to:

Jason J. Bach
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2802 Flintrock Trace, Suite 255
Austin, Texas 78738

/s/ Rola Daaboul
Rola Daaboul
Assistant Attorney General

Rajin Patel

Summary:

A. Allegation

See email from Dr. Duane Jones and Mrs. Brittany Todd

B. Pre - Hearing:

As soon as I received the allegation (December 19th, 2016), I drove to see Dr. Duane Jones. I drove from Plano to Lubbock. However when I arrived to Lubbock Dr. Jones was not available to meet. I emailed Dr. Ricketts prior to arriving in Lubbock about the situation and wanted to meet with him as well. When I came down to Lubbock I met two other students (Preston and Travis) who also had allegations towards them for the same class, in Dr. Pasewark's office. I went to see the Dean, Dr. Pasewark with them. Dr. Pasewark agreed to see us 3 together in the same room. After listening to the two other students allegations of being caught cheating during the final exam (in which the allegations were that they were googling as observed by another student). During the interview Preston stated an incident alleging Dr. Jones allowing an openbook/ open note test to the first group of students. Dr. Pasewark proceeded to allow both Preston and Travis to be dismissed of their allegations and of their sanctions prior to any due process. Preston said to Dr. Pasewark, "The first group that took the test were able to have an open book/ open note exam". Based on this fact Dr. Pasewark replied, "How do you know?" Preston replied, "The people from the first test group said that the test was administered whilst allowing them to use their books and notes". Dr. Pasewark responded, "I will see if I can speed up the process by talking/ emailing your professor about the situations." Dr. Pasewark told me, "You have time (To go through the process). If you did not plagiarize, you have nothing to worry about".

The next day (December 20, 2016) I was informed by Preston that their allegations were dismissed.

On January 4, 2017, I had an over the phone meeting with Brittany Todd (Academic Misconduct). She asked me if I had used anything during the test, in which I replied that I did not have any materials during the test. She further explained that my answers were similar to Dr. Jones' answers and stated that I must have used the internet during the test. I replied saying I did not use the internet or any material during the test and that I studied the book and questions and cases at the end of each chapter to prepare for the exam. These were my best answers on the exam. She further explained that she was going to place my answers in turnitin.com. I explained saying that I studied hard for the test and those were my best answers that I assimilated from reading the required text book, reading the cases, answering the case questions, and the example questions at the end of each chapter. At the conclusion of the phone conversation she adamantly stated that I needed to purchase the required textbook. She further stated that, "You need to stop being a helpless graduate student and to find a way to obtain the textbook".



I received an email stating that Mrs. Brittany Todd wanted to meet and discuss the information she gathered through the course of the investigative process and complete the pre-hearing process. I drove to Lubbock with my mother to meet with Mrs. Brittany Todd at 2 pm on Thursday January 19, 2017. On this day we met and the following is the summary of our conversation: She accused me of cheating by using the internet during the final exam. She also accused me of having a test bank and opening a test bank during the exam. I said at this point, "I do not understand why I am here, I did not do anything wrong. I studied the book and took my exam." At that point she became very angry and started screaming at me and stated "You already know why you are here". She was screaming that I had memorized other sources prior to the exam. I responded in a calm and civil way, "That I did not know what questions were going to be on the exam, that's why I studied the textbook and the questions and cases after each chapter and these were my best answers for the questions on the exam. She continued to yell and scream in the presence of myself and my mother and stated that, "You are liar". I responded, "I am not lying and I am telling the truth and these are my best answers". I responded, "the professor (Dr. Jones was proctoring the exam) was 4 feet away and that to please check the cameras in the room". She stated, "that this will be like you winning the lottery. This will go to hearing and you will be expelled". I felt threatened due to her yelling and screaming and I repeatedly, in an civil manner, told her I studied hard prior to the exam using the textbook and by studying the cases and questions at the end of each chapter. At the end of the conversation Mrs. Brittany Todd led my mother and I to Dr. Sofia Chapman's office (Director of Student Conduct).

On January 24th, 2017 I received an email from Mrs. Brittany Jones with a copy of my graded test and turnitin.com report. There is a discrepancy in the way Mrs. Brittany Todd entered the essay answers into the turnitin.com program. She entered all the essays combined into the report instead of each independent essay separately to give her a false positive overall aggregate percentage number.

On January 25th, 2017 I contacted the office of the President at Texas Tech and spoke with Mrs. Mikaela Michkam. I explained to her that I am wrongly being accused of cheating and I believe I am not getting due process and that they are not listening to me. Mrs. Mikaela Michkam told me to get in touch with Elizabeth Massingayle.

On January 26th, 2015, I submitted my evidence. I also submitted my own plagiarism checker for question 8 which showed 86% uniqueness. There was a research paper which refutes turnitin.com's utility due to false positives on plagiarism and definition based submissions.

C. Discrepancy in the examination process

1. The first test group was allowed an open-book final exam was brought to the attention of Dr. Pasewark by student P.C. (December 20th, 2016). This is a major concern of mine because the rest of the students were not allowed to use an open-book during the exam. professor Duane Jones. This (December 20th, 2016). This is a major concern of mine because the rest of the students were not allowed to use an open-book during the exam.

2. I have further evidence that a student named Kristina confirms that the first test group did in fact have an open book final exam. She apparently was the sole test taker during her test taking [REDACTED] rather brought this to the attention of Dr. Fleischman. Kristina's phone number ([REDACTED]).
3. Another discrepancy was regarding a student finding P.C. [REDACTED] and Travis using google during the final exam. This was brought to the attention of Dr. Jones by the observing student. Dr. Jones proceeded to bring allegations of plagiarism/cheating, including sanctions (sent by email to both students). When Preston, Travis, and I went to Dr. Pasewark's office (December 20th, 2016), Dr. Pasewark, after listening to Preston disclosing that the first test group had open book, decided to drop the allegation of plagiarism and cheating against Preston and Travis. My concern is that, two students that were blatantly found cheating by another student were allowed to have their allegations dropped by Dr. Pasewark.
4. Another major concern is that why did Dr. Jones allow the first test group of students to have an open book final exam, but not allow the rest of the test groups to do so also to be consistent with the test administration process.
5. Another concern is two students who were caught cheating by another student, yet they were allowed to have their allegations dropped even though Dr. Jones and Dr. Pasewark had hard evidence against them.
6. Another concern is that I requested Mrs. Brittany Todd to check the cameras in the testing room to prove my innocence. She was unable to prove that it was a secure testing center (where the test was administered).
7. Another concern is that Dr. Duane Jones reported, "there were no issues with any student that took the exam on December 12th, 2016" during my test date. I finished the exam in approximately the same amount of time as the other students in my test section. Dr. Jones Alleges that this was to be a closed book/ closed note exam all though he allowed the first testing group to use an open-book.

D. Discrepancy to the Pre-Hearing Process

During the entire pre-hearing process Mrs. Todd was biased and was unwilling to listen to any of my concerns. She was accusatory before she looked at both sides of the evidence. I feel that she had a biased approach to my entire pre-hearing process.

E. My Current Student Status

I am currently an undergraduate/graduate student:
undergraduate student: August 26th, 2012 – **in progress**
graduate student: August 2016 – **in progress**

F. Evidence

Question 8.

When OmniOil Corporation wishes to issue certain securities, it must provide sufficient information for Petra, and other unsophisticated investors, to evaluate the financial risk involved. Specifically, the law imposes liability for making false statement or omission that is “material”. What sort of information would Petra consider material?

Answer:

Petra and other average unsophisticated investors are not concerned with minor inaccuracies. However the facts that would be considered material and deter Petra from buying Securities (facts that have important bearing on the condition of the issuers and its business) would be as follows: fraud activity, a dividends change, a significant change in the firm’s financial condition, and a new possible discovery, process change, or product change, as well as its liabilities, loans to officers and directors, customer delinquencies, and pending lawsuits. Making false statements or omissions with respect to this type of information could subject a corporation to liability under the securities laws.

Guide for highlighted areas:

1. Petra and other average unsophisticated investors – this is part of the question being asked
2. (facts that have important bearing on the condition of the issuers and its business) – found in text book “Note that any one of these facts, by itself, is not automatically considered material. Rather, it is will be regarded as a material fact only if it is significant enough that it would likely affect an investor’s decision as to whether to purchase or sell the company’s securities”.(Miller 120)
3. fraud activity, a dividends change, a significant change in the firm’s financial condition, and a new possible discovery, process change, or product change, as well as its liabilities, loans to officers and directors, customer delinquencies, and pending lawsuits. – (areas that are green are found in textbook on page 120)

 “1. Fraudulent trading in the company stock by a broker-dealer. 2. A dividend change (whether up or down). 3. A contract for the sale of corporate assets. 4. A new discovery, a new process, or a new product. 5. A significant change in the firm’s financial condition 6. Potential litigation against the company.” (Miller 120)
 Loans to officers and directors, customer delinquencies, and pending lawsuits are examples of litigation
4. Making false statements or omissions with respect to this type of information could subject a corporation to liability under the securities laws. – “Any material omission or

misrepresentation or material facts in connection with the purchase or sale of a security may violate Section 10(b) of the 1934 act and SEC Rule 10b-5. The key to liability (which can be civil or criminal) is whether the information omitted or misrepresented is material.” (Miller 120)

Question 45

Federal Bank is a secured party on a \$50,000 loan to Gigi, who owns Home HealthCare, an assisted living facility. When Gigi experiences financial difficulty, creditors other than Federal Bank petition her into involuntary bankruptcy. The value of the secured collateral has substantially decreased in value. On its sale, the debt to Federal Bank is reduced to \$25,000. Gigi’s estate consists of \$100,000 in exempt assets and \$20,000 in nonexempt assets. After the bankruptcy costs and back wages to Gigi’s employees are paid, nothing is left for unsecured creditors. Gigi receives a discharge in bankruptcy. Later she decides to go back into business. By selling a few exempt assets and getting a small loan. The bank claims that the balance of its secured debt was not discharged in Gigi’s bankruptcy. She signs an agreement to pay Federal Bank the \$25,000, and the bank makes a new unsecured loan to her. Is Federal Bank correct that the balance of its secured debt was not discharged in bankruptcy? What is the legal effect of Gigi’s agreement to pay the bank \$25,000 after the discharge in bankruptcy?

Answer:

A secured creditor is entitled to priority to the proceeds from the disposal of the secured collateral of the bankrupt debtor up to the amount of the debt owed. If the proceeds do not cover the secured debt, the secured party becomes an unsecured creditor for the given balance. However, unless the debtor has been denied a discharge in bankruptcy, all debts of the debtor are rendered void on the granting of the discharge. However, in this case, Federal Bank is incorrect (in the wrong). Federal Bank became an unsecured creditor to the balance of \$25,000. Gigi’s discharge in bankruptcy discharged her obligation to pay the debt.

The Bankruptcy Code restricts the legality of reaffirmation—agreements to pay debts discharged in bankruptcy. For these agreements to be binding, they must be executed before the discharge in bankruptcy is granted.

All reaffirmation agreements must be filed with the court. Unless Gigi, the debtor, is represented by an attorney, court approval is required. The court will only approve the reaffirmation if the agreement will not cause the debtor a hardship and is in her best interests. If Gigi is represented by an attorney, the attorney must file a declaration stating that Gigi was fully informed of the consequences, the agreement was voluntarily made, and that the agreement does not impose a hardship on Gigi or her dependents. Gigi has a right to rescind this agreement. Because the reaffirmation agreement in this case was made after Gigi’s discharge in bankruptcy, she is not legally obligated to pay the \$25,000 debt previously discharged in bankruptcy.

Guide to highlighted portions within answer:

1. A secured creditor is entitled to priority to the proceeds from the disposal of the secured collateral of the bankrupt debtor up to the amount of the debt owed. If the proceeds do not cover the secured debt, the secured party becomes an unsecured creditor for the given balance. – “Thus, the secured party has priority over unsecured parties as to the proceeds from the disposition of the collateral. Should the collateral be insufficient to cover the secured debt owed, the secured creditor becomes an unsecured creditor for the difference”. (Miller 430)

2. However, unless the debtor has been denied a discharge in bankruptcy, all debts of the debtor are rendered void on the granting of the discharge. – “Also, certain debtors may not qualify to have all debts discharge in bankruptcy. These situations are discussed next”.(Miller 431) “3. The granting of a discharge to the debtor within eight years before the petition was filed”. (Miller 432)

3. The Bankruptcy Code restricts the legality of reaffirmation—agreements to pay debts discharged in bankruptcy. For these agreements to be binding, they must be executed before the discharge in bankruptcy is granted. – “An agreement to pay a debt dischargeable in bankruptcy is called a reaffirmation agreement. A debtor may wish to pay a debt—for example, a debt owed to a family member, physician, bank, or some other creditor—even though the debt could be discharged in bankruptcy”. (Miller 432)

4. All reaffirmation agreements must be filed with the court. Unless Gigi, the debtor, is represented by an attorney, court approval is required. – reaffirmation agreements must be made before the debtor is granted a discharge. The agreement must be signed and filed with the court. Court approval is required unless the debtor is represented by an attorney during the negotiation of the reaffirmation and submits the proper documents and certifications.” (Miller 432)

5. The court will only approve the reaffirmation if the agreement will not cause the debtor a hardship and is in her best interests. – “The court will approve the reaffirmation only if it finds that the agreement will not result in undue hardship to the debtor and that the reaffirmation is consistent with the debtor’s best interests”.(Miller 432)

6. If Gigi is represented by an attorney, the attorney must file a declaration stating that Gigi was fully informed of the consequences, the agreement was voluntarily made, and that the agreement does not impose a hardship on Gigi or her dependents. Gigi has a right to rescind this agreement. Because the reaffirmation agreement in this case was made after Gigi’s discharge in bankruptcy, she is not legally obligated to pay the \$25,000 debt previously discharged in bankruptcy. – “Among other things, these disclosures explain that the debtor is not required to reaffirm any debt...The reaffirmation agreement must disclose the amount of the debt reaffirmed, the rate of interest, the date payment begins, and the right to rescind. The disclosures also caution the debtor:

“Only agree to reaffirm a debt if it is in your best interest. Be sure you can afford the payments you agree to make”. (Miller 432)

Question 64

Fruit-of-the-Plant Seed Company is engaged in the agricultural seed industry in the Midwest. The firm currently has about 40 percent of the market for these products. GreatGro Seed Corporation competes with Fruit-of-the-Plant in the same states. Carbonate has about 35 percent of the market. If Fruit-of-the-Plant were to acquire the stock and assets of GreatGro, would Fruit-of-the-Plant be in violation of any of the antitrust laws? If so, which one? Discuss fully.

Answer:

Section 7 of the Clayton Act prohibits the type of action by Bubbly suggested in this question, a horizontal merger that would increase market concentration. Other factors include the overall concentration of the relevant market, that market's history of tending toward concentration, and whether the merger is apparently designed to establish market power or restrict competition.

Based on the facts stated in the question, most of these factors are present. The major antitrust law being violated is Section 7 which is in the Clayton Act. Section 7 does not allow any person or business organization from acquiring the stock or assets in another business where the result would be a significantly increased market share and the effect would most likely be to lessen competition. The removal of a competitor that controls 35% of the market (GreatGro) combined with the 40% held by the acquiring company (Fruit-of-the-Plant) definitely could drive out the remaining small competitors and be a barrier to future entrants into this market. Either the U.S. Department of Justice or the Federal Trade Commission could file for divestiture of the resulting firm if these parties were to merge.

1. Section 7 of the Clayton Act prohibits the type of action by Bubbly suggested in this question, a horizontal merger that would increase market concentration. Other factors include the overall concentration of the relevant market, that market's history of tending toward concentration, and whether the merger is apparently designed to establish market power or restrict competition. – “Under Section 7 of the Clayton act, a person or business organization cannot hold stock or assets in more than one business when “the effect. . . may be to substantially lessen competition.” Section 7 is the statutory authority for preventing mergers that could result in monopoly power or a substantial lessening of competition in the marketplace. Section 7 applies to both horizontal mergers and vertical mergers, as discussed in the following subsections.”(Miller 510)

Example 26.14

If the four of the largest grocery stores in Chicago accounted for 80 percent of all retail food sales, the market clearly would be concentrated in those four firms. If one of these stores absorbed the assets and liabilities of another, so the other ceased to exist, the resulting merger would further concentrate the market and possibly diminish competition. Competition is not necessarily diminished solely as a result of market concentration, however. Courts will consider other factors in determining if a merger violates Section 7. One factor of particular importance is whether the merger will make it more difficult for *potential* competitors to enter the relevant market.” (Miller 510)

2. Based on the facts stated in the question, most of these factors are present. The major antitrust law being violated is Section 7 which is in the Clayton Act. Section 7 does not allow any person or business organization from acquiring the stock or assets in another business where the result would be a significantly increased market share and the effect would most likely be to lessen competition. – “If a horizontal merger creates an entity with a significant market share, the merger may be considered illegal because it increases market concentration... three additional factors. The first factor is the overall concentration of the relevant market. The second is the relevant market’s history of tending toward concentration. The final factor is whether the merger is apparently designed to establish market power or restrict competition.” (Miller 510)
3. The removal of a competitor that controls 35% of the market (GreatGro) combined with the 40% held by the acquiring company (Fruit-of-the-Plant) – stated within the question
4. definitely could drive out the remaining small competitors and be a barrier to future entrants into this market. – “If a horizontal merger creates an entity with a significant market share, the merger may be considered illegal because it increases market concentration” (Miller 510).
5. Either the U.S. Department of Justice or the Federal Trade Commission could file for divestiture of the resulting firm if these parties were to merge. – “The federal agencies that enforce the antitrust laws are the U.S. Department of Justice (DOJ) and the Federal Trade Commission (FTC), which was established by the Federal Trade Commission Act of 1914. Section 5 of that act condemns all forms of anticompetitive behavior that are not covered under other federal antitrust”. (Miller 511)

“ The DOJ or the FTC may ask the courts to impose various remedies, including **divestiture** (making a company give up one or more of its operations) and dissolution”. (Miller 511)

Question 83

Loren signs a note that states, “Payable in thirty days.” The note is dated March Micah buys the note on April 3. Is Micah an HDC of the note? Explain.

Answer: No, the time that a due date on an instrument begins is the day after the date of an instrument, which would mean that this note is due April 1. In which this means that the note is

overdue. A requirement for becoming an HDC is that a party must take an instrument without notice that it is overdue.

1. due date on an instrument begins is the day after the date of an instrument, which would mean that this note is due April 1. In which this means that the note is overdue. – “What constitutes notice that an instrument is overdue depends on whether it is a demand instrument (payable on demand) or a time instrument (payable at a definite time).”(Miller 249)

“Normally, a time instrument is overdue on the day after its due date”. (Miller 249)

2. A requirement for becoming an HDC is that a party must take an instrument without notice that it is overdue. – “The basic requirements for attaining HDC status are set forth in UCC 3-302. An HDC must first be a holder of a negotiable instrument and must have taken the instrument (1) for value, (2) in good faith, and (3) without notice that it is defective (such as when the instrument is overdue, dishonored, irregular, or incomplete).” (Miller 246)

Question 85

Motor Vehicles Body Shops contracts to buy from Paint Supply & Equipment Headquarters, Inc., twenty-four spray paint guns at \$30 each to be delivered by October 1. Paint Supply knows that Motor Vehicles Body Shops will use the guns to complete a special job by October 31 for a certain auto dealer. Motor Vehicles Body Shops expects to make \$17,000 profit from the job. Paint Supply fails to deliver on October 1. Motor Vehicles Body Shops attempts to buy substitute spray guns, but must pay \$40.00 for each and take delivery on October 15, cutting Motor Vehicles Body Shops’ profits when the dealer arranges for some of the job to be done elsewhere. Motor Vehicles Body Shops sues Paint Supply. What is the measure of recovery?

Answer: There is a valid case for Motor Vehicle Shops to sue Paint supply. This is due to the fact that Motor vehicles lost all of its profit from the dealer due to the non-delivery of Paint guns, there is a case of irreparable damage. Here the Motor Vehicles can sue them for the loss of profits including the permanent damage done for the reputation of the Motor Vehicle Body Shop. In the future auto dealers may hesitate to come back to the company as they may not make up for their promise. With this being said, the total recovery that Motor Vehicles can get would be to get the twenty four spray guns in delay + the paint supply should make good the profit of 17,000 + the a sum of money to measure the irreparable damage done to the Motor Body Shop.

1. “In certain situations, buyers and lessees can protect themselves by obtaining **cover**—that is, by buying or leasing substitute goods for those that were due under the contract. This option is available when the seller or lessor repudiates the contract or fails to deliver the goods, or when a buyer or lessee has rightfully rejected goods or revoked acceptance. In purchasing or leasing substitute goods, the buyer or lessee must act in good faith and without unreasonable delay [UCC 2-712, 2A-518]. The buyer or lessee can recover from the seller or lessor: 1.The difference between the cost of cover and the contract price (or lease payments).2.Incidental damages that resulted from the breach.3.*Consequential damages* to compensate for indirect losses (such as lost profits) resulting from the breach that were reasonably foreseeable at the time of contract formation. The amount of consequential damages is reduced by any amount the buyer or lessee saved as a result of the breach (such as when a buyer obtains cover without having to pay delivery charges that were part of the original sales contract). Buyers and lessees are not required to cover, and failure to do so will not bar them from using any other remedies available under the UCC. A buyer or lessee who fails to cover, however, risks collecting a lower amount of consequential damages. A court may reduce the consequential damages by the amount of the loss that could have been avoided had the buyer or lessee purchased or leased substitute goods.” (Miller 353)

2. “Les Entreprises Jacques Defour & Fils, Inc., contracted to buy a thirty-thousand-gallon industrial tank from Dinsick Equipment Corporation for \$70,000. Les Entreprises hired Xaak Transport, Inc., to pick up the tank, but when Xaak arrived at the pickup location, there was no tank. Les Entreprises paid Xaak \$7,459 for its services and filed a suit against Dinsick. The court awarded compensatory damages of \$70,000 for the tank and incidental damages of \$7,459 for the transport. To establish a breach of contract requires an enforceable contract, substantial performance by the nonbreaching party, a breach by the other party, and damages. In this case, Les Entreprises agreed to buy a tank and paid the price. Dinsick failed to tender or deliver the tank, or to refund the price. The shipping costs were a necessary part of performance, so this was a reasonable expense.” (Miller 353)

Question 95

Best Yogurt Corporation orders refrigeration equipment from Cold Storage, Inc., which has an unperfected security interest in the equipment until it is paid for. Meanwhile, Best Yogurt takes out a loan from Dependable Credit, Inc., subject to a security interest in Best Yogurt’s building and equipment, which Dependable Credit perfects. Best Yogurt files a petition in bankruptcy for

relief in a liquidation proceeding. If the petition is granted, in what order will the creditors be paid?

Answer: If the petition is granted: Dependable Credit will be paid first and then Cold Storage will be paid.

1. “Promptly after the order for relief in the liquidation proceeding has been entered, a trustee is appointed. The basic duty of the trustee is to collect the debtor’s available estate and reduce it to cash for distribution, preserving the interests of both the debtor and the unsecured creditors. The trustee is held accountable for administering the debtor’s estate. To enable the trustee to accomplish this duty, the Code gives the trustee certain powers, stated in both general and specific terms. These powers must be exercised within two years of the order for relief.” (Miller 427)
2. “The trustee has the power to require persons holding the debtor’s property at the time the petition is filed to deliver the property to the trustee. To enable the trustee to implement this power, the Code provides that the trustee has rights *equivalent* to those of certain other parties, such as a creditor who has a judicial lien. This power of a trustee, which is equivalent to that of a lien creditor, is known as *strong-arm power*.”(Miller 427-428)