

## University of Illinois College of Law Examination Cover Sheet

### **Business Associations**

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Fall Semester 2025

Number of Pages: 3 (including this page)

**Exam Date & Time: Wednesday, Dec. 10, 9am.**

### **Exam Instructions**

- 1. Accessing and submitting the exam**
  - a. The exam form will be e-mailed to you by my administrative assistant, on the Exam Date & Time.
  - b. Save your exam answer as a Word (.doc or .docx) file, with the file name being your 4-digit exam number.
  - c. **Submit the exam within 6 hours of the Exam Time (e.g., before 3pm if the Exam Time is 9am)**, by e-mailing it as an attachment to my administrative assistant Kelly Downs (kdwns@illinois.edu).
- 2. Permissible material:** This is an open book exam. Subject to Instruction 3 (confidentiality), you may use any written materials you want, whether in hardcopy or electronic format.
- 3. Confidentiality:** Once you receive this exam form, you are not allowed to discuss the exam with anyone until after the last day of the exam period. Students enrolled in this course are not allowed to solicit or receive information about the exam if the source of the information (directly or indirectly) is a person who has seen the exam.
- 4. Anonymity:** The exams are graded anonymously. Do not put in your exam answer anything that may identify you, except for your 4-digit exam number.
- 5. Length limit:** The total length of your answer may not exceed 1,000 words. For every 10 words in excess of the length limit (rounded up), 1 point will be taken off the exam's raw score.
- 6. Answering the exam:** Cite relevant case and statutory authority that is part of the course material, but do not cite sources that are not part of the course material. Subject to the length limit, answer all relevant issues that arise from the fact pattern, even if your conclusion on one of the issues is dispositive to other issues.
- 7. Assumptions:** Unless the exam question specifies otherwise, assume that -
  - a. The relevant jurisdiction applies the Restatement (Third) on Agency, Delaware corporate law, UPA, and U.S. securities law.
  - b. Each business entity's charter states that: the entity is a stock corporation, has limited liability and perpetual existence; the entity may conduct any lawful act or activity; director fiduciary duty is limited to & director/agent right to indemnification is extended to the maximum degree allowed under DGCL §102(b)(7); the board may amend the bylaws.
  - c. Each business entity's bylaws state that: the chairperson of the board is authorized to call a board meeting; and the board is authorized to call both annual & special shareholder meetings.
- 8. "Fact" patterns are fiction:** The "facts" presented in this exam are not necessarily true in real life.

Cortex Innovations, Inc. (“**Cortex**”) is a publicly-traded Delaware corporation that creates AI-driven wearable technology. Cortex’s board is composed of three directors: **Debby** (who is the Chairperson), **David & Donna**. Cortex had a few “cash cow” products that brought in a steady but declining profit. The company ploughed the profits into developing **Cor-band**, a wristband that predicts heart attacks 24 hours before they happen. However, the accuracy of predictions was mediocre, and therefore the Food & Drug Administration (“FDA”) has yet to approve this product for sale to consumers. Cortex’s board believed that with more work on Cor-band’s hardware and software, accuracy will improve and the FDA will approve the device, at which point the product should be very profitable. At the current stock price, Cortex’s is worth \$400M.

Cortex’s charter (which is a public document) has a clause that states that the CEO has the authority to manage the company’s day-to-day business, whereas the board has the authority to make strategic decisions. Cortex’s board has created an Employees’ Manual (which is a private document, though it is known to all Cortex employees) in which they state that any purchase or sale over \$50M must receive board approval.

The board hired **Conrad**, an experienced tech executive, as Cortex’s CEO. A few months into his tenure, Conrad persuaded the board to buy from a failing start-up the intellectual property of the **Cor-link**, a headband that allows users to control computer cursors with their mind. The cost was very low because the Cor-link was in early development and would require time and a large investment to develop into a marketable product.

Efforts to improve Cor-band made only modest progress, and Conrad believed it would be better to shift efforts to Cor-link. He asked the board to sell the intellectual property of Cor-band (“**Cor-band IP**”), and use the money to develop Cor-link. The board discussed Conrad’s suggestion and rejected it, telling him that in the board’s view Cor-band was still the more promising product, and he should focus on getting FDA approval for it.

Conrad did what he could to get FDA approval for Cor-band, but was skeptical that the efforts would be successful. Meanwhile, he suffered a personal misfortune: his son was diagnosed with a rare and aggressive cancer. Normal treatment had a poor prognosis. Conrad wanted his son to try an experimental treatment offered by a start-up called **Kura**, but that treatment was not covered by their health insurance and would cost \$10M, which Conrad did not have.

Flying back home from a meeting with FDA officials, Conrad met Francesca, the CEO and owner of Frontier Medical Technologies (“Frontier”). When Francesca confided to Conrad that she was a cancer survivor, Conrad told her of his son’s diagnosis and the high cost of Kura’s experimental treatment, which he could not afford. Francesca said she knew of some cancer experts that she could consult to see if there were alternative promising treatments that were less expensive. Conrad then told Francesca about Cor-band and that he was hoping that the FDA would soon approve the sale of the device to consumers, but also told her about Cor-link and his belief that Cor-link was even more promising. Francesca was excited about Cor-band’s prospects, and told Conrad that if he needed a buyer for Cor-band, she would be happy to discuss a fair price.

A few days later, Francesca called Conrad and delivered unhappy news: she checked with the experts she knew, but they said that Kura’s experimental treatment was the only option that had a promising prognosis. Conrad thanked Francesca for trying, and asked if she wanted to meet to discuss the possible sale of Cor-band to Frontier.

The next day, Francesca and Conrad met at Conrad's office in Cortex's headquarters, and discussed the sale of the Cor-band IP to Frontier. To determine the fair value of Cor-band, they agreed to hire an expert in medical device valuation, selected jointly by Francesca and Conrad. The expert conducted a thorough investigation, and concluded that Cor-band IP's fair value was between \$190-210M.

Conrad and Francesca then signed a contract ("the Agreement") between Cortex and Frontier, in which Cortex sold to Frontier the Cor-band IP for \$200M. In addition, they signed an agreement between Frontier and Conrad, that stated that Frontier will pay Kura \$10M for the cancer treatment of Conrad's son, upon the transfer of Cor-band IP to Frontier ("the Side Agreement").

Frontier then presented the Agreement to Sarah, Cortex's Secretary (the corporate officer who has the authority to transfer IP rights on behalf of Cortex). Sarah e-mailed Conrad, Debby, David and Donna, attaching a scan of the Agreement and asking whether she should transfer the Cor-band IP to Frontier. Within a few minutes, Conrad replied to Sarah (copying all of the directors): "The deal is legit, Sarah. I signed it. Go ahead and transfer the Cor-band IP to Frontier."

This was the first time the board heard of the Agreement. Debby immediately called a board meeting by videoconference, and all three directors were furious at Conrad for selling the Cor-band IP despite their instruction not to do so. But they were also pleasantly surprised about the high price Conrad got for it. They made no decision and did not reply to Sarah's e-mail.

Seeing Conrad's reply and no objection from the board, Sarah transferred the Cor-band IP to Frontier. As soon as she did, Frontier transferred \$200M to Cortex and \$10M to Kura.

The board authorized Conrad to use the \$200M to develop Cor-link. A few days later (before Frontier spent any money to develop Cor-band), the FDA announced that it approved Cor-band for sale to consumers. Now, \$200M no longer appeared to be a good price for the Cor-band IP. At the same time, the board learned about the Side Agreement Conrad and Frontier signed.

Cortex sued Frontier ("the IP Suit") claiming that Conrad had no authority to sell the Cor-band IP, and therefore demanding that the Cor-band IP will be returned to them (at which point they will return to Frontier the \$200M it paid them). Cortex also sued Conrad and Frontier for entering the Side Agreement ("the Side Suit").

During litigation, a court-appointed expert concluded that at the time the agreement was signed, Cor-band IP's fair value was indeed \$190-210M, because it was not clear then that the FDA would approve the device. Now that FDA approval was given, the fair value is \$500M.

In a deposition that serves as evidence in the litigation, Francesca said that she was not aware of the rule in Cortex's Employee Manual requiring board approval for sales over \$50M, and that she believed Cortex's CEO had authority to sell the Cor-band IP without board approval.

### **Discuss the IP Suit and the Side Suit.**

## **Model answer for the Fall 2025 BA exam**

### **1. IP Suit:**

(a) Actual Authority – authorization: Conrad is Cortex's agent under R3A§1.01, because he acts on Spirit's behalf in “manag[ing] day-to-day business”, and is subject to the board's control. Conrad knows the employee manual requires “any... sale >\$50M must receive board approval”, and the board specifically rejected his request to sell Cor-band, so he can't reasonably believe he has authority to sell Cor-band. He also knows the charter authorizes him “day-to-day” management but not “strategic decisions”, and a sale of 50% of Cortex's value is strategic. Therefore, under R3A§2.01, Conrad lacked actual authority to sell Cor-band.

(b) Actual authority – ratification: The board acquiesced to Sarah's transfer to the Cor-band IP, and accepted the benefit of the Agreement (the \$200M payment), which, if informed and uncoerced, is ratification. This ratification would be uninformed if knowledge of the Side Agreement was material to ratifying the Agreement. In other words, if a reasonable director would consider the knowledge of the Side Agreement significant to the decision whether to ratify the Agreement. It is significant, because it suggests Cortex could get at least another \$10M for Cor-band (since Frontier was paying a total of \$210M), and because directors may not trust Conrad's judgment if they knew he received a large personal benefit for Cor-band's sale. Since it's material, no ratification.

(c) Apparent authority: Under R3A§3.03, Cortex is bound by the Agreement if Conrad had apparent authority to settle, which he would if Cortex's manifestations to Francesca made her reasonably believe Conrad was authorized. Francesca has one manifestation from Cortex: she met Conrad at the CEO's office that's under Cortex's control, confirming that he's Cortex's CEO.<sup>1</sup> Industry custom and Cortex's charter both give CEOs authority to manage day-to-day business, but boards make strategic decisions. Carla testified she had actual belief that Conrad was authorized, but was that belief reasonable? The sale amounted to 50% of Cortex's value, which is beyond “day-to-day business”. No apparent authority.

(d) Estoppel: Under R3A §2.05, To establish estoppel, Frontier must show that:

- Frontier suffered a detrimental change in position: Frontier suffered a \$10M detriment – the Side Agreement payment;<sup>2</sup>
- Frontier's belief that Conrad was authorized was justifiably induced: up to the point of signing the Agreement, Frontier's belief was not justifiably induced (for the same reasons there was no apparent authority: see 1c). However, Sarah's transfer of Cor-band IP occurred before Frontier's detrimental change in position,

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<sup>1</sup> The transfer of Cor-band IP to Frontier (by Sarah) is not a relevant manifestation, because it occurs after Frontier already entered the transaction, so it couldn't have affected Frontier's reasonable belief in Conrad's authority when Frontier agreed to the transaction. It is relevant, however, to the analysis of ratification (see 1b) and estoppel (see 1d).

<sup>2</sup> The \$200M payment to Cortex is not a detrimental change in position, because Cortex will pay it back if the contract is rescinded (as Cortex's suit requests). The \$300M increase in Cor-band IP value is also not a detrimental change in position – it's not a loss for Frontier compared to not entering the contract at all (which is what a detrimental change in position encompasses).

and could justifiably induce Frontier's belief that the Agreement was authorized (expecting that Cortex's board has control over the transfer and wouldn't allow it unless they approved the Agreement).

- Cortex was culpable: Before signing the Agreement, the board didn't intentionally or negligently cause a belief that Conrad was authorized to sell Cor-band, nor had notice of inducement. But when Sarah contacted them, they had notice that Conrad purported to bind Cortex to the Agreement, and could reasonably contact Frontier to disavow the deal – but failed to do so.

Estoppel succeeds, but only covers the \$10M detrimental change in position: Frontier would have to return the IP, but Cortex would pay Frontier \$210M, not \$200M (however, Frontier would need to pay back these extra \$10M as a result of the Side Suit, see 3d).<sup>3</sup>

## **2. Side Suit - Conrad:**<sup>4</sup>

- (a) Duty: Conrad is Cortex's agent (see 1a) and owe FD as such.
- (b) SoR: Conrad owed FD as agent, so Agency SoR applies.
- (c) Application – CoI: Conrad has personal interest to sell Cor-band to Frontier even if the sale is not in Cortex's interest, because the \$10M treatment payment (which benefits his son, and indirectly him) is conditioned on selling Cor-band to Frontier. This conflict is connected with the fiduciary relationship because it occurs when he's acting in Cortex's behalf in selling Cor-band. Conrad violated R3A §8.01.
- (d) Application – Unauthorized benefit: Conrad received a benefit (\$10M treatment payment that benefits his son, and indirectly him). The benefit was unauthorized: the board may have ratified the Agreement (see 1b), but had no knowledge of the Side Agreement so their acquiescence to the Agreement cannot be an informed ratification of the (unknown) Side Agreement. The benefit was derived in connection with Conrad's actions on Cortex's behalf (selling Cor-band). Conrad violated R3A §8.02.
- (e) Board's acquiescence to the Agreement isn't ratification of Conrad's self-dealing because the board did not know about the Side Agreement (so it isn't informed).

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<sup>3</sup> In most fact patterns we studied in class, apparent authority and estoppel reached similar conclusions, and specifically the analysis for “reasonable belief” (in apparent authority) and “justifiably induced” (in estoppel) were similar. In this exam's fact pattern, this was true for events up to signing the Agreement, but the circumstances after signing (but before Frontier's detrimental change in position), while irrelevant for apparent authority, were relevant for estoppel (and for ratification). Note that unlike ratification's analysis, estoppel doesn't inquire whether B's actions (that caused T to be justifiably induced) were informed (only requiring that the board have notice of the inducement and not take reasonable steps to inform T that A was acting without authority), resulting in the board's behavior creating liability under estoppel (but only for the \$10M detrimental change in position), but not under ratification (for the entire contract).

<sup>4</sup> Some exams wrongly analyzed whether Conrad had authority to enter the Side Agreement. This is wrong because Conrad entered the side agreement personally, not on behalf of Cortex, so authority is irrelevant (authority is the right A has to act on B's behalf, and Conrad entered the Side agreement on his own behalf, not Cortex's).

(f) Conrad was self-dealing (both CoI and unauthorized benefit), so Cortex can either demand damages caused by his breach (\$300M, if Cortex lost the IP suit; see 3d), or disgorgement of the benefit Conrad received from self-dealing (\$10M value of the treatment).

### **3. Side Suit - Frontier:**

Frontier is liable to Cortex for aiding & abetting Conrad's self-dealing.

- (a) Fiduciary relationship: As Cortex's agent (see 1a), Conrad owed Cortex a FD.
- (b) Breach: Conrad breached FD by self-dealing (see 2a-e).
- (c) Frontier's knowing participation in the breach: By offering a \$10M benefit conditional on the Agreement, Francesca actively induced Conrad to self-deal (described in 2c-d), satisfying *Mindbody*'s requirement of active participation.<sup>5</sup>
- (d) Damages proximately caused by the breach: The \$10M treatment payment was a benefit derived from fiduciary position, and therefore belongs to Cortex (it's part of Cor-band's price, that should have been paid to Cortex). Alternatively (if Cortex loses the IP suit), Cortex may be able to show that the \$10M benefit induced Conrad to sell Cor-band despite the board's prohibition (if not for the inducement, Cortex would still own Cor-band), and therefore the breach caused Cortex to lose an asset that is now worth \$300M more than it was paid, making that lost value damages caused by the breach.

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<sup>5</sup> Some exams wrongly assessed whether Frontier knowingly caused/assisted in Conrad's entering the Agreement without authority. This is wrong because lack of authority is not a breach of fiduciary duty (so assisting in it can't be a basis for aiding & abetting a breach of fiduciary duty). And (as mentioned in footnote 4) authority is an irrelevant issue for the Side Agreement because Conrad entered it on his own behalf, not on Cortex's behalf. So, the knowing participation that needed to be analyzed was in Conrad's self-dealing, not in Conrad's lack of authority to enter the Agreement.