

University of Illinois College of Law

Examination Cover Sheet

Mergers & Acquisitions

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Spring Semester 2026

Number of Pages: 4 (including this page)

Exam Date & Time: **Wednesday, May 6, 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 (i.e., before 3pm)**, 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 **Answering the exam:** Cite relevant case and statutory authority that is part of the course material, but do not cite sources that are not part of the course material.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.

Cerium Planar Solutions (“CPS”) is a Delaware corporation that makes a product called CMP slurry, which is used in the creation of microchips. CMP (Chemical Mechanical Planarization) is the process of chemically etching and physically polishing each microchip wafer to make it perfectly flat between layers (which is necessary to make all the layers in the microchip fit and work as intended). CMP slurry is the chemical that does the polishing. The industry standard is a slurry based on silicon dioxide (i.e., sand). However, scientists have developed an alternative called Ceria slurry, which is based on the rare earth metal Cerium. Polishing a wafer using Cerium rather than sand requires much shorter polishing times and has a lower defect rate (scratches on the wafer). However, sand is cheap and abundant, while Cerium is rare and is produced only in a small number of countries.

Fifteen years ago, CPS was founded with the hope of improving Ceria slurry to the point that its advantages would outweigh the higher cost of Cerium. CPS has a single class of stock – common shares – that were publicly-traded. It has two large shareholders: Elementum Partners (“Elementum”) and Meridian Ventures (“Meridian”), each of whom owns a 30% interest in CPS. Elementum and Meridian signed a shareholder agreement under which they agreed to vote their shares jointly (with a mechanism addressing situations when they disagreed how to vote). CPS’s board consisted of three directors: Eric (a senior executive in Elementum), Mira (the CEO of Meridian) and Henrik (CPS’s CEO).

Henrik was competent in engineering and finance, but was not a master of either. His gift was his ability to manage talented people. He hired exceptional employees and was able to motivate them – sometimes through bonuses and support, other times by steering them into competition against another talented worker – to get the most out of the workforce. Two of CPS’s employees stood out for their exceptional talent: Yuxin and Arvind.

Yuxin graduated at the top of her engineering class in China’s Tsinghua University, and then wrote an influential doctoral dissertation that pioneered “smart” Ceria slurry (chemically “smart,” in that the etching process would stop automatically when it hits a certain layer). Yuxin believed that business success comes from bold innovation, not cost-cutting.

Arvind topped his MBA class in India’s IIM-Calcutta. He had an intuition for finance and a talent for communicating with investors. Better yet (from the investors’ perspective) Arvind was frugal, always finding ways to get the job done at a lower cost.

As Yuxin and Arvind both rose up the ranks, they clashed frequently. CPS’s main vulnerability was the price of Cerium. It was high and, worse – volatile. Geopolitical turbulence (such as trade wars or actual wars) would push the price of Cerium sky-high. At present, CPS’s Ceria slurry was so expensive that it was not competitive despite being much better than sand-based slurry. Yuxin believed that CPS was just a product improvement away from having a product so superior that customers would pay the higher price. Arvind believed that no matter how much CPS’s engineers improved Ceria slurry, a spike in Cerium prices could make the product non-competitive, so he urged spending less on developing Ceria slurry, and diverting the resources to improving sand-based slurry – less glamorous and less likely to be game-changing, but less risky.

Over the years, arguments between Arvind and Yuxin increased whenever the price of Cerium spiked. CPS’s board had to decide whether to follow the advice of Yuxin (by then – CPS’s Chief Operating Officer), who advocated doubling down on innovation to make an even better Ceria slurry that would be worth the higher price; or to follow the advice of Arvind (by then – CPS’s Chief Financial Officer), who advocated diversifying away from Ceria slurry. In most arguments, the board sided with Yuxin.

CPS made improvements in the product, which now required less Cerium and had superior performance. For the first time, CPS's Ceria slurry was competitive – more expensive than the sand-based industry standard, but sufficiently better that some customers purchased it.

By this point, Henrik had to retire for medical reasons. It was clear that the next CEO would be either Yuxin or Arvind, and, sadly, also clear that whomever of the two was not selected would leave (since neither one would accept the other's preferred strategy for the company). After deliberating extensively, the board appointed Yuxin as CEO. Henrik retired from CPS and Yuxin also replaced him on the board (so the board now consisted of Eric, Mira and Yuxin). Arvind quit CPS and was hired as CEO of Nano-Abrasive Dynamics ("Nano"), a rival, publicly-traded firm that makes sand-based CMP slurry. Nano has no controlling shareholder.

A couple of years after Yuxin became CEO, a global trade war erupted and the supply of Cerium became constrained. Cerium prices tripled, and almost overnight Ceria slurry became too expensive for customers to purchase, despite its superior performance. Yuxin assured the rest of the board that Cerium prices would soon drop to their previous levels, so they could ride out this challenge and there was no need to change their strategy.

However, as the price of Cerium remained high for weeks, CPS's stock price plummeted. When CPS's share price was at a 10-year low, Arvind pounced. His firm, Nano, announced an all-stock, hostile, evenly-loaded two-tier tender offer. Specifically, Nano offered CPS's shareholders to exchange (in a tender offer mechanism) shares of Nano worth \$42 for each CPS shares that was tendered. CPS shares were trading on that day for \$40/share, so Nano's offer was at a 5% premium. The tender offer was conditioned on over 50% of CPS's shares being tendered, and if the tender offer was successful, Nano would commence a freeze-out merger of the remaining CPS shareholders for the same number of Nano shares as it offered in the tender offer. CPS had about 10 million shares outstanding, so it was trading at a market capitalization of \$400M, while Nano offered to pay \$420M to acquire it.

The board met the next day. Yuxin argued that they had to prevent Nano from acquiring CPS, because if Nano acquired CPS, Arvind would shift CPS's focus from Ceria slurry to sand-based slurry – which all directors agreed was the wrong strategic direction. The board authorized Yuxin to search for alternative acquirers.

A week later, Yuxin convened the board to approve two agreements. First, a long-term Cerium supply agreement with a Cerium mining company (the "Supply Agreement"). The Supply Agreement required CPS to buy (and the mining company to sell) each year for the next 10 years, a large amount of Cerium (equal to 100% of the amount of Cerium CPS currently used) at the current market price (which, as mentioned above, was triple the price of Cerium before the trade war started).

The second agreement was with Next Generation Chemicals ("NGC"), a corporation that wasn't affiliated with any of CPS's directors or shareholders, to acquire CPS in an all-stock intermediate-form triangular merger, paying in NGC shares worth \$41/CPS share (the "Merger Agreement").

After thorough deliberation and consultation with well-informed experts, CPS's board approved both agreements.

Arvind announced that the Supply Agreement made Nano's acquisition of CPS unrealistic, since Nano planned to have CPS stop production of Ceria slurry and focus on sand-based slurry, and the Supply Agreement would force CPS to purchase for 10 years large amounts of Cerium (that it wouldn't need under Nano's strategy) at the current high price. Based on Nano's estimate, the expected loss from selling the unneeded Cerium to others (or alternatively, the damages that would need to be paid to the mining company if the Supply Agreement was breached) would be \$40M. Nano therefore withdrew its tender offer for CPS shares.

Yuxin, speaking for CPS, responded that the board believes that Ceria slurry is on the verge of permanent superiority over sand-based slurry, and for that reason, CPS's shareholders would be best served by focusing on CPS's core strength in Ceria slurry. That strategy requires a reliable supply of Cerium at a stable price, which is why the company entered the Supply Agreement. For the same reason, Yuxin said, NGC's acquisition offer is superior to Nano's. CPS's board expects NGC's future to be brighter than Nano's, because Nano focuses on sand-based slurry while NGC will continue CPS's focus on Ceria slurry, which the board believes is the better strategy.

Pursuant to the Merger Agreement, NGC launched a tender offer for CPS's shares, paying in NGC shares worth \$41/CPS share (as the first part of the intermediate-form merger). 61% of CPS's shares were tendered, including all the shares owned by Elementum and Meridian. NGC then commenced a freeze-out merger of the remaining 39% of shares, also for NGC shares worth \$41/CPS share. No shareholder vote took place regarding the merger. Following this transaction, Elementum and Meridian became the largest shareholders in NGC, but even they each owned less than 10% of voting power in NGC.

Samir and Stella were CPS shareholders who did not tender their shares to NGC, but who accepted NGC's payment in the subsequent merger. Samir sued CPS's board, alleging that they breached their fiduciary duties by approving the Supply Agreement and the Merger Agreement. He claimed that the Supply Agreement caused a senseless loss of \$40M of CPS's value; that the Supply Agreement "killed" Nano's offer, preventing CPS shareholders from accepting \$1/share more than what they received from NGC; and that the board should not have accepted NGC's \$41 offer over Nano's \$42 offer.

Stella sued Elementum and Meridian, claiming that by participating in NGC's tender offer they breached a fiduciary duty they owe to CPS's other shareholders. Elementum and Meridian do not dispute Stella's standing to sue.

Discuss: (1) Samir's suit; and (2) Stella's suit.

Model answer for the Spring 2026 M&A exam

1. Samir's suit¹

(a) **Standing**: Samir raises three bases for liability: corporate waste (loss of \$40M on Supply Agreement); *Unocal* (Supply Agreement killed Nano's offer); and *Revlon* (pursuing the lower valued NGC offer). Under *Tooley*, the *Unocal* and *Revlon* claims are direct, since they harm the shareholder directly (denying them the ability to accept Nano's offer), so Samir has standing for those. The corporate waste claim, however, is derivative under *Tooley*: the alleged loss of \$40M is suffered by CPS, not its SHs. Therefore, Samir lost standing on the corporate waste claim since he no longer owns CPS shares (as in *Tooley*).

(b) **Duty & SoR**: Defendants owe FD as directors. The directors aren't self-dealing, so Entire Fairness doesn't apply.²

Unocal claim: If the Supply Agreement was truly sought "a reliable supply of Cerium at a stable price" as Yuxin claimed, it would be assessed under the BJR, but the Supply Agreement seems aimed to thwart Nano's offer, since earlier Yuxin assured the board that "Cerium prices would soon drop" (so why lock into current prices?), and she pursued the Supply Agreement immediately after learning about Nano's offer (and not before). Because the Supply Agreement intends to thwart (and succeeds in thwarting) Nano's offer, it infringes on the right of CPS's SHs to sell their shares to Nano, so Enhanced Scrutiny applies under *Unocal*.

Revlon claim: If the Merger Agreement created a CoC, then the board has embarked on it and *Revlon* would apply. However, under *Paramount*, *Revlon* doesn't apply because there's no CoC: following the acquisition, the surviving entity (NGC) has no controller (two largest SHs have <20% combined) and compensation to CPS shareholders is entirely in NGC stock (so *Smurfit-Stone's* exception to *Paramount* doesn't apply).

(c) **Application (Enhanced Scrutiny)**:

(i) Did the board act in good faith & after a reasonable investigation?

- Legitimate threat: Yes. *Revlon* doesn't apply, so Arvind's sand-focused strategy is a legitimate threat: in *Airgas* terms, an opportunity loss in Cerium slurry. Following *Paramount*, Nano's sand-focus (and cost-focus) creates an incompatible corporate culture to CPS's Ceria-focus (and innovation-focus) and is therefore a legitimate threat. The board would lack good faith if its act

¹ Some students analyzed Samir's suit by agreement (Supply Agreement and Merger Agreement) rather than by Samir's three claims (each potential basis for liability). As long as all three claims were analyzed in the answer, this is fine.

² Some answers contended that Yuxin was conflicted due to entrenchment. Delaware courts do not assume a director is motivated by entrenchment unless there is explicit evidence that this is their motivation. If the court did otherwise, *Unocal* would not make sense because when a board installs takeover defenses, it is likely that a potential acquirer (if they overcome the defenses and acquire Target) would replace the board that was hostile to it. If we considered the directors as entrenching, we would apply Entire Fairness to all takeover defenses, contrary to *Unocal*, which applies Enhanced Scrutiny.

were consciously illegal (it isn't) or corporate waste. Samir lacks standing to claim corporate waste (see 1(a)), but even if the court may consider waste in applying Enhanced Scrutiny to Samir's *Unocal* claim, there is no corporate waste here: a reasonable person could view the Supply Agreement as benefiting CPS by providing "a reliable supply of Cerium at a stable price".³

- Good faith: Yes. No self-dealing.
- Reasonable investigation: Yes. Board approves both agreements "[a]fter thorough deliberation and consultation with well-informed experts".

(ii) Reasonable response proportionate to threat posed? Under *Unitrin*: Not coercive – the two agreements don't coerce CPS SHs' voting. Not preclusive – if most CPS's shareholders refuse to tender their shares to NGC, that acquisition would fail and other transactions would be possible. The potential \$40M loss from the Supply Agreement might make Nano lower the price for CPS's shares, but doesn't make Nano's acquisition of CPS "realistically unattainable". The Merger Agreement is not otherwise unreasonable, but the Supply Agreement might be. If Nano's estimate is correct, CPS would lose \$40M (10% of CPS's pre-deal market capitalization) if it was acquired by someone who didn't want to focus on Ceria slurry. Caselaw on termination fees & crown jewels finds a value loss of about 3% is reasonable; but 10% is unreasonable.

Conclusion: Waste claim fails both for lack of standing (1(a)) and substantively (1(c)(i)). *Revlon* duties aren't triggered by the Merger Agreement based on *Paramount* (1(b)). *Unocal* claim against the Supply Agreement may succeed because it's possibly "otherwise unreasonable" (1(c)(ii)), but only if CPS's board pursued the Supply Agreement to thwart Nano's offer (1(b)).

2. Stella's suit⁴

(a) Duty: Elementum and Meridian owe FD only if they're a controlling stockholder or (jointly) a control group. Neither is a controlling stockholder because they each fall into the safe harbor of DGCL §144(e)(2)(c) by owning <1/3 of voting power. If by virtue of their shareholder agreement they constituted a controlling stockholder, then they are a control group under DGCL §144(e)(1). Combined, they own 60% of voting power, which is "majority of voting power", making them a controller under DGCL §144(e)(2)(a). However, *Patel & Sheldon* suggest the agreement needs to relate to the challenged transaction. The shareholder agreement regulates voting, not selling, the shares, while the parties sold shares to NGC but didn't vote on the deal. No duty unless *Patel* isn't good law following the 2025 amendment.

³ In section 1(b) of the model answer I said that this wasn't the board's likely purpose in having the agreement, but the test for corporate waste asks if this is (objectively) a reasonable view, not whether (subjectively) it was the board's view.

⁴ Several exams referred, in analyzing Stella's suit, to cases and analysis frameworks that were taught in previous years, and were not in the class slides sets, the pre-class video or the course materials packet. As you know, the law regarding controller fiduciary duties, and therefore the analysis framework for this issue, has changed significantly when DGLC §144 was amended in August 2025. Per exam instruction 6, you should not cite sources that are outside of the course material, and doing so results in a reduced score for the answer.

(b) SoR: If duty is owed, Entire Fairness applies if the challenged transaction was a “controlling stockholder transaction” under DGCL §144(e)(3). Here, defendants aren’t on both sides of the transaction (they aren’t on acquirer’s side), and don’t receive benefits “not shared with the corporation’s stockholders generally”, so they don’t fit either prong of DGCL §144(e)(3).⁵ No self-dealing. Under DGCL §144(d)(5), controllers are exculpated from liability other than for self-dealing (which didn’t occur, see above) or bad faith (which wasn’t alleged). So, no liability.

⁵ The fact that Elementum and Meridian became the largest SHs in NGC (and other shareholder did not) is not a “benefit [given by the challenged act, that is] not shared with the corporation’s stockholders generally” but rather is a result of their owning more shares of CPS, and therefore receiving (pro rata) more shares of NGC. The Merger Agreement treats them in the same way, pro rata, as the other shareholders.