NOTE: 1. This is an OPEN BOOK exam.
2. You must answer BOTH questions.
QUESTION 1

Marks
70

1. Repco Design (the "company") is a company incorporated under the provisions of the B.C. Business Corporation Act. The company carries on a furniture and design business in British Columbia. It has 25 shareholders, but the two largest of these are Linda and Jay Repco who together own 45% of the company's shares (a total of 45,000 shares).

The company also has 100,000 authorized but unissued shares. Each issued share carries one vote at a shareholders' meeting of the company. Linda and Jay are the only directors of the company.

The company has always been controlled by the Repco family and many Repco family members are employees of the company. The company has a reputation for its imaginative approaches to employee relations and for being conscientious about its relationships with its customers as well as the environment in which it operates. Over the years, the directors of the company have paid generous bonuses and other benefits to its employees. In 2013, for instance, it paid all 250 of its employees a $40,000 end of year bonus, despite sales for that year being 25 per cent less than the preceding year. In 2013 the company donated $50,000 to a non-profit environmental protection foundation established to prevent rainforest deforestation around the world.

During the first six months of this year (2014) the net revenues of the company continued to decline and its directors (Linda and Jay) decided to sell the company's single most valuable asset – a factory premises in Richmond, BC, with an appraised value of $10 million. The sale price was $7 million – a sum that represented about 55 per cent of the total value of the company's assets.

The company has recently attracted the interest of Swedart Inc. ("Swedart") a large international furniture manufacturer based in Sweden. Swedart believes that it could manage the business of the company more profitably than the present directors and also provide a better return for its shareholders, many of whom who feel that Linda and Jay are not acting in the best interests of the company by pursuing their employee benefits' policies and making other ex gratia payments.

Swedart approaches Linda and Jay privately and asks them if they would be interested in selling their shares. Jay is especially resistant to this proposal. He feels that Swedart's reputation for ruthless cost-cutting and poor employee relations makes it unlikely that its control of the company would be in its best interests, as well as those of the company's employees. He suggests to Linda that the board authorize the issuance of 50,000 shares (out of the company's
authorized but unissued share capital) to a trust set up to benefit the company’s employees.

Before implementing this plan Jay establishes a committee of the board of the company to study the proposed defensive measures. The committee’s members are Linda, and two senior officers of the company (not including Jay). The committee reports back to the board (one member of the committee dissenting) that it believes the share issuance proposal is in the best interests of the company. Jay also engages a prominent firm of lawyers to provide a written opinion on the legality of the issuance of the shares to the trust. The law firm subsequently produces a detailed legal opinion that concludes the proposed share issue is lawful and within the board’s power to implement.

Two shareholders of the company (Jeb and Jade) become aware of the events described above and approach Linda and Jay suggesting that the share issue may be a breach of their duties as directors of the company. Linda and Jay dismiss these concerns but decide to convene a meeting of the company’s shareholders to vote on a proposed resolution affirming the share issuance plan. Subsequently, a shareholders’ meeting is held and the resolution passes – Jeb and Jade dissenting.

You are now approached by Jeb and Jade and asked for your advice about the law surrounding the above events and what remedies they might have. You are also asked to consider the standing of your clients to seek any such relief and what, if any, procedural barriers they might need to overcome.

In furnishing your advice to Jeb and Jade consider, in particular, the following matters:

(i) The benefits paid by the company to its employees and its donation to the environmental organization. (10 marks)

(ii) The sale of the Richmond, BC factory premises. (15 marks)

(iii) The decision by Linda and Jay to issue 50,000 company shares to a trust. (20 marks)

(iv) What relevance, if any, is the advice the company received from the committee Jay established together with the legal opinion it received? (15 marks)

(v) In advising Jeb and Jade about their obtaining any of the above relief, discuss what relevance the shareholders’ resolution might have. (10 marks)
2. Escape Tours Inc. ("Escape") is a company incorporated under the B.C. Business Corporations Act that specializes in selling tour packages for travel in Asia and Africa. Escape was initially a partnership between two friends – Sarah San and Nicole Rogers – who had travelled widely after high school and decided to establish a travel business together.

By 2008 – when Escape was incorporated – Nicole had married John Smith and Nicole and Sarah agreed that John should become a shareholder in the newly-incorporated company. Shares in Escape are held as follows:

<table>
<thead>
<tr>
<th>Shareholder</th>
<th>Shares</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sarah San</td>
<td>25,000</td>
</tr>
<tr>
<td>Nicole Rogers</td>
<td>25,000</td>
</tr>
<tr>
<td>John Smith</td>
<td>50,000</td>
</tr>
</tbody>
</table>

Each share carries one vote at a meeting of the shareholders of the company.

Sarah and Nicole are the only directors of Escape and John's large shareholding represented his ability to provide significant financial resources to the company. Despite his shareholding, John expresses no desire to otherwise be involved in the management of Escape. Nicole is employed as Escape's president and chief executive officer. Sarah is employed by the company as its chief financial officer.

Ever since Escape was incorporated, relations between Sarah and Nicole have been strained. Nicole has often disagreed with Sarah’s suggestions about the future directions the business might take. Nicole has also become secretive about revealing to Sarah details about the company's sales and overall financial situation. No dividends have ever been declared by Escape, but generous remuneration has been paid as directors’ fees and salaries to Nicole and (somewhat less) to Sarah.

In June, 2014, a special resolution was passed at an extraordinary meeting of the shareholders of Escape, and supported by the votes of Nicole and John, removing Sarah from her office as director. This resolution was passed in reliance upon s. 128(3) of the Business Corporation Act. At the same time as the resolution passes, Nicole informs Sarah that her contract of employment as Escape's chief financial officer has been terminated.

A few weeks after the termination of her employment and removal as a director, Sarah learns that a lucrative contract, that she was the principal negotiator for on behalf of Escape, has been concluded between the company and a large Miami-based cruise company.
You have been approached by Sarah, who complains that without being a director and employee of Escape there is no point in her continuing to be a shareholder. She asks you if – based on the above facts – she has any remedy and what relief she might obtain. Advise her. (20 marks)

Before the above resolution was passed, Escape had entered into a long-term agreement to purchase discounted tour packages from a UK company called Apple Tours Ltd. ("Apple"). Sarah and Nicole negotiated the agreement. At no stage in these negotiations did Nicole disclose to Sarah that she had been a director of Apple for over ten years.

In March, 2014, Nicole disclosed to Sarah her interest in the long-term agreement with Apple. When Sarah voiced her objection, Nicole replied that her concerns were pointless since she and John could approve the arrangement at any time by passing a special resolution affirming it.

Give Sarah your advice on what remedies she has with respect to Nicole’s interest in the contract between Apple and Escape. (10 marks)