

COMPARATIVE MERGERS AND ACQUISITIONS
The University of Mississippi Cambridge Study Abroad Program
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Final Examination

Respond to the questions and requests set forth below. Each question or request is labeled with the number of points it is worth out of the total 120 points in the examination (one point for each minute of the exam).

The questions and requests set forth below relate to a proposed business combination transaction between Alimentation Couche-Tard Inc., a corporation incorporated under the laws of the province of Québec, Canada (“**Couche-Tard**”), and Casey’s General Stores, Inc., an Iowa corporation (“**Casey’s**”). Relevant facts needed to answer the questions are included in the document you received last week entitled “**Final Examination Facts – General Instructions.**” **The general instructions set forth in that document are incorporated by reference here.**

1. **Transaction Type and Structure** – What type or types of transaction are involved in the proposed business combination between Couche-Tard and Casey’s as currently envisioned? Be as specific as possible in describing the transaction(s), and justify your response by reference to facts in the materials, including transactional details. **(6)**

2. **Applicable Law** –
 - a. Consider the need for any required approvals by the board of directors *or* the shareholders (as applicable) of Couche-Tard and Casey’s to authorize any necessary or desired transaction(s) comprising (and, as to Casey’s, the adoption of any takeover defenses against) the proposed business combination between Couche-Tard and Casey’s.
 - i. What law or laws govern(s) the **authority** of each of Couche-Tard **(2)** and Casey’s **(2)** to take part in or oppose this business combination?
 - ii. Name and briefly describe the **legal principle or doctrine** that supports your answers to the question set forth in paragraph a.i. of this Question 2. **(2)**
 - iii. Based on the materials covered in this course, is there **convergence** on the legal principle or doctrine to which you cite in response to the request made in paragraph a.ii. of this Question 2? Explain and support your answer. **(3)**

- b. You represent Casey's. Assume for purposes of this Question 2.b. that Casey's desires to enter into a negotiated merger agreement with Couche-Tard. What law or laws would you consider as possible law(s) to govern the merger agreement? What factors would influence your eventual choice of governing law? Cite to relevant sources for any or all of the foregoing. **(15)**
 - c. Assume for purposes of this Question 2.c. that Casey's actually enters into a negotiated merger agreement with Couche-Tard. If Casey's were to sue Couche-Tard for breach of that contract and include as defendants one or more shareholders of Couche-Tard under a veil piercing theory (piercing the veil of limited liability to pursue the shareholders of Couche-Tard for personal liability for damages resulting from Couche-Tard's breach), what jurisdiction's law would govern a determination as to whether the shareholders of Couche-Tard bear personal liability for the breach? Explain your reasoning and cite to relevant authority. **(10)**
3. **Minority Shareholder Protections** – The Offer to Purchase for the proposed business combination indicates that appraisal rights may be available to Casey's shareholders under Iowa law. Assume for purposes of this Question 3 that Casey's is organized under the **laws of Italy**, rather than the laws of Iowa.
- a. Identify by name the minority shareholder protection rights that may be available to Casey's shareholders under Italian law (in lieu of, but similar to, appraisal rights) based on the current structure of the business combination transaction. **(1)**
 - b. Given the current structure of the business combination transaction, what (if anything) may trigger the applicability of these rights under Italian law? **(3)**
 - c. If triggered, to what benefit would these rights entitle Casey's shareholders under Italian law? **(3)**
 - d. Describe briefly the process through which shareholders receive this benefit under Italian law. **(3)**

Cite to a relevant source for these answers or responses.

4. **Takeover Defenses**. Both the Offer to Purchase relating to the proposed business combination between Couche-Tard and Casey's and Professor Davidoff's blog posting mention actual and possible defenses available to Casey's in fending off a takeover bid by Couche-Tard.
- a. Identify and describe one of the takeover defenses adopted or not waived by Casey's board of directors. What is it called, and how (generally) does it operate as a takeover defense? **(10)**
 - b. Assume **Delaware law** applies for purposes of this Question 4.b. Is it likely that a shareholder derivative action for breach of fiduciary duty against the directors of Casey's challenging the adoption or non-waiver of the takeover defense described

by you in response to Question 4.a. would be successful under Delaware law? What legal standard would the court employ in reviewing the board's decision to adopt or not waive the applicable takeover defense? Name and cite to the source of that standard. **(10)**

- c. Assume for purposes of this Question 4.c. that the laws of the **United Kingdom** apply to Casey's, rather than Iowa law or Delaware law.
 - i. Name the rule under U.K. takeover law that would be applicable to Couche-Tard if it took down (purchased) approximately 65% of the outstanding shares of Casey's voting stock in accordance with the Offer to Purchase. What obligation would Couche-Tard have under that rule? Cite to relevant authority. **(5)**
 - ii. How would the permitted response of Casey's board of directors to the Couche-Tard bid differ under U.K. law from its permitted response under, for example, **Delaware law** (if Delaware, rather than Iowa, law were to be applicable to Casey's)? Cite to relevant authority. **(10)**
5. **Antitrust Regulation** –
- a. Describe briefly the merger control/merger review process that the proposed business combination between Couche-Tard and Casey's must undergo in the United States under federal law (i.e., under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended). Cite to relevant authority. **(10)**
 - b. Compare and contrast the merger control/merger review process in the United States with the merger control/merger review process applicable to transactions governed by **European Union** antitrust law and regulation. Cite to relevant authority. **(10)**
6. **U.S. Federal Securities Regulation** – Pick **one** of the following two listed bodies of law and regulation and describe how it governs or otherwise relates to the proposed business combination between Couche-Tard and Casey's as currently structured. Note in your description the basic legal or regulatory obligations that would or may be applicable to the proposed business combination, including any mandatory disclosure documents, fraud protections, and other procedural or substantive requirements. **(15)**
- a. **Proxy regulation** under Section 14(a) of and Regulation 14A under the Securities Exchange Act of 1934, as amended (the "**1934 Act**")
 - b. **Tender offer regulation** under Sections 14(d) and 14(e) of the 1934 Act