For the following questions, please refer to the General Technology Note Purchase Agreement and Bratton, *Bond and Loan Covenants, Theory and Practice* on the class website.

1. *Sections 1 and 5*; Bratton, pp. 477-481
   (a) *Section 1.* Why are the Notes denominated "Senior" Notes?
   (b) *Section 5.* What are the "representations and warranties" and what function do they serve in the transaction? In a public offering of debt securities what document serves a function analogous to the function served by the representations and warranties in this transaction?
   (c) *Sections 5.3 and 5.5.* Suppose the borrower fails to disclose a material fact and delivers inaccurate financial statements. What rights does the lender have? *See* section 11(e).
   (d) *Section 6.1*: Why is this representation in the Note Agreement?
2. *Section 8*
   (a) What interests of the borrower and lender come into conflict over prepayment provisions? If you were negotiating a deal for the lender what sort of prepayment provisions would best suit your client's interests? If you were negotiating for the borrower?
   (b) Read *Morgan Stanley v. ADM*
      i. Why did ADM prepay?
      ii. How much did MS pay for the debt and how much did it receive?
      iii. Where did ADM get the money to redeem the bond holders?
      iv. How was the prepayment premium determined?
      v. What was the refunding limitation? What if it had been "directly or indirectly"? *See Valero* (a clickable link).
      vi. What's MS's argument, and what's the issue for the court?
      vii. How much does ADM care about its reputation in the bond market?
      viii. What about: issue new stock, call debt with stock proceeds, and incur new debt to redeem SHs? (*see* FN 4 in ADM)
      ix. What if the issuer made a tender offer for the debt that was funded with new lower-cost debt and a call of the original debt? *See James* (a clickable link).

(c) Does General Technology have the option of repurchasing Notes to satisfy its prepayment obligations?

(d) What is the minimum principal amount of Senior Notes which General Technology must have prepaid by February 1, 2021?

(e) Can General Technology prepay $20,000,000 principal amount of Senior Notes on February 2, 2012? If so on what terms? Can it do so if the $20,000,000 is the proceeds of a bank term loan at 6 percent interest?

(f) *Section 8.6 Assume* that the principal amount prepaid is $10,000,000. The Notes' interest rate is 10%. There are 5 years to go. The entire $10,000,000 principal amount is due in five years–no mandatory prepayments. Interest payments are made annually. Assume also that when the Notes were sold originally, treasuries were at 8%. Now, at the time of the prepayment, treasuries are at 6%. What's the make whole premium? Is that fair? What happens if interest rates go up?

3. *Sections 11 and 12* Which of the following automatically constitutes an Event of Default?

   (a) Failing to send year-end financials within 105 days. See question 4(a) below.

   (b) Refusal to permit a reasonable inspection.

   (c) $10 violation of section 10.2.

   (d) Paying a trade payable one week late. Trace the definition of *Current Debt* and *Debt*

   (e) Filing by a creditor of an involuntary bankruptcy petition.

   (f) Entry of $50,000,000 judgment in an anti-trust action.

4. *Section 7*

   (a) What materials must GT forward upon the conclusion of each of its fiscal years?

   (b) How do the periodic reports received by a lender compare with those received by a holder of common stock of a close corporation? Of a listed company? How do the Noteholders' inspection rights compare with those of common stockholders?

5. *Sections 10.1 through 10.4*; Bratton, pp. 464; 461-465; 465-468; 470-471

   (a) *Section 10.1*: What is the purpose of each of each of these tests?

   (b) *Section 10.3*: Why is an unsecured lender concerned with future liens on assets of the borrower?

(c) *Section 10.4*: What sorts of arrangements are covered by section 10.4(a) of the Note Purchase Agreement? Why? What is the extent of the prohibition? What sort of transaction is restricted by section 10.4(b)? Where does section 10.4 restrict Capital Leases? Have the drafters left open a large loophole for Capital Leases?

(d) *Section 10.2*; Bratton, pp. 468-470

i. Does General Technology violate section 10.2 if it permits a 30-day trade payable to remain unpaid for 90 days? Does section 10.2 permit General Technology to buy a machine and pay in installments over a period of 9 months? 15 months?

ii. May a 100 percent owned Subsidiary of General Technology borrow $1,000,000?

iii. May General Technology sell $10,000,000 of its commercial paper tomorrow?

iv. Under what circumstances may General Technology become liable with respect to additional Funded Debt? What result if General Technology borrows $40,000,000 under a bank term loan agreement and by the end of that fiscal year, its Consolidated Funded Debt exceeds 90 percent of its Consolidated Net Worth?

v. Look at GT's balance sheet on page A-109. Assume that it's the balance sheet of the most recently ended fiscal year. Can it borrow $10 million long term to expand its plant?

6. *Sections 10.5 through 10.6*; Bratton, pp. 474-475

(a) *Section 10.5.* What is consolidated net income? What type of income is excluded from CNI?

(b) *Section 10.5.* Into which of the following transactions may General Technology enter? Why does the lender insist on the restrictions in section 10.5?

i. Purchase of one share of I.B.M. common stock.

ii. $10,000 campaign loan to a U.S. Senator.

iii. Purchase of a $100,000 certificate of deposit of the Community Bank of New Jersey (a little bank in Bergen County NJ)? Of Citibank?

iv. A $10,000,000 tender offer to purchase: (x) 49 percent of the outstanding shares of a listed company; or (y) 100 percent of the shares of such company.

v. Purchase commercial paper of "B" rated company.

(c) *Section 10.5.* Assume for this question that the GT note was issued on Feb. 1, 2016. GT's CNI since 2015 is:

Year	2015	2016	2017	2018	2019	2020	2021
Net Income	35M	35M	<50M>	10M	10M	20M	20M

If GT's restricted investments are currently $15,000,000, can it purchase $35 million of Apple stock if it receives approval from the BOD and an independent investment advisory group?

(d) *Section 10.6.*; Bratton, pp. 471-473

i. What are restricted payments and why does the lender insist that they be limited?

ii. It is 2021. Assume for this question that the GT note was issued on Feb. 1, 2016. General Technology has the following dividend and earnings record as of the fiscal year ended June 30:

Year	2015	2016	2017	2018	2019	2020	2021
Net Income	35M	35M	<50M>	10M	10M	20M	20M
Dividend	5M	5M	5M	5M	5M	5M	5M

Can GT pay a dividend of $20 million?

iii. Using the same CNI from above and assuming that GT doesn't pay any dividend, can GT instead repurchase $30 million of its own stock in the third quarter of 2021 with the balance sheet as follows (all amounts in millions)?

Assets	
Cash	30
Account Receivable	40
Inventories	30
PP&E	120
Goodwill	20
Patents	30
Total	270

Liabilities & Shareholder's Equity	
Accounts Payable	40
Short-term Borrowing	40
Long-term Debt	40
Shareholders' Equity	150
Total	270

(e) *Sections 10.8 through 10.11*; Bratton, p. 473

i. *Sections 10.8, 9, and 10*

A. Of what sections, if any, does GT need a waiver if it wants to purchase 100 percent of the shares of a company that manufactures potato chips?

B. Suppose GT plans be merged into British American Tobacco, Ltd., a British corporation. Exactly what must be done in order to prevent an Event of Default from occurring as a result of the merger? Why does the lender insist that each of these steps be taken?

C. Is it possible for GT to turn itself into an investment company, (*i.e.*, it sells its operating assets and purchases investment securities) without an Event of Default resulting? If so, how long would this take?

ii. *Section 10.11*

A. How is the lender's position prejudiced if GT sells a minority position in one of its subsidiaries and uses the proceeds as capital for use in its business?

B. If GT may not sell off 10 percent the shares of a subsidiary, why does the lender have no objection to the sale of 100 percent of the shares of that subsidiary?