1972

Business Organizations II (A): Final Examination (May 20, 1972)

William & Mary Law School
Votes of stockholders were challenged at a meeting of stockholders under the following circumstances where the purpose of the meeting was to vote on a merger of AC corporation with another company:

a. That the shares were held by an administrator who was voting by proxy without having the shares transferred into his name;

b. That one partner was attempting to vote shares standing in the name of the partnership;

c. That shares were attempted to be voted by proxy of a person holding a power of attorney of the stockholder and not by the person with the power of attorney;

d. That the shares attempted to be voted were held by a subsidiary of the AC corporation, the AC corporation holding fifty-one percent of the subsidiary's stock;

e. That the stock was held jointly as tenants by the entirety and only one of the tenants was seeking to vote by proxy;

f. That the stock had been deposited with a bank as trustee and the stock was attempted to be voted by a nominee in whose name the stock had been registered by the bank without a disclosure of the fiduciary capacity in which it held the stock;

g. By a pledgor who had agreed to permit the pledgee to vote the stock during the existence of the loan;

h. That the shares represented treasury shares and could not be voted;

i. That no vote at all could be taken since the AC corporation had not fixed a record date for determination of stockholders and the stock transfer books had not been closed.

Discuss briefly each of the above and indicate whether or not the stock could be voted.

II

Plaintiffs were directors and managing officers of SFC corporation and held 1000 shares of stock in the corporation. B who was Chairman of the Board of another corporation RIC approached plaintiffs proposing to acquire 80% of SFC's outstanding stock in exchange for a certain number of shares of RIC common stock, and contingent upon the continuation of the present management of SFC. Without disclosing that RIC negotiations were taking place, the plaintiffs sought to have their wives placed on the board of SFC. Upon refusal of the other directors to do so, it was agreed the other directors and shareholders, holding 2000 shares collectively would be bought out by the plaintiffs at $5.00 a share over the amount originally paid in, and this was carried out. Plaintiffs claim a contract was finally arrived at by which there would be an exchange of SFC stock for RIC stock, with a loan provided by the RIC to enable Plaintiff to buyout the other SFC stockholders. Plaintiffs sue the defendant corporation for breach of contract. Defendant RIC moves for summary judgment. What should be the decision of the court? Explain.
D corporation by majority vote of the directors sold all of its assets to J corporation for $1,000,000, the J corporation not agreeing to assume any debts of D corporation. Both corporations dealt at arms length. As the result of a defective drilling rig manufactured by D corporation some years before the sale of its assets, P was injured and now sues J corporation claiming it is the successor in interest to D corporation in much the same sense that would occur if there had been a merger or consolidation. D corporation is also named defendant although it had been liquidated some months after the sale. J corporation moves for summary judgment.

1. How should the court determine the case? Explain.

2. If creditors had sought to make the J corporation responsible for the debts of D corporation could they do so. Explain.

A by-law provided that the directors could in their discretion refuse to permit stockholders to examine the stock lists and books of the corporation. X who had just bought 4% of the shares of the corporation requested an examination of the stock list and books stating that it was his purpose to investigate possible mismanagement of the company and to obtain proxies for use at the next meeting of the stockholders in voting for a change in management. Y whose stock was held in a voting trust requested examination of the books and a stock list in connection with a possible merger of the company with another company which management was attempting to block and which Y thought advantageous to his company. Z requested the right to examine the books to ascertain the value of his stock which did not have a ready market. What are the rights of X, Y, and Z? What remedies are available in the state and federal courts? What principles will the courts apply?

A corporation issued convertible bonds, shares for purchase of property, and sold treasury shares. The by-laws provided that preemptive rights cover issuance of stock for a consideration other than cash and also apply to the sale of treasury shares. Assuming as a basis for discussion the Virginia statute, but also relating your answer to newer provisions in other states, discuss the question of preemptive rights in the above situations.