Business Organizations II: Final Examination (May 21, 1973)

William & Mary Law School
The examination consists of six problems of varying weight, totaling 100 points. Each problem states the weight to be given to such problem and a suggested time limit.

1. (10 points - 20 minutes)

In recent years, many states have amended their laws (primarily in response to federal tax problems) to permit certain professionals (doctors and lawyers) to incorporate. One person has commented that the prohibitions were tied to the licensing requirements.

"A corporation being a fictitious character has no mind and cannot think; consequently it cannot meet educational requirements."

Are there reasons, other than that set forth in the above quotation, for not permitting professionals to incorporate; reasons which are intrinsic in the nature of the corporation itself?

2. (25 points - 50 minutes)

A, B, and C have consulted you concerning the formation of a new corporation. The respective contributions of the three will be as follows:

A - $10,000  
B - $30,000  
C - $50,000

The parties have agreed to the following allocation of equity ownership and control.

1. The equitable ownership is to be divided between A and B on a 1:3 basis.
2. C will have only the bare minimum amount of equity necessary to give him a "veto" over matters required to be voted on by shareholders.
3. Each of the parties, A, B and C, want to be assured of electing one member to the three-man board of directors of the new corporation.

Discuss the various methods by which the parties could achieve their goals through the use of intra-corporate documents, i.e., charter and by-law provisions. By what means could they achieve the same results through the use of extra-corporate documents? What factors would influence your decision to recommend one plan to the exclusion of the others?
BUSINESS ORGANIZATIONS II - Mr. Williamson
Page 2

3. (15 points - 25 minutes)

A, B and C were operating a business in partnership form. They decided to incorporate the business under the Model Business Corporation Act. The articles authorized the issuance of 500 shares of common stock, no par value. (Pursuant to the provisions §18 of the Act, no reservation to the shareholders to fix the consideration for the no par shares was made). The new corporation's articles of incorporation were properly filed and at the first meeting of the board of directors the following resolutions were unanimously adopted:

Resolved that the corporation issue 150 shares of no par common stock at a price of $20 per share;
Further resolved that the respective offers of A, B and C to purchase 50 shares each of the corporation's stock be accepted in exchange for the assets of ABC partnership.

The new corporation soon became insolvent and its receiver instituted an action against A, B and C to assess a sum sufficient to pay creditors on the theory that their stock was not fully paid.

At the trial, it was stipulated by all parties that the assets of ABC partnership turned over to the new corporation were worth only $1,500. How should the case be decided? Should the court reach a different result if the corporation had authorized and issued $20 par value common?

4. (15 points - 25 minutes)

You are counsel for three individuals who wish to incorporate a modest Virginia corporation to build resort cottages along the North Carolina coastline. They will have the corporate headquarters in Virginia Beach with a small sales office in Nags Head, N. C. They plan to issue $600,000 in common stock initially to get things started and to issue an additional $2,000,000 within the next two years. They hope to issue the initial $600,000 without registering the transaction under the provisions of the Securities Act of 1933. They have a list of prospective buyers among whom they expect to dispose of the entire issue. The prospective buyers include a wealthy William and Mary law student from New York, the 75 year old uncle of one of the promoters, who is currently confined to a home for the aged, three investment bankers, the widow of a former associate, six members of the Virginia Beach Kiwanis Club, and the spend-thrift son of one of the promoters.

Can the transaction as proposed be consummated without registration? What steps, if any, could be taken to improve the chances of gaining an exemption?

5. (15 points - 25 minutes)

X corporation manufactures modular homes for wholesale distribution. You are the new General Counsel for X Corporation, and are asked to assist in the negotiation of a new contract with Z Corporation to provide certain necessary materials used in the construction of the homes. X Corporation owns 40% of the outstanding stock of Z Corporation. Three of the seven directors of Z Corporation are directors of X Corporation. The remaining four directors all received
X Corporation's vote in the previous election of directors. Seventy five percent of Z Corporation's business is with X Corporation, the companies having done business under two successive five-year contracts. The previous contract provided that Z Corporation would furnish the materials at $10 per unit. The current price quotations from other sources range between $13 and $16 per unit. The profits of Z Corporation have declined in previous years, as have the dividends. X Corporation proposed to offer Z Corporation an increase of $1 per unit for the next five year contract.

Several shareholders of Z Corporation have complained about the dealings with X Corporation. What recommendations would you make to the management of X corporation concerning the procedures to be followed in negotiating the contract?

6. (20 points - 35 minutes)

X, the assistant treasurer of ABC Corp., a company whose common stock is listed on the New York Stock Exchange, owns 400 shares of the company's common stock. Three hundred shares were acquired under the company's stock option plan three years ago at a price of $10 per share. Four months ago he purchased an additional 100 shares at a price of $15 per share. The current price of the stock is $28 per share, the price having gone up apparently on the basis of a general upswing in the market. X believes that the company is about to cancel a new product line in which the company invested substantial money and that the general financial picture of the company is bleak. X believes that when a public announcement of the product cancellation is made to the public the price of the company's stock will decline several points.

X would like to sell 200 shares as soon as possible and also to advise some of his friends to do the same. He asks your advice concerning the consequences of such a plan. What advice would you give?