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Business Associations: Final Examination (January 1964)

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I.

P and U corporations merged and P corporation was the surviving corporation. Prior to the merger there was pending a stockholder's derivative action against the directors and officers of U corporation. The merger, nevertheless, was completed (with provision made for the stockholders of U corporation if the derivative action was successful) and the stock of U cancelled. A stockholder of U corporation seeks to have the merger declared void. Defendant P corporation contends U is no longer in existence and neither the stockholder nor U has capacity to continue the suit nor is there any basis for declaring the merger invalid. It appeared that a company voted 39% of U corporation stock in favor of the merger.

J. E. Kellu was the registered owner of this stock which had been endorsed in blank by him. The merger agreement was not recorded in the office of the county recorder as required by statute. What are the issues involved and how should they be determined? Explain.

II.

P, a law partnership, owned common stock in the E Corporation which is traded on the New York Stock Exchange. D Corporation controls E corporation through ownership of stock. P hoped to elect one of the directors of E corporation through cumulative voting and organizing a committee for this purpose. Stockholders names were obtained from the transfer agent and their proxies solicited. About fifty of the names were stockbrokerage houses, and P, not knowing the extent to which they were the beneficial owners sent one set of the proxy solicitations to each. Some of the houses requested additional sets of the solicitation materials, but eighteen did not and voted some or all of the stock held in their names for the management's candidates, either without the beneficial owners' permission, or with such permission given only on the basis of management's solicitation. At the annual meeting P requested an adjournment to allow the houses to no longer in existence and neither the stockholder nor U has capacity to continue the suit nor is there any basis for declaring the merger invalid. It appeared that a company voted 39% of U corporation stock in favor of the merger.

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III.

P sues R corporation for the wrongful death of her husband in an airplane accident. The plane had been rented by the manager of T corporation from W corporation and consisted of the only asset of W corporation. The pilot of the plane was an officer of W who did not have a license to carry passengers and the flight was at night in violation of T corporation's air taxi certificate. R and T corporations are both in aircraft sales and service and air taxi service business but R operates in Indianapolis and T in Terre Haute, Indiana. T corporation was organized by the chairman of the board of R corporation and two of its director's R corporation owned none of the stock, but seventy percent of it was owned by the Chairman of its board and by its president, his brother. The Chairman of R was the president of T corporation, and the president of R corporation was vice-president of the T corporation. Three of the five directors were directors of R corporation. A mechanic from R corporation worked for T corporation and was paid by T corporation for such work. Pilots from R corporation piloted planes of R corporation for T corporation and were paid by R corporation which then billed T corporation for use of the planes and services. The acts of the manager of T corporation were subject to the approval of the president who did actively supervise the manager of T, and the manager had no authority to employ pilots without his approval. The manager of T corporation was instructed to use only planes of R corporation. There was a motion for a summary judgment for defendant R corporation. How should the court rule on this motion? Explain.

IV.

S and Edwin A. Boss entered into a contract for architectural services for a motel at a certain percentage of the cost of the motel computed on the basis of the lowest bona fide bid. The agreement recited that it was made on April 20, 1961, by and between Boss Hotels Company, Inc., called the owner, and S and Associates, Inc. called the Architect. The owner agreed to pay the architect for such services at the stated fee. Three-fourths of the price was to have been paid by the time the drawings and specifications were completed, in monthly payments. The contract was signed.
IV. (continued)

Owner: Edwin A. Boss
By: Edwin A. Boss, agent for a Minnesota corporation to be formed who will be the obligor.

As the contract was originally written, from the standard contract used by architects, the signatures at the end were planned to be those of Boss Hotels, Company, Inc. and the S and Associates, Inc. After discussion between H who was manager of the Boss Hotels, Company, Inc. and Mr. Boss, the words "Boss Hotels Company, Inc." were erased from the contract by them, and the provision made which appears after Owner in the contract as signed. The architect agreed to this change. In May 1961, an Iowa corporation was formed with H as manager. The Iowa corporation sent one check to the architect in July 1961, for $14,500 and another in May 1962 in part payment of the fee. The plans had been completed October 1961. For some reason, although bids had been received, Mr. Boss did not complete the project. S sues Mr. Boss and the Iowa corporation for $23,500.00 which is the balance of his fee. Can S recover? Explain.

V.

During the period 1950 to 1961 while T was president the C Corporation sold most of its enterprises until its assets consisted chiefly of $36,000.00 in land, which was carried on the books of the company for $3,900,000, and a reserve fund of $10,000,000. While he was president T, who largely had control of the business, raised his salary from $31,000 to $96,000. T was also granted options to buy 700 shares of C company stock at $725 a share. The market price was about $760 a share, but this price did not reflect the true value of C's assets because of the low figure for the land on the company's balance sheet. The stock was reasonably worth from $1500 to $2000. In a stockholder's derivative action based on transactions of T which were tainted with self interest, it was claimed the court had the power to determine that T should refund for the years 1956 to 1962 all amounts over $72,000, and to declare the stock options invalid. Assuming the claims have been properly pleaded, can the court make the requested orders? Explain.