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CORPORATE LAW: AN INTRODUCTION AND DEFENSE

Ronald M. Shapiro†

How can you expect me to want to study a subject like corporations which involves nothing more than turning the nuts and bolts of high-finance and is devoid of humanity?

Too frequently law students, such as the author of the above statement, conjure up visions of a corporation's curriculum that concerns itself with business empires, cold-blooded corporate emperors, and cases dominated by balance sheets. Engaging in the study and practice of corporate law, however, rapidly reveals the erroneous nature of such inexperienced assumptions. Corporate attorneys must have the ability to perceive the unpredictable and to apply a fund of knowledge extending beyond corporate statutes and cases. Moreover, a corporate attorney must maintain a sensitivity to human nature and attempt to account for its wavering course in drafting corporate documents.

Even such an ostensibly boiler-plate process as preparing articles of incorporation for a prospective small-business enterprise which will involve two or three stockholders requires careful planning. Counsel should apprise clients of the numerous optional provisions that may be included in the articles to settle stockholder disputes and resolve corporate deadlocks that may arise at a time less auspicious than the establishment of a business. Corporate codes, such as that contained in the Corporations and Associations Article¹ in the Maryland Annotated Code, provide at least eighteen specific options for handling, among other things, the allocation of control, the protection of financial interests, and the daily operation of a business undergoing extraordinary changes.² Such options must be reviewed with, and ultimately decided upon by, clients. A partial sampling of these matters includes: provisions for stockholders' veto rights over the actions of directors, such as stock issuance and the declaration of dividends; the imposition of special voting requirements for matters that depend upon

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1. All statutory references in this article are to the recodified provisions of the Maryland Corporations Code contained in the Corporations and Associations Article of the Annotated Code of Maryland signed into law by the Governor of Maryland on April 22, 1975, effective July 1, 1975.
2. Not all commentators have considered the many options available in connection with allocating control within corporations under modern corporations statutes, such as that in effect in Maryland, as being entirely salutary. Professor Cary has been critical of the "modernization" of corporate law throughout the United States because of the tendencies that it has had to water "the rights of shareholders vis-a-vis management down to a thin gruel." Cary, *Federalism and Corporate Law: Reflections Upon Delaware*, 83 YALE L.J. 633 (1974).

stockholder approval, such as mergers and charter amendments; the allocation of minority representation on the board of directors through cumulative voting or classification of shares and board members; the protection of stockholders' equity interests through special provisions affecting preemptive rights and financial preferences; and, the provision for extraordinary powers of the board of directors such as those relating to the classification or reclassification of unissued stock.³ It is incumbent upon the attorney to consider carefully each of these options so that the character of the corporate entity will be compatible with his client's interests and objectives. This awareness of the need to provide for flexibility and to protect the diverse human interests within the corporation reveals merely a portion of the broad responsibility assumed by the legal adviser planning the corporation.

This volume of the University of Baltimore Law Review demonstrates the breadth of issues and concerns that arise in the practice of corporate law. From maximizing the monetary return to corporate stockholders through an understanding of corporate taxation, to resolving the breakdown in human relationships through a comprehension of fiduciary duties, and the planning against such breakdown through properly drawn agreements, the articles contained in this volume provide a strong foundation for implementing and comprehending the role of corporate counsel. Perhaps the most significant aspect of this role, which has been appropriately emphasized throughout the issue, is that "[t]he modern lawyer almost invariably advises his client upon not only what is permissible but also what is advisable."⁴

While space and page limitations prevent this issue of the Review from covering every conceivable aspect of corporate practice, the articles do focus on five major areas of concern. John J. Ghingher, III's article on stockholder agreements in the context of closely held corporations examines and explains the major provisions of such agreements as they affect the transfer of stock and the allocation of rights in a closely held enterprise. It also provides an incisive commentary and criticism on the pitfalls which may ensnare the unwary attorney who works with the special provisions of the Maryland Close Corporation statute.⁴ Any attorney counselling a small group of stockholders in organizing a corporation should study carefully the problem situations and the proposed solutions discussed by Mr. Ghingher. Complementing the stockholder agreement discussion is John J. Woloszyn's article on voting trusts.⁵ After tracing the historical development of voting trusts, Mr. Woloszyn discusses the statutory requirements that must be satisfied to allocate control within a corporate enterprise through such agreements. Mr. Woloszyn also explains the application of the securities laws to a voting trust, a requirement frequently overlooked by voting trust draftsmen.

3. For a partial checklist of the various areas that may be provided for optionally in the Articles of Incorporation see MD. ANN. CODE, Corp. & Ass'ns Art., §§ 2-104(B), 2-105 (1975).

4. *United States v. United Shoe Machinery Corp.*, 89 F. Supp. 357, 359 (D. Mass. 1950).

5. MD. ANN. CODE, Corp. & Ass'ns Art., §§ 4-102 to 4-603 (1975).

An area of corporate law that reflects counsel's need to recognize the constraints imposed upon human nature to keep it within the bounds of propriety concerns the fiduciary duties of the corporate directors. Unfortunately, this area of corporate law and its case law progeny may prove elusive to counsel attempting to establish guidelines for the conduct of a director-client. The article by Cleaveland D. Miller outlines the major areas of directors' responsibilities and delineates the appropriate standards of conduct from a diverse body of judicial precedent and scholarly commentary. Aside from Mr. Miller's discussion of the traditional areas of the duty of loyalty and the business judgment rules, the federal and state securities laws concerning corporate directors also are examined.

Reaping a financial harvest from their business efforts through the sale of a business is frequently the primary objective of stockholders in closely held corporations. The financial and other practical factors involved in the decision to sell, the concerns of negotiating the sale transaction, and the legal issues raised in connection with a merger or other acquisition⁶ are the subject of an article by James J. Hanks, Jr. Mr. Hanks sets fourth guidelines for sellers' counsel in connection with his review or preparation of acquisition agreement documents. Further useful tax and accounting material is included, and is indicative of counsel's reliance on the totality of factors that must be applied to any acquisition transaction.

Reallocating equity interests in a corporate enterprise, along with corporate contractions and liquidations, challenges corporate practitioners with a maze of corporate law requirements. Those requirements include a knowledge of surplus and insolvency limitations in the case of redemptions and dividends.⁷ Moreover, a carefully prescribed corporate procedure for stockholder approval must be followed in connection with partial liquidations and dissolutions.⁸ In addition to reviewing these corporate law concerns, Jacques T. Schlenger and Harry D. Shapiro effectively apply the tax law to such corporate transactions. In providing a comprehensive review of the tax issues in stock redemption and liquidation transactions, Messrs. Schlenger and Shapiro forewarn counsel against improper planning of a corporate transaction which will result in ordinary income tax consequences rather than capital gains to a client. Their article emphasizes the financial factors that must be considered in determining the tax consequences of corporate transactions.

Any student or practitioner viewing corporate law as a narrow, dull and sterile subject, should view the matter differently after reading this volume of the University of Baltimore Law Review. The editors of the Review have not only provided a valuable fund of knowledge for those engaged in the practice of corporate law, but also have brought together the talents of the authors of the following articles in documenting a genuine defense of the practice of corporate law.

6. *Id.* § 6-315.

7. *Id.* § 2-510.

8. *Id.* § 5-207.

9. *Id.* §§ 2-309 to 2-311.

10. *Id.* §§ 3-301 to 3-305, 3-401 to 3-419.