5)

======== Start of Answer #5 (1165 words) ========

1. What are Dick's rights and remedies, against Jane, Sam and Harry?

Dick will argue that the buy-out is a Fundamental Corporate Change requiring SH votes.

SHAREHOLDER VOTING RIGHTS

Fundamental Corporate Change
A fundamental corporate change is one that affects the corporation as a whole requires that (i) the board to make a resolution (ii) notice to all SH (iii) approval by all SH and (iv) changes to the articles of incorporation.

Here, LargeCo offered to acquire the assets of Online in exchange for a case buy-out of $1,000,000. H did not give notice to D, who is a SH and not all SH approved the buyout and there was no changes to the articles of incorporation.

Therefore Harry, Sam and Jane acted without the property authority.

DUTIES OF DIRECTORS
Directors of the corporation are the managers of the day-to-day operations of the corporation. Here, Jane, Sam and Harry are all directors of Online.

FIDUCIARY DUTY OF DIRECTORS
Directors owe a fiduciary duty of care to the corporation. The duty requires that they act as a prudent investor and in good faith.

HARRY

DUTY OF CARE

The duty of care requires that each director act as a prudent investor and in good faith.

(i) good faith

Here, Harry was not acting in good faith because he was acting on behalf of the corporation with another anoter company which his wife was a majority shareholder(SH). H might argue that he was not acting to gain an interest for his wife but acting in good faith believing that his was a good investment for the corporation.

It is likely that the court would find that H was not acting in good faith since he did not disclose to Sam that his wife was a majority SH. Although Jane knew, he was required to disclose that fact to the directors and SH.

(ii) prudent investor

A prudent investor acts with reasonably informed information.

Here, there are no facts to indicate that Harry investigated whether the offer by LargeCo would be beneficial to the corporation. He simply called Jane and Sam and asked for their approval.

Additionally since Sam, who is an expert in technology matters feels that the offer was too low, it is likely that H was acting out of spontaneous emotion and not a reasonable investor.

Therefore H breached his duty of loyalty.

Business Judgment Rule

A court will not second-guess the transactions made by a director in the scope of his duty if the director acted (i) good faith (ii) no self-interest (iii) reasonbly informed and (iv) rational basis for the transaction.

(i) good fatih

As discussed above Harry was not acting in good faith.

(ii) no self-interest

Harry was acting in self-interest because he was acting on his wife's interest, which is his interest. He did not inform Sam or Dick about the conflict and therefore was acting in self-interest.

H would gain substantial benefit from the offer made by LargeCo because his wife would receive a benefit and additionally Large Co and TechCo, owned by H were in negotiations of a joint venture.

Therefore H was acting in self-interest.

(iii) reasonably informed

As discussed above, H was nt acting reasonably informed because he failed to investigate the offer.

(iv) rational basis

H was not acting rational, he was most likely acting irrational because he had a stake in the outcome of the merger.

Therefore the court will hold H personally liable because he is not covered by the business judgement rule.

Conclusion: H breached the duty of care and will be personal liable to the corporation.

DUTY OF LOYALTY

Directors owe a duty of loyalty to the corporation. The duty requires them to act in the best interests of the corporations.

Here, H was acting on behalf of the corporation to negotiate a buy-out of the corporation. The act alone does not breach the duty, however, H was an interested party because he was in talks about a joint venture with the LargeCo and TechCo.

Conclusion: H breached his duty of loyaty.

JANE

DUTY OF CARE

Dick will argue that Jane breached her duty of care.

As discussed above, directors owe a duty of care to act as prudent investors.

Here, Jane delegated the duty to H to act and negogiate with LargeCo on behalf of the corporation. She failed to act prudently by not following up to see if the offer was reasonable based on statistical information. She should have called Dick and asked him for his expert opinion since he is an expert in technology.

Therefore Jane breached her duty of care.

SAM

DUTY OF CARE

Sam as a director and SH has a duty of care to the corporation to act as a prudent investor.

Here, when H called them with an offer, he should have investigated it more in depth before agreeing to sell all the assets of the corporation.

Therefore Sam breached his duty of care.

REMEDIES

Dick can require H to disgorge of any profits he has made by the self-interested act.

Constructive Trust

A constructive trust is where th court will hold the party as a trustee for the corporation and ask that he convey the asset back to the corporation.

Here, the court will require that H return the Online asset back to the corporation.

2. What ethical violations, has Harry committed?

Duty of Loyalty

An attorney owes a duty of loyalty to the clients to not be in conflict with the client's interests. A concurrent interest occurs when there is a substantial risk that the client's interests will be materially altered by the attorney's interest or by the interests of a third party.

Here, H's duty to the corporation was interferred with by his interest in his business TechCo. The only way he would be able to continue the representation if a reasonable attorney would believe he could, the representation is not prohibited by law and the case is not against one of his clients.

Here, a reasonable lawyer would not be able represent the corporation because the self-interest overrides the corporations interest. This is evident by H's failure to contact D, an expert regarding the buy-out.

California requires that the attorney tell the client on an actual conflict and a potential conflict. California does not use the reasonable standard but an objective one.

Here, H failed to tell the corporation about the actual and potential conflicts that exists by his negotiating on behalf of the corporation. H was under a duty to disclose and obtain informed consent by the corporation and written consent if it involved a prior client.

Conclusion: H breached his duty of loyalty by the ABA standard because a reasonable lawyer would be able to represent the corporation. He also breached the duty by the CA standard by not informing the corporation about his potential and actual interest. H should have disclosed the information and possibly asked Jane not to be the negotiator, this would have amounted to proper conduct.

Question #2 Final Word Count = 1165

======== End of Answer #5 ========