5)

1. Dick's Rights and Remedies against Jane, Sam, and Harry.

Paying Jane in Shares instead of Salary

Although the Board of Directors (BOD) is capableof issuing stock as determined by the articles of incorporation, any issuing of shares diluting a majority shareholder's influence must be noticed to existing shareholders. Here, there are only three shareholders, Dick, Sam and Jane. Online's initial distribution provided 200 shares to Dick and Sam, and 150 shares to Jane. The facts do not indicate that Dick recieved notice of the BOD's decision to pay jane in Stock instead of by her $10,000 Salary. Issuing Jane an additional 50 shares would dilute the power of Dick and Sam's majority shareholdership. Therefore, with no notice to Dick, this action would be invalid, and Dick could file a direct suit to recover the shares.

Deal with LargeCo

Transactions including substantial assets

Any transaction requiring sale of all or substantially all assets requires a resolution by the Board of Directors, a timely calling of a special meeting, and approval by majority vote of all parties, including those negatively affected. The vote must include a quorum, or majority of shareholders. Here, the deal with LargeCo included a sale of all or substantially all of Online's assets. Dick did ot learn about the transaction until the following week, indicating that the BOD did not file a resolution or call a special meeting

Failure to call special meeting

Fiduciary Duties of Loyalty

In all transactions, the BOD and 10% shareholders owe the coproation a fiduciary dity of loyalty, including a duty not to self-deal or to notify the other board members of conflicts of interest in business deals.

Here, the duty of loyalty applies to Jane, Dick, Sam, and Harry, Because all are either on the BOD or have majority shares. Jane failed her duty of loyalty by failing to disclose her connection to Harry's wife, the CEO of largeco, to the other shareholders before the deal was approved. Similarly, Harry should not have been in charge of negotiating a deal with his wife for her company's acquisition of Online's assets. Jane and Harry had the duty to disclose this conflict of interest to sam. There is no indication that either did so. As such, Sam's approval of the transaction is invalid, because the others approving the transaction had a conflict of interest.

Fiduciary Duties of Care

All BOD members have the duty to conduct the business in such a way that the business assets are preserved, and to engage in reasonable business decision-making processes. Here, the facts do not indicate whether teh buyout for 1million for Online's assets was a fair price, but Dick's opinion was that Online's assets were undervalued. While the business judgement role typically gives corporate heads discretion in business transactions, this freedom is negated by dealings in conflicts of interest (see above) therefore, Dick has a strong argument that the deal was not in the best interests of online, or in his as a shareholder.

Duty to Provide Accounting

Dick can requiest an accounting from the BOD regarding the transaction in order to compare asset sales prive vs actual value, but he must give the board adequate notice of his request.

Joint Venture With Tech Co

Mergers

Mergers are subject to the same resolution and special meeting process above for sale of assets. the facts do not indicate that these procedures were followed, which could void the transaction.

Fiduciary Duties of Loyalty

The duty of loyalty is explained above.

Here, TechCO was owned by Harry. it is unclear whether Harry disclosed this conflict of interest to the other board members before the deal was approved. However, the fact that the joint venture occurred two days after the LargeCo acquisition presents strong evidence of self dealing by Harry, and possibly in concert with his wife, ans CEO of Largeco, and Jane, as an acquaintance of LargeCo. Transactions resulting from self-dealing are voidable on direct suit by the shareholders. therefore, Dick has strong arguments that duties of loyalty was violated by Harry and Jane.

Dick's Remedies

Dick can file a direct suit against the corporation for the self-dealing in the LargeCo acquisition, the self-dealing in the techCo acquisition. Dick can either sue to void these transactions, or request the court dissolve online because the majority of directors have so abused their duties.

Piercing the corporate Veil

Shareholders are not generally reachable for corporate liabilities unless there is a clear showing that 1) the corporations serves as an alter-ego, 2) it is undercapitalized, or 3) to prevent fraudulent activity.

Alter-ego- is present when the corporate formalities are ignored, and the BOD treats corporate assets as their own. Here, the facts do not indicate that any corporate formalities were followed as to the transactions above- paying jane, or the corporate transactions.

Undercapitalization- the cop must be undercaptalized from the time of incorporation. Here, there were no funds to pay jane her salary, but this may be because her salary was high. The facts are unclear whetther this element is met because the corporation had no other liabiilities, but plenty of assets.

Fraud- here, there is a strong argument that the Largeco transaction and TechCo transactions were fraudulent, based on the self-dealing.

Therefore, piercing the corporate veil is likely appropriate to recover damages suffered by Dick. This means the BOD are liable.

2. Harry's ethical violations

Corporate Clients

A corporate client requires the lawyer to put thecoproation's interests above his own.

Duty of Loyalty

An attorney owes a Duty of Loyalty to his clients, meanng putting the client's interests above his own. Here Harry's transactions were in clear violation of this duty:

Loyalty/Conflict of interest

The attorney has a duty to notify his conflict of interest to the client, and obtain their consent in writing per California law. the attorney must believe he can reasonably reperesent the client's interests without harm or with draw. In California, the reasonableness standard is omitted.

Here, Harry negotiated a business deal with his wife's company at a rate Dick felt was below market; and later joined in a venture with a company he owned. Harry did not inform all of the BOD of this conflict of interest, or obtain their informed consent in writing. This is a violation of H's duty to Online because online is the client. Harry will argue that he can adequately represent online despite this conflict, however, this does not mitigate hte failure to obtain consent. there was therefore a violation of loyalty.

<u>Business transactions with Clients</u>

Lawyers are permitted to enter into business contracts with clients so long as the client has notice of the transaction, the terms are fair, and the client has the opportunity to have the tems reviewed by another attorney.

Here, there are no facts indicating that Harry gave notice if his intent to the joint venture with his wife, or that the opportunity to meet with alternate council were given. This is likely not the case, because the transaction occurred in two days. Finally, it is unclear that the terms were fair. though the venture value was at 10 million, there may have been other better oportunities, or the terms may have been disporportionately in favor of his wife's (or his own) company.

Therefore, this was an improper business transaction

<u>Self-dealing</u>

<u>D lawyer must mot engage in self-dealing, or use client's assets for his own (or a loved one's benefit)</u>

Here, Harry negotiatd a deal with his wife's company. Both deals were likely for both his and his wife;s benefit, and therefore prohibited because online's interests were not preserved.

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