2)

1. **Corporation**

A corporation is formed after filing Article of Incorporation with Secretary of State for dejure or defacto status, or by estoppel if it holds itself out as a corporation. The articles may name the directors, each have equal vote in the corporation.

Here, Acme Inc is a corporation that has been profitable for several years and now holds $20 million cash in its treasury. Acme's board of directors consists of Brown (Acme's CEO), Chase(Acme's CFO), and ten other non-employee (outside) directors.

The other ten outside directors have equal vote as the CEO and CFO directors.

Majority vote- Ordinary Course of business

For the ordinary course of business, the majority vote of directors are valid.

While Brown and Chase strongly recommend that Acme pay a dividend to its shareholders, and the ten outside directors voted in favor of a resolution not to declare a dividend, it is valid by a majority vote. Furthermore, the matter o which they voted was withn ordinary course of business because directors have a duty of care and loyalty to preserve the assets of the corporation.

After a lengthy discussion on the report to the board from an outside consulting firm regarding favorable prospects for Acme's expansion into a new line of business, the ten outside directors voted not to declare a dividend, and instead to accumulate cash for the corporation's future use.

Because it is in the ordinary course of business for directors to not usurp corporate opportunities and to preserve coprpoarte assest under a duty of loyaly the outside directors majority vote is valid.

Duty of care

Directors have a duty of care to treat the corporation's assets as they would their own in the best interest of the corporation

Here, outside consulting firm presented favorable prospects for Acme's expansion into new line of business. Because it is a favorable aspect to Acme to hold the accumultaed cash for such furure use, the ten outside directors votes did not breach their duty of care.

**Business Judgment rule**.

Wherer the director depend on good faith facts and informed decisions to make desions for the corporation, they exert authority expressed or implied in the articles of incorporation.

The ten outside voters voted not to declare dividend because of the outside consulting firm

s favorable prospects for Acme.

**Right to dividends**

Shareholders do not have an inherent right to dividends.

Here, o the strong recommendation that Brown and Chase presented to pay dividend to the shareholders, the ten outside shareholder voted in favor of resolution not to declare a dividend.

Acme outside directors possess authority to reject Brown and Chase' recommendation to pay dividends from cash in the treasury.

2. Shareholders have the right to inspect documents and records of the corporation.

Here, one of Acme's many shareholders send a letter to Acme board demanding inspection of Acme'srecords relating to the board meeting. Davis as a shareholder has the right t inspect Acme's records.

Becasue Davis requested the inspection, he has the right to inspect the discussions.

3. **Demand suit**

For a shareholder to sue for personal benefits from a corporation, he has to show that the directors have breached their duty of care and loyalty.

Breach of duty of care

Directors have a duty of care to treat the corporation's assets as they would their own in the best interest of the corporation

Here, outside consulting firm presented favorable prospects for Acme's expansion into new line of business. Because it is a favorable aspect to Acme to hold the accumultaed cash for such furure use, the ten outside directors votes did not breach their duty of care.

Business Judgment rule.

Where the director depend on good faith facts and informed decisions to make desions for the corporation, they exert authority expressed or implied in the articles of incorporation.

The ten outside voters voted not to declare dividend because of the outside consulting firm as favorable prospects for Acme.

Duty of loyalty

Directors breach duty of loyalty if they self deal or usurp the corpoartion of corporate opportunities.

Here, the ten outside directors did not gain any personal benefits from voting for non payment of dividends, but instead to save the cash for future favorable prospects fro Acme.

Evan will not prevail on Demand order for corporation to pay dividends.

Derivative Suit

A shareholder may bring a suit against a corporation to act in the ebst interest of the corporation if the demand on the board and shareholder has been or would be futile, he contemporaneously and will retain shareholder position until case is heard, and post a bond.

Here, Evan filed a lawsuit against Acme and its borad seeking orders that Acme pays a dividend to its shareholders and be enjoined form contributing $100,000 to the university.

Since Evan will be able to show that his demand on the board would be futile following a majority vote by the ten outside shareholders against two in favor of the paying of dividends, he owns the shares curently and likely to continue until case resolves the issues, and should be able to post the bnd, the suit should be able to proceed.

However, after the cour has weighed the validity of the reason why the dividend will not be paid, in addition to Evan's lack of inherent right to a dividend as discussed above, it is likely that Evan will not prevail in his suit for an order to corporation to pay a dividend.

Duty of care by Director

Discusses supra

In terms of best judgment, Evan is not likely to prevail in his suit to procure the order that corporation pay a dividend.

4.

**Derivative Suit**

A shareholder may bring a suit against a corporation to act in the ebst interest of the corporation if the demand on the board and shareholder has been or would be futile, he contemporaneously and will retain shareholder position until case is heard, and post a bond.

Here, $100,000 is about to be paid to University of which Brown is a graduate and a member of the board of trustees.

Evan is likely to show that since the university benefitting from Acme may not be in its ordinary course of busines nad Brown has self interest in university benefitting, there cannot be a unanimous vote because Brown a s an interested director should not have been allowed to vote. Furthermore, the other directors knew of Brwn's personal interest so they breacghed the duty of loyalty when they allowed Brown to vote.

Evan will be able to show futile demand, he owns shares and may post a bond.

Furthermore, since the board elected to withhold dividends for future prospects fro Acme, the money should remain in Acme's assets.

Evan is likely to prevail in his suit to enjoin Acme from paying $100,000 to university.

Question #2 Final Word Count = 1138

**END OF EXAM**