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QUESTION 4

1. IS THE AGREEMENT BETWEEN ALIYAH AND BOWEN VALID?

Although the Articles of Incorporation allows each shareholder to have one vote per share that they own multiplied by the number of open director positions, the agreement between Aliyah and Bowen is not valid. The fact that they signed a written agreement between them is self-serving to vote to elect themselves to the board of Corp and then elect successors to the board. Aliyah and Bowen breached their duty of loyalty by voting themselves to the board of Corp, then choosing Palmer as the new president of Corp.

2. IS DAYA ABOUND BY ALIYAH AND BOWEN'S VOTING AGREEMENT WITH RESPECT TO THE ELECTION OF SUCCESSOR DIRECTORS?

Daya will not be bound by Aliyah and Bowen's agreement as to the election of the successor directors because the agreement is in violation of Aliya and Bowen's fiduciary duty, it is self-dealing and against shareholder's interests.

3. THEORIES MIGHT ESGAR BRING AN ACTION TO ENJOIN CORP FROM MOVING SOLELY INTO MANUFACTURING BICYCLES

Esgar as a shareholder may bring an action against lack of notice and for Corp to violate its Articles of incorporation which was formed solely for the purpose of manufacturing televisions not bicycles.

4. THEORIES MIGHT ESGAR BRING AN ACTION FOR DAMAGES AGAINST PALMER

Duty of Loyalty

A director or majority shareholder shall avoid conflict of interest or engaging in self-dealing.

Here, Palmer as the new president of Corp and has the duty of due care, to act with d care for the benefit of Corp. When Palmer instituted several costly changes to shift t the manufacturing of bicycles, Palmer was not thinking of the interest of Corp because Corp has been higly profitable in the business of manufacturing televisions for 20 years, and includes in its Articles of Incorporation that it was formed for the purpose of television manufacturing. By not telling the directors of his decisions and changes, Palmer breached that duty. He had a duty not to unilaterally decide for the corporation without consulting its officers even though it would be profitable. Palmer allowed his own interest to conflict with those of Corp and its officers and shareholders.

Duty of Due Care

A director or majority shareholder shall practice due care, has a fiduciary duty to practice care, and manage the assets as if it was his own, as a reasonably prudent investor.

Here, Palmer would be liable for breaching his duty of due care, because it is a mere reasonable person standard but an actual fiduciary duty. By not acting for the good of Corp, endangering its profitability and changing its purpose without consulting others.

Question #1 Final Word Count = 440

END OF EXAM