Corporations: Shareholder Rights

- Control Rights
  - Controlling shareholder(s) may sell controlling interest so long as the sale does not harm the corporation or other shareholders
    - Controlling stock often sells for a premium
      - The extra value comes from right of control
    - Controlling shareholder may be liable for selling controlling shares to purchaser who harms the corporation if shareholder knew or should have known what that the purchaser would mismanage
  - Controlling shareholders owe minority shareholders a duty of fairness
    - Must be impartial
    - Duty of good faith and fair dealing

Corporations: Shareholder Rights

- Informational Rights
  - Includes the right to inspect corporate books and records, so long as the demand to inspect is to ascertain:
    - The financial condition of the corporation
    - The value of shares
    - Whether the corporation has been mismanaged
    - The identification of shareholders for proxies
    - Information in aid of litigation
  - The MBCA grants shareholders an absolute right to inspect the articles, bylaws, and minutes of shareholder meetings within the past three years

Corporations: Shareholder Rights

- Meeting Rights
  - State statutes and the MBCA require an annual shareholder's meeting
    - Usual Purpose – Elect Directors
  - Special meetings may be called whenever a corporate act requires shareholder approval:
    - E.g., merger, dissolution
    - Notice must be given and must state the meeting's purpose
  - Notice must be given to shareholders entitled to vote
    - Normally, shareholders of record
  - A quorum of outstanding shares must be present, either personally or by proxy

Corporations: Shareholder Rights

- A majority of votes cast decides the issue(s) put to a vote
- Shareholder rights at the meeting include: the right to offer resolutions, debate the merits of proposed resolutions, and ask questions of corporate officers

- Right to Elect Directors
  - Straight Voting: Each share has one vote to cast for each director candidate
    - E.g., Ten candidates for three open positions. A shareholder owning 500 shares may cast up to five hundred votes each for three of the candidates
    - Downside to straight voting – controlling shareholder(s) determine outcome of election

Corporations: Shareholder Rights

- Cumulative Voting: Minority shareholders accumulate votes by multiplying the number of directors to be elected by the number of shares held
  - E.g., Shareholder owns 1,000 shares. There are five directors to be elected. Shareholder owns 5,000 votes.
  - Shareholder may divide these votes among the candidates or vote all 5,000 for only one candidate
- Class Voting: Each class of shares (e.g., common, preferred) is given separate voting rights
  - Each class is given the right elect one or more directors in order to balance power within the corporation

Corporations: Shareholder Rights

- Voting Devices
  - Proxies:
    - A shareholder may appoint a proxy to vote his or her shares
    - Proxies are agents who owe their principles all the duties of a fiduciary relationship
    - Purpose may be limited to a specific act or general with the same voting power as the shareholder
    - Benefit: Allows minority shareholders to vote collectively
    - Duration: Limited and generally revocable
    - Irrevocable when coupled with an interest
      - E.g., when a proxy-holder is a party to a shareholder voting agreement
      - MBCA: coupled with an interest and proxy states "irrevocable"

Corporations: Shareholder Rights

- Wall Street Rule: Either support management or sell the shares
- Sample proxy:

http://www.bdo.com.ph/aboutus-pdf/sample%20proxy%20forms.pdf

- Voting Trusts: To create a voting trust, shareholders transfer their shares to one or more trustees and, in return, receive voting trust certificates
  - Goal - achieve control of the corporation by concentrating shareholder voting power in the voting trustees
  - These trusts are of limited duration
- Shareholder Voting Agreements
  - Essentially a contract
  - Shareholders agree how they will vote their shares
  - Duration is based on the terms of the agreement

Corporations: Shareholder Rights

- Share Class
  - Common shares:
    - Non voting, or
    - Voting – unlimited voting rights
  - Preferred shares – no or limited voting rights
- Review:

  Identify the incorrect statement:

  A. Normally, directors are elected by a single class of shareholders in straight voting.

  B. With straight voting, a shareholder may vote for as many nominees as there are directors to be elected.

  C. Under straight voting, the nominees with the most votes are elected.

  D. Under cumulative voting, the voting power of majority shareholders is increased.