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Close Corporations, Law, and Practice, by F. Hodge O'Neal

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BOOK REVIEW

CLOSE CORPORATIONS, LAW AND PRACTICE. By F. Hodge O'Neal. Illinois: Callaghan & Company. 1971 (two volumes). Pp. 1330. $75.00.

We are in the fourteenth year after Professor F. Hodge O'Neal first pledged his troth, by token of a two volume treatise,[1] to the exocratic corporation.[2] The 1958 formality, which came after an extended courtship with the close corporation,[3] created what has proven to be a happy estate for the profession as well as for O'Neal and his "lady."[4] Although she has been prolific of problems (none of his making, so far as I know), O'Neal has remained attentive and responsive to her needs, keeping his readers in pocket parts all the while.[5] This love affair, by now common knowledge among corporate lawyers, has generated a certain identity between the name O'Neal and the law of close corporations.[6]

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[1] F. O'NEAL, CLOSE CORPORATIONS, LAW AND PRACTICE (1st ed. 1958) [hereinafter cited as O'NEAL (1st ed. 1958)].

[2] "Our language contains no word to identify the large, publicly held corporation, whose stock is scattered in small fractions among thousands of shareholders. I shall refer to such corporations here as 'endocratic' corporations . . . to distinguish them from . . . corporations controlled by a substantial stock ownership — 'exocratic' corporations." Rostow, *To Whom and for What Ends is Corporate Management Responsible?* in E. MASON, THE CORPORATION IN MODERN SOCIETY 303 n.2 (1966).

[3] This affair was no mere daliance. The following articles produced by Professor O'Neal figured prominently in the production of the 1958 work: *Molding the Corporate Form to Particular Business Situations: Optional Charter Clauses*, 10 VAND. L. REV. 1 (1956) (Chapter IIIE); *Resolving Disputes in Closely Held Corporations: Intra-Institutional Arbitration*, 67 HARV. L. REV. 786 (1954) (Chapter IXC); *Giving Shareholders Power to Veto Corporate Decisions: Use of Special Charter and By-Laws Provisions*, 18 LAW & CONTEMP. PROB. 451 (1953) (Chapter IV); *Restrictions on Transfer of Stock in Closely Held Corporations: Planning and Drafting*, 65 HARV. L. REV. 773 (1952) (Chapter VII). And this is only a sampling of Professor O'Neal's writings.

[4] Perhaps it is premature to so characterize the close corporation. In most jurisdictions, she is still more nearly a tramp. Only four jurisdictions (Delaware, Florida, Maryland, and Pennsylvania) have enacted so-called "integrated" laws specifically designed to grant concessions to the close corporation. Other states, most notably New York and North Carolina, have adopted scattered provisions relating to close corporation problems. *See* 1 F. O'NEAL, CLOSE CORPORATIONS, LAW AND PRACTICE §§ 1.13a-1.14c (2d ed. 1971) [hereinafter cited as O'NEAL (2d ed. 1971)].

[5] Supplements were printed for 1963, 1964, and 1966-70.

[6] Professor Henn asserts that "[a]n extensive body of literature on the subject [of close corporations] is available to assist the practitioner." H. HENN, HANDBOOK OF THE LAW OF CORPORATIONS AND OTHER BUSINESS ENTERPRISES 512 (2d ed. 1970). He lists a few citations, *id.* at 512 n.12, but these are thin soup compared with the lavish citation of commentary which pervades O'Neal's editions.

Professor William H. Painter has recently entered the field with a major text on closely held corporations: PAINTER, CORPORATE AND TAX ASPECTS OF CLOSELY HELD CORPORATIONS (1971). *See* Shipman, Book Review, 85 HARV. L. REV. 527 (1971).

By bringing us a Second Edition of his treatise, Professor O'Neal has resolemnized his bond with the still youthful[7] and developing apple of his eye. The form of this most recent renewal differs considerably from its 1958 predecessor. Two new compression loose-leaf binders (spelling an end to clumsy pocket parts) replace the two bound volumes. But the convenience of footnotes at the bottom of each page is also missing, it having been decided, no doubt, that placing footnotes at the end of each section would facilitate reprinting of revised pages. Convenient tables for quick location of pertinent federal and state statutes and regulations have been added,[8] and the index, which may be an "outcome determinative" research tool, has been improved somewhat, though it was quite adequate in the First Edition as supplemented.

The principal peculiarities of the closed corporate form are known generally to most corporate practitioners, but they bear repeating here if only for the purpose of establishing a framework for analyzing Professor O'Neal's treatment of them. If it be assumed that the major corporate characteristic of limited liability is to be granted to a relatively small group of persons in whom both ownership and management control are merged,[9] perhaps such a group should also be allowed to deviate from some of the basic ground rules of corporate life and to relinquish certain unwanted corporate

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[7] In the preface to his First Edition, Professor O'Neal wrote: "The close corporation is young; naturally it will continue to grow." 1 O'NEAL vii (1st ed. 1958). But the close corporation, like a fine lady, hides her age. Some of the toughest policy issues were joined in the last century. Salomon v. Salomon & Co., [1897] A.C. 22 (whether limited liability persists where management and ownership are completely rejoined); Slee v. Bloom, 19 Johns. *456, *473 (N.Y. 1822) (dictum) (same issue):

> There is nothing of an exclusive nature in the [general corporation] statute; but the benefits from associating and becoming incorporated, for the purposes held out in the act, are offered to all who conform to its requisitions. There are no franchises or privileges that are not common to the whole community.

See 1 O'NEAL §§ 1.05, 1.11 (2d ed. 1971).

[8] 2 O'NEAL Tables (2d ed. 1971). Listed are: sections of the Internal Revenue Code and regulations and rulings thereunder; federal securities laws and related rules and releases, together with certain miscellaneous United States Code provisions; state constitutional and statutory material; model and uniform act references; and a group of foreign citations. These are in addition to the table of cases.

[9] This is no mean supposition, but it is too late in the day to challenge it. As an original proposition, it might be argued that the corporate attribute of limited liability, not contained in some early corporation laws, was a hard-won concession, bargained and given in exchange for shareholder surrender of everyday management prerogatives within the context of a relatively widely held corporation. Thus, it can be said that the close corporation (if such be defined to require the coalescence of control and ownership) inherently contravenes the original policy of the corporation laws and the general policy applicable to unincorporated associations as well. But that battle is behind us. *See* note 7 *supra.*

attributes, provided the participants fully understand their arrangements and observe their fiduciary responsibilities, and so long as "outside" senior equity holders and creditors are not harmed. Ingenuity has not been flatly barred, and, over the years, much energy has been devoted to the elaborate art of adapting general business corporation laws to the realities of closed corporate behavior. All this bending, molding, cutting, and embellishing has produced a separate regimen — a special mix of statutes, organizational documents, and contracts — to govern the close corporation, whose typical activities and objectives tend to distinguish it in several important respects from the more widely held species. First, common equity holders in the closed form are more intimately involved in management decisionmaking. Second, the ownership group is exclusive. Third, since shareholders have greater control and are more closely knit, fiduciary duties, in some respects at least, are pegged at a higher level. These distinctive features are the source of an array of legal issues with which the conscientious lawyer must deal. The new edition of Professor O'Neal's treatise, even more thorough and exhaustive than his first, will be a helpful and comforting companion to those who must confront the many facets of the close corporation phenomenon.

The goal of radically greater shareholder involvement in the ordinary conduct of corporate affairs can be achieved only by neutralizing the normal split-level statutory control structure which draws a bright line between director and shareholder domains, sets a pattern of majority or smaller quorums and votes at both board and shareholder levels (with some exceptions regarding fundamental changes), and reposes immediate control in the hands of a few whom the majority have elected. Until the distinction between board and shareholder decisionmaking has been entirely eliminated by statute for close corporations — as it has been in some states[10] — judicial inhibitions engendered by the two-tier system will haunt the most careful planner. However, limited special statutes, provisions in articles and by-laws, and private agreements can be employed, alone or in combination, to short many circuits of the business corporation laws. With these tools, it is possible to achieve much of the flexibility allowed under general partnership law.[11]

[10] The principal means by which the barriers have been eliminated are (1) statutes which make it unnecessary for a close corporation to have a board and (2) statutes which permit allocation of director power to shareholders by organizational document provisions and private agreements. *See* 1 O'NEAL §§ 5.07a, 5.21 (2d ed. 1971).

[11] The realistic "norms" for many close corporations are stated more accurately,

O'Neal treats extensively the means by which a shareholder can gain and protect substantial rights to participate in the immedate control of his corporation's business, either directly or by effective representation. In Chapters 3D, 3E (to some extent), 4, and 5, O'Neal details the manner in which control can be allocated by 1) classifying stock, 2) tailoring articles and by-laws to create power distribution and protection mechanisms (such as high quorum and high or unanimous vote requirements), and 3) constructing an overlay of contractual arrangements (such as shareholders' agreements, voting trusts, irrevocable proxies, and contracts delegating management functions). Another mode of ensconsing power at the executive and operating levels is discussed in Chapter 6, which is devoted primarily to employment contracts.

When shareholders are permitted a greater voice in management decisionmaking, even to the point of having veto power on specific matters, the incidence of deadlock, accompanied by corporate stagnation or worse, is certain to rise. The possibility of deadlock and the ways of lessening its shock are perennial topics of lively debate among corporate practitioners. In Chapter 9, Professor O'Neal canvasses the methods of planning for and coping with this frequently terminal malady to which so many close corporations are susceptible. He devotes nearly seventy pages to the "hope" offered by arbitration as an alternative to other approaches, such as buyout arrangements, special dissolution agreements, divisive reorganizations, independent board appointments, and statutory dissolution. He frankly admits, however, that "formidable obstacles" lie in the path of lawyers who contemplate use of arbitration techniques to produce more satisfactory answers to the problems of the "unhappy corporation." One little noticed impediment to comprehensive arbitration is the antiwaiver concept which is codified in the securities laws.[12] Prospective arbitration arrangements which purport to cover unknown securities claims have not received favorable treatment in the courts. Since it is likely that more and more controversies involving corporate management duties will include securities violations, particularly under antifraud doctrines, the judicial hostility to precontroversy waiver of securities rights must be reckoned with.[13]

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perhaps, in sections 18 and 31 of the Uniform Partnership Act than in the typical general business corporation law.

[12] Securities Act of 1933 § 14, 15 U.S.C. § 77n (1970); Securities Exchange Act of 1934 § 29(a), 15 U.S.C. § 78cc(a) (1970); UNIFORM SECURITIES ACT § 410(g).

[13] Though it has been under heavy attack recently, the notion that precontroversy

Another byproduct of blending ownership and control in a few shareholders is the need for simplifying the formalities of taking corporate action. However, corporate ritual cannot be cashiered altogether without raising the danger of losing the shield of limited liability. The participants owe themselves and their creditors a degree of discipline which produces a clear record of corporate action and which segregates corporate behavior from the purely personal acts of the participants. There is no policy justification for failing to tend record books, commingling assets, and treating corporate obligations as personal debts. Even if integrated close corporation laws become commonplace, it is unlikely that such behavior will be countenanced while the veil of limited liability remains unrent. This is not to say, however, that there is no call for taking some of the starch out of corporate procedures, especially where ownership and management are more or less fused. O'Neal treats these points quite adequately in the first sections of Chapter 8, which covers several "problems of operation."[14]

Understandably, there is considerable clannishness built into most close corporations. To preserve the privacy of the enterprise, barriers are erected against unwanted strangers. Transfer restrictions (with first options) and buyout arrangements are the chief means of shutting out unacceptable intruders and providing fair payment to participants who wish to sever their ties with the corporation. In Chapter 7, O'Neal elaborates upon the principles governing restraints, first options, buy-sell contracts, and stock repurchase agreements.[15] He devotes a group of helpful new sections to the various methods of valuation which may be used in setting the price of shares to be transferred pursuant to restrictions or buyout arrangements.

Although the foregoing may tend to prove otherwise, widely held and closed corporate forms do share some common ground. The law relating to the duties of managers and dominant shareholders seems serviceable in both contexts and cross-transferable

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arbitration agreements violate the antiwaiver provisions is still alive. Wilko v. Swan, 346 U.S. 427 (1953).

[14] *See also* 1 O'NEAL § 3.62 (2d ed. 1971), where the author warns that too much informality may result in unlimited personal liability.

[15] One of the more important questions under the heading of corporate repurchases is how the "surplus" and "equity insolvency" tests should be applied to periodic payments made by a corporation pursuant to an installment buyout agreement. *See, e.g.*, McConnell v. Estate of Butler, 402 F.2d 362 (9th Cir. 1968); Palmer v. Justice, 322 F. Supp. 892 (N.D. Tex. 1971); Tracy v. Perkins-Tracy Printing Co., 278 Minn. 159, 153 N.W.2d 241 (1967).

between them. As part of his chapter on operational problems (Chapter 8, already adverted to), O'Neal does a fine job of cataloging and explaining the diverse forms of troublesome fiduciary behavior endemic to corporate life. The discussion includes a section devoted to the federal corporation law which has developed under securities statutes and regulations.[16] My prediction is that this portion of the treatise is in for some expansion as federal antifraud concepts are fleshed out to cover more misdeeds involving the disposition and holding of securities. Close corporation controversies have stimulated much of the federal implied private right doctrine.[17] A striking recent example is *Tully v. Mott Supermarkets, Inc.*,[18] in which a New Jersey district court has dealt another major blow to the much circumscribed but stubbornly persistent holding of the *Birnbaum*[19] case, which requires certain private plantiffs suing under Rule 10b-5 to be purchasers or sellers of securities. *Tully* involved a sort of majority squeezeout, executed by directors who caused the corporation to sell treasury stock to themselves and others for the purpose of shifting voting control. Since the plaintiffs were neither purchasers nor sellers of securities, the defendant directors naturally invoked *Birnbaum*. With *Birnbaum* alive, the plaintiffs' only recourse would have been to state law remedies.[20] But, unless an appeal ensues and the Third Circuit reverses, we might be able to say that *Birnbaum*, already pruned to the shaft, has finally been felled.[21] The more critical point, however, is that yet another "Main

[16] 2 O'NEAL § 8.16 (2d ed. 1971). References to securities law remedies for particular types of conduct are found in other sections. *See, e.g., id.* §§ 8.08 (compelling declaration of dividends), 8.09 (issuance of shares to managers at less than true value).

Securities-type corporate common law need not be exclusively federal in character. In those states where implied private claims are not expressly negated by statute, a new case law of corporations can develop under the influence of the more protective philosophy of securities regulation. *See, e.g.*, Shermer v. Baker, 472 P.2d 589 (Wash. Ct. App. 1970) (implied private claim under § 101 of the Uniform Securities Act for insider trading). A case like *Shermer* directly overlaps traditional insider trading doctrine such as that applied in Weatherby v. Weatherby Lumber Co., 492 P.2d 43 (Idaho Sup. Ct. 1972).

[17] It was in a case involving a close corporation that the Supreme Court explicitly held for the first time that an implied private civil claim could be based on SEC Rule 10b-5, 17 C.F.R. § 240.10b-5 (1971). Superintendent of Ins. v. Bankers Life & Cas. Co., 404 U.S. 6 (1971).

[18] [1971-72 Transfer Binder] CCH FED. SEC. L. REP. ¶ 93,377 (D.N.J. Feb. 2, 1972).

[19] Birnbaum v. Newport Steel Corp., 193 F.2d 461 (2d Cir.), *cert. denied*, 343 U.S. 956 (1952).

[20] *E.g.*, Sheppard v. Wilcox, 210 Cal. App. 2d 53, 26 Cal. Rptr. 412 (1963).

[21] I say "might" because the holding of the *Tully* case extends only to plaintiffs seeking retrospective equitable relief (invalidation of corporate action) under Rule 10b-5. The courts have drawn distinctions based on the kinds of relief sought in Rule

Street" corporate problem may have entered the world of federal securities regulation.

A group of preorganization planning topics, mainly taxation and initial capitalization, are taken up in Chapter 2. Since publication of the First Edition, O'Neal has been expanding his coverage of tax matters, and the sections on initial tax planning seem comprehensive.[22] One notices some lacunae,[23] but the text identifies the issues which can be pursued at greater length in standard tax sources. Perhaps this chapter could be improved by some additional discussion of the factors which should be considered in allocating interests (net assets, profits, and voting) among enterprise participants. More extensive commentary on problems of valuation, especially as they relate to the incorporation of a going concern, would also seem proper for inclusion in Chapter 2. However, the new material on valuation which has been added to Chapter 7 (on restrictive options and buyout agreements) can be adapted to issues arising in the organizational phase.

In the last section of Chapter 1, a section which might have been better placed in Chapter 2, O'Neal alerts the reader to the fact that federal and state securities laws might have a significant impact on the issuance of a close corporation's securities. He furnishes short descriptions of the private offering, intrastate, and small offering exemptions, but he does not develop the theoretical and practical sides of this important planning topic. Nonetheless, there is sufficient warning to the careful practitioner that he must look further. We may expect a quick rewrite and embellishment of this section (perhaps before this review is published), because of recent changes in the law regarding private and small offerings and statu-

10b-5 cases. In some circuits, non-purchasers and non-sellers who seek prospective equitable relief are given standing to sue, while those who seek damages are denied the right to proceed under Rule 10b-5. *Tully*, if allowed to stand, may be circumscribed as an "equitable relief" case.

[22] Subchapter S, section 1244 stock, multiple corporations, thin capitalization, bailout devices, section 351, and personal holding company status are covered in Chapter 2. Other tax matters, such as redemptions, compensation, and accumulated earnings, are meshed nicely with related corporate law questions later in the text. The Supreme Court has been spending a good deal of time recently on close corporation tax problems. *See* United States v. Davis, 397 U.S. 301 (1970) (redemption); United States v. Donruss, 393 U.S. 297 (1969) (accumulated earnings); United States v. Generes, 40 U.S.L.W. 4196 (U.S. Feb. 23, 1972) (loss deductions).

[23] Some mention of collapsible corporations would not be out of place. In connection with the section 351 discussion, it might be proper to mention the tricks that the Commissioner can play under the "nominal property" rule in Treasury Regulation section 1.351-1(a)(1)(ii). Also of interest would be the tax treatment of bad debt reserves and accounts receivable upon incorporation. *See* Nash v. United States, 398 U.S. 1 (1970) (bad debt reserve); Peter Raich, 46 T. C. 604 (1966) (accounts receivable).

tory underwriters.[24] These are developments with which close corporation counsel must be familiar. Unfortunately, there are those who do not appreciate the extent to which their close corporation clients are affected by federal and state securities regulation at the point of issuance. Many either overlook the laws or misconstrue exemptions.[25] The latter habit stems, I believe, from the erroneous assumption that the nature of all close corporations is such that some exemption (primarily that for private offerings) is always available. Such a conclusion is unwarranted, whatever the essential characteristics of the close corporation might be. The criteria for identifying the close corporation have been stated to be: fewness of shareholders, lack of a market for shares, treatment by participants of one another as partners, and merger of ownership and management control. It cannot be generally concluded that such attributes, either singly or cumulatively, entitle a corporation to exemptions from federal or state legislation. It is lamentable that there are not more sources which fully explain the securities implications of issuance by a close corporation.

A group of other less extensively treated topics are scattered, though not illogically placed, throughout the two volumes. Among these are: the corporate veil,[26] choosing the proper business form,[27] indemnification,[28] employee compensation,[29] and antivoidability standards for salvaging conflict of interest transactions.[30] A little surprising is O'Neal's cursory treatment of provisions which deal with conflicts of interest. Abrogation of the strict rule of voidability seems warranted. Many statutes and organizational docu-

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[24] *See* SEC Securities Act Release No. 5223, 37 Fed. Reg. 591 (1972) (new Rule 144); SEC Securities Act Release No. 5224, 37 Fed. Reg. 590 (1972) (new small offering exemption); SEC Securities Act Release No. 5225, 37 Fed. Reg. 599 (1972) (modifications of Regulation A); SEC Securities Act Release No. 5226, 37 Fed. Reg. 600 (1972) (fraud implications of private offerings).

[25] In Ohio, for example, we have only a very limited quasi-exemption for the *first sale* of the *voting shares* of a corporation which has no more than *five shareholders* after such sale, but only if the exemption is *formally claimed*. OHIO REV. CODE § 1707.03(O) (Page 1964). Preorganization subscriptions, which are clearly securities, are eligible only for a fairly narrow exemption. *Id.* § 1707.03(K)(3). On the debt side, our statute provides a private offering exemption. *Id.* § 1707.02(G) (subject to a quaint unwritten administrative policy limiting its use to officer and director offerees). All this certainly gives counsel for the close corporation something to think about.

[26] 1 O'NEAL §§ 1.09-.10 (2d ed. 1971).

[27] *Id.* §§ 2.03-.04.

[28] *Id.* § 3.67.

[29] *Id.* §§ 3.69, 8.10-.14a.

[30] *Id.* § 3.66.

ments go further, however, and purport to completely validate fiduciary transactions by foreclosing, under certain conditions, any inquiry into the question of fairness.[31] As we know from the *Remillard Brick Co.* case,[32] courts might be expected to resist such unusual shifts from the common law, even in the face of compelling plain meaning arguments. This ought to be mentioned. Indemnification, too, is an area where the responsibility gaps created by wide open corporate statutes are being filled by regulatory restrictions, especially under the aegis of the securities laws.

Professor O'Neal is an obvious partisan in favor of comprehensive statutory schemes designed especially for close corporations.[33] Such an approach seems preferable to the philosophy of forcing a single statute to perform double duty by interlarding it with sections designed to afford "relief" to the closed corporate form. The latter process, while dispensing legitimate flexibility to close corporations, introduces some very troublesome opportunities for abuse by publicly held enterprises. What is good for the principals of Main Street Motors is not necessarily good for the shareholders of American Motors, and those who tinker with business corporation laws under the guise of perfecting a rational scheme for the incorporated partnership should consider the ill effects which might accrue from an unlimited reflux of close corporation principles into an environment where ownership is *not* in control.[34]

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[31] *See, e.g., id.* §§ 10.03, 10.20.

[32] Remillard Brick Co. v. Remillard-Dandini Co., 109 Cal. App. 2d 405, 241 P. 2d 66 (1952) (holding that fairness is an issue even where a transaction has been approved by a fully informed majority of shareholders, notwithstanding statutory indications to the contrary). Under the old New York statute, the *Remillard* decision would probably have been followed, but New York has recently amended its conflict of interest section so as to make such a result more difficult. N.Y. BUS. CORP. LAW § 713 (McKinney Supp. 1971). The drafters of the 1967 Delaware law revisions (as contrasted with the Delaware legislature) did not intend to adopt the *Remillard* approach. 2 P-H CORP. (Del.) at 326-27 (1967). But the Delaware courts have not yet spoken. Ohio is headed for adoption of a "validation" provision. *See* 45 OHIO B. 719, 727 (1972). As a member of the committee which prepared the proposal, I am aware of some feeling that the effects of *Remillard* were not desired, but here again we are talking about the thinking of a bar association committee and not the intent of the General Assembly.

[33] See 1 O'NEAL §§ 1.12-.14c (2d ed. 1971).

[34] Consider, for example, the Model Business Corporation Act, which provides that management of a corporation may be vested by the articles in *anyone.* ABA-ALI MODEL BUS. CORP. ACT § 35 (1969). Though such a provision legitimately facilitates the operation of close corporations, it also allows directors of widely held businesses to push separation of ownership from control to a point where shareholders can no longer change policy by voting directors out of office. Thus, those who actually run the corporation can be completely unaccountable to the shareholders. This indiscriminate unraveling of the corporate fabric should be compared with the more cautious approach taken in New York, where latitude for close corporations is achieved with some

The preceding comments have been directed to O'Neal's deft, precise, and separate handling of each of the peculiar needs of the close corporation. But the treatise furnishes yet another perspective: one that concentrates on broader planning aspects which cut across a number of specific problems. To illustrate, a substantial part of Chapter 3 is devoted to general considerations regarding the creative use of articles and by-law provisions, and a good portion of Chapter 5 identifies the common themes which recur in shareholder agreements.[35]

There is an unmistakably empirical tone to the entire text. O'Neal's own experience and his ongoing dialogue with other lawyers probably account for the air of praxis which pervades his analysis. The most utterly bread-and-butter aspect of the treatise is Chapter 10, which contains a number of very clean and intelligible specimen charter, by-law, and contract provisions. These originate or are adapted from cases and other generally reliable sources. They are accompanied by explanatory footnotes and cross-references to relevant textual discussions.

The structure and sequencing of the material reflect O'Neal's many years as teacher and writer. He follows the extremely helpful pattern of beginning each chapter with a delineation of its subject matter. He also includes a sketch of the practical context to which each chapter is relevant. Chapter 1, which surveys the "distinctive needs" of the close corporation, serves the same function with respect to the treatise as a whole. This technique is a valuable aid to insight, and it is well worth the user's extra time to refer frequently to these pathfinders.

Before reading through the Second Edition, I tested its response to a group of specific questions in order to find out how the text and ancillary aids function together and how deeply my problems could be pursued. There were only a few instances where I felt less than amply enlightened. Citation to modern authority is extensive, and, whenever concepts overlap, flags are set to advise the reader that reference to analogous topics might be fruitful.

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safeguards against unwanted side effects. N.Y. BUS. CORP. LAW § 620 (McKinney 1963).

[35] For instance, shareholder agreements are subject, more or less and depending on statutory pronouncements, to a prohibition against unreasonable encroachment upon unfettered director discretion. The Court of Appeals of New York has recently augmented its line of cases on this subject. Glekel v. Gluck, 30 N.Y. 2d 93, 281 N.E.2d 171 (1972) (holding that an agreement which bound a director to use his best efforts to cause a registration of another shareholder's stock was not an unreasonable infringement on director prerogatives).

One who undertakes to review a treatise does so with a certain dread that his task might become a little like reading the telephone book. I found no such tedium in the O'Neal work. His style is crisp and, as the promotional flyer puts it, "actually . . . enjoyable." The same sales blurb states that "[t]he revision continues to reflect the original volume's philosophy of avoiding an overly conceptualistic approach by focusing on planning, drafting, counseling and preventive law rather than on doctrine or curative law." This remark should not be taken to indicate that the treatise is short on policy analysis. One of the most attractive attributes of O'Neal's approach is his careful explanation of rhyme and reason. On the other hand, lest any potential users be repelled by the prospect of solid scholarship, it must be noted again that O'Neal has skillfully channeled his theoretical analysis into an array of practical settings. Every law office, including and perhaps most especially the small firm, should avail itself of this fine new edition of a respected corporate standby.

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