<u>Corporations Review Problems</u>

Answer the following questions in light of the *probable* content of state law, noting significant distinctions among Delaware, MBCA, and IL laws.

1. ZuderCo is a corporation that has owned and operated the historic Palms Hotel and two smaller hotels since 1914. The Palms Hotel constitutes approximately 50% of the fair market value of the total assets of ZuderCo and produces approximately 75% of the revenue and 80% of the EBITDA of the corporation.

ZuderCo has 15 shareholders. Thirteen of them are descendants of the founder, and the remaining two are Able and Baker. No shareholder owns more than 10% of the outstanding shares. ZuderCo has a three-person board of directors, consisting of Able, Baker, and Chase (a Zuder family member).

Able and Baker believe that the property on which the Palms Hotel is located has great potential for development as an office park. They value it at $18 million based on their own close study of public documents relating to the development pattern in that area. The other ZuderCo shareholders disagree because they believe that the Palms property has greater economic potential as a hotel. They arrive at a more modest valuation of about $13 million for the property's use as an office park. Able and Baker have obtained three independent appraisals valuing the Palms property as an office park at $14 million, $16 million, and $18 million.

Able and Baker decide to offer ZuderCo $14.5 million to buy the Palms property, and then to vote as directors at the next board meeting to accept the offer. They do not plan to approach the third director, Chase, before the meeting. They expect that Chase will go along with their plan without asking any questions or causing delay because Able and Baker will have their two votes in favor of the sale and because the $14 million appraisal will support the amount of their offer. They do intend to disclose the $14 million appraisal to Chase, but they do not intend to disclose the other two higher appraisals.

The relevant corporate documents for ZuderCo contain no special or extraordinary provisions directly on point as to the following questions (explain fully):

1. **Can the board of directors of ZuderCo authorize the sale by its unilateral action?**
2. **What disclosures, if any, must Able and Baker make at the board meeting?**
3. **Will the votes of Able and Baker be sufficient to approve the transaction?**
4. **What duty, if any, does Chase have as a director, in light of the sale proposal presented by Able and Baker, and what (at least) must he do to fulfill that duty?**
5. **If Able, Baker, and Chase follow your guidance on the above questions, will that completely insulate the transaction and their behavior from attack by a dissident shareholder? What opposition leverage might a dissident shareholder apply here, and how powerful do you think it might be?**

2. FurnitureCo has manufactured quality furniture for 20 years. Its articles and by-laws contain only the minimum required by law. Adam owns 70% of the stock of FurnitureCo, and Diane and Edward each own 15%. The board of directors has five members: Adam; Adam's loyal children, Beth and Charles; and Diane and Edward. Adam is the President of FurnitureCo, Beth is Vice President, and Charles is Secretary/Treasurer. Their duties are not specified in the by-laws. Neither Diane nor Edward is an officer.

Over the past few years, FurnitureCo's business has been flat but marginally profitable. At its last regular board meeting, Adam presented a plan to diversify FurnitureCo's business by entering the tennis club business. After hearing Adam's presentation on the expanding opportunities in the sports field, the board voted 3 to 2 to direct Adam as President to "study and implement at his discretion a program for restructuring and/or reorienting the business operations of the company." Diane and Edward were the two dissenters.

After studying the matter, Adam decided that FurnitureCo's profits would be maximized by getting out of the furniture business altogether, selling all of its current assets, and using the sale proceeds and cash on hand to buy a tennis club. On his own initiative and without anyone else's approval, he then scheduled an auction for next month to sell all of FurnitureCo's existing assets.

Diane and Edward are sure that Adam's plan would ruin the company, so they visited Adam in his office to express their disagreement with his plan and plead with him to abandon it. Specifically, they demanded that he immediately cancel the auction. Adam told them that he did not need their approval to implement his plan and ordered them to leave his office.

Diane and Edward consult you about the availability of any reasonable arguments they might make to block the sale in particular and Adam's plan in general. Answer the following questions, explaining fully:

1. **In light of the above, does Adam have sufficient authority as President to change FurnitureCo's business and to sell its existing assets?**
2. **If they have not done so already, could Adam, Beth, and Charles lawfully act together to approve and implement the change in business and the sale of assets without the participation of Diane and Edward?**
3. **If Diane and Edward can convince Beth and Charles of their father's folly, can they prevent Adam's plan, or can Adam implement his plan despite the disagreement of every other constituent here? If so, explain exactly the steps that Adam would have to take and how long it would likely take for Adam to ram through his plan.**
4. **Assuming they cannot use the democratic governance process to prevent Adam from implementing his plan, can Diane and Edward assert any other reasonable claims against the corporation or Adam?**