

COMPANY ARTICLES Student's Manual



*Realistic and
Innovative
Business English
Learning*

Business: the purchase and sale of goods and services in an attempt to make a profit.

Simulation: training by imitating the behavior of some situation or process by means of a reasonably accurate model.



 **DVBE**
DAVE VOLEK'S BUSINESS ENGLISH

w w w . d v b e . b z



About Dave Volek

Engineer. Businessman. ESL Instructor. Inventor. At the heart of the comprehensive suite of Dave Volek's Business English (DVBE) modules lies my diverse expertise in business, engineering, and finance; my interest in people and education; and my passion for creating innovative solutions that bridge the inherent gaps of traditional business English instruction. My proven, unconventional approach helps business and technical professionals build strong, practical English skills for the dynamic workplace.

The Other DVBE Modules



Risk & Reward Your group will choose one of three risky investments. The group who makes the best choices wins the contest.

The Grocery Store You will communicate with big numbers and use "increase" and "decrease" a lot. There's some good income statement vocabulary.



The Tractor Deal You will either be a farmer looking to buy a tractor or a farm equipment dealer trying to sell a tractor. Lots of talk about "specs." No experience with tractors is necessary: the buyer and seller worksheets will guide you.

Stan's Tents You will follow an entrepreneur prepare his marketing plan and make a similar plan of your own. There's lots of useful marketing words you need to learn.



The Billionaires Your group will follow some instructions to determine which billionaire really controls the world. There's lots of suspense to keep you guessing, but you need your business English to find out.

Credits

- Designer & Writer: Dave Volek, B. Sc.
- EFL Advisor & Editor: Les Thompson, B. Ed.
- Illustrations: Tim Rotheisler
- Layout & Marketing Consultant: Third Stage Alliance www.ThirdStageAlliance.com



CONTENTS

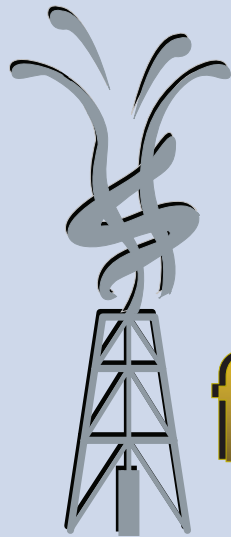
INTRODUCTION	1
EXERCISE 1: DESCRIBING THE SECURITIES	2
<i>Part 1</i>	2
<i>Part 2</i>	2
<i>Part 3</i>	2
EXERCISE 2: SCAVENGER HUNT	3
THE ARTICLES	8
I. ANNUAL SHAREHOLDERS' MEETING	8
II. THE BOARD OF DIRECTORS	8
III. LIST OF SECURITIES	9
EXERCISE 3: VOCABULARY QUIZ AND COMPREHENSION QUESTIONS	13
EXERCISE 4: LIQUIDATION, DISSOLUTION, AND PROFIT	13
EXERCISE 5: S & J INC.	14
EXERCISE 6: THE TRIAL	19
<i>Additional Lawyer Strategy</i>	19
<i>The Judge's Role</i>	19
VOCABULARY QUIZ	20



INTRODUCTION

This DVBE module gives you lots of practice working with legal English. You will be reading legal text to **resolve** several **realistic** business **issues**.

Practice Your **Business English** with Native Speakers!



Make big oil deals in this business simulation using e-mail and instant messaging.

Gain finance and negotiation experience.

oil
financier
.com

Visit www.OilFinancier.com to take advantage of this valuable opportunity!



EXERCISE 1: DESCRIBING THE SECURITIES

Part 1

Use your own words to describe the various securities:

- **bonds,**
- **preferred shares,**
- **convertible preferred shares,**
- **common shares, and**
- **non-voting shares.**

Explain the benefits the owner of these securities gets from the company he has invested in.

Part 2

Explain the advantages and disadvantages of each of these securities to an investor (hint: investments usually have a balance between risk and reward).

Explain the advantages and disadvantages of each these securities to a company looking to raise money (hint: **cash flow** and **tax considerations** are usually the major concerns).

Part 3

The instructor will read a list of advantages and disadvantages for each security. Listen carefully and write down the points you missed.



EXERCISE 2: SCAVENGER HUNT

A scavenger hunt is a game where teams try to find specific items on a list. In most scavenger hunts, team organization is often more important than having actual knowledge or skill. Use your business English skills to get your team organized to solve this challenge efficiently.

The **playing field** for this scavenger hunt is the company **articles** for a **fictitious** company. These articles are the **rulebook** that determines the selection process of the **board of directors**, provides a decision-making process, and establishes the **rights** of the various **security holders** who **financed** the company. When board or shareholder **disputes** happen within a company, the articles are used to resolve these disputes.

Larger companies usually **draft** their own articles, and this process is often fairly expensive. Smaller companies usually **adopt** articles written by a **ministry** of the government. In either case, **amendments** to the rules can be made by using **due** democratic **process**.

Usually the articles are over 100 pages long, but for this exercise you will be working with a much **simplified** set of rules.

In this scavenger hunt, you must find the correct answers to 14 questions about the articles. When your team thinks it has all the answers, take your list to the instructor. If one of your answers is wrong, your team must **go back** to the articles to check all your answers. If your team is the first to get all 14 answers correct, you will win a great prize provided by your DVBE instructor.

Here are some ideas to get your team organized so you can win the prize:

- Assign individual questions to different team members. There's no need for everyone to do the same questions.
- **Skim** the articles instead of reading every word. Look for headings that match the question, and then carefully read just those articles to find or **work** the answer **out**.
- If a team member gets **stuck** on one question, go to the next assigned question. Sometimes another member may find the answer.
- If the question seems a little hard, work in pairs to solve it. Sometimes two heads are better than one.
- **Keep track** of questions answered and not answered.
- Be ready to change assignments and strategy as questions are answered or not answered.
- When you first submit your 14 answers to the instructor, you'll probably get one or two wrong. Divide the answers which you are sure are correct and answers where there is some **doubt**. Spend time, as a team, on the doubtful answers.



Below are the questions your team must answer:

Fact-Finding Questions

Question 1

What is the same between **Series A** and Series B bonds?

- A. the **maturity date**
- B. the interest payment date
- C. the amount of interest payments per year
- D. the **redemption** amount

Question 2

Which of the following **officers** can be voted for at the Annual General Meetings?

- A. The president
- B. The **auditor**
- C. The **company solicitor**
- D. None of the above

Question 3

If a convertible preferred shareholder decides to convert this share into common shares, how many common shares does he get?

- A. Five shares
- B. One-fifth of a share
- C. One share
- D. None of the above

Question 4

When a common shareholder decides to sell his shares back to the company, what must the company do?

- A. It must pay the owner \$10.00 per share.
- B. It must find **fair value** for the shares and pay this to shareholder.
- C. It must inform all other shareholders and hold an auction.
- D. None of the above.



Question 5

What happens if a shareholder loses a share or bond certificate?

- A. The shareholder loses all the money he invested in the company.
- B. Dividend and interest payments are **suspended** until the certificate is found.
- C. The shareholder **files** for a replacement certificate.
- D. The shareholder must **take** the company **to court**.

Thinking Questions

Question 6

The Board called an annual shareholders' meeting (ASM) for November 25. One shareholder, who has 20% of the **outstanding** shares, **submitted** a shareholders' **resolution** to the company solicitor on November 11, but the Board did not agree to put this on the **agenda**. At the meeting, this shareholder asked to put his resolution on the meeting's agenda. Another shareholder, who owns 6% of the outstanding stock, supported the first shareholder's request. According to the company articles, is the company **legally obligated** to put that resolution on the ASM agenda?

- A. Yes, because the two shareholders own more than 25% of the outstanding shares.
- B. Yes, because the shareholder gave the resolution to the company solicitor 14 days before the **cut-off date**.
- C. No, because the shareholder with 6% did not sign the resolution at the appropriate time.
- D. No, because only the Board of Directors can **set** the agenda.

Question 7

The company earned excellent profits, and the Board of Directors has decided to pay some of these earnings out as **dividends**. What is a proper legal step before paying dividends to the common shareholders?

- A. **As long as** bonds are still outstanding, the Board cannot pay dividends to the common shares.
- B. As long as the preferred shareholders don't complain about late payment for their dividends, the common shareholders can get their dividend.
- C. Annual dividends and any delayed dividend payments for the preferred shares must be paid out before declaring dividends for the common shares.
- D. Dividends to common stock can not be paid until all convertible preferred shares are converted into common stock.



Question 8

The articles have a **restriction** for Class B common stock to be sold. What is this restriction?

- A. Shares can be sold to anyone, and this **transaction** must be reported to the company lawyer.
- B. The shares can only be sold to a **current** shareholder of the company, and this transaction must be reported to the company lawyer.
- C. The sale of these shares needs the **approval** of the Board of Directors.
- D. None of the above.

Question 9

A preferred shareholder wants to vote for a specific director at the annual general meeting but cannot **attend** the meeting. What is an acceptable method to **ensure** this vote is counted.

- A. The shareholder can be represented by an individual named in his proxy.
- B. The shareholder can instruct the company solicitor to vote his shares for the director.
- C. Both A or B.
- D. Neither A nor B.

Question 10

A Class A preferred shareholder demands that the company **buy back** his preferred shares. What is a legal restriction on the company after the shareholder completes the proper **paperwork**?

- A. The company must pay \$85.00 per share immediately.
- B. The company cannot pay dividends to common shares until the company pays the preferred shareholder for his shares.
- C. The company must wait for all the preferred shareholders to agree to have their shares bought back.
- D. None of the above.

Calculation Questions

Question 11

A company is electing its board of directors at the annual meeting. Eight individuals were **nominated** as director, and each received the following number of votes:

- Candidate A 110,000
- Candidate B 75,000
- Candidate C 207,000
- Candidate D 23,000
- Candidate E 87,000
- Candidate F 181,000
- Candidate G 95,000
- Candidate H 101,000



According to the articles, who are the directors and what is each director's **voting block** on the board?

- A. A-16%, C-30%, F-26%, G-13%, H-15%
- B. A-13%, B-8%, C-23%, D-3%, E-10%, F-21%, G-11%, H-11%
- C. A-20%, C-20%, F-20%, G-20%, H-20%
- D. This election is not final and requires another **round**.

Question 12

A shareholder owns 10 CPS and has been properly paid all his preferred dividends. He **converts** these shares to common stock on September 15. How much of a preferred dividend is he entitled to?

- A. \$40.00
- B. \$6.79
- C. None, because he loses all **accrued** dividends when he converts his shares.
- D. None, because there is a waiting time for newly converted shares to receive dividends for common shares.

Question 13

On August 30, the board of directors **declares** a \$2.00 dividend for common shares **on record** as of September 20. A shareholder owns 10 CPS. He converts these shares to common stock on September 15. How much of a common dividend is he entitled to?

- A. None, because there is a waiting time for newly converted shares to receive dividends for common shares.
- B. \$100.00
- C. \$4.00
- D. \$6.79

Question 14

The board of directors decides to **redeem** some of its Series A Bonds on October 31. How much must it pay out per bond?

- A. \$1,000.00
- B. \$1,065.00
- C. \$1,008.03
- D. \$1,073.03



THE ARTICLES

I. ANNUAL SHAREHOLDERS' MEETING

- A. The Board of Directors shall **call** an Annual Shareholders' Meeting (ASM) in November every year.
- B. The Company shall send, by mail, **notice** of this meeting to all shareholders **registered** on October 1 with the company solicitor, **postmarked** no later than October 15.
- C. Business to be **conducted** at this meeting **shall** be restricted to:
 - 1. any business as decided by the Board of Directors
 - 2. any shareholders' resolution that was submitted to the company solicitor
 - a) with the **signatures** of shareholders representing at least 25% of the outstanding shares and
 - b) no less than 7 days before the annual shareholders' meeting.
 - 3. election of the new Board of Directors.
- D. A Series A common shareholder has the right to be represented by **proxy provided** that the individual attending the meeting can present a **signed proxy** to the Secretary or Solicitor. This proxy shall include either:
 - 1. **delegation** of the voting responsibility to a particular individual or
 - 2. instructions to the Secretary or Solicitor to vote the shareholder's shares a certain way in a resolution or to vote for a certain director.
- E. The person representing the proxy has the right to attend the meeting.

II. THE BOARD OF DIRECTORS

- A. Five directors shall be elected as per section B.2 to the Board at the Annual Shareholders' Meeting. Their **term of office** shall **commence** immediately after the election and **cease** when the new board is elected at the next ASM.
- B. Series A Common Shareholders attending the ASM or represented by proxy as per Section D(C) are **entitled** to vote.
 - 1. Voting shall be done by **secret ballot** that indicates the shareholder's **preferences** for director. Shareholders and **eligible** proxies shall submit ballots to the secretary and/or company solicitor. Each share shall have one vote. Shareholders can **split** their total shares to vote for more than one director. The secretary and company's solicitor shall act as **vote tellers**. The solicitor shall prepare ballots for each shareholder for the meeting.



2. The five individuals receiving the highest number of votes **cast** shall be the directors.
 - a) A director need not be a shareholder.
 - b) Each director shall have a voting block on the board **in proportion** to the number of votes cast for that director at the ASM.
 - c) Votes cast for unsuccessful candidates for director have no effect on the Board's voting block.
3. The Board, **subject to** the company articles and shareholder resolutions, shall have **full authority** and responsibility for the affairs of the company.
4. The Board shall **appoint** a chairman, secretary, treasurer, and any other officer it feels necessary. Officers need not be directors or shareholders.
5. The Board shall appoint a solicitor, auditor and any other **professional** it feels necessary.

III. LIST OF SECURITIES

The company has *issued* the following securities. All securities are **nonnegotiable** except for conditions **as stated**.

A. Series A Bonds

Each Series A Bond has a **nominal value** of \$1000.00 and the following rights:

1. Maturity
 - a) Each bond **matures** on September 20, 2015
 - (1) after which time, the company shall pay the holder of each bond \$1000 when the bondholder **surrenders** the bond certificate to the company solicitor.
 - b) No **further** interest shall be paid after this date.
2. Interest
 - a) The company shall pay the holder \$57.50 on March 20 and on September 20 of each year until the maturity, including the final interest payment on September 20, 2015.
3. **Resale**
 - a) Sale of the bond is allowable only with written permission from the Board of Directors.
4. **Redemption**
 - a) The company has the right to redeem any or all of the outstanding bonds at any time. The company shall pay on any bond chosen for redemption:
 - (1) \$1065.00 per bond and
 - (2) any accrued interest, as defined by **clause 2.a)**



5. **Dissolution and Liquidation**

- a) **In the event of** dissolution or liquidation of the company, bondholders have the right to company **proceeds up to** the redeemable value plus any accrued interest.
- b) Payment shall occur
 - (1) only after **secured creditors** have been paid in full, and
 - (2) before **unsecured creditors**, preferred shareholders, and common shareholders.
- c) **In the event** there are **insufficient** funds to pay all the bondholders **in full**, each bondholder shall receive a **portion** of the available funds **pro rata** to the total number of bonds outstanding.

B. **Series B Bonds**

Each Series B bond has a nominal value of \$1000.00 and the following rights:

1. Maturity
 - a) Each bond matures on December 31, 2017
 - (1) after which, the company shall pay the holder of each bond \$1000 when the bondholder surrenders the bond certificate to the company solicitor.
 - b) No further interest shall be paid after this date.
2. Interest
 - a) The company shall pay the holder \$68.50 on December 31 of each year until the maturity date, including the final interest payment on December, 2017.
3. Resale
 - a) Sale of the bond is allowable only with written permission from the Board of Directors.
4. Redemption
 - a) The company has the right to redeem any or all of the outstanding bonds at any time. The company shall pay on any bond chosen for redemption:
 - (1) \$1065.00 per bond and
 - (2) any accrued interest, as defined by clause 2.a)
5. Dissolution and Liquidation
 - a) In the event of dissolution or liquidation of the company, bondholders have the right to company proceeds up to the nominal value plus any accrued interest.
 - b) Payment shall occur
 - (1) only after secured creditors have been paid in full, and
 - (2) before unsecured creditors, preferred shareholders, and common shareholders.
 - c) In the event there are insufficient funds to pay all the bondholders in full, each bondholder shall receive a portion of the available funds pro rata to the total number of bonds outstanding.



C. **Series A Preferred Shares**

Each Series A preferred share has a face value of \$100.00 and the following rights:

1. Dividend Payment
 - a) The dividend shall be \$7.00 on June 15 of each year, subject to clause C.3.
2. Buyback
 - a) The preferred shareholder can demand the company **repurchase** any or all preferred shares **held** by the preferred shareholder. The preferred shareholder must submit to the company solicitor:
 - (1) written notification **stating** the **intention** to **effect** the buyback and
 - (2) the preferred share certificate.
 - b) The Company shall pay the preferred shareholder:
 - (1) \$85.00 per share and
 - (2) any accrued dividends up to the day of notification, subject to clause C.3.
3. Payment Terms

In reference to clauses C.1. and C.2., the company shall:

 - a) pay the preferred shareholder only if the company's financial position is strong enough to survive the payout.
 - (1) The Board of Directors has the right to **assess** this condition.
 - b) not **declare** or pay any dividends to common shares or **embark** on **significant capital projects** until all preferred shareholders are paid their rightful amounts in dividends or buybacks.
4. Dissolution and Liquidation
 - a) In the event of company dissolution or liquidation, preferred shareholders shall be entitled to the proceeds up to the face value of the preferred shares plus any accrued dividends up to the date of dissolution or liquidation.
 - b) Payment as per clause a) shall only be considered after secured creditors, bondholders and unsecured creditors have been paid in full.
 - c) In the event that there are insufficient funds to pay all preferred shares in full, each preferred share shall receive a portion of the available funds pro rata to the total number of preferred shares outstanding.
5. Sale of Series A Preferred Shares is allowable only with written permission from the Board of Directors.

D. **Series B Preferred Shares** (**herein** referred to as "Convertible Preferred Shares" or "CPS")

Each CPS has a face value of \$100 per share and has the following rights:

1. Dividend
 - a) Each CPS shall receive a dividend of \$4.00 on July 15 of each year.



(1) If the CPS is converted to common shares as per section D)3., the shareholder shall receive any accrued dividend payable that was earned in the period **prior to** the conversion. CPS dividends shall cease immediately after **conversion**.

2. Conversion

- a) Each CPS can be converted into 5 Series A Common Shares. To enact the conversion, the convertible preferred shareholder must submit to the solicitor:
 - (1) a signed written **notice of intent** to convert and
 - (2) the CPS certificate.
- b) This conversion feature **expires** on:
 - (1) December 31, 2013, or
 - (2) the date of liquidation, as determined by the courts, or
 - (3) the date of dissolution as determined by the Board of Directors, **whichever comes first**.
3. **Up until** the time of conversion and **with the exception of** dividend payment amount and conversion rights, convertible preferred shares shall have the same rights as preferred shares as described in Section III. C.
4. Immediately after the submissions of notice and share certificate as required by clauses 2.a)(1)&(2), the common shares obtained by conversion shall have the same rights as common shares as per section III. E.

E. **Series A Common Shares**

Each A Common Share issued has a nominal value of \$10.00.

1. Each A Common share has the following rights:
 - a) right of ownership in the company in proportion to the number of shares outstanding.
 - b) right to proceeds of dissolution or liquidation after all creditors, bondholders, and preferred shareholders have been paid their **rightful** amounts.
 - c) right to attend and vote at the ASM.
 - d) right to submit and vote on resolutions as per clause I.C.2.
 - e) right to dividends as declared by the Board of Directors.
2. Resale
 - a) Sale of shares is restricted to any of the **existing** shareholders at a price negotiated between the buyer and seller.
 - b) To be legally **recognized**, any sale of common shares must be **registered** with the company solicitor with an acceptable **contract of sale**.

F. **Series B Common Shares**

1. Each "B" common share has a nominal value of \$10.00 and all the rights of Series A common shares except for the right to vote as described in clause E.1. and E.2.



IV. **OTHER**

- A. Any payments made by the company to security holders shall be made as soon as **reasonably** possible.
- B. In the event that a security holder has lost a certificate, a "lost certificate **affidavit**" prepared by the company solicitor **nullifying** the old certificate shall **suffice** for any legal affairs between the company and the security holder. The solicitor shall issue a new certificate within a reasonable time.

EXERCISE 3: VOCABULARY QUIZ AND COMPREHENSION QUESTIONS

This DVBE module is for advanced students, and if you have made this far you are certainly showing some advanced abilities in business and English.

To use most of your class time for business English conversation, I recommend that you do the vocabulary quiz, comprehension questions, and further reading as homework. The instructor will give you answers later.

EXERCISE 4: LIQUIDATION, DISSOLUTION, AND PROFIT

The instructor will give you a little exercise that requires three accounting calculations. You will use the articles to determine how the calculations should be made.

Each student group will have different problems to solve. If you want to know whether your group got the right answer or not, you will have to call a member of another group to your group. Explain, in your best business English, to that student how you did the calculations. If that student agrees with you, then it's a good sign that you did everything correctly.



EXERCISE 5: S & J INC.

Fifteen years ago, ten business people **started up** S & J Inc., an importing and exporting firm. This firm became very successful because each partner had a different product **expertise** in international trading and the partners were able to **complement** each other on many business deals. S & J **currently** has more than 80 employees **worldwide** in sixteen offices.

Another reason for the success was their **collective** decision-making capability. All important decisions were made at monthly management meetings where partners used their combined knowledge, wisdom, and experience to make decisions by **consultation** and **consensus**. When one or two partners disagreed with the **majority**, they **willingly went along with** the majority's decision.

Question 1

Why was S & J a successful importing and exporting firm?

- A. Because all the partners were able to understand each other because they had the same expertise.
- B. Their 80 employees and six strategic offices made all the decisions.
- C. They had an extremely capable CEO who usually made good decisions.
- D. The company had experience with lots of different products and locations.

For its **corporate legal structure**, S & J Inc. uses the same company articles you have already read in previous exercises. The company did have a Board of Directors and an annual shareholders meeting (ASM), but these were only legal **formalities**. The five board members never met together because all the decisions were made at the monthly management meetings with most partners present. The ASM was treated as a social event where the partners invited their families, customers, and **vendors** to a great party.

Question 2

What was the main method of decision making for the company?

- A. The board of directors elected at the ASM made the decisions.
- B. The company most often made decision by consensus at the monthly management meetings.
- C. The company would get into **heated** debates followed by a vote.
- D. Partners in the **minority** often ignored the decision of the majority to prove the majority was wrong.

However, this good **atmosphere** could not last forever. For the past year, the customers have been **drifting** to S&J's competition. Something has to change so that S & J Inc. can **retain** its **market share**. At September's management meeting, two **proposals** were presented showing how the company could change to meet this new challenge, but only one of these proposals could be selected. The partnership divided itself into two camps, each supporting a different business proposal. Jackson,



Jenik, Johnson, Jetz, and Jessop believe in Plan J. Strauss, Southerland, Stribriny, Saunders, and Szabo support Plan S.

The partners tried to **reconcile** their differences, but each partner remained **steadfast** to the plan he or she believed was the best.

At October's management meeting, it was reported that two more S & J customers had been lost—but S & J Inc. still couldn't decide between Plan J and Plan S.

Question 3

What is the source of **disunity** in this company?

- A. The competition is too strong.
- B. People whose last names begin with "J" really don't like people whose last names begin with "S" and **vice versa**.
- C. The partners could not agree on a plan to prevent the competition from taking away business.
- D. S&J Inc. was not providing products and services as well as it used to do.

The company solicitor, Cooper, was at the last management meeting. He told the partners the best way to solve this **impasse** would be to properly elect a new Board of Directors at the ASM which was already scheduled for November 7. The board would make the final decision. All parties agreed to this idea because the worst decision for the company was the **status quo**.

Question 4

What is the advantage of having the board of directors make the final decision?

- A. It would be a legally **binding** decision that **dissenting** partners could not successfully **challenge**.
- B. The board of directors has always made such decisions.
- C. The board would probably decide for the status quo.
- D. November 7 is not too far away, so a decision can be made then.

The current shareholders' list, on record **as of** October 18, was **as follows**:

Shareholder	Convertible Preferred Stock	Common Stock
Jackson		100
Jenik	110	405
Johnson		802
Jetz	320	520
Jessop		346



Shareholder	Convertible Preferred Stock	Common Stock
Strauss		50
Southerland	200	200
Stribriny	165	900
Saunders		157
Szabo	65	903
Jackson Holdings Ltd. *	40	297
339002 Canada Ltd. *		430
SJJ Holdings Ltd. *	—	390
Total	<u>900</u>	<u>5500</u>

* *These are holding companies, which are limited liability companies whose main business is to hold securities in other companies. Holding companies are usually owned by one or just a few individuals. Such people use holding companies, instead of investing in their own names, for tax, legal, or international reasons. They are also a good way for private investors to combine their resources with other investors.*

Unfortunately, the partners had had little experience in holding a proper and legal annual shareholders' meeting. This inexperience created lots of confusion at the November 7 ASM. There was a lot of debate about proper proxies and about converting the CPS (convertible preferred shares) into common stock. The meeting did not **conclusively** establish the new board of directors because there were several **interpretations** about which shares were allowed to vote for the board. So S & J, Inc. still could not decide between Plan J and Plan S. The only thing the partners could agree on was to resolve this **mess ASAP**.

Cooper recommended that the partners not call a new annual shareholders' meeting. The true legal ASM was the November 7 meeting, and if any partner **objected** to the results of a second ASM, he or she would have very good legal **grounds** to dispute these results. Cooper recommended that S & J Inc. hire three retired judges to **arbitrate** the result of the ASM. The hearing was quickly **set up**, and all partners agreed to **abide by** the decision of these judges.

Question 5

What was a problem with the November 7 ASM?

- Some proxies were not properly prepared, so it was difficult to determine if some proxy voters were indeed representing who they said they were.
- The ASM was conducted so poorly that it could not be considered a legal meeting that elected a legal board of directors.
- The articles were incorrectly applied in determining who was entitled to vote.
- There was great disagreement about how many common shares and CPS each partner owned.



Your job is to role-play these judges. Review the company articles, shareholders' list and the **evidence** pertaining to the ASM and decide who are the valid directors.

Following is a list of the evidence. None of the partners is disputing any of these facts.

1. The decision to solve the impasse by electing new directors at the ASM was made at the October 18 monthly management meeting.
2. The ASM **took place** on November 7 **convening** at 7:30 p.m. and **adjourning** at 10:15 p.m.
3. Saunders attended and voted for himself as director.
4. Jackson attend and voted his shares in favor of himself as director.
5. Szabo had family problems and couldn't attend the ASM. However, he faxed Cooper his proxy instructing Cooper to vote his shares towards Saunders as director. Cooper did provide this document at the ASM. Szabo also submitted his conversion of his CPS on September 30 and the final paperwork was done on October 15.
6. Jenik submitted a letter of intent to convert all his convertible preferred shares to common stock and his CPS certificate to Cooper on November 4. Cooper personally **acknowledged** this submission, but the legal paperwork was not completed until November 12. Jenik voted all of his stock in favor of himself for director.
7. Strauss voted all her shares in favor of herself at the meeting.
8. Johnson was in South America on company business on November 7. She instructed her husband, who all the partners knew, to attend the ASM and vote her shares in favor of Jenik for director. Johnson's husband did not have a signed letter authorizing him as proxy.
9. Southerland was in Indonesia on company business on the day of the ASM. He sent, from his hotel in Jakarta to Strauss' office, a signed fax giving Strauss his proxy for the meeting. Strauss could vote Southerland's share as Strauss **saw fit**. The fax came at 5:45 p.m. local time at the S & J headquarters. However, Strauss was unaware of Southerland's fax and did not know that she was Southerland's proxy—until the morning after the meeting. There is no question of a properly prepared proxy or the time it came in; it was not present at the actual meeting. Southerland had no intention of converting his CPS.
10. On the afternoon of November 7, Jetz submitted her CPS certificate and a proper letter of intent to convert all her CPS to common stock to the solicitor's office. Cooper was not in, but his secretary took the submission and indicated that it would be valid. The final paperwork was completed on November 11. Cooper addresses the judges on this issue: "In my opinion, my secretary is a **valid** representative for the position of 'company solicitor' for these affairs." Jetz voted all her shares in favor of herself at the meeting.
11. Stribriny had to **catch** a plane to Europe for company business the afternoon before the ASM and therefore couldn't attend. His wife attended the meeting and she had a properly prepared proxy instructing the meeting that she could vote Stribriny's shares for Stribriny as director. Stribriny had personally submitted to Cooper on the morning of November 7 his intentions to convert all his CPS holdings to common stock, but he couldn't find his



CPS certificate. Cooper verbally informed Stribriny that he would prepare a lost certificate declaration for Stribriny to sign later and that everything would be in order.

12. Jessop voted all his shares in favor of Jackson at the meeting.
13. Stribriny sold 40 common shares to Jessop on August 15. The two partners wrote their own contract for this sale and signed this contract. The money **changed hands**. However, Cooper did not receive notification of this sale, and therefore the shareholders' list as of November 7th did not **reflect** this sale.
14. Jackson Holdings Ltd. (JHL) is 100% owned by Jackson. He brought a proxy to the ASM which had been signed by the president of JHL (i.e. Jackson) that JHL had **authorized** Jackson to vote its shares **on its behalf**. Jackson had forgotten about the 40 CPS JHL owned and submitted his intent to convert on November 8 but this document was **backdated** to November 3.
15. 339002 Canada Ltd. is a **numbered company** that is 100% owned by Strauss. Strauss did not have a prepared proxy for the ASM. She thought everyone would understand and would agree she could speak on behalf of 339002 without a proxy.
16. SJJ Holdings Ltd. is owned by Saunders, Jetz, and Jessop, each having a one-third share. In this company's articles, the partners are to take turns serving as the company's **sole** director for a year and this director is given absolute power to conduct the day-to-day affairs of the company. For **extraordinary** affairs that could drastically affect the nature of SJJ, SJJ's articles **stipulate** that the shareholders are to **hold** a special meeting and make a decision **based on** a majority vote. On November 7, Saunders was this sole director and he brought a proper proxy, signed by the current president of SJJ, (**i.e.** himself) stating that SJJ would vote for Saunders as director. Jetz and Jessop objected; they stated that they held a special SJJ shareholders' meeting on November 3 (to which Saunders was invited but did not **show up**) where the majority of the shareholders agreed to vote the shares held by SJJ for Jetz.

In your groups, discuss the following, shareholder by shareholder, going through each fact, starting with #3:

- Are the shares eligible to vote?
- Did those shareholders who could not **make** the ASM have a proper proxy?
- Did those shareholders who tried to convert their CPS into common shares do their conversion properly or **in time**?

After you determine who are the five directors elected to the board, use the articles to figure out which plan is implemented: Plan J or Plan S.



EXERCISE 6: THE TRIAL

The instructor will set up a **trial** where some of you are lawyers for the J Side, some are lawyers for the S Side, and some are judges.

If you are a lawyer, you might want to prepare your arguments **beforehand** to make a good case for the trial. Give the reasons why shares should or should not be included in voting for directors. Use the articles to make your point. Do not change the facts because neither side is disputing these points. Be careful of which legal points you want to convince the judge with: if you are successful, the opposing side could use the **precedent** against you.

It is very important to show proper courtroom **etiquette** if you are a lawyer. Here are the rules you should follow:

- Show respect to the judge at all times and call him or her “Your Honor”.
- When making your argument, address the judge not the opposing lawyer.
- Do not interrupt another lawyer’s presentation.
- Do not **put down** the other lawyer.
- **Argue** the point, not the person.
- Respect the judge’s final decision.

Additional Lawyer Strategy

- Keep your presentation short and **to the point**.
- **Concede** on points you are unlikely to win.
- Use precedents made in the trial to your advantage.
- If you lose a small battle, forget your loss and carry on to the next battle.

The Judge’s Role

- Give each lawyer a reasonable **chance** to **express** the case for or against each shareholder.
- After a lawyer has made a case, allow the other lawyer to **rebut** the argument.
- **Hurry** the lawyer **along** if he seems a little slow in making his point.
- Make the decision based on the strength of the lawyer’s argument, not on your personal opinion.
- How the lawyer behaves in court shouldn’t effect your decision (in theory), but if he doesn’t display good courtroom etiquette, you could give a close decision to his opponent.
- Try to make your decision **right** after the arguments have been made, but you can **defer** the decision if you want to.
- You don’t have to give reasons for your decision, but it would be good business English practice for you. If you do give your reason, be brief to keep the trial **moving** quickly.



VOCABULARY QUIZ

This quiz uses the four-up, four-down format. This means that for each word, the correct definition lies somewhere between four definitions up to four definitions down. You need not search the entire list to find the right answer.

Please note that the definition provided fits well with the context in which it is used. You will find many of these words used in different contexts, and they will have a different definition.

Introduction		
1. resolve		a) to make a firm decision about
2. realistic		b) a concern or situation that may require a decision
3. issue		c) a share that pays a fixed dividend
Exercise #1		
4. bond		d) a share that has the same rights as a common share except for selection of the directors
5. preferred share		e) representing things or conditions as they really are
6. convertible preferred share		f) the pattern of income and expenses
7. common share		g) a share that gives the right of partial ownership of a company
8. non-voting share		h) A certificate of debt issued by a government or corporation guaranteeing payment of the original investment by a specified future date plus interest at periodic intervals
9. cash flow		i) the area for a game
10. tax consideration		j) a preferred share that has an option to exchange for common shares
Scavenger Hunt		
11. playing field		k) the business people who guide the company
12. articles		l) a lengthy set of legal text
13. fictitious		m) something that is due to a person because of law, morals, or ethics
14. rulebook		n) careful thought on the effects of taxes
15. board of directors		o) the document that stipulates the conduct of all participants
16. right		p) conceived by imagination
17. security holder		q) to provide funds to
18. finance		r) to write a legal document

19. dispute		s) legally acceptable change
20. draft		t) an argument or quarrel
21. adopt		u) someone who has invested money into a company and has the official certificate
22. ministry		v) a governmental department the specializes with one aspect of governance
23. amendment		w) more than
24. due process		x) to select as the standard
25. over		y) to return
26. simplified		z) reduced in complexity
27. go back		a) proper legal procedure
28. skim		b) to read quickly and lightly to find some basic information
29. work out		c) to figure
30. stick		d) securities having the same characteristics
31. keep track		e) uncertainty
32. doubt		f) to remember or maintain a good record
Scavenger Hunt Questions		
33. series		g) the act of recovering ownership by paying a certain sum
34. maturity date		h) to become stopped or obstructed
35. redemption		i) an accountant who verifies that accounting records have been properly recorded and reported.
36. officer		j) to cause to stop for a period of time
37. auditor		k) one who holds a position of trust or authority in an organization
38. company solicitor		l) the time at which a bond or note is due



39. fair value		m) an amount of money reasonable people can agree to
40. suspend		n) to enter a legal document into official and public record
41. file		o) (securities) publicly issued and sold
42. take _____ to court		p) the lawyer who keeps the legal affairs of the company in order
43. outstanding		q) a list of things to be accomplished at a meeting
44. submit		r) a formal statement of decision or opinion
45. resolution		s) to sue
46. agenda		t) to deliver formally
47. legally obligated		u) a payment made to the shareholders of a company
48. cut-off date		v) to proclaim or determine
49. set		w) to be forced into a certain action because of the law
50. dividend		x) if
51. as long as		y) a business exchange
52. restriction		z) the final day when something can be accomplished
53. transaction		a) official consent or confirmation
54. current		b) to make certain
55. approval		c) a regulation that places limits
56. attend		d) to be present at
57. ensure		e) the official strength a director, delegate, or group has in a democratic decision
58. buy back		f) belonging to the present time; on the official list
59. paperwork		g) to change into another form
60. nominate		h) to publicly name someone for a particular office of election
61. voting block		i) an additional election with candidates with the lowest number of votes being dropped off
62. round		j) to repurchase an asset or security
63. convert		k) work involving reports, forms, and letters
64. accrue		l) to accumulate unpaid funds over time
65. declare		m) to recover ownership by paying a sum
66. on record		n) on the official list
67. redeem		o) to set and announce a date

Articles		
68. call		p) to announce formally
69. notice		q) to do
70. registered		r) formal announcement
71. postmark		s) a name written in one's own handwriting to signify agreement to a legal contract
72. conduct		t) a delegate substituted for the rightful owner
73. shall		u) on the official records
74. signature		v) will or must, with a sense of legal obligation
75. proxy (1)		w) to stamp a document to indicate date and place of mailing
76. provided (that)		x) the act of assigning responsibility
77. signed		y) if
78. proxy (2)		z) the time a person holds an official position
79. delegation		a) to stop
80. term of office		b) a legal form or letter that stipulates the person to act as proxy
81. commence		c) having the appropriate signature
82. cease		d) a vote in which the voters' preferences are not known by others
83. entitle		e) the selecting of one over another
84. secret ballot		f) to start
85. preference		g) to divide into different parts
86. eligible		h) to give (a vote)
87. split		i) to allow or permit by law
88. vote tellers		j) in the same relative ratio or fraction
89. cast		k) under the control or direction of
90. in proportion		l) allowed by the rules
91. subject to		m) people responsible for voting lists and counting votes
92. full authority		n) to sell or make available securities for sale
93. appoint		o) total control
94. professional		p) to fill an office or a position
95. issue		q) the value stated on the certificate, which may or not be market value



96. nonnegotiable		r) to present and give up
97. as stated		s) the same as what has been spoken or written
98. nominal value		t) a person following a learned trade
99. mature		u) the act of selling again
100. surrender		v) not allowed to be freely traded
101. further		w) to reach a time limit
102. resale		x) a section of legal text that can be identified by numbers and letters
103. redemption		y) a forced termination of a corporation
104. clause		z) more
105. dissolution		a) if (something happens)
106. liquidation		b) an agreed termination of a corporation
107. in the event of		c) the act of recovering ownership by paying a specified amount
108. proceeds		d) creditors who have liens on assets
109. up to		e) not enough
110. secured creditors		f) the total amount owing
111. unsecured creditors		g) as many/much as, but not more
112. in the event		h) the money from a sale of something
113. insufficient		i) fraction
114. in full		j) the value stated on the certificate, which may or may not be market value
115. portion		k) creditors who have no liens on assets
116. pro rata		l) if
117. face value		m) referring to something on a proportional basis
118. repurchase		n) a course of action one intends to follow
119. hold		o) to have in possession
120. state		p) while considering
121. intention		q) to indicate in text or speech
122. effect		r) to buy something that was previously owned
123. in reference to		s) to start (something significant)
124. assess		t) to determine or decide
125. declare		u) in this document or matter
126. embark		v) to bring about; to cause
127. significant		w) to formally announce
128. capital project		x) before

129. herein		y) of considerable size
130. prior to		z) a formal request
131. conversion		a) a business undertaking that requires lots of money
132. notice of intent		b) selecting the first occurrence of several possibilities
133. expire		c) to come to an end
134. whichever comes first		d) not including
135. up until		e) the act of changing something into another form
136. with the exception of		f) having a legal claim
137. rightful		g) from now to some future time; until
138. existing		h) not to any extreme, in good sense
139. recognize		i) a written oath with a legal official's seal
140. register		j) to record or announce officially
141. contract of sale		k) on the current list
142. reasonably		l) a written formal agreement between buyer and seller
143. affidavit		m) to accept as being valid
144. nullify		n) a court-appointed professional who sells the assets of a defunct company and pays out creditors and security holders their rightful amounts
145. suffice		o) to be acceptable

Liquidation, Dissolution, & Profit

146. capitalization structure		p) to declare valueless or no longer official
147. liquidator		q) the shape of the company from its source of financing
148. wind up		r) to finish
149. decline stage		s) to terminate a company by selling assets and settling debts
150. market cycle		t) a financial condition that assumes all outstanding convertible securities are converted to common stock
151. dissolve		u) a period of the market cycle when products or services are slowly becoming less popular
152. fully diluted		v) to begin (something from nothing)
153. non-diluted		w) the "birth to death" history of a product or service



S&J Inc.		
154. start up		x) to make something better by adding something else
155. expertise		y) a financial condition that assumes all outstanding convertible securities will remain in their current form
156. complement		z) now
157. currently		a) involving or extending around the world
158. worldwide		b) a special knowledge or skill
159. collective		c) an opinion or decision reached by a group as a whole
160. consultation		d) made by a number of people as a group
161. consensus		e) compliantly, gladly
162. majority		f) how a company is put together from a legal perspective
163. willingly		g) rigorous adherence to law or custom
164. go along with		h) where advice, opinions, and insights are freely exchanged and blended together
165. corporate legal structure		i) to accept
166. formality		j) more than half of the voters
167. vendor		k) the voters with a different opinion than the majority
168. heated		l) filled with lots of argument, passion, and emotion
169. minority		m) to keep
170. atmosphere		n) business that provides goods or services to another business
171. drift		o) to move slowly
172. retain		p) the mood, tone, or effect
173. market share		q) unwilling to change, loyal
174. proposal		r) with the order reversed, conversely
175. reconcile		s) a situation where no progress can be made
176. steadfast		t) a well thought-out idea or concept
177. disunity		u) the percentage of total market
178. vice versa		v) a lack of being in harmony or agreement
179. impasse		w) to settle or resolve (after a previous division)
180. status quo		x) the same situation
181. bind		y) on (this date)
182. dissent		z) to voice disapproval

183. challenge		a) to fight against by using legal process
184. as of		b) serving to put an end to doubt or question
185. as follows		c) to compel or obligate
186. conclusively		d) difficult situation
187. interpretation		e) opinion on the exact meaning
188. mess		f) to oppose or dispute
189. ASAP		g) to show or present shortly
190. object		h) basis
191. ground		i) to establish
192. arbitrate		j) something helpful to form a conclusion
193. set up		k) as soon as possible
194. abide by		l) to finish (a meeting)
195. evidence		m) to comply with
196. take place		n) to have a decision made by an independent, authoritative, third party
197. convene		o) to recognize as being valid
198. adjourn		p) to start (a meeting)
199. acknowledge		q) having legal acceptance
200. see fit		r) to happen
201. valid		s) to show
202. catch		t) to reach or use a mode of transportation
203. change hands		u) to do with something as one pleases
204. reflect		v) to put an earlier date on a document than the actual date
205. authorize		w) as the agent of
206. on behalf of		x) to transfer ownership of money or property
207. backdate		y) only
208. numbered company		z) beyond what is ordinary or usual
209. sole		a) to grant authority or power
210. extraordinary		b) a corporation with a long number as its name
211. stipulate		c) to have
212. hold (meeting)		d) to attend
213. based on		e) that is (from Latin "id est")
214. i.e.		f) to state clearly
215. show up		g) to appear or attend
216. make		h) in advance
217. in time		i) determined by



Exercise #6		
218. trial		j) before a time limit expires
219. beforehand		k) the customary practices or norms of polite behavior and courtesy
220. precedent		l) a legal decision that may be used as a standard in similar cases in the future
221. etiquette		m) directly to the matter under discussion
222. put down		n) a legal process to examine evidence and apply laws to reach a decision
223. argue		o) to put forth reasons for or against something
224. to the point		p) opportunity
225. concede		q) to speed something up
226. chance		r) to criticize or humiliate
227. express		s) immediately
228. rebut		t) to make known by words
229. hurry along		u) to acknowledge, often reluctantly, as being true, proper, or just; to admit
230. right		v) to progress
231. defer		w) to offer opposing arguments
232. move		x) to postpone; to wait for the opinion of an acknowledged expert or more knowledge



Online Training in Finance and Negotiation
www.oilfinancier.com