

QUESTION 9 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK III

Enfoo Enterprises (EE), a properly formed Michigan corporation, designs and manufactures baby toys. According to EE's bylaws, the annual meeting is held on the last Friday of September. In August 2011, EE sent out notices to all shareholders of the annual meeting, indicating that the shareholders would be electing the Board of Directors. While most of the directors were well-regarded by the shareholders, one director, Greg Goldfinger, was considered controversial.

On the appointed day, all but two of the fifteen shareholders arrived at the annual shareholder meeting. Tamara Terville, an EE shareholder, brought with her a video of her sister, Carolyn Cook. In the video, the meeting participants recognized a smiling and suntanned Carolyn. Carolyn stated that she was unable to attend the meeting because she was on a tropical vacation, and authorized Tamara to vote her shares by proxy. However, while Tamara voted her own shares, she was not permitted by EE to vote Carolyn's shares at the shareholder meeting.

Additionally, Dan Dumas, another EE shareholder, phoned into the shareholder meeting, seeking to participate telephonically. Dan was placed on speaker phone, and the other participants could readily communicate with Dan. Although EE's telephone display indicated that the phone call originated from Dan's home telephone, and the distinctive falsetto voice was unquestionably Dan's, he was not permitted to participate in the meeting remotely because the corporation's bylaws did not address the issue.

The remaining shareholders voted, and Greg Goldfinger was re-elected to the Board of Directors by a narrow margin. It is uncontested that if Tamara had been permitted to vote Carolyn's shares, or if Dan had been permitted to participate in the meeting telephonically, Greg's re-election would have been defeated. It is also uncontested that Greg's re-election was the only matter of business which would have been affected by Carolyn's proxy and Dan's participation.

Applying Michigan law, assess (1) the validity of Carolyn's proxy to Tamara; (2) whether Dan was wrongfully denied the ability to participate in the meeting; and (3) the actions and remedies, if any, available to Carolyn and/or Dan. Assume that EE's articles of incorporation and corporate bylaws are silent regarding these issues. Explain your answers.

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