

EXAMINERS' ANALYSIS OF QUESTION NO. II

A preemptive right is a shareholder's right to purchase a corporation's newly issued stock before the Shares are offered to the public, in an amount proportionate to the shareholder's current holdings, in order to prevent dilution of the shareholder's ownership interest. Black's Law Dictionary, 8th Ed.

Resolution of Dutton, Arnold and Ping's claims are governed by MCL 450.1343. The statute provides in relevant part:

(1) The shareholders of a corporation do not have a preemptive right to acquire the corporation's unissued shares except to the extent provided in the articles of incorporation or by agreement between the corporation and one or more shareholders.

(2) A statement included in the articles or an agreement that the corporation elects to have preemptive rights, or words of similar import, means that the following principles apply except to the extent the articles or agreement expressly provide otherwise:

(a) The shareholders of the corporation have a preemptive right, granted on uniform terms and conditions prescribed by the board to provide a fair and reasonable opportunity to exercise the right *to acquire proportional amounts* of the corporation's unissued shares upon the decision of the board to issue them.

(b) A shareholder may waive his or her preemptive right. A *waiver evidenced by a writing is irrevocable even though it is not supported by consideration.*

(c) There is no preemptive right with respect to any of the following:

(i) *Shares issued as compensation to directors, officers, agents, or employees of the corporation, its subsidiaries or affiliates.*

* * *

(4) The preemptive rights, whether created by statute or common law, of shareholders of a corporation formed before January 1, 1973, are not affected by subsections (1) and (2) A *corporation may alter or abolish its shareholders' preemptive rights by an amendment of its articles*. (Emphasis added.)

All 3 shareholders will fail in their claim that Muma Corp violated their preemptive rights.

Dutton - because Dutton waived his preemptive rights in writing, the waiver is irrevocable. The waiver is irrevocable despite the fact that the waiver was not supported by consideration. MCL 450.1343(2) (b) .

Arnold - enjoys no preemptive right to acquire the shares issued as compensation to the Muma Corp directors. MCL 450.1343(2) (c) (i) .

Ping - MCL 450.1343(2)(a) provides that shareholders with preemptive rights have the right to acquire *proportional amounts* of the corporation's unissued shares. Because the facts indicate that Ping owned 5% of Muma Corp shares, he would not be entitled to purchase any higher amount as part of exercising his preemptive rights. Moreover, because the facts indicate that Muma Corp properly amended its articles of incorporation and abolished its shareholders' preemptive rights, Ping's preemptive rights no longer exist. See also MCL 450.1602(n) .