

such as shareholder agreements, voting arrangements and management contracts. A typical example of the thoroughness with which each subject is examined is a checklist of twenty-one precautions for the attorney to observe in drafting voting agreements.<sup>20</sup> A final chapter discusses the employment contract as a device for protecting the tenure and status of stockholder employees and key personnel.

The treatise is an extremely valuable aid for the practicing lawyer. It sets forth in one place the typical problems confronting the organizers of a close corporation (and therefore their lawyer as well), and it presents in logical, analytical fashion the methods for solving the problems. Proper use of the treatise can increase the lawyer's efficiency in dealing with close corporations and improve the quality of his work.

Although focusing on planning, drafting, counseling and preventive law rather than on doctrine or curative law, the treatise has great value for the academician as well as the practitioner. Professor O'Neal has collected and discussed much of the writing in the field of close corporations,<sup>21</sup> and his statement and solution of practical problems contain sound theoretical insights and philosophy. It is not surprising, therefore, that the legal writers in the close corporation field, of whom Professor O'Neal is acknowledged to be the master, are credited with instituting statutory reforms. Professor O'Neal deserves the appreciation and commendation of bar and bench for his continuing efforts as a teacher, scholar and author.

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CLOSE CORPORATIONS, Vol. 2. By *F. Hodge O'Neal*. Mundelein, Illinois: Callaghan & Company, 2d ed., 1971. Pp. xviii, 222.

One approaches the task of reviewing this treatise with a feeling of awe, for it would be difficult to exaggerate the extent of Professor O'Neal's influence over the ongoing development of close corporation law.<sup>1</sup> The first edition of his treatise, in combination with his

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20. *Id.* § 5.27.

21. Conversely, it is a rare article in the field that does not quote Professor O'Neal.

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1. The uniqueness and importance of Professor O'Neal's contribution to close corporation law is reflected in the well-nigh universal enthusiasm with which the original version of his

other writings,<sup>2</sup> has had an enormous impact upon practitioners and scholars alike, as well as on the course of legislation affecting close corporations. All those who have used this work will welcome the publication of an updated version reflecting the numerous developments that have taken place in this field during the approximately fourteen years that have elapsed since this book made its initial appearance.

Volume 2 begins with an excellent chapter on stock transfer restrictions and buy-out arrangements.<sup>3</sup> As throughout the treatise, the emphasis is on planning and drafting to avoid problems rather than on strategies to be used after problems have arisen. Typical of this eminently practical approach is the author's suggestion that it may be advisable to combine first options, buy-outs, or both with special provisions for dissolution of the corporation in the event the option is not exercised or the buy-out agreement is not performed.<sup>4</sup> Similarly, the chapter's thorough discussion of methods for setting the transfer price of shares which are subject to first options or buy-outs flags many potential problems that can be avoided by intelligent planning and careful drafting.<sup>5</sup>

The pragmatic approach is maintained in a chapter dealing with

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treatise, *Close Corporations*, was hailed. *See, e.g.*, Carrington, Book Review, 26 TENN. L. REV. 448, 449 (1959) ("Every practicing lawyer who serves any corporate client that is or might be considered to be or might become closely held, should, in my opinion, keep this new treatise before him as a working tool. . . ."); Coker, Book Review, 34 N.Y.U.L. REV. 799 (1959) ("This is a timely and useful book. It is designed primarily for the instruction and guidance of the nonspecialist practicing lawyer, and performs this function definitively, with care, clarity and effectiveness."); Hart, Book Review, 5 WAYNE L. REV. 278, 281 (1959) ("[The treatise] will undoubtedly become accepted as the standard work on the close corporation. . . ."); Hayes, Book Review, 12 VAND. L. REV. 306, 311 (1958) ("It should soon be recognized as a classic work in its area."); Kubicek, Book Review, 26 U. CHI. L. REV. 347, 351 (1959) (" . . . Professor O'Neal's setting forth in bold relief the law relating to the close corporation should be regarded as another eventful milestone in the growth of the law."); Rubin, Book Review, 19 LA. L. REV. 233 (1958) ("It meets a need in the law library not served by any other work.").

2. Representative of Professor O'Neal's highly original work in the field of close corporations are: O'Neal, *Molding the Corporate Form to Particular Business Situations: Optional Charter Clauses*, 10 VAND. L. REV. 1 (1956); O'Neal, *Restrictions on Transfer of Stock in Closely Held Corporations: Planning and Drafting*, 65 HARV. L. REV. 773 (1952). Not to be overlooked are the student writings which he has inspired. For example, during the 1957-58 school year Professor O'Neal taught a seminar on close corporations at the New York University School of Law. A direct by-product of that seminar is Note, *A Plea for Separate Statutory Treatment of the Close Corporation*, 33 N.Y.U.L. REV. 700 (1958).

3. 2 F. O'NEAL, CLOSE CORPORATIONS § 7 (2d ed. 1971).

4. *Id.* § 7.23a.

5. *Id.* §§ 7.24-24g.

problems of operation.<sup>6</sup> Treated here are a variety of important topics, including a lucid analysis of the dangers presented by disregard of corporate ritual and by inadequate record-keeping.<sup>7</sup> Although there has been a salutary trend toward relaxing traditional requirements of formal corporate meetings in the case of close corporations, doubt concerning the legality of action taken at informal meetings still remains, even in those jurisdictions that have gone quite far in validating informal action.<sup>8</sup> This uncertainty is particularly acute when the action in question is not taken unanimously, for in such a case acquiescence by the nonassenting directors or shareholders generally will have to be shown if the informal action is to be upheld.<sup>9</sup> Professor O'Neal highlights these problems, making the reader aware of both the possibilities and the pitfalls inherent in informal action. Other subjects discussed in this chapter include, *inter alia*, the squeeze-out of minority shareholders<sup>10</sup> (both "squeezors" and "squeezees" will find plenty of ammunition here); the power of minority shareholders to compel the declaration of dividends;<sup>11</sup> the difficult problem of finding a safe method for fixing the salaries of officers who are also directors and shareholders;<sup>12</sup> various types of contingent or deferred compensation;<sup>13</sup> and a survey of the tax treatment and special tax problems of close corporations.<sup>14</sup>

The textual portion of Volume 2 closes with a lengthy chapter on problems of dissension, deadlock and dissolution.<sup>15</sup> This chapter goes to the heart of the task that confronts the lawyer in advising the family corporation or the incorporated partnership: getting the prin-

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6. *Id.* ch. 8.

7. *Id.* § 8.02.

8. See, e.g., *Village of Brown Deer v. City of Milwaukee*, 16 Wis. 2d 206, 114 N.W.2d 493, cert. denied, 371 U.S. 902 (1962) (Wisconsin statute permitting board of directors to act by unanimous written consent without a meeting held to have preempted the field so as to prohibit corporations from acting informally without complying with the statute).

9. Even under a very liberal statute such as N.C. GEN. STAT. § 55-29 (1965), the validation of less-than-unanimous informal director action is far from automatic. It must be shown either that *all* the shareholders knew of the action in question and made no *prompt* objection thereto, *id.* § 55-29(a)(2), or that it was *generally* known to the shareholders that the directors were accustomed to taking informal action and that none of the directors, all of them knowing of the action in question, made *prompt* objection thereto, *id.* § 55-29(a)(3).

10. 2 F. O'NEAL, *supra* note 3, at § 8.07.

11. *Id.* § 8.08.

12. *Id.* § 8.10.

13. *Id.* § 8.11.

14. *Id.* § 8.17.

15. *Id.* ch. 9.

cipals to think seriously about how they will resolve future conflicts among themselves, and planning and setting up adequate machinery to deal with such conflicts. Often it is not easy to persuade clients to focus on disputes that have not yet arisen and may never arise; yet failure to do so can have disastrous consequences for the business and for the personal fortunes of the parties. Considerable initiative is required of the lawyer whose clients are (or think they are) perfectly compatible with other people at the time, and who have no doubts that their enterprise will succeed. The lawyer must convince them that they should contemplate and make provisions for the state of affairs that will exist if serious questions arise and they are unable to agree as to how these questions shall be resolved. One of Professor O'Neal's central teachings surely is this: think about problems that are likely to arise in connection with *this* business and *these* people, and attempt to set up adequate mechanisms in advance for dealing with those problems in a way that will be fair to all concerned.<sup>16</sup> Although the problems will vary greatly from one situation to another, and although there are no fixed solutions, this chapter of the treatise enumerates and explores in some depth the various mechanisms for coping with disagreement and deadlock. It will be of unquestionable value to the lawyer who seeks to do the kind of conscientious counselling, planning and drafting that Professor O'Neal consistently urges.

In addition to the textual material, Volume 2 contains a very useful set of forms.<sup>17</sup> The author wisely warns against slavish adherence to any form. As he puts it, forms "cannot be substitutes for careful, individualized drafting."<sup>18</sup> Yet they can be useful as starting points and as checklists, and Professor O'Neal has assembled a splendid collection of specimen instruments. The utility of the forms included here is heightened by illuminating annotations which provide references to relevant sections of the treatise as well as to other basic sources.

The treatise concludes with distribution tables, a table of cases,

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16. The treatise wisely avoids any attempt to set guidelines as to when a lawyer should or should not represent both a close corporation and its shareholders. If there are two or more shareholders, then obviously the potential for ethical problems is great. The prudent lawyer may well conclude that each shareholder, or at least each identifiable grouping of shareholders, should be represented by separate counsel.

17. 2 F. O'NEAL, *supra* note 3, at § 10.

18. *Id.* § 10.02.

and a very adequate index. The distribution tables add considerably to the value of the treatise as a research tool, for they key important provisions of the Internal Revenue Code, the federal securities laws, state corporation statutes, and model and uniform acts to the sections of the treatise where these provisions are discussed.<sup>19</sup> Also noteworthy is the loose-leaf format in which the treatise is published, an approach that lends itself to frequent updating and supplementation, with the reader spared the time-consuming chore of first consulting material in the basic text only to find that it has been superseded by material in a pocket part.

Professor O'Neal's writing is lucid, crisp and concise, and his grasp of the material is sure. The result is a highly readable work of consummate scholarship. Beyond cavil, the new edition is worthy of its eminently successful predecessor. I have no doubt that lawyers will be using this book, and law professors recommending it to their students, for many years to come. Professor O'Neal's trail-blazing work in the field of close corporations constitutes service of the highest order to the profession. I for one am grateful to him, and I applaud him for his achievement.

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19. For a dash of the sort of nit-picking without which no review of a scholarly book is complete, let it be noted that the distribution tables fail to make reference to N.C. GEN. STAT. §§ 55-29, -63 (1965), *as amended*, § 55-63(c) (Supp. 1971), even though these provisions of the North Carolina Business Corporation Act are quoted in full in section 8.03 of the text.

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