Critical Legal Cases for Chapter 37

37.1 Proxy: No, Smith and Gibbons cannot reverse their proxy agreement with Zollar. A normal proxy, unless otherwise stated, is valid for 11 months. A proxy becomes irrevocable for a longer period if the proxy states that it is irrevocable, and it is coupled with an interest. Smith and Gibbons had given Zollar a proxy that specifically stated that it was irrevocable for a period of ten years. The court held that the proxy was coupled with an interest in that Smith and Gibbons had given their proxies in exchange for Zollar's contribution to the corporation. Smith and Gibbons were attempting to reverse their proxy after only one had passed. Because the proxy agreement was to last for ten years, and the proxy met the requirements for irrevocability, the court held that the proxies were still valid. *Zollar v. Smith,* S.W.2d 155, **Web** 1986 Tex. App. Lexis 12900 (Court of Appeals of Texas).

37.2 Dividends: Gay's Super Markets wins the suit. The payment of dividends is at the discretion of the board of directors. The directors are responsible for determining when, where, how, and how much will be paid in dividends. Corporations often do not pay dividends, but retain profits in the corporation to be used for research expense, internal expansion, and other anticipated needs. Courts will only order a corporation to declare a dividend if the directors have abused their discretion in not paying. Gay's Super Markets' board stated valid reasons, such as expansion, for not granting a dividend at their January 1972 meeting. This decision was well within the board's discretion. Because Gay's had usually decided to retain earnings due to increased competition and planned expansion, the court did not interfere with their decision. *Gay v. Gay's Super Markets, Inc.*, 343 A.2d 577, **Web** 1975 Me. Lexis 391 (Supreme Judicial Court of Maine).

37.3 Duty of Loyalty: Hellenbrand wins since he can obtain an injunction to prevent Berk from leasing the club. Directors and officers of corporations owe the corporation a duty of loyalty. This duty requires that officers and directors subordinate their own personal interests to those of the corporation and its shareholders. The duty of loyalty prevents officers and directors from competing with the corporation and usurping corporate opportunities. Berk was an officer of a corporation, and a vice president of Comedy Cottage, Inc. Berk usurped a corporate opportunity when he arranged for the Comedy Cottage's lease to be drawn in his own name. When this action was discovered, Berk used his former position to retain the lease and open his own Comedy Club. This new club was in direct competition with his old corporation. Because of these two actions, the court held that Berk had breached his duty of loyalty to the Comedy Cottage, and granted Hellenbrand the injunction he sought. *Comedy Cottage, Inc. v. Berk*, 145 Ill.App.3d 355, 495 N.E.2d 1006, **Web** 1986 Ill. App. Lexis 2486 (Appellate Court of Illinois).