**LAWS13009 - CORPORATIONS LAW**

**Tutorial 3**

In the following scenario, analyse step-by-step the legal arguments leading to a conclusion about whether the decisions of the shareholders in each scenario were inequitable use of majority voting power. The scenarios are expressed in a very basic form so you should also state any assumptions you make or additional evidence you require to form a final conclusion. You can assume that in each scenario, the relevant resolution was a special resolution involving a change in the company's constitution.

1. The board of directors of a company X wants to invest in a successful mining company, but cannot do so because the chairman of the mining company hates one of the minority shareholders of company X. The directors therefore call a general meeting and pass a resolution to compel the shareholder to sell his shares for market value.

*Was a special resolution passed?*

To enable the BoD to change the constitution a special resolution (s 136(2)) by at least 75% of members is required and must be in the bone fide interests of the company (*Allen v Gold Reefs*). To expropriate minor shares, the principles in *Gambotto* must be followed.

*Is it an expropriation case?*

This is an expropriation case because the minority shareholder is being compelled to sell his shares.

*Was it done for a proper purpose?*

In *Gambotto*, the Court narrowly defined proper purpose: the amendment to the constitution would only be validly a proper purpose if its substantial purpose of the expropriation is to prevent significant harm or detriment to the company. The majority would bear the onus to prove that the minority shareholder posed a significant detriment to the company investing in the mining company through harming the company’s interests. An example of a proper purpose is if the minority shareholder is competing with the company or there are statutory requirements forcing the acquisition of shares. Here, it is unlikely that the majority could show that the minority shareholder was ‘detrimental’ to the company due to the Chairman ‘hating’ him (personality clashes are not defined in the Act as a proper purpose for expropriation). It is not sufficient for the expropriation to merely advance the interests of the company or a certain class.[[1]](#footnote-2) An alteration will not be valid as a proper purpose if it for example to further the interests of a majority. Here, both the BoD of Company X and the Chairman of the mining company are acting prejudicially to further their own interests and not the company’s or members as a whole.

*Was it done in an oppressive way?*

The decision in Gambotto laid out a two limbed test for expropriation of shares. The second limb involves fairness:

*Was there procedural fairness?*

Procedural fairness involves full disclosure of the reasons for the amendment to the constitution and compulsory acquisition of the shares. In addition to the disclosure, an independent expert valuation of the share worth must be undertaken. There is no information in the problem question allowing for further examination of whether this was followed or not. If disclosure was made to the shareholders, it is unlikely that the true reason for the forced sale of the shares would have been given, as it is not a reasonable reason. Regarding market value, it is unstated how the value has been ascertained and if an expert opinion was obtained. It is unlikely that procedural fairness has been followed here.

*Was there substantive fairness?*

To adhere to this principle, the market value of the shares needs to be fair and this may depend on the stock exchange volatility. More information is required to answer this. If the company’s share value changes rapidly, an expert opinion on the value of the shares may only be valid for a very short period of time. Other factors such as dividends, assets and future earnings are relevant to working out share value.

*Conclusion*

It is likely that a court would find the conduct of these parties unlawful resulting in an invalid acquisition of the minority shareholder’s shares. The minority shareholder also has recourse to remedies under s 233 of the Act.

1. *Gambotto v WCP Ltd* (1995) 182 CLR 432. [↑](#footnote-ref-2)