

State Law & State Taxation Corner

By *Thomas E. Rutledge*

Vampires and the Law of Business Organizations: The Fruitless Search for Authenticity



CCH

a Wolters

Beyond agreement that they are “undead” and survive on a diet of blood, vampires are indefinite creatures. Some must sleep during the daylight hours, others may be awake so long as they do not come into contact with sunlight and others do not sleep at all.¹ Some vampires, upon exposure to sunlight, will combust while others are not so sensitive, either being weakened or simply reflecting the light as if from jewels in their skin.² For some, only the blood of humans will suffice, while others may subsist on other than human blood or even on synthetic “True Blood.”³ While for some vampires garlic is a barrier, to others it is “irritating.”⁴ A crucifix is a weapon against some vampires while others enjoy them.⁵ Some vampires can squeeze through small spaces while others cannot.⁶ Certain vampires have characteristics that are not, in the context of other vampires, mentioned.⁷

There is no set definition of the characteristics of a vampire; rather, what is a “vampire” is defined within a particular construct of a particular author. None of those constructs is more correct or more authentic than is any other—there is no “real” vampire against which to make any comparison of authenticity.

The law of business organizations has much in common with vampires; there are numerous characteristics that may or may not be embodied in a particular form, each of which should be understood to be a construct.⁸ Some structures provide the owners limited liability from venture debts and obligations, while others do not.⁹ In some forms management is coincident with ownership, while in others they are distinct.¹⁰ While in some forms apparent agency authority is a characteristic distinct from operational control, in other instances it is or may be coincident with control.¹¹



Thomas E. Rutledge is a Member in the law firm of Stoll Keenon Ogden PLLC in Louisville, Kentucky.

Recognition that there are no normative characteristics of business organizations, but rather only unique combinations of factors, is an important realization in interpreting and applying the various duties, rights and obligations that may exist between the participants in any *particular* venture. As observed recently by the Delaware Chancery Court, “[T]here is nothing absurd about different legal principles applying to corporations and LLCs.”¹² Analogy is a potentially misleading guide in that it fails to accommodate the particular elements of the situation under consideration, treating a fact pattern arising under one form as equivalent to the same fact pattern arising under another form. In a more abstract formula, the assumption that fact pattern A in business form B provides the basis for analogy to fact pattern A in business form C is at best questionable and is often incorrect.

Process–Notice

Process is an area in which reliance upon analogy is dangerous when interpreting the law of business organizations. Business corporation laws are significantly focused on process, defining for example when a meeting agenda must be distributed (the meeting being then restricted to that agenda), the minimum period for giving notice, the mechanism of giving notice and minimum requirements for a quorum to act.¹³ Where these limitations are not satisfied, no action may proceed as valid.

The law of other business organizations, by way of contrast, is silent as to those procedural points. For example, partnership law is silent as to requirements for partners meetings. The statute is silent as to the minimum period of notice for a meeting, the means by which notice is to be conveyed and when notice will be deemed to have been given, requirements as to an agenda and requirements as to quorum. While provisions of this nature may be agreed to among the partners,¹⁴ those rules apply exclusively to that one particular partnership.

Let us assume that Nova state law, for business corporations, requires 10 days notice of a meeting of the shareholders, provides that notice begins to run from the mailing of the notice and requires that the

purposes(s) of the meeting be specified in the notice. A particular LLC’s operating agreement provides that there shall be, as required, meetings of the LLC’s members, but provides no further details.

A meeting of the members is called by means of voicemail messages, the meeting to take place in five days, but without any information on the topics under discussion. A member, fearful that a majority of the members intend at the meeting to expel him from the company, retains counsel to halt the meeting.

But what is counsel to do? He or she could argue that as the operating agreement is silent as to meeting notices; the court should look to the law of business corporations for the “usual” rules and as they were not satisfied (no agenda, no ten days notice) posit the call to be invalid. In doing so, counsel is arguing, *inter alia*, that the law of business corporations is normative, the standard against which others are measured.¹⁵ Hopefully, the court will (properly) inquire “On what basis do you argue that corporate law is the gap filler

for the law of other business organizations?” No doubt opposing counsel will commend the court for this insightful inquiry, as it clearly shows the weakness of his or her position. While business corporations may be a popular form of organization,¹⁶ they are not thereby the standard, and the fact

that they set forth certain rules does not indicate that those rules are “correct” for other forms.

Consider as well the further begged question, namely that the notice for a meeting of the shareholders, and not the rules for a meeting of the board of directors, is the appropriate point of reference. While members typically have operational control of an LLC,¹⁷ so do corporate directors.¹⁸ Directors may meet on two days notice and without the requirement of an agenda of the items to be discussed.¹⁹ Might not company counsel argue that this is the better analogous provision (and one in which the meeting notice is sufficient)? No, responds opposing counsel, members are the residual equity owners and are more like shareholders. Ultimately, both of our attorneys are making the wrong argument. Corporate directors and shareholders are materially different from LLC members, and attempts to by analogy infer the rights of the latter based upon the positive law limitations imposed upon the former are *ab initio* flawed.

The law of business organizations has much in common with vampires; there are numerous characteristics that may or may not be embodied in a particular form, each of which should be understood to be a construct.

A court, faced with the premised facts, need not look at what is done in other businesses²⁰ but rather focus on what is done in this particular LLC. Has it in the past met pursuant to voice-mail notices, without an agenda and/or on five or fewer days notice? These comprise a course of conduct that may as well constitute an amendment to the operating agreement.²¹ Absent such evidence, the question is one of reasonableness and good faith. It is as true today as it was over a century ago that:

No court can determine for all cases what shall be sufficient notice and what shall not be. The question must necessarily be one of fact.²²

Assuming there to exist an obligation to provide “reasonable notice,” it does not follow that, by analogy, the required period of notice under a state’s business corporation act is “reasonable.” Rather, that statute defines what in the context of a business corporation is the minimum notice, a point of positive law, not a definition of what is reasonable.

As has been otherwise reviewed, the fact that proxies are now sanctioned in the context of the business corporation, there does not flow therefrom the conclusion that proxy voting is appropriate, as a normative matter, in other organizational forms.²³

Just as the process for killing a particular vampire is dependent on a particular context,²⁴ the processes to be employed in a particular venture are dependent upon that venture.

Substance–Insection Rights

Consider as well the substantive right of participants in a venture to inspect and copy books and records. In business corporations governed by an adoption of section 16.02 of the Model Business Corporation Act, there is defined a class of records that may be inspected at any time, another class of books and records that may be inspected upon the showing of a “proper purpose” and as well a requirement that financial reports be made available to the shareholders upon request.²⁵ It is expressly provided that the right of inspection may not be limited in either the articles of incorporation or the bylaws.²⁶

By way of contrast, under certain LLC Acts, all business books and records are available for inspection by members²⁷ while others condition access to books and records upon the showing of a “proper purpose.”²⁸ In other formulae, under at least certain

nonprofit corporation statutes, as well as the uniform partnership acts, both those of 1914 and 1997, all books and records of the venture are available for inspection.²⁹ These various formulae as well differ with respect to the degree to which the right to access information may be restricted by private ordering.³⁰

Some vampires cast a reflection in a mirror while others have no reflection.³¹ In the same way, different organizational forms have adopted different formulae as to what records are available to the owners of the venture and upon what terms that access will be afforded. None of these formulae are better than any other; rather, they are simply different. There exists no objective normative formula against which to measure the normative correctness of any of these formula, just as in the same way it is not possible to say whether it is more correct that a vampire does or does not cast a reflection in the mirror. Consequently, a court that, when considering one particular form of organization, looked to the law of another form to determine inspection rights, would, in effect, be applying an inapplicable law to the question. On the other hand, a court would be well served in those situations to contrast the different formula that are utilized, understanding the substantive differences between them in order to appreciate the intended scope and purpose of each. Just as some vampires have a reflection while others do not, information rights are dependent upon the form of organization of the particular venture.

Substance–Assignee Rights

Another area in which a focus upon the details of a particular situation is necessary is when considering the rights of an assignee of an interest in the venture. In a business corporation, absent a private agreement to the contrary, a shareholder may unilaterally transfer its shares and, upon that transfer being effective, the transferee is vested with all rights of a shareholder, including those to vote with respect to organic changes such as a merger or alteration in the articles of incorporation, to, by means of a derivative action, enforce the fiduciary duties owed the corporation by the directors and to inspect the corporation’s books and records.³² Conversely, LLCs, partnerships and limited partnerships all utilize the rule of *in delectus personae* pursuant to which, while the right to receive, as distributed, the economic fruits of the venture are freely assignable, the right to participate in management is not.³³ As such, it is

not possible for an assignee, absent the consent of the incumbent partners/members to, for example, inspect books and records,³⁴ object that fiduciary duties have been violated³⁵ or object to an amendment to the organic agreement.³⁶ Those schooled in the law of business corporations and the numerous decisions over the years intended to protect the franchise of transferability and the underlying value of the shares³⁷ will no doubt find such limitations offensive, and when faced with the limitations in a particular circumstance, may request a court to set them aside “Surely, your Honor, it cannot be the law that one with an economic stake in the venture has no right to inspect documents. Just look at the corporation law—it says that a shareholder’s right to inspect records may not be eliminated.” But therein lies the problem, namely that the venture at issue is not a corporation, but is rather a partnership or an LLC. In these forms of organization, the fruits of the rule of *in delectus personae* are embodied in both the statutory and case law. The fact that, in a corporation, a similar consequence may not result in no way implies that the same consequence, in the context of a partnership or LLC, is improper.³⁸ Indeed, in that realm, the idea that management rights are freely transferrable absent the consent of the other participants in the venture would be inappropriate.

Neither paradigm is objectively better or worse than the other; they are simply different and are applicable consequent to the choice of entity analysis. Investors who believe that their respective estates or other transferees should be able to exercise the entire rights of ownership need to invest in either corporations or in those partnerships/LLCs where those rights are afforded by private ordering. Conversely, where an investor has chosen to invest in a partnership and LLC that do not provide for successor admission to all rights of ownership, a transferee should not be heard to complain that they are being somehow deprived of what their rights should be. Just as there are different ways by which one may become a vampire,³⁹ the rights of an owner’s assignee *vis-à-vis* the business organization and its other participants are contextual to the form of organization.

Vampires and business organizations are each fascinating constructs attributed, in a particular context, with myriad powers, capabilities and limitations. In the case of a vampire, those characteristics are determined by a particular book or movie, while as to a business organization, those characteristics are derived from statute and case law. In either instance, careful study of that context is required in order to avoid the imputation of characteristics foreign to those adopted by the author of that particular construct.

ENDNOTES

- ¹ *Compare True Blood*, episode “Release Me” (HBO 2009) (may be awake during daylight but suffer “the bleeds”) and (“It’s going to be dawn soon. I get sick if I don’t rest during the day.”) with STEPHANIE MEYER, *TWILIGHT* (2005 eBook edition July 2007) at 328 (“I can’t sleep.” It took me a moment to absorb that. “At all?” “Never,” he said.) with ANNE RICE, *INTERVIEW WITH THE VAMPIRE* (1976) at 83-87 (must sleep during the day in a coffin). See also MEYER, *TWILIGHT*, *supra* at 323 (“Sleeping in coffins?” “Myth.”).
- ² *Compare True Blood*, episode “I Will Rise Up” (HBO 2009) (combust) and RICE, *INTERVIEW*, *supra* note 1, at 85 (“The sun will destroy the blood I’ve given you, in every tissue, every vein.”) and NOSFERATU (Film Arts Guild 1922) (combust) with BRAM STOKER, *DRACULA* (1897), at 1052 (weakest between sunrise and sunset) with MEYER, *TWILIGHT*, *supra* note 1, at 447 (“sunlight glinted off his face, his teeth”) and at 452. Having consumed faire blood will allow some vampires, otherwise susceptible to sunlight, to for a time be exposed without negative consequences. See *True Blood*, episode “I’m Alive and On Fire” (HBO 2011).
- ³ *Compare* STOKER, *DRACULA*, *supra* note 2, at

- 917 (“[H]e can flourish when that he can fatten on the blood of the living.”) and at 918 (“But he cannot flourish without this diet, he eat not as others.”) with RICE, *INTERVIEW*, *supra* note 1, at 114–15 (other blood; “Rats can be quite nice,” he said. ... ‘Do you mean, then, we can live from animals?’ I asked. ‘Yes.’”) and MEYER, *TWILIGHT*, *supra* note 1, at 331 (animal blood) with *True Blood*, episode “Strange Love” (HBO 2008) (synthetic blood; “Now that the Japanese have perfected synthetic blood that satisfies all of our nutritional needs there is no reason for anyone to fear us.”).
- ⁴ *Contrast* STOKER, *DRACULA*, *supra* note 2, at 803 (“ ... I had laid over the clamps of those doors garlic, which the Undead cannot bear.”) and at 922 (“Then there are things which so afflict him that he has no power, as the garlic that we know of,”) with *True Blood*, episode “Burning House of Love” (HBO 2008) (“Garlic?” “It’s irritating but that’s pretty much it.”). See also STEPHANIE MEYER, *NEW MOON* 2006 eBook edition July 2007, at 1574 (garlic is a “superstition”).
- ⁵ *Contrast* STOKER, *DRACULA*, *supra* note 2, at 1083 (“Further and further back he cowered,

- as we, lifting our crucifixes, advanced.”) with RICE, *INTERVIEW*, *supra* note 1, at 80 (“And I rather like looking on crucifixes in particular.”). See also MEYER, *TWILIGHT*, *supra* note 1, at 569–70 (cross hanging in Cullen house); RICE, *INTERVIEW*, *supra* note 2, at 131 (“He laughed uproariously when I discovered ... that crosses had no effect upon me”); and *True Blood*, episode “Sparks Fly Out” (HBO 2008) (Bill Compton does not “sizzle up like fat back bacon” or “burst into flames” in the presence of a crucifix). See also *True Blood*, “Burning House of Love” (“What about holy water?” “It’s just water.”).
- ⁶ *Contrast* STOKER, *DRACULA*, *supra* note 2, at 919 (“slip through a hairbreadth space”) with RICE, *INTERVIEW*, *supra* note 1, at 80 (lamenting that he cannot pass through a keyhole).
- ⁷ See, e.g., *True Blood*, “The First Taste” (HBO 2008) (“You have to invite me in. Otherwise it is physically impossible for me to enter a mortal’s home.”); STOKER, *DRACULA*, *supra* note 2, at 920 (“He may not enter anywhere at the first, unless there be some one of the household who bid him to come,”). This limitation is absent in *INTERVIEW WITH THE VAMPIRE* and the *TWILIGHT* books.

ENDNOTES

- ⁸ This statement is intended to be applied both across the range of possible organizational forms as well as among the individual instances of the form.
- ⁹ Contrast Mod. Bus. Corp. Act §6.22 (shareholders not liable for corporation's debts and obligations) and Rev. Unif. Ltd. Liab. Co. Act §304(a), 63 U.L.A. 475 (2008) (members not liable for LLC's debts and obligations) with Unif. Part. Act §5, 6 (pt. 1) U.L.A. 613 (2001) (partners liable for partnership's debts and obligations) and Rev. Unif. Part. Act §306(a), 6 (pt. 1) U.L.A. 117 (2001) (same).
- ¹⁰ Compare Rev. Unif. Part. Act §401(f), 6 (pt. 1) U.L.A. 133 (2001) (each partner has a per capita right to participate in the partnership's management) with Ky. Rev. Stat. Ann. §275.165(2) (in a manager-managed LLC, absent private ordering departing from the default rule, members do not participate in LLC's day-to-day management) with Mod. Bus. Corp. Act §8.01(b) (business and affairs of corporation under the control of the board of directors).
- ¹¹ Compare Rev. Unif. Part. Act §301(1), 6 (pt. 1) U.L.A. 101 (2001) (each partner has agency authority on behalf of partnership) and Ky. Rev. Stat. Ann. §275.135(1) (in member-managed LLC each member has apparent agency authority on behalf of LLC) with Rev. Ltd. Liab. Co. Act §301, 6B U.L.A. 469 (2008) (members qua members are not apparent agents of an LLC) with 18 AM. JUR.2D Corporations §1261 (directors are agents of the corporation).
- ¹² *CML V, LLC v. Bax*, Del. Ch., 6 A3d 238, 249 (2010), *aff'd*, Del. S.Ct., __ A3d __, __, 2011 Del. LEXIS 480, at *13 (2011) (“[I]t is hardly absurd for the General Assembly to design a system promoting maximum business entity diversity. Ultimately, LLCs and corporations are different; investors can choose to invest in an LLC, which offers one bundle of rights, or in a corporation, which offers an entirely separate bundle of rights.”).
- ¹³ See, e.g., Mod. Bus. Corp. Act §7.02(d) (agenda required for special meeting of the shareholders and meeting restricted to those matters); Ky. Rev. Stat. Ann. §271B.7-020(4) (same); Mod. Bus. Corp. Act §8.22(b) (no agenda required for special meeting of the board of directors); Ky. Rev. Stat. Ann. §271B.8-220(2) (same); Mod. Bus. Corp. Act §8.22(b) (minimum of two days notice for a meeting of the board); Ky. Rev. Stat. Ann. §271B.8-220(2) (same); Mod. Bus. Corp. Act §7.25(a) (quorum of the shareholders); Ky. Rev. Stat. Ann. §271B.7-250(1) (same).
- ¹⁴ See Rev. Unif. Part. Act §103(a), 6 (pt. 1) U.L.A. 73 (2001); Del. Code Ann. tit. 6, §15-103(a); Ky. Rev. Stat. Ann. §362.1-103(1).
- ¹⁵ This argument fails to account for section 7.32 of the Model Business Corporation Act which, at subsection (a)(8), authorizes shareholder agreements providing different rules for notice, agenda, etc.
- ¹⁶ Although in many states more LLCs are now formed than are corporations. See, e.g., Rodney D. Chrisman, *LLCs Are the New King of the Hill: An Empirical Study of the Number of New LLCs, Corporation and LPs Formed in the United States Between 2004–2007 and How LLCs Were Taxed for Tax Years 2002–2006*, 15 FORDHAM J. CORP. & FIN. L. 459 (2010).
- ¹⁷ See, e.g., Ky. Rev. Stat. Ann. §275.165(1); Ind. Code §23-18-4-1(a).
- ¹⁸ See, e.g., Mod. Bus. Corp. Act §8.01(b); Ky. Rev. Stat. Ann. §271B.8-010(2); and Ind. Code §23-1-33-1(b).
- ¹⁹ See, e.g., Mod. Bus. Corp. Act §8.22(b); Ky. Rev. Stat. Ann. §271B.8-220(2); and Ind. Code §23-1-34-3(b).
- ²⁰ See *supra* note 8.
- ²¹ See, e.g., Rev. Ltd. Liab. Co. Act §102(13), 6B U.L.A. 429 (2008) (course of conduct operating agreement); Del. Code Ann. tit. 6, §18-101(7) (limited liability company agreement may be written, oral or implied).
- ²² *Solomon v. Hollander*, 21 N.W. 336, 338 (Mich. 1884).
- ²³ See Thomas E. Rutledge, *In Delectus Personae and Proxies*, J. PASSTHROUGH ENTITIES, July–Aug. 2011, at 43.
- ²⁴ While sunlight is in certain contexts fatal to a vampire, in other constructs it is not. Contrast NOSFERATU, *supra* note 2 (sunlight is fatal) and RICE, INTERVIEW, *supra* note 2 at 119 (“There’s nothing you can do to defend yourself once the sun rises, nothing.”) with MEYER, TWILIGHT, *supra* note 1 (sunlight is not debilitating much less fatal). Even the famed stake through the heart is fatal to some vampires but not others. Contrast STOKER, DRACULA, *supra* note 2 at 1284 (“If the Count is here, Van Helsing and Seward will cut off his head at once and drive a stake through his heart.”) with MEYER, TWILIGHT, *supra* note 1 at 680 (“How can you kill a vampire?.... “The only way to be sure is to tear him to shreds, and then burn the pieces.”). Still, recall that it was a cut to the throat with a kukri and a Bowie knife (and not a wooden stake) “plunged into the heart” that dispatched Dracula. See STOKER, DRACULA, *supra* note 2 at 1445.
- ²⁵ Mod. Bus. Corp. Act §16.02(a) (no need to state a purpose), §16.02(b) (proper purpose required) and §16.20 (required financial statements).
- ²⁶ *Id.*, §16.02(d).
- ²⁷ Ky. Rev. Stat. Ann. §275.185(3) (request must be “reasonable”).
- ²⁸ See, e.g., Rev. Unif. Ltd. Liab. Co. Act §410(b), 6B U.L.A. 493 (2008).
- ²⁹ See, e.g., Ky. Rev. Stat. Ann. §273.233; Unif. Part. Act §19, 6 (pt. II) U.L.A. 184 (2001); and Rev. Unif. Part. Act §403(a), 6 (pt. 1) U.P.A. 140 (2001).
- ³⁰ Contrast Ky. Rev. Stat. Ann. §273.233 (right of inspection may not be limited by the articles of incorporation or the bylaws) with Rev. Unif. Part. Act §103(b)(2), 6 (pt. 1) U.L.A. 73 (2001) (right to inspect records may be restricted so long as the restriction is not unreasonable) and Rev. Unif. Ltd. Liab. Co. Act §110(c)(6), 6B U.L.A. 443 (2008) (same).
- ³¹ Contrast STOKER, DRACULA, *supra* note 2, at 103 (“But there was no reflection of him in the mirror!”) and 718 (“[H]e make in the mirror no reflect”) with *True Blood*, episode “Burning House of Love” (HBO 2008) (vampires have a reflection; “Wait a minute. I thought you were supposed to be invisible in a mirror.” “We started most of the myths about ourselves many centuries ago. If humans thought we couldn’t be seen in a mirror it was another way for us to prove that we weren’t vampires and that way we could stay hidden.”) and MEYER, TWILIGHT, *supra* note 2 at 147 (“In his rearview mirror, Edward’s eyes were on me.”) and RICE, INTERVIEW, *supra* note 2 at 131 (“He laughed uproariously when I discovered that I could see myself in a mirror”). Some vampires have no shadow while others do. Contrast STOKER, DRACULA, *supra* note 2 at 918 (“He throws no shadow,”) with NOSFERATU, *supra* note 2 (has a shadow) and RICE, INTERVIEW, *supra* note 1 at 231 (Lestat’s shadow merging with that of another).
- ³² See generally Thomas E. Rutledge, *Assigning Membership Interests: Consequences to the Assignor and Assignee*, J. PASSTHROUGH ENTITIES, July–Aug. 2009, at 35. See also Charles B. Elliott, A TREATISE ON THE LAW OF PRIVATE CORPORATIONS §427 (3d ed. 1900) (“A transferee of shares acquires the rights of the transferor”); *Witte v. Beverly Lakes Inv. Co.*, 715 S.W.2d 286, 294 (Mo. App. WD 1986) (noting that “free alienability is an inherent attribute of shares”); and 12 William Meade Fletcher, FLETCHER CYCLOPEDIA OF THE LAW OF PRIVATE CORPORATIONS, at §5452.
- ³³ See, e.g., Rev. Unif. Part. Act §503(a)(3), 6 (pt. 1) U.L.A. 157 (2001) (a transferee is not entitled to participate in the management and conduct of the partnership’s business); §401(i) (no person may become a partner without the consent of all partners), Del. Code Ann. tit. 6, §15-503(a)(3), §15-401(i), Ky. Rev. Stat. Ann. §362.1-503(1)(c) and §362.1-401(9). See also Thomas E. Rutledge, *Assigning Membership Interests: Consequences to the Assignor and Assignee*, J. PASSTHROUGH ENTITIES, July–Aug. 2009, at 35.
- ³⁴ See, e.g., *Dame v. Williams*, 727 N.Y.S.2d 816, 818 (N.Y. App. Div. 2001) (estate of former general partner not entitled to participate in partnership’s management or to inspect its records); Rev. Unif. Part. Act. §503(c)(3), 6 (pt. 1) U.L.A. 157 (2001) (transferee not entitled to information or to inspect books and records).
- ³⁵ See, e.g., *Bayside Petroleum, Inc. v. Whitmar Exploration Co.*, DC-OK, 1997 WL

ENDNOTES

34690262 (“no fiduciary duty” is owed the assignee of a partner); *Haynes v. B&B Realty Group, LLC*, 633 S.E.2d 691 (N.C. 2006) (no fiduciary duties owed to transferee of LLC interest); and *Landskroner v. Landskroner*, 797 N.E.2d 1002, 1014 (Ohio Ct. App. 2003) (fiduciary duties are not owed to former member of LLC); see also Thomas E. Rutledge, Carter G. Bishop and Thomas Earl Geu, *No Cause For Alarm: Foreclosure and Dissolution Rights of a Member’s Creditor*, PROB. & PROP., May–June 2007, at 40.

³⁶ See, e.g., *Bauer v. The Blomfield Co.*, 849 P.2d 1365 (Alaska 1993).

³⁷ See, e.g., *Haldeman v. Haldeman*, 197

S.W. 376 (Ky. 1917) (agreement among shareholders to elect certain directors unenforceable); *Bamford v. Bamford*, 777 N.W.2d 573 (Neb. 2010) (purported voting trust struck down for failure to expressly satisfy statutory requirements); and *Man O War Restaurants, Inc. v. Martin*, 932 S.W.2d 366 (Ky. 1996) (holding unenforceable a shareholder agreement requiring upon termination of employment that shareholder sell stock for original acquisition cost, that provision being characterized as unreasonable liquidated damages or a forfeiture).

³⁸ See *supra* note 12 and accompanying text.

³⁹ Contrast *STOKER, DRACULA*, *supra* note 2, at

1106 (consuming vampire blood) and at 823-24 (“For all that die from the preying of the Undead become themselves Undead, and prey on their kind.”) with *RICE, INTERVIEW*, *supra* note 2, at 65-75 (nearly all blood drained and then replaced with that of the vampire) and *True Blood*, episode “To Love Is to Bury” (HBO 2008) (“Drained his blood and give her yours.” “Once planted in the Earth the transformation will begin.”) with *MEYER, TWILIGHT*, *supra* note 1 at 706-07 (transmitted as a “venom” with some but not all bites). See also *True Blood*, episode “The First Taste” (HBO 2008) (drinking a vampire’s blood will not make a person a vampire).

This article is reprinted with the publisher’s permission from the JOURNAL OF PASSTHROUGH ENTITIES, a bi-monthly journal published by CCH, a Wolters Kluwer business. Copying or distribution without the publisher’s permission is prohibited. To subscribe to the JOURNAL OF PASSTHROUGH ENTITIES or other CCH Journals please call 800-449-8114 or visit www.CCHGroup.com.

All views expressed in the articles and columns are those of the author and not necessarily those of CCH or any other person. All Rights Reserved.
