

supervise the business of the corporation. If the shareholders appoint an officer, then only the shareholders may terminate the officer, except that the directors may terminate an officer appointed by the shareholders for cause. In a closely held corporation, the termination of a minority shareholder-employee who had a reasonable expectation of being an active participant in the company may be regarded as an oppression act.

Exam: Feb 2001: Issue: Whether an employee whose employment contract was conditioned upon acquiring shares in the corporation and participating in its management can be terminated by the board.

Exam: Feb 1998: Issue: Whether a board can terminate an officer/employee of the corporation who is also a director.

### **CORPORATIONS: Treasury Shares - Feb 2012 Priority: MED**

**Exam: 1 of 33 (3%); Feb Exam: 0 of 1 (0%); Subject: 1 of 73 (1.4%); Feb Subject: 0 of 43 (0%)**

Under the BCL, treasury stock are shares issued by a corporation that have been repurchased by the corporation. The shares are retained uncanceled by the corporation and are not considered assets. Treasury stock is not regarded as outstanding, although the shares remain active and can be resold by the corporation at a future date. Accordingly, treasury shares are not entitled to vote or to be counted in determining the number of outstanding shares. Likewise, treasury stock does not provide any type of dividends or earnings per share. A corporation can hold onto treasury stock for an indefinite period of time. While in the possession of the corporation, the stock is stored in the treasury of the corporation. A corporation can also elect to cancel or retire the shares if it is deemed to be in the best interests of the corporation. Any shares that are reissued for purchase are no longer considered treasury stock and would regain both voting rights and be subject to the issuance of dividend payments to the shareholder.

Exam: July 2010: Issue: Whether a corporation can vote with treasury stock at a shareholder meeting.

## **CRIMINAL LAW AND PROCEDURE - 25 of 33 exams - 139 of 871 issues - overall issue freq: 15.54%**

### **CRIMINAL LAW AND PROCEDURE: Accomplice - Feb 2012 Priority: HIGH**

**Exam: 6 of 33 (18.2%); Feb Exam: 2 of 6 (33.3%); Subject: 6 of 139 (4.3%); Feb Subject: 2 of 66 (3%)**

An accomplice is a person who actively participates in the commission of a crime, even though they take no part in the actual criminal offense. Accordingly, one can either be liable for a substantive offense as a principal, or liable as an accomplice of a principal so long as the liability arises from the accomplice's own criminal conduct. Under the Penal Law, an accomplice is a witness in a criminal action who, according to the evidence, may reasonably be considered to have participated in the offense charged or an offense based upon the same or some of the same facts or conduct which constituted the offense charged. An accomplice can be convicted of the substantive crime if he actively aids, abets, assists, counsels, or encourages a principal to commit a crime. In New York, accomplice liability extends to any crimes foreseeable from the intended crime and the initial crime itself. Under the Penal Law, an accomplice is not absolved of liability if the principal is acquitted, immune, or not prosecuted. However, withdrawal is an affirmative defense to accomplice liability if the accomplice: (1) voluntarily and completely renounces; and (2) withdraws prior to the crime; and (3) makes an effort to prevent the crime.

Exam: Feb 2011: Issue: Whether an accomplice can be found guilty of arson if he left the scene before the fire was set.

Exam: July 2006: Issue: Whether an accomplice can be found guilty of arson if he did not set the fire.