2. C.A. Nimocks was a promoter engaged in organizing the Times Printing Company. On September 12, on behalf of the proposed corporation, he made a contract with McArthur for her services as comptroller for a one-year period beginning Oct. 1. The Times Printing Company was incorporated Oct. 16, and on that date McArthur commenced her duties as comptroller. Neither the board of directors nor any officer took formal action on her employment, but all the shareholders, directors, and officers knew of the contract made by Nimocks. On Dec. 1, McArthur was discharged without cause. Has she a cause of action against the Times Printing Company?

Answer: Promoters’ Contracts. McArthur has a cause of action against Times. Although her contract was made with the promoter prior to the existence of the corporation, the corporation upon being organized adopted the contract by acceptance of her services and thereby effectively became a party to it and bound by it.

4. Wayne signed a subscription agreement for ten shares of stock, having a value of $100 per share, of the proposed ABC Company. Two weeks later, the company was incorporated. A certificate was duly tendered to Wayne, but he refused to accept it. He was notified of all shareholders’ meetings, but he never attended. A dividend check was sent to him, but he returned it. ABC Company brings a legal action against Wayne to recover $1,000. He defends upon the ground that his subscription agreement was an unaccepted offer and that he had done nothing to ratify it and that he was therefore not liable upon it. Decision?

Answer: Subscribers. Judgment for ABC Company. Subscriptions for shares of stock are irrevocable for six months. Revised Model Business Corporation Act provides that a preincorporation stock subscription is irrevocable for a period of six months, unless otherwise provided by the terms of the subscription agreement or unless all of the subscribers agree to the revocation of the subscription.

6. A corporation formed for the purpose of manufacturing, buying, selling, and dealing in drugs, chemicals, and similar products contracted to purchase, under authority of its board of directors, the land and building it occupied as a factory and store. Collins, a shareholder, sues in equity to restrain the corporation from completing the contract, claiming that as the certificate of incorporation contained no provision authorizing the corporation to purchase real estate, the contract was ultra vires. Decision?

Answer: Sources of Corporate Power. Decision in favor of A Corporation which has as one of the general powers conferred by statute the authority to acquire real estate, especially real estate for use in conducting the business it is organized to carry on. Section 3.02, Model Act.

9. Amalgamated Corporation, organized under the laws of State S, sends traveling salespersons into State M to solicit orders, which are accepted only at the home office of Amalgamated Corporation in State S. Riley, a resident of State M, places an order which is accepted by Amalgamated Corporation in State S. The Corporation Act of State M provides that "no foreign corporation transacting business in this state without a certificate of authority shall be permitted to maintain an action in any court of this state until such corporation shall have obtained a certificate of authority." Riley fails to pay for the goods, and when Amalgamated Corporation sues Riley in a court of State M, Riley defends on the ground that Amalgamated Corporation does not possess a certificate of authority from State M. Result?

Answer: Classification of Corporations: Foreign or Domestic. The Amalgamated Corporation may maintain the suit in the court of State M without obtaining a certificate of authority to transact business in State M. The activities of Amalgamated Corporation in sending traveling salesmen into State M who solicit orders there which do not ripen into contracts until accepted at the home office in State S, and the shipping of goods from State S into State M, do not amount to transacting business in State M. A large number of such salesmen and a large volume of activity might change the ruling. It is in each case a question of fact. See Sect 15.01(b) of the Model Act, in particular (6).

10. Dr. North, a surgeon practicing in Georgia, engaged an Arizona professional corporation consisting of twenty lawyers to represent him in a dispute with a Georgia hospital. West, a member of the law firm, flew to Atlanta and hired local counsel with Dr. North’s approval. West represented Dr. North in two hearings before the hospital and in one court proceeding, as well as negotiating a compromise between Dr. North and the hospital. The total bill for the law firm’s travel costs and professional services was $21,000, but Dr. North refused to pay $6,000 of it. When the law firm brought an action against Dr. North for the balance owed, he argued that the action should be dismissed because the law firm failed to register as a foreign corporation in accordance with the Georgia Corporation statute. Decision?

Answer: Classification of Corporations: Foreign or Domestic. Judgment for the law firm. In most jurisdictions, single or isolated transactions do not constitute doing business within the meaning of such registration statutes. Even if the transactions are part of the business which the corporation is organized to conduct, such isolated acts will not constitute doing business if they indicate no intent to engage in continuous business activity. The purpose of such statutes is to require registration of foreign corporations intending to conduct business within the state on a continuous basis, not as a temporary matter.

Here, the law firm’s activities were concentrated in Arizona, although various attorneys in the firm handled litigation outside the state of incorporation. Furthermore, West had represented clients in Georgia on two prior occasions, but these had nothing to do with his representation of Dr. North. The law firm’s representation of Dr. North amounted to an isolated transaction. Therefore, a certificate of authority was not required and the firm can collect from Dr. North. Reisman v. Martini, Meyer, Hendricks, & Victor, 155 Ga. App. 551, 271 S.E.2d 685 (1980).
Little Switzerland was incorporated on January 28, 1968. On February 18, Ellison and Oxley were made directors of the company after they purchased some stock. Then, on September 25, Ellison and Oxley signed stock subscription agreements to purchase 5,000 shares each. Under the agreement, they both issued a note which indicated that they would pay for the stock "at their discretion." In March 1970, the board of directors passed a resolution canceling the stock subscription agreements of Ellison and Oxley. The creditors of Little Switzerland brought suit against Ellison and Oxley to recover the money owed under the subscription agreements. Decision?

Answer: Subscribers. Judgment for the creditors. A subscriber to corporate stock is liable for his subscription regardless of any separate agreement between the subscriber and the corporation. Any person who permits the corporation to hold him out as a subscriber is estopped from denying the validity of the subscription as against creditors. Furthermore, the directors of the corporation did not have the authority to release Ellison and Oxley from liability on the agreements. Little Switzerland Brewing Co. v. Oxley, 156 W. Va. 800, 197 S.E.2d 301 (1973).

On September 14, 1971, Healthwin-Midtown Convalescent Hospital, Inc., (Healthwin), was incorporated in California for the purpose of operating a health care facility. From that date until November 30, 1974, it participated as a provider of services under the Federal Medicare Act and received periodic payments from the United States Department of Health, Education and Welfare. Undisputed audits revealed that a series of overpayments had been made to Healthwin in the total amount of $30,481.00. The United States brought an action to recover this sum from the defendants, Healthwin and Israel Zide. Zide was a member of the board of directors of the Healthwin corporation, the administrator of its health care facility, its president, and owner of 50 percent of its stock. Only Zide could sign the corporation's checks without prior approval of another corporate officer. In addition, Zide had a 50 percent interest in a partnership that owned both the realty in which Healthwin's health care facility was located and the furnishings used at that facility. The corporation was initially undercapitalized, and its liabilities continued to exceed its assets substantially. Zide exercised control over Healthwin, causing its finances to become inextricably intertwined with both his personal finances and his other business holdings. The United States contends that the corporate veil should be pierced and that Zide should be held personally liable for the Medicare over-payments made to Healthwin. Decision?

Answer: Judgment for the U.S. Under the alter ego theory, the corporate veil may be pierced if (1) there is such unity of interest and ownership that the personalities of the corporation and the individual no longer exist separately; and (2) if it would be inequitable to treat the acts as those of the corporation alone. It is not necessary that there is actual fraud; it is sufficient that the failure to pierce the corporation's veil would result in an injustice. Other factors the courts consider in determining whether the corporate veil should be pierced include: inadequacy of the corporation's capitalization or its insolvency; failure to observe corporate formalities; absence of regular board meetings; nonfunctioning of corporate directors; commingling of corporate and noncorporate assets; diversion of assets from the corporation to the detriment of creditors; and failure of an individual to maintain an arm's length relationship with the corporation.

All these factors are present here. The corporation was undercapitalized; Healthwin consistently had outstanding liabilities in excess of $150,000, and its initial capitalization was only $10,000. Zide exercised his control over Healthwin so as to cause its finances to become inextricably intertwined with both his personal finances and his other business holdings. Zide handled Healthwin's finances so as to accommodate his own business interests. Another factor present here is that the operations of Healthwin were marked by an essential disregard of corporate formalities. For example, board meetings were not regularly held. Furthermore, to leave Healthwin's corporate veil unpierced would result in an injustice. Healthwin's insolvency would subject all its creditors, including the United States, to inequitable risks regarding the corporation's debts. Therefore, Healthwin's corporate entity should be disregarded and Zide held personally liable. U.S. v. Healthwin-Midtown Convalescent Hospital, 511 F. Supp. 416 (Calif. Cent. Dist. 1981).
1. Olympic National Agencies was organized with an authorized capitalization of preferred stock and common stock. The articles of incorporation provided for a 7% annual dividend for the preferred stock. The articles further stated that the preferred stock would be given priority interests in the corporation's assets up to the par value of the stock. In 1965, the shareholders voted to dissolve Olympic. Because Olympic's assets greatly exceeded its liabilities, the liquidating trustee petitioned the court for instructions on the respective rights of the shareholders in the assets of the corporation upon dissolution. Decision?

Answer: Preferred Stock. The preferred stockholders should be paid only the par value of their stock before any liquidation dividends are paid to the common stockholders. Where one class of stock is afforded a stated preference as to assets on liquidation and the articles of incorporation are silent as to any further participation, the clear implication is that the rights of the preferred stock are exhausted once the preference has been satisfied. In Re Olympic National Liquidation Agencies, Inc. 442 P.2d 246 (Wash. 1968).

2. The XYZ Corporation was duly organized on July 10. Its certificate of incorporation provides for total authorized capital of $100,000, consisting of 1,000 shares of common stock with a par value of $100 per share. The corporation issues each of a total of 50 certificates, numbered 1 to 50 inclusive, representing various amounts of shares in the names of various individuals. The shares were all paid for in advance, so the certificates are all dated and mailed on the same day. The 50 certificates of stock represent a total of 1,050 shares. Certificate 49 for 30 shares was issued to Jane Smith. Certificate 50 for 25 shares was issued to William Jones. Is the validity of the stock thus issued in any way questionable? What are the rights of Smith and Jones?

Answer: Issuance of Shares. The XYZ Corporation may not validly issue more than 1,000 shares of its common stock, as that number of shares is all that is authorized by its charter to issue. Any certificate representing shares in excess of the amount authorized is void. Certificates Nos. 49 and 50 are void because they each represent an over-issue of 25 shares. Jane Smith is entitled to a new certificate for five shares. Both Jane Smith and William Jones are entitled with respect to the over-issue of 25 shares to recover from the issuer the price he or the last purchaser for value paid for it with interest from the date of his demand. U.C.C. Section 8-104 (1)(b).

3. The Hyperion Company has an authorized capital stock of 1,000 shares with a par value of $100 per share, of which 900 shares, all fully paid, are outstanding. Having an ample surplus, the Hyperion Company purchases from its shareholders 100 shares at par. Subsequently, the Hyperion Company, needing additional working capital, issues the 200 shares in question to Alexander at $80 per share. Two years later, the Hyperion Company is forced into bankruptcy. The trustee in bankruptcy now sues Alexander for $4,600. Decision?

Answer: Treasury Stock. The trustee in bankruptcy may not recover with respect to the sale of the 100 treasury shares, but may recover $2,000 from Alexander with respect to the 100 previously unissued shares. The outstanding 900 shares of capital stock were all fully paid. When Hyperion Company purchased from its shareholders 100 shares at par (100) it was not only solvent but had an ample surplus. The 100 shares purchased became treasury shares. Treasury shares may be disposed of by the corporation for such consideration expressed in dollars as may be fixed from time to time by the board of directors. Hyperion had the right to sell the 100 shares of treasury stock to Alexander for $80 per share.

With respect to the sale of 100 previously unissued shares, the trustee in bankruptcy has a valid claim against Alexander for $20 per share, or $2,000. Shares having a par value may be issued for such consideration expressed in dollars, not less than the par value thereof, as shall be fixed from time to time by the board of directors. Alexander bought 100 shares at $80 per share, or $20 per share less than par, and therefore owed the Hyperion Company the unpaid balance of $2,000. This right of Hyperion Co. became an asset of its trustee in bankruptcy.

4. Sayre learned that Adams, Boone, and Chase were planning to form a corporation for the purpose of manufacturing and marketing a line of novelties to wholesale outlets. Sayre had patented a self-locking gas tank cap but lacked the financial backing to market it profitably. He negotiated with Adams, Boone, and Chase, who agreed to purchase the patent rights for $5,000 in cash and 200 shares of $100 par value preferred stock in a corporation to be formed.

The corporation was formed and Sayre's stock issued to him, but the corporation has refused to make the cash payment. It has also refused to declare dividends, although the business has been very profitable because of Sayre's patent and has a substantial earned surplus with a large cash balance on hand. It is selling the remainder of the originally authorized issue of preferred shares, ignoring Sayre's demand to purchase a proportionate number of the shares. What are Sayre's rights, if any?

Answer: Dividends and Other Distributions. The corporation is obligated to pay Sayre, $5,000. Sayre will probably be unable to compel the declaration and payment of a dividend. Sayre has no preemptive right to purchase original unissued shares of preferred stock.

(a) After a corporation comes into being it may either expressly or impliedly ratify a contract made on its behalf and thus become bound. There is no evidence of express ratification of the contract by vote of the shareholders or directors, but there is ample evidence of implied ratification by acceptance of the benefits of the contract for purchase of the gas tank cap rights. The corporation takes the burdens with the benefits and is bound to pay the $5,000 to Sayre.

(b) As to the refusal to declare dividends, the courts say that it is not their business to operate business corporations and to substitute their business judgment for that of the board of directors. On the other hand, the courts are equally ready to say that it is the purpose of corporations to make money and pay it out to shareholders in the form of dividends. The directors will not be permitted to abuse their discretion in the withholding of dividends. Dodge v. Ford Motor Co., in text.
(c) The Act, Section 6.30 provides that unless otherwise provided in the articles of incorporation, holders of shares shall not be entitled to any preemptive right.

10. Wood, the receiver of Stanton Oil Company, sued Stanton's shareholders to recover dividends paid to them for three years, claiming that at the time these dividends were declared, Stanton was in fact insolvent. Wood did not allege that the present creditors were also creditors when the dividends were paid. Decision?

Answer: Liability For Improper Dividends and Distribution. Judgment for the shareholders. Shareholders are not required to repay dividends unless (1) the dividend impairs the corporation's capital stock and the shareholders have notice of this fact; or (2) the dividend was made while the corporation was insolvent and suit is brought by creditors existing when the dividend was paid. Under the second theory, the shareholders are liable to the representative of the existing creditors for the amount of the dividends thus received. Because Wood did not allege that some of the present creditors were also creditors when the dividends were paid, the court must rule for the shareholders. Wood v. City National Bank, 24 F.2d 661 (2d Cir. 1928)