

Introduction to Corporations



- Why Incorporate?
 - Advantages of Incorporating
 - ✦ Limited liability
 - ✦ Easier to raise capital
 - ✦ Perpetual life
 - ✦ Available tax deductions
 - Disadvantages of Incorporating
 - ✦ Double taxation
 - ✦ Cost of complying with regulations
 - E.g., costs of complying with SOX
 - ✦ Limited liability may not be all that limited
 - ✦ Administrative costs

Introduction to Corporations



- Types of Corporations
 - Public Corporations – public control/purpose
 - Municipal Corporations – incorporated cities, towns, villages
 - Charitable/Nonprofit
 - ✦ Public Benefit (charity)
 - ✦ Mutual Benefit (social clubs)
 - ✦ Religious
 - Publicly Held Corporations - large, many shareholders, traded stock
 - Close Corporation - management and control in limited hands
 - Professional Corporation - limited liability for professionals.
 - Foreign Corporations - incorporated in one state but doing business in one or more different states.
 - ✦ **Personal Jurisdiction**, Jet Wine: Minimum Contacts & Causal Connection

Introduction to Corporations



- Internal Affairs Doctrine
 - Internal affairs governed by law in state of incorporation
 - Incorporation and Delaware
- Choosing the Corporate Form
 - Limitations in partnerships
 - Advantages of LLC
 - Anticipating client need and changing circumstances
- Selecting the State of Incorporation
 - Why forum shop?
 - Why incorporate in state of principal activity?
 - ✦ Tax burdens
 - ✦ Qualifying to do business
 - ✦ Regulations

Introduction to Corporations



- **Steps in Formation**
 - What is a Promoter?
 - What do Promoters do?
 - ✦ Arrange Financing
 - ✦ Pre-incorporation share subscription agreements
 - ✦ Make sure regulatory requirements are met
 - ✦ Draft/execute/file articles of incorporation
 - Articles function as corporate constitution
 - ✦ Conducting required meetings
- **Drafting the Articles of Incorporation**
 - First Essential Step
 - MBCA Presumption

Introduction to Corporations



- Drafting the Articles of Incorporation
 - Contents:
 - ✦ Name
 - ✦ Purpose
 - ✦ Service of Process
 - ✦ Incorporators/Directors
 - ✦ Type/Amount of stock
 - ✦ Proper execution of articles
- Corporate Name
 - A distinguishable name
 - Incorporated, Inc., Corporation, Corp., Company
- Statement of Purpose/Power
 - Old law – identify specific purpose

Introduction to Corporations



- **Statement of Purpose**
 - Today: Engage in any lawful business
 - Ultra Vires
 - ✦ Used as a shield
 - ✦ Used as a sword
- **Registered Agent**
 - Service of process
 - Person or organization
- **Incorporators**
 - Incorporators sign articles of incorporation
 - Age requirement
 - Elect initial directors

Introduction to Corporations



- Incorporators
 - Notice requirement for meetings
- Articles – Optional Provisions
 - Enabling Statute (law granting corporate powers)
 - ✦ Usually provide wide latitude
 - ✦ For example, Delaware General Corporation Law: “every corporation, its officers, directors and stockholders shall possess and may exercise all the powers and privileges granted by this chapter or by any other law or by its certificate of incorporation, together with any powers incidental thereto, so far as such powers and privileges are necessary or convenient to the conduct, promotion or attainment of the business or purposes set forth in its certificate of incorporation.”
 - Voting Rights

Introduction to Corporations



- Corporate Charter
 - Articles and enabling law
 - Charter as a contract
- Bylaws
 - Articles are the constitution
 - Bylaws are the rules
 - ✦ Regulating internal affairs
 - ✦ Establishing rules for meetings
 - ✦ Power of shareholders to amend

Check it out:

Nordstorm articles of incorporation: <http://phx.corporate-ir.net/phoenix.zhtml?c=93295&p=irol-articles>

Microsoft Bylaws:

<http://www.microsoft.com/investor/corporategovernance/policiesandguidelines/bylaws.aspx>