BASICS OF CORPORATIONS

- **Corporation**: A legal entity formed in compliance with statutory requirements of its state of incorporation.

- A corporation is owned by **shareholders** whose liability is limited to their investment in the corporation. The corporation is distinct from its shareholders.

- A corporation is managed by a **board of directors** elected by the shareholders.

- The board of directors employ **officers**.
Because a corporation is a “person,” it enjoys constitutional rights such as the right of access to the courts, due process, freedom from unreasonable searches and seizures and double jeopardy.
CORPORATE TAXATION

Corporate Taxation: Corporate profits are taxable to the corporation when they are distributed in the form of dividends, but not when they are “reinvested” in the corporation as retained earnings.

Dividends: Corporate profits distributed to shareholders in proportion to their shares held; and

Retained Earnings: Corporate profits not distributed to shareholders.
CORPORATE POWERS

The express powers of a corporation are found in the following sources, and any conflict between sources is to be resolved according to the following priorities:

1. **United States Constitution** takes priority over
2. **State Constitution(s)**, which take priority over
3. **State Statutes**, which take priority over
4. **Articles of Incorporation** -- a document filed by the corporation in the state of incorporation, containing information about the corporation’s organization and functions -- which take priority over
5. **Corporate By-Laws** -- a set of governing rules adopted by the corporation’s shareholders -- which take priority over
6. **Resolutions of the Corporation’s Board of Directors** -- policy statements adopted periodically by the board.

When a corporation exceeds its express or implied powers, the acts are ultra vires acts. The RMBCA provides remedies for corporate acts “*beyond the powers.*”
DOMESTIC, FOREIGN, AND ALIEN CORPORATIONS

- **Domestic Corporation:** A corporation incorporated in a given state and doing business in that same state.

- **Foreign Corporation:** A corporation doing business in a given state, but incorporated in another state.

- **Alien Corporation:** A corporation doing business in a given state, but incorporated in (or otherwise formed, as provided for by the laws thereof) a foreign country.

  Foreign and alien corporations do not automatically have the right to do business in a state other than the one in which they are incorporated. They may be required to obtain a *certificate of authority* from any other state in which they want to do business.

- **Note:** Any particular corporation doing business in several jurisdictions can be a domestic corporation in one jurisdiction, and a foreign corporation in another. The distinction depends on in which jurisdiction the corporation’s activity is being assessed.
PRIVATE, PUBLIC, AND NON-PROFIT CORPORATIONS

- **Private Corporation:** A corporation formed by and owned by individuals and other private interests.

- **Publicly-Held Corporation:** A corporation whose shares are sold to and held by, or on behalf of, the general public, and are traded on a public exchange.

- **Privately-Held Corporation:** A corporation whose shares are not publicly-traded, and may generally only be bought from or sold to the corporation.

- **Close Corporation:** A privately-held corporation with a small number of shareholders, often members of the same family (a/k/a “closely-held corporation”).

- **Public Corporation:** A corporation formed by a government to serve some public purpose.

- **Non-Profit Corporation:** A corporation formed, in many cases, for charitable, educational, religious, or similar purposes, and organized and operated without the goal of making a profit.

“S” CORPORATIONS

6
**S Corporation:** A closely-held corporation that is taxed like a partnership, while affording its owners the limited liability of a corporation. In order to qualify as an S Corporation, the corporation:

1. **must** be **incorporated in the U.S.;**

2. **must not** be a member of an **affiliated group of corporations;**

3. **must** be owned by **individuals, estates,** and/or **certain trusts** (S Corporation shares **cannot** be owned by other corporations, partnerships, or nonqualifying trusts);

4. **must** have **75 or fewer shareholders;**

5. **must** have only **one class of stock** (although not all shares must have the same voting rights); and

6. **must not** have any **nonresident alien** shareholders.
CORPORATE FORMATION: PROMOTION

- **Promoter:** A person who takes the preliminary steps in organizing a corporation, including:

  1. Issuing a *prospectus* -- a document required by federal and/or state securities laws that describes the financial operations of the proposed corporation sufficiently to enable prospective investors (*subscribers*) to make an informed decision;

  2. Procuring stock *subscriptions*;

  3. Making *contracts* (e.g., to purchase or lease property for corporate facilities, to secure the services of attorneys, accountants, and other professionals); and

  4. Securing a *corporate charter*.

- **Promoter Liability:** A promoter is personally liable on contracts made prior to incorporation, unless the other party to the contract agrees to hold the corporation, rather than the promoter, liable. Once the corporation is formed, it may release the promoter and assume liability on the contract through *novation*.
CORPORATE FORMATION: INCORPORATION

- **Chartering:** The first step in incorporation is to select the state of incorporation. Delaware is very popular because of its corporation laws. Increasingly, though, corporations are incorporating in the state where they plan to base their operations.

- **Articles of Incorporation:** The primary document needed to incorporate, the *articles of incorporation* include basic information about the corporation and will serve as a reference for future business organization and operations.

- **Incorporator(s):** The person(s) who execute(s) the articles of incorporation.

- Typically, articles of incorporation include:

  1. Name
  2. Duration
  3. Nature and Purpose
  4. Capital Structure
  5. Internal Organization
  6. Registered Agent & Office
  7. Incorporators

CORPORATE STATUS
- **De Jure Corporation:** A corporation whose articles, while containing some technical defect, *substantially comply* with the laws of the state of incorporation.

- **De Facto Corporation:** A corporation which, despite some substantive defect in its incorporation and/or continuing status, is recognized to exist, even if its existence is improper or illegal. *De facto* status requires:

  (1) A state statute under which the corporation can be *validly incorporated*;

  (2) A **good faith effort** by the corporation to comply with that statute; and

  (3) The corporation has **actually undertaken** to do business.

- **Corporation by Estoppel:** A business entity that **holds itself out** as a corporation will normally be estopped from denying corporate status **against claims by a third party**.
PIERCING THE CORPORATE VEIL

- At times, owners and/or officers and/or directors of a corporation will use a corporate entity to commit fraud and/or other illegality. In such a case, a plaintiff may be able to “pierce the corporate veil” -- i.e., **disregard the corporate entity** and its attendant limitations on personal liability -- and sue the wrongdoers **individually** for actions they took as owners, officers, and/or directors of the corporation.

- The following factors **may** persuade a court to pierce the corporate veil:
  
  - The plaintiff was **tricked** or **misled** into dealing with the corporation rather than the individual;
  
  - The corporation was created **never to make a profit** or had **insufficient capital** at the time of its formation to meet its prospective debts and/or potential liabilities;
  
  - Statutorily-required **corporate formalities** are not observed; and
  
  - Personal and corporate interests are **commingled** to the extent that the corporation **ceases to have a separate identity** from its owner(s).
CORPORATE FINANCING

- **Bond:** A debt security that represents borrowing by the corporation, in accordance with a *bond indenture* -- a contract between the issuing corporation and the *bondholder*.

- **Stock:** An equity security that represents the purchase of a share of ownership in a corporation by a *shareholder*.

- **Common Stock:** Shares of stock in a corporation that give the shareholder a proportionate interest in the corporate with regard to voting, earnings, and net assets. Common stock shares are the last to receive dividends (distributed income) and to receive asset distribution upon the corporation’s dissolution.

- **Preferred Stock:** Shares of stock that have priority over common stock both with respect to payment of dividends and distribution of assets upon the corporation’s dissolution.