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STOCK ISSUES UNDER THE UNIFORM BUSINESS CORPORATION ACT

ROBERT S. STEVENS†

The National Conference of Commissioners on Uniform State Laws at its session in August, 1927, tentatively approved a Uniform Business Corporation Act. Ten drafts have been before the Conference since the subject was first taken up by it in 1910. The act which has now been tentatively approved is, therefore, the result of painstaking study and of conscientious consideration and discussion. It will come before the Conference for final approval at its next session in July of this year.

It is to be borne in mind that the Uniform Business Corporation Act is intended to authorize and control only private business corporations, and not public service, banking, trust or insurance corporations. The most important and essential provisions of any corporation act are those dealing with the financial structure of the corporations which it regulates. The purpose of the present article is to explain the theory of these provisions in the Uniform Act and to support that theory by a brief survey of the evolution of the law dealing with the process of capitalizing corporations and of affording reasonable protection to the shareholders on the one side and other members of the public on the other side.

"The personal responsibility of the stockholders is inconsistent with the nature of a body corporate."1 In thinking of the responsibility of the shareholders for corporate debts, this is undoubtedly the normal rule. It is a conclusion usually found to result from the decisive reason that the obligation was incurred not by the shareholders, but by a legal unit distinct from them.2 The same conclusion may be reached by regarding corporate obligations as the obligations of the incorporated associates who have been given, not an exemption from, but a limitation of liability.3

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2People ex rel Winchester v. Coleman, 133 N. Y. 279, 284, 31 N. E. 96 (1892); Warren, op. cit. supra note 1, at 519.

However, the limitation of the individual liability of shareholders is by no means an inseparable incident of incorporation. Immunity from individual liability has not always been the rule, and today there are statutes under which full liability of shareholders is either optional or compulsory. In reviewing the development of individual liability, Professor E. H. Warren has pointed out that in the early history of corporation law, shares could be allotted for any kind or amount of consideration, there was no requirement of paid-in capital, and it was customary to pay dividends out of capital. He finds that whether we search in charters, parliamentary acts, or judicial decisions, "our conclusion is that in every American jurisdiction in which the law is based upon the law of Great Britain as it existed at the time of the Revolution, there were at the start no safeguards provided by law for the protection of the creditors of corporations in addition to those provided for the protection of the creditors of individuals." With the beginning of the nineteenth century, the pendulum swung the other way. The interest of members was required to be divided into shares; shares must have a par value; the amount of the par value had to be paid in full, and no part of the capital thus received could be returned to the shareholders by way of dividends or otherwise. The full contribution of this corporate capital was the required substitute for individual responsibility. To make certain that shares were paid in full, it was for a time required that they should be paid for in money.

4N. Y. Bus. Corp. Law § 6: "Every corporation formed under this chapter may be or become a full liability corporation by inserting a statement in the certificate of incorporation, that the corporation thereby formed is intended to be a full liability corporation;..." Corning v. McCullough, 1 N. Y. 47 (1847).
Calif. Const., Art. XII, § 3: "Each stockholder of a corporation or joint stock association shall be individually and personally liable for such proportion of all its debts and liabilities contracted or incurred during the time he was a stockholder, as the amount of stock or shares owned by him bears to the whole of the subscribed capital stock or shares of the corporation or association." See also Kerr's Calif. Civ. Code § 322 (2d. ed. 1920) and Const., Art XII, § 15 as to shareholders of foreign corporations.

5Warren, op. cit. supra note 1, at 522-3.
6See for example, N. Y. Laws 1848, c. 40, § 14: "Nothing but money shall be considered as payment of any part of the capital stock." Amended by L. 1853, c. 333, § 2, to permit the kind of corporations named in the act to receive property necessary for their business and "issue stock to the amount of the value thereof in payment therefor." See also U. S. Stat. 1870, c. 80, § 4, regulating corporations of the District of Columbia and construed in Maine v. Butler, 130 Mass. 196 (1881). See other cases cited infra note 15.
As an additional security for creditors, some jurisdictions retained a conditional liability of shareholders. Thus, in Massachusetts from 1829 to 1870, shareholders were individually liable for all corporate debts until the whole amount of the authorized capital had been paid in and a certificate to that effect had been filed, but in 1870 this was restricted so that only those shareholders who had not paid in full for their shares continued liable to creditors to the extent of the amount of capital remaining unpaid. A similar situation is found in the progress of the law of New York. The manufacturing corporation act of 1848 imposed upon every shareholder, even though his own shares were fully paid, individual liability to corporate creditors to an amount equal to the par value of shares held by him until the whole amount of the authorized capital stock had been paid up. In 1892, the risk of such liability was lessened by making it conditioned upon non-payment of the whole amount of the capital stock issued and outstanding at the time the particular corporate debt was incurred. Finally, in 1901, this double liability was removed, and there was substituted the provision which now exists that a shareholder shall be liable to creditors only to the extent that shares held by him are not fully paid. These changes in the statutes indicate the progressive attempts to reconcile the conflicting claims of creditors and shareholders, with a resulting grant of increased security to the shareholders at the expense of the creditors. The demands of economic progress call for the fullest exemption from individual liability that is consistent with reasonable security for corporate creditors and investors. The harshness of the early Massachusetts rule of liability without limit induced Chief Justice Shaw to say that "the law looks also to the relief of the stockholders, as well as the security of those who deal with the company", and to decide that when the sworn certificate of full payment has been filed as required by statute, no creditor should be allowed to dispute the fact of payment. On the other hand, the liability under the New York statute being limited to the amount of the par value of shares held by the individual, the New

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7St. 1829, c. 53, § 6; R. S. (1836) c. 38, § 17. Warren, op. cit. supra note 1, at 526.
8St. 1870, c. 224, § 39. Warren, ibid.
9L. 1848, c. 40, § 10. A like provision was contained in the Business Corporation Act of 1875, L. 1875, c. 611, § 37. A similar situation existed under the Illinois corporation law of 1857, see Kipp v. Bell, 86 Ill. 577 (1877).
10L. 1892, c. 688, § 54. See also § 55 for conditions and limitations of liability.
11L. 1901, c. 354, § 54. For existing statutory provisions in New York, see S. C. L., §§ 70–73.
12Stedman v. Eveleth, 6 Metc. 114, 120 (Mass. 1843).
York court was inclined to interpret its statute more favorably for the creditor and to permit him to disprove the fact of payment, established only \textit{prima facie} by the certificate similarly filed.\textsuperscript{13}

Granted that a shareholder is liable only to the extent that the shares held by him are not fully paid, when are shares fully paid? That is a question of no great difficulty when the subscription contract calls for payment in money. As we have seen, some early statutes stipulated that nothing but money could be received by a corporation in payment for its shares.\textsuperscript{14} Under such statutes, some courts found themselves mechanically compelled to say that an acceptance of any consideration other than money would violate the statute, and that it would be no defence to a shareholder that he had transferred to the corporation consideration of equivalent money value.\textsuperscript{15} Such a defence would but raise that most troublesome question, whether the proposed substitute for money was of equal value with the money actually required to make up the capital. "It (the statute) intended to give creditors of such an incorporation such security as might result from the original contribution of the capital in cash,—whatever might be done with it afterwards."\textsuperscript{16} In this one sentence, we have a profession of the state's policy to guarantee that the aggregate amount of the par value of shares outstanding represents the value of capital assets, and at the same time a naive confession of the unreliability of the guarantee. In construing the same statutory provision, a subsequent New York court had to decide whether a shareholder had made a good payment by cancelling a debt due him from the corporation for labor done. This court, employing a less mechanistic method of judicial process, held the payment good, reasoning that "if the company had paid the money to Jones in discharge of the debt due him, and then Jones had handed back the same money as payment upon his stock, no question could have arisen. Precisely the same thing was the substance of the transaction, although the form of passing the money was omitted."\textsuperscript{17} Similar reasoning has been employed in construing other statutes.

\textsuperscript{13}Veeder v. Mudgett, 95 N. Y. 295 (1884).
\textsuperscript{14}Supra note 6.
\textsuperscript{15}Maine v. Butler, supra note 6; McDaniel v. Harvey, 51 Mo. App. 198, 205 (1892); People v. Troy House Co., 44 Barb. 625 (N. Y. 1865). Henry v. Vermillion etc. R. R., 17 Ohio, 187, 191 (1848), provision in charter.
\textsuperscript{16}People v. Troy House Co., supra note 15, at 636. See also cases in note 42 infra.
\textsuperscript{17}Veeder v. Mudgett, supra note 13, at 315.
which were silent as to the proper medium of payment for shares.\textsuperscript{18} The inevitable realization of the impracticability of compelling corporations to resort to this circuitous method of first raising money with which to pay for property which they might lawfully purchase has produced in practically every American jurisdiction express statutory authority to accept property, other than money, in payment for shares.\textsuperscript{19} Most jurisdictions, but not all of them, also expressly permit shares to be allotted in consideration of services rendered to the corporation.\textsuperscript{20} However, the majority of American legislatures, while granting this permission, did not recede from the policy of attempting by one device or another to assure the public that the aggregate par value of shares outstanding was a true indicator of the actual value of the consideration received therefor.

The most paternalistic method of insuring the full payment of shares is that employed by Massachusetts from 1875 to 1903. As a prerequisite to the validity of payment in property, the commissioner of corporations was required to certify that he was satisfied that the valuation which had been put upon the property was fair and reasonable.\textsuperscript{21} The present Iowa practice is very similar. Under the provisions of the code in that state, application has to be made to the executive council for leave to allot shares for any consideration other than money, and the executive council is required to make investigation and fix the value at which the consideration may be received by the corporation in payment for shares.\textsuperscript{22} A system of state appraisal has at least two practical objections: first, the obstacles encountered when the property to be valued is situated outside the state, and second, the danger of guaranteeing value in view of the fallibility of even state appraisers.\textsuperscript{23}

\textsuperscript{18} Brant v. Ehlen, 59 Md. 1, 29 (1882); Lee v. Cutrer, 96 Miss. 355, 51 So. 808 (1910); Boot and Shoe Co. v. Hoit, 56 N. H. 548, 558 (1876); East N. Y. and Jamaica R. R. Co. v. Lighthall, 36 How. Pr. 481 (N. Y. 1868). 5 Thompson, Corporations (3d ed. 1927) §§ 3977, 3980; notes in (1910) 27 L. R. A. (N. S.) 315 and Ann. Cas. 1912B, 478, Pell's Case, 5 Ch. App. 11 (1869); Re Baglan Hall Colliery Co., 5 Ch. App. 346 (1870).

\textsuperscript{19} The first express statutory permission in New York seems to have been granted in 1853, supra note 6. In Massachusetts, the first statutory authority is found in L. 1875, c. 177, § 2.

\textsuperscript{20} For reference to various constitutional and statutory provisions and a suggestive summary thereof, see 5 Fletcher, Cyclopaedia of the Law of Private Corporations (1918) §§ 3525-3575.

\textsuperscript{21} L. 1875, c. 177, § 2. Repealed by L. 1903, c. 437, §§ 14 and 95. See post p. 414.


\textsuperscript{23} W. W. Cook, "Watered Stock"—Commissions"—Blue Sky Laws"—Stock without Par Value (1921) 19 Mich. L. Rev. 583, 598.
A much less effective device was that resorted to in Illinois from 1905 to 1921. In lieu of a state valuation, there was required an affidavit of three persons who could swear that in their opinions the value of the consideration to be received was equal to the par value of the shares to be allotted. These persons were not to be state appointed, nor even impartial appraisers; they were the incorporators themselves. The statutory conditions having been compiled with, the shareholders would be protected from further liability, but the security thus afforded the persons dealing with the corporation would indeed be illusory. This scheme is still employed in Utah.

A cruel method of guaranteeing that a dollar of par value means a dollar of corporate capital paid in, or to be paid in, is that inflicted under the "true value rule". Though the utmost good faith and conservatism may have been exercised in placing a value upon the property or services exchanged for shares, there is a perpetual risk that a judicial body may some day disagree with that valuation. If property has been accepted in payment, "that property must be fully equal to the value placed upon it, and its value is determined by the fact and not by the opinions of the persons turning it over, even though they may have honestly believed it to be worth the amount certified." But can value be a fact? Value is opinion, and opinions may differ. Even the opinions of two juries, sitting at about the same time, may differ as to the value of the same property, and the valuation of persons about to embark on a business for profit is almost certain to differ from that of a court or jury summoned by a crew of salvagers to view the derelict and estimate the value it had at the outset of the venture.

In practice, the true value rule puts a penalty upon a shareholder, even though neither he, as a vendor to the corporation, nor the directors, as representing the corporate purchaser, may have been guilty of a fraudulent overvaluation; he will suffer the penalty because a

25 See supra note 18, § 3991; 5 FLETCHER, op. cit. supra note 20, § 3576; BALLANTINE, PRIVATE CORPORATIONS (1927) 657.
judicial body has come to disagree with their conscientious valuation. Since the purpose of corporation laws is to encourage association for business enterprises, the interjection of this principle may tend to defeat the object of the law. Furthermore, to the extent that the penalty imposed under the true value rule is paid to persons who have not been misled by overvaluation, the benefit will accrue to a class of persons undeserving of it. It is generally true that creditors or investors who had knowledge of the facts of overvaluation may not enforce the consequences of the true value rule, even against shareholders who were conscious participators in a fraudulent overvaluation. So, too, persons who dealt with the corporation before the transaction complained of took place, may not inquire into the equality of values in that transaction. Thus, in a defensive way, courts apply the principles of the law of deceit. Conversely, persons who have actually been defrauded through the chicanery of deliberate overvaluation of the consideration paid for shares, ought to have actions in deceit against the persons who committed the fraud intending to deceive. But the existence of the true value rule, like that requiring a preliminary valuation by the state, is intended to assure persons dealing with a corporation that full value has in fact been paid in, to entitle them to dispense with the necessity of investigating the facts, and to give them the benefit of a presumption of reliance upon the apparent or professed amount of corporate capital. A state policy which induces persons dealing with a corporation to shirk the responsibility of investigating the nature and value of corporate assets, and then rewards them for their recklessness, or even indifference, is of doubtful morality and wrings harsh justice from conscientious shareholders. A person who is about to enter into transactions of magnitude with an individual makes inquiry into the state of his financial circumstances. Should he not take reasonable precautions when about to deal with a corporation? Should he be able to claim that he is deceived if he does not? True enough, he


should not be under obligation to do more than take reasonable precautions, and what will be reasonable will depend principally upon the availability of the information which he needs for self-protection. It is for this reason, as will be presently insisted, that publicity should be required to be given to the facts relating to corporate capitalization.

The test of equality of values is to be made as of the time of payment; there is no guaranty of the maintenance of that equality, except that capital shall not be returned to shareholders. In reality, the creditor's concern is not in the past value of corporate capital, but in the value of the assets of the corporation at the time he deals with it. Obviously, therefore, the remedy afforded as a result of the guaranty, is based upon the fiction that persons dealing with the corporation have placed reliance upon a representation, not as to what the corporate assets are at the time they deal with it, but that the consideration constituting the capital was, at the time it was received by the corporation, equal to the value at which it was received.

Opposed to the true value rule is "the good faith rule" which prevails in England and the majority of American jurisdictions. Under this rule, the inequality between the actual value of property and the value at which it was received will not, of itself, subject the shareholder to liability. It must first be shown that there was a lack of good faith in estimating the value at which the property was to be received by the corporation. This principle finds statutory expression in the very common provision: "Any corporation may purchase any property authorized by its certificate of incorporation, or necessary for the use and lawful purposes of such corporation, and may issue stock to the amount of the value thereof in payment therefor, and the stock so issued shall be full paid stock and not liable to any further call, neither shall the holder thereof be liable for any further payment under any of the provisions of this chapter; and in the absence of fraud in the transaction the judgment of the directors as to the value of the property purchased shall be conclusive." Such a statutory provision is not only a legislative attempt to protect...
shareholder, but is also a legislative warning to persons dealing with the corporation.\textsuperscript{35}

But what is “fraud” the presence of which will vitiate the conclusiveness of the judgment of the directors? If it is a mental state, then, it has been suggested, that one trouble with the good faith rule is “the difficulty of fathoming the human mind, and the courts often differ on this subject even in the same transaction”.\textsuperscript{36} A New York court in applying the statute of 1853,\textsuperscript{37} said: “The real question, therefore, is whether the property was placed and taken at a higher valuation with a fraudulent purpose, with the intent of evading the provisions of the statute. . . All that is necessary to establish the legal fraud and take the stock issued out of the immunity assured to stock honestly issued in pursuance of the act of 1853 is to prove two facts: (1) That the stock issued exceeded in amount the value of the property in exchange for which it was issued; and (2) That the trustees deliberately and with knowledge of the real value of the property overvalued it, and paid in stock for it an amount which they knew was in excess of its actual value.”\textsuperscript{38} It was upon this issue of fraud that juries in two actions disagreed.\textsuperscript{39} New Jersey courts in construing the statutory provision that “in the absence of actual fraud in the transaction, the judgment of the directors as to the value of the property purchased shall be conclusive,” have said that “the judgment of those who are by law entrusted with the power of issuing stock ‘to the amount of the value of the property’, and on whom, therefore, is placed the first duty of valuing the property, must be accorded considerable weight, but it cannot be deemed conclusive when duly

\textsuperscript{35}For a criticism of the judicial interpretation of such a statutory provision, see \textit{infra} note 40.


\textsuperscript{37}L. 1853, c. 333, corporations “may purchase mines, manufacturies and other property necessary for their business, and issue stock to the amount of the value thereof in payment therefor; and the stock so issued shall be declared and taken to be full paid and not liable to any further calls; neither shall the holders thereof be liable for any further payments under the provisions of the tenth section of the said act.”

\textsuperscript{38}Douglas v. Ireland, \textit{supra} note 36, at 104. See also Lake Superior Iron Co. v. Drexel, 90 N. Y. 87 (1882).

\textsuperscript{39}Brockway v. Ireland, \textit{supra} note 36.
subjected to judicial scrutiny. Nor is it necessary that conscious overvaluation or any other form of fraudulent conduct on the part of these primary valuers should be shown to justify judicial interposition. Their honest judgment, if reached without due examination into the elements of value, or if based in part upon an estimate of matters which really are not property, or if plainly warped by self-interest, may lead to a violation of the statutory rule as surely as would corrupt motive."

It is significant that in none of the cases just referred to was relief sought by, or for the benefit of persons who claimed that they had been deceived by misrepresentations as to the corporate capital. The transactions involved were upset because the valuations constituted a fraud on the act, behind which was the policy of guaranteeing that the "capital stock of all corporations should at the start represent the same value whether paid for in property or in money." Without these statutory provisions, the principles of the law of deceit would have protected the corporation against the fraud of its vendor, and would have protected investors or creditors against the corporation or against particular individuals who had misled them into dealing with the corporation. In Old Dominion Copper Co. v. Lewisohn, the investors failed in attempting to proceed through an alleged right of the corporation against the promoters based purely upon principles of corporation law. The Supreme Court seems to have been influenced in part by the consideration that "if the corporation recovers, all stockholders, guilty as well as innocent, get the benefit. . . And this means that two-fifteenths of the stock of the corporation, the 20,000 shares sold to the public, are to be allowed to use the name of the corporation to assert rights against Lewisohn's estate that will

40Donald v. American Smelting Co., 62 N. J. Eq. 729, 731-2, 48 Atl. 771 (1900): action to enjoin allotment of shares for property at an overvaluation. Injunction granted. The court suggests a distinction between this situation and that where the issue is an accomplished fact. In the former case, the judgment of the directors is of "considerable weight," whereas in the latter case it would be "conclusive". But this distinction was repudiated in See v. Heppenheimer, 69 N. J. Eq. 36, 56, 61 Atl. 843 (1905). The interpretation of statutes declaring the judgment of the directors to be conclusive is discussed by G. W. Wickersham, The Capital of a Corporation (1909) 22 HARV. L. REV. 319.

41Old Dominion Co. v. Lewisohn and Same v. Bigelow; Douglas v. Ireland and Brockway v. Ireland; and See v. Heppenheimer. Donald v. American Smelting Co., is to be distinguished as the bill was brought to enjoin a threatened stock issue not yet completed.

42See v. Heppenheimer, supra note 40, at 55. Also Douglas v. Ireland, supra note 36, at 104.

43Supra note 36.
enure to the benefit of thirteen-fifteenths of the stock that are totally without claim." But would the defrauded investors have failed had they brought actions in their own right founded on the principles of deceit? Upon the argument of the Lewisohn case in the Supreme Court, it was assumed that "the new members had no ground for a suit in their own names". Mr. Justice Holmes said in his opinion, "We shall not consider whether the new members had a personal claim of any kind, and therefore we deal with the case without prejudice to that question, and without taking advantage of what we understand the petitioner to concede." For the investor or creditor defrauded through misrepresentation as to corporate assets, the law of deceit affords adequate protection. The law of deceit, however, is not adequate to protect investors and creditors who sustain loss because of their inability to ascertain the truth that lies behind appearances. For them, the common law must be supplemented by statute, but the needed supplement is not one that supplies an illusory state guarantee, whatever its form, but one that supplies an opportunity for accurate information. "With regard to the protection of creditors and investors it has been truly said that legislation cannot protect people from the consequences of their own imprudence, recklessness or want of experience. Nor can the Legislature supply them with prudence, judgment or business habits. It can, however, make it possible for the creditor or investor to obtain the information necessary to enable him to form a judgment." When an investor or creditor knows that the property of the corporation with which he is dealing consists largely of patent rights, or of oil or mining property, should his attitude toward the corporate valuation of that property be other than cautious doubt? Many states have caused their statutes, to this extent, to coincide with common sense and have framed them upon the assumption that at least persons who deal with a mining corporation are making a speculation on the actual value of its property and are not placing reliance on the par value of its outstanding shares.

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4Ibid. at 213; see also at 216: "We express no opinion as to whether...there was any personal claim on the part of the innocent subscribers."
45Little, Promoters' Frauds (1910) 5 ILL. L. REV. 87.
4Portion of statement by Comptroller of the Company's Department in a Blue Book published by the English Government, June, 1907, and quoted by W. W. Cook, op. cit. supra note 23, at 595, 1 COOK, CORPORATIONS (8th ed. 1923) § 45b. For additional quotation from same statement, see infra note 61.
482 Mont. Rev. Codes (1921) § 5970: "... provided that on mines any arbitrary value may be fixed and such value shall, regardless of the actual value, be deemed
Another practice which seems consistent with good business sense but inconsistent with a state warranty of the full payment of the par value of shares is that sanctioned by the decision in *Handley v. Stutz*.49 It was there held that an active corporation, finding its original capital impaired by loss or misfortune, may, for the purpose of recuperating and of producing new conditions for the successful prosecution of its business, allot new shares for the best price obtainable even though that be less than the par value. This doctrine has received express judicial approval in but a limited number of states.50 To rescue the corporation by the allotment of shares at the best price obtainable, even though that be below par, is advantageous to both shareholders and existing creditors, and it will not be injurious to future creditors who exercise that caution which the very adoption of this rule requires of them. However, the establishment of the rule through deliberate legislation would be more appropriate than through a too liberal judicial interpretation of legislative intention. In Maryland, Rhode Island, Virginia and West Virginia there is express statutory authority for the allotment of par value shares for cash or other consideration at less than par, and this privilege may be exercised even by corporations not in failing circumstances.51 The committee which was the value thereof, so as to make the stock issued in payment therefor at such arbitrary value full paid stock." See also Colo. Comp. L. (1921) § § 2249, 2341; 1 Nev. R. L. (1912) §§ 1200, 1330; Utah, 1 Comp. L. (1917) § 862, amended L. 1921, c. 22, p. 73, Richardson v. Treasure Hill Mining Co., 23 Utah 366, 65 Pac. 74 (1901). *Contra:* Rhode v. Dock-Hop Co., 184 Calif. 367, 194 Pac. 11 (1920).

2 MORAWETZ, PRIVATE CORPORATIONS (2d ed. 1886) § 830; 5 FLETCHER, Op. Cit. supra note 26, § 3508; note (1921) 12 A. L. R. 437. Many Blue Sky Laws attempt to protect investors against fraudulent sales of mining lands or shares in mining corporations.


50 Speer v. Bordeleau, 20 Colo. App. 413, 79 Pac. 332 (1903); Peter v. Union Mfg. Co., 56 Ohio St. 181, 46 N. E. 894 (1897), suit by minority shareholder; Thomason v. Brenneman v. Goodman, 254 Fed. 39, 44, (C. C. A. 6th, 1918), interpreting Ohio statute, noted in (1919) 3 MINN. L. REV. 281. *Contra:* Mutual Adjusting Agency v. Davidson, 23 Calif. App. 274, 137 Pac. 1091 (1913), noted in (1914) 2 CALIF. L. REV. 238; but see Stein v. Howard, 65 Calif. 616 (1884), relied upon by the Supreme Court, and Kellerman v. Maier, 116 Calif. 416, 423, 48 Pac. 377 (1897); Jackson v. Traer, 64 Iowa, 469 (1884); Lee v. Cameron, 67 Okla. 80, 169 Pac. 17 (1917), the Oklahoma constitution forbids the issue of shares except "for money, labor done, or property actually received to the amount of par value thereof..." For a discussion of Handley v. Stutz and Oregum Gold Mining Co. v. Roper, L. R. [1892] A. C. 125, see (1891) 25 AM. L. REV. 940; (1892) 26 ibid. 464 and 861; (1893) 27 ibid. 306.

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charged with the revision of the Ohio corporation law in 1927 have
with more conservatism taken a middle position: the corporation
must have been organized for at least two years and the directors
must have found that par could not be obtained for the shares to be
allotted, but there is not the qualification, found in Handley v. Stutz,
that the new money must be needed for recuperation rather than for
expansion of the business. The doctrine of Handley v. Stutz has not
the critical importance that it once had, for now a corporation which
finds that the market price of its shares has depreciated below par
value, may raise new capital by taking advantage of the permission
given in practically every state to create shares without par value.

To promote the sound business practice of enabling a corporation to
secure additional capital through stock issues rather than by increasing
its indebtedness, is but one of the reasons for the introduction of
non-par value statutes. The importance of such statutes is that they
manifest the state policy to refuse continued support to the supposed
reliance of persons dealing with corporations upon the importance of
par value and nominal capitalization. They remove the state
guarantee, and they concentrate attention upon the facts of capitali-
ization. Of this policy, it has been remarked: "So far as creditors are
concerned there is, under such legislation, nothing to be said but
caveat creditor." And again: "The whole theory of stock without

Ohio L. 1927, p. 16. "Section 16. Shares with par value may be issued for an
amount of consideration not less than the par value thereof except as herein other-
wise provided. The board of directors may authorize the issuance of shares with
par value at a price greater than par.

A corporation by action of its board of directors may issue and sell shares
having par value or securities convertible into shares having par value, or give
options to purchase shares having par value, for an amount of consideration less
than the par value of such shares or of such shares as may be issued upon the con-
version of such securities or exercise of such options if

1. The corporation has been in existence more than two years; and
2. The board of directors shall find that such shares cannot be sold at par; and
3. The board of directors shall fix a price for such shares at less than par and
cause them to be offered to existing shareholders at such price; and
4. All of the shares so offered shall not have been purchased by existing share-
holders."

The balance of the section authorizing the sale for less than par of the shares not
taken by shareholders, and requiring the filing with the secretary of state of a
verified certificate stating the number and par value of shares and the price at
which issued, is omitted. The Ohio committee, in its report dated January 16,
1928, proposes a revision of this section to clarify its meaning, without, apparently,
changing its effect.

282, 286.
par value is, 'let the buyer beware' and 'let the creditor beware', but *caveat emptor*—no implied warranty of quality—applies only when the goods are available for inspection. Better the old law, 'let the promoter beware'.'

One who is about to extend credit to an individual guards himself by inquiring as to the financial circumstances of that individual. Should not one who is about to deal with a corporation take the same precaution? The answer is "yes" if we insert the word "reasonable" before the word "precaution". The prospective creditor of the individual and the prospective creditor of the corporation have not had an equal opportunity of obtaining that necessary information as to the financial condition of their proposed debtor. The conviction that this is true has been the directing force in the evolution of this part of corporation law. The practice of officially appraising the consideration to be received in payment for shares, the trust fund doctrine and the full value rule, and the concurrently imposed liabilities, all find their justification in the fact that investors and creditors have had no adequate means of ascertaining the facts about corporate assets and about the private contracts between the corporation and the shareholders.

The use of non-par value shares does not eliminate the necessity of valuing the consideration to be received for the shares. A valuation is necessary in order that the rights and interests of shareholders may remain proportionate to the amount of their investments, or, in the discretion of the proper parties, in proportion to the market value of the outstanding shares at the time of the allotment of new shares. Valuation is necessary in order to fix the amount that is to be considered capital and the amount that is to be considered paid-in surplus. Valuation is necessary in order to fix the capital stock which enters into the calculation of the funds available for the declaration of dividends. The institution of non-par value shares has been

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55Uniform Bus. Corp. Act § 24: "Paid-in Surplus. I. If, upon the allotment of shares having no par value any part of the consideration received by the corporation is to be treated as paid-in surplus rather than as payment upon such shares, the incorporators, shareholders or directors, as the case may be, who determine the value of the consideration so received, shall at that time specify the amount of such value that is to be considered as surplus and the amount thereof that is to be considered payment for shares. II. Amounts of surplus paid in by shareholders shall be shown on the books of the corporation as a separate item designated 'paid-in surplus'." See also Ohio Act of 1927, § 38; A. A. Berle, *Problems of Non-Par Stock* (1925) 25 Col. L. Rev. 43.
56Section 1, paragraph X, of the Uniform Act defines "capital stock" as "(a) the aggregate amount of the par value of all allotted shares having a par value,
criticized in that it leaves no check against overvaluation; formerly, deception was due to the difference between the actual value of the consideration received and the par value of the shares allotted for it, but now it is due to the difference between the actual value and that value at which the corporation receives it in payment for a given number of shares without par value. Once more, the need for the publication of the facts with regard to capitalization becomes apparent. If a valuation of the consideration received for non-par value shares is required to be made, and if that valuation is required to be published together with an adequate description of the consideration, then members of the public about to deal with a corporation can learn much about its financial condition by becoming informed as to the nature of that consideration, and by comparing their own appraisal of it with the valuation put upon it by the corporate representatives.

The tendency since 1900 has not been entirely away from paternalism, but from one type of paternalism to another. The tendency seems to have been away from a state guarantee to the corporate investor and creditor, and toward an effort to assist self-help by affording the means of self-protection. At the same time, the tendency has been to discontinue those formal regulations of corporate organization and management, which, experience has shown, exist only to invite evasion. With particular reference to corporate capitalization, this tendency was tersely stated in 1911 in the report of the New York State Bar Association's Committee on Corporation Law, when, in speaking of its proposed non-par value statute, it is said that that bill "proceeds upon two theories, or rather with reference to two conditions; first, the absolute necessity of telling the truth; secondly, the relief from the necessity of telling a lie."

including such shares allotted as stock dividends, and (b) the aggregate of the cash, and the value of any consideration other than cash, determined as provided in this Act, agreed to be given or rendered as payment for all allotted shares having no par value, plus such amounts as may have been transferred from surplus upon the allotment of stock dividends in shares having no par value."

Section 25 provides in part, "No corporation shall pay dividends (a) in cash or property, except from the surplus of the aggregate of its assets over the aggregate of its liabilities, including in the latter the amount of its capital stock, after deducting from such aggregate of its assets the amount by which such aggregate was increased by unrealized appreciation in value or revaluation of fixed assets; (b) in shares of the corporation, except from the surplus of the aggregate of its assets over the aggregate of its liabilities, including in the latter the amount of its capital stock."

6Report of N. Y. State Bar Ass'n (1911) 72. At page 65 of the same report, it is said: 'It was in 1892 that this Association first committed itself to the proposition that the annexing of the par value to the certificate of stock of corporations
This tendency was also expressed and recommended in 1902 in the report to the Massachusetts legislature of its committee on Corporation Laws. "Under the modern theory, the state owes no duty, to persons who may choose to deal with corporations, to look after the solvency of such artificial bodies; nor to stockholders, to protect them from the consequences of going into such concerns, the idea being that, in the case of ordinary business corporations, the state's duty ends in providing clearly that creditors and stockholders shall at all times be precisely informed of all the facts attending both the organization and the management of such corporations, and particularly that there should be full publicity given to all details of the original organization thereof." It was as a result of this recommendation that the Massachusetts legislature in 1903 repealed the provision for the state appraisal of the consideration to be received for shares, and, in place of this policy which had nurtured a false sense of security, substituted the requirement that there should be filed in a public office a certificate showing the number of shares outstanding, the proportion thereof paid for in money and the proportion paid for in consideration other than money, and in the latter case, a description of such consideration.

With regard to section 88 of the English Companies Act providing that when shares are to be allotted for consideration other than cash, a return of the number of shares so allotted and the consideration for which they have been allotted shall be filed with the registrar of companies, it has been said that "the object of this section is to afford those who deal or propose to deal with a company the means of was a source, and an unnecessary source, of confusion and misapprehension in the public mind; that it also involved a constant invitation to what may be called an evasion of the law in order to enable business enterprises perfectly proper in purpose to accomplish that proper purpose; and that it compelled corporations to state what all the community and what many conscientious managers of corporations have found to be an embarrassing estimate of value when the statements of the stock certificates in the aggregate were compared with the inventories of the corporation taken upon a commercial basis rather than with reference to statutory statements." The progress of the non-par value proposal in this association may be traced through the following references: N. Y. State Bar Ass'n Report (1892) 138; id. (1908) 43, 44, 196; id. (1909) 270–282; id. (1910) 515–517; id. (1911) 54–80.


English Companies (Consolidation) Act 1908, § 88.
ascertaining approximately the position of the company as regards its issued shares."

At about the same time that Massachusetts adopted this policy of publicity, there was incorporated in the constitution and laws of Virginia a provision that a corporation might dispose of its stocks or bonds at such prices as it sees fit, that subscriptions for shares might be paid in money, other property or services, and that "there shall be no personal or individual liability on any subscriber beyond the obligation to comply with such terms as he may have agreed to in his contract of subscription", provided the corporation has filed with the state corporation commission a verified statement containing a full disclosure of the financial plan and an accurate description of the property or services together with a statement of the valuation at which the same are to be received by the corporation. It has been held that if the provisions of this act have been complied with, shares of an aggregate par value of $40,000 were fully paid for by turning over to the company "rights, options and contracts being valued at four thousand dollars".

As pointed out already, both the Maryland and Rhode Island corporation laws, as amended in 1920, also permit corporations to accept less than full par value for their par value shares, but in both states this is made conditional upon the filing of an exposure of the facts, i.e., a statement of the amount of stock to be issued, a description of the property or services to be received, and a statement of the value at which they are being received. In all three of these states, the obligation of the shareholder is limited to the performance of his contractual obligation, the existence of the statute puts the creditor on notice of this fact, and the information publicly filed furnishes him with the means of self-protection.

61Palmer, op. cit. supra note 32 63. In an English Blue Book published in 1907, supra note 47, it is said: "The trend of recent legislation in this country has been to endeavor to afford information concerning the joint stock companies to all who may seek for it, on the ground that publicity is the best protection which can be devised for the benefit of creditors and investors, and that, moreover, it is fair to demand publicity of companies and to compel disclosure of material facts by them in return for the privilege of limited liability."


66To this extent the statutes of Maryland, Rhode Island and Virginia go beyond the effect of the English Companies Act (1908) §§ 14, 88 and 123, for under these
By an amendment to the Illinois law in 1921, the provision requiring the incorporators to report their valuation to the secretary of state was supplanted by the provisions requiring the filing of a description and a statement of the valuation of the property received for shares. No case has been found, however, which indicates that this amendment alters Illinois' adherence to the full value rule.

In that carefully conceived act passed in Ohio in 1927, publicity has been adopted as the means of safe-guarding those who deal with corporations. With regard to this feature of the act, the views of the Ohio committee may be stated in their own words: "It is believed that the liability to creditors which will obtain in case property is probably overvalued, and the requirement of filing such certificate in the office of the secretary of state, will operate as an effective deterrent against the issuing of shares for little or no consideration. The committee considers this to be one of the outstanding merits of this draft. It removes the chief objection that has been made against non-par shares, namely, that under the laws of certain states there is the greatest latitude and freedom in issuing them. If this draft is adopted, Ohio will not be one of the wide open states as to the issuing of non-par shares, and yet there will be sufficient latitude to enable honest directors and shareholders to issue such shares from time to time in accordance with the requirements of the corporation."

A consideration of the modern tendencies of the law with regard to sections par value shares may not be paid for with consideration agreed to be worth less than the par value of the shares. See PALMER, op. cit. supra note 32, at 57-68. The W. Va. statute, supra note 51, permits par value shares to be paid for with consideration valued at less than par, but, except for the provision that notice of the purpose of the meeting at which the authorization is to be voted on shall be published in a newspaper for two weeks, there is no requirement that the facts with regard to the payment for the shares shall be made a public record.

Callaghan's Ill. Stat. Ann. (1924) c. 32, §§ 4 and 28; L. 1921, p. 365, amended by L. 1923, p. 283 and L. 1927, p. 354. The nature of the payment is to be disclosed either in the articles of incorporation or in a certificate to be filed within thirty days after any subsequent allotment of shares.

Supra note 26.


By § 25, the valuation at which consideration is received in payment for shares shall be conclusive unless the person asserting overvaluation "shall affirmatively prove by clear and convincing evidence, and otherwise than by proving the difference between the value of such considerations and the amount so determined, that such determination of value was knowingly and intentionally made and fixed at an amount known to the parties making the same to be greater than the fair value of such considerations to the corporation."

Report to Ohio Bar Ass'n of the Special Committee on Revision of Corporation Laws, Dec. 28, 1926, at 32.
STOCK ISSUES UNDER THE UNIFORM ACT

stock issues would be incomplete were not reference made to Blue Sky Laws which have been so universally adopted in this country. These laws have grown up independently of corporation acts, even though their effect is to supplement the latter, and it is to be noted that the National Conference of Commissioners on Uniform State Laws is separately considering a Uniform Sale of Securities Act. A second tentative draft of such an act was submitted to the Conference in 1924.

Existing Blue Sky Laws are aimed at protecting the investor and not the corporate creditor. Furthermore, the investors whom they purport to protect are not always merely the investors in corporate securities. Within the scope of the New York act are: "any commodity dealt in on any exchange within the United States of America or the delivery of which is contemplated by transfer of negotiable documents of title all of which are hereinafter called commodities, or... any stocks, bonds, notes evidences of interest or indebtedness or other securities, or negotiable documents of title, or foreign currency orders, calls or options therefor hereinafter called security or securities. . ." In the next place, it is common for these acts, in defining the "sales" which they regulate to exempt from such regulation distributions by corporations of shares, bonds or other securities exclusively to their own shareholders or other security holders. The scheme of these acts is to provide for licensing the "vendors", and for gathering and publishing material information with regard to the securities or commodities to be marketed, but they usually disavow any purpose of guaranteeing or recommending the value of such securities or commodities.

This brief comparative study of the legal treatment of stock issues is the history of the conflict of those who deal with a corporation and those who are its members. The state's settlement of this conflict evidences the social interests that are found to predominate at a given time. Prior to the nineteenth century, the policy of encouraging the aggregation of wealth for industrial development and commercial expansion determined the balance in favor of the shareholders and produced for them a real limited liability. Then, with the beginning

72So provided in the securities acts of the following states: Arkansas, California, Indiana, Iowa, Kentucky, Massachusetts, Minnesota, Missouri, Nebraska, New Hampshire, North Carolina, Ohio, Pennsylvania, Rhode Island, South Dakota, Utah, Virginia, and West Virginia.
74So provided in the securities acts of the following states: Arizona, Arkansas, California, Florida, Georgia, Idaho, Illinois, Iowa, Kentucky, Louisiana, Maine, Michigan, Mississippi, Montana, New Hampshire, South Carolina, Tennessee, Vermont, Washington, Wisconsin, and Wyoming.
of the nineteenth century, the hardship on corporate creditors became sufficiently impressive to produce for them not only a guarantee of a real corporate capital, but also the additional protection of the contingent liability of shareholders. The practical necessity of permitting property to be transferred in payment for shares precipitated the dilemma of attempting to secure a parity between the value of the property and the par of the shares, and of attempting to prevent the deception of investors and creditors which was believed to be an incident of disparity. The state's solution of the dilemma was usually a guarantee to the unknowing investor or creditor that a disparity did not exist, or that the discrepancy, if any actually existed, would be supplied from the individual wealth of those whose shares were paid for with property of inadequate value. The statutory provisions enacted for the protection of the investor and creditor at the expense of the shareholder received a formal, but not a genuine compliance; their existence left the shareholder in anxious doubt as to his security from liability, and their strict enforcement would have defeated the purpose of incorporation statutes.

The twentieth century seemed to bring new light. The state is assuming less responsibility for the corporations which it authorizes to take part in the social economy. The tendency has been toward conformity with the realities of business experience: persons who deal with corporations do not rely upon the nominal value of shares; they do rely upon such information as they can obtain as to the nature and value of corporate assets. Permission has been given to remove the nominal value from shares; the machinery is now being supplied to furnish investors and creditors with the information they need for self-protection. The publishing of this information will be the shareholder's means of self-protection from individual liability.

The conclusions which are deduced from this survey and which

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751 Cook, op. cit. supra note 33, § 45b.


77 Mr. Cook quotes from President Eliot: "The principle of limited liability is by far the most effective legal invention for business purposes made in the 19th century." Cook, op. cit. supra note 23. See also Cook, Principles of Corporation Law (1925) 156, quoting from the London Statist, April 6, 1907, as follows: "It seems to me that in condemning watered capital the American public are led by theorists. If a law prohibiting the issue of stock unless for par in cash had existed in that country in the past, many of what are now big systems would never have been built; and if in the future the capital of railroads is to represent no more than the money spent, it follows that no new railroads will be built, unless by existing dividend-paying system."
have been the foundation of the pertinent provisions of the tentatively approved Uniform Business Corporation Act may now be suggested.

First: A shareholder should be under no liability to the corporation with respect to his shares other than the obligation of complying with the terms of his subscription contract therefor, but one who acquired shares without knowledge or notice of the fact that they had not been fully paid for, should not be liable to the corporation with respect to such shares.

Second: The liability of a shareholder to corporate creditors, as such, should not extend beyond

A. Such direct statutory liability to employees as the policy of a particular state may require, and

B. The right of the creditor, by equitable execution, to avail himself of the obligation of the shareholder to the corporation as defined in the first paragraph.

Third: By requiring a description and valuation of the consideration received in payment for shares to be filed in a public office, persons dealing with a corporation will be afforded an opportunity (a) to discover the character of the corporate capital, (b) sometimes, but not always, to place their own valuation upon such consideration, and (c) to learn much about the corporate finances by comparing their valuation with that fixed by those acting for the corporation.

Fourth: For the purpose of determining the outstanding obligation of a shareholder to the corporation with respect to his shares, the valuation at which consideration other than money was agreed to be received by the corporation in payment for shares shall be conclusive. A deliberate overvaluation, consciously agreed upon by both the corporation and the shareholder should not alter the liability of the shareholder to the corporation and subject him to an obligation to pay more than he had agreed to.  

These conclusions have been substantially adopted by the new Ohio corporation act: shares may be issued for property or services, and par value shares may be issued even for money at less than par; shareholders are under no liability to the corporation except to pay the amount and kind of consideration for which their shares were authorized to be issued; a creditor has no claim against shareholders, as such, other than to reach and apply the debt, if any, of the shareholders to the corporation; the valuation at which consideration other than money is agreed to be accepted in payment for shares is conclusive, unless the party claiming overvaluation shall affirmatively prove, otherwise than by merely showing the difference between the actual and the agreed value, that the value was knowingly and intentionally fixed at an amount known to be greater than the fair value of the consideration; within sixty days after the issue of shares at
Fifth: Fraud practiced by a promoter or other vendor in contracting with an innocent corporation, whether with regard to the payment for shares to be allotted to him or otherwise, should entitle the corporation to the usual remedies of a defrauded contracting party, i.e., rescission, restitution or damages.

Sixth: Persons dealing with a corporation, whether they be investors or creditors, if deceived by fraudulent overvaluations, would have their tort remedies against (a) the corporation, and (b) such shareholders as intentionally participated in the fraudulent deception. In any action brought for this purpose, the valuation at which the corporation received the consideration in payment for shares should not be conclusive, but the plaintiff should be able to show the true value, provided he can establish the defendant’s intent to deceive the plaintiff and the fact of plaintiff’s deception. The filing of the description and valuation of the consideration should not result in charging persons dealing with the corporation with constructive notice of the facts there stated, but such filing, to the extent that it furnishes such persons with an opportunity for acquiring information, should have a bearing upon the actuality of their deception.\textsuperscript{79}

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PROVISIONS OF THE TENTATIVELY APPROVED UNIFORM BUSINESS CORPORATION ACT RELATING TO THE ALLOTMENT OF SHARES AND PAYMENT THEREFOR

SECTION I. Definitions.

IV. An “Incorporator” is one of the signers of the original articles of incorporation.

V. A “Subscriber” is one who subscribes for shares in a corporation, whether before or after incorporation.

VI. “Shares” are the units into which the shareholders’ rights to participate in the control of the corporation, in its profits or in the distribution of corporate assets, are divided.

VII. A “Shareholder” is one who owns one or more shares. A subscriber becomes a shareholder upon the allotment of shares to him. Nothing in this section shall be construed as forbidding a corporation to recognize the exclusive right of a person registered on less than par, or after the issue of shares for consideration other than money, a statement must be filed showing the number and class of shares issued and a description of the consideration. This summary is based on §§ 16, 22, 24, 25, 26, 28.

\textsuperscript{79}Section 10 of the Uniform Act provides that the filing of any paper pursuant to the provisions of the Act shall not charge persons who deal with a corporation with notice of the contents of such paper. See (1920) 7 A. L. R. 981, note.
its books as the owner of shares to receive dividends, and to vote as such owner, or to hold liable for calls and assessments a person registered on its books as the owner of shares.

VIII. A "Certificate of Stock" is a written instrument signed by the proper corporate officers, as required by this Act, and evidencing the fact that the person therein named is the registered owner of the share or shares therein described.

IX. "Allottment" means the apportioning of a certain number of shares to a subscriber in response to the application contained in his subscription, or to a shareholder pursuant to the declaration of a stock dividend. The allottment of shares to the incorporators, or to persons whose subscriptions were approved by the incorporators before incorporation and were unrevoked at the time of incorporation, shall be considered automatically coincident with incorporation.

Section 3. Articles of Incorporation.

I. Articles of incorporation shall be signed [in triplicate originals] by each of the incorporators and acknowledged by at least three of them before an officer authorized by the laws of this State to take acknowledgments, and, in addition to stating the name of the corporation, shall state in the English language:

(a) its purposes;
(b) its duration;
(c) the location and post office address of its registered office in this State;
(d) the total authorized number of par value shares and their aggregate par value; and, if any of its shares have no par value, the authorized number of such shares;
(e) a description of the classes of shares, if the shares are to be classified, and a statement of the number of shares in each class, and the relative rights, voting power, preferences and restrictions granted to or imposed upon the shares of each class;
(f) the amount of paid-in capital with which the corporation will begin business;
(g) the first directors, their post office addresses, and their terms of office;
(h) the name and post office address of each of the incorporators and a statement of the number of shares subscribed by each, which shall not be less than one, and the class of shares for which each subscribes.

II. Articles of incorporation may contain any other provisions, consistent with the laws of this State, for regulating the corporation's business or the conduct of its affairs.

Section 6. Subscriptions for Shares before Incorporation.

I. Subscriptions for shares of a corporation to be formed shall be in writing. Unless otherwise provided in the writing, the subscription shall be

(a) irrevocable for a period of one year from the date of signing except as provided in subdivision II of this Section;
(b) revocable after a period of one year from the date of signing, unless prior to such revocation a certificate of incorporation has been issued as provided in Section 5.

II. Subscriptions for shares may be revoked at any time by either party upon such grounds as exist at law or in equity for the rescission of any contract.

III. Upon the issue of the certificate of incorporation, subscriptions for shares may be enforced by the corporation according to their terms unless revoked as provided in this Section.


The amount of paid-in capital with which a corporation may begin business shall not be less than $[ ] in cash or other property taken at a fair valuation.

SECTION 13. Shares—Classes of—Par and No Par Value.

I. The shares of a corporation formed under this Act may be divided into classes with such rights, voting power, preferences and restrictions as may be provided for in the articles of incorporation.

II. Any or all of the shares may have a par value or have no par value, as provided in the articles of incorporation.

III. Except as otherwise provided by the articles of incorporation, and stated in the certificate of stock, each share shall be in all respects equal to every other share.

SECTION 15. Shares—Allotment and Consideration.

I. No allotment of shares of a corporation shall be made except:
   (a) pursuant to subscriptions received therefor, or
   (b) pursuant to the declaration of stock dividends.

II. Subject to the provisions of (here include appropriate reference to the Sale of Securities Act), subscriptions for shares may be made payable, as provided in subdivisions III and IV of this Section, with cash, other property, tangible or intangible, or with necessary services actually rendered to the corporation.

III. Subscriptions for shares having a par value shall be made payable:
   (a) with cash to an amount not less than the aggregate par value of the shares subscribed for; or
   (b) with consideration other than cash, the fair valuation of which is not less than the aggregate par value of the shares subscribed for.

IV. Subscriptions for shares having no par value shall be made payable as follows:
   (a) if the subscription is signed before incorporation, with consideration of the character and value determined by the incorporators;
   (b) if the subscription is signed after incorporation, with consideration of the character and value determined by the shareholders at any annual or special meeting, duly called and held for that purpose, or determined by the board of directors acting under authority conferred by the shareholders or by the articles of incorporation.
STOCK ISSUES UNDER THE UNIFORM ACT


I. A certificate of stock shall not be issued until the shares represented thereby have been fully paid for.

II. Shares allotted as stock dividends, and shares for which the agreed consideration has been paid, delivered or rendered to the corporation shall be fully paid shares [and non-assessable].

III. When a corporation has received a note or uncertified check as consideration for shares, such shares shall not be considered as fully paid for until such note or check has been paid.

SECTION 17. Valuation of Consideration for Shares.

For the purpose of determining whether shares have been fully paid for in order to fix the extent of the outstanding obligation of a shareholder to the corporation with respect to such shares, the following valuations shall be conclusive:

(a) the valuation placed by the incorporators, the share-holders or the directors, as the case may be, upon the consideration other than cash with which the subscriptions for shares are made payable;

(b) the valuation placed by the board of directors upon the corporate assets in estimating the surplus to be transferred to capital as payment for shares to be allotted as stock dividends.

SECTION 18. Filing Report and Affidavit as to Consideration for Shares. Penalty for Failure to File.

I. Within [30] days after incorporation, and within [90] days after every subsequent allotment of shares the facts in regard to which have not been made public in a report previously filed as required by this Section, the corporation shall file in the office of the [Recorder of Deeds in the county] in which the corporation has its registered office, a report verified by the president or vice-president and by the secretary, assistant secretary or treasurer, and containing:

(a) a statement of the total number of shares allotted up to the date of the report, the number of such shares that have no par value, the number of such shares that have a par value, and the par value thereof;

(b) an accurate, detailed and itemized description of the consideration received or to be received in payment for shares allotted, or allotted since the date of the last report;

(c) a statement of the valuation put by the incorporators, shareholders or board of directors, as the case may be, upon the consideration other than cash received or to be received in payment for shares allotted, or allotted since the date of the last report, and, in case of shares allotted as a stock dividend, the amount of surplus transferred to capital in respect of such dividend, whether all or any part of such surplus was created by a revaluation of assets, and, if so, the value of the assets on the books of the corporation before and after such revaluation, the amount of the surplus or deficit before such revaluation, and the amount of the surplus after such revaluation.
II. For every violation of this Section, a corporation shall be liable to the State in a fine not exceeding [one-tenth of one per cent of the amount of its capital stock] for each day's omission after the time limited for the filing of such report.

SECTION 19. Validity of Shares.

The fact that shares are allotted in violation of, or without full compliance with the provisions of this Act shall not make the shares so allotted invalid.

SECTION 20. Liability of Incorporators, Subscribers, Shareholders, Directors and Officers.

I. A subscriber to or holder of shares of a corporation formed under this Act shall be under no liability to the corporation with respect to such shares other than the obligation of complying with the terms of the subscription therefor; but one who became a shareholder in good faith and without knowledge or notice that the shares he acquired had not been fully paid for, shall not be liable to the corporation with respect to such shares.

II. A shareholder of a corporation formed under this Act shall not be personally liable for any debt or liability of the corporation [except as provided in (here include appropriate references to statutory provisions, if any, imposing personal liability upon shareholders, e.g., liability to laborers)].

III. Nothing in this Act shall be construed as in derogation of any rights which any person may have under the common law or the principles of equity against an incorporator, subscriber, shareholder, director, officer or the corporation because of any fraud practised upon him by any of such persons, or the corporation; or in derogation of any rights which the corporation may have because of any fraud practised upon it by any of such persons.


I. The following persons shall be guilty of misdemeanor and, upon conviction, each shall be fined not more than [$5,000] or imprisoned for not more than [1] year, or, in the discretion of the court, both fined and imprisoned:

(a) any incorporator, subscriber, shareholder or director of a corporation formed under this Act who knowingly and wilfully grossly overvalued the consideration with which subscriptions for shares were made payable;

(b) any officer or director of a corporation who knowingly and wilfully allotted, or consented to the allotment of shares, in violation of the provisions of this Act, or who knowingly and wilfully issued, or consented to the issue of certificates of stock in violation of the provisions of this Act;

(c) any incorporator, officer or director who knowingly and wil-
fully made, or consented to the making of any false statement in any paper filed in any public office as required by the provisions of this Act.

II. For the purpose of this Section, an incorporator, director, officer or shareholder shall be presumed to have consented to the doing of a prohibited act unless he was absent from the meeting of the incorporators, directors or shareholders, respectively, at which such act was authorized, or unless his dissent therefrom was filed at the time in the registered office of the corporation.