

For the following questions, please refer to the General Technology Certificate of Incorporation and Preferred Stock Resolution on the class website.

**1. Certificate of Incorporation**

- (a) Read Article 4(b) of GenTech's Certificate of Incorporation. In the absence of this provision, what would GenTech have to do to issue preferred shares?
- (b) Where else have you seen before this type of provision? Corporations?
- (c) Read the "RESOLVED" paragraph of the GenTech BOD resolution. What is happening?

**2. Voting Rights.**

- (a) Does the GenTech Series A Preferred Stock (Series A) have voting rights? (4(d)(3)).
- (b) In regular corporate matters, is that right significant?
- (c) For which matters does the Series A have a class vote? (4(d)(3)(a)).
- (d) When can the Series A elect its own directors? (4(d)(3)(b)(i)) and (4(d)(3)(c)(i)).
- (e) When do these rights end? (4(d)(3)(b)(v)) and (4(d)(3)(c)(v)).
- (f) Can the Series A elect 4 directors in the case of both dividend and redemption arrearages? (4(d)(3)(c)(i)).
- (g) What is the need for DGCL §242(b)(2)? How does it help to protect preferred shareholders?

**3. Dividend Rights**

- (a) What dividends are the holders of the Series A entitled to? (4(d)(2)).
- (b) Are the dividends obligatory? (4(d)(2)).
- (c) What happens if the dividends are skipped? (4(d)(3)(b)(i)).
- (d) Non-cumulative preferred: Will a court imply a right to a dividend if there are otherwise sufficient profits?

*Here we are interpreting a contract into which uncoerced men entered. Nothing in the wording of that contract would suggest to an ordinary wayfaring person the existence of a contingent or inchoate right to arrears of dividends. The notion that such a right was promised is, rather, the invention of lawyers or other experts, a notion stemming from considerations of fairness, from a policy of protecting investors in those securities. But the preferred stockholders are not—like sailors or idiots*

*or infants— wards of the judiciary. As courts on occasions have quoted or paraphrased ancient poets, it may not be inappropriate to paraphrase a modern poet, and to say that ‘a contract is a contract is a contract.’*  
*Guttmann v. Ill. Cen. RR, 189 F.2d 927 (2d. Cir. 1951)*

#### 4. Liquidation Preference

- (a) What is the Series A liquidation preference? 4(d)(6)).
- (b) Does this give a Series A much protection? What will generally be the financial and economic state of the corporation when a liquidation occurs?
- (c) Is a merger or sale of substantially all of the assets of the corporation a deemed liquidation? 4(d)(6)).

#### 5. Redemption Rights

- (a) Under what circumstances would it be beneficial for a corporation to have a right of redemption?
- (b) Is GenTech obligated to redeem the Series A shares? If so, at what price? (4(d)(7)).
- (c) Can GenTech redeem more shares than it's obligated to redeem? If so, at what price? (4(d)(7) and 4(d)(8)).
- (d) Are there any limits to the optional redemption in 4(d)(8)? (4(d)(8)(a) and (b), skim only).
- (e) Can GenTech purchase Series A shares in the open market? (4(d)(13)).
- (f) What does funds legally available mean in 4(d)(7)? See DGCL §160 and *SVIP v. ThoughtsWorks* (Del. Ch. 2010) on the class web page. See also (d)(12).
- (g) What are other situations in which GenTech can redeem the Series A shares? (4)(d)(9).

#### 6. Convertible Preferred

##### Series C Preferred Stock of Integrated Ventures 10-Q (Nov. 2024):

*Effective January 14, 2021, the Company filed a Certificate of Designation of the Series C Convertible Preferred Stock with the Nevada Secretary of State. The Company has authorized the issuance of an aggregate of 3,000 shares of the Series C preferred stock. Each share of Series C preferred stock has a par value of \$0.001 per share and a stated value of \$1,100 per share. The shares of Series C preferred stock are convertible into shares of the Company's common stock at a conversion price of \$8.50 per share.*

- (a) What is the conversion price?
- (b) What is the conversion ratio?