2)
(1) Bill does not have a preemptive right to purchase any of ABC's unissued shares. The first issue is whether a preemptive right exists. Under Texas law, for companies formed after September, 2003, Preemptive Rights must be stated in the Certificate of Formation or they do not exist. Here, there are no facts to indicate that the Certificate includes that language so we must assume that it does not. The next issue is whether Bill's letter to ABC's treasurer is irrevocable. When a shareholder disclaims his right to exercise preemptive rights in a writing, it is not revocable unless the corporation decides to accept the revocation. Here, Bill wrote a letter to ABC telling them that he did not want to exercise a preemptive right. Unless ABC decides to accept his later request to change his mind and the preemptive right language is in the Certificate of Formation, Bill does not have a preemptive right to purchase any of ABC's unissued shares.

(2) If Bill could establish a preemptive right, he would have the right to purchase 300 shares. The issue is how many of the 5,000 shares Bill would have a right to acquire. The rule is that preemptive rights can be exercised in proportion of the shareholder's ownsership. However, that right only applies to shares issued for money, and does not apply to shares issued as compensation or an exchange. Here, ABC is giving 1,000 shares to its president as compensation and another 1,000 shares to a vendor in exchange for equipment. Bill cannot exercise a preemptive right as to those shares. However, ABC is selling an additional 3,000 shares to the public. Bill currently owns 10% of ABC's issued stock and therefore he would have the right to purchase 10% of the 3,000 shares, or 300 shares.

(3) Yes, Bill can require ABC to pay him for his shares due to his right of appraisal, so long as he follows the proper procedure. The issue is whether ABC's proposed merger would entitle Bill to have ABC acquire his stock. The general rule is that certain fundamental corporate changes in corporations that are either not traded on a stock exchange or have 2,000+ shareholders, trigger a right of appraisal. To exercise that right, the shareholder must notify the corporation of his intent to exercise his right along with his estimate of the value, he must abstain from the vote or vote against, and within 20 days after the vote he must must sumbit his request. The company can either agree to his valuation, or counter. If that doesn't work, an independent appraiser can determine the value. Here, the corporation is looking to merge with another, which is considered a fundamental change. Furthermore, ABC is not listed on a stock exchange nor does it appear to have more than 2,000 shareholders. Therefore, Bill can require ABC to pay him for his shares.

2)
1. Bill does not have preemptive rights to pruchase any of ABC's unissued shares.

A corporation is an entity comprised of shareholders, a booard of directors, and officers. It is essntially a series of relationships. A corporation must be filed with the Texas Secretary of State. The corporation comes into existence when the certificate of formation is filed with the Secretary of State. The shareholders essentially own the corporation. They vote in the board of directors and can also fire them. They exercise their ownership through stocks. Here, Bill owns 500 shares of ABC, thus his ownership of ABC is 10%.

Preemptive rights allow a shareholder to purchase new stock as the company issues it in proportion to their ownership rights. The idea is that the shareholder can maintain their percentage of ownership in the company before the company sells the stock to the public. The shareholder can purchase whatever amount of the newly issued stock is necessary to maintain the shareholder's interest. Certain stocks are not subject to preemptive rights: stocks issues for compensation for services or for payment to a company official may not be purchased to satisfy preemptive rights. Further, preemptive stocks must be provided for in the COF as of 2003. That is, before 2003, preemptive rights were assumed a right of the shareholders, but after 2003 a corporation must opt in to allow shareholders to exercise this right. Preemptive rights may be waived. If the waiver is oral, it is not binding and may be revoked. However, if the waiver is written it is binding and irrevocable.

Here, Bill does not have preemptive rights because he wrote to ABC's treasurer stating that he did not want to exercise his writes. Even though he changed is mind and called the treasurer later, this was not an effective revocation of the waiver because his inital waiver was written. Thus, Bill does not have preemptive rights. Further, the facts inidcate the ABC was formed in 2005. As this is after the 2003 rule that preemptive rights must be provided for in the COF. we would need more facts to know whether ABC complied with this. However, since Bill exercised his waiver, it is presumed that ABC did opt in.

2. If Bill could establish a preemptive right, he would have the right to purchase 300 shares.

A shareholder may exercise his preemptive rights in order to maintain the proportion of his or her ownership interest in the company. As mentioned above, stock for payment of compensation is excluded from preemptive rights. Here, Bill owns 10% of ABC Corp. ABC then issues the rest of its 5,000 shares, but gave 1,000 to its president as compensation, and 1,000 shares to a vendor in exchange for equipment. Thus, these shares are not subject to Bill's preemptive rights. However, the 3,000 shares issued to the general public are. Thus, to maintain his interest, BIll is entitled to purchase 10% of the 3,000 shares, or 300 shares.

3. Bill can require ABC to pay him for his shares, and he must give notice, not vote in favor of the merger, and demand payment.

A merger is a fundamental corporate change whereby one company buys out another and mergers with it. As a funamdental change, a merger requires a 2/3 majority vote by the corporation's shareholders. A shareholder is entitled to vote in these change as of the record date, and must be given notice of the merger before hand with an outline of the merger and how it will work. A shareholder is entitled to dissent from the fundamental change of a merger. In order to dissent, the shareholder must make sure that his objection is noted in the meeting

minutes, not vote in favor of the merger, and send notice to the corporate officers of his dissent. In addtion, a dissenting shareholder may require the corporation to pay him for his shares by execising his appraisal rights when a fundamental corporate change happens. A shareholder may not do this if the corporation is registered on a national stock exchange, as the idea is it would be easy for the shareholders to get rid of the shares that way. In order to exercise appraisal rights, the TBOC requires several steps. First, the shareholder must notify the corporation that he intends to exercise his appraisal rights. Then, he must not vote in favor of the fundamental change. Next, he must send a demand for payment on the company treasurer and officers within 20 days. After that, the corporation has 90 days in which to respond to this demand for payment. If the company and shareholder cannot decide on a price, then generally it will be fair market value.

Here, Bill may exercise his appriasal rights and require ABC to pay him for his shares. If he sends notice to ABC officers of his intent to dissent and demand payment, does not vote for the merger, and sends a demand for payment 20 days after, then ABC must respond and pay him for his shares.

2)

1. Bill does not have a preemptive right to purchase any of ABC's

A preemptive right allows a current shareholder the first chance to purchase unissued shares, upon the corporation's announcement of issuance, in porportion to their current holdings, to maintain their percent of ownership in the corporation. The shareholders (SH) of corporations formed before September 1, 2003, had an implied preemptive right to purchase unissued shares upon the corporations, to prohibt this implied right the certificate of formation must have expressly disclaimed this right. However, the certificate of formation (COF) of coprorations post September 1, 2003 must expressly reserve this right to the shareholders in order for them to demand the right. Absent evidence of the express reservation of a preemptive right to purchase SH of post Sept. 1, 2003 corporations do not have a preemptie right.

Here, ABC coproration was formed in 2005. ABC falls under the presumption of no preemptive rights unless expressly stated in the COF. Based on the facts presented to us, there is no idication of the contents of ABC's COF or that the corporation expressly reseved preemptive rights to the shareholders. As such, Bill does not have a preemptive right.

Additionally, a preemptive right to purchase may be waived eithe in writing or orally. A written waiver of a shareholder's right to purchase is irrevokable but an oral wavier is revoakble if done so before the corporation has relied upon that oral waiver. Here, even if Bill could establish the express right to purchase the shares has wavied that right through his written letter to the Corproation stating that he does not want to exercise that right. Because it is writing it is irrevokable. Regardless, because the corporation was formed after 2003 and the lack of express statment in the COF of the preemptive right to purchase unissued stocks Bill does not have a right to do so.

2. If Bill could establish preemptive rights he would be entitled to purchase 300, (10%) of the unissued shares.

As stated above, a preemptive right allows a current shareholder the first chance to purchase unissued shares, upon the corporation's announcement of issuance, in porportion to their current holdings, to maintain their percent of ownership in the corporation. However, this right excludes various classifications of shares. The following shares are exempt from preemptive rights. Shares issued within the first 6 months of formation, shares given to directors, officers, employees, agents or vendors as a form of compensation, or preferred non- voting shares. Here, ABC as a total of 5,000 shares of unissued stock. ABC is giving the president 1,000 as compensation, and 1,000 to a vendor in return for equipment, another form of compensation. Both are exempt from preemptive rights. This leaves 3,000 share of unissued stock to sell to the public. Bill intial owned 10% or 500 shares of the corporation accordingly he is entitled to 10% of the remaining 3,000 shares sold to the public. If Bill could stablish preemptive rights he would be entitled to purchase 300 shares.

3. Yes, Bill can require ABC to pay for his shares.

Under the TBOC a sharehold has an apprasial right to demand payment from the corporation for its shares unpon a fundamental change. A merger is considered a fundamental change. Upon notice of the shareholder meeting, to invoke appriasal rights a SH must send notice of his dissent to the corporation president and secretary. Additionally, the SH must not vote in favor of the merger at the SH meeting. Following the meeting, if the merger is approved the SH has the right to demand payment of his shares from the company. The SH must send notice of this right within 20 days of notice of the merger. They must send a demand letter to the president and

secretary of the corp. stating the number of shares they current own, an estmatived fair market value (FMV) of the shares and provide their name and address for further communication and information regarding appraisal rights to be sent to. If the corporation agrees with the requets fair market value proposed by the SH they have 90 days to intiate payment, the corporation may also counter the FMV, if the corporation counters and an agreement is reached the corp has 120 days to intiiate payment. If the two parties cannot come to an agreement a court order may be requested to establish the FMV of payment.

Here, ABC's merger is considered a fundamental change. As such Bill may invoke is appraisal rights Upon notice of the shareholder meeting Bill must send notice of his dissent to the corporation president and secretary. Additionally, Bill must not vote in favor of the merger at the SH meeting. Following the meeting assuming the merger is approved Bill has the right to demand payment of his shares from the company. Bill must send notice of his decision to invoke this right within 20 days of notice of the merger. He must send a demand letter to the president and secretary of ABC stating the number of shares he currently own, an estimated fair market value (FMV) of the shares and provide his name and address for further communication and information regarding appraisal rights to be sent to. If the ABC agrees with the requets fair market value proposed by BIll they have 90 days to intiate payment, ABC may also counter the FMV, if the it counters and an agreement is reached ABC has 120 days to intiiate payment. If the two parties cannot come to an agreement a court order may be requested to establish the FMV of payment.