

This examination covers Introduction to Forms of Business Entities through Duty of Care (Chapters 1-10).

You will have **3 hours** to complete this exam. This examination will test your knowledge of the materials that we covered in class. Please answer each question concisely. Please use headings, underline issues and rules, as this will help you organize your thoughts, spot and frame the legal issues, and present the rules and doctrines clearly. Try to answer all questions with complete sentences. Do not use abbreviations, other than those commonly used for each business organization (like LLP). Answer all questions presented. If you cannot answer a question completely, answer as best you can. Partial answers will be given partial credit. Please write clearly. **Good luck!**

PART I (50 POINTS)

Answer the following questions:

1. Define the term *limited liability*.
2. What is an exculpation Statute, why did some States enact them, and what are the three types of exculpation statutes?
3. List as many factors you can that are considered in deciding whether to “pierce the corporate veil.”
4. What is needed in order to form a partnership?
5. Is there one valuation formula that is appropriate for all businesses. If not, why not?
6. Discuss what makes evaluation of shares in closely held corporations complex, and the nine methods for determining prices.
7. What information is typically required by various states’ statutes to be included in the corporate Articles of Incorporation (Charter)?
8. What is a Pre-incorporation Agreement, its purpose, objective, and three principal items it should include?
9. Discuss the “Internal Affairs” doctrine.
10. Explain liabilities of corporations on Promoters’ contracts.

PART II (50 POINTS)

In 2012, Amy, Bob and Charles, former college roommates at Sonoma State University celebrate Bob's 35th birthday with a dinner at *Catelli's* in Geyserville. While catching up on what they have been doing since graduating, they start talking about wanting to leave their current jobs, and how they still share a love of pets (in college, they took in several rescue animals). They are excited about trying a new idea and begin talking about working together.

Amy has a patent on a Cat Collar Tracking Device (CCDV), whereby only the particular cat living in your house can enter through the cat door (using microchip technology). The pet industry is a fast growing business. Last year, pet products accounted for \$60.59 Billion spent in the US. At an average \$2 billion annual growth consistently for 20 years (from \$17 Billion in 1994), the friends feel that this trend is likely to continue to grow, and that anyone able to innovate new products has much to gain. They want to be the go-to pet industry innovator, creating innovative solutions for animal lovers everywhere. They want to name their company PetPeeves.

To pitch their idea to investors they ask all their families and friends to answer a survey (anecdotal stories and preferences) about ideas for new pet supplies they might like to buy, and industry data to analyze the opportunities. http://americanpetproducts.org/press_industrytrends.asp

Amy currently works for Prudential Financials in Des Moines, Iowa, and offers to start up production of her patents, as well as invent new products. Bob is currently in sales in Atlanta, Georgia, and thinks he can secure funding and sell pet products. They ask Charles if he is interested in their idea. Charles is. He too moves back to Sonoma, but he keeps his national part-time marketing job with Pet Smart. He offers to do PetPeeves website, sales platform and marketing.

Sam Miller (SM), Charles' uncle, is a business partner at Eastern Farms, a local pet store. When Charles tells his uncles about the project, SM agrees to invest in the new business venture, if he can get the first dibs on selling their products in his store. They set out to find a business location for manufacturing. Driving around one day with a commercial real estate agent, Amy find suitable manufacturing space in an industrial complex at Airport Business Park, close by the microchip manufacturer SoChip.

SM will also invest \$50,000 in the new business, in exchange for quarter interest in the business. Charles pays the first two months' rent with his own check book. SM then offers the three friends to use SM's own personal lawyer for the initial planning of the business.

The three college friends now come to you, a seasoned business lawyer, asking (1) whether they should retain SM's lawyer, (2) the various business organizations available to them, with the pros and cons of each, and (3) what if any particular provisions you think they should make sure to memorialize to get the business off on the right foot (not puns about paws, please).

This year, 2015, with PetPeeves up and running, a cat gets stuck in one of the newer versions of the cat door (a new, cheaper chip malfunctioned.) While the cat luckily survived, one leg had to be amputated, and the pet owners were quite traumatized by it all, and the vet bills are significant. They are suing PetPeeves. Please discuss what liability, if any, PetPeeves is exposed to.

END OF EXAMINATION