

Business Organizations

Fall 2010

Professor McCann

Midterm Examination Issue Outline

ESSAY QUESTION

The question called for a discussion of the following:

1. Discussion of the considerations in choosing the appropriate Business Organization going forward for A, B, and C.

Nature of the Venture and Constraints Affecting Choice of Entity

High risk nature of rodeo business

Different control requirements among the co-venturers

Different participation requirements

Different need for salary vs return on investment

Partnership

Advantage in terms of simplicity

Advantage in terms of income tax flexibility

Key disadvantage personal liability given nature of the risks of the business (although could be mitigated by insurance)

Less flexible with respect to safety issue of Carl's investment.

LLC

Advantage in terms of ease of operation

Advantage in terms of limited liability

Disadvantage in terms of need to maintain good standing with state

Advantage in terms of attracting additional capital.

Alice as w-2 employee, Bob as consultant, Carl as either lender or preferred shareholder (with guaranteed dividend)

Corporation

Disadvantage in terms of ongoing need to adhere to formalities

Advantage in terms of ability to craft rights and duties of shareholders

Recognized form eases ability to attract capital

Limitations as to nature of capital that can be exchanged for stock

Limited liability provided adhere to formalities

Alter ego (piercing veil) issue if undercapitalized or commingle

Alice as w-2 employee, Bob as consultant, Carl as either lender or preferred shareholder (with guaranteed dividend)

2. Discussion of exposure for pre-formation liabilities:

Under what theories is there personal liability

How can this exposure be addressed

Possible liability for trademark/service mark infringement