

Discussion Questions Business Associations 1

Each person will be assigned to answer and present on a problem, explaining their response and why. You will be graded on the thoroughness of your explanation and correct statement of the applicable principles or rules. Maximum points: 10 points.

[2 person]

Question 1) This question relates to ABC Management Consulting and relies upon the client interviews of Andrew and Carla in the Facts folder. Assume that Andrew and Carla decide that they want to set up some kind of a partnership in Oregon to combine their law practices, distinct from the management business.

What type of legal entity would you recommend for Andrew and Carla, and why? Explain your answer based upon the advantages of the legal entity selected and what steps need to be taken to effect their intent.

Hint: There are four types of partnerships: 1) General Partnership; 2) Limited Partnership; 3) Limited Partnership with a corporate general partner; and 4) Limited Liability Partnership. However, there is a restriction in the nature of the business that will preclude them from forming all except one of the forms.

Help: Remember that lawyers cannot practice with nonlawyers under the same entity.

Facts: ABC MANAGEMENT CONSULTING

Andrew, Bob and Carla are interested in starting ABC Management Consulting Firm (ABC Management), employing two associates, and two secretaries. The firm provides management-tax consulting services to businesses including billing, tax planning, and computer systems design and management. It is designed to be a one-stop shopping for small businesses where all administrative and legal services are handled by a single firm or entity. Legal services shall be handled individually by lawyers who are affiliated with the firm since non-lawyers are prohibited from practicing law with lawyers. Andrew has found a small office building owned by Devon that is centrally located to house the firm. Bob has contacted Edward, an authorized dealer, to purchase computer and office equipment..

These are the transcripts of the parties' initial interview and private facts.

ANDREW THOMPSON

"Hello, my name is Andrew Thompson. I have been a corporate lawyer for 15 years. I have also advised clients on nonlegal business matters. You could say I have been rather successful. My practice has grown beyond my wildest expectations."

“About a year ago, some of my clients asked if I would consider setting up a business to services all of their needs. It seemed like a good idea, so I started ABC Management Consulting.”

“I have approached Robert Crawford to join me. I taught an entrepreneur class at one of the local business schools and he was also an adjunct. He is exceptionally bright and is into international trade, which some of my clients are moving into.”

“I want to continue to service my own clients and handle the legal work of any new clients. Bob will take over the nonlegal work. Carla, a long time business associate and tax lawyer, will handle tax matters.”

“I want to receive 40-45 percent of the profits, depending upon how we structure the relationship. I intend to be managing partner in the firm. I will invest \$50,000 in the firm, on the condition that I receive half of my investment back with interest within two years. I want to minimize my liability, and I don’t want to have to make any additional contributions.”

Private Facts:

"I tend to live above his means. The \$50,000 I am investing in the firm is a loan from one of my clients. I have made assurances that I can repay it within 18 months. I am good at getting clients and closing deals, but tend to be less effective in doing the work. I tend to spread himself too thin.

I am behind in his work, missing key deadlines for clients. I am fearful that I may lose my clients and have made representations that I am bringing in more people. My clients have stuck by me because I can deliver. I have made some big money for some of my clients and want to help them invest it internationally in exchange for a piece of the action. Carla was a former lover and I want her back. When I approached her about working with me, she said she would consider it, but only if no one else knew about their previous involvement. She is smart and was a big help to me when we were together. I messed it up because I had trouble dealing with her intellect. You have handled a variety of matters for me over the years."

CARLA GREGORY

"My name is Carla Gregory. I have a small tax practice and I have been running a paralegal school for 15 years. I have done pretty well for myself, but am getting bored and would like to get into something else."

“Andrew, a former classmate and long time friend of mine, approached me about joining him in a management consulting firm. It sounded appealing, but I know Drew, and am not sure we could work together as partners. He thought it would be a great idea and that I could continue running the school. I told him I would consider splitting my time between the school and the firm, working part-time as a consultant, or as a partner, until

we see if it will work. I proposed that we negotiate a deal where I would lease office space and get a referral fee for my clients. I will handle tax matters for other clients on a contract basis. I would want to be able to set up a program so that students from the school could intern at the firm or get an initial placement after school. “

“If things work out, I would consider buying into the firm for \$10,000, and would want a 25-30 percent share of the profits.”

Private Facts:

"I consider myself an entrepreneur and tend to have my hands in a lot of baskets. I get bored easily. Some people think I tend to shy from making any firm commitments. I would prefer to just lease space from Andrew and provide some job experience for my students. Quiet as it is kept, Andrew and I use to date. It was a difficult break-up. He hurt me. I can't say I am completely over it. I also am not sure I want to get involved with him again and open myself up to getting hurt again. No one knows about our relationship and I think its best that way. At least for the time being."

"Andrew is very talented, I have to admit. He will probably do well. I could see myself investing in the business at some point. If things go well, I may be willing to become a partner, but I need to see whether we can have strictly a professional relationship. I have started seeing someone but it is nothing serious. I don't know. If he came back, I am not sure what I would do. I came to you because of our friendship. You are one of few people who believe in me and what I am trying to do."

[2 persons]

Question 2) The next question relates to the case study on ABC Management Consulting. Based upon the public and private facts known about Andrew, Bob, and Carla; would you recommend that Andrew, Bob and Carla form an LLC for the consulting firm? Answer the question based upon their tax and nontax interests, conditions, constraints, and contributions. Explain your answer.

Hint: Make a chart of each person's interests, contributions, conditions and constraints.

Help: Compare the chart created against the advantages and disadvantages of an LLC below.

LIMITED LIABILITY COMPANIES

ADVANTAGES

No member is personally liable for debts, liabilities and LLC obligations.

Flexibility in allocating responsibilities and accommodating diverse interests.

Check box tax treatment as a partnership or corporation for tax purposes.

Can have unlimited number of members and include foreign investors.

Can have a single layer of taxation.

No formalities after initial set up.

No waiting time to switch tax election from partnership treatment to corporation, but must remain a corporation for 60 months.

More flexibility in accommodating members' interests, e.g. passive investors and active investors.

Can have multiple classes of ownership.

DISADVANTAGES

More complexity in formalities and structuring than a partnership.

Lack of uniform state laws regarding treatment.

State must authorize by filing articles of organization.

Minimum state franchise taxes; and corporate rates may be lower for some tax brackets.

Most states have default provisions regarding corporate or partnership treatment.

In some states, it may dissolve upon death, resignation, withdrawal, and bankruptcy unless members agree to continue.

Not very appropriate for large, public companies.

Assignment of interests confers an economic interest without the right to participate in the management.

FACTS:

ABC MANAGEMENT CONSULTING

The following are transcripts of the parties' initial interviews and private facts.

ANDREW THOMPSON

"Hello, my name is Andrew Thompson. I have been a corporate lawyer for 15 years. I have also advised clients on nonlegal business matters. You could say I have been rather successful. My practice has grown beyond my wildest expectations."

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"I want to continue to service my own clients and handle the legal work of any new clients. Bob will take over the nonlegal work. Carla, a long time business associate and tax lawyer, will handle tax matters."

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ANDREW'S PRIVATE FACTS

"Some people would say that I tend to live above my means. [pause] To be honest, the \$50,000 that I am investing in the firm is a loan from one of my clients. I have got to make this work. I've made assurances that I can repay the money within 18 months. I am good at getting clients and closing deals, but I really don't want to do the work. I have a lot on my plate. Perhaps too much right now. "

"I am starting to fall behind in my work, missing key deadlines for clients. I can't afford to lose any more clients. I have already told them that I am in the process of bringing in more people. Most of my clients have stuck by me because they know I can deliver. I have made big money for them. Now I want to help them invest it for a piece of the action."

" [pause] Carla is good. We had a thing for a while. Man, I would love to get her back. I messed up and let her slip away. I have been talking to her, not about that. Just about working in the firm. She said she would consider it, but only if no one else knew about us and what we had. I said okay. She is smart and was a big help to him when we were together. I messed it up because I had trouble dealing with her intellect. She can really be a pain sometimes. "

" I came to you because you have handled other matters for me over the years."

BOB CRAWFORD

"Good afternoon, my name is Robert Crawford. I recently graduated from Wharton Business School with a Masters in Business, with a concentration in International Relations. I have been adjunct teaching at Pacific Western Business School until I find something permanent so that I can pay off my school loans. I would really like to be an entrepreneur, but I don't have any money. Andrew has approached me about him. The offer sounds intriguing, but I would only want to do it if I could get a salary of \$ 2,500 per month and get an equity interest of 10-15 percent in the firm. I am looking to make a commitment to helping the firm grow, if I can get some assurance of increasing my interest in the firm in the future."

" I recently got married to a lady who started business school after me . We have talked about doing something together and I would like to see that she has an opportunity to work in the firm when she graduates. We also want to start a family in the near future, so I would want to provide some security so that my family will be provided for something happen to me. My wife is smarter than me, so I have no problem with any conditions Drew might want to impose upon her performing at a certain level. I am psyched about the opportunity and and am ready to get started."

BOB'S PRIVATE FACTS

I think I am very capable at what I do. However, my wife puts a lot of pressure on me to make money. I consider myself to be a free spirit, not caught up with making a lot of money. If I had my way, I would be satisfied working in Corporate America and getting a steady pay check, rather than assume the risk of being an entrepreneur. My wife is more the risk taker, but can be reckless and is unrelenting in wanting to move up the social and professional ladder. My wife is more capable than I am. While I think I am smarter than my wife, it is usually easier to let her have her way than argue with her . Some people say I lack the confidence to stand up to her, but I think I have a lot of potential. It is she, not me, that really wants to be a part of the firm. I found you through a friend of a friend. You are aware of my situation through your friend.

CARLA GREGORY

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[2 persons]

Question 3) Assume that Andrew and Carla decided to create a limited liability partnership for their legal practice. Andrew, Bob and Carla are now focusing on the business entity for the management firm. In light of the pros and cons of creating a close corporation, would you recommend that they form a close corporation for the consulting firm? Explain your answer.

HINT: Assume that Andrew and Carla will either be shareholders in a corporation that contracts with the limited liability partnership for the provision of legal services, OR partners in a related limited liability partnership that contracts with the professional limited liability partnership for the provision of services. The reason to create a separate legal entity for the management firm is that in a limited liability company, professionals cannot practice with nonprofessionals or members from other professions. Andrew and Carla would, therefore, have distinct interests in both entities.

HELP:

The advantages and disadvantages of the corporate structure are summarized below:

CORPORATIONS

ADVANTAGES

Limited liability of shareholders for business debts.

Perpetual existence.

Shares are freely transferable.

Easier to raise money by selling shares.

More flexibility in tailoring ownership interests to special needs of the investors.

May be taxed as a partnership with limited liability through Sub S election.

Employee fringe benefits (insurance, sick pay, retirement) are more readily deductible.

DISADVANTAGES

May be subject to double taxation.

More formalities and cost, i.e., filing articles, drafting by-laws, and payment of fees.

Must maintain accurate records and make periodic filings.

Harder to dissolve.

More layers of centralized management.

Higher taxes on business income from \$100,500 and \$335,000.

Maximum tax rate on corporate long term capital gain (35%) is higher than for individual long term capital gain (15%)

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[Everyone will discuss]

Question 4) This question refers to the Case Study on TDH, Inc. Tom, Dick, and Harry are equal shareholders in a close corporation and have been operating for the past five years. Each of the shareholders receives a salary as an officer in the corporation. All earnings from the company have been reinvested back into the company so there is a cash reserve of \$100,000, although the books have not been adjusted accordingly. The fair market value of the company is currently \$500,000.

Assume Tom dies, and Tom's wife, Lola, wants to assume his role in the company. His wife has no experience in the business and would not be perceived as an asset to the company. Tom's sister, Sally, wants cash out of the business. Dick and Harry are willing to buy Tom's interest out, but do not have the cash; they would have to borrow the money from a bank or get it from the corporation.

Dick and Harry seek your advice on what to do. Review the alternatives below and select the top three options that you believe would be best for all of the parties and have the least adverse tax effects. Assume that you represent TDH, Inc. and will be successful at convincing Lola to accept a buy-out in lieu of her joining the business.

ALTERNATIVES

Alternative 1: If Dick and Harry buy out Tom's interest and they get the money from the corporation, then it will be taxed as a distribution.

Alternative 2: If the corporation repurchases the shares, there will be a reduction in cash and the shares will become treasury until they are cancelled or sold; however, Dick and Harry's interest will remain the same.

Alternative 3: If the corporation redeems the shares, there will be a reduction in cash and the shares will cease to exist. This means that Dick and Harry's pro rata's interest will increase to offset the reduction.

Alternative 4: If they do some combination of the above, the shareholders and/or corporation may also be able to get a note payable over a term-- which will result in the shareholder being taxed on the gain from the sale only as proceeds are being received. Dick and Harry can agree to purchase the balance that the corporation cannot afford.

Alternative 5: Change the capital requirements to create a surplus with the \$100,000 in reserve on the corporate books so that the corporation has the money to purchase Tom's shares. The shareholders could agree to contribute additional capital as is necessary.

Alternative 6: Sell some of the assets to the deceased family and then lease them back to the corporation, so that the family receives lease payment but the corporation has use of the asset. You need to determine if the assets' value is necessary to enhance the financial stability of the company, e.g., an asset that can be collateralized if it is owned out right.

Alternative 7: Distribute assets other than cash to pay the amount. However, be mindful to properly value the asset and determine the tax consequences.

Alternative 8: Pay Lola as the spouse, a death benefit. However, the corporation would have to provide for a death benefit up front and make it available to all shareholders.

HINT: You should select options that have the least adverse impact on the corporation and Dick and Harry.

APPLICABLE RULES

Rule 1: There are tax advantages in structuring the transaction so that the corporation, not the shareholders are purchasing the shares. If the corporation redeems the shares then they are using corporate assets to buy the shares and nobody is taxed on the distribution of the corporate funds as a shareholder distribution.

Rule 2: Pursuant to IRC Section 2703, the IRS will look at a number of factors: 1) whether the value is fixed or determinable and reasonable; 2) whether the estate is obligated to offer to sell the shares at an agreed upon price pursuant to a buy-sell agreement; 3) whether the obligation is binding during the decedent's lifetime; 4)

whether the contract to purchase the shares is a bona fide business transaction; 5) whether the transaction is a way to pass the shares to the natural objects at a discount; and 6) whether the transaction is comparable to other contracts.

HELP: Select an option that does not totally deplete the company's cash; but allows Lola to receive fair value for Tom's interest.

1 person

Question 5) What is the level of risk and control that each person would likely want in the alternatives below, and how would you effect their interests in terms of allocating their contribution as debt or equity? Are there any other special provisions that you would include to protect their interests?

ALT 1: A is a retired military who is a widower. His contribution is his nest egg. He relies on social security and disability payments, owns 2 apartment buildings. He is 60 years of age and in fair health.

ALT 2: A is a real estate attorney, with a profitable practice from which he receives a salary of \$120,000. He has other investments that bring in \$10,000 a year, is 32 years of age, and is looking to retire by the time he is 40 years of age.

1 person

ALT 3: B is a recent college graduate with \$60,000 in school loans. He is single and wants to use the business to create a chain and eventually franchise the store. He receives \$2,000/month from a trust.

ALT 4: B is a high school graduate who has hustled all of his life. He is recently married with a young child. He owns his own house and has invested in rental property, from which he receives \$1,000.

AB SOFTWARE (Each person complete and we will discuss in class)

Facts: A is contributing \$100,000, no additional contributions, veto power, no salary. B is contributing \$10,000 plus sweat equity, salary of \$5000/mo., no cash contribution, interest for cash, past and future services.

If A and B were to select either an LLC or a closely-held company, how would you allocate the contributions of A and B in terms of debt and equity and other critical terms of their agreement?

Debt	A	A	Equity
			Type
Secured			Class
Convertible			% Voting
Trigger			Preference on distribution
Interest Rate			Preemptive Right
Term			Buy-Sell Agreement
Default Conditions			Right of 1 st Refusal
Debt	B	B	Equity
			Type
Secured			Class
Convertible			% Voting
Trigger			Preference on Distribution
Interest Rate			Preemptive Right
Term			Buy-Sell Agreement
Default Conditions			Right of 1 st Refusal

Question 6)

TAX HYPOTHETICALS-Based upon Tax Rate 2004

1) If Anthony has earned \$80,000 in income, then at the individual rate (married filing joint return), he would pay in taxes \$16,310, i.e., \$5,535 + \$10,775 [$43,100 \times .25$]. While the marginal rate is 25%, the effective rate is 20% ($16,310/80,000$).

2) Anthony is the sole shareholder in a corporation that earns \$80,000 in taxable income without any distributions of dividends. The marginal corporate rate is 34%. The tax is \$15,450. i.e., \$13,750 + \$1,700 [$5,000 \times .34$]. The effective rate is 19% [$15,450/80,000$].

1 person

Q: Would it make a significant difference from a tax standpoint, whether the earnings would be taxed individually to Anthony, or to the corporation?

Q: What would be the critical issue from Anthony's standpoint?

3) If Anthony received a salary of \$50,000, then the salary would be deducted by the corporation as a business expense, but would be taxed to Anthony individually as income.

If this was the only income Anthony received with no offsetting deductions, then Anthony would pay a tax on his salary of \$8,810, i.e., \$5,535 + 3,275 [$13,100 \times .25$].

4) If the corporation earned \$50,000 in income, then the corporation would pay \$7,500 ($50,000 \times .15$) in taxes.

5) If A received \$80,000 from the sale of a capital asset that qualified for capital gains treatment, then Anthony would pay \$20,810 i.e., \$8,810 [salary] + \$12,000 [$80,000 \times .15$]

1 person

6) If Anthony was the sole shareholder, and the company was planning a major expansion of the business that would result in a \$50,000 loss in the next year, what steps, if any, would you suggest the board consider?

7) If Anthony earned \$300,000 in income, having made the Subchapter S election the previous year, then his individual marginal rate would be 35%. Compute the tax and effective rate?

8) If the business had not elected Subchapter S, then the corporate rate would be 39%. The tax would be \$100,250, i.e., \$22,250 + \$78,000 (200,000 x .39). The effective rate is 33%.

Q: What advice would you give Anthony about the impact of the Subchapter S election.

5 persons: 1 person for each question

1) Prescription Drug Is a manufacturer of PMS and menopause-related treatment. The industry is subject to heavy government regulation by the FDA, including extensive trial tests, documentation and consumer information, and strict liability for negligence in handling or dispensing the drug. Company has 4 departments and a heavy investment in research and development. Investors include individual chemists and scientists who are leading experts in this field of research, university and institutional investors pharmaceutical companies.

2) Group of 5 lawyers who have a varied corporate law practice in related and complementary fields. They propose to divide profits and losses in accordance with valuations assigned to client lists, cash investments. Their practice requires that they issue opinion letters on the feasibility of deals. They will have 4 associates on an independent contract basis based upon billable hours and an hourly rate of \$75.00, and 2 salaried secretaries and 1 office manager.

3) Writer is a writer and producer of programming for television wants to break into computer software and intends to join forces with Programmer, a computer programmer who has the technical skills. Marketer wants to work part-time marketing their programming to studios and publishers. There are rules governing agent fees for commercial programming but not for designs for computer programs. Marketer would like a percentage fee and/or ownership in the production company.

4) A group of four college roommates decide to develop three lots: one for commercial and two residential multi-family dwellings. Only two of the four roommates have any experience in real estate development, one as a marketing agent and the other working for an engineering firm. The other two have experience in banking, and retail sales and \$10,000 each. They do not have enough money to develop all of the lots at the same time, so they will develop and finance them in stages. They propose to sell units to up to 90 passive investors total (30 investors per lot) who are looking to take the initial losses and profits from the business. Some investors want to invest in the commercial, but not the residential development. They are looking for an income

stream. Banks will require personal guarantees of all of the roommates. Some of the investors may be foreign aliens. As part of closing, title insurance will be obtained and they intend to use bonded contractors.

5) A computer programmer has started a home-based business developing storing and maintaining secure database files for small companies, and performing administrative support services such as billing and processing purchase orders, employee records, and system support. Most of her work requires her to go to the site or access computer networks remotely, through a dedicated DSL line. She relies upon income from her business and other contract part-time work troubleshooting and administration of system networks for a manufacturing company. There is no conflict of interest in doing both work.

**Questions on the Business Judgment Rule in Derivative Actions
and Self-Dealing**

1 person

Question 1: AB Auto Corp is a publicly held corporation under the laws of Somewhere, that follows the MBCA. The company manufactures automotive parts. Last year, AB's board approved a \$5 million loan to Auto Interests Committee, a lobbying entity whose interests are to protect the rights of auto makers. The committee was organized by Andrew Jr., nephew of Andrew, who is a majority shareholder of AB Auto Corp. Andrew controls the board, even though Bob has guaranteed seat on the board. There are currently two vacancies on the board. A meeting is scheduled to elect new directors. An accounting showed that a lot of the money was used to pay the organizers and for travel expenses. The loan is now delinquent and Bob's wife, Carla, who is now a minority shareholder wants the corporation to take action to collect on the debt.

- a) Does Carla have to make a demand of the shareholders of AB Auto Corp?
- b) Does Carla have to make a demand of the board of directors?
- c) Advise Carla on whether she should make a demand first or file suit.
- d) Assume that Carla does not make a demand on the board but files a derivative action. What must the corporation do in response?
- e) If they elect to appoint an independent committee to investigate, and the committee in consultation with outside counsel votes not to proceed with the litigation, what should they do and what will be the likely response from the court?

1 person

QUESTION 2: If Andrew owns 95% of the shares of a corp. (disregard if it is publicly held or close 'cause the rules are the same), and the remaining 5% is owned by family members.

- a) Can Andrew elect himself president?
- b) Is it a breach of fiduciary duty?
- c) Can Andrew decide to pay himself a \$500,000 salary? What test will be applied?
- d) What if Andrew was not a majority shareholder and the board approved the compensation plan? What test will be applied?
- e) What if he redeems his shares at slightly above the market (but reasonable) but does not allow the 5% shareholders to do so? What test will be applied?
- f) What if a dividend is paid proportionately to everyone but the amount is based upon the money lost by Andrew in gambling debts?

QUESTION 3: Directors of AB Corp. offer to sell to the corporation a piece of land owned by a family trust for a high price. What standards are applicable?

REVIEW QUESTIONS
CORPORATE OPPORTUNITY DOCTRINE

1 person

1) Director learns that the company is going to expand the plant, so he goes out and buys the adjoining land. Is that a breach under any of the tests?

2) If he secretly sells it back to the corporation at a profit, is that a breach?

1 person

3) If he is aware that the company is interested in drilling oil and leases land adjoining to the property, is this a breach?

4) If the director buys land adjoining the company knowing that the property values will increase as a result of the company's activities, is this a breach?

QUESTIONS RELATED TO SECURITIES EXCHANGE ACT OF 1933

Over the last five years, AB Software Store has diversified and grown into a full service office computer hardware and software store (similar to Office Max). Andrew and Bob are still involved with the C corporation that was ultimately formed to run the business. They are now interested in franchising their stores across the country. George, Henry and Ivan are friends of Andrew's and spend the weekends playing golf. They decide to create a new corporation in the state of Somewhere as their corporate headquarters. George, Henry and Ivan each decide to invest \$150,000 in the new company for a total of 75,000 shares at no par. George will oversee the franchises; Henry and Ivan will be passive investors. All are experienced investors and have had moderate success.

1 person for Q 1-3

QUESTION 1: Has AB Software Store violated Section 5 of the SEA of 1933 in failing to register when issuing stock to George, Henry and Ivan.

QUESTION 2: Henry and Ivan are residents of Somewhere. George is a resident of Nowhere, although he promises that he will be subject to the jurisdiction of Somewhere. Is the issuance of stock to Henry, Ivan and George exempt under 3(a) governing intrastate offerings?

QUESTION 3: If, as a way to avoid the SEC requirements, Henry and Ivan agreed to buy the shares and then resell a portion of the shares to George, Will exemption 3(a) apply? What about the safe harbor rules or Rule 504 governing small offerings?

1 person for Q 4

QUESTION 4: After 5 years of operation, AB Software Store becomes a huge success? They now want to expand to allow persons to purchase their products on-line through international distribution networks. They need to raise \$3 million, by selling 300,000 new shares at \$10/share to friends and a group of venture capitalists who are interested in this kind of business. Many of the investors will be from different parts of the country.

a. AB Software expects to raise \$3 million by selling to 40 investors: 10 of whom have a net worth of over \$1 million; another 10 have incomes of over \$200,000; another 10 are experienced software programmers and equipment vendors; and the last 10 are family and friends. Will Regulation D apply to exempt the transaction from SEC registration?

b. AB wants to use Rule 505 to avoid SEC registration. It places a solicitation in a computer trade publication. The only respondents are institutional investors. Is the solicitation exempt?

c. AB wants to use Rule 505 to avoid SEC registration. It sends out letters to 50 investors that it knows who have in the past expressed an interest. Some of the respondents are not accredited investors. Is the solicitation exempt?

1 person for Q 5-6

QUESTION 5: After 10 years of operation, AB Software wants to acquire several existing competitors and consolidate its operations. Over the next 3 years, it proposes to raise \$3,000,000 in round 1 during year 1, \$3,000,000 in round 2 during year 2, and \$2,000,000 in round 3 during year 3. During year 1 the corporation raises the \$3,000,000 from accredited investors; in year 2 the corporation raises the \$3 million from 35 persons; in year 3, the corporation raises \$2,000,000 from members of the general public. Is this offering exempt under Regulation D?

QUESTION 6: If the corporation raised the money in three separate transactions that were authorized at the beginning of each year, would your answer change.