

THIS IS A SAMPLE EXAM. QUESTIONS ARE FOR LEARNING PURPOSES ONLY.  
THE FINAL EXAM MAY SUBSTANTIALLY DIFFER FROM THIS SAMPLE.

EXAM # \_\_\_\_\_

**FALL 2018 CORPORATIONS I (ORANBURG) SAMPLE EXAM**

**INSTRUCTIONS**

1. This final exam contains fifteen (15) short-answer questions and one (1) extra credit essay question. Each short answer-question is worth six (6) points. The extra credit essay question is worth up to ten (10) bonus points.
2. You will have two (2) hours to write this exam. Do not turn over this instruction page until the proctor declares that the time to take the exam has begun.
3. Put your exam number at the top right-hand corner of this page.
4. Count these pages now. This exam should contain a total of three (3) pages, including this instruction page. If you do not have the correct number of pages, consult the proctor.
5. Write all your answers either on ExamSoft or in a bluebook. If you use bluebook(s), put your exam number on the cover of each bluebook that you use. You will not receive any credit for any writing on this exam packet, scrap paper, or an unidentified bluebook.
6. If you encounter a typographical error or ambiguity that impacts how you will answer a question, make note of it in your response and explain how you resolved the error or ambiguity. Do not ask a proctor for assistance. Always use common sense in determining how best to deal with an error or ambiguity.

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### SHORT ANSWER

**Background Facts:** Two entrepreneur-capitalists in Pennsylvania plan to start a new business that will design and install energy-saving systems in existing homes. The business, which they will call “Your Green Home,” will hire a staff of “green” designers, along with a work force of skilled installers of solar panels, heat collectors, insulation systems, and high-efficiency heat pumps and electric generators. Anita is an MBA business journalist, with spare cash. Brandon is an experienced mechanical engineer, without much savings. Anita will put in the bulk of the capital and oversee the firm’s finances; Brandon will manage the business; and they plan to split the profits.

#### Organizational Choices

Anita contributes \$10,000 cash to purchase insulation materials, and Brandon enters into a contract with a customer to install a heat pump.

1. If Brandon installs the heat pump incorrectly, and it damages the customer’s house, is Anita liable?

Your Green Home does not generate enough profits to cover Anita’s capital contribution, and Anita asks Brandon to share in the net losses.

2. Does Brandon have to contribute cash toward the loss?
3. [INTENTIONALLY OMITTED]
4. [INTENTIONALLY OMITTED]
5. [INTENTIONALLY OMITTED]

#### Corporate Formation

You are approached by Anita and Brandon to help form their business.

6. Who do you represent?

Prior to coming to your office, Anita and Brandon visited LegalZoom (a “do-it-yourself” website) and downloaded some incorporation forms. They filled out these forms and sent them via mail to the Delaware Secretary of State, but they did not include a check for the filing fee or provide a return address. Believing that they formed a corporation, Brandon orders \$30,000 worth of solar panels from SolarCity for the account of “Your Green Home.” The business assets are insufficient to pay for the equipment.

7. Are Anita and Brandon personally liable for the bill from SolarCity?
8. [INTENTIONALLY OMITTED]

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9. [INTENTIONALLY OMITTED]

10. [INTENTIONALLY OMITTED]

Corporate Authority

Anita and Brandon hire Charles to be their sales manager. Anita sends an email to hundreds of prospective buyers, saying, "Huge sale on installation of high-efficiency water heaters! Contact our sales manager Charles for details!" Anita told Charles that he could offer up to a 20% discount under MSRP (the manufacturer's suggested resale price or "list price") for water heaters. Charles sells a water heater for 30% under MSRP to one of the recipients of Anita's email. Anita does not want to honor the price.

11. Was Charles's sale of the water heater for 30% under MSRP authorized by Your Green Home, such that Your Green Home is under contract to sell the unit for that price?

Your Green Home is negotiating a large contract to install solar panels on over one hundred homes that are owned by Walnut Capital. But Brandon is concerned about Walnut Capital's financial condition and ability to pay for the solar panels. To allay Brandon's concerns, Walnut Capital presents Your Green Home with a "guarantee" for the installation project signed by the Treasurer of Wrong-Aid, one of Walnut Capital's lessees.

12. Are you confident about this guarantee? What documents would you need to review in order to ensure that Wrong-Aid is actually bound on the guarantee?

13. [INTENTIONALLY OMITTED]

14. [INTENTIONALLY OMITTED]

15. [INTENTIONALLY OMITTED]

**EXTRA CREDIT ESSAY QUESTION (10 bonus points)**

[INTENTIONALLY OMITTED]

**\* END OF EXAM \***

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### SAMPLE EXAM ANSWERS

Answer 1: Yes. Under the Revised Uniform Partnership Act, even though Anita and Brandon did not intend to form a partnership, they became partners as a matter of law when they began to carry on as co-owners a business for profit. RUPA § 101(4). As a default, all partners are jointly and severally liable for all obligations of the partnership. RUPA § 303(a). Therefore, Anita will be personally liable for the damage to the customer's house.

Answer 2: Yes. As a default, partners share equally in profits and losses. RUPA § 401(a). Where partners have agreed to split profits equally, and they do not discuss sharing losses, they will be charged with an equal share of the losses. RUPA § 401(b).

Answer 6: You represent the "situation" until the corporation is formed; then, you represent the corporation. You do not represent any of the individual founders. See ABA Model Rule 1.13(a) ("A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituent"). You must inform Anita and Brandon that you do not represent them personally. ABA Model Rule 1.13(b).

Answer 7: Maybe. Under the equitable doctrine of *de facto* corporation, courts infer limited liability if (1) the promoters made a good faith effort to incorporate, (2) the promoters were unaware that the incorporation had not happened, and (3) the promoters used the corporate form in a transaction with a third party. Here, the key issue is whether Anita and Brandon made a good faith effort to incorporate, where they simply mailed a form based on advice from a website and failed to provide a return address. Anita and Brandon can also avoid liability pursuant to the doctrine of *corporation by estoppel*, where courts prevent a third party from asserting the promoter's personal liability when the third party dealt with the business on the assumption its only recourse would be against business assets. This equitable remedy, however, will be limited as justice requires, so a court might not grant limited liability to Anita and Brandon if they failed to make a good faith effort to incorporate.

Answer 11: Yes. Anita, the principal, created apparent authority in Charles, her agent, when she manifested to the email recipient that Charles was acting for Your Green Home. The Restatement (Third) of Agency §2.03 defines Apparent Authority as "the power held by an agent or other actor to affect a principal's legal relations with third parties when a third party reasonably believes the actor has authority to act on behalf of the principal and that belief is traceable to the principal's manifestations." Here, Anita "cloaked" Charles with apparent authority to sell her water heaters at a discount such that a reasonable third party would believe that Anita consenting to Charles acting for Your Green Home. Therefore, Your Green Home is bound by his act, even though it was contrary to her actual instructions.

Answer 12: You are skeptical about this guarantee. Who is Wrong-Aid, and why would a lessee guarantee the debts of its landlord? You should ask to see a board resolution approving and authorizing the guarantee. You should further confirm that the resolution was adopted at a regulator meeting or at a special meeting that was properly noticed. You should further confirm that the meeting was attended by a quorum and that a sufficient majority of directors voted in favor of the guarantee. You may have to review Wrong-Aid's bylaws to confirm its meeting rules.