

## Answers to Assignment 9 Questions

NOTE: These answers are provided to give students a basic understanding of acceptable types of responses. They often are not the only valid answers and are not intended to provide an exhaustive response to the questions.

### Educational Objective 1

- 1-1. Under the traditional common law doctrine of employment at will, in the absence of an express contract or union collective bargaining agreement stating otherwise, an employer is free to terminate any employee at any time, for any reason or for no reason at all.
- 1-2. An implied contract may exist if the terms and intentions of employment are indicated by the actions of the parties and the surrounding circumstances, rather than expressly written. For example, an employee handbook or supervisor's statement that an employee may be fired only for "just cause" might be interpreted as an implied contract that prohibits termination without cause.
- 1-3. The covenant-of-good-faith exception, also called the implied-in-law contract exception, creates a broad exception to employment at will. Under this exception, the employer has an obligation because of a special relationship with the employee or the conduct of the parties. For example, an employer could be found to have operated in bad faith for terminating a long-term employee just before that employee became eligible for retirement benefits.

### Educational Objective 2

- 2-1. The ADEA prohibits discrimination, on the basis of age, against persons age forty or older. This act extends the prohibition to all aspects of employment, including hiring, pay, terms, conditions, privileges, and termination. The OWBPA has a narrower scope than the ADEA and specifically prohibits age discrimination in the offering of benefits.
- 2-2. The Civil Rights Act of 1964 expanded the bases of discrimination of race, color, and national origin to include sex and religion. Title VII of the act governs most employment discrimination actions, including pregnancy discrimination, sexual discrimination (including sexual harassment), and sex-based insurance rates.
- 2-3. The employees who are protected by the ADA are defined as qualified individuals with a disability who, with or without reasonable accommodation, can perform the essential functions of the job. A disability includes any physical or mental impairment that substantially limits one or more of the major life activities of an individual.

### Educational Objective 3

- 3-1. Created by Congress as part of the National Labor Relations Act (NLRA), the NLRB has a two-fold purpose. The first purpose is to prevent and remedy unfair labor practices, whether conducted by labor organizations or by employers. The second purpose is to determine whether or not certain groups of employees desire labor organization representation, and their selection of a union, for collective-bargaining purposes.



- 3-2. Collective bargaining is mandatory for wages, hours, and other terms of employment. Any issue relating to an aspect of the relationship between the employer and employee is considered an issue requiring mandatory bargaining.
- 3-3. The tactics of economic pressure a union can use include a strike, boycott, or picketing. The tactics of economic pressure an employer can use include using replacement employees or, under certain conditions, a lockout, when the employer withholds work from the employees.

### **Educational Objective 4**

- 4-1. Congress created OSHA to enforce the Occupational Safety and Health Act (OSH Act). OSHA is responsible for issuing and modifying the occupational safety and health standards applicable to businesses. OSHA also has the responsibility to conduct workplace inspections; to investigate complaints regarding working conditions; and to issue regulations requiring employers to record and report certain work-related injuries, illness, or deaths.
- 4-2. The FMLA applies to employers who have fifty or more employees (including full-time, part-time, and temporary workers) during at least twenty weeks in the current or preceding year, located within a seventy-five mile radius of the work location where the employee requests leave. The FMLA applies to employees who have worked for an employer subject to FMLA requirements for at least twelve months (not necessary consecutive) and for at least 1,250 hours during the twelve-month period preceding the leave.
- 4-3. Under the Health Insurance Portability and Accountability Act (HIPAA), healthcare providers, health plans, and other healthcare services must adhere to guidelines established by the statute. The act grants all patients the right to see, copy, and request to amend their own medical records. Notice of privacy practices about how a patient's medical information is used and disclosed must be given to the patient by each medical professional or medical facility. Medical information must be protected and not disclosed except as permitted by law.

### **Educational Objective 5**

- 5-1. The primary advantage of incorporation is that it limits the owners' liability for the corporation's contracts and torts. Other possible advantages include tax advantages, ease in sale or transfer ownership, ease in raising capital, and perpetuity beyond the death of owners.
- 5-2. Corporations raise funds by issuing two principal types of securities: debt securities and equity securities. A debt security, or bond, is a debt obligation. Equity securities are the corporation's capital stock and represent the stockholders' ownership of and equity, or financial interest, in the corporation. Bondholders are the creditors of the corporation, while stockholders are owners of the corporation.
- 5-3. Board decisions that would change the terms of the contract between the corporation and its stockholders require stockholder approval. Examples of such decisions include amendments to the articles of incorporation (including capital structure, purpose, name, or preemptive right limitations), mergers or consolidation, and dissolution of the corporation. Board decisions regarding business policy do not usually require stockholder approval. These decisions include issuing stock, borrowing money, electing and assigning officer duties, declaring dividends, purchasing or selling property in the normal course of business, decisions concerning insurance coverage, and general policy decisions regarding company operations.



- 5-4. A corporation may reacquire issued securities by repurchasing them. This reacquisition is known as redemption. The original agreements between the corporation and the purchasers of debt securities and preferred stock can include provisions to make the securities redeemable at the corporation's option or to provide for a mandatory retirement of the security. A corporation may provide for redemption of nonvoting stock but cannot provide for the redemption of all common voting stock. A corporation can redeem stock only if its assets exceed its liabilities, including any obligations to preferred stockholders in the event of dissolution.

One reason a corporation may choose to repurchase stock is that a reduction in the number of issued shares may result in a stronger return on investment. If earnings are static, the earnings per share will increase with fewer outstanding shares. Another reason is that repurchasing shares can make a corporation less attractive for a takeover. Stock repurchases can reduce accumulation of excessive cash in the corporation and increase the market value of remaining outstanding stock. Both of these are deterrents to a takeover.

## Educational Objective 6

- 6-1. A director or an officer who exercises discretionary control in the management or assets of a corporation's pension or health benefit plan is a fiduciary under ERISA with specific statutory duties and liabilities. Directors and officers have duties to act solely in the plan participants' interest, to exercise the care and skill of a reasonable person conducting a similar enterprise, to diversify investments unless it is clearly unreasonable to do so, and to act in accordance with the plan documents.
- 6-2. Stockholders may file a class action suit when a transaction damages multiple stockholders. A common example is a stockholder class action suit against directors and officers for damages for fraud, such as failure to make a full disclosure in connection with a public stock offering. An individual stockholder might file suit to seek a remedy for direct harm, such as an injury sustained while engaged in company business. The third type of lawsuit is filed on behalf of the corporation itself by one or more stockholders, and this type of lawsuit is a derivative action. For example, stockholders might file a derivative suit if an outside auditing firm negligently audited the books of the corporation.
- 6-3. Dividends come from corporate profits. Cash dividends are the type most frequently paid by corporations. Property dividends are shares of another corporation that the declaring corporation has acquired. Stock dividends are corporate profits issued in the form of additional shares of the issuing corporation. Stock dividends are paid either in treasury stock or from authorized but unissued shares. An extra dividend is a dividend in addition to the usual and expected regular dividend. A liquidating dividend is not a true dividend because it does not come from corporate profit, and it is a distribution of assets during a corporate reorganization.

## Educational Objective 7

- 7-1. In a corporate merger, two or more corporations join to become a new, single corporation. The newly merged corporation owns all the assets and is subject to all the liabilities of the merging corporations. A true merger is considered a friendly transaction to which the boards of both (or all) merging organizations agree.



- 7-2. In a share exchange merger, a corporation acquires all of another corporation's outstanding shares in return for shares of the acquiring corporation. A *de facto* merger occurs when one corporation sells all or most of its assets to another corporation, in return for the purchasing corporation's shares, for distribution to its stockholders.
- 7-3. The acquiring corporation can attempt a hostile takeover. This can be accomplished by making a tender offer for shareholders' stock and thus acquiring sufficient stock to become eligible to vote on the board of directors. A takeover can also be accomplished by the acquiring corporation's obtaining sufficient proxies from the unwilling target corporation's stockholders (often by proposing a higher share price than the one at which the stock currently trades) for the acquiring corporation to elect its own board of directors or to vote for a merger.
- 7-4. Voluntary corporate dissolution begins with a board resolution to dissolve the corporation, approved by a majority of the stockholders. The corporation files a "statement of intent to dissolve" with the state and then proceeds with liquidation. Involuntary dissolution occurs when the state of incorporation, the stockholders, or corporate creditors file for involuntary dissolution proceedings.

## Educational Objective 8

- 8-1. Partnerships can arise by people's actions as partners, by oral agreement, or by written agreement. Two or more persons are presumed to be partners if they agree to work together in any line of activity and share the profits and losses, although not necessarily on an equal basis. To be considered a partnership, the enterprise need not have physical assets but must have profit as its goal. An advantage of forming a partnership is that income is taxable at each individual partner's tax rate rather than at a rate that would apply to a corporation.
- 8-2. A partnership by estoppel results if three elements are present. First, a person who is not a partner acts as if he or she is a partner or permits others to think he or she is a partner. Second, a third party deals with the entity in justifiable reliance on a belief that it is a partnership or that the person who claims to be a partner is actually a partner. Third, the third party changes his or her legal position because of reliance on that belief, such as entering into a contract. Under these circumstances, the person who has permitted the appearance is liable to the third party to the same extent that an actual partner would be. In addition, the presumed partner has the power to bind the partnership, just as an actual partner would.
- 8-3. A rightful dissolution of a partnership is one that is in accordance with the partnership agreement and is not any partner's fault. On rightful dissolution, the partnership is liquidated and assets distributed. Wrongful dissolution of a partnership occurs when there is fault on the part of one or more partners. The innocent partners can either liquidate the business or continue the business for the remainder of the partnership term. If they choose to continue, the remaining partners must pay the wrongful partner his or her share of the assets, less any damages the wrongful dissolution caused.
- 8-4. These answers are based on the facts presented about Jose and Miguel's partnership:
  - a. Jose and Miguel are each entitled to a \$10,000 profit.
  - b. The partnership has a \$20,000 loss (\$100,000 initial capital – \$80,000 assets remaining). Jose is entitled to \$70,000 (his initial investment of \$80,000 – half of the \$20,000 loss). Miguel would receive \$10,000 (his initial investment of \$20,000 – half of the \$20,000 loss).



## Educational Objective 9

- 9-1. Unincorporated associations are formed under the common law right of contract, have no separate legal existence, and do not legally possess perpetual life.
- a. Associations, although unincorporated, resemble corporations in their form and organization. An association typically has a contract of association similar to a corporate charter. The biggest difference between a corporation and an association is that an association is not a legal entity separate from its members and managers. Associations are not subject to franchise, transfer, and other taxes commonly levied on corporations. Unlike corporations, associations do not need to register in the states in which they do business or file various reports required of corporations.
  - b. An association resembles a partnership in that, because an association is not a separate legal entity like a corporation, its members may be individually liable for the association's activities. Associations differ from partnerships in several ways. An association, unlike a partnership, cannot usually hold title to real property or execute a lease in the association's name. A member's withdrawal does not cause dissolution of an association as it would in a partnership. Any expense-sharing or profit-sharing in an association is frequently other than per capita. An association's individual members do not have the authority that partners do to participate directly in its day-to-day management.
- 9-2. These are the six major types of unincorporated associations:
- Trade associations foster their members' interests by exchanging and compiling information, lobbying, setting standards, and issuing publicity. Trade associations form the largest group of unincorporated associations.
  - Labor unions are the second largest group of associations. Local unions, as well as national organizations representing multiple smaller unions, may be formed as associations.
  - Benevolent and fraternal associations have traditionally taken the form of associations. If these organizations provide insurance or credit for their members, they must comply with state laws governing such issues.
  - Religious organizations may be unincorporated associations, although they may choose to incorporate.
  - Clubs are associations of persons for some common objective, such as social purposes.
  - Condominium owners' associations are usually regulated by state statutes. All unit owners within the condominium are association members, and the association is responsible for the condominium's operation and the care and preservation of the common areas.



- 9-3. Individual members can be liable for both torts and contracts arising from the association's activities. Even in states that now allow unincorporated associations to sue and be sued, the possibility of the association being sued does not eliminate the members' individual liability.
- a. Absent statutes to the contrary, members of an association organized for trade or profit are individually liable for contracts made by an authorized officer or agent in the association's name or incurred in the course of business for which the association was organized. This liability exists even if the other party does not know the individual members' names. Members of not-for-profit associations, however, do not have individual liability to third parties unless they join in authorizing a contract.
  - b. Association members are jointly and severally liable for torts committed by the association's agents and employees acting within the scope of their employment. However, under the Volunteer Protection Act, those who provide voluntary services are immune from liability in many instances.
- 9-4. Because no specific statutory provisions apply to the dissolution of associations, they can be dissolved in a variety of ways. Associations can be dissolved by members' vote; by the death or withdrawal of a majority of the members; by court action on application of creditors or members, or for illegal conduct; and by the expiration of a period stated in the articles.

