BURRILL COMPETITION 2013
CHOICE OF BUSINESS ENTITY

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I) Why create a business entity?
   A) Liability Protection
   B) Professional Appearance
   C) Separation of Personal and Business Interests
   D) Tax Purposes
   E) Structure to Raise Capital or Seek Financing
   F) Management Structures and Defined Roles

II) Types of Business Entities
   A) Sole Proprietorship
   B) General Partnership
   C) Limited Partnership
   D) Limited Liability Partnership
   E) Limited Liability Company
   F) Corporation
      i) C Corporation
      ii) S Corporation
      iii) Service or Professional Corporation
III) Analysis of Entity Type

A) Sole Proprietorship
   i) Owner Liability – No limitation on liability; owner is personally obligated on all liabilities
   ii) Tax Issues – No separate existence; all income passes to owner and therefore all taxes paid by owner
   iii) Organizational Issues – None; Creation is as simple as saying you have a sole proprietorship
   iv) Management – Owner
   v) Primary Documents – None
   vi) Issues – Absolute liability for all obligations of the proprietorship

B) General Partnership
   i) Owner Liability – Joint and several liability for all wrongful acts or breaches of trust; joint liability for all other debts and obligations
   ii) Tax Issues – No taxation at partnership level; all partners taxed directly on partnership-level income regardless of whether income is distributed to partners; owners are subject to self-employment tax
   iii) Organizational Issues – Should have a partnership agreement, but no filings necessary with state to create a general partnership
   iv) Management – Managed by the partners and governed by Chapter 178 of the Wisconsin Statutes unless otherwise agreed; management delegation very flexible
   v) Primary Documents – Partnership Agreement
   vi) Issues – While partnerships offer great flexibility, they do not protect partners from liability; has largely been replaced by limited liability companies; there should always be a partnership agreement to define the roles and responsibilities of the partners

C) Limited Partnership
   i) Owner Liability – General partners remain personally liable for obligations of the limited partnership as if it were a general partnership; limited partners are liable only for what they invested in the partnership
   ii) Tax Issues – Disregarded for tax purposes, meaning partners pay tax of partnership as they would in a general partnership regardless of whether a limited or general partner
   iii) Organizational Issues – A Certificate of Limited Partnership must be filed with the Department of Financial Institutions (and fee paid); should have a partnership agreement
   iv) Management – General partners manage the business and have authority to bind the partnership; limited partners are only investors; can allocate management in partnership agreement
   v) Primary Documents – Certificate of Limited Partnership; partnership agreement
   vi) Issues – General partners remain liable for partnership’s obligations; roles of partners need to be defined in a partnership agreement
D) Limited Liability Partnership
   i) Owner Liability – With rare exceptions, partners not personally liable for obligations of partnership, only for own actions
   ii) Tax Issues – Taxed the same as a general partnership
   iii) Organizational Issues – Must file a registration statement and fee with the Department of Financial Institutions; should have a partnership agreement
   iv) Management – Same as General Partnership
   v) Primary Documents – LLP registration statement; partnership agreement
   vi) Issues – Roles of partners need to be defined in a partnership agreement

E) Limited Liability Company
   i) Owner Liability – With rare exceptions, members and managers are not personally liable for obligations of the LLC
   ii) Tax Issues – Single member LLCs are disregarded entities for tax purposes and all tax is assessed on the member; multi-member LLCs can choose to be taxed as a partnership or a corporation
   iii) Organizational Issues – Must decide whether to be member-managed or manager-managed; governance of LLC is determined by the members in an Operating Agreement; must file Articles of Organization with Department of Financial Institutions
   iv) Management – Extremely flexible; managed by the members or the manager; can allocate responsibilities as desired in an Operating Agreement
   v) Primary Documents – Articles of Organization; Operating Agreement
   vi) Issues – Often times the flexibility and ease of creation of LLC’s is taken for granted; certain formalities should always be followed, such as creation of an Operating Agreement, to ensure maintenance of liability shield and protection of the company from member disputes

F) Corporations
   i) C-Corporations
      (a) Owner Liability – With rare exceptions, shareholders are not personally liable for acts and obligations of the corporation, except for acts or conducts other than as a shareholder
      (b) Tax Issues – The corporation is taxed on the income it earns and then shareholders are taxed when the corporation distributes income in the form of dividends
      (c) Organizational Issues – Requires adequate capitalization; must file articles of incorporation with department of financial institutions
      (d) Management – Shareholders elect a board of directors of specified size; board of directors appoint officers, generally a president, vice president, secretary and treasurer
      (e) Primary Documents – Articles of Incorporation; Bylaws; Shareholder’s Agreement; Stock Certificates
      (f) Issues – Often times smaller companies and startups avoid C Corporation status because of the double taxation; Requires more formalities and has a more rigid structure than does an LLC or an S-Corporation
ii) S-Corporations
   (a) Owner Liability – Same as C-Corporations
   (b) Tax Issues – Generally, S-Corporations do not pay tax on income earned; Similar to a partnership and LLC, S-Corporation shareholders are taxed on income, regardless of whether the income is distributed; can minimize some employment taxes
   (c) Organizational Issues – Same as C-Corporations, except IRS Form 2553 must be filed by the 15th day of the third month following the incorporation of the corporation in order to elect S-Corporation treatment
   (d) Management – Same as C-Corporations
   (e) Primary Documents – Articles of Incorporation; Bylaws; Shareholder’s Agreement; Stock Certificates; IRS Form 2553
   (f) Issues – Requires more formalities and has a more rigid structure than an LLC; It is possible for a corporation to “blow” its S-status, making it a C-Corporation and subject to double taxation

iii) Service or Professional Corporations
   (a) All aspects of a Service Corporation are the same as above, except that all shareholders must have the same license certificate, or registration
   (b) An example of a service corporation is a law firm or an engineering firm
   (c) With respect to certified public accounting firms, they can still be service corporations so long as more than 50% of the shareholders are licensed CPAs

IV) General Tips

   A) Unless you have been advised otherwise, utilize a limited liability entity.
   
   B) Remember to keep a formal division between the activities of the entity and the individual owners.
   
   C) Whenever possible, obtain professional guidance from attorneys and/or accountants.
   
   D) Maintain comprehensive records for your business entity.