

Question 1

Established by local ordinance, Blue City, Indiana's Mayor's Residence Commission ("MRC") is charged with maintaining, remodeling, and furnishing the Mayor's Residence. Its regular meeting place is the City Council Chambers.

At 9:00 a.m. on a Monday, Doris, the MRC chair, emailed the MRC, scheduling a regular meeting for the next day (Tuesday) at 5:00 p.m. The email said the MRC would hear proposals from interior designers to remodel the Mayor's Residence and would select a designer for the job. Doris included the mayor's chief of staff and the president of the local chapter of the American Society of Interior Designers ("ASID") on her email. No other notice of the meeting was provided.

Upon arrival, each commissioner received the written agenda. Doris placed copies of the agenda on a table eight feet inside the meeting room door, which remained open.

At the meeting, four local ASID chapter members, including the Chapter President, presented. Ten of the Chapter President's clients also appeared and gave testimonials about his work. The MRC secretary compiled a list of the clients' names and addresses. After the testimony, Doris excused everyone but the MRC and closed the door. The MRC deliberated and, by a 3-2 vote, awarded the job to the ASID Chapter President. Doris then opened the door, reconvened the meeting, and announced the MRC's decision.

The following morning, the MRC secretary emailed to the MRC members a draft of the meeting minutes and a separate document, marked CONFIDENTIAL, listing the names and addresses of the ten testifying clients – information the secretary excluded from the minutes.

Later that day, Mary, a local designer, learned of the meeting and actions taken. She emailed Doris complaining because she had not had an opportunity to present at the meeting. Her email also demanded an opportunity to review the list of testifying client names and addresses. Doris called Mary, orally denied her request for the list, and told her the MRC stood by its choice. Mary told Doris she would be hearing from her lawyer.

1. Does the Indiana Open Door Law ("ODL") apply to this situation? Explain.
2. Does the Indiana Access to Public Records Act ("APRA") apply to this situation? Explain.
3. Assuming the ODL applies, did the MRC violate it? Explain.
4. Assuming the APRA applies, did the MRC violate it? Explain.
5. What remedies and other relief, if any, could Mary pursue for any statutory violations that occurred?

IEE 1:

1. Yes, in this situation the Indiana Open Door Law (ODL) would apply. The purpose of the ODL is to ensure that official action of the state and its political subdivisions is conducted and taken openly so that people may be fully informed. Public agencies subject to the ODL include bodies exercising the executive, administrative or legislative power of the state or local government. In this situation, we have a governmental commission that was established by local ordinance that is performing official action, that is, maintaining, remodeling and furnishing the Mayor's residence. Presumably they are using state and/or local taxpayer money for some if not all of this activity. The MRC qualifies as a governing body, which is defined as two or more individuals who are a public agency in the form of a board, commission, committee, council or other entity that takes official action on business.

2. Yes, the Indiana Access to Public Records Act (APRA) also applies to this situation. The purpose of APRA is to ensure that all persons are entitled to full and complete access to information regarding the workings of the government. Like the ODL, APRA is to be liberally construed. Any person may inspect and copy public records of any public agency. The Mayor's Residence Commission (MRC) qualifies as a public agency for the purposes of APRA, as it is defined as any agency, board or commission exercising any part of the executive, administrative, judicial or legislative power of state or local governments.

3. The MRC violated the ODL in several ways. First, public notice of the date, time and place of any meetings shall be given at least 48 hours before the meeting. Doris sent this email the day before the meeting and only sent it to mayor's chief of staff and the president of the local chapter of the American Society of Interior Designers (ASID). Proper notice was not given. Doris should have posted a copy of notice at the principal office of the public agency (presumably the Mayor's office) and mailing emailing or faxing notice to all news media that requested notice from the agency of all public notices before January 1 for the calendar year. Next, Doris was required to post the agenda at the entrance to the meeting location prior to the meeting, not eight feet inside like she did. Next, Doris was not permitted to excuse everyone and close the door for the vote because there is no voting by secret ballot permitted. Finally, minutes are to be open for public inspection and copying, thus the MRC secretary should not have only sent them to the MRC members.

4. The MRC also violated APRA. First, Mary properly identified with reasonable particularity the records requested when she asked to review the list of testifying client's names and addresses. She is within her rights to ask for this information in writing or on a form provided by the agency. Also, a public agency is not required to create a list of names and addresses unless required by state statute. But, if an agency creates a list, it must permit the inspection and making of memoranda abstracts upon request. Thus, by creating the list in this situation, the commission opened itself up to requests for production of the list. Also, since Mary emailed Doris about the request, Doris was required to respond in writing as well and not with a phone call.

5. A court of competent jurisdiction may issue a declaratory judgment, an injunction or declare void any policy decision or final action of a public agency that is determined to have been made in violation of the ODL. A person need not demonstrate or prove any special damage different from that suffered by the public at large, and a court may also award reasonable attorney's fees and other reasonable expenses of litigation if Mary prevails. However, she must

first seek the opinion on the issue from the public access counselor, unless the action was filed to prevent a violation of the ODL.

Remedies under APRA include filing an action in the circuit or superior court of the county in which the denial occurred. The court considers this de novo and if Mary substantially prevails, the court must award reasonable attorney's fees. Like with the ODL, Mary must first seek the opinion of the public access counselor unless she can show it was necessary to file first.

Question 2

Mary and Joe, parents to a 17-year-old daughter, Darcy, divorced when Darcy was two years old. Mary and Joe's agreement, which the Court approved, provided that Joe would never seek custody of Darcy and that Mary would never seek to modify child support.

Joe moved out of state immediately after the divorce. He only visits with Darcy once per year for a couple of days, but he and Darcy speak on the phone weekly. Mary has had sole custody of Darcy since the divorce. Mary's parents live next door and have assisted with Darcy over the years. Darcy has a close relationship with her grandparents, but they are now in poor health.

Darcy loves her school, is involved in several extra-curricular activities, and has many friends. Mary is now engaged to a man who lives several hours away from Mary and Darcy's home. Although Darcy only has one year left of high school, Mary intends to move in with her fiancé. Darcy dislikes her Mother's fiancé and does not wish to relocate and change schools.

Joe has since moved back to the town where Darcy resides. He wants to modify custody to allow Darcy to live with him and complete high school. Mary is not willing to agree to a modification of custody and wishes to enforce the provision of the agreement that prohibits Joe from seeking to modify custody.

Darcy does not wish to reside with Joe. Instead, she would like to reside with her best friend's mother, Betsy, but neither Mary nor Joe will agree to Betsy having custody.

Mary, Joe, and Betsy each want custody of Darcy. Indiana law applies.

1. Can Joe seek to modify custody? If so, what procedural action should Joe take to obtain physical custody?
2. What is the standard to be applied in modifying custody, and who has the burden of proof?
3. Assuming Joe can seek to modify custody, what factors will the Court likely consider in determining custody? Explain how those factors apply here.
4. What is the likelihood that the Court will award custody to Betsy? Explain.

1. *Modification of custody*

Joe may seek to modify the custody despite the agreement. Modification of custody may be made by motion of one of the parents, or in some cases by the court. Joe may begin an action for modification by filing a petition in the original action. Joe must give Mary adequate notice and an opportunity to be heard.

2. *standard for modification of custody*

The standard for modification of custody order is usually if there is a substantial change in circumstances. And the party seeking the modification bears the burden of proof. In this case, Joe must show that there is a substantial change in circumstance and that it is in the best interest of Darcy to modify the custody.

3. *Factors considered in modification*

Under Indiana Law, child custody is determined based on the best interests of the child which include: (1) the age & sex of the child; (2) the child's wishes, with more consideration given if the child is over the age of 14; (3) the parent's wishes; (4) the interrelationship between the child and family or others who affect the best interests of the child; (5) the child's adjustment to home, school, and community; (6) the mental and physical health of all parties involved; (7) any evidence of domestic violence; and (8) any evidence of a "de facto" parent. Indiana courts no longer presume that a mother is the best parent to have custody of a child. In addition, Indiana has adopted the *Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)* which grants an Indiana court to have jurisdiction over a parent through various means. The Home-State Jurisdiction under the UCCJEA provides a court with jurisdiction over the parent if: (1) parent and child live in Indiana; (2) the child lives in Indiana at the direction of the parent; or (3) the child has lived in Indiana for 6 months or since birth. Once an Indiana Court obtains jurisdiction and orders custody, they maintain exclusive-continuing jurisdiction over the custody order, including modifications, which will only be lost should parties leave the state or original jurisdiction fails.

In this case, Darcy is a girl and a 17 years old teenager, as a teenager this is the stage where Darcy needs consistency. This factor might weigh in favor of Mary because Darcy is a girl and will probably need a her mom to guide her through her teenage years. Darcy wishes will be given greater consideration because she is over the age of 14, and she wishes to live with Betsy her mom's best friend, this factor does not weigh in favor of either parent. Both parents wishes to have custody of Darcy. In addition, Darcy has a close relationship with her grandparents who live next door, although Mary might argue that they are in poor health and that might affect Darcy as she navigates her last year of high school and should therefore move away with her, Joe will argue that Darcy needs to be there more than ever now that they are getting old. Additionally, Darcy loves her school and is very involved in extracurricular activities, this is important as she is in her senior year and applying to colleges, these activities will be important on her college application. Moving might not give her the opportunity to continue to participate in the activities she enjoyed. The last 3 factors are dispositive as there are no factual indication of mental or physical health, domestic violence or a de facto guardian. These factors

weigh in favor of Joe getting custody because Darcy has a lot of connection to where she currently resides and it seems to be in her best interest to stay there with Joe.

4. *Award of custody to Betsy*

The court will likely not award Betsy custody of Darcy as a third party. After the United States Supreme Court ruling in *Troxel v. Granville*, a third party does not have standing to seek visitation if it is against a parent's wishes. Parents have a fundamental right to raise their children as they see fit. If a parent chooses to restrict or eliminate third party custody, it is within that parent's right. Generally, awarding custody to a third party when a parent has explicitly refused to do so would be violating that parent's constitutional rights. However, an exception to the rule is that Courts will permit third parties to seek custody if one of the child's parents is deceased or imprisoned. A court may also permit third parties to seek visitation in instances where the third-parties' assisted in raising the child. However, a court will exercise caution as to not upset a parent's constitutional right to raise the child and control the child's upbringing as deemed by the parent. Here, Darcy has both of her parents, neither of them is deceased or incarcerated, and there is no indication that Betsy has served as a de facto guardian to Betsy. Therefore, the court will likely not award Betsy custody of Darcy.

Question 3

ABC is a small business based in Indianapolis, Indiana, that custom prints promotional products. ABC does most of its business in the Indianapolis area, but it does have a few out-of-state clients.

In 2018, ABC required each of its employees to sign a document that, in addition to other provisions, (a) confirmed the employee's continuing status as an at-will employee and (b) stated the following:

For two years following termination of employment for any reason, Employee shall not, whether on Employee's own behalf, or directly or indirectly on behalf of any other person or entity, anywhere in the United States or Indianapolis, Indiana, (i) perform services for any other business entity that is in substantially the same business as ABC in a capacity similar to the capacity in which Employee performed services for ABC; or (ii) call upon, accept business from, or solicit the business of any person or entity who is, or who had been at any time during the preceding twelve months, a customer or client of ABC.

Late on a Friday, ABC fired Julie, a sales representative who had worked for ABC for ten years. ABC collected Julie's company laptop when it fired her.

The following Monday, ABC went into its computer system to shut down Julie's email account. ABC discovered Julie had remotely accessed the system over the weekend, downloaded ABC's entire customer list, and emailed the list to her personal Gmail account. Later that same week, ABC learned a competing custom printing company, XYZ, hired Julie as its first Indianapolis-based sales rep to accelerate the growth of its business.

ABC wants to immediately stop Julie from sharing its customer list with XYZ and competing with ABC.

1. Is the restrictive covenant Julie signed enforceable under Indiana law? Explain.
2. Assume the restrictive covenant is enforceable. Identify the legal steps ABC can take against Julie to attempt to stop her from competing and sharing its customer list. Include in your answer the factors a court must consider in determining whether to grant ABC non-monetary relief.

Question 3

Part one:

The restrictive covenant is likely enforceable, even if only partially.

This particular type of covenant is known as a non-compete agreement. A non-compete agreement prevents an employee from competing against their former employer. Because such agreements limit trade, they are disfavored and strictly construed against the employer. Indiana courts follow 3-step process in deciding whether to enforce such agreements: 1) non-compete agreements must protect an employer's legitimate interest. Legitimate interest exists when the employer has gained some advantage that he may use to unfairly compete against his former employer. But the agreement should be enforced only if the employee has gained some advantage at the employer's expense that would not be available to the general public. This includes confidential information such as client lists. 2) The restriction must be reasonable. The agreement will be enforced only if it is reasonable in geographic scope and in time, and not against public policy, considering the totality of the circumstances. Two years is considered reasonable. 3) There must be adequate consideration. A non-compete agreement will be enforced only if it is supported by adequate consideration. This is rarely an issue in IN because an offer of employment or an offer to continue employment is valid consideration.

Here, the court will likely find that the agreement is enforceable. Furthermore, even if certain aspects of the agreement are not found to be enforceable, the court might still be able to strike offending provisions if they are separable from the main agreement. This is referred to as the "Blue Pencil Doctrine."

In this case, the court will likely find that the non-compete agreement protects a legitimate interest that ABC has in the services of its team-members and in the business relationships that are extant and fresh (within one year) at ABC.

The court will likely find that there was adequate consideration considering the fact that it was simultaneously given with the confirmation that Julie is continuing her employment. The fact that she is being permitted to continue her employment when no duty to continue existed due to the fact that she was an at-will employee (meaning that either party could terminate the employment relationship at any time and without cause), will likely be deemed as adequate consideration.

Second, the court will likely find most of the agreement (if not all) to be reasonable in scope. The fact that it is limited to services that are "substantially the same" business as ABC is likely reasonable. Custom printing of promotional products is not likely to touch many sectors in such a way as to restrict Julie's ability to earn a living. However, the provision regarding the entire united states may be unreasonable considering the fact that ABC only operates in Indianapolis. Nonetheless, if the court finds this particular provision offensive, it can strike this provision and uphold the remainder of the agreement.

The scope relating to the customer lists are also reasonable for the fact that they only contain customers who have actually been a customer within the last twelve months for ABC. This does not include relationships that have come and gone and it does not include potential relationships. Two years will be considered a reasonable amount of time.

Thus, the agreement is enforceable.

Part two:

The court may bring a declaratory action and may seek a temporary restraining order (TRO) and/or preliminary injunction as to Julie's ability to compete or to disseminate the client list.

A court may issue a TRO in order to maintain status quo for a short period of time. A TRO may be granted without notice to the adverse party if it clearly appears from an affidavit or verified complaint that irreparable harm will result to the applicant before the adverse party can be heard, and the applicant's attorney certifies to the Court in writing the efforts, if any, which have been made to give the adverse party notice. A TRO granted without notice automatically terminates after 10 days but can be extended for good cause.

A court may also issue a preliminary injunction (PI) in order to maintain the status quo during the pendency of the action. PIs may only be issued once a party has received notice. The court must consider factors which include 1) a reasonable likelihood of success on the merits; 2) that remedies at law are inadequate and the movant will suffer irreparable harm if not granted; 3) the threat to movant outweighs any harm to the defendant; and 4) public interest will be served if granted.

Outside of the non-compete agreement, ABC may also have an action for trade secret misappropriation. Indiana follows the UTSA and deems "trade secrets" as information that derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by, proper means by other persons who can obtain economic value from its disclosure or use; and is the subject of efforts that are reasonable under the circumstances to maintain secrecy. Assuming that these elements are met, the court may award money damages as well as injunctive relief.

Question 4

Todd was involved in a fight with Ken in February 2018 in Yellow County, Indiana. Ken moved from Yellow County to Green County, Indiana, six months later when he broke up with his fiancée. Todd filed a personal injury lawsuit against Ken on May 31, 2019, in Yellow County. Todd had the sheriff serve the summons and complaint. The next day, the sheriff returned an executed proof of service stating he had left the summons and complaint at the Yellow County address listed for Ken on the police report, which was Ken's ex-fiancée's home.

Todd filed a motion for default judgment because Ken failed timely to respond to Todd's complaint. A copy of the motion for default judgment with hearing date was mailed to Ken at the address on the police report. At the hearing, Todd submitted evidence of medical expenses totaling \$30,000 as damages from the fight. Ken failed to appear. The court entered a default judgment in favor of Todd in the amount of \$30,000. Ken became aware of the lawsuit and the default judgment when Todd instituted collection proceedings.

1. Explain whether Todd properly served Ken.
2. Explain whether Todd sued Ken in the proper venue.
3. Under the Indiana Trial Rules, what must Ken show to set aside the default judgment against him?

Question 4

1.

Todd did not properly serve Ken. In Indiana, service of process on individuals may be performed through certified mail with return receipt requested and returned sent to the defendant's residence or place of employment; through the sheriff; personally by the Plaintiff; by leaving a copy at the defendant's dwelling house or usual place of abode, with a copy sent by mail to last known address of the person being served; or serving defendant's agent with a copy sent by mail to defendant's last known address.

In this case, Todd used the sheriff to serve the summons and complaint on Ken, which is allowed under Rule 4.12. The sheriff left the summons and complaint at Ken's last known address which was pulled from the police report; however, Ken does not live at that address. For service to have been proper, Todd should have served Ken at his "dwelling house or usual place of abode" in Green County, and also sent a copy to the last known address. Therefore, Ken was not properly served.

2.

Todd sued Ken in the proper venue. In Indiana, a plaintiff may bring a case in any county in Indiana, but some counties may constitute a preferred venue, which includes the county of defendant's residence; the county in which the land is located; county in which the accident or collision occurred; county of defendant's principal place of business; by written stipulation; county where defendant is in custody; and county which has a claim in plaintiff's complaint.

In this case, Todd filed a personal injury suit in Yellow County, where the fight took place, and where Ken resided until six months later. Since the fight took place in Yellow County, it is a proper venue to hear the case.

3.

Setting aside a default judgment is treated the same as seeking relief from a final judgment under Rule 60(b). Under that rule, a court may set aside a default judgment if the party suffered from mistake, surprise, or excusable neglect; party presents newly discovered evidence which by due diligence could not have been discovered; adverse party engaged in fraud, misrepresentation, or other misconduct; judgment by default was entered against a party served only by publication who did not have actual knowledge of the action; judgment was entered while party was not represented by a guardian; judgment is void; judgment has been satisfied; or justice requires relief from judgment. The defendant must make a motion within one year after judgment with the first four reasons.

In Ken's case, he must show that he suffered from mistake, surprise, or excusable neglect caused by the service of process. In his case, he must be able to show that the service of process was improper, and as such, he did not have notice that the case was proceeding against him, and did not know that he had a default judgment. According to Indiana law, he must also show that he has a good and meritorious defense to the cause of action. The court will likely set aside the default judgment due to the excusable neglect of never receiving the summons, complaint, and motion for default judgment.

Question 5

In 2002, Rob executed a valid Will under Indiana law. After specific bequests of \$10,000 to each of his three nephews, Rob's Will stated:

I leave the remainder of my estate in its entirety to my wife, Kay. In the event that she predeceases me, then the remainder of my estate shall be distributed to my children as follows: Jack - 65%; Nancy - 35%.

Rob and Kay began having marital problems in November 2019. They agreed that Kay would move out of the family residence. Rob and Kay began marriage counseling. By March 2020, Rob and Kay realized, with their counselor's help, that there was no hope for their marriage. Kay filed for divorce.

While Kay processed the break-up relatively well, Rob did not. He went from sad to angry pretty quickly. He knew the marriage was problematic, but he didn't think divorce was the answer and blamed Kay for filing for divorce. He crossed out a portion of his 2002 Will so that it read:

~~I leave the remainder of my estate in its entirety to my wife, Kay. In the event that she predeceases me, then the remainder of my estate shall be distributed to my children as follows: Jack - 65%; Nancy - 35%.~~

In addition, Rob wrote in the margin, "SHE SHOULDN'T GET A DIME!" He also changed the beneficiary designation of his 401(k) to remove Kay and make Jack and Nancy equal beneficiaries.

Rob died in an automobile accident while the divorce was still pending. He had the following three assets when he died:

- Real Estate, held individually - \$500,000
- Savings account, held individually - \$250,000
- 401(k), beneficiaries Jack (50%) and Nancy (50%) - \$1,000,000

Jack petitioned the court to probate the Will and gave notice to Kay, Nancy, and the three nephews. Kay intervened, taking the position that she was entitled to take from Rob's estate. The survivor's allowance was properly waived. Estate administration expenses and claims totaled \$50,000.

1. Analyze whether Rob's handwritten changes to his 2002 Will had the effect of revoking or legally modifying his Will.
2. Are there any theories under which Jack could argue Kay should not be entitled to any portion of Rob's estate? Explain.
3. How will Rob's three assets ultimately be distributed? How does the distribution align with his intentions?

Question 5.

1. **Handwritten Changes:** No, Rob's handwritten changes to his 2002 will had no effect on revoking or legally modifying his Will.

A will may only be altered or revoked via a testamentary act, physical act, or by law.

By Testamentary Act:

A will is only revoked by a testamentary writing when a (1) new will is published, subject to all testamentary formalities; or (2) a codicil, an amendment to a will, is made subject to all the testamentary formalities. The testamentary formalities require that a will or codicil be:

- (1) In writing (except nuncupative wills),
- (2) Signed by Testator, or by a proxy at the testator's direction and in the testator's presence
- (3) Signed by two attesting witnesses
- (4) The testator's signature must be made or acknowledged by the testator in each of the witnesses' presence (who are both present at same time)
- (5) The witnesses must sign in presence of each other, and the testator, AND
- (6) The testator must publish her will, by declaring that it's the will so witnesses know it's a will.

Physical Act:

Revocation by physical act is an act of mutilation or destruction done with intent to revoke. It must be performed by T or T's proxy in T's conscious presence and direction. It must also touch an essential part of the will, and serves to revoke the whole will.

By Law:

Revocation by law means that the testator's divorce or annulment from a former spouse changes the will. It serves only to revoke all provisions in a will or revocable trust in favor of a former spouse, but divorce or annulment does not revoke former spouse life insurance beneficiary status.

Here, the handwritten changes to the 2002 will have none of the above effects. There are no facts which suggest that Rob did anything other than cross out some key provisions that favored his wife in the 2002 will, so none of the formalities required for revocation by testamentary act are met. Further, no change was made by physical act, as the writing on the will was not done with the present intent to revoke the entire will, merely to cut his wife Kay out the will because of the pending divorce. Finally, though a divorce was pending, and as much as Rob would have liked to, his actions did not actually cut Kay out of the will through revocation by law, only an actual divorce decree will do that. Since the divorce was still pending and the parties were still technically married, Kay's interest in the will would not change automatically. Therefore, without any modification or revocation, the will stays exactly as it was executed, despite Rob's best attempts.

2. **Contesting Kay's Take of the Estate:** There are no applicable theories, based on the present facts, that Jack could use to contest Kay's share.

Under the Indiana intestacy statutes, a surviving spouse is disqualified from her interstate share if she is deemed to be living in adultery at time of decedent's death or deemed to have abandoned the decedent without just cause. However, this applies only to intestate shares, rather than Wills. The public policy grounds for such an exception for intestacy, but not for wills, make sense. It may take a long time to end a marriage, so for those without a will, evidence that a spouse was cheating on or abandoned the testator justify an automatic revocation of the intestate take; Wills however, are more easy to modify than it would be to get out of a marriage (which takes at least 60 days in Indiana). Absent grounds for challenging the formation of the will, claiming that Rob

was of unsound mind, was unduly executed, or that the will was executed under undue influence or fraud, or any other valid objection to the will or its probate, the will will control the distribution of the estate, and this intestate exception will not apply.

3. **Asset Distribution and Rob's Intent**: The estate will be paid as follows, probably far from what Rob intended.

- a. The 50,000 dollars of estate administration expenses and claims will be paid out of the individually held savings account
- b. Specific bequests of 10,000 dollars to each of Rob's three nephews will be paid out of savings account.
- c. The remaining property in the estate is 170,000 dollars in the savings account, 500,000 dollars in real estate, all of which will go to Kay
- d. The entire 401(k) will be split between Rob's children equally, each getting 500,000. As long as there are named beneficiaries other than the estate for a 401(k) it will not be subject to probate or a distribution by a will. Here, since Jack and Nancy are the named beneficiaries, they split the 401(K)

This is not exactly what Rob wanted, but he did succeed in ensuring that the 401(K) did not go to his soon to be ex-wife.

Question 6

- A. Buckeye Inc. is an Ohio Corporation in good standing based just across the border from Indiana. When one of its Indiana competitors went out of business, Buckeye noticed a significant increase in its business from Indiana customers traveling to Ohio. Buckeye has even had to send staff to Indiana to assist customers and make deliveries. Buckeye is concerned that it might need to become qualified in Indiana to continue doing this additional business, but it does not want to do more than is required.
1. Discuss the statutory guidelines for determining whether a foreign corporation must register to do business in Indiana.
 2. If Buckeye must register to do business in Indiana, what action is required to complete registration of the entity?
 3. If a foreign entity is required to register in Indiana but fails to do so, explain the potential legal consequences for that failure?
- B. Define and describe at least four ways in which an S-Corporation is more limited than, or otherwise differs from, a C-Corporation.
- C. Adam and Jane are considering how to operate their new Indiana business venture and are deciding whether to operate as a Sole Proprietorship, a Limited Partnership, or a Corporation. They have the following questions about each of the three entity types:
1. What liabilities can the owners expect to be exposed to when operating each type of entity?
 2. If the entity type offers liability protections, what limitations, if any, are placed on those protections?

A. 1. A foreign corporation must register to do business in Indiana if they are transacting business in Indiana. Isolated transactions that are completed within 30 days nor transacting business in interstate commerce is sufficient to impose the requirement. Selling through independent contractors, owning property in Indiana, soliciting offers in Indiana requiring acceptance outside Indiana before becoming contracts or similar items are not considered transacting business. The more business they do in Indiana and the increased likelihood that they will have increased sustained contacts with the state increases the likelihood that they will need to register to do business.

2. If Buckeye must register with the state, they must obtain a certificate of authority from the secretary of state. Then, they must maintain a registered office and agent in the State continuously. The registered agent will be the corporation's agent for service of process.

3. If a foreign entity fails to register with the state, they will be unable to maintain a proceeding in any Indiana Court until it obtains a certificate and it may be fined up to \$10,000. Failure to obtain a certificate does not impair the validity of its corporate acts or preclude it from defending an action brought in an Indiana Court.

B. An S Corporation is limited to only US individuals, estates and certain trusts as owners. C Corporations have no restriction on the types of owner. An S corporation allows its income to be passed through to its shareholders for income tax purposes, while a C corporation has its income taxed at the entity level rather than pass through to the shareholders. A C corporation has no limits on the number of owners where an S corporation must be limited to no more than 100. Finally, an S corporation may only differ between classes of ownership interests with respect to voting rights, whereas C corporations have no restrictions.

C. 1. There are important liability considerations to be made with respect to these organizations. In a sole proprietorship, the owner is personally liable for all debts of the sole proprietorship. In a limited partnership, General partners would not have limited liability while limited partners would have limited liability for the partnership. A corporation enjoys the most level of protection from liability. The only way to make individuals in a corporation liable is to pierce the corporate veil.

2. For someone to pierce the corporate veil, there are significant hurdles to overcome. The main considerations are when the corporate form has been so ignored, controlled, or manipulated such that the corporation was merely an instrumentality of another and allowing the misuse of the corporate form would constitute fraud or promote injustice. Any discussion would be very fact sensitive and the courts consider the following eight factors; (1) fraudulent representation by corporation shareholders or directors, (2) lack of corporate records, (3) undercapitalization, (4) use of the corporation to promote fraud, injustice, or illegal activities, (5) commingling of assets and affairs, (6) failure to observe required corporate formalities, (7) other shareholder acts or conduct ignoring, controlling, or manipulating the corporate form, or (8) payment by corporation of individual obligations.

As mentioned above, a limited partner is generally not liable for the obligations of the limited partnership. This is only defeated if he is also a general partner, or in addition to exercising the rights and powers of a limited partner, he participates in the control of the business. If the limited partner participates in control of the business, he is only liable to persons who transact business believing based on the conduct that he is a general partner. The limited partner may not allow their name to be used in the name of the limited partnership. A general partner is jointly and severally liable with the other general partners for any liabilities.