

Corporate Form Fact Pattern

Fact Pattern

Keith Robinson has big dreams. Since he began attending West Virginia University (WVU) over five years ago (first as an undergraduate and now as a law student), he has recognized that Morgantown (despite the party school moniker) is in serious need of recreational outlets. His idea? To build a huge, 10,000 square foot warehouse that would house a paint ball grid, a miniature golf course, and a whole room dedicated to arcade games (he wants to call it Fun! Fun! Fun!).

After scouting out locations, Keith chose a spot on the south side of Star City, close to the river. He has also been to a number of banks to try and secure financing (initial estimates place start up costs at over \$100,000). Unfortunately, because he is a law student with a lot of debt and no income, banks are unwilling to give him a loan. Keith's father (a retired law partner) has agreed to help the enterprise by loaning it \$50,000. However, he is clear that he wants no part of the day-to-day operations. Instead, he wants the business to pay him back at 10% annual interest within five years after the business shows a profit.

Over coffee one night, Keith shared his plan with Roger Hansel, a recent graduate of the law school. Roger, a nontraditional student, had a whole career as a software engineer before deciding that he wanted to get a J.D., so he could understand the legal side of any future business deals he was contemplating. Roger tells Keith that he has a number of contacts from his previous career and can also secure the rest of the financing through his banking contacts. Keith then shares another idea that he has. It's an arcade video game, where you must solve murders and kill bad guys while avoiding death as the kingpin murderer stalks you (a cross between Ghost Squad and Clue). Keith has created the graphics, picked the name (Criminal Files Unleashed) and designed the story line the gamers will follow. Roger tells Keith that he can turn his idea into a workable arcade game within six months.

After talking through the night the two come up with a plan. Roger will move to Pennsylvania (where his family lives) and hole himself up in their basement so he can design the game (which he thinks will be test ready in six months). He will return every month or so to help Keith secure the financing he needs. Keith will devote himself to the logistics of building and equipping the center (while still trying to graduate from law school on time).

Given the strengths that each of them offers, they believe that they should have an equal share of the profits from the recreational center. Keith, however, would like to get the bulk of the profit. Roger agrees, but insists that he needs to have some share in the profits from the video game since he will spend a substantial amount of time bringing it

to market. The two agree that a 70/30 split would be fair. Keith has also insisted (and Roger reluctantly agreed) that he should maintain creative control and ownership over the game (including the finished product).

After lengthy discussions Keith and Roger have decided that rather than risk unlimited exposure under a general partnership agreement, the better course of action is to form a corporation. Keith has therefore consulted with you about the best way to form a corporation. He has decided to name his corporation Mountaineer Guns, Golf and Games. He would like to have majority control over business decisions. Roger agrees except that he wants the shares to reflect each person's initial contributions for profit and dividend purposes. They both have agreed that any issues of control and profits for the video game also need to be included in the articles of incorporation. They would like the business to be incorporated in West Virginia.

Assignment

Please draft by-laws and articles of incorporations that conform with the laws of the State of West Virginia and the wishes of Keith Robinson and Roger Hansel.

Extra Credit: In a separate memo, please go through the differences between this business entity and a partnership. Include any significant advantages or disadvantages to either form. Limit your memo to 750 words.

New Developments: Corporate Code of Conduct

You have portioned off the corporate form assignment from Roger and Keith's request to a more junior associate. However, they have an additional worry – they would like early on to establish a code of conduct - a vision for their corporation regarding how it should be run. They're not quite sure what different ideas laws or regulations are implicated and they would like to meet with your firm to discuss. They do however know this much: they hope that one day the video game business will go global and that would like to use labor in India or another developing company to outsource this.

Assignment

You will be meeting with Roger and Keith sometime next week. Come to your meeting prepared! Do some preliminary research on the types of issues that corporate codes of conduct usually address (in industries similar to theirs) and draft questions that will help solicit the information you will need to draft your code of conduct.

For a place to get started on corporate codes of conduct try this one:

<https://abc.xyz/investor/other/code-of-conduct.html>

EXERCISE
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Extra Credit: Given that Roger and Keith eventually want to go global, in a separate document please walk them through the potential “governance gaps” that you can uncover (based on your research) between what international law would require them to do and what (if anything) she would want to do as a responsible corporation.

Take a look at this document as a place to start for your extra credit:

http://www.ohchr.org/Documents/Issues/Business/A-HRC-17-31_AEV.pdf