

**INDIANA ESSAY
QUESTION I
FEBRUARY 2004**

Mary, an artist, owns a farm in rural Indiana. She decides to start a ceramic business in the barn. She asks her wealthy friend Bob to invest \$50,000.00 in the business and offers Bob 75% of the profits of the business for the first five years and 50% for each year thereafter. Bob agrees and gives Mary the \$50,000.00, but tells Mary that he wants no day-to-day involvement in the business and wants no liability in connection with its operation. Mary agrees that she will be solely responsible for the day-to-day operation of the business and that Bob will have no liability. Bob and Mary do not reduce their agreement to writing or file any paperwork with the Secretary of State. Mary calls the business "Clay Creations."

To generate more income, Mary enters into an oral agreement with Farmer. The agreement reached is that Farmer will plant crops on the farmland and that she and Farmer will split the proceeds from the sale of the crops equally. Farmer is to provide all equipment, supplies (such as seed, fertilizer, and fuel), and labor. Farmer makes all decisions what to plant, when to plant, when and where to sell, etc. Mary and Farmer's relationship continues year after year.

Three years later, the ceramic business is thriving. That year, Mary decides she should be compensated for all of her hard work and creativity and, without talking to Bob, Mary writes herself a check for \$40,000.00 before she splits the profits with Bob.

The next year, a customer of Clay Creations slips and falls on some ceramic glaze that Mary dropped on the floor and forgot to clean up. The customer breaks her wrist in the fall. The customer sues Mary, Bob and Clay Creations.

That same year, the bottom drops out of the soybean market, which happens to be the crop Farmer planted that year. After harvesting and selling the soybeans, and dividing up the sale proceeds, Farmer does not have enough money left to pay for the seed and fertilizer he purchased on credit from Supplier. Supplier sues Farmer and Mary contending that they are both liable for the unpaid bill. In the complaint, Supplier alleges that Farmer represented himself to be in business with Mary. Supplier himself never had any conversations or business dealings with Mary.

1. Analyze the business relationship between Mary and Bob. Also analyze whether, based on that business relationship, Bob may be liable to the injured customer who has sued Mary, Bob and Clay Creations.
2. Describe and analyze any claims Bob may have against Mary.
3. Analyze the business relationship between Farmer and Mary and whether, based on that business relationship, Mary may be liable to Supplier.

Explain your answers.

**INDIANA ESSAY
QUESTION II
February 2004**

Charles Contractor comes into your office for advice about a major public construction contract that he recently bid on. Though his company was the low bidder, Charles did not receive the contract. Instead, the County Board of Public Works awarded the contract to Wanda Wilson's company, because it is a woman-owned business enterprise.

Charles tells you that he doesn't believe that giving a preference to a company like Wanda's is fair. Charles was born to a poor family and has struggled most of his life. He was finally able to "pull himself up by his own bootstraps" and built a moderately successful construction business. Like many such businesses, though, it has recently fallen on hard times. Wanda, he claims, has not suffered similar disadvantages.

You tell Charles that you will talk to the County Board of Public Works and find out what, if anything, can be done. You meet with the Board President, and he tells you that the Board really wanted to award the contract to Charles, both because Charles was the low bidder and because the Board is familiar with Charles' "rags to riches" story. But the President tells you that the Board's hands are tied because a state statute requires that it award a certain percentage of its contracts each year (by dollar value) to woman-owned businesses, and the contract in question is so large that it must be awarded to a woman-owned business for the Board to comply with the statute.

You research the statute and find out that it applies only to counties with populations of between 200,000 and 300,000 people. Only Charles' county falls within that range. While there are similar statutes governing other Indiana counties, they all have lower percentages of contracts that have to be awarded to woman-owned business enterprises, and the Board could comply with those statutes (if they applied) and still award Charles the contract.

Prepare a memorandum describing in detail the challenges you can bring under Indiana law to help Charles obtain the contract, including your evaluation of the likelihood of success on each. Assume that the procedural mechanism you will use is a suit for declaratory and injunctive relief, and that you need not exhaust any additional administrative remedies.

INDIANA ESSAY
QUESTION III
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John Smith, an Indiana resident, owned a business specializing in caring for rare and expensive potted plants. He operated this successful business from a building located on the two acre family homestead he and his first wife, who is deceased, purchased twenty-eight years ago. The homestead is in his name alone. John had never taken any steps since his second marriage, to Kate, to change the title to the property.

John's two children by his deceased wife graduated from college and have since moved to the Northeast. John ran the business on his own, except for occasional weekend assistance from Kate and her seventeen-year-old son from her previous marriage.

John's customers regularly delivered their prized plants to John in order for him to administer his specialized treatment. He normally had a customer's plants for two weeks or less. On January 27, 2003, Calvin Customer dropped off for treatment thirteen valuable plants from the island of Madagascar and has not returned to pick them up.

On April 1, 2003, John suddenly became ill, and Kate rushed him to the hospital. Within three days, he died. The day before his death, with Kate and two nurses at his side, he told his wife: "Please let my two children and your son know that I love them. I love you, too. I never went to my lawyer's office to make a will, but of course you know that I leave you the family homestead and everything that's in it. Also, everything I've accumulated in my business belongs to you."

After John's death, his children are stunned to learn that their father left them nothing. At Kate's request, the two nurses who stood at John's bedside recount John's dying words and confirm them in writing.

Kate begins to operate the business and keeps all the proceeds for herself. She refuses to return the Madagascar plants to Calvin Customer and advertises them for sale instead.

Analyze who will take John's assets, and give the reasons for your conclusions. Analyze whether Calvin Customer has a right to the bushes from Madagascar and why or why not.

**INDIANA ESSAY
QUESTION IV
February 2004**

Aaron Brown is an adult living in Indiana. Aaron had a knee replacement in an Indiana hospital by an Indiana surgeon in June 2002. Two weeks after the surgery, Aaron and his surgeon noticed that the appliance in the knee did not work properly. Aaron could not return to his employment as an attorney in a lucrative practice, and he suffered severe pain on a daily basis. He could not perform any activities except sleeping in a recliner and watching television.

After six months passed without improvement, Aaron's surgeon recommended removing the appliance. When the surgeon removed the artificial knee, he found that the appliance had a crack in it from top to bottom. The surgeon removed the cracked appliance and placed a new appliance in the knee. The second appliance worked well, and Aaron returned to work and regained full, normal function in his knee, one full year after the first surgery. Aaron lost one full year's income, totaling \$150,000.

Aaron retains you, an Indiana lawyer, to recover damages for the lost income and the pain and suffering he experienced. You file a lawsuit against the Indiana manufacturer in an Indiana state court. After you file the suit, you talk to Aaron's surgeon, who still has the cracked appliance. The surgeon tells you that he will mail the appliance to the manufacturer (the defendant in your suit) for testing, and he does so. The manufacturer's president writes a letter to the surgeon, a copy of which you receive from the manufacturer's attorney, acknowledging that the president had personally received and examined the appliance and would have it tested for defects immediately.

In your first discovery request, you ask what the results were of any testing done on the cracked appliance. You also request an opportunity for the expert you have retained to examine the appliance.

- (A) Assume seventy-five days have passed, and you have received no response from the manufacturer's attorney. Describe the steps you must take to obtain responses.
- (B) Assume that following your efforts to obtain responses as outlined in your response to (A), you receive the following response under oath from the manufacturer's president: "The appliance in question was in my possession but cannot now be located. I believe I inadvertently discarded it when I was preparing to send it to an outside expert for testing. If I locate it, I will inform counsel for Plaintiff immediately." Describe your options under the Indiana Trial Rules to respond to this disclosure and analyze which option you would recommend to your client, and the reasons why.

In your response, assume the surgeon met his duty to exercise reasonable care. Do not discuss any medical malpractice issues.

**INDIANA ESSAY
QUESTION V
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In 1996, Mother, age seventeen, gave birth to a child. Father was seventeen years of age as well. Paternity was established. In the paternity case, Mother received sole custody and Father received parenting time and was ordered to pay support. Maternal Grandparents were then appointed guardians of Child so that health insurance could be provided for Child. Between 1996 and 2002, Mother lived in a number of homes and had several live-in boyfriends; during this period, child sometimes lived with mother and sometimes with grandparents. Mother maintained steady employment from 1998 until January 2004, when she quit. Mother wanted to terminate the guardianship for several years. Finally, in September of 2003, Grandparents entered into an agreement with Mother terminating the guardianship, and the court approved the termination.

In February of 2004, Maternal Grandparents file an ex parte Petition For Immediate Temporary Guardianship as well as a Petition For Permanent Guardianship. Father filed a Consent to Grandparents' actions. In the Temporary Guardianship petition, Grandparents assert an emergency exists because Mother has met a man through the Internet and is planning to move to Florida with him in the next thirty days. Maternal Grandparents assert it is an emergency because Child will be uprooted from his first grade class. They also seek an order appointing them as the permanent guardians because Mother had promised them she would lead a stable life when the former guardianship was terminated in 2003.

Question: What is the appropriate action for the trial court to take on the ex parte Petition For Immediate Temporary Guardianship? Why?

At the hearing on the permanent guardianship, Mother admits that she met her new boyfriend/fiancé on the Internet in May of 2003. They are planning to marry, but they don't know when. She visited him in the summer of 2003, and he came to Indiana to visit her from Thanksgiving through the end of December of 2003. He is a self-employed roofer who has a roofing job lined up upon his return to Florida. Mother quit her job. She is taking the early withdrawal penalty and withdrawing \$5,000.00 from her retirement plan to help cover expenses until she can obtain employment in Florida. Mother and her boyfriend/fiancé have rented an apartment with the rent paid through the end of February in Florida. They testify that they need to hurry and move to Florida so boyfriend/fiancé can work and pay the March rent.

Question: Should the trial court grant Maternal Grandparents permanent guardianship? Why or why not?

INDIANA ESSAY
QUESTION VI
February 2004

Bob and Ray opened a tire store in May 2002. At the time they opened their store they formed an Indiana limited liability company for the store's operation to be known as "Tire Max, LLC" ("Tire Max"). Prior to commencing operations, Tire Max purchased several hundred tires from Prime Tire Corporation ("PTC"). Tire Max granted a security interest in its tire inventory to PTC to secure payment of the inventory acquisition loan. PTC filed a financing statement with the county recorder in the office in the Indiana county where Tire Max was located.

Three months after purchasing the tires, Bob and Ray obtained a line of credit from Third National Bank. Third National Bank obtained a security interest from Tire Max in all of Tire Max's equipment and personal property. Third National Bank perfected its security interest by filing a financing statement with the county recorder in the Indiana county where Tire Max was located and with the Indiana Secretary of State.

Six months after going into business, Bob and Ray ran into severe financial difficulties and were unable to meet their current financial obligations. Tire Max defaulted on its obligations to Third National Bank and PTC, and both entities filed suit to foreclose their security interests. At the time the suits were initiated, the only assets Tire Max had were its tire inventory.

Discuss and analyze all issues pertaining to the security interests of Tire Max and PTC and their respective abilities to obtain the tire inventory.

Indiana Essay Question I
Sample Answer
(verbatim transcription of answer written by an examinee)
February 2004

(1)

A partnership (Pship) is an agreement between two or more persons to carry on a business for profit. A Pship does not have to be in writing. Unless, the Pship is otherwise, Partners share in the profits and liabilities of a Pship equally. Receipt of profits, not for rent or wages, is prima facie evidence that the person receiving such is a Partner. Regardless of what Bob told Mary concerning liability, all partners of a general pship are liable personally for pship debts. In fact, Partners are held responsible unless they are a limited partner. Bob and Mary still to have started a pship, which is easy to do since there are really no formalities. Bob should have filed a certificate of limited partnership with the state if he wanted limited liability. Since Bob doesn't have limited liability, he and Mary may be liable to the injured customer along with Clay Creations. IF a Judgement is entered for the customer, the money would first come from Clay Creations (Pship) then if NOT enough from Mary and Bob.

(2) Regarding the customer, if a judgement is entered and Clay Creations is bankrupted after paying, then Bob and Mary will have to come up with the rest. Bob can try to sue Mary for indemnification a contact theory since she agreed to be solely liable. Also since the customer's injury was caused by Mary's negligence.

Bob can also sue Mary because she breached her fiduciary duty of loyalty. When there is a Pship, none of the partners can unilaterally decide to pay him/herself because doing so is self-dealing. However, Mary can defend by saying that she handled the "day to day" operations per Bob's request and that it was within her discretion to compensate herself. This will likely fail because NO agreement was made concerning Mary being paid and Partners are usually only paid for extrordinary services.

(3) Mary and Farmer are probably NOT PARTNERS. Proceeds and Profits are two different things. Proceeds are the amount they are getting from their crop selling agreement NOT Taking costs into consideration. Profits on the other Hand are the amount left after expenses. A Partner must share in the benefits (profits proceeds \$) and the burdens (cost) of the pship. IT appears that Farmer is an independent contractor since he provided all the equipment, supplies, and labor and he & Mary just SPLIT the proceeds since it was her land. This is very analagous to share cropper agreements IN the agricultural days of our county. I

If a court finds that Mary and Farmer are partners, then Mary May be liable to supplier because partners are agents for the partnership and each other. However, if the court finds that Mary and Farmer are NOT partners, then Mary will only Be liable if there was apparent/ostensible authority and supplier relied to his detriment. Since Mary Never had any conversations or business dealings with supplier and never held Farmer out to be her agent then she probably won't be liable to him. However, Supplier can argue that Being on Mary's farm and farming it gave the improper appearance to the public that they were partners and that he relied on Farmer's representation, then Mary should be estopped from Denying his claim because she benefited from the seed and the fertilizer. Mary will probably still win because his argument unintentionally points out that if it was a real Pship, Supplier would have been paid because the debts would have been distributed before Farmer and Mary get their shares, but since NO partnership then Mary got her "proceeds" and Farmer got his "proceeds" which were enough to cover Supplier Bill.

Indiana Essay Question II
Sample Answer
(verbatim transcription of answer written by an examinee)
February 2004

TO: Charles Contractor
FROM: Applicant
DATE: 2/24/04
RE: Suit to seek award of contract

(I) Suing for a Declaration Judgment & Injunctive Relief

It appears that there are several successful challenges which we may bring to obtain the contract that was denied by the County Board of Public Works.

In order to obtain the most immediate relief and to obtain the greatest chance of having the contract awarded to Charles' construction company, we will bring a suit in equity, seeking two remedies: (1) a declaratory judgment and (2) injunctive relief. A declaratory judgment is a statement by the court regarding the legality of a law, or the interpretation of a legal instrument such as a contract. A declaratory judgment can be issued where there is an issue of contention between two or more adverse parties, where the parties are seeking a ruling of interpretation, rather than an award of damages. A declaratory judgment is the best remedy to seek in our suit because the trial court can move an action for a declaratory judgment ahead on the calendar, and it will provide quick, efficient relief, if we are successful.

We will also seek an injunction to keep the board from awarding the contract to Wanda, or to keep the contract award from moving forward. To obtain this relief, we will need to show that there is an important issue of law involved, that it is a matter of public importance at stake, that our ultimate relief if we sue for damages will be inadequate, that the opposing party has been given notice of our suit for an injunction and has had an opportunity to be heard, and that we will likely prevail on the merits. Since there are issues of gender discrimination involved, and the best remedy is the awarding of the contract, we will have a good chance to obtain an injunction, since there are several constitutional challenges we can make under the Indiana Constitution.

(II) Challenges under the Indiana Constitution

A. Special Legislation

Since there are no further administrative remedies which we need to exhaust, we will challenge the award of the contract in trial court (superior or circuit court), where we will also argue that the law awarding a set percentage of contracts to woman-owned businesses violates the provision in the Indiana Constitution which bars special legislation. Special legislation is generally prohibited, and is legislation that does not apply uniformly throughout the state. Here, the facts indicate that the law in question only applies to counties with a certain population, though there are similar laws applying to counties with a lesser population. The test for special legislation is whether the subject matter of the law is amenable to general application, and if it is being applied specifically. Here, the legislation is not uniform throughout the state. Nevertheless, courts have basically allowed legislation that applies to counties on the basis of population, under the rationale that eventually it could apply to all counties. Courts tend to be differential where legislation is challenged as special, and this we should make other constitutional challenges as well.

B. Due Course of Law

The due course of law provision in the Indiana Constitution is similar to that in the federal constitution, guaranteeing due process before one is deprived of property. For administrative actions, the due process principles are codified in the AOPA, which applies to state agencies. Here, we could argue that denying the contract on the basis of is a violation of the due course of law provision, as a property right, the award of the contract, would have gone to Charles' construction company but for gender reasons.

C. Equal Privileges and Immunities

Art I, section 23 of the Indiana Constitution provides for equal privileges and immunities, somewhat analogous to the Federal Constitution's concept of equal protection, but with a different analysis.

When interpreting the Indiana Constitution, courts look to the text, history, framers' intent, and precedent under the constitution. The fact that the constitution was changed in 1984 to include gender-neutral language will assist us in challenging this gender-based law on the awarding of contracts.

The equal privileges and immunities clause asks (1) if the disparate treatment on the basis of gender is rationally related to the inherent characteristics of the class, and (2) if those within each class are treated equally. Here, we can challenge the law because it does not treat all male-owned contractors equally but varies based on their geographic locale. *FN

D. Germaneness

We could also challenge the law as lacking germaneness since it deals with more than one issue. However, courts are very deferential in reviewing laws under the germaneness requirement of the Indiana constitution, and thus this is not our best challenge.

In sum, if we can demonstrate likely success on the merits on any of these issues, we may be able to obtain an injunction, since there are issues of public concern involved.

FN* We can also argue that the disparate treatment of contractors on the basis of gender is not rationally related to the goals of the law. While review under the equal privileges and immunities clause is deferential, we could argue that based on the adoption of gender-neutral language in the constitution that equal treatment on the basis of gender is a "core constitutional value", which is similar to Price's holding on free expression, the legislature may not materially burden. Thus, while review under the equal privileges and immunities clause is generally not under a strict or exacting standard, we could potentially get the court to review this law more stringently under earlier case law.

Indiana Essay Question III
Sample Answer
(verbatim transcription of answer written by an examinee)
February 2004

John's Assets

The probate court would allocate $\frac{1}{2}$ of the personal property to Kate with $\frac{1}{4}$ in real property. The two children from his prior marriage will receive $\frac{1}{2}$ personal and $\frac{3}{4}$ real property from John's estate.

At issue is whether John's oral statements at death constitute a valid will.

Under Indiana probate law, nuncupative wills (oral wills) are valid if death is imminent and person dies from that imminence. Oral wills are limited to personal property with value of 1K unless in military then 10K. Two disinterested witnesses are required with the oral statements placed into writing within 30 days. Finally, for an oral will to be valid it must be sent to probate within 6 months and may not revoke a written will. If a person does not have a will or an invalid will then the person's estate will be governed by the laws of intestacy. A subsequent wife will receive $\frac{1}{2}$ personal property and $\frac{1}{4}$ real property if there are children from a prior marriage. The children from prior marriage will receive the remainder.

Here, John attempted to make a nuncupative will. However, it would be invalid under Indiana law. He tried to transfer both real and personal property to Kate. The personal property is assumed to be over 1K and would not constitute a valid nuncupative will. Kate and John's children would claim under intestacy law because John did not have a valid written will.

Kate would receive $\frac{1}{2}$ personal property within John's probate estate and a value of $\frac{1}{4}$ in real property. The children from John's prior marriage would split the remainder of John's estate equally. Kate's seventeen year-old son would receive nothing from John's estate under intestacy law. He was not a biological son of John's nor was he adopted by John.

Calvin Customer's Bushes

A court would find that Calvin Customer should obtain his bushes from Kate.

At issue is whether Calvin has a right to the bushes he left in John's care.

Under Indiana law, abandoned property is property where the owner shows actual intent to give up both title and possession to the property.

Here, Calvin left his expensive and rare bushes with John's business for care and upkeep. He left them there in January 27, 2003 and has now come to claim his property. The facts do not state that he has any intent to give up both title and possession to the bushes. No mention is made regarding a contract for time the bushes were to be kept but John is in the business of caring for expensive plants, Calvin did not abandon the bushes.

A court would order Kate to return Calvin's expensive bushes because he showed no actual intent to give up both title and possession to his property.

Indiana Essay Question IV
Sample Answer
(verbatim transcription of answer written by an examinee)
February 2004

In general, the scope of permissible discovery includes those matters relevant to a party's claim or defense or reasonably calculated to lead to the discovery of admissible evidence.

The items at issue here, the test results, if any, and the knee appliance are critical to establishing the manufacturer's liability for manufacturing and marketing a defective product.

A. Steps to obtain responses

Assuming the "first discovery request" was a request for production of documents and tangible things, Defendant's response would have been due within 30 days of service of the request (plus an additional three days if the request was served by mail).

After 75 days, Defendant's responses are long overdue. However, the first action required under the Indiana Trial Rules, is a conference among counsel, during which counsel engage in a good faith effort to resolve any issues before resorting to court intervention.

Assuming opposing counsel does not agree to comply with the discovery request voluntarily, I would prepare and file a motion to compel the production of the test results and the appliance. This motion must include reference to the specific discovery requests at issue, an explanation of the need for the matters requested, (i.e., within scope of permissible discovery) that Defendant has failed and (as of the conference with opposing counsel) refused to comply, and requesting that the court order compliance. As a practical matter, it would be effective to attach, as exhibits to the motion to compel, highlighted copies of the discovery requests at issue and the letter from Defendant's president promising to have the appliance tested immediately. Also, a proposed order compelling responses to the discovery requests should be attached to the motion and brief.

If Defendant fails to comply with the court's order compelling discovery, I would continue to seek compliance by asking that the court assert additional pressure. The most likely results would be contempt, awarding of attorneys fees, awarding an adverse inference, i.e., that the trier of fact may infer from Defendant's failure to produce the results or appliance, that these items would have produced negative results for Defendant (e.g., that the appliance was indeed defective as alleged), or, if the court considers Defendant's conduct sufficiently egregious, it may order "death penalty" sanctions, i.e., enter default judgment against Defendant.

B. Response to disclosure

Under the Indiana Trial Rules, the scope of permissible discovery extends only to matters within a party's (or non-party's) possession, custody or control. By offering this sworn statement, Defendant has attempted to remove the appliance from the realm of proper discovery. However, because the statement is sworn and because we lack the power to read Defendant's mind or enter its facilities to search for the appliance, we will largely be bound by Defendant's word. Of course, we should request additional discovery relating to the matters set forth in the statement, including how it was discarded, when, where, under what circumstances, who else had access to it, and who else know about it.

Moreover, the purported inability to produce the appliance certainly does not relieve Defendant of the obligation to produce the test results, if any exist.

Because Defendant has effectively prevented us from accessing vital evidence in our claim against Defendant, we should consider several options: (1) we could request that the court hold a show cause hearing, where Defendant should have to demonstrate why it should not be held in contempt; (2) we can request an adverse inference (see above); (3) amend the Complaint to assert a spoliation claim; or (4) move the Court for entry of default judgment.

Contempt is unlikely because Defendant will undoubtedly argue it did not act intentionally in disregarding the court's order but negligently. An adverse inference would be helpful. This is probably the most likely course. The Court will be hesitant to enter a default judgment unless we establish that Defendant's "accidental" loss of the appliance was actually willful concealment. Finally, the spoliation claim would be of little use because it would probably not address the magnitude of harm caused by the loss of the appliance.

Indiana Essay Question V
Sample Answer
(verbatim transcription of answer written by an examinee)
February 2004

Question One:

In considering the *ex parte* Petition for Immediate Temporary Guardianship, the court will consider a variety of factors.

First, a procedural rule should be addressed regarding the *ex parte* hearing. In order for a hearing to be *ex parte*, a party must certify: (i) what efforts were made to contact the party being excluded; (ii) irreparable injury if it is not heard immediately; and (iii) a party bringing an *ex parte* order must present both sides of the case because the other side isn't there to present the evidence in their favor.

The likelihood of an *ex parte* order here is very slim. First, the child still lives with her mother and she has sole legal custody. Second, mother is moving (or desires to move) to Florida with him in 30 days. This gives the mother plenty of time to be heard. Thus, *ex parte* is not really warranted here, especially absent a showing of efforts made to contact mother, irreparable injury, and a showing of both sides of the case by the grandparents.

As far as the Petition itself, the court will look heavily upon the best interest of the child factors. Those factors will also be considered in the permanent guardianship analysis.

It is unlikely that the court will grant the Temporary Guardianship Motion, since Grandparents were guardians of the child but were only the guardians for 6 years so that support would be paid. For temporary immediate guardianship, there hasn't been a strong enough showing by the Grandparents that this is an emergency situation so severe as to hear this *ex parte* and rule immediately. They are more likely to succeed on the permanent guardianship claim.

Question Two: With respect to Maternal Grandparents' request for permanent guardianship, the court will place great importance in the best-interests of the child analysis. Under this analysis the following factors are considered: (i) the age and sex of the child; (ii) the wishes of the parents; (iii) the wishes of the child, with greater weight placed on this factor if the child is 14 or older; (iv) the child's interrelationship with family, such as siblings; (v) the child's adjustment to home, school and community; (vi) the health of the parties; and (vii) whether the child had been cared for by a *de facto* custodian.

Balancing these factors, the courts also pay special attention to a child's interest of staying with his parents. Anyone challenging guardianship or even visitation must presume that the child's best interests with respect to his or her grandparents are being taken care of by the custodian parents. In other words, it is the presumption that the parent acts in the best interests of the child, making it hard for a "*de facto* custodian" to overcome this presumption. Further, Indiana law has also included as a factor in the analysis of whether a *de facto* custodian should

Indiana Essay Question VI
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A security interest in its broadest sense is a concept whereby one party (creditor) loans or extends credit to another party (debtor) and the creditor obtains an interest in the property (collateral) of the debtor. Security interests are governed by Article 9 of the Uniform Commercial Code which has been adopted by the state of Indiana.

The first requirement for the validity of a security interest is that there be "attachment," the security interest must attach to the collateral. A security interest is said to be attached when (1) a creditor gives value and takes an interest in the debtor's collateral and (2) the debtor has rights in the collateral.

Next, after a security interest attaches it must be perfected. Perfection merely provides notice "to the world" of the agreement between the debtor and creditor.

These concepts can now be applied to the transactions between Tire Max, PTC, and Third National Bank.

The security interest between Tire Max and PTC is unperfected, and consequently PTC would have no rights in Tire Max's inventory. The issue surrounding this transaction pertains to perfection of the security interest.

The transaction between Tire Max and PTC created a purchase money security interest or (PMSI). A PMSI is created when credit is extended for the sole purposes of acquiring property and a security interest is then granted in the property acquired. A PMSI transaction will give rise to an automatic perfection period of 20 days but the perfection will expire if the security interest is not perfected by some other means. Generally security interests may be perfected by filing a financing statement with the Secretary of State's office where the debtor resides.

Here, the facts reveal that PTC filed a financing statement with the county recorder in the Indiana court where Tire Max was located. This manner of filing is insufficient. Any other party that extends credit to Tire Max and takes a security interest in Tire Max's inventory would have priority.

As between PTC & Tire Max alone, the security agreement between them is still valid and enforceable. This, despite PTC's misfiling it still has priority in Tire Max's inventory over Tire Max itself. Consequently, Tire Max's default on its obligation to PTC would justify PTC's foreclosure on the inventory.

A secondary issue in this matter concerns the security interest of Third National Bank. The facts reveal that Third National Bank took a security interest in Tire Max's "equipment and personal property" and properly perfected that interest by filing with the Indiana Secretary of State. While this filing would cover any equipment owned or possessed by Tire Max, it would not likely cover the inventory.

Article 9 of the UCC as adopted by the state of Indiana places emphasis on certain categories of collateral. These categories include goods, inventory, equipment, general intangibles, accounts, chattel paper, etc. These different types of collateral have different methods of perfection, and while filing a financing statement may perfect one category of collateral, it will not suffice for others.

Here Third National took a security interest in "equipment and personal property", as provided in the financing statement filed with the Secretary of State. Because "inventory" is not "equipment" for purposes of UCC, the filing will be insufficient. Further, the filing of a

financial statement for "personal property" would not act to perfect an interest in "inventory" as "personal property" is far too vague a description and not recognized as a category of collateral by the UCC.

Therefore, neither Third National nor PTC would be perfected as to an interest in Tire Max's inventory. However, the security agreement between Tire Max and PTC regardless of the non-perfection would likely allow for PTC to repossess the inventory.

MPT Question I
Sample Answer
(verbatim transcription of answer written by an examinee)
February 2004

IN THE CIRCUIT COURT OF WILLAMSON COUNTY,
STATE OF FRANKLIN.

STATE)
)
 V.) CASE NO. _____
)
MILLER)

BRIEF IN SUPPORT OF ADMISSION OF PRIOR ACTS
UNDER FRANKLIN RULES OF EVIDENCE

STATEMENT OF FACTS

Defendant, Tom Miller, is charged with two counts of aggravated assault against Jan Adams, stemming from actions taken by Defendant on November 5, 2003 and October 29, 2003. As a result of his entered plea of not guilty, the case at hand is set for jury trial.

The problem at hand is that Defendant had committed other acts of domestic violence and abuse towards Ms. Adams and her daughter Sara during the time he lived with them from June 2001 to September 2002. He has also been convicted of an assault against Ms. Adams on September 21, 2002.

Because all of Defendant's prior acts of misconduct have involved acts against Ms. Adams and her daughter, the prosecution seeks to admit this evidence during the jury trial.

In accordance with Franklin Rule of Evidence (hereinafter, "FRE") 418E, the prosecution gave the defendant and his counsel timely notice of its intention to use these three prior acts of violence in his upcoming jury trial. The defense, however, objects to its admission, stating the following: (i) none of the prior incidents constitutes domestic violence under Franklin Penal Code §501, and so FRE 418 does not apply; (ii) each prior incident constitutes inadmissible character evidence under FRE 404A; and (iii) Even if the evidence is admissible under FRE 404B or 418, the court should exercise its discretion under FRE 403 to exclude the evidence.

The prosecution and defense have subsequently been ordered by the Honorable Gebippe to prepare concurrent briefs so that he may rule on the admissibility of these factors.

ARGUMENT

