

INDIANA ESSAY  
QUESTION I  
February 2006

Plaintiff filed a Complaint against Defendant in an Indiana trial court. The Complaint presented one claim for relief, negligence. Defendant filed a timely Answer without any affirmative defenses, and the parties completed discovery. On November 1, 2005, Plaintiff filed a Motion for Summary Judgment against Defendant. Plaintiff served Defendant by personally delivering a copy to Defendant's attorney's law office on November 1, 2005.

On December 5, 2005, Defendant filed a document entitled "Response to Plaintiff's Motion for Summary Judgment." On December 7, 2005, Plaintiff filed a Motion to Strike the Response to Plaintiff's Motion for Summary Judgment.

Assume Plaintiff's Motion for Summary Judgment included affidavits establishing the following facts: Plaintiff purchased a lava lamp from a store in Plaintiff's Indiana home town, took the product home, and plugged it in an electrical outlet in her basement. That night, a fire destroyed her basement. Fire investigators determined the fire's origin was the lava lamp. The lamp was destroyed, along with the box it came in and all the documents in the box. The fire also destroyed the receipt showing the store where it was purchased and the purchase date. Plaintiff cannot determine the brand name of the lamp or its manufacturer, but she thinks she purchased the lamp at a local discount store called "Dollar Bonanza." Plaintiff asserts in the Motion for Summary Judgment that Defendant owns "Dollar Bonanza" and that because Dollar Bonanza sold her the lava lamp, Defendant is responsible for the damages to her basement.

Plaintiff's Motion for Summary Judgment requested judgment for Plaintiff on liability but did not address damages.

State how the Court should rule on the following motions and give the reasons for the ruling on each motion: (1) Plaintiff's Motion to Strike the Response to Plaintiff's Motion for Summary Judgment; and (2) Plaintiff's Motion for Summary Judgment. As Part (3), assume the party who did not prevail on the Motion for Summary Judgment wants to appeal the ruling. Advise that party as to the steps it would have to take to appeal the court's ruling, and why.

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Hometown Corporation ("Hometown") is a closely-held corporation formed by adult siblings, John and Mary, under the laws of the State of Indiana. It produced and marketed chocolate candies to shops and restaurants. When Hometown was created, both John and Mary made equal capital contributions to the company. John and Mary were the sole shareholders of Hometown, each owning 50% of the outstanding stock of the company. Mary's secret recipes were used to make Hometown's candies and John's managerial skills were critical to Hometown's prosperity. John was the President of Hometown; Mary was the Secretary and Treasurer; other relatives and friends made up the remaining officers of the company.

Hometown turned out to be a great success. Five years after Hometown was formed, Giant Foods ("Giant") made an offer to purchase the business by offering to buy all its outstanding stock in exchange for \$10,000,000. Unfortunately, John and Mary could not agree on what to do. Mary was eager to sell to Giant, but John really enjoyed running the business and was also concerned about how Giant would treat Hometown's employees. John and Mary had many meetings to resolve the problem, but could not. Finally, without telling John, Mary approached Giant Foods and sold the secret candy recipes to it for \$3,000,000. Giant Foods then revoked its offer to buy Hometown. John learned about Mary's actions only later when Giant began to market similar candies in competition with Hometown.

John has now consulted you about these events. He feels that he no longer wants to be in business with Mary and that her actions have harmed him and the company. Advise him as to any and all rights and remedies both he and/or Hometown might have arising from this situation. Assume that throughout these events all relevant corporate formalities were followed by Hometown.

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QUESTION III  
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Husband and Wife, Indiana residents, divorced in 2002 after twenty years of marriage. At the time of the divorce, their two children, a daughter and a son, were eight and fifteen years old respectively. During the marriage, Husband had been very involved in the children's school and extracurricular activities, including coaching their soccer teams. In the divorce, Wife was awarded primary physical custody of the children and Husband was given parenting time every other weekend, every Wednesday evening, alternating holidays and one half of summer vacation.

Soon after the divorce, Husband began dating Wife's former best friend. Wife's overt anger about this relationship negatively influenced the children's relationship with Husband. Wife would also schedule activities for the children that would interfere with Husband's ability to exercise his parenting times. When Husband married the former friend in 2004, son refused to attend the wedding and told Husband that he did not want to see him anymore. He and Husband have not spoken since that time.

In December, 2005, Husband received a message on his answering machine that Wife and the children will be moving to California in March because her parents and all of her siblings are there. The children, now eleven and eighteen, will complete the school year in a new school. Son will enroll in college next August. The following week, Wife filed a petition seeking contribution for son's college expenses next year.

Before the move occurs, Husband retains you to represent him in the post dissolution hearing. He specifically seeks your advice on the following issues:

1. Wife's ability to move with their children from Indiana.
2. Husband's obligation to contribute to son's college expenses.

Advise Husband on these two issues, giving detailed reasons for your advice.

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Ken Parker (Ken) is the sole shareholder of Parker Ponds, Inc., an Indiana corporation, located in Elkhart County, Indiana. Parker Ponds, Inc. owns a chain of highly successful restaurants, hotels and resorts. Ken incorporated Parker Ponds, Inc. in 1990. Ken's basis in his 100 shares of stock is \$1,000,000.

Ken is seventy-five years old and is interested in retiring. Ken is a widower. He has two adult children, Sam and Sara Parker, neither of whom is interested in continuing the family business.

Ken has received an offer from one of his competitors, Global Group, to acquire his stock for \$100,000,000.

1. Assume that Ken elects to sell all of his stock to Global Group in February, 2006. Discuss the federal tax consequences to Ken from the sale of his stock to Global Group for \$100,000,000 cash.

2. Dave Jones is an accountant who has worked as the chief financial officer of Parker Ponds since its creation in 1990. Assume that Ken gives 10 shares of his Parker Ponds stock to Dave, as a reward for all of his hard work. Ken and Dave then immediately sell their shares to Global Group. Dave receives gross proceeds of \$10,000,000 from the sale. Discuss the federal tax consequences to Ken and to Dave from this transaction.

3. Assume Ken decides to hold on to all of his stock until he dies. He leaves his stock equally to his children in his Will. Ken dies on February 1, 2006. Twenty-two months after Sam and Sara inherit Ken's stock, the sale to Global Group is consummated for \$125,000,000. Assume the stock has a fair market value on the date of Ken's death of \$100,000,000, and Ken's basis in the stock at death was \$1,000,000. Assuming no tax law changes have occurred since February, 2006, discuss the federal income tax consequences of the sale of stock inherited by Sam and Sara once it is inherited by them and sold to Global Group. Do not discuss estate or inheritance tax issues.

INDIANA ESSAY  
QUESTION V  
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Sue runs a booth at a flea market in her Indiana town. She sells clothing, jewelry and sports memorabilia. In June, 2005, Sue was walking in the downtown area of her Indiana town with her metal detector activated. The detector alerted her to a large crack in the sidewalk. Sue looked in the crack and saw a shiny gold object. It was a ring commemorating an Indiana State High School volleyball championship in the year 2003. The only identification on the ring was the initials "A.B."

The ring belonged to Amanda Bright, a member of that championship volleyball team. Two days before Sue had found the ring, Amanda had inadvertently dropped the ring from her purse when searching for her car keys. Amanda immediately placed an advertisement in the local newspaper offering a reward for the ring. She ran the advertisement for two weeks. For months, Amanda searched all the local pawn shops for the ring but could never locate it.

In July, 2005, Sue was using her metal detector in an alley behind some businesses, when the detector alerted her to a box on the ground, five feet away from a trash dumpster. Inside the box Sue found a gold watch with engraving that said "To Chuck, Happy Retirement, 6/30/05." She took the watch from the box. About one hour later, the box's owner, Chuck Duncan, came out in the alley, picked up the box, and put it in his vehicle. Chuck was moving personal items from his office inside a business following his retirement on June 30, 2005. Chuck did not realize until a week later that the watch was gone from the box. He assumed he had lost the watch.

In August, 2005, Sue was visiting her friend, Ethel Franks, when Sue spotted a baseball signed by Barry Bonds. When Ethel left the room, Sue put the baseball in her bag. Ethel did not discover that the baseball was missing for thirty days. After she noticed it was missing, she called the police and reported it missing.

Sue took all three items to expert appraisers, who appraised each item at \$500 fair market value. Sue placed all three items for sale in her booth at the flea market.

Gabe Howard came to Sue's booth one Saturday in December, 2005. Gabe bought the ring, the watch, and the baseball for \$750 each. Gabe showed the items to a friend, Ethel's cousin, who recognized the Barry Bonds baseball as belonging to Ethel. After the local newspaper published a story concerning the baseball's sale to Gabe, the sale of the ring and the watch also became public. Amanda and Chuck joined Ethel in demanding that Gabe return the items. Gabe refused, arguing that he had paid more than fair market value for each item. Amanda, Chuck, and Ethel filed suits against Gabe, seeking the return of each item or its fair market value.

You are the Indiana trial court judge hearing the cases filed by Amanda, Chuck, and Ethel against Gabe. How would you rule as to each item. Provide an analysis and reasons for your ruling.

INDIANA ESSAY  
QUESTION VI  
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At the request of the State's welfare chief, the General Assembly passed a statute requiring that 35% of the State's welfare funds be administered by "faith-based organizations," such as churches, synagogues, the Salvation Army, missions and the like. Statements made by the welfare chief in legislative committee hearings, and statements during the floor debate on the legislation, indicate the provision will allow the State to close several welfare offices and substantially reduce the staff devoted to administering welfare and therefore reduce the State's welfare costs.

The proposal was made in several prior sessions of the General Assembly. Each time it passed the House of Representatives but did not receive a hearing in the Senate. In the most recent session, however, supporters of the legislation managed to get it attached to the State's budget bill, so it passed both houses and was signed by the governor.

The provision requires the welfare chief to develop an application process to decide which faith-based organizations will be allowed to administer the funds, and to instruct the Auditor and Treasurer to reimburse such organizations for their actual cost plus an "administration fee" of .5% of the welfare funds they administer. The Auditor is required to prepare reimbursement "warrants" (the State government equivalent of a check) and the Treasurer is required to honor them.

You are an Indiana lawyer, and you are approached by Peoples Pantry, a non-religious charity that runs several shelters and soup kitchens to feed and house the poor and the homeless. Peoples Pantry submitted an application to administer State welfare funds but its request was denied because it was not a "faith-based organization." You also are approached by several religious charities whose requests were denied, including Buddhist, Wiccan and Unitarian organizations. They tell you that nearly all of the agencies that the State has approved are Christian, and that those that aren't Christian are either Jewish or Islamic.

You are also contacted by Jan Jones, a welfare recipient, who recently received a letter from the State Welfare Department, stating that, in order to continue receiving welfare, Jan must go to Chapel Church, a Christian organization approved to administer state welfare. Jan went there last month, at the date and time the letter said that welfare assistance would be distributed, only to be told that "we don't hand out the checks until after our worship service, please have a seat in the sanctuary." Jan Jones sincerely believes that "Christianity is a deeply flawed, offensive and dangerous religion," and objects to even having to go to a Christian church, much less having to sit through a service, to receive public assistance.

Analyze in detail the Indiana Constitutional challenges available to Peoples Pantry, Jan and the other clients, any defenses to those challenges, and the likely outcome.

**Indiana Essay Question I**  
**Sample Answer**  
**(Verbatim transcription of answer by an examinee)**  
**February 2006**

1) The court should grant the Plaintiff's Motion to Strike the Response to Plaintiff's Motion for Summary Judgment because the response was not timely filed in the 30 day response period prescribed by law. Under Indiana law, motions for summary judgment are useful when there are no genuine issues of material fact. The party requesting summary judgment is allowed to file with that judgment any documents or other evidence that tends to prove the proponent should win and that there is no genuine issue of material fact. The opposing counsel then has 30 days (or 33 days if sent by mail) to respond to the motion for summary judgment. Finally a summary judgment hearing must be scheduled at least 40 days after the mailing or delivery of the motion. In the present case the court will strike the Defendant's response to the summary judgment motion since the response motion was filed more than 30 days after the receipt of the summary judgment motion and no request for additional time was made with the court.

2) The court should not grant plaintiff's motion for summary judgment because in this case there are genuine issues of material fact. As stated above, summary judgment is appropriate when there are no genuine issues of material fact; the present case presents many issues of material fact. This matter would be much different if there were some evidence that the plaintiff purchased the lava lamp at "Dollar Bonanza" but as it stands the lamp, box, and all manufacturer information has been destroyed. Since the only "evidence" linking the lamp to defendant's store is her belief that she "thinks" she purchased the lamp at defendant's store, there are genuine issues of material fact that must be determined in court and therefore summary judgment is not appropriate.

3) If the party who did not prevail on the motion, in this case the Plaintiff, wishes to appeal the ruling, she may file a motion to reconsider, petition to file an interlocutory appeal, or wait for the matter to proceed to final judgment and then file a motion to correct errors. A motion to reconsider can be filed after a judgment has been granted or denied for any reason up to a year after approval or denial of the motion. If the plaintiff wishes to file an interlocutory appeal she must first get trial court certification by showing: 1) later damage remedies will be inadequate, 2) she will incur substantial damages if she's not allowed to appeal now, or/and 3) there are substantial questions of law and fact. Once the trial court certifies she would have 30 days to petition the appellate court to hear the case and then 15 days to request the trial court to get the necessary documentation together. (Note: had her motion resulted in either a final judgment or a judgment with Rule 54 language stating "no reason for delay" and directing judgment entry or even an interlocutory appeal involving the transfer of money, property, or an injunction, the plaintiff would not have to go through the petitioning process and could immediately appeal). Finally the plaintiff could wait until the conclusion of the trial and file a motion to correct errors. A motion to correct errors is different from a motion to reconsider because it occurs after the case is closed due to a final judgment. To file a successful motion to correct errors the plaintiff must show that new evidence has been discovered that either makes the original award excessive or inadequate. Also, a motion to correct errors, must be filed within 30 days of the closure of the case.

Finally it is important to note that had the plaintiff been successful in her motion for summary judgment, the defendant would have been able to immediately appeal since the granting of summary judgment is a final ~~order~~ Judgment.



**Indiana Essay Question II**  
**Sample Answer**  
**(Verbatim transcription of answer by an examinee)**  
**February 2006**

There are three issues in this question: 1) What did Mary violate by selling the recipes to Giant, 2) was the sale to Giant valid, and 3) how can John and Hometown recoup losses as against Mary and as against Giant.

#1 Hometown is defined as a closely held corporation. These entities typically have a few shareholders, who participate in the day-to-day runnings of the business. As such, they do not need a board of directors, and typically do not trade shares on any market.

Because of the small, close nature of the number of shareholders, they owe a duty not just to the corporation, but to the fellow shareholders as well. Referred to as the "incorporated partnership doctrine," this treats shareholders as owing the same duties (to act in good faith and for the best interests of the corporation) as partners would owe to each other.

Mary very clearly breached this duty, as well as her duty to the corporation, by selling recipes to Giant Foods for \$3 million. By not telling John or the other officers about it until chocolate competition entered the market, she did not act in the best interests of the corporation, did not act in good faith and therefore breached her fiduciary duty.

Additionally, the question does not say whether Mary pocketed the \$3 million, but if she did, she would be liable for breach of fiduciary duty, embezzlement, and be liable to the other shareholders in a derivative suit.

#2: Was the sale to Giant valid?

Since Mary was an officer and shareholder of Hometown, she most likely had apparent, if not actual, authority to enter into an arm's-length transaction with Giant. Therefore, the sale of the recipes to Giant is probably valid on its fact.

#3 Remedies of John and Hometown

First, John (and/or the other officers) could file a shareholder derivative action on behalf of Hometown, and allege that Mary breached her duty of loyalty and fiduciary duty to the corporation. This would only result in ousting Mary, not getting his trade secrets back, however.

Second, John could attempt to revoke the sale to Giant and give them back their \$3 million. If they did not agree that the recipes should be returned, John could file for an injunction against Giant to enjoin them from marketing their chocolate. He could allege that Hometown did not intend to sell the chocolate recipes, & that Mary's act was "ultra vires" (i.e. outside the scope of her powers), since John was charged with managerial skills. If the recipes were worth significantly more than \$3 million, John could also claim unconscionability, though this would be a weaker argument.

In order to be successful with his preliminary injunction, John must show that he has a reasonable chance of success on the merits, that his remedy at law is inadequate, that the injunction would not be against public policy, and that the balance of harms weighs in his favor.

However, if John and/or Hometown simply wanted monetary damages, they could file a breach of fiduciary duty action against Mary, and seek damages from her. They could assert lost corporate opportunity in that they could have garnered a price of \$10 million, but Mary

unilaterally settled for \$3 million. She also breached her duty of loyalty, did not disclose the offer to fellow shareholders, and did not act in the best interests of the corporation. John can bring a breach of fiduciary duty action against Mary on behalf of himself as a shareholder of Hometown.

**Indiana Essay Question III**  
**Sample Answer**  
**(Verbatim transcription of answer by an examinee)**  
**February 2006**

1. Wife's ability to move with children from Indiana.

Before Wife can move to California with your two children, she must file notice with the court that handled the divorce settlement. Notice must be filed with the court and the non-custodial parent anytime the custodial parent moves out of state, or at least 100 miles from current residence. Once this is done, the court will probably schedule a meeting to decide whether the custodial arrangement should change or stay the same. In making this determination, the court will apply the best interest of the child standard. The factors that the court will consider are:

- 1) The age and sex of each child
- 2) The wishes of the child if over 14 years old
- 3) The wishes of the parents
- 4) The physical and mental well being of the child(ren) and parents
- 5) The willingness of the custodial parent to allow the other parent to enjoy visitation
- 6) The relationship of the child(ren) with friends, relatives, and others in the community
- 7) Whether there is a history of domestic violence
- 8) If one of the parents is in a relationship that could have a negative impact on the child(ren).

Even though this list is not all inclusive, the court will weigh these factors in order to determine whether the children may be moved to California with their mother, or if Sole physical custody should be transferred over to you as their father. The wishes of your eighteen year old son would be considered by the court. Since he is now of the age of majority, the decision whether to stay in Indiana or move to California with his mother will probably be one he would make for himself. However, your eleven year old daughter's wishes may be taken into consideration by the court; even though she is not yet 14, and the court does not have to. Next, the court will want to know your wishes for your children to stay in Indiana. You must let the court know that you want the children to stay in Indiana. Along with your wishes, the court will look into the children's adjustment to their current environment and their relationship with other family members and friends. If the court determines that the children are well adjusted to their school, their home, and after-school activities, for example, the court may decide to ~~award you joint physical cus-~~ transfer custody to you. The court may also decide to award you joint physical custody. However, this is unlikely since California is far away and this may disrupt your children's schedule if they have to live in two different states so far apart.

The court will also look at the children's relationship with you. The fact that their current relationship with you is not the best, may favor their mother's retaining physical custody, and in effect moving them to California. If you can show the court that wife's anger over your relationship with your current wife is the reason for your children's negative relationship with you, and that this could change if you are allowed to spend time with them, the court will probably take this into consideration while making its determination about what is in their best interest.

Finally, the fact that wife has interfered with your ~~visitation rights~~-parenting time by scheduling the children's school activities during your parenting time will weigh in your favor.

If wife does not allow you to spend time with your children while they are still in Indiana, it is highly unlikely that she will allow you to do so if she moves them to California. If we can show the court that moving the children to California will not necessarily be in their best interest, changes are the court may transfer primary physical custody to you.

2) Husband's obligation to contribute to ~~child~~ son's college expenses.

You are obligated to contribute toward son's college expenses until he graduates from college. In Indiana, a non-custodial parent has an obligation to pay child support until they reach 21 years of age or longer if the child is in college. The child (or custodial parent) must file a petition seeking contribution before the child reaches age 21, which Wife has already done. ~~You~~ The court is likely to order that you contribute toward your son's college expense until he turns 21 or until he graduates; ~~whenever comes~~ However, if son stops going to school, he becomes emancipated before he graduates, he becomes self-supporting or marries, you could petition the court at that time to re-consider your obligation to contribute toward son's college expenses. Unless the court determines at a future date that your obligation is to end due to one of the above mentioned factors, you will be obligated to pay for his college expenses until he graduates.

**Indiana Essay Question IV**  
**Sample Answer**  
**(Verbatim transcription of answer by an examinee)**  
**February 2006**

(1) Sale to Global Group

Upon the creation of a corporation, the subscribers contribute capital to the corporation in return for stock in the corporation. The shareholder's receipt of stock is not a taxable event for income tax purposes so long as the shareholder (1) gives property (not services) in exchange for (2) stock/shares from the corporation, and that issue of stock gives (3) control to the shareholders, control being defined as at least 80% ownership of the corporation. Here, Ken gave \$1,000,000 in exchange for stock, and, since he is the only shareholder, he presumably has over 80% ownership. This the receipt of stock was not income taxable.

As defined by the IRC, income is any economic benefit or clearly realized accession to one's wealth. As a general rule, the receipt of income (realization) gives rise to the obligation to report such income on a tax return (recognition) unless some exemption or exclusion applies.

Here, Ken has realized economic benefit of \$1,000,000 cash. His basis, or cost of acquiring the shares was \$1,000,000. Thus, Ken must recognize \$99,000,000 of benefit. However, since Ken has earned this benefit by purchasing and holding investment property for over 12 months, he will be subject to capital gains taxes of 15%.

(2) Transfer of stock to Dave

This transfer would most likely be considered income as to Dave as compensation for his dedicated service. It would not be considered as a gift by Ken and thus Ken would have no gift tax obligation.

Under the income tax code, a transfer of property or services out of detached and disinterested generosity qualifies as a gift. If categorized as a gift, the Donor is subject to Federal gift tax (Indiana has no gift tax) and the Donee is subject to no income tax of any kind (until transfer). For the Donee, the gift tax definition of a gift would govern. The gift tax definition is much broader than its income tax counterpart, defining a gift as any transfer for less than full and adequate consideration.

However, there is a strong presumption that any transfers from an employer to an employee are transferred for compensation. Some general exceptions to this rule are diminimus transfers, achievement or retirement gifts under \$400 given in a ceremony, retirement fund contributions and qualified employee discounts. In this case, the transfer of stock to Dave is none of the above mentioned exceptions. In fact, the facts state that Ken transferred the stock to Dave "as a reward for all of his hard work." Therefore, Dave has realized gross income equal to the fair market value of the stock at the time of transfer. Dave must recognize this payment on his Income tax returns. However, Dave's basis in the stock is the FMV of the stock at the time of transfer (which is the value he will use on his income tax returns for the realized gain on the stock transfer). Thus, Dave must also report any gain accruing to him on the sale of the stock for \$10,000,000. The difference between \$10,000,000 and the fair market value will be taxable to Dave at a short term capital gains rate (which is higher than long term capital gains rates) given the fact that he did not hold the stock for over 12 months.

Since the stock was paid as compensation, Ken will be entitled to deduct this expense from the corporation's income tax return.

(3) As a general rule, when a Donor gifts property to a Donee, the Donee takes a substituted basis in the property, or more specifically, the Donee takes the basis of the Donor. However, if a Donor transfers wealth at death, the Donees will receive a “stepped-up” basis in the property which will be equal to the fair market value of the property on the date of the Donor’s death. Here, since the property was transferred upon the death of Ken, his children have a basis in the stock of \$100,000,000. Incidentally, when wealth is transferred to a Donee as inheritance, there is no taxable income to the Donee. Therefore, Sam and Sara have a realized gain at sale of \$125,000,000; subtracting their stepped-up basis of 100,000,000 leaves a gain of \$25,000,000. This 25,000,000, since the children retained/hold it for 22 months, will be taxed as a long-term capital gain.

**Indiana Essay Question V**  
**Sample Answer**  
**(Verbatim transcription of answer by an examinee)**  
**February 2006**

I would rule that the true owner receives their property back.

(1) Ring- we first need to decide if the item is lost, mislaid, or abandoned. In order to do so, we look to where the item was found. Since the ring was in an unlikely spot for a ring (crack in the sidewalk) and not, therefore mislaid and since (as we know from the facts) no statute of limitations has run to make it abandoned, and it is not where an abandoned ring would be found the ring is lost. The finder of lost property has rights to possess the property against the whole world except the true owner, so long as the owner did not trespass, find it in a highly private locus, find it buried under owner's locus, or was not in an employer/employee relationship with the owner. The only likely option possible would be buried under owner's locus, but it doesn't really look like the sidewalk was in Amanda's locus nor that it was really buried. So Sue is the rightful possessor against all but Amanda, but she does have a duty to find the owner. Since the initials are on the ring with a specific highschool and a specific year, sport, and championship-it would be reasonable for Sue to be able to find its owner. Sue should have, but the fact that she didn't does not change our analysis. Amanda gets back the ring, because the true owner can go to anyone to get back her lost item, even to a bona fide purchaser (like Gabe who bought the ring for value with no notice-presumably-of the fact that it was not rightfully owned by the seller), unless the item is 1) money or a negotiable instrument, 2) the true owner gave the item over with intent to the wrong doer or trespasser (in a fraud-type situation) or 3) the true owner gave the buyer express or implied right for the right for the wrongdoer or trespasser to sell it to the buyer. Since none of these three exceptions exist, Amanda gets her ring back.

(2) It appears the watch was abandoned, since it was in a box near a dumpster, but in order for property to be abandoned, there must be loss of dominion or control and an intent to give up ownership. Clearly we know from the facts that Chuck did not intend to give up ownership, but Sue did not know that. Since the box was five feet from the dumpster and Chuck was in the process of moving & could have had other boxes or his car around. Likely the box was at least right next to the office's alley door- an indication that the box was not abandoned. As a result of these facts I would rule the box was mislaid (if it was abandoned, Sue would be the new owner since she took dominion and control over it with the intent to own- and Gave would be the subsequent owner and is entitled to keep the watch). Since the property was mislaid, it falls under the same analysis as the lost ring of Amanda's and Chuck can get his ring back. Note, this is not a treasure trove situation, since the gold watch is not a coin or money. But even if it were, modern courts apply the same rules as lost property, and Sue wasn't a trespasser.

(3) The baseball card was stolen from Ethel's home, as a result, as mentioned in the rule supra, regarding trespassers and highly private locus Sue does not even have possession rights to the baseball card. Either way, Ethel can get her card back, since it was not abandoned. The three could with an action in replevin to get the goods back, trespass to get money damages, or trover to get money damages for dissolution plus value of the property (and Gave keep the item).

**Indiana Essay Question VI**  
**Sample Answer**  
**(Verbatim transcription of answer by an examinee)**  
**February 2006**

There are clearly several Constitutional violations including 1) The violation of at least three sub clauses of the Religion Clause in the Bill of Rights, i.e. the Freedom of Religions Opinion, the Freedom of Religion and the requirement that no government money be given to religions or organizations and 2) The violation of the requirement of germaneness, i.e. that individual pieces of state legislation be devoted to a single subject and naturally related subjects and 3) potential violations of the Equal Privileges & Immunities Clause.

Lets start with a discussion on the Indiana Constitutional requirement that all pieces of state legislation be devoted to a single subject and naturally related subjects, i.e. The requirement of germaneness. The State budget bill contained the legislation that created the system of faith-based administration of welfare funds. Opponents may argue that these are naturally or closely related subjects since they both deal with state finances and appropriation of state financial assets, However, the nature of the faith-based administration system is no radically different that what came before in budget legislation that it is hard to perceive them as part of the same subject matter. Indeed, even the history of the faith-based administration system points to the conclusion that it is an independent subject matter with its own (long) history and its own particular set of supporters & opponents. The Supreme Court is usually quite deferential to the legislature in this regard but here, when it appears as if the faith-based administration initiative was tacked on to the budget legislation merely for the purpose of ensuring its passage after prolonged failure to get passage, even the Supreme Court must see this as violative of the Germaneness clause.

The Bill of Rights forbids the government from giving money to religious organizations. And this provision has been interpreted quite strictly, yet here religious organizations are being given 35% of the States Welfare funds to administer. Some may argue that the government is not in effect giving money to religious organizations since the religion organizations must distribute these funds to the public, but if the constitutional clause is interpreted strictly, there is no doubt that money is being given to these organizations despite the fact they are not expected to keep it. Furthermore, however, the religious organizations are allowed to keep 0.5% of the funds they administer. Although this is compensation for their administration services, the government is giving money to these organizations in violation of the constitution.

To extrapolate further, appointing such religious organizations with such administrative power and with such financial discretion empowers them in a way that contradicts one of the intentions of the clause forbidding the government from giving money to religious institutions. Government is not to empower religious institutions!!

This last point segnes into the next right provided by the constitution, the right to freedom of religion, and its corollary, Freedom from religion. People eligible for state welfare funds are being asked to interact with religious organizations, religious organizations they may not be a part of, in order to apply for public welfare funs. The non-religious Hoosiers have a right to not have religion & their institutions thrust on them by their government.

One defense to this is that only 35% of State Welfare funds are being administered by Religious institutions leaving 65% supposedly to be administered by public offices and this



permits those who want to avoid religion to be able to continue to do so. Nonetheless those non religious poor have been severely limited in their ability to access purely public administration & distribution.

This legislation has also prevented non religious charities from continuing to receive and administer welfare funds. This may violate provisions of the Religion Clauses in the Bill of Rights, though it is not clear that this is so since those provisions may be restricted to the rights of individuals, not organizations.

The government's requirement that some welfare recipients attend specific church services of churches approved to administer state welfare is, without a doubt, violative of the Freedom of Religion and the Freedom of Religion opinions. One cannot have religion thrust upon them and ought to be free to follow their own religious guidelines and avoid religions they deem unworthy.

In addition, therefore, these non religious people and those that follow religions different from the ones with institutions in the administration system and people who are opposed to religion generally may be being treated in violation of the Equal Privileges & Immunities Clause. They are being treated unequally with persons who actively do or are quite willing to attend church & engage with religion in order to get welfare benefit. Or, another way of looking at it, the poor eligible for welfare benefits are being treated irrationally different from the better financially well off of Indiana in that the poor are being compelled to interact with religion & even attend religious services while the less poor are not. There is no inherent characteristic of the poor that reasonably justifies such unequal treatment.

The non monotheistic religious institutions such as the Buddhists, Wiccaus & Unitarians may also have a claim under the Equal Privileges & Immunities clause since the Benefit afforded to religious institutions in Indiana, i.e. the benefits of having the opportunity to earn money administering welfare funds and of having the power to distribute the funds at their discretion, is not equally available to all religious groups. There seems to be religious discrimination in effect against non Christian religions &, to some extent, non Jewish and Islamic ones. The Equal Privileges and Immunities Clause may not be applicable to organizations per se, so they may not easily win such a claim, but it is probably true that their poor members who are eligible for welfare funds are being discriminated against vis-à-vis the poor members of the Christian, Jewish & Islamic religions.

As a final post script here, I would like to note that a fuller constitutional analysis (as if one is needed) would address not only the text of the allegedly violated constitutional clauses, but also the history of those clauses, the intent of the chapters of such clause and would cite relevant Indiana Supreme Court decisions interpreting those clauses.

And one final post-post script, this analysis is quite different than what would be conducted under the federal constitution, whose scrutiny this legislation would also have to survive.