

Indiana Essay Question I
Sample Answer
(Verbatim transcription of answer by an examinee)
February 2008

Bob, my first thought is that we need to file a motion to correct errors with the trial court. We will argue that the award as it stands needs to be adjusted. In Indiana, there is a rebuttable presumption that the division of property following dissolution of a marriage should be 50-50. The presumption is that the 50-50 division is just. However, the court can depart from this 50-50 division if it would be in the name of justice to do so. However, before discussing the factors necessary to consider departing from the 50-50 presumption, we must first discuss which assets are eligible to be divided.

Indiana follows the one-pot theory in property division. Essentially, all assets acquired before or during the marriage go into the pot to be divided. Also, included in the pot are all debts accrued by either party before or during the marriage. The cut off date for being included in the pot is the date that a party files for dissolution.

Bob, the following assets from your marriage belong in the pot: your stock in FTI, the \$25000 in savings, \$150,000 for your residential home, and your 401(k) valued at \$150,000. The following items will not be included: the value of either your or Jane's college degrees, Jane's Masters degree, and Jane's \$50,000 inheritance. The inheritance will not be included because she didn't inherit after the filing for dissolution. Also, the value of degrees are never included. Additional items may be included, but it appears that you have already divided them, so we do not need to discuss them.

Now that we know what is in the pot, we need to discuss how it should have been decided. The court should consider several factors in making this determination. The factors include the following:

- (1) the contribution each party made to the wealth of the marriage;
- (2) the length of the marriage;
- (3) the role each party played in the dissipation of wealth;
- (4) the economic status of each party;
- (5) the earning potential of each party; and
- (6) the custody of any minor children.

The first factor includes both economic and noneconomic contributions. Therefore, your salary will be weighed against Jane's homemaking and child rearing (if applicable).

The second factor, the length of marriage, here should lean towards a more even division. You were married 28 years. That is long enough to be thought of as having equal access to the benefits of the assets.

The third factor relates to the dissipation of wealth. This usually comes into play when one spouse has wrongfully lost a significant amount of money, such as through gambling. However, although the accident occurred after the filing, it is possible that the court might consider your negligence in not obtaining insurance for the company.

The fourth factor is a big one for you. Bob, your current economic status looks bad. Jane on the other hand just inherited \$50,000. We will argue that your share must be greater because it is going to be harder for you to get back on your feet.

The fifth factor is going to be harder for us. You are unemployed now, but will be able to draw on many years of work experience when finding a new job. Jane on the other hand has been out of work for 25 years.

The final factor does not apply to you because your child is emancipated.

Overall, we can attempt to argue that the division is unfair based on the above factors. We will also attempt to argue that the stock, now worth \$0, should be valued at \$0 instead of the \$150,000. We can also attempt to have the court vacate the order awarding Jane attorneys' fees. For now, I will file a motion to stay the enforcement of that order so that you will not be found in contempt for not following it while we get all of this straightened out.

Indiana Essay Question II
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This question presents three issues:

1. Was the warrantless surveillance on David's home constitutional under the Indiana constitution?
2. Was the warrantless removal of David's garbage constitutional under the Indiana constitution?
3. Can the evidence obtained through the above warrantless searches be used against David?

1. Warrantless surveillance of David's home.

Under the Indiana constitution, the legality of warrantless search and seizure depends on whether the law enforcement conduct was reasonable. This is different from the Federal Constitution because there, the legality of a warrantless search depends upon the expectations of privacy of the search subject. In order to determine if the conduct of the law enforcement was reasonable, the courts will consider the following factors:

1. Bases for selecting the search subject
2. The degree of intrusion by the police
3. Law enforcement needs

Under the above totality of the circumstances test, the surveillance of David's home would seem to be constitutional.

David's home was selected based on a tip by an informant. Though David would argue that informant tips are not reliable, the state would show that this particular informant has previously provided the police with reliable information.

The degree of intrusion on David's home also seems to be slight. From the information provided, it would seem that the police watched his home from the outside. Though David could claim that this was invasion of his privacy, the State would counter by showing that Police never entered his property.

Finally, the needs of the police in this case seem to be important. There is no question that catching drug dealers or stopping drug trade is an important goal and a need of all law enforcement agencies.

As a result, the surveillance of David's home would pass the totality of the circumstances test and would be held as constitutional.

2. Warrantless removal of Garbage

Under the Indiana constitution, a warrantless removal of one's garbage again revolves around whether the conduct of the police was reasonable. In analyzing such cases, the court will consider

the three factors mentioned in the part one (1) of this question and, will consider two additional factors:

1. Was the garbage removed in the substantially same manner as it would be on “trash days”
2. Did the searching police officer have a reasonably articulable suspicion for choosing this particular house?

Under the above totality of circumstances test, the warrantless removal of David’s garbage would be considered constitutional. The bases for selecting David’s home and the needs of the police would remain the same as in part one (1) of this question. The difference would be that David could claim that there was no basis for selecting him as the search subject since the previous surveillance indicated nothing unusual. The State would argue that the informant was reliable and has provided valid information previously.

The degree of intrusion on David was slight. Though he can argue that the police actually entered his property, the State would argue that the intrusion was at midnight and only within 15 feet of his property. It is likely that the State would prevail in this argument.

The garbage was removed in substantially the same way as it would be otherwise. The police had a truck waiting, they put the cans back where they belonged and it does not seem that they did anything unreasonable.

Finally, because of the informant’s tip, the police had a reasonable, articulable suspicion for removing David’s garbage. Once again, David could argue that because of the previous surveillance there should have been no suspicion but the state would again point to a reliable informant

Under the Indiana constitution and applying the totality of circumstances test, it would seem that the removal of David’s garbage was constitutional.

3. Using Evidence against David

Because the evidence was obtained without violating David’s constitutional rights, it can be used against him at trial. Though he can argue that the evidence was obtained without a warrant, it would not make a difference since the state can show that the police conduct was reasonable.

Indiana Essay Question III
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This question involves a bailment relationship regarding property as well as an issue with a negotiable instrument.

Property/Bailment Businessman claim against Elite

The relationship between Elite and Businessman could possibly be a bailment. A bailment occurs when the bailee intends to take control over chattel for a period of time for the bailor. If the benefit is for the bailor the bailee is held to a slight duty of care being responsible for gross negligence. If the bailment is for the benefit of the bailee the duty of care is high and responsible for slight negligence. Mutual benefit are governed by an ordinary care standard which is also the modern trend to apply in all bailments. If this relationship was in fact a bailment is for the mutual benefit and the bailee would be responsible for failure to realize ordinary care. The problem is whether the relationship was a bailment at all because although there was a mutual benefit the ride in exchange for a fee, the bailee never seem to intend on being a bailee for the book. That is what Elite will argue to the Businessman. The Businessman will argue there was a bailment created because a limo driver can reasonably expect passengers to leave items behind on accident. The expectation is evidenced by the sign placed in the limo that states Limo is not responsible for items left in the vehicle. So because of the sign there could be reasonable expectation and therefore there should be a bailment. This bailee would be held liable because he didn't use ordinary care when he told Fan he could keep the book so therefore he would be liable to Businessman. The notification sign in the limo trying to limit the liability is not effective being the facts state it was small and on the partition which is quite far away from the other end of the limo, therefore a customer could never even see it. Such notices are only valid if seen or should have been seen and cannot relieve liability for intentional torts or gross negligence.

Property

The Book could also be found to be "mislaid" property because there could have been an intentional act to place the book down by the businessman and just forgot the book. The book could also be lost property if there was no voluntary act to place the book down in the limo and it was by accident. The book could also be lost property if there was no voluntary act to place the book down in the limo and it was by accident.

The book definitely is not abandoned property which requires intent to give up possession control and title. Regardless of the category of property the True Owner is the winner and taken against all others expect where the property is cash or negotiable instrument.

Negotiable Instrument Elite's claim against Businessman. The check is a negotiable instrument. A negotiable instrument requires the following:

- 1) Writing
- 2) Signed by Maker or Drawer
- 3) Unconditional
- 4) Promise to pay or order to pay

- 5) Fixed Amount
- 6) In Money
- 7) No additional undertakings
- 8) Payment on demand or definite time
- 9) Made payable to order of or bearer of

Negotiable Instruments are covered by Article III of the UCC. Article IV contains additional laws regarding banks and their customers.

Because Businessman issued a check he is the drawer, his bank is the drawee and Elite is the payee. Checks are also called drafts and always have three parties as stated above. The check was also order paper which requires special endorsement, (consisting of transfer & endorsement), because the check was specifically made out to Elite.

Businessman put a stop payment on the check which requires specific information to be given to the bank so the bank may properly identify the check and prevent its payment as requested. It seems this has been done and Elite could file suit under contract law because Businessman did sign the check. He could also try to claim Businessman breached the transfer warranty. When you transfer a negotiable instrument you guarantee it's authentic, you have the right to enforce it, there has been no alterations and you know if no insolvency, claim or defenses.

Additionally, Elite being a sole proprietorship the owner would be liable for the book if it could not be found. The driver of Elite limo would probably be an employee and therefore his actions would make the owner liable under agency or respondent superior.

Indiana Essay Question IV
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A. STATUS OF THE UNRESPONDED-TO REQUEST FOR ADMISSIONS IN THE SUMMARY JUDGMENT PROCEEDING

1. Effect of not responding to requests for admissions generally

To determine the status of the unresponded-to requests for admissions in the summary judgment proceeding, we must first analyze requests for admissions generally.

If a party fails to respond to a request for admission or fails to deny a specific request within 30 days, the matter requested is deemed admitted for purposes of the current suit.

The Indiana Trial Rules provide that the requests are admitted, without having to apply to the court for their admissions.

Further, it is very difficult for a party to convince a court to allow the party to deny the facts admitted.

2. Important of a Response to a Motion for Summary Judgment and Designation of Evidence.

Pursuant to Indiana Trial Rule 56, an opposing party is not required to respond to a Motion for Summary Judgment. The court will not automatically rule against a party for failure to respond; rather it will decide the motion on its merits. If there are “no genuine issues of material fact,” the court will grant the motion.

However, it is very important for parties to respond because courts will only consider evidence that is designated to the court on the motion. TR 56. Further, on appeal, the courts will be limited to designated evidence.

3. Conclusion – The unresponded-to admissions will not be considered in the summary judgment proceeding.

The court is likely to refuse to hear evidence of the admissions in the summary judgment proceeding. The admissions are deemed admitted without court action. However, Plaintiff failed to present evidence of the admission to the court through a response and designation of evidence.

B. NECESSARY STEPS TO REINSTATE PLAINTIFF’S SUIT AGAINST SMALLVILLE

1. Plaintiff should file an Indiana Trial Rule 60(B) motion for relief from judgment.

Indiana Trial Rule 60(B) allows parties to move the court for relief from judgment in certain circumstances. One of the enumerated circumstances is for any reason under a Motion to Correct Errors that could not reasonably be discovered within 30 days of judgment.

One such reason if there is substantial evidence that could not have been reasonably discovered at trial.

Motions under TR 60(B) must be made within one (1) year of judgment. Plaintiff is certainly within that time frame.

However, it may be difficult to prove that the evidence could not have reasonably discovered, given that Plaintiff personally mailed the letter, and it should be public knowledge that Wanda Smith was appointed to the Town Board.

Therefore, Plaintiff may want to pursue the TR 60(B) motion on other grounds, such as excusable neglect or misconduct or fraud of the other party (if that is in fact the case).

2. If the TR 60(B) motion is denied, Plaintiff should appeal the decision to the Indiana Court of Appeals

Decisions to reverse, affirm, or modify judgments under TR 60(B) are considered final judgments. Therefore, if the trial court denies the TR 60(B) motion, the Plaintiff should appeal.

The Plaintiff could first choose to file a Motion to Correct Error within 30 days of the judgment. This motion would be filed with the trial court. It is discretionary in this case.

The Plaintiff could also choose to appeal directly to the Indiana Court of Appeals by filing a Notice of Appeal. The Notice of Appeal must be filed with the trial court within 30 days of the final order. It must be accompanied by a \$250 filing fee, and a copy of the Notice to be provided to the Clerk of the Indiana Court of Appeals.

Under Indiana law, each party has a right to one appeal to the Indiana Court of Appeals for final judgments.

If unsuccessful, the Plaintiff could then file for a rehearing with the Indiana Court of Appeals, which is optional to the party. It is also discretionary to the court. This motion must be filed within 30 days of the decision.

Finally, the Plaintiff could file a Motion to Transfer to the Indiana Supreme Court. Again, this motion must be filed within 30 days of the judgment. It is discretionary, and unlikely the court would grant transfer.

Indiana Essay Question V
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Jane and Peggy,

I am sorry to hear about your recent loss of your father and brother. Within this letter I will explain to you, based on the facts I have, how Sam's property is divided according to Indiana Law, and further the best way for you to accomplish your goal of John's ex-wife and your niece Judy living in the farmhouse.

First, Sam's relationships are all frozen when he dies. Accordingly, because Sam does not appear to have a wife or parents alive when he died all of his property, real and personal, was passed to you two and John upon Sam's death. Usually, this would mean you each receive a one-third share. Since Sam's death, his estate should have been accumulating rent on the farmland and rent from John. This income becomes part of his estate. It is not clear whether John was paying rent on the house to the estate, but Sam's estate's administrator will be able to determine that. If John was not, the administrator has a duty to obtain these funds from John's estate unless you two agree otherwise and sign a settlement agreement so indicating. If John was not paying this rent and was obligated to before Sam's death, John's estate will be liable to Sam's estate for this as well unless an agreement can be reached. From the sounds of things, those agreements should be reached easily.

Second, before considering John's untimely death, I must alert you to certain tax issues. First, Federal Estate and possibly Federal Gift Tax will apply to Sam's estate. Secondly, Indiana has an inheritance tax system that will be applied because Sam's real property was located in Indiana.

A. Federal Estate and Gift Tax.

There is a \$2,000,000 Unified Credit for Federal Estate and Gift Tax Purposes. It is not clear how much of this Sam used during his lifetime, but the limit for gifts during one's lifetime not in contemplation of death is \$1,000,000. Accordingly Sam has at least \$1,000,000 remaining. Although property has increased in value in recent years before this recent decline, I will assume that Sam's estate consisting of the farmland and farmhouse will not generate any estate tax in excess of \$1,000,000. If this is not entirely accurate please contact me so we can discuss in more detail.

It should be noted that each of you receive as a basis for your property the fair market value of the property at Sam's death. This is not the case for gifts, so please let me know if you received any gifts so that I can inform you of the tax consequences

B. Indiana Inheritance Tax.

In addition to the Federal Tax above, Indiana imposes an inheritance tax on property transferred from Sam to each recipient. Luckily, as Sam's lineal descendants, you and John are classified as Class A and have the lowest tax rate and a \$100,000 exemption. Therefore, only amounts transferred to you at Sam's death in excess of \$100,000 will be taxed. Again, I advise you that we should sit down with an accountant if Sam's property has significant value.

There is one potential loophole in the tax system we may be able to utilize, but it appears unlikely. If the farmland has been farmed actively by John or another family member and was then transferred after death to be used in the same manner by another family member, the

farmland may have been able to be valued for inheritance tax purposes at Sam's basis. However, merely renting the land is not sufficient involvement for this provision to apply.

Finally, I would like to help you two accomplish your goal of allowing John's ex-wife and daughter Judy to live in the farmhouse. There are a number of ways to accomplish this depending on how the estate is divided and how long you would like Judy to be able to live in the house.

1) If your goal would be, in essence, to give Judy the house, you could work with the Administrator of Sam's estate to determine if you two can split the farmland and then give farmhouse to John's estate. Because John is unmarried and it does not appear that this mother is alive, his entire estate would pass to Judy. The court would set up a trust and appoint a trustee, possibly one of you two, to manage the trust until Judy reaches the age of majority. This will protect the property from John's ex-wife.

2) If you two and John's estate become tenants in common or joint tenants, you could set up your own trust and appoint a trustee to manager for Judy's benefit. This would enable you to limit the length of time Judy may enjoy the land by either making it revocable or stating a time period. This involves a transfer to a minor and may also involve gift taxes, so if you prefer this option we will have to discuss in more detail. This also would allow you to create a spendthrift provision to protect the house from creditors but, again, we can discuss this in more detail later. There are many specific rules for minor's trusts

3) The final option is to transfer by deed, either as tenants in common, joint tenants, a term of years, or a life tenancy. This option allows you some of the same controls as a trusts, but there is not a fiduciary protecting your interest or Judy's interest. Although you may like this option, I would encourage you to establish a trust of one kind or another.

Indiana Essay Question VI
Sample Answer
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February 2008

1) The Partnership will be liable to the Bank for the \$10,000 loan plus interest.

Andy and Ben were in a partnership. A partnership is an association of two or more persons to carry on as co-owners a business for profit. Andy and Ben agreed to share profits equally. Under the Indian Uniform Partnership Act, the sharing of profits is prima facie evidence of a partnership.

Partners in a partnership follow many of the same principles in agency. An agency is the manifestation of consent whereby the principal agrees to let the agent act on his behalf and the agent agrees to be under the principal's control.

In a partnership, the partnership is the principal and the individual partners are agents.

An agency can be created in one of four ways: Actual, Apparent, by ratification, or by estoppel. Actual authority can be express or implied. Actual express authority is granted by words or overt conduct. Actual implied authority is where the principal leads the agent to believe the agent has authority. Apparent authority exists where the Principal leads a third party to believe the agent can act. Agency by estoppel occurs when a creditor provides credit. These same principles apply in the partnership, particularly when the partners use their title as partner to obtain credit.

In the suit by the Bank, Andy used his position with Delivery Service to convince the Bank to loan money. The agreement (loan) was a contract. In partnership law, one partner is jointly liable in contract for the contracts made for the partnership. Andy signed in the name of the partnership, Delivery Service, in his capacity as a partner. Additionally, this was for "credit." Therefore, Andy acted with Apparent Authority for Delivery Services or alternatively, an agency by estoppel.

Unfortunately, as Andy's partner, you will be liable (JOINTLY) on the Contract. Creditors of partnership can get partnership assets & charging order against you.

2) Ben will be liable for the negligence of the automobile accident (if found liable), but will not be liable for Andy's intentional tort.

In a partnership, partners are jointly and severally liable for torts committed within the scope of the partnership.

Here, Andy was specifically sent out by Ben in a partnership delivery truck to make a delivery. Deliveries are the essence of the business. Therefore, when Andy ran the red light, the tort was committed within the scope of the partnership. As such, Ben and Andy are jointly and severally liable to Driver.

Ben, you will be relieved to know that you are not jointly and severally liable for intentional torts committed by a partner. To be liable, you would have had to act with the same intent or authorize or ratify the action. Clearly, you did none of these things. You had no knowledge of the facts surrounding Andy breaking Driver's nose.

Andy alone will be liable to Driver.

To be clear, the partners are liable jointly in contract, but jointly and severally in tort. Also, a creditor of the partnership can seek satisfaction against the partnership assets. Thereafter, the creditor becomes a creditor of the individual partners. The creditor can seek a charging order for a partners distributions.

INDIANA ESSAY
QUESTION I
February 2008

Bob and Jane were married for 28 years with one emancipated child when the parties separated and Bob filed for dissolution. Both are college graduates and Jane has a Masters Degree in Social Work. Bob was employed by the family business, Family Trucking, Inc. (FTI) earning \$110,000 per year. Jane was not employed outside the home in the last 25 years.

The only asset owned prior to the marriage was Bob's stock in FTI worth \$15,000 at the time of the marriage, but worth \$150,000 at the time of separation primarily due to Bob's efforts. The parties agreed on the division of tangible personal property immediately, but could not agree on division of the following assets which they valued as of the date of filing as follows: Savings - \$25,000; Residential home - \$150,000; Bob's FTI stock - \$150,000; and Bob's 401(K) - \$150,000.

Thirty days after the filing, an FTI truck caused an accident killing three people. Due to an oversight on Bob's part, there was no insurance. Prior to the Final Hearing, all of the assets of FTI were liquidated to pay the claims of creditors. Bob was left unemployed.

After the filing, but prior to the Final Hearing, Jane inherited \$50,000 from her grandmother.

Due to lack of employment history, Jane requested 75% of the assets and her attorney fees. The Court valued all of the assets as of the date of separation and awarded Jane 60% as follows:

<u>Jane Awarded</u>		<u>Bob Awarded</u>	
1/2 Bob's 401(K)	\$75,000	1/2 401(K)	\$75,000
Residential home	150,000	FTI Stock (now worthless)	<u>150,000</u>
Savings	<u>25,000</u>		\$225,000
	250,000	Less Judgment	<u>-35,000</u>
Judgment against Bob	<u>35,000</u>		
Net Total	\$285,000	Net Total	\$190,000

The court also awarded Jane attorney fees of \$3,000 with \$1,500 payable in 45 days and the balance within 90 days.

The post-separation inheritance of Jane was not considered by the Court.

Jane immediately advised Bob she will use contempt charges with threat of jail to collect the Judgment and attorney fees as soon as possible.

Bob is stunned by the decision and seeks your advice. Give Bob a detailed analysis.

INDIANA ESSAY
QUESTION II
February 2008

Police Officer was told by Informant that David Dealer was selling marijuana from his home in Fort Wayne. Informant previously had given Police Officer reliable information. Police Officer performed surveillance on David Dealer's home, but saw no unusual comings and goings or other signs of drug sales.

On July 5, 2007, David Dealer took two garbage cans to their usual place near his garage, where they were to be emptied early the next morning by a private trash hauling service. Instead, shortly after midnight Police Officer and another officer walked about 15 feet up Dealer's driveway, each took a garbage can, and they emptied the contents into a waiting police pickup truck and returned the now-empty garbage cans to their original spots.

In the contents of the garbage cans, Police Officer found marijuana stems and leaves and plastic bags with cocaine residue. Using these results, Police Officer obtained a search warrant, searched David Dealer's home, and found abundant marijuana and cocaine along with paraphernalia necessary to weigh and package the drugs. David Dealer was arrested and charged with various drug possession and drug sale offenses.

David Dealer moved to suppress the evidence found in the search of his home. Analyze his claim and the State's response under the Indiana Constitution.

INDIANA ESSAY
QUESTION III
February 2008

A California businessman (Businessman) was the guest speaker at a conference in downtown Indianapolis, Indiana. He was given a first edition, signed copy of Kurt Vonnegut's Slaughterhouse Five as a thank you gift. The book is valued at \$500.00. He hired Elite Limousine (Elite), a sole proprietorship, to transport him to the Indianapolis airport for a flight to California. The customer section of the limousine where Businessman was seated was separated from the driver by a glass partition that was open. Just below the partition was a small notice that Elite is not responsible for items left in the vehicle. En route to the airport, Businessman and Elite talked about the book just given to Businessman. Due to traffic delays, Businessman was late arriving at the airport. Businessman paid Elite \$100.00 with a check drawn on his California bank account. In his haste to make his flight, he left the book on the back seat of the limousine. He did not realize that he forgot it until he was in flight.

After delivering Businessman to the terminal, Elite picked up its next customer (Fan) who flew in to see the Pacers' home game against the Bulls. During the trip downtown, Fan noticed the book on the back seat and asked Elite about it. Elite told Fan the book was left in the limousine by another customer and Fan could have it. Fan slipped it into his backpack. Upon arrival at Conseco Field House, Fan paid Elite with cash, exited the vehicle and entered the stadium.

As soon as Businessman arrived in California, he contacted Elite to notify them that he left the book on the back seat. Elite explained to him that it is not liable for property left in the limousine. Businessman then called his bank and placed a stop order on the \$100.00 check given to Elite. When Elite presented the check for payment the following day, it was notified that a stop payment order had been issued and the check would not be honored.

Analyze what claims Elite may bring against Businessman.

Analyze what claims Businessman may bring against Elite.

INDIANA ESSAY
QUESTION IV
February 2008

In August of 2006, Plaintiff was attending a baseball game at the ball diamond owned by the town of Smallville. The bleacher on which Plaintiff was sitting collapsed and Plaintiff was injured. In November of 2006, Plaintiff mailed a Tort Claim Notice by certified mail with the appropriate content. The certified letter was addressed: "Sammy Smith, President of Smallville Town Board, 234 Franklin St., Smallville, Indiana".

Plaintiff filed suit against Smallville in April of 2007. In August of 2007, Smallville filed a Motion For Summary Judgment attaching an affidavit. Smallville asserted that Plaintiff had not complied with the tort claim notice requirement because the notice had not been sent to a legal representative of Smallville. The affidavit executed by Sammy Smith indicated that Sammy Smith had resigned from the town board in June of 2006.

Plaintiff did not file any response to the Motion For Summary Judgment. The trial court held a hearing on the motion in October of 2007. At the hearing, Plaintiff's attorney referred to requests for admission Plaintiff had sent to Smallville asking Smallville to admit that Sammy Smith was Town Board president. Smallville had not responded to the requests for admissions within 30 days or sought any extension.

Question 1: Under the Indiana Trial Rules, what is the status of the unresponded-to request for admissions in the summary judgment proceeding? Explain.

In November of 2007, the trial court granted summary judgment in favor of Smallville and dismissed Plaintiff's Complaint. Four months later, it comes to the attention of Plaintiff that the Tort Claim Notice that was sent by certified mail to Sammy Smith was signed for by his wife, Wanda Smith. Furthermore, Plaintiff discovers that after Sammy Smith resigned from the Town Board, Wanda Smith was appointed to the Town Board effective in June of 2006, two months before the bleacher collapsed. In fact, Wanda Smith was the Town Board president in November of 2006 when she signed the return receipt on the certified letter mailed to Sammy Smith containing the Tort Claim Notice.

Question 2: Under the Indiana Rules of Trial Procedure, what steps should Plaintiff's attorney take in an attempt to reinstate the dismissed suit against Smallville?

INDIANA ESSAY
QUESTION V
February 2008

Sam Smith owned 62 acres of land in Indiana. Two acres contained a house and 60 acres were farmland. Sam rented his farmland to a nearby farmer to grow crops.

Sam was staying in Florida, was divorced, and had three adult children; Jane, Peggy and John. Sam's son, John, lived in the house on two acres owned by Sam, and was to pay \$400.00 per month to rent to this father. Unexpectedly, in January of 2007, Sam passed away in Florida with no will.

Sam's children, who all lived in Indiana, come to you to discuss what actions to take. What advice do you provide to Sam's children? Unfortunately, approximately three months after Sam's death, John was killed in a one-car accident. John was also divorced and had a 10-year old daughter, Judy. John also had no will. John's sisters want to give the house and two acres to John's ex-wife, so that she and Judy may live there. What advice do you give to John's sisters?

INDIANA ESSAY
QUESTION VI
February 2008

Andy Atkins and Ben Butler verbally agreed to become partners in a delivery business, which they decide to call "Delivery Service." They agreed to divide profits equally. They agreed Andy would handle all financial matters and Ben would solicit and schedule the clients. They purchased liability insurance for their delivery vehicles which would pay a limit of \$100,000 per collision.

On February 1, 2007, Andy borrowed \$10,000 from the local bank ("Bank"). Andy told the loan officer that Delivery Service needed the loan to purchase a new vehicle, and Andy showed the loan officer a photograph of the vehicle Delivery Service would purchase. Andy did not tell Ben about the loan, and Andy signed the promissory note for the loan, "Delivery Service by Andy Atkins, Partner." The note required Delivery Service to make monthly payments on the note beginning on March 1, 2007, and the note provided for interest on the unpaid principal. Andy made no monthly payments on the note. Andy deposited the loan proceeds into his personal checking account and gambled all the money away playing poker over the Internet.

On March 1, 2007, Ben sent Andy out in a vehicle owned by Delivery Service to make a delivery for a client. Andy ran a red light and struck another vehicle. The other vehicle had one occupant, "Driver," who fortunately recovered from the injuries but incurred over \$100,000 in medical expenses due to the collision. Immediately after the collision, before any witnesses or assistance arrived at the scene, Andy went to the other vehicle and began yelling at Driver. Andy accused Driver of running the red light and punched Driver in the face, breaking Driver's nose. Andy did not tell Ben about the collision or the incident after the collision.

On December 1, 2007, Ben received at the Delivery Service offices a summons and complaint by the Bank against Delivery Service, Andy Atkins, and Ben Butler, for \$10,000 plus interest the Bank alleged was due under the terms of the promissory note.

Also on December 1, 2007, Ben received a second summons and complaint at the Delivery Service offices. In this second lawsuit, Driver sued Andy Atkins, Ben Butler, and Delivery Service. In Count 1, Driver alleged negligence and requested the medical expenses which exceeded the liability insurance limits, and for pain and suffering allegedly incurred due to the collision. In Count 2, Driver asserted a battery claim for being struck by Andy, including pain and suffering and permanent injury to his nose.

On December 4, 2007, Ben visited you, an Indiana lawyer, to ask your advice as to his potential liability in the lawsuits described above. Assume all events described occurred in the State of Indiana. What advice would you give to Ben and give detailed reasons for your advice. Do not discuss any claims Ben may have against Andy.