

INDIANA ESSAY
QUESTION I
February 2009

Mary Smith, age 82, was physically healthy, lived alone, and contributed regularly to Habitat for Humanity. Mary had a good relationship with each of her children, John and Robert. She knew her assets consisted of approximately \$250,000.00 in two bank accounts. However, due to her having been taken advantage of recently in several financial matters, she consented to John and Robert being appointed Co-Guardians with powers limited to handling financial affairs only.

Immediately after the Guardianship was established, she wrote a Will for the first time. It named the Trust Department of a Bank as the Personal Representative and, after payment of debts, distributed the assets as follows:

- (a) 50% to Habitat for Humanity.
- (b) 25% to son, John, age 50, as Trustee in Trust for the benefit of John with a spendthrift clause. John is to get income only until age 60 and then the balance is to be distributed to John.
- (c) 25% to son, Robert.

The Will also states that anyone who contests the Will or any provision thereof shall have their share of the Estate forfeited and divided among the remaining devisees.

Mary dies shortly thereafter leaving \$200,000.00 in the Guardianship Account set up by her Co-Guardian sons. John also discovers there is a joint savings account with his Mother and him on the account. The account contains \$50,000.00 and a statement in the Passbook that reads: "This account is for convenience only so John can pay my bills."

John is particularly upset about the bequest to Habitat for Humanity. What are John's rights to regards to his mother's estate?

INDIANA ESSAY
QUESTION II
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Webb Company is a computer software developer located in Marion County, Indiana. Webb develops sophisticated software used for managing complex litigation and similar matters. The source code for the software is kept under lock and key and only a limited number of employees have access to the source code. The source code allows Webb's programmers to modify and customize the software to fit each customer's needs. Webb considers the source code to be a trade secret and has required all of its employees to execute confidentiality and non-disclosure agreements covering the company's confidential information. The agreement defines confidential information to include all trade secrets, financial information, customer lists, customer data and the source code for all software developed by the Company.

Webb has just learned that one of its sales employees, Dave Smith, has resigned and gone to work for a competitor, Compu-World, Inc. One of Webb's customers has advised Webb that they are going to take all of their software management business to Compu-World, Inc. because they like doing business with Smith. Webb is aware that Smith has taken all of its customer information and is in the process of contacting Webb's other customers. Webb strongly suspects that Smith has taken a copy of the source code with him.

Webb wants to preclude Smith from using any information covered by the confidentiality agreement and wants to do so as soon as possible. Describe in detail the procedures Webb should follow.

INDIANA ESSAY
QUESTION III
February 2009

Sally started a corporation in 1976. She was the sole shareholder. In February, 2008, she sold all of her shares in the corporation to Ben for \$1,000,000. At the time of the sale, her basis in the shares was \$400,000. She also received a \$10,000 bonus from the Corporation before the closing on the sale. In April, 2008 Sally went to Las Vegas to celebrate. She lost \$10,000 and won \$50,000 for overall net gambling winnings of \$40,000. Two years ago Sally's uncle passed away. His Trust left Sally all of his Google stock valued at \$1,500,000 at his death which she received in July, 2008. In late July, Sally also sold her principal residence that she lived in for 5 years for \$600,000, resulting in a gain to her of \$200,000. In August, Sally decided to use some of her money to remodel her cottage located in Indiana. She found the perfect carpeting for \$2,000 at a store in Michigan. Since it was an out-of-state purchase, the store did not charge Sally the 6% Michigan sales tax. She also purchased about \$10,000 worth of merchandise over the internet for Christmas and she was not charged sales tax on these purchases. In September, Sally decided to pay the college tuition in the amount of \$6,000 for her favorite niece. In December, Sally received a \$6,000 dividend from her inherited Google stock.

What, if any, tax consequences would Sally have as a result of the foregoing?

INDIANA ESSAY EXAMINATION
QUESTION IV
July 2009

On Friday, October 10, 2008, John went to the Lawton, Indiana City Hall to pay his water bill. Lawton is located in Tuft County, Indiana. Just as John walked into the building he saw his old friend, Mayor Tim McGee and turned to wave to Tim. While he was waving, he failed to notice a loosened 18” floor tile in the entryway to City Hall. At that precise moment, John stepped on the loosened tile, slipped and fell hard to the floor, striking his head and knocking himself unconscious. John was taken immediately to the Tuft County Memorial Hospital where he remained hospitalized for 3 months; incurring medical bills in excess of \$75,000.

The City of Lawton had a maintenance contract with Grimeminders, Inc., an independent and privately owned cleaning and maintenance company incorporated in the State of Delaware with its principal office in Blackstone, Indiana. This maintenance contract made Grimeminders responsible for ordinary and routine maintenance of City Hall. Lawton also employed a full-time janitor to perform daily cleaning duties at City Hall. When the tile was installed by Bluegrass Tile, Inc., (a Kentucky corporation with its principal office in Wildcat County, KY) Bluegrass failed to put epoxy on one tile which may have caused the tile to be loose. While the floor tile had been noticeably loose for approximately three weeks, neither the janitor nor anyone from Grimeminders did anything about it.

1. What defendants can John sue in Indiana? Briefly explain your answer.
2. In what court or courts may John sue?
3. Where is venue proper under the Indiana Rules of Trial Procedure?
4. Can John obtain a change of venue under the Indiana Rules of Trial Procedure? Explain your answer.
5. If John failed to give proper notice under the Indiana Tort Claims Act before bringing his lawsuit, how would a defendant raise that issue?

INDIANA ESSAY
QUESTION IV
February 2009

Five years ago, Zephia incorporated "Calls R Us, Inc." a telemarketing business. Zephia is the sole director and shareholder of the corporation. She started Calls R Us, Inc. with two dozen automatic "robocall" machines. Following a change in state law three years ago, which now requires live callers, the business hired, trained and now employs live telemarketers who call prospective customers for clients.

The business has struggled in the last few years. Zephia has never drawn a salary, nor has she kept her personal funds separate from those of Calls R Us, Inc. She leased a company car from Auto Rental, Inc., pursuant to a valid contract, but Zephia signed the contract personally. Nevertheless, Call R Us, Inc. has made all of the auto lease payments. Zephia has spent most of her time travelling all over the state, in an attempt to drum up business.

Zephia hired Tad, to train the company's telemarketing staff. Zephia explicitly instructed Tad in the applicable law, to ensure he correctly trained the telemarketing staff and then turned over all the hiring and training to him. Tad advertised the positions, interviewed many candidates and eventually hired an initial group of workers, including a worker named Corinne. Corinne's résumé contained the names of three references, who Tad, in his haste to hire her, failed to call. It turns out Corinne had been fired from her previous employment for insubordination and inappropriate language. Tad instructed all new callers that whenever they placed a call and the recipient asked to "be taken off the list," they had to show them "who is boss," refuse to do so and continue to try and make the sale. Tad supervised the first round of phone calls of the new callers but after the first round, he left the callers alone so he could go play golf.

Once left alone, Corinne telephoned Hal, to sell him some timeshares in the Caribbean. When Hal indicated that he was having dinner with his family and to take him off the list, Corinne became abusive and ended up using obscene language with Hal. Once Tad found out about Corinne's actions, he fired her on the spot. At the same time, Calls R Us, Inc. has not made an auto lease payment for over 90 days.

Apparently, Zephia has never kept a corporate minute book, nor has she submitted the required corporate reports to the Secretary of State and the corporation has been administratively dissolved.

Corinne has now sued Zephia, and Calls Are Us, Inc. for wrongful discharge. Auto Rental, Inc. has sued Zephia, and Calls Are Us, Inc. for the balance due on the auto lease. Draft a memorandum to Zephia assessing both her personal liability and that of Calls R Us, Inc. in these two lawsuits and discuss the defenses that you would raise.

INDIANA ESSAY
QUESTION V
February 2009

In June of 2008 Smith agreed to purchase a car from Johnson for \$8,000. Johnson agreed to install a CD player in the car. Smith paid \$7,500 and took possession of the car. The remaining \$500 was to be paid after the CD player was installed.

Sometime later Johnson took the car to have the CD player installed. Johnson agreed he would take good care of the car while it was in his possession. While the car was in Johnson's possession, it was stolen.

What are Smith's rights regarding the car?

INDIANA ESSAY
QUESTION VI
February 2009

In 2006, Bob Jones was a licensed insurance agent in the state of Illinois. In 2007, Jones had an opportunity to relocate his business to Indiana. Jones wanted to be licensed in Indiana through reciprocity. In order to do so, Jones filed an application with the Indiana Department of Insurance which had sole jurisdiction over the licensing of insurance agents in the state. Jones was granted a license through the reciprocity procedure. At the time Jones received his Indiana license there was in effect a statute which required all insurance agents to obtain 20 hours a year of continuing education.

At the end of 2007, Jones was notified that he had failed to complete the continuing education requirements for the year 2007. In the notification Jones was advised that he had 30 days from the date of the notification to challenge the determination that he had insufficient continuing education. Jones did not challenge the determination.

In July of 2008 the Attorney General on behalf of the Indiana Department of Insurance filed a complaint alleging that Jones had failed to obtain the continuing education requirements for the year 2007 and asked the Indiana Department of Insurance to impose appropriate sanctions. In early December of 2008 the Commissioner of the Indiana Department of Insurance appointed an Administrative Law Judge to conduct a hearing. On December 20, 2008 a hearing was conducted. On January 15, 2009 the ALJ issued an order recommending to the Commissioner that Jones license be suspended for a period of 6 months. In Indiana the Commissioner makes the final decision in these matters. The sanction for this type of violation normally is a fine.

Indiana law requires that sanctions issued by a license agency be consistent with sanctions which have been levied in regards to similar violations and if there is a deviation from the norm that the Administrative Law Judge issue specific findings accordingly.

Outline the procedure to be employed by Jones to challenge the ALJ's decision and set forth the substance of those challenges.

Indiana Essay Question I
Sample Answer
(Verbatim transcription of answer by an examinee)
February 2009

There are a number of matters of which John should be advised with respect to his mother's asset distribution.

1. Prohibition on will contests. Although Mary's will states that anyone who contests the will shall have their share forfeited, Indiana does not recognize such will contest prohibitions and so that clause is invalid.

2. Will Itself. In Indiana, for a will to be valid it must be executed with all the necessary formalities. It must be signed by the testator or by someone else in the testator's presence and as his/her direction, it must be in writing (generally with exception of nuncupative wills), it must be signed by two witnesses that sign in each other's presence and in the testator's presence, and it must be published – meaning that the testator declares that it is her will. A will can also be acknowledged by the witnesses and testator to show that the formalities were complied with and/or a self-proving affidavit can be included which would eliminate the need for the witnesses to testify in court because the self-proving affidavit is a notarized document. Neither of these last two methods are required for a will to be valid in Indiana. The facts do not indicate whether any of these formalities were followed, so that should be investigated. If they were not, the will would likely be invalidated and John would be entitled to an intestate share of Mary's estate.

Additionally, a party must have Legal Capacity to enter into a will, meaning that the testator must be at least 18 years old or in active military service. A testator must have testamentary intent and must have testamentary capacity to enter into a will. The facts indicate that Mary intended to execute the will as she was organizing her affairs after establishing a guardianship for financial matters.

3. Challenges to the Will. Wills can be challenged on several grounds, including undue execution (formalities not complied with), undue influence, fraud, any other valid objections to the will. The facts do not indicate any of these objections, but more investigation should be done to see if Mary may lack testamentary capacity. The test for capacity is whether the testator knew the (i) nature and extent of her property, (ii) the natural objects of her bounty, (iii) the nature of the disposition she is making, and (iv) how these elements relate to one another.

Here we know that she knew she had \$250,000 in two bank accounts. She knew who would naturally receive her property because she left her two sons each 25% of her assets by will. She had a good relationship with them and made them co-guardians of her finances. Her asset distribution to Habitat For Humanity is a continuation of her life's contributions to that organization. It seems as though she likely knew she was making this disposition based on her selection of a Bank as personal representative also. While John might argue that she did not have capacity because she had been taken advantage of recently, that argument is not very strong considering she actively sought to protect herself from such dealings by appointing her sons as co-guardians.

4. Joint Savings Account. If an account is opened as a joint savings account with right of survivorship, then all amounts avoid probate and are vested in the survivor on the account. However, this is not the case when there is evidence to indicate that the joint account was established as a mere convenience and not as a non-probate device. Here, Mary's passbook states the account is merely for convenience so John can pay the bills. Accordingly, the \$50,000 should be devised under the will and will not go to John directly.

5. Spendthrift Claus. Spendthrift clauses are designed to protect the beneficiaries from any voluntary or involuntary disbursement of trust assets. Thus, creditors cannot get access to trust property under a

spendthrift clause, with the narrow exceptions of alimony, child support, and taxes. Spendthrift clauses are valid in Indiana unless it is the settlor's property that the settlor is trying to protect as a beneficiary himself just to keep creditors away. However, it is unclear from the facts what kind of trust has been established here. The will simply says that John is Trustee in Trust for the benefit of John. To be a valid trust, you must have a Settlor (Mary) delivering legal title to property to a trustee for the benefit of a beneficiary, with intent, and for a lawful purpose. In Indiana trusts must be in writing. It is possible to create a testamentary pour-over will provision that puts assets in a trust at the time of the testator's death. However, the trust must be in existence at the time of the testator's death. It is unclear if this has occurred based on these facts. If there is no trust in place, a court may strike that portion and simply give 25% to John outright. Further, for a trust to be valid, a trustee must have been assigned real duties and must be bound to them by the beneficiary. If John is both trustee and the sole beneficiary, he really doesn't have to be accountable to anyone. In that event, the court may appoint someone else to serve as a trustee in this instance.

Indiana Essay Question II
Sample Answer
(Verbatim transcription of answer by an examinee)
February 2009

Webb Company wants to know what they can do to prevent Dave Smith from using any information covered by their confidentiality agreement at his new job at Compu-World, Inc.

1 Is Dave Smith breaching a duty of confidentiality to Webb Company?

Webb Company is in the business of creating sophisticated computer software. Within their business there are sensitive and private information exchanged amongst their employees. Trade secrets and computer source codes are only made available to certain individuals within the Company. The highly private nature of this company is evidenced by the confidentiality and non-disclosure agreements that have to be executed by the companies Employees.

In the case of Dave Smith, he is breaching this confidentiality agreement first off by attempting to allegedly use trade secrets which he obtained while at Webb Company at his new job at Compu-World, Inc. If Dave Smith was to do so, he would be in strict violation of the confidentiality agreement he signed as an employee of Webb Company.

Dave Smith is also in the process of using the customer list of Webb Company at his new job at Compu-World, Inc. This is also an absolute violation of his confidentiality agreement.

Finally, Dave Smith wants to use the highly sensitive source codes that he acquired as an employee of Webb Company at his new job at Compu-World, Inc. This is likewise, a strict violation of the confidentiality agreement he signed and agreed to as an employee of Webb Company.

Webb Company has a very strong argument to make that Dave Smith is in breach of the confidentiality agreement he signed while an employee based on the above mentioned analysis.

2 What can Webb Company do to prevent Dave Smith from using the confidential information he obtained as an employee of Webb Company at his new job at Compu-World, Inc.?

First off, to avoid any immediate harm to Webb Company, Webb Company needs to file a request for a Temporary Restraining Order (TRO) at the Marion County circuit court in Indianapolis.

The request needs to lay out and describe the situation and go through the analysis described under issue 1 previously mentioned. This will be a discretionary decision of the judge where the case is assigned but the evidence looks to be in favor of Webb Company. If granted the TRO will prevent Dave Smith from taking action in violation of the confidentiality agreement and a failure to abide by the TRO will result in possible punishment or fines assessed against Dave Smith. It is important to point out that a TRO is only good for 10 days, with a

permissible 10 day extension provided it is requested. However, a TRO can not exceed 20 days. The purpose of a TRO is to prevent immediate harm.

The next step Webb Company must take is to file once again in the Marion County circuit court a request for a preliminary injunction. This also would prevent, if granted, Dave Smith from violating the confidentiality agreement.

When a court determines whether or not a preliminary injunction should be granted they look to four factors. The first one being the likelihood of success on the merits. As mentioned previously, Webb Company has a very strong argument in their favor. Dave Smith is attempting to directly violate the confidentiality agreement by using Webb Companies Customer list, trade secrets, and source codes at his new job at Compu-World, Inc. This factor looks to be in Webb companies favor as to the granting of a preliminary injunction.

The next factor the court would look to is whether the issue raises a significant question of law or fact. Dave Smith will be in direct violation of the confidentiality agreement which brings about a question of fact. This factor also look good for Webb Company.

The third factor is granting a preliminary injunction is whether irreparable harm will result if the injunction is not granted. Failure to issue this injunction will cause significant harm to Webb Company as they work in an area with trade secrets and highly sensitive source codes. Release of this information to other companies would dramatically hurt their business and the success it currently has. When applied, this factor is in favor of Webb Company as well.

The fourth and final factor is that the issuance of the injunction would not be against public policy. This factor is clearly met as it is the purpose of confidentiality agreements and trade secrets to stay and remain highly privatized to lead to the success of companies who have them.

When these four factors are applied Webb Company will have a very strong argument to make to the Marion County circuit court judge to issue a preliminary injunction. This will in turn prevent Dave Smith from using his knowledge gained as a Webb Company employee at his new job or elsewhere. Failure to abide by the injunction will cause fines or penalties imposed on Mr. Smith.

Webb Company should hire counsel immediately and file the above mentioned request in order to preserve the confidentiality of their companies information.

3 Can Dave Smith be prevented from having clients follow him to his new job at Compu-World?

Webb Company will likely have a weaker argument under this issue. If Dave Smith has established a good reputation with clients and they like him for who he is and not who he works for, then they will likely be permitted to follow him to his new job. This is all provided on the fact that he does not solicit their business through the use of the Webb Company phone list.

Thus, Webb Company will likely not be able to prevent Dave Smith's clients follow him to his new job based on the above mentioned conditions.

Indiana Essay Question III
Sample Answer
(Verbatim transcription of answer by an examinee)
February 2009

Sally's tax consequences are as follows:

Sale of shares of corporation – Sally would be required to report a \$600,000 gain on the sale of her business stock. Since her basis was \$400,000 and the sale was for \$1,000,000, the gain was \$600,000. This would be taxed at the capital gain rate and not as ordinary income.

\$10,000 bonus – the bonus would be taxed as ordinary income. This would be the same treatment as wages. Gross income includes income from any source where derived. Bonuses would go in to the calculation to determine gross income.

Gambling earnings - \$40,000 must be reported as income. Gross income is defined as all income from whatever source derived. Even gambling wins or other illegal activities that generate income must be reported. Traditionally all wins must be reported as income and expenses from gambling cannot be deducted to reduce the liability. In this case, it appears that the \$50,000 win and \$10,000 loss occurred in the same event, creating a net gain of \$40,000.

Google stock – Since the Google stock was an inheritance, there is no tax impact to Sally. She receives the stock and takes the basis at the time of death of her uncle. If she were to sell the stock, it would be a taxable event that she would recognize gain or loss from.

Sale of Residence – there is no tax implication for Sally because of this sale. Taxpayers may exempt up to \$250,000 of gain on their personal residence. To qualify as a personal residence, the homeowner must have used the home as the primary residence for two out of the last five years. Her She lived there for five years and had only a \$200,000 gain so it would be excluded

Carpet purchase & internet purchases – Indiana requires that 7% sales tax be paid on all purchases that are used/consumed in the state. Since Sally paid no sales tax on any of these purchases, she is required to report that and pay over to Indiana 7% of the cost.

College Tuition to Neice – If the \$6,000 is considered a gift to the neice, there will be no tax implication to Sally. Taxpayers are allowed up to \$12,000 per year per person up to a lifetime of \$1,000,000 in gifts without having a taxable event. Since this was a gift, and assuming she had not given over \$6,000 more to the neice, there is no impact.

Google Dividend – the \$6,000 dividend is considered income and will be taxed as such. Even though the stock was inherited, the income on the property must be reported.

All of these events will be treated as discussed above and Sally's Federal and Indiana tax liability will be calculated by taking gross income minus deductions to equal adjusted gross income. Then more deductions are taken from AGI multiplied by the tax rate to get potential tax liability. Then credits are added in to get total tax liability.

Indiana Essay Question IV
Sample Answer
(Verbatim transcription of answer by an examinee)
February 2009

To: Zephia
From: Applicant
RE: Personal and Corporate Liability

I. Piercing the Corporate Veil

Generally there is limited liability for shareholders, directors and officers of any corporation. Because of this concept of limited liability, courts are generally reluctant to pierce the corporate veil (i.e., go after the shareholders, directors, officers personally). However, courts will pierce the corporate veil if the formalities of a corporation have been so ignored as to demonstrate a complete disregard of the corporation.

Usually, the court looks to the Business Judgment Rule to assess the decisions of Directors. This rule essentially states that as long as the Director behaved as a reasonably prudent person under the circumstances and was acting in the best interests of the corporation there can be no breach of duty.

However, there are some aspects of your business that concern me and may make it easier for both Corinne and Auto Rental to pierce the corporate veil and come after you personally.

Elements of Piercing

Undercapitalization – From these facts, it doesn't appear that Calls R Us was undercapitalized for the service it was providing. This is good because this is a major factor that the courts look at.

Public or Close Corp. – This is a close corp with Zephia being the sole shareholder.

Formalities Ignored – Zephia has neglected to file with the Secretary of State which is mandatory.

Fraudulent Misrepresentations – From these facts, it doesn't appear that any fraudulent misrepresentations have been made.

Co-mingling of Funds – Zephia has never bothered to keep the personal funds separate from the corporation's funds. This is a big factor.

Identity of Shareholders, directors & officers

This factor is usually used with parent/sister corporations to establish a similarity or identity. You, Zephia, do not have this kind of problem.

Absence of Corporate records- By not keeping a corporate minute book you have failed to adhere to corporate formalities leaving an absence of corporate records.

Payment of Individual Debt – Because of the way you signed the contract with Auto Rental, which was personally and not on behalf of the corporation, the court could view payments for the lease out of Calls R Us funds payment of individual debt.

The court will weigh these factors to determine whether you should be held personally liable.

II. Corinne's Suit

I do not believe that Corinne will be able to use the doctrine of piercing the corporate veil in her wrongful discharge action because she was, on the facts, an at will employee. She clearly violated company policy and it is unlikely that she will prevail against you personally or against Calls R. Us.

III Auto Rental, Inc's Suit

Auto Rental has a stronger claim against you personally due to the manner in which you signed the contract. However, our agreement will be apparent authority that you had on behalf of the corp to

rent/lease the vehicle. If Auto Rental knew of your capacity as an agent of Calls R Us, your personal liability is greatly reduced but the corporate liability and potential for piercing the veil increases.

Our Firm will look into your corp's circumstances to better assess your personal and corp liability. Should you have any questions or concerns, please contact me.

Indiana Essay Question V
Sample Answer
(Verbatim transcription of answer by an examinee)
February 2009

I. Smith has a cause of action for breach of a bailment agreement.

A bailment is a bifurcation of title and possession; with title remaining in the bailor and possession being with the bailee. In most cases, the bailee must intend to exert control over the chattel or item. A bailee is not a guarantor. That means that absent a showing of negligence, risk of loss is on the bailor. If negligence is in question, the question then becomes what duty of care did the bailee owe and did he breach that duty. The modern trend in Indiana is to employ reasonable care in all situations; however, a court may instead look at the type of bailment.

If the bailment is for the sole benefit of the bailor, then the bailee owes a duty of slight care and is liable for gross negligence. If the bailment is for the sole benefit of the bailee, then the bailee owes a high duty of care and is liable if merely slightly negligent. In the case of bailments for mutual benefit, ordinary and reasonable care applies.

A prima facie case for breach of bailment agreement is made when the bailor

- 1) transfers property to bailee, who accepts and exerts control;
- 2) demand upon bailee is made to surrender chattel
- 3) bailee fails to surrender chattel.

Upon the making of a prima facie case, a rebuttable presumption arises that the bailee was negligent.

In this case, Smith's rights regarding the car will hinge on whether the risk of loss is superceded by Johnson's negligence; whether Johnson owed a duty and to what extent if he did; and, if Johnson owed a duty of care, whether he breached it.

II. A Prima Facie case for breach of bailment was likely made.

Perhaps the most important question to be resolved is whether or not Smith had title in the car. He paid \$7,500 of the \$8,000 purchase price with an understanding of paying the remaining \$500 upon installation of the CD player. The facts are silent as to whether Smith took title from Johnson. If he did not, he has no rights with regard to the car itself. If he did and the court finds he requested return of the car and Johnson refused or was unable, then a prima facie case has been made out.

III. What was Johnson's duty of care

If a prima facie case is established, Johnson must rebut the presumption of his negligence. The duty of care he owed will depend on whether the court takes the more progressive Indiana view of ordinary care or if the court wishes to define the bailment in terms of mutual or sole.

Because the car was in Johnson's possession to install a CD player, the bailment could be:

a) sole benefit of bailor, because Johnson was not getting any additional benefit; Smith was already obligated to pay the full purchase price

or;

b) mutual benefit, because the sale would not have been consummated but for the agreement to install the CD player

Depending on what approach the Court takes, Johnson could be held to a duty of slight care (paragraph "a") or ordinary care (paragraph "b")

IV. Did Johnson breach a duty of care?

A further fact inquiring is needed to determine whether Johnson breached a duty of care. The circumstances under which the car was stolen will play a vital role in that determination.

V. Recovery of the Car

If, by chance, the car is recovered or otherwise found and a determination is made that title passed to Smith, Smith is entitled to possession under most circumstances. A thief cannot gain title.

Indiana Essay Question VI
Sample Answer
(Verbatim transcription of answer by an examinee)
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Mr. Jones has 30 days to file for judicial review of final administrative orders. A final administrative order is one either issued by the Administrative Law Judge (ALJ) who is also the ultimate authority for the agency or if the ALJ is not the ultimate authority (UA) then the ALJ's recommendation must be approved, by the UA in order to make it a final order. The UA can also raise the ALJ's recommendation or remand it back to the ALJ but there won't be a final administrative order until the UA makes final approval.

The ALJ has 90 days to issue a recommendation from the date of the hearing. If approval by UA is needed, the UA has 60 days to do so. In this case the ALJ issued its recommendation on a timely basis. However, because the ALJ was not this commission the ALJ's recommendation of 6 month license suspension must be approved by the commission before it becomes a final order.

Therefore, if and when the commission approves the ALJ's recommendation, Mr. Jones will have 30 days from that date to file for judicial review of the final order. He files with the Clerk of Courts in the appropriate District Court (where jurisdiction and venue are met). This can be where the principal office of the agency is located or where the effect of the agency order will/is occurring. Furthermore, Mr. Jones has 30 days from the date he files to provide the Court with the Agency Record.

Mr. Jones can make several challenges regarding the administrative order. However, I will first address the issue he cannot raise is whether or not he actually did fail to complete the continuing education requirement. This is because he had 30 days to challenge, which he did not do so he waives it.

The challenges he can make are as follows:

- 1 that the administrative order was arbitrary, capricious or an abuse of discretion. It seems that the agency abused its discretion in recommending a suspension of his license for 6 months because that sanction for this type of violation is normally 6 months. However, an agency is permitted to deviate from standards so long as they describe why they deviated. From the facts it does not seem that the ALJ described why he decided to increase the normal sanction.
- 2 The second challenge Mr. Jones can make is that the AO affects one of his constitutional rights- the AO deprives him of his property, his license without due process because proper procedures were not followed. Mr. Jones was not given notice of the administrative hearing and therefore not given an opportunity to be heard at the hearing.
- 3 Another challenge Mr. Jones can make actually relates to the first challenge because Indiana law actually requires the ALJ to issue specific findings if he deviates from previous sanctions regarding similar violations. Therefore the ALJ not only didn't follow procedure, he violated an Indiana Law in making this AO.