INDIANA ESSAY EXAMINATION
QUESTION 1
February 2010

Indiana Home Builder orders a modular home from Indiana Manufacturer for Indiana Customer. The price for the home is $76,000. Payment for the home is due in full upon the Manufacturer's delivery of the home to the Customer's building site. Customer gave Home Builder a check for $76,000, but told Home Builder to wait 2 weeks before depositing the check because Customer's account did not have sufficient funds in it. After the Customer leaves Home Builder's premises, Home Builder notices that the check is unsigned and forges the Customer's signature on the check. The next day Home Builder endorses check over to Manufacturer and takes delivery of the modular home. Home Builder does not tell Manufacturer about the account having insufficient funds or the forged signature. Manufacturer deposits the check into its account. The check is returned for insufficient funds.

Manufacturer sends a demand letter to Customer for payment, with a copy of the returned check. Customer responds that it is not liable on the check because Customer's signature was forged and because Customer told the Home Builder not to deposit the check for 2 weeks because the account did not have the funds. Customer further states that it wants to rescind the check because the Home Builder has disappeared and has not finished the installation of the home.

What are Manufacturer's rights against Customer under the Indiana Uniform Commercial Code?

INDIANA ESSAY EXAMINATION
QUESTION 2
February 2010

Debra is a 70 year old multimillionaire and an Indiana resident. Debra proposed marriage to Charles, who was 28 years old. Charles had a bachelors' degree in education and was teaching in a public school. Charles had a total annual income of $50,000, including his teacher's salary, coaching salaries, and summer employment. Upon marriage to Debra, Charles quit all his jobs at Debra's insistence, and he spent his days supervising the household employees and playing golf and poker.

Prior to the January 1, 2007 marriage, Debra owned the following assets: (1) an unincorporated business worth $5,000,000; (2) a home worth $1,000,000; and (3) $5,000,000 in cash in several bank accounts. Debra decided not to execute an ante-nuptial agreement with Charles, but she did not put his name on any assets and continued to hold them in her name alone.

On November 1, 2008, Charles received a check for $1,000,000 from his grandmother's estate. Charles placed the money in a bank account in his and Debra's names, as joint tenants. On November 20, 2008, Charles suffered a severe back injury while golfing at a resort, and he was scheduled to undergo surgery after the first of the year.

Prior to November 1, 2008, a private investigator hired by Debra informed Debra that Charles had engaged in multiple extramarital affairs during their marriage. Debra decided Charles now had the financial resources to support himself; and so on December 1, 2008 she filed an action to dissolve their marriage in an Indiana trial court.

On December 1, 2008, Debra's assets were now worth as follows: (1) the unincorporated business was worth $5,500,000; (2) the home was now worth $1,250,000; and (3) the bank accounts now totaled $6,000,000.

In the final hearing, Debra asked the trial court for a judgment giving her all the assets held in her individual name, along with one-half the joint account. Charles asked for the entire joint account and one-half of Debra's assets. Charles also requested Debra pay him $50,000 per year in maintenance, based upon his physician's testimony that he could never work as a teacher and coach again, due to his back injury.

1. What division of assets does Indiana law presume?
2. What arguments could each party make for deviation from that presumption?
3. Analyze Charles' claim for maintenance.

INDIANA ESSAY EXAMINATION
QUESTION 3
February 2010

Abe, Bob, Chuck and Dan incorporated a coal mining company in Indiana known as ABC&D Mining, Inc. (ABC&D). Abe and Bob live in Blue County, Indiana. Chuck and Dan live in Purple County, Indiana. ABC&D offices were in Blue County. ABC&D negotiated a $500,000 dollar loan with the Blue County National Bank (Bank) to buy an excavator.

In addition to a security interest in the excavator, Bank required Abe, Bob, Chuck and Dan to personally guarantee the loan. After obtaining the loan and buying the excavator, the business quickly fell on hard times and closed. ABC&D filed bankruptcy as did Abe and Chuck. The excavator was left at the mine.

The loan contract allowed for repossession in case of default and sale in a commercially reasonable manner. Bank repossessed the excavator, sold it for $70,000 and has filed suit in Blue County against Bob and Dan on their personal guarantee to recoup the $430,000 still due on the loan.

Bob has moved out of state and cannot be located.

Dan answers Bank's complaint, and raises the defenses of incorrect venue and that he does not owe what Bank is demanding because the sale price of the excavator was not reasonable. In response, Bank files a Motion for Judgment on the Pleadings. Attached to the motion are a copy of the guarantee signed by Dan and an affidavit from the Bank loan officer authenticating the guarantee and stating the balance due on the loan.

Question 1: Analyze Dan's defense of incorrect venue

Question 2: What recourse does the Bank have to obtain service and pursue the case against Bob?

Question 3: (A) Analyze the procedure the Court should use in ruling on the Motion For Judgment on the Pleadings and why?

(B) What standard should the Court apply to decide the motion?

INDIANA ESSAY EXAMINATION
QUESTION 4
February 2010

John works for Wonderworks Automotive Repair as a mechanic. John has been employed by Wonderworks for approximately ten (10) years.

John owns the tools that he uses to perform repairs to automobiles at Wonderworks. It is the policy of Wonderworks that all tools regardless of the fact that they are owned by the employee are to remain in the Wonderworks' building during the business week. Accordingly, Wonderworks has established a storage area at the end of the north service bay for the storage of tools. This storage area is separate from the rest of the Wonderworks' building and is accessible by an outside door which, from time to time, is not properly secured.

Last week, John's tools were stolen from the Wonderworks' storage area.

John has consulted you to determine whether he has any claim against any party for the loss of his tools other than the perpetrator of the theft.

Discuss John's potential claims and those parties to which those claims could be asserted.

INDIANA ESSAY EXAMINATION
QUESTION 5
February 2010

Demos Corporation was validly incorporated under Indiana law three months ago. The corporation has thirteen (13) original shareholders, and is directed by a three (3) member Board of Directors. Among its articles of incorporation are the following provisions:

> Article 19: The original thirteen (13) shareholders of Demos Corporation shall have preemptive rights.

The Board operates under the corporate bylaws and a series of Board resolutions issued pursuant to the bylaws. Board resolution No. 4, which the Board adopted last week, states that the Board has the authority to issue three thousand (3000) additional shares of Demos stock as compensation to the directors and officers of the corporation. Resolution No. 5, which the Board adopted last week, states as follows: "No shareholder of Demos Corporation shall have preemptive rights."

The Board's rationale for the adoption of Resolution No. 5 is that it believes that the Board should have the right to decide who gets to acquire Demos' shares without regard to preemptive rights of other shareholders.

Sara, one of the original thirteen shareholders, has recently found out about the passage of Board Resolutions Nos. 4 and 5, and intends to make a written demand on the Board. In that demand, Sara intends to request that the Board recognize her preemptive right to purchase some of the 3000 shares to be issued under Board Resolution No. 4. Upon further reflection, thinking this request would be futile, she instead has hired an attorney to pursue her claim.

1. What remedies, if any, does Sara have against Demos Corporation and the Board of Directors?

2. Analyze Sara's claim that she is entitled to preemptive rights with regard to the issuance of the proposed 3000 shares set forth in Board Resolution No. 4.

INDIANA ESSAY EXAMINATION
QUESTION 6
February 2010

Acme Fireworks Company operates a consumer fireworks business in a storefront that requires an Indiana permit for fireworks sales. On June 25, an Inspector of the Indiana Fire and Building Safety Department determined that Acme was violating Indiana rules on where fireworks may be stored.

On June 26, Acme received written notice from the Indiana Fire and Building Safety Department that, as a penalty for the violation, Acme's permit would be suspended for seven days beginning June 28. The notice stated that Acme may not sell fireworks during the suspension period and that the suspension may be appealed to the Indiana Fire Prevention and Building Safety Commission.

As described in the notice, the suspension period runs through July 4 and covers the period during which Acme makes more than 90% of its sales for the year. Being closed during that period threatens the survival of the business.

Acme's defense to the violation notice is that the fireworks that were the subject of the illegal storage finding had been left in the wrong location inadvertently and for only a short time.

1. What can Acme do to challenge the sanction for the violation? Explain in detail what Acme can do to challenge the sanction.

2. What, if any, action can Acme take to keep the suspension from going into effect during the period of Acme's greatest sales?

Indiana Essay Question 1
Sample Answer
(Verbatim transcription of answer by an examinee)
February 2010

The check is negotiable instrument.
The requirement of negotiable instrument is (1) writing

(2) signed by maker or drawer (3) unconditional (4) in money (5) fixed (6) no undertaking (7) promiss to pay or order to pay (8) payable on demand or on definite time (9) payable to the order or to the beaere.

In case of forgery, holders of check after forgery are not holder in due course. (HDC)

In order to be HDC, (1) pay value (2) good faith, (3) no notice of defense or claim should be met.

However, when forgery happen, after forgery, no HDC right will be given.

In forgery case, there are two kinds of warranty. (1) presentment warranty (2) transfer warranty.

presentment warranty means that (1) presentor is entitled to enforce. (2) there is no alteration (3) presentor has no knowledge of unauthorized signature in transfer warranty. (1) transferor is entitled to enforce (2) no alteration (3) every signatures are authentic and genuin (4) no defense or claims (5) transferor has no knowledge of insolvency.

In this case, Builder forges customer's signature. So, builder breached of transfer warranty.

However, in case of Manufacturer, it did not breach the presentment warranty, because manufacturer did not have knowledge that customer's signature was unauthorized.

Therefore, the bank should have paid the check if there was enough money in the customer's account.

However, Bank did not pay the check due to the insufficient funds.

Now, the manufacturer demands customer to pay the check. But the manufacturer's right as HDC is not effective because the check's signature was forged.

Therefore, manufacturer should argue in other way – customer's negligence.

In this case, there are substantial negligence made by customer. Customer left unsigned check in the builder's office. Without any notice by customer.

Builder could forge the signature of customer because customer left the unsigned check to the builders.

In conclusion, this negligence could help builder to forge, therefore, customer is liable to pay the check.

Customer can argue that he is not liable for the check, because builder disappeared and has not finished the installation of the home.

However, this is not good defense.
For the defense for negotiable instrument, (1) incapacity (2) fraud (3) illegality (4) any other notices should be presented.

In this case, there is no real defenses here.

Only personal defense is in this case – not finished the installation.

Therefore, customer is liable for this check.

Indiana Essay Question 2
Sample Answer
(Verbatim transcription of answer by an examinee)
February 2010

1. Indiana is an equitable distribution state. This means that all property no matter when acquired or how it is titled (jointly or individually), is part of marital property and will go into "one pot." Marital assets include real property, tangible property, and intangible property so long as it has vested such as good will, pensions, and stocks. The marital estate does not include professional degrees, tort rewards, property received after the divorce petition is filed, or workman's compensation payments.

Once the marital property is in "one pot" it is then subject to an equitable 50/50 division among the spouses unless either party can convince the court to use a different distribution scheme.

2. Courts will deviate from the equitable distribution and equal division presumption upon the showing of one or both spouses that the 50/50 division is unfair or unreasonable.

The courts in Indiana have traditionally considered the economic circumstances around the parties and their earning capacities, the length of the marriage, property titled in the individual's name prior to marriage, each party's contribution to the accumulation of wealth during the marriage, and whether either spouse will be caring for a minor child. Though none of these factors are determinative, Indiana courts have found that the shorter the marriage the more likely the court is to deviate from the 50/50 division.

It is important to note that because Indiana is a no fault divorce state, Charles' affairs are a nonpoint in the divorce matter because he cannot be punished for those sins, in the courtroom, at least. Further, once the judge's decision regarding property division upon divorce, the order is final and will not be modified without a showing of fraud. Lastly, the judge has the discretion to make the property division in kind by dividing the assets among the two exspouses or by ordering a payment in cash that can be a lump sum or in periodic payments.

Considering the totality of the circumstances in this marriage, Debra can strongly argue that the combination of the short marriage (less than two years) and the substantial assets that she brought to the marriage and continued to maintain in her name only, should be sufficient to deviate from the 50/50 split in her favor. Further, her assets have increased by $1.75 million during the course of the marriage and it is highly unlikely that Charles contributed to the accumulation of that wealth, because he mostly played poker and golf. Here, the courts will give value to the work of a spouse not in the work force but it is usually because the services rendered allowed one spouse to work outside the home and prevented the family from paying for housework or child care. Lastly, there is no consideration of a minor child here, and despite his injury, Charles has a decent fortune from his deceased grandmother.

As such, Debra can make a strong argument to deviate from the traditional 50/50 split of marital assets in Indiana.

Charles can surely argue that because of his hurt back his earning capacity is greatly diminished and his economic circumstances would be fixed. Charles can also counter argue that he quit his job and his modest income at the direction of Debra and for this reason he was unable to contribute to the accumulated wealth of the marriage. Also, Charles would likely have a strong argument that he should keep the entire $1 million from his grandmother's estate, despite that he deposited the money in a joint account with Debra. The relatively short marriage in combination with the fact that the inheritance was an income completely and wholly separate from his marriage gives him a good argument that the inheritance should not be subject to equal division upon divorce.

3. Finally, Indiana allows for maintenance support in three very limited situations. First, maintenance is granted to the spouse that cannot care for themselves financially due to a mental or physical disability. Second, a parent is entitled to maintenance support if she can show that the property division is not enough to support her and she is unable to work because she must care for a disabled or incapacitated child. Finally rehabilitative maintenance is provided to the spouse for up to 3 years so that the spouse can go back to school to get job training or the education needed in order to support themself in the future.

It is likely that Charles' argument for maintenance would be for the first reason for maintenance – that he is unable to support himself due to a physical disability. However, here we are told that Charles would never be able to coach or teach again, not that he could never work again. Because Indiana courts have narrowed the scope of maintenance, it is likely that the court's would not view his injury as one that permanently barred him from working & would not order Debra to pay Charles maintenance.

Charles can still negotiate with Debra, among other things, an award for maintenance in a Settlement Agreement if the two decide to settle their divorce between themselves rather than with the court.

Indiana Essay Question 3
Sample Answer
(Verbatim transcription of answer by an examinee)
February 2010

1) While a party may request change of venue once, Bank's choice of venue was not improper. Under the Indiana Trial Rules, venue is proper in a county where any defendant(s) resides, where a defendant corporation has its office, where an accident giving rise to the litigation occurred, where any property that is the subject of the litigation is located, or any county that the parties agree to . Here, Blue or Purple counties would be proper. While Dan can ask that venue be changed to Purple County, it is not improper for venue to be in Blue County because that is where resided. However, if Bob has moved out of state and does not intend to return to Blue County, thus changing his domicile, Blue County would no longer be proper. Because Bank is not suing ABC&D as a corporation, venue cannot be based upon the location of the corporation's office in Blue County.
2) Under Indiana Trail Rule 4, there are three ways to obtain service over an individual 1) personal service, 2) service by registered or certified mail, or (3) by leaving a copy of the summons and complaint at the individual's last known address and sending a copy by registered or certified mail. By any of the three methods, the defendant must be served with a copy of the summons and complaint. If none of the three methods is successful, which it appears may be the case with Bob, plaintiff can achieve service by publication. Service by publication must be a last resort when none of the other three methods have effectuated service. Service by publication requires that a notice be published at least three times in a newspaper of general circulation qualified to provide such notice. The notice must contain plaintiff's name, plaintiff's attorney's address and contact information, the name of the court and cause number of the action, and a brief statement of the complaint. Each of the three published notifications must be at least 7 days apart and service is considered effective at the close of court business on the day of the third publication.

3) (A) In analyzing Bank's Motion for judgment on the pleadings, the court should only consider the information contained in the complaint by Bank, Dave's answer, and Bank's Motion and its attachments. Because Bank filed its motion with the guarantee and affidavit attached, it should be treated as a Motion for Summary Judgment.

4) (B) In deciding the motion, because bank attached the guarantee and affidavit, the

court should use the Summary Judgment standard and determine whether, based on the pleadings, no issue of material fact exists. If no issue of material fact exists, the motion should be granted. If an issue of material fact exists, the motion should be denied.

Indiana Essay Question 4
Sample Answer
(Verbatim transcription of answer by an examinee)
February 2010

John may have a claim against Wonderworks Auto Repair, his employer. Based on the facts, it appears that John and Wonderworks had a bailor/bailee relationship with regard to his tools. A bailment arises when a party takes possession of another's property, with legal title remaining in the owner. Both parties must consent to the bailment. In this case, John, the owner, is the bailor and Wonderworks is the bailee. A bailee's liability for damage or loss to the bailed property largely depends on which party the bailment was intended to benefit. Specifically, when a bailment is for the sole benefit of the bailor, the bailee will only be liable for gross negligence. When the bailment is for the mutual benefit of bailor and bailee, the bailee will be liable for ordinary negligence. When the bailment is for the sole benefit of the bailee, the bailee will be liable for even slight negligence. If the bailee ever exceeds the scope of the bailment, the bailee will be strictly liable for ANY damage or loss. The bailor/bailee relationship is characterized by consent!

In this case, since it was in fact the employer's POLICY that all workers leave their tools, the bailment was arguably for the sole benefit of the bailee. Perhaps the employer was trying to prevent its employees from moonlight mechanic work in their spare time. At any rate, it this bailment can be characterized as being for the sole benefit of Wonderworks, the company is liable for even slight negligence.

Obviously, if the company left the door unlocked with valuable tools inside, it is liable. However, with liability for slight negligence, the company might also be liable for failure to have a watchman or keep the area well lit. John should sue for damages, or more specifically, for the fair market value of his tools.

Indiana Essay Question 5
Sample Answer
(Verbatim transcription of answer by an examinee)
February 2010

Under Indiana Corporation law which adopted the Sarbanes-Oxley Act of 2002, in order to file a derivative claim against the Board on behalf of the Corporation the share holder must first make a written demand on the Board. If Sara has personally been harmed by the Corporation's actions she may file a direct claim against the Corporation.

A. Derivative Claim

When a shar holder wants to assert a derivative claim against the Board of Directors several factors must be present.

First, Sara has to show that the actions the Board of Directors is or has taken are not in the best interests of the corporation.

Second, Sara has to show that she owned shares at the time the action by the Board was taken and that she is a share holder when the case is filed and when it is pursued.

Third, Sara must first make a demand, written, on the Board regarding the inappropriate action being taken. The Board has to either deny or dismiss the written demand or disregard it.

Sara is not acting on a personal harm but rather is claiming that the Corporation is being, harmed by the Board of Directors' actions. It appears that the Board is trying to pass a resolution that directly conflicts with one of the articles of incorporation. The resolution only affects the original 13 shareholders and doesn't appear to affect the corporation as a whole.

B. Direct Claim

It appears that a direct claim against the Board is a more appropriate case for Sara to pursue. The original articles of incorporation gave the original thirteen shareholders preemptive rights under Article 19. Now the 3 member Board of Directors wants to amend the bylaws with a resolution stating that no shareholder shall have preemptive rights.

Because the Board is attempting to amend the articles of incorporation by amending the bylaws Sara is being harmed. Preemptive rights are only allowed to be granted or restricted in the articles of incorporation, therefore, the Board is acting in contranention of the articles of incorporation if they adopt this resolution.

While it seems unlikely that a financial decrease to the shares will take place due to this resolution it is still wrong. Sara has to lose something by this resolution in order to bring a direct claim.

While a demand on the Board seems futile to Sara, it may be her best course of action. She should probably demand that the Board comply with the articles of incorporation, then if they fail to amend the resolution to comply with the articles she could bring a derivative claim stating the Board is acting in contranention to the articles of incorporation.

C. Sara's claim of Preemptive Rights as to the 3000 shares.

While Sara does have preemptive rights as an original shareholder as set forth under the articles of incorporation, she does not have a right to preempt the 3000 shares as proposed by the Board.

When a Board issues a proposal of 3000 new shares to be given as compensation to the directors and offices as the corporation, Sara can't preempt those. She can preempt sale of shares of stock or new stock given to the public, she cannot preempt shares given as compensation.

Indiana Essay Question 6
Sample Answer
(Verbatim transcription of answer by an examinee)
February 2010

1. Acme should challenge the sanction by filing with the Indiana Fire Prevention and Building Safety Commission ("IFPBSC") or may file directly with the Indiana trail court since purely constitutional issues are involved.

The Indiana legislature may delegate authority to state agencies via proper enabling statutes. Under such statutes, the agencies are authorized to promulgate rules , conduct investigations, and administer adjudications. The adjudications are subject to the Indiana Administrative Orders and Procedures Act (AOPA). AOPA requires the adjudications be administered by an impartial Administrative Law Judge (ALJ), who is required to make findings of fact and issue a ruling setting forth the reasons for his/her ruling. Additionally, the rules of evidence do not apply, although an ALJ may not base his ruling solely on hear say.

In this case, Acme should challenge the sanction in front of the IFPBSC. If Acme loses, it may be entitled to judicial review. Ordinarily, a party can file an appeal in the Indiana Courts if the party has standing, the appeal is timely (w/in 30 days of the ALJ's ruling), and the party has exhausted all administrative remedies (and jurisdiction and venue are proper). A party wishing to appeal must also show that the administrative decision was either arbitrary, capricuous, an abuse of discretion, violated constitutional or procedural rights, was beyond the agency's jurisdiction, or was unsupported by the substantial weight of the evidence.

In very limited circumstances, a party may be able to skip the administrative hearing and file directly with the Indiana trial court. These circumstances include where the administrative hearing would be futile or where purely constitutional issues are involved. In this case Acme may be able to file directly with the trail court because a purely constitutional issue is involved.

The Due Course of Law clause of the Indiana Constitution requires that just compensation be paid if the government deprives a party of any life, liberty, or property interest. This analysis involves 2 steps. The first is whether there was a life, liberty, or property interest. In this case, Acme arguably has a liberty interest involved-the right to sell fireworks, the sale on which its survival depends. The second step is to determine if the procedure was adequate. To answer this, the court must balance the harm to the individual, the government interests, and the value of an additional procedure.

Here, Acme may appeal directly to the trial court because it has a valid argument that a taking has occurred and it is therefore entitled to just compensation (i.e. a purely constitutional issue). Although the violation provided it with a hearing , Acme will not be able to recover from losing 90 % of its sales and will be forced to close. As such, in balancing, the harm to Acme far outweighs the government interest, and Acme is owed just compensation (measured by assessed value + actual damages less any benefits accrued).

2. Acme can file for a preliminary injunction or a temporary restraining order to keep the suspension from going during its busiest time of year.

A preliminary injunction will be issued if the moving party can show a likelihood of success on the merits, inadequate remedy at law, and the party will suffer irreparable harm if not issued.

Similarly, a temporary restraining order will be issued in emergency situations if the party will suffer irreparable harm and the party can show the extreme circumstances that call for the temporary restraining order.

In this case, Acme will have strong & valid arguments for both a preliminary injunction and a temporary restraining order. However, because of the emergency situation & that the suspension will take place during its busiest sales time, Acme should file for the temporary restraining order.