

**Indiana Essay Question 1**  
**Sample Answer**  
**(Verbatim transcription of answer by an examinee)**  
**February 2011**

Dear Sue,

At issue here is whether Jon gave up rights in the personal property (i.e. the rings). You may keep the “pre-engagement ring” but you may have to return the one-carat diamond ring that was given to you in consideration for marriage.

Under Indiana law, a person may make a lifetime gift of personal property to another when the donor has intent to pass title in the property now, when there is valid delivery of the personal property to the donee, and when the donee accepts the personal property gift.

The second and third elements are not in dispute. Jon provided you with the pre-engagement ring and one-carat diamond ring. Thus, delivery has been completed. Delivery of personal property is effective when the donor gives the donee personal possession of the property. Here, because you received personal possession of the rings, delivery is satisfied.

Next, you accepted the gifts from Jon. Acceptance is accomplished by mere silence and may only be rebutted by affirmative refusal of the gift. Here, you accepted the gift of each ring and did not affirmatively refuse. Therefore, acceptance is satisfied.

The real issue here is whether “intent has been satisfied. To have intent to make an *inter vivos* gift (lifetime gift) you must have the intent to give up title to the property now. Giving up possession is not sufficient.

I anticipate that Jon will argue that he gave you these rings, any only had intent to give up possession now, not title. Jon will further argue that he only intended on giving up title once you married Jon.

With regard to the “pre-engagement” ring, Jon’s argument will not prevail. He stated that the ring was a birthday present or a friendship ring. This demonstrates that Jon intended to give up title to this ring at the time he delivered it to you and at the time you accepted possession of same. Thus, the pre-engagement ring is a gift and you may keep it.

With regard to the second one-carat diamond ring, Jon’s argument is likely to prevail. The ring was given to you contemporaneous with a marriage proposal. This shows that the ring was given to you in consideration of marriage and Jon has a valid argument that he gave up possession, but had not intent to give up title to the ring until you and Jon actually got married.

We would respond that Jon did, in fact, give up title and possession to this ring and that his change of mind does not entitle him to receive these rings back.

In the end, a court would likely conclude that the one-carat ring should go back to Jon.

In sum, I advise that you give Jon the one-carat diamond ring that was given to you in consideration of marriage, but you may keep the “pre-engagement” ring that you received as a birthday present.

Please let me know if I can assist you any further, and if you have any questions, please call.

--Signature

**Indiana Essay Question 2**  
**Sample Answer**  
**(Verbatim transcription of answer by an examinee)**  
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I. Introduction

There are three issues presented in this question. First, can Molly obtain a divorce and/or legal separation from Jane? Second, will Molly be able to get custody of Seth? Finally, does Molly have any other family or contractual rights or remedies under Indiana law. These issues are discussed separately below.

II. Can Molly obtain a divorce or legal separation from Jane?

Under Indiana law a valid marriage can only exist between a man and a woman. Thus, even though Jane and Molly are legally married in Massachusetts, Indiana law does not recognize their marriage as valid; it treats the marriage as void.

To obtain a separation or dissolution of marriage under Indiana law, there must first be a valid marriage. Because no valid marriage exists between Jane and Molly, no legal separation or dissolution is available to her.

III. Can Molly obtain custody of Seth?

Under Indiana law, same sex couples are permitted to adopt children. To maximize her rights, it would, therefore, behoove Molly to petition for adoption of Seth. Granting an adoption to her would make any custody battle much easier.

In Indiana, custody of a child can be legal and physical. Legal custody pertains to the important decisions in a child's life such as medical treatment and the schools they attend, and physical custody pertains to where the child lives. Both can be sole or joint custody is presumed to go to the biological mother. However Indiana law refers to the Best Interest of the Child standard when considering custodial matters. The factors used to determine the best interests of the child are:

- age and sex of the child or children;
- wishes of the parents
- wishes of the child, with more emphasis given to the child's wishes if over fourteen;
- mental and physical health of the parents and child;
- relationship of the child with each parent and any siblings;
- whether any history of domestic violence exists;
- the economic circumstances of each parent
- and whether there is a de facto custodian.

A de facto custodian is one who is responsible for a significant amount of the child's care, meeting most of his daily needs. Because Molly is with Seth at home, and has been his primary care giver for his short life, she has a good argument for being a de facto custodian of Seth. Additionally, Jane's absence from Seth's life as well as her disinterest in him when she is not working provide further support of Molly's de facto custodian status.

If Molly can demonstrate to a court that she has been a de facto custodian for Seth for the last three months, and that it is in Seth's best interests for her to have custody of him, she may be able to obtain legal and physical custody of Seth.

IV. Does Molly have any other family or contractual remedies at law?

It is unlikely that Molly has any other family or contractual remedies under Indiana law. Because Indiana does not recognize same sex marriage, her family law rights are severely limited.

Molly's best option is to petition the court to be an adoptive parent of Seth. Her rights increase significantly once she has an adoptive parent status.

**Indiana Essay Question 3**  
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In this litigation, Bank will prevail.

A Cashier's check is a draft. In this situation, the check was drawn on Sam's account at Red Bank, and payable to Chuck's Chop Shop (payee).

A negotiation occurs when a negotiable instrument is either in possession of a party (bearer paper) or is indorsed and in possession of the party it was indorsed to (order paper).

In this case, there was order paper payable to Chuck's Chop Shop, that was given by Sam to Chuck's Chop Shop (the cashier's check).

It is important to determine whether Green Bank was a holder in due course, since this will determine the defenses that Green Bank has against Red Bank. A holder in due course, has the right of only having real defenses asserted against him, but not personal defenses.

However, before we determine whether Green bank was a holder in due course, we need to address whether the cashier's check was a negotiable instrument.

In order to have a negotiable instrument, there must be a signed (any symbol with present intent to authenticate), writing, with an unconditional promise to pay, a fixed amount of money or to the order of, payable either on demand or at a definite time, with no other promise or undertaking (courier without luggage language), and payable to bearer or order.

The cashier's check was in writing; there was sufficient signature as it would be signed by the bank (or stamped); no other conditions appear to be attached; there was a certain amount of money payable to the order of Chuck's Chop Shop; on demand and did not appear to have any promise or undertaking linked to it.

Thus, the check was a negotiable instrument.

Returning our focus back to the determination of whether Green Bank was a holder in due course, we need to analyze whether Green Bank was a holder, whether there was value, whether there was good faith by Green Bank and lastly whether it took without notice of any claims or defenses.

Someone becomes a holder when an instrument is negotiated to them. Chuck's Chop Shop negotiated the instrument to Green Bank. Thus, Green Bank was a holder. Furthermore, the Shelter Rule would give the transferee, the same rights as the transferor. Value was given when the instrument was transferred. Green Bank took in good faith (honest in fact-subjective; and fair dealing-objective) as everything seemed to be appear legitimate. And lastly, Green Bank had no notice of Chuck Chop Shop's fraud regarding not buying/delivering the motorcycle to Sam.

Thus, Green Bank is a holder in due course, and only real defenses may be asserted against it (in fancy, illegality, duress, incapacity).

A claim in recoupment, or other claim that Sam would have against Chuck's Chop Shop, or that Red Bank would have against Chuck's Chop Shop, is a personal defense. Accordingly, this defense cannot be raised against Green Bank by Red Bank.

Sam properly communicated stop payment to Red Bank. If Red Bank had not listened, the check would not have been properly payable (and Sam would have had an action against Red Bank for the amount of the check).

Since Green Bank is a person who is entitled to enforce the instrument, and since Red Bank cannot assert any defenses against Green Bank (due to Green Bank's holder in due course status), Green Bank would prevail against Red Bank in this litigation.

There were no alterations, forged signatures or forged names, every person in the chain was entitled to enforce the instrument, Red Bank simply has to eat the loss (especially due to Green Bank's holder in due course status).

In conclusion, as stated above, Green Bank would prevail on a wrongful dishonor theory against Red Bank.

**Indiana Essay Question 4**  
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A professional corporation is a statutorily-created business form in Indiana. It has the advantage of having a slightly more flexible operating structure than a typical corporation, and there are some tax benefits to being a professional corporation.

Members of a professional corporation must be licensed professionals within the meaning of the statute. This category includes licensed physicians.

Members of a professional corporation have limited liability as to the debts of the corporation. They will not be personally liable for any business liability. There is a major exception for malpractice, however. Members are still personally liable for their own malpractice, but are not liable for the malpractice of other members.

Margaret and Peter are both licensed physicians in Indiana, so they qualify to be members of an Indiana professional corporation. Ralph is a physician licensed in Illinois, however, and does not qualify. He can fix this problem by becoming licensed in Indiana, though. Finally, Jan does not qualify because she is not a licensed professional within the meaning of the statute. Non-professionals may be allowed to be owners of a professional corporation if they do not exercise control over the day-to-day operation of the business. Jan wants to be the President, however, and such a position would exercise too much control. She cannot achieve her objectives with a professional corporation.

The issue of limited liability would work in Jan's favor, however. She would not be liable for the business's debts, and she would not be liable for the malpractice of the other members. Since she is not a physician, it is not possible for her to be liable for her own malpractice; she cannot commit malpractice.

Alternatively, Ralph does not have to become licensed in Indiana if he practices medicine only in Illinois. Because the company will have offices in more than one state-both Indiana and Illinois-the members are not required to be licensed exclusively in Indiana.

In conclusion, some of the objectives of the four people can be achieved with an Indiana professional corporation, but not all of the objectives. The members will receive limited liability for the debts of the business, but not for their own malpractice. Jan can be a passive investor, but she cannot exercise control of the professional corporation, such as being President, because she is not a licensed professional. Ralph may be a member if the corporation has an Illinois office and he practices solely in Illinois.

**Indiana Essay Question 5**  
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- A.
1. Joseph should file a motion to join XYZ as a party. Since the mortgage was assigned to XYZ they are an interested party in the litigation and should be joined. Joseph would not want to be subject to two lawsuits from XYZ and ABC
  2. Joseph should also file a 12(b)(6) motion to dismiss for failure to state a claim upon which relief can be granted. Under the contract terms of the promissory note, Joseph is entitled to notice and a right to cure. If Joseph can convince the judge that he received no notice and therefore also did not have a chance to cure before foreclosure, the court may dismiss on 12(b)(6) grounds. The court on 12(b)(6) motion is limited to the complaint and the properly attached promissory note in rendering its opinion. Additionally, if supporting documents are attached the judge will have to treat as summary judgment. If 12(b)(6) is granted, the P will probably be able to re-plead. A motion for summary judgment states that there is no material issue of fact. If Joseph established he did not get notice, then the complaint should be dismissed on summary judgement.
  3. A motion for summary judgment would also be appropriate. Unlike a 12(b)(6) motion, other evidence may be submitted for consideration of summary judgment. Specifically, Joseph could include an affidavit affirming he never received notice. The judge may look at the complaint, answer, briefs and any other relevant evidence on paper in decided summary judgement.
  4. A motion for judgement on the pleadings would also be available. This allows the judge to consider both the complaint and the answer as well as any briefs in support or against. If granted for D, unlike 12(b)(6), the P may not be able to re-plead. The same notice (lack of) would be presented in the motion as in the others.
- B. Joseph is not entitled to a jury trial because this action would be considered an action in equity not law. Although the judgment may include money damages as to the amount of mortgage that is typical of an action at law, the underlying foreclosure is an attempt to remove title of land from Joseph and is therefore an equitable remedy not entitled to a jury.
- C. Joseph will not be able to remove the case to federal court because there is no diversity or subject matter jurisdiction.  
The foreclosure of the mortgage does not meet the federal question component of subject matter jurisdiction. It is a state law claim.

Diversity is not sufficient even if XYZ joins as a delaware corporation because you have an Indiana corporation as Plaintiff and an Indiana resident as a Defendant. There is not complete diversity in the action that would allow the case to be removed to federal court.



**Indiana Essay Question 6**  
**Sample Answer**  
**(Verbatim transcription of answer by an examinee)**  
**February 2011**

1. Argument's that the Alcohol and Tobacco Commission's decision is incorrect.

A. The most basic argument against this decision is that the ATC's interpretation of the statute is incoherent as applied to Larry's winery. How they can not renew a permit because new wineries have been banned is illogical. His winery is not "new" which should be obvious to the ATC since he is "renewing" which means the winery already existed. If this is somehow a factual determination of what constitutes "new" it is arbitrary and capricious.

B. Another argument against the ATC is that the statute they made their decision on is unconstitutional as both a special law and a violation of Larry's equal privileges and immunities.

a. Special Laws

Special laws are given a 3 part test

1. Is the law on its face special?
2. Does it fit on of 16 restricted categories?
3. If the law does not fit one of the categories can it be made general?

While this law that purports to support the agencies decision does not fit one of the sixteen restricted categories it is facially special and cannot be made general because of the obvious targeting of one particular region. Furthermore the justification given is unreasonable, Southern Indiana's failure to compete is not a reasonable justification for a special law.

b. Equal Privileges and Immunities

This test is different than the federal test that uses levels of scrutiny for laws that have classes. The Indiana test is simpler.

(1) Is the law rational related to the inherent differences between the classes defined in the law?

(2) Is the law applied equally across that class?

Our analysis need not reach part 2 because the law the Indiana ATC is relying on violates part 1 because there is no rational reason why Southern Indiana can have no wineries and Northern Indiana cannot. Perhaps that goes too far, there are reasons that could be dreamed up like over use of resources or nuisance but those do not exist here.

c. Is the ATC's decision a regulatory taking?

For a regulatory taking to exist all worth or at least any reasonable value of a piece of property must be stripped away. The facts in this scenario do not present such an instance.

2. The steps Larry must follow to present any arguments he may have that the ATC's decision is wrong and he should be issued a permit?

This process will be governed by the Indiana Administrative Orders and Procedures Act because it is an act of agency adjudication.

Step 1: As the problem states he must file an appeal with an ALJ, after his filing he will be given 5 days notice, at least, of a hearing.

Step 2: Go through with the hearing presenting evidence and argument before the ALJ which could be a single individual or a panel.

Step 3: If Larry wins and ATC will not renew his license, he can file an enforcement action with a circuit court. The court will give the ATC 60 days to act before holding them in contempt.

Step 4: If Larry loses he will have to exercise all his internal agency appeals.

Step 5: Once all his inner agency appeals have been made Larry will have 30 days to appeal from final judgement to a circuit court that will sit as an appellate court from the ALJ. The court can only review on the record from the administrative adjudication. Indiana's Constitution provides a due course of law provision that allows for appellate review of agency decisions.

The steps for taking an appeal in accordance with the Indiana Appellate Rules are as follows:

30 days to file notice of appeal from final judgment

30 days to give clerk's record to court

30 days to file briefs

7 days to ask for oral argument

30 days to ask for rehearing

30 days to ask for transfer

Since the ATC's decision is so against the plain reading of the statute Larry may be able to argue they were actually engaging in rule making and have completely botched the notice. In which case the attorney general should find the agency rule void in accordance with the notice provisions laid out in the Indiana Administrative Rules and Procedures Act.

Larry may also wish to attempt to skip the appeals process by asking a court for a declaratory judgment that the agency's ruling is wrong and his license should be renewed immediately,

At the very least he should get a preliminary injunction so that he can carry-on operations of the winery during adjudication. Preliminary injunctions require a showing that it is not against public policy, balance of harms favors it, there is no adequate legal remedy for the harm, and probability of success.

INDIANA ESSAY EXAMINATION  
QUESTION 1  
February 2011

Jon and Sue dated for several years. For her birthday, Jon gave Sue a half-carat diamond ring that he referred to as a “pre-engagement” ring. When Sue asked him what he meant by that, Jon just laughed and said, “It’s your birthday present, just call it a friendship ring.” Six months later, Jon proposed marriage and gave Sue a one-carat diamond ring. Two days before the wedding, Sue received a text message from Jon that said, “Sorry, I can’t go through with the wedding. Met my real soul mate. When can I get my rings back?”

Sue wants to know if she can keep the rings or must she return them to Jon.

Write a detailed client letter to Sue discussing her rights regarding the rings under Indiana law.

INDIANA ESSAY EXAMINATION  
QUESTION 2  
February 2011

Jane and Molly married in 2005 in Massachusetts, a jurisdiction which since 2004 has allowed same sex couples to marry. They lived in Massachusetts until approximately one year ago, when they moved to Indiana because Jane was hired to be the Vice President for a large Fortune 500 company. Immediately after they arrived in Indiana, Jane was artificially inseminated and three months ago she gave birth to a son, Seth. Because of the demands of her job, the couple agreed that Molly would stay at home and raise Seth, while Jane pursued her career. Molly never adopted Seth. Jane is listed as mother on Seth's birth certificate. There is no father listed on Seth's birth certificate.

The travel demands of Jane's position have increased such that since she returned to work one week after giving birth three months ago, Jane has been at home only 9 days and has spent very little time with Seth. When she is home, she shows no interest in Seth, wanting only to relax and sleep a few hours until going back to work.

Molly, unhappy with the situation and feeling that this agreement is not what she contemplated, approaches you to learn her rights. She would like to seek a divorce or at least a legal separation from Jane and obtain custody of Seth.

Discuss whether Molly can obtain a divorce and/or legal separation, custody of Seth and any other family or contractual remedies she might have under Indiana law.

Do not address any constitutional issues that you believe are raised by this fact situation.

INDIANA ESSAY EXAMINATION  
QUESTION 3  
February 2011

Sam is a customer of Red Bank and has been depositing money into his account over a long period of time to save enough money to buy a Bad Boy motorcycle.

On January 1, Sam saved enough money in his savings account to purchase the Bad Boy motorcycle. Sam requested that Red Bank issue a Cashier's Check payable to Chuck's Chop Shop for the purchase of the Bad Boy motorcycle.

On the same day that Sam tendered the Cashier's Check to Chuck's Chop Shop deposited the check into its account at Green Bank. The next day Chuck's Chop Shop closed its account at Green Bank and emptied it of all of the cash. Later, Sam learned that Chuck's Chop Shop had gone out of business and had never ordered the Bad Boy motorcycle. Sam immediately directed Red Bank to stop payment on the Cashier's Check.

With no practical recourse against Chuck's Chop Shop, Green Bank filed suit against Red Bank for refusing to honor the Cashier's Check.

Which bank will prevail in this litigation and in answering this question, explain why.

INDIANA ESSAY EXAMINATION  
QUESTION 4  
February 2011

Margaret and Peter are recently licensed physicians in the State of Indiana. Ralph is a licensed physician in the State of Illinois. Margaret, Ralph, and Peter were close associates at Plymouth University Medical School. They want to establish a medical practice with a clinic in Indiana and Illinois. They are interested in forming an association with Jan, a recent MBA graduate, as their office manager. Jan is not a licensed physician. Since Margaret, Ralph and Peter are unable at this point to pay Jan a large salary Jan has agreed to work for them as a co-owner of the medical practice. She is willing to invest \$50,000 into establishing the practice in exchange for an ownership interest. Jan has also requested that she have the title of President. She wishes to find a way to protect herself from being personally liable for the business debts of the practice and the conduct of the physicians in the practice, including any malpractice. She has heard that it might be a good idea to establish a professional corporation.

Discuss whether Margaret, Peter, Ralph and Jan can achieve their objectives by forming an Indiana professional corporation.

INDIANA ESSAY EXAMINATION  
QUESTION 5  
February 2011

Joseph owned a parcel of land in Hoosier County, Indiana, upon which he wanted to build a home. Joseph selected a mortgage broker who arranged a construction loan for \$150,000 with ABC Mortgage Company, Inc., a corporation incorporated in the State of Indiana and whose principal office is in Hoosier County, Indiana. After the house was completed, the construction loan was converted to a permanent loan with ABC as the Mortgagee. Joseph made regular payments on the loan for almost a year when, due to continued economic hard times, he lost his job. As a consequence, he was unable to continue paying the mortgage. Also, during this period, ABC assigned the mortgage to XYZ Corporation, a corporation incorporated in the State of Delaware that regularly does business in the State of Indiana. During the time Joseph was able to make his mortgage payment, he sent his check directly to ABC.

Because Joseph fell behind in his mortgage payment, ABC filed suit in Hoosier County, Indiana, against him to foreclose on the mortgage. XYZ was not named as a party to the lawsuit. The promissory note has a notice of default provision and a “right to cure” provision. Joseph swears that he never received any notice of default.

Please answer the following questions about ABC's lawsuit against Joseph:

- a. Identify the pre-trial motions that might be available to Joseph and explain the basis for each motion.
- b. Discuss whether Joseph is entitled to a jury trial? If so, why? If not, why not?
- c. If XYZ is ultimately joined as a party, can Joseph remove the case to federal court?

INDIANA ESSAY EXAMINATION  
QUESTION 6  
February 2011

Larry operates a winery in Blue County, in Northern Indiana. He has obtained all necessary permits to operate his winery from the Alcohol and Tobacco Commission.

Wineries in Southern Indiana put pressure on their legislators, arguing that too many wineries were opening in Northern Indiana, taking business away from Southern Indiana wineries. Blue County has more wineries than any other county in Indiana.

The General Assembly passed the following statute by a narrow margin: "The Alcohol and Tobacco Commission shall grant no permits for new wineries in Blue County."

When Larry applied for annual renewal of his permit, he received the following notice from the Alcohol and Tobacco Commission: "Your application for a permit has been denied because the General Assembly has passed a law forbidding licenses for new wineries in Blue County. If you disagree with this decision, you have 30 days to file an appeal for an administrative hearing before an Administrative Law Judge of the Alcohol and Tobacco Commission."

1. Describe fully every argument Larry may have that the Alcohol and Tobacco Commission's decision is incorrect.
  
2. Describe the steps Larry must follow to present any arguments he may have that the Alcohol and Tobacco Commission's decision is wrong and that he should be issued a permit.