

INDIANA ESSAY EXAMINATION
QUESTION 1
February 2012

Bill, Mary, and John decided to go into a home repair and maintenance business. They all were laid off from their current jobs but believed that they would be called back to work in the next 9 to 12 months.

They wanted to create a formal business organization. They have investigated all the forms of business organizations and have concluded that a limited liability company was the best form for them.

They determined that they needed \$95,000 to start up. Bill contributed \$60,000 and John contributed \$35,000 in initial capitalization. Bill was given a 60% membership interest in the LLC, and John was given a 35% membership interest. Mary had no money to contribute, but the other members believed her to be a valuable asset to the business. Mary was given a 5% membership interest and agreed to supervise the employees. Mary was not herself an employee.

They retained a local law firm to prepare Articles of Organization and an Operating Agreement, and the required documents were filed with the Indiana Secretary of State in December 2009. In the Operating Agreement there was no designated manager and all members have unlimited management authority. The Operating Agreement provides: (1) Any member may petition to dissolve the LLC after two years of operation; (2) Mary shall receive a "reasonable amount of compensation" for her management duties, which would not be tied to her 5% ownership interest, if the Company had a net profit of over \$200,000 in the first year; provided, however, that the amount of her compensation has to be agreed upon by all of the members; (3) If the Company is not profitable after one year, then any member may file for dissolution.

In the first year, the Company had a net profit of \$201,000. In the second year, it had a net profit of \$100,000. The Company has never filed its biennial business entity report with the Indiana Secretary of State. Also, the members never agreed upon how much compensation Mary should receive.

1. List and describe the ways to dissolve a limited liability company.
2. What remedy or remedies should Mary pursue to obtain compensation for her services and why should she select that remedy or remedies?

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Ralph, a single male, adopted twin boys Marcus and Paul in 1977, when they were three years old.

Marcus and Paul now have children of their own. Ralph, Marcus, Paul, and their families described below live within a short drive of one another.

- Marcus married Judy in 2000, and their son Sam was born in 2002. Marcus and Judy divorced in 2005. Marcus and Judy have joint legal custody of Sam, with Marcus having primary physical custody. The divorce did not affect the time Ralph spent with Sam or Ralph's regular communication with him.

Marcus moved in with his girlfriend, Angela, in 2006. Marcus later decided that Sam should remain at home to be home-schooled by Angela. Ralph did not believe that Angela was qualified or capable of providing Sam with an adequate education, and he told Marcus and Angela about these beliefs. As a result, neither Marcus nor his ex-wife Judy has allowed Ralph to contact Sam since September 2010.

- Paul, Marcus's twin, married Linda in 2001, and their daughter Carol was born in 2004. Ralph has maintained regular contact, communication, and visits with Carol. Ralph has recently learned that Paul is planning to move with his wife and child to Nebraska to take a job there. As a result of this relocation, Ralph also will not be able to regularly see Carol.

Ralph has experienced deep satisfaction in his role as a grandfather. He has given his grandchildren sustained financial support as well as emotional support when he has had access. He regularly babysits for Carol, as he did for Sam before September 2010. Carol stays overnight at his home weekly, and he stays in touch with her by telephone and email, as he did with Sam before September 2010.

1. What are Ralph's rights regarding grandparent visitation with Sam?
2. What are Ralph's rights regarding grandparent visitation with Carol?

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Company is an Indiana corporation located in central Indiana. Two weeks after quitting their jobs at Company, two key employees opened NewCo, a competing business located within 10 miles of Company. At the time the Employees were hired, both signed non-compete agreements barring them from working for or operating a competing business within 15 miles of Company for a period of one year following the termination of their employment.

Company sues in an Indiana state court. The three-count Complaint against the two Employees alleges they are liable for breach of their non-compete agreements and for misappropriation of Company's trade secrets. Company also alleges that the Employees are liable for fraud because they had always professed loyalty to Company when, in fact, they knew all along they would eventually go into business for themselves.

1. In order to close NewCo's doors as soon as possible, Company files a Verified Motion for a Preliminary Injunction, based on the Employees' alleged violations of their non-compete agreements. Excluding the underlying elements for Company's three causes of action, identify every requirement the Company must satisfy in order to obtain a preliminary injunction.

After a hearing, the Court denies Company's request for a preliminary injunction. A few months later, the Employees file a Motion for Summary Judgment on Company's fraud count against them, which the Court later grants.

2. Discuss the differences between a Motion to Dismiss for failure to state a claim (which the Employees did not file) and a Motion for Summary Judgment (which they did file).

After a bench trial on the two remaining issues (non-compete and trade secrets), the Court found in favor of Company on the non-compete agreements, but found against Company and for the Employees on Company's trade secrets claim.

3. If Company wanted to appeal, identify what Company would have to file in order to initiate an appeal and identify any deadline that may apply.

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The Blue County Sheriff's office received an anonymous tip that methamphetamine was being sold from a home at 100 Spruce Street. Sheriff's deputies determined that Fred was the sole resident of that address. Deputies observed the home for several hours and saw an abnormally high number of people go into the home for brief periods of time then leave again.

Deputies Smith and Jones approached the home and smelled anhydrous ammonia, an ingredient in methamphetamine. They knocked on the door and observed someone pull back a curtain to look at them, but no one answered their knock. Deputies Smith and Jones found that the front door was unlocked, and they entered the home. They apprehended Fred and found a methamphetamine manufacturing operation in the basement of the home along with 8 grams of methamphetamine.

Fred was convicted of two crimes: manufacturing methamphetamine and possession with intent to deliver methamphetamine, both Class A felonies because of the amount of methamphetamine involved. The sentencing range for a Class A felony is 20 to 50 years, and the trial court sentenced Fred to 50 years for his manufacturing conviction and 50 years for his possession with intent to deliver conviction, to be served consecutively for a total sentence of 100 years.

Indiana law defines manufacturing methamphetamine as follows (omitting irrelevant language): "A person who knowingly or intentionally manufactures methamphetamine, pure or adulterated, commits dealing in methamphetamine, a Class B felony. The offense is a Class A felony if the amount of the drug involved weighs three grams or more."

Indiana law defines possession with intent to deliver methamphetamine as follows (again omitting irrelevant language): "A person who knowingly or intentionally possesses, with intent to deliver methamphetamine, pure or adulterated, commits dealing in methamphetamine, a Class B felony. The offense is a Class A felony if the amount of the drug involved weighs three grams or more."

What arguments could Fred make on appeal to reverse or vacate one or both of his convictions and sentences. Explain each of Fred's arguments and the arguments the State could make in response to each. If additional information would inform your analysis, state what additional information would be useful. **Limit your response to arguments under the Indiana Constitution.**

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Jane gives you the following chronological list of events, all of which occurred in 2011:

- 1.) In January, Jane and her niece were in a serious car accident while Jane was driving. The accident was not Jane's fault. Jane paid \$35,000 of medical expenses for her niece in May and also paid \$30,000 for her niece to resume her college education.
- 2.) In March, Jane's ex-husband Bob died and left Jane \$1,000,000 in the form of life insurance proceeds.
- 3.) In May, Jane sold all of her interest in her business for \$2,000,000. \$1,500,000 of the sale proceeds was consideration for her stock in the business and \$500,000 was the consideration to Jane for a one year non-competition agreement.
- 4.) In September, a court awarded and Jane received \$150,000 for personal injuries she sustained in the January car accident. The court also awarded punitive damages, of which Jane received an additional \$50,000.

Identify and describe the federal tax consequences to Jane resulting from each of the numbered events. Also identify and discuss any actions Jane may take to mitigate the federal tax consequences of the events. **Limit your answer to federal taxation law.**

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In 2002, James, age 72 and divorced, executed a Will leaving his property in equal shares to his two children: Ann, then age 54, and Linda, then age 46. The Will named the daughters Co-Personal Representatives.

In late 2006, James was diagnosed with the onset of Alzheimer's Disease. In January 2007, James moved in with Ann. One week before James moved in with Ann, James had his attorney prepare and James executed a Deed to his house to Ann. James explained to his attorney he did this because Ann was providing a place for him to live.

In November 2011, Ann took James to her attorney. The attorney had already prepared a Will and Power of Attorney at Ann's instruction. Ann directed James to sign the documents, which he did in the presence of four people: two independent witnesses, Ann, and Ann's attorney. The Will named only Ann as Personal Representative. The Power of Attorney named Ann as attorney-in-fact.

Upon receiving the Power of Attorney, Ann changed three bank accounts containing a total of \$600,000 from James' name to joint accounts in the names of James and Ann with rights of survivorship. Changing the names on the accounts was done without James' knowledge.

The 2011 Will transfers all of James's property to a Trust. Linda is named as the Trustee. Linda and Ann each are to receive equal amounts from the Trust eventually, but Linda has absolute discretion to distribute the principal and income of the Trust at any time, provided that all funds are distributed by the time Linda reaches age 65.

James died in January 2012 of complications associated with advanced Alzheimer's. He had no debts, \$100,000 in a bank account in his name alone, and \$600,000 remaining in the three joint accounts.

Upon learning of the 2011 Will and its terms, Linda, who is now 55 years old, became angry, because she believes she should receive one-half of all of the assets James had prior to deeding his house to Ann. Based on what a law student told her, Linda believes the Trust is invalid because Linda is both the Trustee and a beneficiary.

What action could Linda take to maximize her share of the property James owned before transferring his house to Ann? State the legal arguments for each such action, and state the likely result of each. Specifically address each asset discussed in the fact pattern, including the Trust.

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

(1) A limited liability corporation (“LLC”) combines principles of partnership/agency law and corporations. Partnerships are an association of two or more persons who intend to carry on as owners a business for profit. A corporation is a separate legal entity having privileges and liabilities distinct from those of its members. The requirements for forming an LLC include (a) having a unique name with an “LLC” designation, (b) having an agreement among the members as to how to operate the business, and (c) filing articles of incorporation with the Secretary of State.

The benefits of having an LLC are that the members of the LLC may run the business without the formalities of a corporation (such as board meetings, bylaws, certain tax and regulatory reports, etc), while at the same time, the members of the LLC are insulated from personal liability. Unlike a partnership, members of an LLC are not personally liable for the debts of the organization. This allows for substantial freedom in the marketplace, as the members do not have to account for personal liabilities when making decisions on behalf of the corporation.

A LLC may be dissolved in many different ways. The LLC may be dissolved by operation of the Operating Agreement, by operation of law, by declaration of a Court, or by fulfillment of a certain purpose or time designated in the Articles.

Per the Operating Agreement, the Company may be dissolved by petition after two years, by petition upon unprofitability after year one. Further, with regard to operation of law, the State may dissolve the LLC if the biennial business entity report is not timely filed with the Indiana Secretary of State. Since this is a statutory requirement for the continued existence of an LLC, the failure of the Company to file the biennial report may cause the state of Indiana to declare the Company dissolved.

(2) The Operating Agreement serves as a contract between the members of the LLC. Thus, when the Operating Agreement is breached with respect to one of the members, that member has standing to file a lawsuit against the other members. Consequently, if meaningful talks between the members have broken down, Mary should file for a breach of contract lawsuit against the Company and the members. Because Mary is not considered an employee per se, she will not have any remedy under due course of law for lost wages. For LLC’s, an owner-member of the LLC is not entitled to compensation absent some other agreement.

Per the Operating Agreement, Mary is entitled to receive “a reasonable amount of compensation” for her management duties if the Company has a net profit of over \$200,000 in the first year. This compensation is above and beyond the 5% ownership she has within the company. In the first year, the Company had a net profit of \$201,000, which is greater than \$200,000. Thus, the

condition precedent in the contract has been met and Mary is entitled to reasonable compensation for her efforts. The fact that the members cannot agree on the amount of her compensation does not negate her right to compensation completely. To allow the members of the Company to avoid liability by simply disagreeing would make the Operating Agreement illusory. Thus, if the members cannot agree, a Court will likely substitute its own reasonable interpretation of what is reasonable compensation.

In calculating reasonable compensation, a Court would likely look to compensation at other companies for similar services. The Court is unlikely to factor in Mary's ownership interest into the calculation.

Another option separate from the action above would be to sue for her share of the pro-rata profits. In Indiana, all LLC members are presumed to have equal rights to profits absent a contrary agreement. Although the membership interests are not equal among the members, this refers to their share ownership in the business as a whole and not to the right to receive profits. Thus, the presumption under the law is that Mary is entitled to one third of the net profits in each year, which will total around \$100,000.

Indiana Essay Question 2
Sample Answer
(Verbatim transcription of answer by an examinee)
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Indiana law recognizes grandparent visitation rights under specific circumstances. The grandchildren's parents were divorced in Indiana, an Indiana court having issued the dissolution; paternity has been established where the grandparents are the parent of the Father or putative father.

Under Indiana law Ralph's adoption of Marcus and Paul has no affect on possible grandparent visitation.

Regarding grandparent visitation Indiana law has a rebuttable presumption that parents will make reasonable decisions in their childs best interest of regarding visits with grandparents. This law also comports with federal law regarding grandparent visitation.

Under the law Ralph must rebut the presumption that his son's and their ex-wives are reasonably limiting his visitation and that the limitations are not in Sam and Carols best interest. The burden of proof is on Ralph.

Indiana Parenting Time Guidelines do not specifically grant grandparent visitation.

As to Sam, Ralph may note that for eight years he had an ongoing relationship with Sam. He has provided financial support and emotional support. Until 2010 Ralph provided babysitting for Sam.

Ralph may note his concerns over the education choices for Sam. While this alone is not sufficient, if Angela is truly not qualified to teach Sam and he is in danger of harming his overall education, this may show that Sam's parents are not making decisions in his best interest.

If the court finds that the education choices are not reasonable, Ralph may be able to rebut the presumption.

As to Carol, Ralph is clearly concerned about the pending move. Under custody and non-custodial parenting time Orders notice of a pending move are required. However, the statute requiring motification and an opportunity to object does not apply to Ralph.

Ralph is not Carols custodial parent and there is no current Order for parenting or grandparenting time.

Ralph will also note the financial and emotional support given to Carol. The frequent visits; including weekly overnight stays, and phone and email communication point to a strong relationship.

Ralph may point out how this separation may harm Carol, as Ralph has been such a constant figure in her life. Ralph may be able to show that Carol may suffer emotionally due to the separation without opportunity to visit.

The presumption in the law is a strong one. Parents are deemed to make decisions in their child's best interest.

Cutting Ralph off from Sam may be spiteful, but is it unreasonable? Effecting visits could cause harm if Ralph and Marcus argue about Sam's education. Conflict may be the basis to keep Ralph and Sam from visits, which may be very reasonable. Sam may get mixed messages from his father and grandfather, again making Marcus decision reasonable.

It is unfortunate that Pauls move will affect how often Carol will see Ralph. Since there seems to to be no conflict between Paul and Ralph ongoing communication may be possible, and advantageous to Carol.

While Ralph may assert the right to grandparent visitation neither is likely to prevail. Marcus and Paul both seem to be acting in the best interest of their children

Marcus' educational decisions may be questionable and sufficient to test the reasonableness of the education decisions. A suit for grandparent rights would likely fail. A suit may also further alienate Ralph and Marcus. Ralph may be better served to repair his relationship with his son and thereby restore his relationship with Sam

There are even lesser facts to base a suit for grandparent visitation with Carol. The move out of state does not appear irresponsible or against Carols best interest.

Ralph should look for opportunities to go visit Carol in her new home, as well as learn all the latest technology to keep in touch.

Ralph should maintain his relationship with Carol in any reasonable way

Court action regarding either child is not likely to succeed and may damage current relations. Ralph should avoid court; repair his relationship with Marcus; learn to Skype; and do all he can to enjoy his grandchildren.

Indiana Essay Question 3
Sample Answer
(Verbatim transcription of answer by an examinee)
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1. The first element that must be proved to obtain a preliminary injunction is that the movant is likely to succeed in the case on the merits. This means that Company must be able to show that it is reasonably likely to prevail on the merits for the basis of the preliminary injunction. In this case, Company must show this likelihood for the violations of the non-compete agreements.

The second element Company must satisfy is that there is no adequate remedy at law. In other words, monetary damages will not compensate Company's alleged damages.

Third, Company must show that allowing NewCo to operate causes an immediate and irreparable harm to them that outweighs NewCo's harm of being shut down.

Finally, Company must prove that granting the preliminary injunction is not against public policy.

2. A motion to dismiss is filed early in the case, and alleges that the complaint fails to state a cause of action or a claim. A motion to dismiss may be filed before or with an answer, and must be filed within 20 days of service of the complaint. The judge is allowed only to consider the complaint in considering the motion to dismiss. If the motion is granted, the plaintiff is given ten days to amend the complaint and re-file it. A motion to dismiss can only be filed by the defendant to a claim. If he or she chooses, the judge may treat a motion to dismiss that adds additional facts as a motion for summary judgment.

A motion for summary judgment is filed by either party. It alleges that there are no material issues of fact, and thus that the judge can decide the issue based solely on law. The proponent for a motion for summary judgment must designate the evidence in the pleadings or discovered evidence that shows that there are no issues of material fact. The opponent designates evidence that shows issue of material fact. Both sides may submit affidavits in support of their side with their motion or reply. In addition, the court may hold a hearing on a motion for summary judgment. Finally, a motion for summary judgment dismissing the case does so with prejudice, and does not allow the plaintiff to re-plead.

3. The Company must file a Notice of Appeal. This Notice must be filed with the clerk of the trial court within 30 days of the final judgment of the case. In addition, a copy of the Notice of Appeal must be filed with the clerk of the appropriate court of appeals. Once the appeal is filed, the clerk of the trial court prepares the official record for appeal and submits it to the appellate court.

Indiana Essay Question 4
Sample Answer
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This problem deals with several aspects of Indiana Constitutional law. To name a few: (1) search & seizure; (2) proportionality of the sentence; (3) double jeopardy. I will discuss each below, which would be potential arguments for Fred on appeal.

(1) Search & Seizure. Indiana Constitution as to search & seizure is different than the 4th Amendment under U.S. Constitution. Whereas, 4th Amendment focuses on the reasonable expectation of privacy of the person searched. Indiana Constitution focuses on the reasonableness of law enforcement conduct. Law enforcement conduct is measured under the totality of circumstances standard, and balances the intrusiveness level and the reasonableness of police. The 3 factors that courts look at are: (1) level of intrusion; (2) reasonableness of the intrusion & (3) the need for intrusion (law enforcement need). Police must have an articulable individual suspicion for their actions. They can't just pick someone, because that someone is in a bad area of the city. Court balances these factors, before determining the outcome of a search (whether it would be suppressed or not). It would be helpful to know if there was a suppression hearing in this case. If there was, and Fred lost the suppression he would still need to object on the record during trial to admitting this evidence.

There is a strong preference for a warrant in Indiana. Based on the facts given, the court will not look good upon the fact that police did not obtain a warrant before entering the house, especially since they have been observing the house for several hours. I believe (and I will need to check on this) that there are no exigent circumstances in Indiana to allow a search such as this to be held without a warrant. It will not be looked good upon the police to act the way they did based on anonymous tip. Although informants are used in helping police, anonymous tip is not good enough to raise a specific articulable suspicion.

-On the other hand, the court will weight the factors that Fred was the sole owner of the house, the fact that it was observed that over several hours an abnormally high number of people go into the home for brief periods of time & then leave. The court will consider that when they approached the home they smelled anhydrous ammonia & the fact that after they knocked, they saw someone pull back a curtain to look at them, but then none answered the door. Court will consider all of these factors in totality before determining if the search and the products of the search was within the Constitutional requirements under Indiana law.

The prosecution will argue that the search was reasonable under the circumstances, and therefore valid. But ultimate decision will be for the court to decide.

(2) Another issue which may arise during appeal process is the proportionality of the punishment. Court of Appeals in Indiana reviews the proportionality of sentences. It may be argued a sentence of 100 years is not proportional to the crime Fred was convicted of. Although the sentences for both felonies fall within the appropriate scale of 20 – 50 years, to serve these sentences consecutively (one after the other) may not be proportional since the crime convicted of arose under the same circumstances. State would argue that the sentence was within the judges discretion. Additional information which would be helpful here is Fred's criminal history and whether the judge looked at pre-sentencing report before sentencing Fred. This would be important to know to make sure the sentence was not vindictive and the judge was fair.

(3) Another appealable issue to consider is Double Jeopardy. Indiana Constitution Double Jeopardy is a little bit different than U.S. Constitution. Indiana Constitution provides the defendant with an additional option.

Similarly to U.S. Constitution, Double Jeopardy in Indiana attaches for multiple prosecutions and the crime is the same if essential elements of one are the same as the other. This would be the lesser included offenses. In addition to these, Indiana Constitution provides that the crime is the same and double jeopardy attaches if the elements of each crime charged are proved by the same evidence. This is very unusual, but it does provide an additional protection to the defendant.

In this case, manufacturing methamphetamine requires knowledge or intentionally manufacturing, where as possession requires intent to deliver. These are different elements. However both charges become Class A felonies if the amount of drug involved weighs 3 grams or more. These elements are the same, so it may be argued that both charges violate double jeopardy. It could also be argued that some evidence was used to prove both charges, but based on the facts, it is not clear what evidence was used in proving both crimes, this information would be useful to determine if the additional protection available to the defendant can be applicable here. Of course the state will argue that different evidence was used to prove the elements of the charges.

Indiana Essay Question 5
Sample Answer
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- (1) Jane can deduct the 35,000 she paid in medical expenses if her niece is her dependent. Jane would report this on schedule A of her form 1040 as an unreimbursed medical expense. It is subject to floor, however, that is equal to 7.5% of her adjusted gross income for 2011.

If her niece is not her dependant, Jane's payment of the \$35,000 constitutes a taxable gift to the extent that it exceeds the annual gift tax exclusion (\$13,000 in 2011). = Taxable gift of \$22,000. This \$35,000 payment will not be considered a taxable gift, however, if Jane made the payment directly to the care provider (doctor or hospital). The facts don't indicate whether she did pay directly, so I can't say for sure.

The \$30,000 payment for school is similar to the payment for medical expenses. If this \$30,000 was for tuition and/or other "qualifying expenses," and it's paid directly to the school, it's not a taxable gift. But if Jane was paying for, say her niece's college apartment, and doing so by giving the money directly to her niece, it's a taxable gift to the extent all amounts given in 2011 exceed the annual exclusion of \$13,000.

- (2) Life insurance proceeds are not included in gross income, being specifically excluded by section 101 of the Internal Revenue Code. They are not taxable to Jane.
- (3) Jane's sale here constitutes essentially two transactions. First, she sold her stock for \$1,500,000. \$1,500,000 is her amount realized. To determine whether she'll realize a gain or a loss on this transaction, she'll subtract her adjusted basis in that stock – what she paid for it, basically. This gain (or loss) will be characterized as a capital gain or loss because it is from the sale of stock, which is a capital asset. Whether it is characterized as a long-term or short-term capital loss will depen. The length of time that she owned the stock. If she owned it for at least one year, it is a long-term capital gain, and will be taxed at lower rates. If it's a short-term gain, it will be taxed at original rates. If she has a long-term capital loss, she can deduct it from her gross income on Schedule B. If it's a short-term capital loss, she'll be limited to a deduction \$3,000, but will be allowed to carry it forward.

Second, Jane received \$500,000 for signing a noncompete agreement. This \$500,000 will be taxed to her at ordinary rates (it is not a capital gain).

- (4) Assuming that Jane actually received her damages in 2011 (the facts state only that she was awarded that amount in damages), Jane can exclude from her income the \$150,000 received on account of physical injuries. Awards for physical injuries are not taxed. Punitive damages are always taxed, however, and at ordinary rates. She will pay taxes on the \$50,000.

Indiana Essay Question 6
Sample Answer
(Verbatim transcription of answer by an examinee)
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As to the January 2007 deed of James' house to Ann, it is probably legitimate and will withstand scrutiny. James initiated the action. There is no appearance of undue influence being exerted over James. His execution of the deed appears knowing and voluntary. One approach that Linda might take here is to have the house declared an advance on Ann's inheritance. This approach will likely not succeed, though, as the deed was purportedly executed in return for services rendered, i.e. – Ann providing James a place to live. If it did succeed, the house would be considered part of the estate "hotch-pot", and would be deducted from Ann's share.

As to the November 2011 will, it appears that it was executed with the proper formalities. However, Linda may challenge the will on the grounds that it was executed under duress and that James was no longer competent to execute his will. The will was prepared by Ann's attorney according to her instructions and signed at her direction. By this point, James had been suffering with Alzheimer's for five years. A court may indeed find that James was no longer competent to understand what he was signing and form the intention that it be his last will, and that Ann took advantage of that fact to prepare a new will more favorable to her.

As to the three accounts containing \$600000, a court may find that Ann breached her fiduciary duty to James as his attorney in fact when she changed the accounts from James name to joint accounts with rights of survivorship. Normally a joint owned property with rights of survivorship inures to the surviving party immediately, such that it never becomes part of the estate of the deceased. However, in view of Ann's breach of her duty to James, Linda should petition the probate court to have another executor assigned to the estate and for the executor to sue for the \$600000 to be returned to the estate.

As to the trust, a trustee cannot be beneficiary if her control of the disbursement of trust funds is entirely unconditional and discretionary. Here, however, there are conditions. The trust distributions must be equal between Ann and Linda, and must be entirely distributed by the time Linda is 65. Linda's best approach to the trust is to challenge the will on the grounds of duress and James' incompetance to execute it. If she succeeds, the trust issue will become moot