

INDIANA ESSAY EXAMINATION
QUESTION 1
February 2013

Yvonne Bates is a licensed plumbing contractor in Indiana. She has gone into partnership with her twin daughters, Mary and Sherry, under the name Professional Plumbers. Mary and Sherry also have their Indiana plumbing contractor licenses.

Indiana Code § 25-28.5-1-31(c) states:

(c) It is unlawful for a plumbing contractor to fail to include one of the following names on written or printed advertising for plumbing services and on vehicles that are used to provide plumbing services:

(1) The plumbing contractor's name.

(2) The name of the business with which the plumbing contractor is associated.

In June 2012, the Indiana Plumbing Commission (IPC) received a written complaint that Professional Plumbers' vehicles did not comply with Indiana Code § 25-28.5-1-31(c).

IPC has the authority to conduct administrative hearings. As a result of the complaint against Professional Plumbers, the full board of the IPC conducted an administrative hearing five days ago. During the hearing, Yvonne presented the following evidence:

- The name of her business, Professional Plumbers, is on the truck she uses for business.
- Her daughters' vehicles are not in compliance with the regulation because they use their personal vehicles to perform work-related duties.
- On several occasions, Yvonne unsuccessfully applied to lenders for commercial and personal loans to purchase trucks for her daughters.
- Several of Yvonne's local competitors are currently violating the regulation.

After the hearing, IPC informed Yvonne in writing that unless Professional Plumbers provides IPC with evidence of compliance with Indiana Code § 25-28.5-1-31(c) within the next 30 days, Yvonne's license will be suspended.

Assume the Indiana Administrative Orders and Procedures Act applies.

- (1) Can Yvonne seek judicial review of the IPC's order? Why or why not?
- (2) Assuming Yvonne can seek judicial review, describe all of the steps she must take to pursue judicial review and the standard of review that applies.

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FedBox is a delivery service and operates in Indiana through its fleet of vans and trucks. On March 2, 2012, there was a significant snowstorm in Central City, Indiana. While on his way to work, Mike Nguyen was involved in an accident with a FedBox truck. According to Mike, the truck failed to stop for a red light and hit Mike's car. No one appeared injured and, although damaged, Mike's car was drivable.

After Mike called 911 and reported that no one seemed seriously injured, the dispatcher told him that the police would not come to the scene given the number of other accidents that day. The dispatcher told Mike and the truck driver to exchange information and report the accident to their insurers. No police report was ever made. While exchanging information, Mike thought he smelled alcohol on the FedBox driver's breath. Mike also noticed a passenger in the FedBox truck, but he didn't ask who he was.

That evening, Mike became very sore and decided to go to the hospital. In addition to incurring medical bills, Mike missed work, lost wages, and his car was damaged.

Mike timely sued FedBox and the driver, Lou Smith. In their Answer, the defendants asserted that Mike (not Lou) ran the red light and was at fault for the accident. During his deposition, Lou stated he did not know who his passenger was. Lou said the passenger was a trainee who was not offered a permanent job. Lou denied he had been drinking or used any drugs before the accident. Lou testified that he had previously worked for United Carton Service (UCS). Lou said that after six years UCS fired him due to "company politics."

Assume the county in which Mike filed suit has no local rules applicable to discovery or discovery-related issues.

- (1) Identify and discuss how Mike's attorney can use the various methods under the Indiana Trial Rules to find out the identity of the FedBox trainee who witnessed the accident. Of the methods you identify, which would you recommend, and why would you recommend it?
- (2) In response to the discovery you propound to obtain the identity of the FedBox trainee, FedBox's attorney refuses to respond with the requested information. Identify all things Mike's attorney should do in response.
- (3) Mike wants to see Lou's personnel file from UCS. Under the Indiana Trial Rules, describe the process of obtaining it from UCS.

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Before Hank's 2013 marriage, he was a widower with one adult child, Sam, and no other children. All of Hank's assets were in a Revocable Living Trust ("Trust"). Hank was the Trustee of the Trust and, upon his death, Sam will become the Trustee. Sam is the sole beneficiary of the Trust. The Trust states that upon Hank's death all assets of the Trust shall be distributed to Sam.

Hank married his second wife, Wilma, on January 10, 2013. Shortly after the marriage, on January 20, 2013, Hank (as Trustee) executed a Deed transferring title to his house from his Trust to Hank and Wilma as tenants in common, each owning an undivided one-half. Also on January 20, 2013, Hank executed a new Will. The new Will named Wilma as Personal Representative and stated Wilma was to receive 75% of his estate and Sam was to receive 25%.

Hank died January 30, 2013. The only debt Hank had at the time of his death was a credit card with an outstanding balance due of \$50,000.00. At the time of his death, Hank owned the following assets:

ASSET	MANNER OF OWNERSHIP	VALUE
1. House	Hank & Wilma Tenants in Common Each owning an undivided ½ interest	\$ 300,000.00
2. Fidelity Investment Account	Hank's Revocable Living Trust	\$ 400,000.00
3. 2012 Porsche	Hank's Revocable Living Trust	\$ 200,000.00
4. Checking Account	Hank's Revocable Living Trust	\$ 100,000.00

Answer the following:

- (1) What are the assets of the estate?
- (2) How will Hank's credit card debt be paid?
- (3) How will the fees for the estate's attorney be determined?
- (4) Will Wilma get paid for being Personal Representative and, if so, how much?
- (5) Assuming Wilma does everything she can to maximize her share, what will she receive from Hank's estate?

INDIANA ESSAY EXAMINATION
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Disputes over assessments of property for property tax purposes are decided initially by an administrative agency. The result may be appealed to the Indiana Tax Court. Recently, the number of property tax appeals increased significantly. As a result, the Indiana Tax Court developed a backlog, leading to lengthy delays in adjudicating appeals.

The delays came to the attention of the Indiana legislature. In response, the legislature passed a law with the following provisions:

- The law applies only in "counties where the average time between filing an appeal and decision by the Indiana Tax Court is longer than 18 months."
- For those counties, the law creates a "Legislative Property Tax Appeals Tribunal" consisting of "Property Tax Magistrates" appointed jointly by the Speaker of the House and President Pro Tempore of the Senate and supervised by a legislative committee.
- The Property Tax Magistrates have one-year terms, which are renewable.
- Once it is determined that a county fits the eligibility criteria for a Legislative Property Tax Appeals Tribunal, all new property tax valuation appeals are referred to the Tribunal.
- The law also contains a mechanism for determining when the Tax Court backlog has been reduced in a given county, and no new cases are referred to the Tribunal from that county after that time.

Under the law's provisions, the Property Tax Magistrates adjudicate property tax valuation disputes using a "fast track" procedure described in the law. The "fast track" procedure differs from the Tax Court's procedure because it limits parties' written briefs to ten pages and does not allow any oral presentation to the Tribunal.

Identify no more than three issues this law raises under the Indiana Constitution and analyze each issue.

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John and Marcus have successfully operated a home repair and residential home construction business for the past ten years as a general partnership under the name J&M Home Construction. They trust each other completely. Each allows the other to enter into contracts with vendors and customers without the prior knowledge or consent of the other.

In their business, John and Marcus employ subcontractors for various stages of the work. They have always been very involved on-site at every project. Their personal involvement has assured quality construction.

John and Marcus have decided to transition their business from residential home repair and construction to apartment complex construction and large-scale commercial building construction. They have been approached by several real estate developers to construct these types of buildings.

Both John and Marcus are willing to make substantial, equal, monetary contributions to this new enterprise. They will obtain insurance policies in the types and with coverage amounts advised by their insurance agent. Because of the larger scale of future projects, John and Marcus will be less personally involved at each stage of construction and will have to rely more on subcontractors and architects to monitor the quality of work being performed.

In transitioning their business, John and Marcus have the following primary concerns:

- They want to continue running the business as closely as possible to the manner in which they have operated their J&M Home Construction general partnership with respect to decision making, day-to-day operation, distribution of proceeds, and taxation of any profits; and
- They would like the personal assets they do not contribute to the new venture to be free from claims of creditors if the venture fails or if claims or judgments against the new venture exceed available insurance proceeds and the value of this new venture's assets.

Answer the following:

- (1) Discuss the advantages and disadvantages of the following types of business organizations in light of the primary concerns of John and Marcus:
 - a. limited liability company (LLC);
 - b. Indiana domestic corporation; and
 - c. general partnership.

- (2) State which of the three forms of business organizations is best suited to the needs of John and Marcus.

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Maria and Joe married in May 2000. Before their wedding, Joe asked Maria to sign a premarital agreement due to his concerns about his very valuable coin collection that he inherited from his grandfather. Maria refused to sign a premarital agreement but told Joe that, should they ever split up, she would never seek any part of his coin collection. Based on this agreement, Joe proceeded with the marriage.

The parties did not have children. Maria earned a medical degree and became a heart surgeon during the marriage. She earned over \$500,000 in each of the last five years of the marriage. Joe never went to college. He sold paintings that he painted in their garage. Although Joe really enjoyed painting, his paintings did not sell very well. In fact, Joe did not earn enough money to cover his art supplies from year to year.

Joe did most of the cooking and cleaning around the house because Maria had a very demanding work schedule. He also planned the family vacations and paid the bills.

Maria and Joe accumulated significant assets during the marriage, including Maria's large retirement plan. They had no debts.

On May 5, 2012, Maria filed a Petition for Dissolution of Marriage seeking to be divorced from Joe as soon as possible due to her involvement in a love affair with Joe's best friend, Frank.

Answer the following:

- (1) Will Joe be able to keep his coin collection out of the marital estate based on the parties' agreement before their marriage?
- (2) What basis, if any, does Joe have to argue that he should receive more than 50% of the marital estate?
- (3) Will Maria's adulterous behavior be a factor the court considers in dividing the property?
- (4) What is the earliest date the marriage can be dissolved?

Indiana Essay Question 1
Sample Answer
(Verbatim transcription of answer by an examinee)
February 2013

Question (1) Can Yvonne seek judicial review of the IPC's order? Why or Why not?

As a general rule, a party to an administrative hearing may only seek judicial review of a final order, given by the final authority of the administrative agency. Here the IPC informed Yvonne in writing that unless Professional Plumbers provides IPC with evidence of compliance with I.C. 25-28.5-1-31(c) within the next thirty (30) days Yvonne's license will be suspended. In order to seek judicial review the party must have exhausted all administrative remedies unless doing so would be futile or the board will not dispose of the case. The facts indicate that Yvonne was given notice of the hearing, she attended the hearing, Yvonne presented evidence at the hearing, and the board made a decision at the hearing. Therefore, it appears as if she received proper notice and was afforded proper procedures therefore, her due process rights do not appear to have been violated. The question of whether she can seek judicial review turns on whether or not this is a final order of the final authority of the IPC. In order for this to be a final order, the final authority of the administrative agency must make a finding and state in the order the facts and findings and conclusions of law that he based his decision on. In the event that it is, then she is entitled to seek judicial review of the final order.

In the event that this is not a final order, because of the fact that she has thirty (30) days to comply with the order, then it is not currently appealable. She must seek and exhaust all administrative remedies prior to seeking judicial review of the board's decision. One argument could be made that this is not a final order because there is no other information pertaining to how she can dispute the suspension should she not be in compliance by the 30 day limit. The board needs to put in the order the facts and findings of their decision along with other avenues she may seek to have this decision reviewed administratively.

Question (2) Assuming Yvonne can seek judicial review, describe all of the steps she must take to pursue judicial review and the standard of review that applies.

The first thing that Yvonne must do is to file a Notice of Appeal with the clerk of the court in the proper jurisdiction. She must do so within 30 days of the final order of IPC. She must serve all parties who were involved in the administrative hearing.

Because this is not rule making the court's standard of review is not de novo review. As a general rule the court may only look at the record and the final order when making its determination on appeal. There are exceptions to this rule. The exceptions include when there is evidence that with due diligence the party could not seek discovery during the hearing, and when there is clear abuse of discretion. Once the notice of appeal has been filed the clerk of the court has 30 days to make a transcript of the hearing and provide it to the court.

When deciding on a notice of appeal the court will look at several factors in determining whether or not to remand the matter for further proceedings and whether or not to overturn the IPC final order. The court will consider whether the board of the IPC decision was capricious, arbitrary, or an abuse of discretion, whether the board did not follow personal rights to the defendant that are against the defendant's constitutional protection of due process, equal protection, or privileges and immunity, whether (not), whether the board acted in excess of its statutorily prescribed jurisdiction, and whether there was substantial evidence to the contrary submitted. The court will only overturn an administrative order if it meets any of the previously described factors.

First, Yvonne should argue that the board's ruling was capricious, arbitrary, and an abuse of its discretion. She needs to argue that the board's decision was based on a written complaint. The facts do not indicate that any witnesses were called and so therefore she did not have the opportunity to cross examine the complainants. Although the rules of evidence do not apply in administrative hearings decisions based purely on hearsay are not allowed. Second, Yvonne should also allege that taking her license at the end of the 30 day period is a violation of her due process because the state is taking away her property, her license, which is how she makes money, this is her livelihood.

In the event that she is successful on any of the above claims, the court may remand the matter back to the administrative agency, remand with further instructions, or simply overturn the administrative agencies orders.

Indiana Essay Question 2
Sample Answer
(Verbatim transcription of answer by an examinee)
February 2013

1. Identity of Trainee

The most efficient method to obtain the identity of the FedBox trainee would be to serve interrogatories requesting his or her identity. Interrogatories are written questions that can be served on parties only. They need not be filed with the court, but a party must serve them in accordance with Trial Rule 5 and include a certificate of service. The party receiving the interrogatories has 30 days to respond (33 days if service is by mail). The response recites each interrogatory verbatim and sets forth the response underneath.

Other possible methods, which would be less efficient, could include requests for the production of documents or depositions. Requests for the production of documents simply request that a party or non-party provide certain information or produce documents. Like interrogatories, they are not filed with the court and are served (if on a party) in accordance with Trial Rule 5. Here, Mike's attorney could request that FedBox produce documents concerning the trainee in the car that day or documents relating to the identity of the trainee. However, it would be much more efficient to ascertain the identity through an interrogatory and follow up with requests for documents concerning the individual identified, if such information is pertinent.

A Trial Rule 30(b)(6) deposition is another potential source of this information. Mike's attorney would be required to serve a notice in compliance with Trial Rule 5 and include the time and location of the deposition along with the topics upon which FedBox should designate a witness (one of which would be the identity of all individuals in the FedBox vehicle on the day of the accident). FedBox would then choose a witness with the relevant information. If Mike's attorney were to pursue this course, he should consult with FedBox's counsel in advance concerning a mutually agreeable date and location. Again, this is not the preferred method of ascertaining the identity of the witness because it would be more expensive than a simple interrogatory, and Mike's attorney likely would want responses to his written discovery and documents prior to noticing depositions.

2. FedBox's Failure to Respond

Mike's attorney is first obligated to meet and confer with opposing counsel to try to narrow or resolve the discovery issue. Accordingly, he should reach out to FedBox's attorney to arrange a conference between the parties during which he may either convince FedBox's attorney to respond or confirm that no response is forthcoming.

If the parties are unable to resolve their dispute through a conference, Mike's attorney should file a motion to compel under Trial Rule 37. He will explain the basis for the parties' dispute, that they have been unable to resolve the dispute by conferring, and explain why he is entitled to the discovery sought. He will have to show that the discovery is reasonably calculated to lead to the discovery of admissible evidence to obtain it, which he should be able to show easily on these facts. He can also seek attorney's fees in connection with the motion.

In the mean time, Mike could consider pursuing third party discovery from FedBox's insurer since the information has not been forthcoming from FedBox. The insurer may have a report that identifies all the parties involved in the accident, including the passenger. To obtain that discovery, Mike's attorney would have to serve a subpoena duces tecum under Trial Rule 45 on the

insurer. Prior to serving such a subpoena, he would have to give 15 days notice to the parties to the action, and the insurer would then have 30 days from the date of service to respond. The subpoena would need to be served pursuant to Trial Rule 4, by certified mail or personal service.

3. Lou's Personnel File from UCS

To obtain Lou's personnel file from UCS, Mike's attorney would have to serve a subpoena duces tecum under Trial Rule 45 as set forth above. He would have to give the parties 15 days advance notice (barring emergency) prior to serving the subpoena to allow them an opportunity to object or move to quash. After the 15 day period, he can issue the subpoena (which should include the case caption, party names, etc.) himself and include requests for production of documents. He would need to serve the subpoena pursuant to Trial Rule 4, by certified mail or personal service. The party receiving the subpoena then has an opportunity to respond.

Indiana Essay Question 3
Sample Answer
(Verbatim transcription of answer by an examinee)
February 2013

1. Assets of the Estate

The estate will include Hank's half interest in the home valued at \$150,000. Since Hank and Wilma were tenants in common, as opposed to joint tenants with a right of survivorship, Hank's interest does not pass to her automatically on his death. The assets in the Revocable Living Trust, which was in existence at the time of Hank's death, will be part of his estate for estate tax purposes because he retained the power to revoke it up until his death. However, those assets will be subject to division pursuant to the trust instrument as opposed to by will. One of the benefits of a revocable trust is the ability to avoid the formalities associated with wills (in fact, a testator can devise assets to a trust that exists at the time he dies, called a pour-over gift, and revise the trust instrument as he sees fit without following testamentary formalities such as attestation). The Trust states that upon Hank's death all Trust assets shall be distributed to Sam. Accordingly, those assets pass and are distributed to Sam by virtue of the trust agreement.

The estate for tax purposes thus consists of \$850,000. Assuming Hank made no lifetime gifts that count against the cap, he has a \$5 million exemption at the federal level, and his estate will owe no tax. The Indiana Inheritance Tax would apply to transfers to Sam, as a Class A beneficiary, at preferential rates subject to a \$250,000 exemption. Wilma is entitled to a 100% spousal deduction and will owe no tax.

The assets subject to division in the estate include the \$150,000 interest in the real estate less the \$50,000 credit card debt and other costs associated with administering the estate. In addition, Wilma will be entitled to a \$25,000 family allowance off the top. The remaining \$75,000 will be divided between Wilma and Sam pursuant to the terms of the will, with Wilma to receive 75% and Sam 25%.

2. Credit Card Debt

Wilma, as personal representative, should give notice to the credit card company as a known creditor of the estate. Assuming the credit card company does not dispute the amount of the debt, it will be paid out of the assets in the estate prior to distribution to the devisees.

3. Fees for Estate Attorney

The estate attorneys' fees should be determined by Wilma, as executor of the estate. The executor is charged with estate administration and payment of debts and other obligations of the estate. The attorneys' fees will come off the top prior to distributing the other assets in the estate.

4. Personal Representative

Wilma, as personal representative, should be entitled to reasonable compensation in an amount determined by the probate court for administering the estate.

5. Wilma's Share

Wilma is entitled to a family allowance in the amount of \$25,000 off the top of the estate regardless whether she elects to take pursuant to the will or to take an elective share.

Wilma will be better off taking the 75% share Hank devised to her by his will. The alternative would be for her to take an elective, or forced, share. Ordinarily, a surviving spouse would be entitled to an elective share of half of the estate. However, as a subsequent childless spouse of a husband with surviving issue (Sam), her elective share is only one-third of the personal property and one-fourth of the real property in the estate. Because the only property in the estate is real property, the one-fourth share would be substantially less than 75%.

Wilma could try to argue that the assets in the revocable trust should be included in the estate so as not to defeat her elective share. While a testator is not permitted to avoid a spouse's elective share by putting assets in a trust for that purpose, Wilma is unlikely to prevail on these facts. The Revocable Living Trust was in existence at the time of the marriage, so Hank's intent in creating it could not have been to defeat an elective share that did not exist. In fact, he granted Wilma a one-half interest in the home shortly after marriage, suggesting he was attempting to provide for her. He also executed a will giving her 75% of his estate within days of their marriage. He and Wilma were only married for 20 days, during which time there is no indication that Hank made any alterations to the trust aside from granting Wilma an interest in the home.

Indiana Essay Question 4
Sample Answer
(Verbatim transcription of answer by an examinee)
February 2013

The legislature's adoption of the new law relating to appeals for property taxes triggers several constitutional issues under the Indiana Constitution.

First, when examining a constitutional issue under the Indiana Constitution, the Indiana Supreme Court has set forth the property framework for analysis. First, one must begin with the text itself, and review it giving consideration to the history behind it and the time/history of its enactment. This review is done while also giving weight to the purpose behind the Indiana Constitution and finally, applying and reviewing the applicable case law already interpreting the subject provisions.

The first issue under the Indiana Constitution is the new law's potential violation of Indiana's preference for general versus specific laws. Under Article IV, sections 22 and 23, the Indiana Constitution provides that laws which are enacted are, for the majority of cases, designed to be laws of general applicability. In other words, laws are supposed to be of such design that they apply to everyone in the state and do not categorize geographic areas or citizens to apply the law. That being said, special laws are not de facto invalid, however. Special laws may be permitted, so long as they can pass the test set forth for them under the Indiana Constitution and under Indiana Supreme Court authority. Article IV, section 22, first sets for 16 enumerated categories which prohibit special laws. Among this list includes provisions related to taxation. If a law falls into one of these 16 categories as a special law, then it is invalid on its face and will be held unconstitutional and, therefore, unenforceable. If the law does not fall into one of the 16 categories contained in Section 22 of Article IV, then section 23 provides that the law will only be held constitutional if the area of subject matter is of such a specialized nature that the special law is a necessity to address the area or subject matter.

In the instant case, the provision of the which trigger analysis under Article IV sections 22 and 23 is the provision which states that the law is applicable only to "counties where the average time between filing an appeal and decision by the Indiana Tax Court is longer than 18 months." While the law may be neutral in that it does not specifically set forth the counties which will be subject to the law, in operation, it will operate to separate Indiana counties between those where the law will apply and those where the law will not apply. Accordingly, this law must pass muster under Article IV, section 22 and 23 to be constitutional. While taxes are a category under Section 22's enumerate prohibited categories for special laws, the law at issue here is actually a law affecting appeals and appeal procedures. Thus, the law does not fall into the taxation provisions or any of the other categories set forth in Art. IV, section 22's list. Accordingly, one must assess whether the area or subject matter of the law is so specialized and unique that a special law is appropriate. In this case, the court might find that counties where citizens must wait over 18 months for a decision on their appeal to be a unique situation that required a remedy. The underlying subject matter of these appeals are disputes over assessments of property for property tax purposes. While these disputes might not constitute an emergency or require immediate solution, certainly an argument can be made that these disputes require resolution within at a minimum one year. Property values are necessary for tax purposes, to purchase homes, and to sell existing homes. These are interests that most residents of Indiana deal with on a regular basis and, when dealt with, are of great importance to them. It can likely be agreed by the court that Indiana citizens having to wait 18 months to have their case decided is likely a situation that requires extra attention. As such the law, while special in its operation, should be found to be valid because of the unique situation is seeks to remedy.

Next, because the law creates a classification of counties, it must also pass Article I section 23's equal privileges and immunities standards in order to be constitutional. Indiana's Constitutional does not have a provision specifically setting forth equal protection rights, unlike the Federal Constitution. However, the Indiana Supreme Court has held that Art. I, section 23, sets forth those rights in

its protection of equal privileged and immunities. In order for a law to be valid under Art. I, section 23, the Indiana Supreme Court has held that the underlying classification must be based on the inherent characteristics of the subject group and that the law is uniformly applied to all those meeting those inherent characteristics. While federal analysis of equal protection includes the use of the "levels of scrutiny," the Indiana Supreme Court has not adopted those levels of scrutiny for an analysis under Art. I, section 23. That being said, the Indiana Supreme Court has often referred to a standard of laws being "substantially related to a legitimate government purpose" when examining a law under Art. I, section 23, which appears to be a compilation of the federal "rational basis" (rationally related to a legitimate government purpose) and of intermediate scrutiny (substantially related to an important government purpose). The case at bar, as described above, provides a classification for counties where the average waiting time between an appeal and a decision in the Indiana Tax Court is longer than 18 months. The subject law has been enacted in an effort to solve the lengthy delays and the backlog currently in place in the Indiana Tax Courts. The classification clearly seems to be based on the inherent characteristics, as it is targeting counties where the wait for a decision is over 18 months, which is, as discussed above, an extraordinarily long time to wait for a decision on an appeal. Because the law seems to be based on the inherent characteristics of the class, it next must be uniformly applied. This requirement also seems to be met. The law will apply to any county where the wait is over 18 months. There is no discretion on when to apply the law or where to apply it. Accordingly, the law meets the second prong. To use the Indiana Supreme Court's own standard, the law in the instant case seems substantially related to a legitimate government interest—reducing its citizen's wait time for decisions on their appeal. Accordingly, this law should be found constitutional under Art. I, section 23's equal privileges and immunities doctrine.

Last, there might be an argument under Article I, section 12 for due process with regard to judicial review. Agency decisions are entitled to judicial review under this section of the Indiana Constitution. The law in this case puts in place a "Legislative Property Tax Appeals Tribunal." It is unclear from the facts whether this tribunal has the same powers as a traditional court in Indiana from which a challengers could normally seek a judicial review from an agency decision, such as those that deal with disputes over property tax assessments. Further, once the backlog is cleared, the appeals will again be heard by an Indiana Court, rather than the tribunal, which indicates that the tribunal will not be in place for an extended period of time and will not be the sole source of appellate authority for these appeals. I would argue that the provisions creating the tribunal run afoul of the guarantee for judicial review for administrative agency decisions for those with standing to appeal those decisions. Accordingly, the law could be held unconstitutional under Art. I, section 12, of the Indiana Constitution.

Indiana Essay Question 5
Sample Answer
(Verbatim transcription of answer by an examinee)
February 2013

1. a LLC's have the advantage of being the most flexible entity, since they are hybrids of partnerships (taxation etc.) and corporations (limited liability). Liability is limited to the LLC member's investment to prevent loss to his personal assets if sued. LLC's by default (if multi-membered) are taxed like partnerships with profits flowing through to individual member 1040 returns on schedule K-1's. The LLC lives on if one member dies unlike a partnership which dissolves to start a new partnership with remaining partners.

The disadvantage of LLC's is the cost to file articles of organization as well as the biennial fee payable to the secretary of state to keep its existence in good standing

b Corporation's (Corps) have the advantage of limited liability if the corp is sued or fails so that creditors cannot reach shareholders personal assets but just lose their investment. The entity lives on if one shareholder dies or wants out so there is continuity of the corp's existence.

The disadvantage of Indiana corps is the cost to set them up by filing articles of incorporation and paying the biennial fee to the secretary of state. More formality is required than a partnership. Annual minutes and shareholder meetings must be held. A C corporation is taxed twice (on corp profits and shareholder dividends received). S corps can be elected so they are only taxed once like a partnership by distributing profits to the shareholder to pay tax off schedule K-1.

c The advantage of general partnerships is that no formality is required to start it. No paperwork needs to be filed. The profits flow-through to the partners who pay the tax, not the partnership itself.

The disadvantage of general partnerships is the risk of unlimited liability to the partners, including to their own personal assets. Partners are joint and severally liable for torts which can reach personal assets of partners. Partners are jointly liable for contract breach whereby partnership assets are exhausted first before reaching partners' personal assets.

2. If John and Marcus want to run the business as close to how they have as a general partnership, an LLC is the best choice. Decision making is flexible (no required corporate shareholder meetings or minutes) with LLC's.

Distributions in LLC's don't require formal authorization like corp's require to pay dividends. LLC taxation by default for multi-members is identical to partnerships. They both file Form 1065 partnership returns which John & Marcus are used to and the profits flow through to their 1040's via K-1 schedules.

John & Marcus should choose an LLC to protect them from creditor claims (no more unlimited personal liability like with partnerships). Any creditor claims will go after the LLC's assets, not their own personal assets. As stated in 1c, there is no more joint and several liability for torts. They are only liable for their own personal intentional torts in LLC's.

Overall, the LLC meets their flexible needs and asset protection needs the best.

Indiana Essay Question 6
Sample Answer
(Verbatim transcription of answer by an examinee)
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(1) A premarital agreement is a written agreement made prior to a marriage that states how the parties would like their property separated in the case of divorce. The agreement must be signed by both parties as well. A premarital agreement can contract for just about anything except for child support. However, in the case here because the agreement was not in writing or signed, the coin collection will be included in the marital estate. Indiana includes everything in the marital estate except for premarital agreements, and unvested assets.

(2) The presumption in Indiana is that the marital assets will be split evenly. A court has discretion to deviate from this but must explicitly state its reasons for deviation. The court may consider the following factors to deviate from the even split: (1) the assets of the parties before marriage, (2) keeping the children in the family residence, (3) the earning ability of the parties, (4) the economic situation, (5) contributions of the parties, and (6) any dissipation by the parties.

If Joe's coin collection is extremely valuable this may weigh in his favor in getting more than 50%. It will not prevent the coin collection from being included in the estate but it may increase his share due to it being acquired prior to the marriage. The second factor will not be relevant to the parties because they do not have any children. The third factor, earning ability may weigh in Joe's favor. The courts will look not at what Joe makes now but what he is capable of making. Since he never went to college and spent his time at home during the marriage he has not developed many occupational skills outside of painting. His painting career does not seem to be very positive either, it seems to be more of a hobby. For these reasons it appears that Joe's earning ability is very low. Fourth, the court will look at the economic situations of the parties. There is a large gap in the economic situations of the parties. Joe does not have a regular job, and has very little education. Maria on the other hand has a medical degree and makes over \$500,000 a year currently. This disproportion would favor Joe. Fifth, the courts will consider the contributions of the parties. The court will consider both financial and non-financial contributions. Here it seems that the parties equally contributed. Maria was the bread winner and Joe ran the household. Finally, the court will consider any dissipation by the parties. The facts do not suggest that either of the parties have participated in any gambling or anything of the kind so this will likely not be a factor.

Joe has a few arguments to make a claim that he is entitled to a more than 50% share of the marital asset. He had a valuable coin collection that he had prior to the marriage, he has very little earning ability and Maria on the other hand makes a great deal of money. For these reasons it is likely that Joe would receive more than 50% of the marital assets.

(3) Indiana is a no fault based state for divorce. Therefore, Maria's adulterous behavior will not be considered by the court. The court may only deviate from the 50% split based on the factors listed in (2).

(4) Assuming the parties have been residents of Indiana for 6 months and a resident of the county where they filed for 3 months, the parties have to wait 60 days.

