

INDIANA ESSAY EXAMINATION
QUESTION 1
February 2014

In 2003, Susan, a nineteen-year-old resident of Indiana, gave birth to her only child, Henry. Henry's biological father is Bradley, age twenty. Shortly before Henry's birth, Bradley enlisted in the military and was deployed to the Middle East. Bradley executed a paternity affidavit before leaving Indiana and was never involved in Henry's life.

In 2008, Susan married Robert, who agreed to raise Henry as his own child. Robert has three other children from an earlier marriage, but they live with their mother in Arizona. As a result, Robert has limited contact with his biological children.

In 2010, Susan and Robert hired an attorney to file their joint petition for Robert to adopt Henry. Susan subsequently contacted Bradley through his parents, and Bradley executed a consent to the adoption of Henry by Robert. The adoption was finalized in early 2011.

In 2013, Susan filed a petition for dissolution of her marriage to Robert. Around that same time, Susan received correspondence from Bradley indicating that he moved back to Indiana and is interested in meeting Henry. Bradley suggested that he wants to be involved in Henry's life. Susan fears that Bradley will intervene in the dissolution action and file a petition for custody or parenting time with Henry. Robert has hired an attorney for the dissolution and recently told Susan that he intends to file for sole legal and physical custody of Henry.

Susan, Robert, and Bradley each want custody of Henry.

1. Explain the different types of custody and the factors a court will consider in deciding who should be awarded which type or types of custody of Henry.
2. How will the court determine whether Bradley should be awarded parenting time with Henry?
3. Explain the considerations that will go into determining which parent will be able to claim Henry as a dependent for tax purposes in the future.

INDIANA ESSAY EXAMINATION
QUESTION 2
February 2014

The Photo Place, Inc. is an Indiana corporation that operates a photograph processing and camera sales business. Each year the corporation generates cash not anticipated to be needed for ordinary operations, referred to as "Available Cash." During his lifetime, Dave owned all 100 of the issued and outstanding shares.

The corporation Bylaws provide: (1) all actions of the shareholders require a majority vote; (2) there are two Directors of the corporation; (3) all actions of the board require a majority vote of the Directors; (4) each year at the annual meeting of shareholders, Directors are to be elected for a one year term with each shareholder having one vote for each share owned; and (5) each year, at the annual meeting of Directors, the Directors are to vote on dividends and capital improvements or expenditures to be made from Available Cash. The corporation has elected sub-chapter "S" status for tax purposes. None of the shares is subject to a stock restriction agreement or a buy/sell agreement.

Ten years ago, Dave and his daughter, Sue, as Directors, authorized expenditures out of Available Cash for a technology upgrade in anticipation of digital photography.

Dave died four years ago, leaving 50 shares to Sue and 50 shares to Sue's brother, Jack. At the first annual shareholders' meeting after Dave's death, Sue and Jack elected Sue and Jack as Directors and at the annual Directors' meeting, Sue and Jack, as the Directors, declared a dividend to the shareholders of the Available Cash. That was the last time they agreed.

At each subsequent annual shareholders' meeting, Sue voted for herself and her husband as Directors and Jack voted for himself and his wife as Directors. At each subsequent annual Directors' meeting, Jack voted for a distribution (dividend) of all Available Cash and Sue voted to distribute (by dividend) only enough cash to pay income tax on the income and to use the balance of the Available Cash to upgrade the aging and struggling computer systems. The disagreement continues.

- a) Name the cause of action Jack or Sue has under the Indiana Business Corporation Law to address their deadlock.
- b) Identify and explain the elements of that cause of action that a plaintiff would need to prove in order to prevail.
- c) Assuming Jack or Sue seeks judicial relief through this cause of action, what may the court do regarding the operation of the business while the litigation is pending?

INDIANA ESSAY EXAMINATION
QUESTION 3
February 2014

Maureen holds a valid Indiana barber's license and operates a licensed barber shop in Middle County, Indiana.

For several years, Maureen leased space and conducted business in a strip mall in the county. Maureen's brother, Jerry, is also a licensed barber and worked with her part-time at the shop. When mall management increased the rent, the shop began to lose money and Maureen decided she had to move her business. She found a new location for her business in another mall, but there was a three-week gap between the end of one lease and the beginning of the other.

To keep her customers happy, Maureen relocated her barber shop to the basement of her home for approximately three weeks. Jerry continued to work with her there. Shortly after moving into the new mall location, Maureen fired Jerry for poor performance. At the time the shop moved into its new mall location, Maureen updated the shop's address on her license with State Board of Cosmetology and Barber Examiners (the "Board").

A few days after Jerry was fired, an investigator for the Board paid a visit to Maureen's new location and asked her questions about the barber shop's previous locations. Maureen declined to answer questions without having a lawyer present. Yesterday, Maureen received the following letter from the investigator:

Dear Maureen:

Following my investigation, I have determined that just cause exists to suspend your barber's license and barber shop license. I have proposed to the Board that your licenses be suspended for one year, and the Board will act on that recommendation at its next meeting, 21 days from this date. The licenses may be surrendered by mailing them to or dropping them off at the Board's office.

Maureen has learned that Jerry filed a formal Complaint with the Board alleging: 1) Maureen operated a barber shop in a location not listed on the barber shop license, and 2) the basement location did not comply with Indiana statutory requirements to operate a barber shop.

Assume the Indiana Administrative Orders and Procedures Act (AOPA) applies.

Describe the steps Maureen may take to contest the action proposed by the investigator.

INDIANA ESSAY EXAMINATION
QUESTION 4
February 2014

In December 2012, Matt signed a month-to-month lease with Smart Apartments for a one-bedroom unit at a cost of \$1,500 per month. The lease also stated that “in the event of a default in payment, the defaulting party is responsible for costs and attorneys’ fees incurred in collecting the amount owed.” The lease required Matt to pay the next month’s rent no later than the last day of each month.

As required by the lease, Matt paid the first month’s rent in advance before the end of December 2012.

Matt moved in on January 1, 2013, and paid February’s rent on the last day of January. Early in February, he lost his job. He was unable to pay his rent for March by the last day of February. He also did not pay rent for April or May. On the last day of May, Matt moved out and moved into his new girlfriend’s apartment.

On June 3, 2013, Smart Apartments filed a civil action in Superior Court in the Indiana county where Matt’s apartment was located. Smart Apartments claimed that Matt’s failure to pay violated the terms of the lease. The complaint claimed \$4,500 in breach of contract damages, plus costs and attorneys’ fees. Matt filed an answer denying the allegations of the complaint.

On July 1, 2013, Smart Apartments filed a document entitled Motion for Summary Judgment. The document stated, in full: “The Plaintiff is entitled to damages in the amount of \$5,500 because the Defendant breached the lease.” Smart Apartments attached to its Motion the following: (1) a copy of the complaint; (2) a copy of the 14-page lease; (3) an affidavit certifying the accuracy of Matt’s rent record, which showed that he paid for January and February but made no payments thereafter; and (4) an affidavit from the attorney who filed the complaint verifying costs of \$200 and attorneys’ fees of \$800.

On July 31, 2013, Matt filed a document entitled Opposition to Plaintiff’s Motion for Summary Judgment and Cross-Motion for Summary Judgment. The document stated, in full: “Plaintiff’s Motion should be denied, and Defendant should be granted summary judgment, because Plaintiff has not followed the Indiana Rules of Trial Procedure and because the apartment manager told me I could stay until I found a new place to live.”

1. What standard will a trial court use to decide whether either party is entitled to summary judgment under the Indiana Trial Rules?
2. Should the court grant Smart Apartments’ motion, Matt’s motion, or neither, and explain the reasons why?

INDIANA ESSAY EXAMINATION
QUESTION 5
February 2014

John and Rachel are married, have two adult children, Dave and Ann, and live in Central County, Indiana. John was a successful businessman.

Using forms he obtained from the internet, John drafted an estate plan for himself and Rachel in September, 2013. On September 30, 2013, they executed documents to transfer their assets to be held as follows:

- a. The Residential Home, where John and Rachel lived, valued at \$2,000,000, was transferred from John and Rachel to John and their daughter, Ann. The Deed, prepared by John, conveyed title simply to "John and Ann, as Tenants in Common."
- b. Four collector cars valued at total of \$750,000 were re-titled as follows: "John and Dave, jointly with rights of survivorship."
- c. \$300,000 was transferred to a bank account in John's name alone.
- d. \$4,000,000 was placed in an Irrevocable Trust with Big Bank as the Trustee. The only distributions from the Trust are to be payments to John and Rachel, or the survivor of them, of \$25,000 per month for life. After the last of them dies, the balance of the Trust is to be distributed as follows: 50% to Main Street Church; 25% to Dave; and 25% to Ann.

The estate plan devised by John did not include any Will.

On December 20, 2013, John was diagnosed with cancer. On December 23, 2013, John wrote a handwritten Will leaving 75% of his assets to Rachel and 25% to Main Street Church. The minister of the Main Street Church was present when John hand wrote the Will and the minister signed as a witness. The next day, John's neighbor also signed as a witness. John died on December 26, 2013.

1. Identify what steps will have to occur to administer John's estate and any payments to be made before making any distributions to beneficiaries.
2. After John's estate closed, assuming Rachel is still alive, who owns all or any part of the following assets and why: (a) the Residential Home; (b) the collector cars; and (c) the cash assets contained in the bank account and in the Trust.

INDIANA ESSAY EXAMINATION
QUESTION 6
February 2014

Curt operated Art Gallery, Inc. in Big City, Indiana. Art Gallery sold original oil paintings.

When Art Gallery began operating in 2007, it obtained a \$100,000 loan from Bank to purchase inventory and fixtures and to pay operating expenses. Curt signed a security agreement and a financing statement, both of which met all legal requirements, as he was authorized to do on behalf of Art Gallery, pledging as security “all inventory and equipment, including after-acquired inventory and equipment.” Bank filed the financing statement with the Indiana Secretary of State immediately after closing on the loan and took no further action.

In 2010, Art Gallery added custom framing. It purchased \$50,000 in framing equipment and supplies from Frames, Inc., which sold the supplies on credit, with the equipment and supplies that were purchased serving as collateral. Curt signed a security agreement and a financing statement, both of which met all legal requirements, as he was authorized to do on behalf of Art Gallery. But Frames, Inc. did not file the financing statement.

In 2012, Art Gallery received on consignment from Joe seven paintings he had painted, priced at \$1,500 each. They were the only paintings Art Gallery ever accepted for consignment sale.

In 2013, Art Gallery undertook some remodeling. During the construction, it did not have space to store all its paintings on site. Curt made an arrangement with Big City Art School to store two dozen paintings during the remodeling, and in exchange Art Gallery offered for sale six paintings done by Big City Art School students.

In 2014, Curt had to stop operating Art Gallery because of health problems, and it closed. Art Gallery still owed debts to Bank and Frames, Inc. and it retained some cash from recent sales. Art Gallery missed payments to both creditors, and missing a payment is an event of default under each security agreement. Curt also learned that students at Big City Art School had painted over some of the canvasses that were being stored there, ruining them. Art Gallery still has inventory and equipment, including framing equipment and supplies, and still has five of Joe’s paintings (Joe was paid for the two that Art Gallery sold, and none of Joe’s paintings was stored at Big City Art School).

1. Describe Bank’s rights and Frames, Inc.’s rights with regard to Art Gallery’s assets.
2. What actions could Bank and Frames, Inc. each take to enforce those rights?
3. Describe Joe’s rights regarding the paintings he consigned to Art Gallery.
4. State whether Art Gallery, Bank, or Frames, Inc. has any rights against Big City Art School, and if so, describe what each of them may do to enforce those rights.

Indiana Essay Question 1
Sample Answer
(Verbatim transcription of answer by an examinee)
February 2014

1. The different types of custody and factors a court will consider in deciding who should be awarded custody of a Henry are:

(a) sole physical custody

The factors to determine who should be awarded sole physical custody of Henry are determined by deciding what is in the best interest of Henry. In determining what is in the best interest of Henry the court will consider eight factors. Those factors are:

1. Henry's age and the fact that he is a boy
2. Henry's wishes and because he is 13 or almost 14 his wishes will be given more value or credibility from the court
3. the wishes of the Susan and Robert because they are the legal parents of Henry.

Bradley consented to adoption of Henry, even though he signed the paternity affidavit, he is not the legal father of Henry anymore and his wishes will likely not be considered

4. Henry's relations with any other siblings, immediate family, and or anyone that would seriously influence their life - Bradley's relations with his child may be considered here, but won't be very strong since he has been out of the child's life for a very long time. Robert's other children and their relationship with Henry would be a consideration of the court.

However, it appears that they are not very close and the kids live in another state. This would not strengthen Robert's changes for primary physical custody.

5. Henry's adjustment to his environment, home, school, and community
6. the mental health of all persons involved
7. whether there is evidence of domestic violence, and if Henry has witnessed it
8. whether or not Henry has been cared for by a de facto custodian

If it is found that Henry has been cared for by a de facto custodian that party will be joined into the suit and given custody upon a showing that it is in the best interest of the child and that the de facto custodian wishes for such. (not an issue for this case)

(b) joint physical custody

The factors to determine if the parties should be granted joint custody of a Henry are:

1. the willingness of the parties to agree on the matter
 2. even if the parties do not agree on the matter, the agreeableness of the parties in
-

general (court might grant joint even if they do not agree to matter if they are agreeable in the nature of their relationship)

3. the fitness and suitability of the parties
4. the wishes of Henry, again more weight since he is about 13 at this time
5. Henry's relationship to the parent whether they are close or not, or whether they would benefit from that

Relationship

In this case, Bradley and Henry do not have a close relationship since Bradley has been away in the military for so

long, but this really wouldn't apply to him because he also consented to the adoption of Henry which basically cut off his parenting rights over Henry.

6. the proximity and distance between the parties - this will depend on where Robert or Susan plan to move after

they separate

Custody has both a legal aspect, which is the ability to make religious, educational, and medical decisions for a child, and a physical

aspect which is where the child primarily will reside. A party may be given sole legal, or the parties may share joint legal. Similarly, a party may also be given sole physical or joint physical custody of a child.

In this case, the court will consider whether or not it should give primary physical custody to Susan or to Robert. Susan is the biological mother of Henry and thus she will certainly be someone who has a right to custody, and Robert adopted Henry in 2011, thus, he is considered the legal parent of Henry. When a child is adopted in Indiana, the biological parent that consents to the adoption will be cut off from being the legal parent of the child. Thus, Bradley, because he consented to the adoption and Robert lawfully adopted Henry, will not be considered a parent with rights over Henry.

2. In order to determine if Bradley should be awarded parenting time with Henry the court will consider what is given under the Indiana Parenting Time Guidelines. Generally, the guidelines give a noncustodial parent reasonable parenting time and the time awarded by the guidelines is presumed valid. However, this presumption may be rebutted when the parent may pose a danger to the child's physical health or substantially impair their emotional well-being. In this case, Bradley signed the paternity affidavit before leaving for the Middle East. At that point in time he was the biological father of Henry. He could have been awarded such reasonable parenting time

at that point in time. However, he left for the Middle East, and a few years later he consented to Robert adopting Henry. Once Henry was adopted by Robert, Bradley ceased to have parenting rights over Henry. Thus, his rights to reasonable parenting time were cut off. He may be able to seek visitation by showing his relationship to Susan and Robert, and a showing that it is in the best interest of Henry to have visitation with Bradley. In Indiana, such visitation rights would fall under third party visitation rights.

3. The considerations that will go into determining which parent will be able to claim Henry as a dependent for tax purposes are (among other things):

1. the marginal tax rate
 2. the benefit to the person claiming the child
 3. the yearly income of both parents
 4. which parent the child primarily lives with and which one has parenting time or visitation rights
-

Indiana Essay Question 2
Sample Answer
(Verbatim transcription of answer by an examinee)
February 2014

Sue and Jack each have a cause for dissolution of the company.

A. Sue or Jack have a cause of action for dissolution

Sue or Jack could sue for dissolution of the company due to deadlock among both the board and the directors.

The parties may both have claims under the business judgment rule which requires that directors act as ordinarily prudent individuals reasonable in the circumstances with the best interests of the business and not act wanton or reckless. Directors owe each other, the company, and the shareholders a duty of good faith. Here Dave simply wants to issue the money as a dividend, while Sue wants to use the cash in a method that aids the business financially and technologically.

B. Elements of the cause of action for dissolution

Dissolution requires that there be deadlock among the board of directors such that harms the corporation or the ordinary course of business. Dissolution because of deadlock may also be petitioned based on failure of shareholders to fill a vacancy on the board of directors for the past two annual meetings.

Here for the past two years they have failed to fill the vacancy on the board of directors. Also, the directors are unable to decide ordinary business decisions.

As a result, grounds for dissolution are present at both the shareholder and director level. Quite simply, if a third individual were brought in and added as a board member or shareholder the deadlock could be resolved to break the constant tie.

C. Courts option for the business while the litigation is pending

The court has various options while the action is pending. First, the court could place control of the corporation in a neutral, disinterested representative to maintain a status quo. Second, the court put an injunction to maintain the status quo by ensuring no company funds were used outside of the normal course of business. Finally, the court enjoin the corporation from acting further as long as the action is pending to ensure no further harm is done while the matter is pending.

Indiana Essay Question 3
Sample Answer
(Verbatim transcription of answer by an examinee)
February 2014

An administrative agency is created by enabling statutes from Indiana legislators. Administrative agencies carry out important roles in society and insure that various sectors of society are run properly. In Indiana Administrative agencies are governed by the Indiana Administrative Orders and Procedures Act (IAOPA) and have three primary functions: i) investigatory, ii) quasi-legislative: rulemaking (promulgation), and iii) quasi-adjudicative which allows administrative agencies to hold administrative hearings.

Under Indiana law, circuit courts and superior courts will lack subject matter jurisdiction over a matter if a claimant such as Maureen fails to exhaust her administrative remedies. Therefore any steps Maureen must take will require action within the administrative agency itself. Here, Maureen is challenging several of the Investigator's actions as violations under the IAOPA. Therefore she must take the following steps:

Step 1: File an Action with the Board Requesting Administrative Hearing Alleging Due Process Violations Immediately:

Maureen should immediately request an administrative hearing in order to exhaust her administrative remedies, although the Investigator's letter claims that the Board will act on the Investigator's recommendation at its next meeting. Pursuant to the Indiana Administrative Orders and Procedures Act, Maureen must file an administrative action challenging the agency's actions, specifically the investigator's acts, to the State Board of Cosmetology and Barber Examiners "The Board."

The IAOPA protects citizens' due process rights and here Maureen has a liberty and property interest in running her business and the newly leased property. Maureen clearly has a cause of action to file with the Board, although administrative hearings do not require standing as most Indiana trial courts. An administrative hearing should be held before an impartial administrative law judge and it will be less formal than a normal trial court hearing.

Administrative hearings often issue an "order" which is retroactive in nature, because the hearing is held after an alleged violation takes place. However, here, the Investigator showed up after Maureen had already began her business in another mall and updated the shop's address on her license pursuant to board regulations.

If the Board in fact does follow the procedure mentioned in the Investigator's letter by acting on an Investigator's determination without reviewing, issuing their own finding, this will clearly constitute a violation of Maureen's due process rights under IAOPA because the Investigator is not an impartial administrative law judge, nor was he issuing a finding as a panel of the Board, and thus violating the requirement for a written finding by an ALJ or "ultimate authority." Maureen should know that Administrative law judges may be members of the agency, or members of the community that serve as impartial judges for the relevant government agency.

Step 2: Hire an Attorney for an Administrative Hearing to be set Prior to the Board's Next Meeting

Before a finding of "just cause" is issued and suspension of her licenses, Maureen has a right to present evidence. Under IAOPA, citizens are entitled to representation by an attorney at an administrative hearing, likewise, she will be entitled to discovery rights under Indiana Trial Rules 26-37 and entitled to cross-examine witnesses.

While, the Investigator for the Board may claim to have been acting under the agency's investigatory function by investigating a matter

that was brought to his attention about Maureen's barbershop, he has exceeded his scope of authority by sending her a letter stating that he determined that just cause exists.

Under her failed to adhere to the rules and procedures set forth in the IAOPA regarding Administrative hearings and written findings. Under Indiana law, circuit courts and superior courts will lack subject matter jurisdiction over a matter if a claimant such as Maureen fails to exhaust her administrative remedies. Therefore any steps Maureen must take will require action within the administrative agency itself.

Step 3: Notice of Formal Complaint:

Maureen is entitled to notice of a formal complaint filed against her and she should receive such notice by certified mail. She can raise the issue of retaliatory motives of Jerry for filing a formal complaint at her administrative hearing. Jerry likely has standing to file a formal complaint with the Board against Maureen because even though Jerry is not licensed as a barber, IAOPA standing requirements are not stringent.

Step 4: Entitled to a Written Finding by the Agency's Ultimate Authority:

The letter given to Maureen claiming that an investigator found "just cause" to suspend her license is clearly insufficient under the IAOPA requirements for issuing a written finding and naming specific facts and reasons behind such finding.

IOAPA requires an ultimate authority (usually the ALJ) or Board to issue a written finding within 90 days of the administrative hearing. If the ALJ is not the ultimate authority, then the Board must issue its own written finding explaining why it adopted or differentiated from the ALJ's findings. That is due within 60 days of the ALJ's written findings being issued.

Step 5: Appeal the Agency's Ultimate Decision if her Licenses are Suspended:

If Maureen, disagrees with the ultimate authority's finding, she has from 30 days (recently amended) to 60 days to appeal the agency's action in the relevant circuit or superior court. She must give notice to the administrative agency, the attorney general, and the agency must begin to prepare the trial record including: the written finding of the Board or ALJ, administrative regulations, and other materials necessary for the trial court to hear such matters.

The court will not look at new facts, they will stick to the record and not go on fact-finding missions. Maureen would be responsible for a filing fee and as mentioned, Maureen must have exhausted her administrative remedies before bringing suit. The court will review the agency's action and determine whether it constituted an abuse of discretion (high standard to overcome on appeal). The court gives deference to administrative agencies because they are the experts in their relevant field.

Indiana Essay Question 4
Sample Answer
(Verbatim transcription of answer by an examinee)
February 2014

Summary Judgment Standard. Summary judgment is governed by Indiana Trial Rule 56. A court should grant summary judgment where there exists no genuine issue of material fact and, therefore, the movant is entitled to judgment as a matter of law.

A motion for summary judgment may be filed by a defendant at anytime and by a plaintiff 20 days after the initiation of the action.

The Court Should Deny Both Motions. The Indiana Rules of Trial Procedure require that parties filing motions for summary judgment make certain "designations." The movant must designate the material in the record that it wants the court to consider when deciding the motion. And the party adverse to the motion for summary judgment must designate (1) material in the record that the court should consider in ruling on the motion, and (2) the genuine issues of material fact. Neither party complied with the designation requirement. Therefore, the motions violate the Indiana Trial Rules and should be denied.

In addition, should the court grant leave to Smart Apartments to file a corrected motion for summary judgment, it is not certain that a subsequent motion should be granted. The facts suggest a genuine issue of material fact on the question of whether Smart Apartments waived its rights under the contract through its agent (the apartment manager). Granted, Matt offers nothing more than the bare assertion that the property manager told him he could stay, but Matt's claim is not hearsay (statement from a party opponent) and thus cannot be struck from the motion.

Agency Law. Under principles of agency law, an agent may bind a principal where actual authority exists or where a substitute for actual authority exists. We need more information to determine if the apartment manager had the actual authority to enter contracts and either

waive or modify portions of existing contracts. However, even if no actual authority existed, apparent authority is a substitute for actual authority that operates to protect third parties. And it is perfectly reasonable for someone, like Matt, to rely on a "property manager" with respect to the terms of his agreements and obligations with Smart Apartments. In short, it is likely that, if the property manager modified or waived provisions of Matt's contract, Smart Apartments could be bound by the waiver.

Commercial Law. The rent contract was month-to-month and so the parties could orally modify its terms without violating Indiana's Statute of Frauds. However, there would be no effective modification here because of the pre-existing duty rule. The facts do not suggest that Matt gave any new consideration for a modification. As such, there cannot be a valid modification of their agreement.

But, under commercial law, there are two other theories under which the apartment manager's statement could have legal effect (if the manager made such a statement). (1) Since the agreement was month-to-month, a court could view the apartment manager's actions as creating a new agreement beginning the next month after the statement was made. And (2) as suggested above, the court could view the apartment manager's actions (if true) as a waiver of the terms of the contract to which Matt relied. Smart Apartments would thus be estopped from suing to collect on those provisions now.

Conclusion. The motions for summary judgment should both be denied because neither complies with the designation requirement under the Indiana Trial Rules. But even if they had complied, it appears that a genuine issue of material fact may still exist with respect to the actions of the apartment manager.

Indiana Essay Question 5
Sample Answer
(Verbatim transcription of answer by an examinee)
February 2014

John Doe, Attorney
ABC Law Firm 123 Main Street
Greenwood, Indiana 46143

Rachel Smith
158 Johnson Lane
Greenwood, Indiana 46143

Re: Estate of John Smith

Dear Ms. Smith:

Please accept my condolences on the loss of your husband. As a follow-up to our meeting yesterday I want to memorialize several points regarding the administration of your husband's estate and the distribution of his assets:

1) Validity of Will:

As we discussed, in Indiana a Will must be executed by the testator in the presence of two disinterested witnesses. The witnesses must sign the Will in the presence of the testator and in the presence of each other. Accordingly, because your husband's will was witnessed on December 23rd by your pastor and on December December 24th by a neighbor, the document will be invalid as the witnesses did not sign in the presence of each other. Furthermore, because the document leaves a substantial part of the Estate to your church, your minister cannot be considered a completely disinterested party. Accordingly, the distribution of your husband's estate will occur as though he had died intestate, or without leaving a Will. I have provided you with a copy of Indiana Code 29-1- 2-1 which provides for the distribution scheme of assets held by a person dying intestate. Specifically, John's estate will pass one-half

to you as his widow and one-half among your two children, giving them a net 1/4 share each in their father's estate. In addition, prior to the distribution of the Estate's assets, you can elect to take a spousal allowance of \$25,000.00 as a surviving spouse.

2) Estate Administration

In Indiana, a decedent dying with assets in excess of \$50,000.00 in assets, less liens and encumbrances, must have a probate estate in order to re-title the assets to the decedent's beneficiaries. Inasmuch as your husband's sole name bank account alone has a value of approximately \$300,000.00, you will need to open a probate estate. Prior to our next meeting, I will prepare the necessary pleadings to open an unsupervised estate in the Central County Probate Court appointing you as the Personal Representative.

Because Dave and Ann are also beneficiaries of their father's estate, I will want each of them to sign a consent form joining in the Petition for your appointment as the Estate's Administrator. Once executed, I will file the pleadings with the court and submit the appropriate Notice of Administration to the newspaper. The court may require you to post bond as the estate's administration however, because you are a surviving spouse, I suspect this will not be the case. Once the pleadings have been approved, the court will issue a document entitled Letters of Administration to you reflecting your status as the administrator of your husband's estate and conferring upon you authority to wind up his final affairs. You and your children can expect to receive directly from the court a Notice of Administration and a Notice of Unsupervised Administration to be mailed to a distributee directly from the court clerk within ten days of the estate's opening.

3) Unsupervised Administration

Because the wind-up of John's affairs should be relatively easy and because you have advised me that the relationship between you and your children is a positive one, the court will likely order unsupervised administration of John's Estate. That is, the court will not require you to file a petition to dispose of any of the estate's assets or to file an inventory or accounting. However, you will still need to prepare an inventory of the estate's assets and an accounting of their

distribution for subsequent transmittal to the estate's beneficiaries. My office can assist you with this process as necessary, and we will advise the court of our completion of these records even though the same will not become a part of the court's public record.

4) Claims

The duration of John's estate will largely be based upon the amount of time necessary to close-out his affairs, transfer the real estate, and address any creditor issues. Creditors have a period of 90 days following the first publication of the Notice of Administration to file a claim with the probate court. You should make a list of any known creditor claims prior to our next meeting so that we can address the same together. Any creditor claim of which you know or should know that you do not address within the 90 day period will be absolutely barred after 9 months from John's date of death unless the creditor timely files a claim, or if the creditor is a party of the government. I will receive notification of any claims filed with the court and we will review the validity and potential payment of each claim on a case-by-case basis.

5) Estate Closeout

You have asked me to specifically memorialize the disposition of a number of assets of the marital party following the close out of John's estate, and I am happy to provide the following information:

a) The Residential home was jointly titled between John and Ann as tenants in common at the time of John's demise. As such, Ann is the fee simple owner of an undivided 1/2 interest in the real estate and the remaining undivided 1/2 interest is subject to distribution in John's Estate which provides for a 1/2 distribution to you and a 1/2 distribution among your two children. Accordingly you will own a 1/4 interest in the home, Dave will have a 1/8 interest in the home, and Ann will have a 5/8 interest in the home.

b) The collector cars were titled jointly between John and Dave with rights of survivorship. Accordingly, Dave now has an absolute interest in this property.

c) The cash assets contained in the bank account are subject to John's Estate and you should plan to exercise your \$25,000.00 spousal will receive election against this asset during the estate's administration. The remaining balance will be utilized to pay any creditor claims, court costs, and attorney's fees,

and thereafter divided 1/2 to you and 1/2 among your children.

d) The assets in the trust are subject to the trust's terms which are irrevocable, meaning you have no power to amend the trust. You should anticipate receipt of \$25,000.00 per month from the trust over which Big Bank serves as trustee. At your demise the trust's remaining assets will be distributed pursuant to the trust's terms.

Should you have outstanding questions, please do not hesitate to contact me.

Respectfully,

John Doe, Attorney at Law

Indiana Essay Question 6
Sample Answer
(Verbatim transcription of answer by an examinee)
February 2014

This is a Secured Transaction Question Governed by Revised Article 9 UCC

In order for a creditor to to secure a loan or financing, sometimes they ask for collateral. When the borrower gives collateral that is called a "Security Interest." Sometimes multiple creditors have a security interest in the same collateral. Secured Transactions law governed by Revised Article 9 establishes who has priority over the collateral. In order for a creditor to win other creditors, there must be Attachment, Perfection, and Priority.

Attachment

Attachment happens when there is a valid security agreement. in order for there to be a valid security agreement, there must be.

Agreement (must be voluntary except for statutory lienholders) Borrower must have rights in the collateral.

Lender must give value

Perfection

There are multiple ways to perfect:

- Filing a Finance Statement with the Secretary of State
- Perfect by Possession (required for promissory notes, etc)
- Automatic Perfection (Purchase Money Security Interests in Consumer Goods, etc)

Priority

A creditor who Perfects against another creditor has priority over the subsequent creditor

EVEN IF the subsequent creditor attaches first. This is because Perfection gives notice to the world (and other creditors) that there is a security interest in that specific collateral. If neither creditor perfected, then priority goes to who attaches first. If neither creditor attaches its security interest, then it is an unsecured creditor and must fall in line behind all other secured creditors and shares what is left between all unsecured creditors. It is important to note, that the creditor is still a creditor and entitled to repayment. But if that creditor is unsecured, then their chances of actually getting money goes down dramatically.

Issue #1 What is bank's rights in the equipment, Inventory and after-acquired equipment and inventory.

Rule: Under Revised article 9 to have priority over all competing claims, a creditor must attach and perfect its security interest. As mentioned above to attach, there must be an agreement to attach. The debtor must have rights in the collateral. and the lender must give value. Perfection for equipment and inventory (goods) may be done by filing a financing statement.

Analysis: The facts show that Curt signed a security agreement and a financing statement. This shows that he agreed and it was voluntary. When he purchased the inventory and fixtures, he owned all the inventory and equipment. Therefore he had rights to the

inventory and equipment. The facts show that the bank did in fact give the \$100,000 to Curt. So Bank did give value for the security agreement. The facts also state that the Bank filed a financing statement with the Secretary of State immediately. Because Bank Attached and perfected, unless something goes wrong, Bank has priority over all other creditors on the collateral.

Conclusion: As long as Bank files a continuation Statement, within 6 mo. before 5 years. Bank has priority over all other claims against the equipment and inventory of Art Gallery.

Issue #2 Did Bank File a continuation statement?

Rule: Under revised article 9 a financing statement expires after 5 years. the lender must renew the financing statement by filing a continuation statement within 6 months before the 5 year expiration date.

Analysis: the facts say that the bank "took no further action." the facts also state that the current year is 2014 which is seven years after the filing of the financing statement. because they didn't file a continuation statement. it is as if they never filed a financing statement in the first place.

Conclusion: Bank has no priority in the inventory, equipment, or after-acquired inventory or equipment in Art Gallery, Inc.

Issue #3 Is Frames Inc a secured creditor?

Rule: as stated above there must be attachment, and perfection for priority

Analysis: the facts say that curt signed a security agreement on the equipment and supplies from Frames Inc. Facts also state that Frames did not file.

Conclusion. Because Frames did not file they do not have priority unless they don't need to file.

Issue #4 did Frames have a purchase money security interest (PMSI) in the equipment and supplies?

Rule: under revised article 9 Perfection is automatic with PMSI in consumer goods. If commercial goods, the lender has 20 days to file.

Analysis: because this is a commercial goods PMSI, there is a 20 day grace period for Frames to file a statement. because the facts say they did not file the financing statement, they do not have priority.

Conclusion: because Frames didn't file financing statement, they do not have priority over

other secured creditors in the same property.

Issue #5 What actions Could Bank and Frames take to enforce their rights

Rule: under Revised Art 9 UCC a lender still has rights on the contract. In other words, just because they are not perfected, they are still a secured creditor. as mentioned above, two competing creditors in the same collateral whoever attaches first wins.

Analysis: Because Bank Attached first, they have priority over Frames because Frames is also an non-perfected secured creditor. Frames must ask the court to have Bank foreclose on the collateral and satisfy their loan before Frames can collect.

Conclusion: Bank may foreclose on the collateral to satisfy their debt. if there is any money left over, then that money goes to Frames, any more money left over, to other creditors, then the surplus goes to Art Gallery.

Issue #6 Joe's Rights to consigned art to Art Gallery

Rule: Under revised article 9 UCC, consignments are included in secured transactions. UNLESS the company is an auctioneer, has "consignment in the title" or is commonly known to creditors as holding inventory or selling on consignment.

Analysis. the facts say that the paintings from Joe were the only paintings ever sold on consignment. this shows that creditors had no idea that those particular paintings belonged to someone else. therefore, in order for Joe to have priority over other creditors in those paintings, he must perfect by filing a filing statement. because the facts do not show he in fact did, he is an unsecured creditor.

Conclusion: Joe is an unsecured creditor when it comes to the consigned paintings.

Issue #7 Was Art Gallery a Bailee

Rule: Under Indiana Law a Bailee is one who does not hold title, but holds property on behalf of another. to hold a bailee liable for damages there are 3 different standards to apply:

1. is the bailee holding the property primarily for benefit of bailor? Yes? then slight care needed
2. Is bailee holding property primarily for benefit of bailee? yes? then great care needed
3. is bailee holding property for mutual benefit? yes? then ordinary negligence.

Analysis: In this case, Big City Art School housed the paintings because Art Gallery didn't have enough room. this is for the primary benefit of art gallery. and only slight care needed. Because slight care can still prevent paintings from students from painting over finished product held for Art Gallery, Big City Art school is liable for the damages to the paintings.

Conclusion: Because Art school held the property for the benefit of art Gallery, and did not use slight care, it is liable to the art gallery and its creditors.
