INDIANA ESSAY EXAMINATION
Question 1
February 2015

Abe hired Carol to build a barn on Abe's farm located in Blue County. Their written contract provided that the work would be completed within 90 days of the start date. Various issues prevented Carol from finishing the project on time, and Abe got impatient. He told Carol not to come back onto his property and refused to pay Carol for the work she had completed.

Carol's attorney wrote Abe demanding payment on the contract, but Abe did not respond. Carol then filed a lawsuit for breach of contract in the Blue County Circuit Court. Abe hired an attorney who filed an answer to the complaint, denying that Abe owed Carol any money because the work was not completed on time and because Carol's work was shoddy and "likely to fall down in a wind storm."

After the answer was filed, Abe fired his attorney and informed the Court he would represent himself.

1. Carol wants to obtain more specific information about Abe's claims about the quality of Carol's work:

    a. Identify and discuss each of the discovery methods available under the Indiana Trial Rules that Carol can use.

    b. Of the methods you identify, which would you recommend using? State the reasons for your recommendation.

2. Assume Abe refuses to cooperate with any discovery requests. Under the Indiana Trial Rules, describe all steps Carol can take to remedy Abe's refusal to respond to discovery. Be specific as to all requirements that must be met.

1)

1a. There are several discovery methods that Carol can use to discover information about Abe's claim about the quality of Carol's work on the barn. Given that an answer has been filed, discovery may begin.

First, Carol's attorney can serve interrogatories on Abe. Interrogatories are allowed under Trial Rule 33. Interrogatories are written questions to Abe that Carol's attorney can serve, by mail or personal service, on Abe. She can serve up to 25 interrogatories (subparts count as an interrogatory in reaching the 25 limit) on Abe. In the interrogatories, Carol may ask Abe for all facts supporting his claims, the identity of witnesses or documents that support his claim, and details surrounding the condition of the barn. After served with the interrogatories, Abe has 30 days (plus 3 days if served by mail) after service of the interrogatories to provide sworn, written responses to Carol. Abe must either answer each interrogatory or object, if appropriate. Abe must also sign under oath or penalties of perjury that the facts set forth in the responses to the interrogatories are true and correct. Abe's responses must be served on Carol's attorney. Service of the responses can be by mail.

Second, Carol's attorney can serve, by mail, requests for documents and things, or inspection of property, on Abe. Requests for documents and things, or inspection of property, are covered by Trial Rule 34. Carol must serve, by mail or personal service, the requests for documents and things, or inspection request, on Abe. In the document requests, Carol can ask for all documents that Abe has to support his claims, for any pictures or videos that Abe has of the barn and for any documents regarding any engineering inspection of the barn. Within 30 days of service of the requests, Abe must respond to the requests in writing stating objections, if appropriate, or stating that he will produce the requested documents or things. Abe's response must be served by mail or personal service. If Carol's attorney requests an inspection of property, Abe must make the porperty available for inspection unless

Abe objects. Photographing or videotaping is allowed at such an inspection. With respect to documents and things, Abe must produce the documents and things by request number or as they are kept in the ordinary course of business.

Third, Carol's attorney can serve, by mail or personal service, requests for admission on Abe. Requests for admission are covered by Trial Rule 36. Carol must serve the requests on Abe and the requests will set forth facts that she wants Abe to admit or deny. Within 30 days of service of the requests, Abe must serve, by mail or personal service, a response in writing which for each request either admits, denies or states that Abe does not have information sufficient to form a belief as to the truth of the request. Abe may also object to a request if appropriate. Abe must also swear or affirm under penalties of perjury that the statements set forth in the response are true and correct. For any matters that Abe says he cannot answer because of insufficient knowledge, he must also swear or affirm that he lacks such knowledge to answer and has tried to determine the answer.

Fourth, Carol's attorney can take Abe's deposition orally or in writing. Depositions by writing are rarely used in Indiana. More typically, Carol's attorney will send a notice to Abe for his deposition. At the deposition, Abe will be sworn in by a court reporter and Carol's attorney will ask a series of questions which Abe must answer. The court reporter will transcribe the deposition and it will be produced in a written transcript for later use in the case.

1b. I would first request an inspection of the barn under Rule 34. Abe has indicated that Carol's work was shoddy and likely to fall in a wind storm. An inspection would allow Carol's attorney to see the work and take a video or photograph for later use. This will allow Carol the opportunity to preserve with video or photographic evidence the condition of the barn for use in a later deposition or trial.

After the inspection, I would take Abe's deposition. This will be the most direct and efficient way for Carol to examine and discover the basis for Abe's claim about the

quality of the work. Carol's attorney will be allowed to ask Abe for every fact that supports his contention that the barn was built poorly. During the deposition, Carol's attorney can use the photos and/or videos from the inspection to question Abe and get him to make admissions about the quality of the work.

2. If Abe refuses to cooperate with discovery requests, there are several things Carol's attorney can do.

First, if Carol's attorney serves requests for admission, Abe's failure to respond under oath within 30 days means that those requests are deemed admitted with no further action by Carol.

Second, if Abe fails to respond to interrogatories within 30 days, document requests within 30 days, allow the inspection of the barn, or appear for a deposition when noticed, Carol's attorney will need to meet with Abe to confer about his failure to respond and see if he will respond in a reasonable fashion without resort to court intervention.

If Abe fails to meet and confer or still refuses to respond, Carol's attorney must file a motion to compel with the court. Carol's attorney can even request attorneys' fees associated with filing the motion. In the motion, Carol's attorney must set forth what discovery was served on Abe and when it was served. Carol's attorney must also set forth his efforts to meet and confer with Abe. The motion to compel must be served on Abe. Abe will have 30 days to respond to the motion to compel. After the time to respond has ended, the court may with or without a hearing enter an order compelling Abe to respond to the discovery and sit for his deposition. The court will also likely order Abe to pay attorney's fees unless Abe has a good reason for objecting, which is not likely if he simply fails to cooperate.

If Abe fails to follow the order to compel, Carol can seek relief from the Court in the

form of having the court strike Abe's defenses, deeming certain facts admitted or finding Abe liable to Carol on her claim (the most drastic sanction, but one that might be appropriate here given Abe's failure to respond). Abe will have a chance to be heard before the Court takes any of these actions.

INDIANA ESSAY EXAMINATION
Question 2
February 2015

Jiffy Insurance Company is headquartered and operates in Indiana. It specializes in insurance for the auto racing industry. Only two other companies specialize in the auto racing industry. Jiffy has pioneered innovative underwriting practices and the use of technology to obtain administrative cost savings, making Jiffy a more profitable business than its competitors.

The Indiana Department of Insurance has announced that it will issue a rule regulating life insurance for auto racing drivers. The proposed rule will require Jiffy to abandon some of the underwriting practices and technology it has been using, so it will cut Jiffy's profit and penalize Jiffy more than its competitors. Jiffy believes the rule will require it to re-adopt outdated business practices that are no longer necessary, even though those are the practices Jiffy's competitors still use. Jiffy has participated in the rulemaking process by testifying at the public hearing to oppose the proposed rule.

If the rule becomes final in its proposed form, Jiffy plans to challenge the rule in court. Jiffy objects to the substance of the rule, which it believes is unnecessary and hurts Jiffy more than it hurts other companies, and Jiffy believes the procedure used to promulgate the rule did not follow all the statutory requirements for administrative rulemaking.

Assume that the Department's rulemaking is governed by a statute stating that "The Department shall have authority to issue rules governing the business and underwriting practices of insurers. The Department's rules shall be impartial and not unduly disadvantage any insurer."

Answer all three of these questions:

1. Once the rule has become final, may Jiffy challenge it immediately, or must Jiffy wait until enforcement action is taken against Jiffy so that it can exhaust administrative remedies?
2. Assuming Jiffy does nothing until it is cited for a violation, describe each step (including any court proceedings) that Jiffy must take to challenge the alleged violation and challenge the rule's validity?
3. Assuming Jiffy may challenge the rule immediately when it goes into effect, describe each step Jiffy must take to bring the legal challenge in court and the standard it must meet to prevail in the lawsuit.

2)

(1) Once final, may Jiffy challenge it immediately or must Jiffy wait until enforcement action is taken against Jiffy so that it can exhaust administrative remedies?

The Indiana Department of Insurance (the "Department") is a state agency that may undertake its quasi-legislative action of rulemaking pursuant to the statute created by the Indiana legislature. Such delegation of duties are appropriate to Indiana Agencies, and thus the Department may make rules as stated in the facts here. In order to undertake a rulemaking, the agency must follow a series of steps, and the entire process must typically be completed within one year. The steps the agency must follow are described below:

- (1) Once the agency has determined to issue a rule under a statute, it must provide notice in the Indiana Register of such intend to adopt a rule. Notice shall be provided no later than 28 days before such rule will be proposed.
- (2) If the fiscal impact will be greater than $500,000, the agency must complete an impact analysis.
- (3) The Propsed Rule must be published both in the Indiana Register and in a general publication newspaper, stating the opportunity for notice and comment at a hearing. Such publication and notice must occur no later than 21 days before the hearing.
- (4) A hearing must take place where comments can be submitted in writing or addressed orally.
- (5) The agency must consider and respond to all comments (such responses can be in a summary form and not specifically addressed to each if desired or needed).
- (6) The agency must adopt a final rule, and any changes from the proposed rule must be a logical outgrowth of the comments recieved and addressed from the hearing.

- (7) The final adoption is then presented to the Attorney General, and he may disprove for cause (didn't follow the procedures required, was not substantially sufficient, etc.) only, or may approve it. If he does nothing, it is deemed approved in 45 days. If a taking will occur, the Attorney General must raise such issue and address as appropriate.
- (8) The rule will then go to the Governor, who may disprove for any reason or approve. If the Governor does nothing, it is deemed approved within 15 days.
- (9) The final rule is filed with the secretary of state, and it must be reviewed within three days. It is then published to the Indiana Administrative Code and the Indiana Register.

The facts state that Jiffy Insurance Company ("Jiffy") participated in the rulemaking process by testifying at the public hearing. Before the rule becomes finalized, the issue stated is whether Jiffy can challenge it immediately. A rulemaking may be challenged and it is reviewed de novo by the appropriate court. Standing is not as strict of a requirement as in the constitutional sense, and thus Jiffy would likely have standing to challenge such action before enforcement action was taken against him. Furthermore, if there is purely a constitutional issue or a procedural issue raised with respect to the rulemaking, it can be challenged. Thus, as Jiffy objects to the substantive and procedural aspects, it likely can be challenged. Furthermore, Jiffy could argue that the Department did not abide by the statute it is governed by, as the rules are not impartial and unduly disadvantaging insurers. The review would be de novo and a court would assess whether the appropriate procedural issues were followed.

(2) Describe each step (including court proceedings) that Jiffy must take to challenge the alleged violation and the rule's validity

Assuming Jiffy is cited for a violation, he may then appeal to the quasi-judicial, or adjudcative, aspect of the agency. Agencies are required to conduct notice and hearings in accordance with the Indiana AOPA requirements, and thus they will apply here. He must appeal the violation to the agency, and will be granted a hearing. At the

hearing, an Administrative Law Judge ("ALJ") or a panel of ALJs will preside over the hearing. Although less formal than most typical courts, Jiffy will be entited to pleadings, discovery, cross-examination, and presentation of evidence at such hearing. After such hearing, the ALJ will make a determination within 90 days. The determination will be fully documented and based upon the evidence presented. If the ALJ is not the "ultimate authority" of the agency, his decision will not be immediately final and will instead be submitted to the "ultimate authority" for such determination and final order. Once the "ultimate authority" makes the final determination, a final order will be issued to Jiffy.

If the rule is final, Jiffy may then seek judicial review. Judicial review is sought by filing a notice of appeal with the clerk of the court of appeals, filing a verified complaint, and appropriately serving all parties (including the Attorney General, the agency, any parties to the underlying action, and the ALJ). The ALJ and agency will compile the record and provide it to the court of appeals. In order to seek judicial review, Jiffy must establish the following: Standing, Exhaustion of Remedies, and Timeliness. Standing will presuably be easy for Jiffy, as he was a party in the underlying action and the recipient of a violation from the Department. With respect to exhaustion of remedies, this must occur before filing, and will be sufficiently met so long as there was a final order issued from the agency. This is likely met as well, so long as the adjuciation occurred as described above. Alternatively, exhaustion of the remedies can be waived if there is a purely constitutional issue involved, or if doing so would be futile. Jiffy could argue that purely constitutional issue were involved, stating that the rule in general violated his due course of law right and thus could likely appeal directly on due course of law. Finally, Jiffy seeking judicial review must be timely, and must be done within 30 days of receiving the final order from the agency.

Once this has been done, it is not an appeal and thus the normal appellate standards are not required. The court instead will look at the facts from the record during the

adjudication. The court will not consider any new evidence that was not raised, unless it could not have been obtained or determined at the time of the adjudcation. Additionally, the court will determine whether the agency action constituted any of the following:

- Arbitrary and capricious or otherwise an abuse of discretion,
- Without constitutional considerations of due course of law, property rights, or privileges / immunities
- In excess of statutory jurisdiction,
- Without proper procedures, or
- Contrary to substantial evidence.

In this case, Jiffy will argue initially that the agency's action in the rulemaking was in excess of statutory jurisdiction. Because the rule will deprive Jiffy of its advanteage, require it to abandon some of the underwriting practices and technology it has been using, and penalize Jiffy more than its competitors, he likely has a valid cause of action that the agency is acting in volation of the statutory jurisdiction. The statute provides that the Department can authorize rules and govern underwriting, but it also provides that such rules must be impartial and "not unduly disadvantage any insurer." The application of the statute as it is seen here will disadvantage Jiffy by requiring it to use out of date business practices and decrease its profit. However, the agency will be able to argue that it is simply creating a more level opportunity for all, Jiffy still has its argment.

Furthermore, Jiffy can argue that this was without proper procedures. The facts do not fully state how Jiffy believes the Department went against such required rulemaking procedures as stated above, but if he can make a showing based on the evidence that they did so, he could argue under this standard as well. Finally, Jiffy could argue that the agency's action was without due course of law. By enacting this statute, it will effectively curb Jiffy's business margin and negate the innovative underwriting practices and the technology to obtain cost savings.

(3) Describe each step to bring the legal challenge in court and the standard it must meet to prevail in the lawsuit

If Jiffy can challenge the rule immediately, he will be able to go right to an appeal and a de novo standard will be applied as mentioned above. The court will review whether the agency followed both substantive and procedural requirements, and can make its determination.

INDIANA ESSAY EXAMINATION
Question 3
February 2015

I-TECH is a highly profitable Indiana software corporation, which for five consecutive years (from 2006-2010) was named "Hoosier Technology Company of the Year."

Brandon Glass was I-TECH's CEO from 2000 to 2010. At the end of 2010, Glass informed I-TECH's Board of thirteen directors that he was resigning in June 2011. The Board immediately conducted a national search and hired Sarah Miller as I-TECH's new CEO. Miller accepted and started in July 2011.

Miller had a great start, and I-TECH's performance under her leadership improved. In July 2012, I-TECH announced a 20% increase in quarterly dividend income. However, in January 2013, each I-TECH Board member received a letter from Miller's ex-husband in which he alleged Miller had been convicted of multiple counts of fraud and grand theft in 2001 when she worked in another state.

Upon reading the letter, the Chairperson of the Board performed searches on the Internet and discovered that the allegations were true and had been reported in national newspapers. The next day, the Chairperson of the Board convened an emergency meeting and reported his findings to the Board. The Board was concerned that publicity concerning Miller's unsavory past would negatively affect I-TECH's performance and tarnish its image for years to come. Because of its concerns, the Board unanimously decided that Miller would have to leave. To avoid having to fire her, the Board offered to pay Miller $1.2 million to resign if she would publicly state that she was leaving I-TECH to "pursue a better opportunity." Miller accepted the offer of $1.2 million and resigned.

I-TECH employees, shareholders, suppliers, and customers were surprised by Miller's sudden departure and voiced their concerns to the Board about I-TECH's future leadership and viability.

A month after Miller's departure, a local newspaper broke the news of Miller's previous convictions and I-TECH's $1.2 million payment to her. I-TECH's stock fell 33% within hours of the newspaper story's release.

A number of I-TECH shareholders have decided to a file a derivative action against the Board.

1) What is a derivative action, and what are the requirements the shareholders must satisfy to bring a derivative action?

2) Can the shareholders file any other cause of action? Why or why not?

3) What are the I-TECH shareholders' chances of success on any of the claims you have identified?

3)

1. A derivative action is an action that a shareholder of a corporation brings on behalf of the corporation. The requirements to file the action are the following:

1) Be a sharholder before and during the lawsuit,
2) the shareholder must adequately represent the interests of all of the shareholders;
3) a shareholder has a right to file a derivative suit if the sharholders' rights are at stake or if the directors have made a wrongful decision affecting the corporation and its shareholders;
4) the sharholder must submit a written request to the bord before filing the suit, unless it would be futile to do it. A writen request is considered futile when 1) the majority of the directors are interested, when 2) the directors don't know about the situation because they have not communicated among themselves, 3) or when the directors have violated the duty to act on the best interest of the company;
5) Once the case is filed, the sharholder representing the interest of the company and all of the sharholders must estate in detail the demands make upon the board and the rusults obtained;
6) If the case proceeds in court, no settlement or dissmissed will occurr without the court's permission;
7) the monetary compensation, if any, will go directly to the company and not to the shareholder.

2. A shareholder also has the right to file a direct suit. A direct suit is a lawsuit brough on the own shareholder's behalf. Unlike the derivative suit, the remedies or benefits obtained through the lawsuit go directly to the shareholder filing the suit. However, the sharholder must prove a direct harm to his interest as a shareholder of the company. Like in a derivative suit, in order to bring a direct suit, a shareholder must be a shareholder before and during the litigation. Otherwise, the sharholder is prevented from filing a direct suit.

Another remedy that the I-Tech shareholder may pursue is a breach of the directors' duty. A director of a company may be personally liable if the director has breached his duty of care. A director must act as a reasonable and prudent person making the decions in the best interest of the company. However, a director may be shield from liablity if the mistake was honest and with the belief that it was in the best interest of the company. This is known as the Business Judgment Rule (BJR). However, there is a presumption under Indiana law that if the majority of the directors acted with the honest believe the the decision was made in the best interest of the company, then the BJR is applied.

3. The chances of succes of the Shareholders are not very high. In regards to the direct suit, the facts do not indicate that any shareholder has been personally injured by the the actions of the board. ALthough the stock fell 33% as a result of the Miller's actions, there is an increase on the dividends that the shareholders obtained during Miller's time with the company. It is unlikely that a shareholder would be able to show a direct harm under this circumstances.

The chances of succes filing a suit for breach of the Director's duty of care is not high either. As previously mentioned, Indiana has presumption that if the majority of directors acted in good faith, liability will not be imposed. The facts of this case indicate that the directors acted prudently when they offered Miller the 1.2 to leave and avoid scandal that they knew it will affect the company. In other words, did what they tought it was the best thing to do in that situation. There is no reason or facts showing that they wacted recklessly when they made the decision and all of the directors appered to be in agreement with the decision made. As sush, it seems very unlikely that a court would impose liability base on the directors' breach of duty.

INDIANA ESSAY EXAMINATION
Question 4
February 2015

Nursery is an Indiana LLC that operates (1) a commercial and residential landscape and gardening center and (2) a landscaping business. It has a fleet of five trucks, five riding mowers, and other manual and power tools for the landscaping business. At the landscape and gardening center, it sells lawn and garden equipment (including riding mowers, lawn mowers, trimmers, snow blowers, etc.) in addition to soil, mulch, seeds, plants, trees, and the like.

Nursery's sole member, Angela, started the business in part with money loaned by her Uncle. On August 15, 2005, Uncle transferred $100,000 to Nursery, and Nursery executed a Note and a Security Agreement in Uncle's favor as the Secured Party. It stated, "For value received, the Debtor grants to the Secured Party a security interest in all of the Debtor's assets whether now owned or hereafter acquired, securing the payment and performance of the Note dated August 15, 2005 in the amount of $100,000." The next day, Uncle filed a UCC Financing Statement with the Indiana Secretary of State. The Financing Statement properly identified both the Debtor and the Secured Party and described the collateral as "all of the Debtor's assets."

In 2013, Bank loaned Nursery $25,000. Nursery executed a Security Agreement in Bank's favor granting Bank a security interest in all of Nursery's inventory "whether now owned or hereafter acquired," and Bank and Nursery executed a commercial loan agreement. Bank timely filed a UCC Financing Statement with the Indiana Secretary of State. The Financing Statement properly identified both the Debtor and the Secured Party and described the collateral as "all of the Debtor's inventory."

Nursery purchased 150 snow blowers in June 2014 from SnowKing. Nursey paid SnowKing in full by financing the $40,000 purchase price through CreditNow. Nursery signed a Security Agreement giving CreditNow a security interest in the 150 SnowKing blowers. Since Nursery had no storage space, SnowKing agreed to delay delivery until November 2014.

The high CreditNow payments caused Nursery to fall behind on its obligations. By September 2014, Nursery could not meet its monthly obligations to Bank, Uncle, or CreditNow. SnowKing did not deliver the blowers in November 2014 after both CreditNow and Nursery claimed them.

Assume Indiana law applies to all questions. Unless specified above, no other documents were executed and no other filings were made.

(1) Identify and describe any security or other interest owned by the following and state how each one's interest was created and the extent of that interest as to any property Nursery owns:
    (a) Uncle;
    (b) Bank; and
    (c) CreditNow

(2) As among Bank, Uncle, and CreditNow, identify who has the superior claim to the following property and describe the nature of that superior claim:
    (a) The SnowKing blowers;
    (b) All riding mowers in Nursery's possession; and
    (c) Nursery's plants and trees.

4)

1. Security or other interest owned by the following parties:

(a) Uncle

Uncle attempted to attach and perfect his loan of $100,000 to Nursery in August 2005. In order for an unsecured creditor to become a secured creditor, their interest must attach in collateral. There are three requirements for attachment: (1) creditor must give value, (2) debtor must have an interest in the collateral that the creditor takes security in, (3) and there must be an agreement, which in most cases is a written security agreement. Here, the Uncle transferred $100,000 in exchange for a Note and an interest in "all of the debtor's assets." A security agreement requires a description of the collateral and while general descriptions are okay, "all of the debtor's assets" is usually too generic so there may be a problem with the security agreement which may cause some attachment problems if it is found not to be valid due to the super generic description and it is unclear what the collateral that the Uncle attached to is. The agreement also contains an after acquired property clause, which are valid clauses (but this again depends on if the interest in the collateral is found valid at all).

However, if we assume that Uncle's interest did in fact attach, then Uncle tried to perfect his interest by filing a finance statement with the Indiana Secretary of State. It appears he did that properly as he had the creditor's and debtor's names, and described the collateral. With financing statements, supergeneric descriptions are more acceptable unless it is consumer debt but because here it business debt of an LLC then there do not seem to be filing issues as it puts parties on notice who are looking to do business with the debtor, Nursery. So, if the security interest had attached, then it seems the filing of the finance statement was proper and Uncle would be a perfected secured creditor and since he was first in time (which means he was the first to file or perfect) then he would have senior priority.

But, finance statements are only good for 5 years unless you file a continuation

statement within 6 months of the lapse of the filing statement. If the continuation statement is filed, then a secured party's perfection carries over for another five years without lapsing in priority. The facts state that no other filings were made, this means that assuming Uncle was a perfected secured creditor, he ceased being one in August 2010 when his financing statement lapsed. A lapsed financing statement has the effect of making it as thought the interest was never perfected, so all priority is lost.

Therefore, in terms of security, Uncle may have had an issue with attachment due to the supergeneric description on the security agreement, which if that is found invalid would make him an unsecured creditor, but assuming that the agreement was valid he is a secured but unperfected creditor. In addition, when Uncle transferred the loan of $100,000 he also got an instrument, a Note which is a negotiable instrument if it meets the requirements ((1) a written agreement (2) signed by the maker, (3) promising to pay, (4) an unconditonal, (5) amount of fixed money, (6) without undertakings, (7) that is payable at a determinable time or on demand, (8) that is payable "to the order or bearer of"). He may hold Nursey liable on the note or underlying obligation.

(b) Bank

In 2013, Bank became a creditor of Nursey. Bank's interest attached when it gave value ($25,000 loan), for security in property that debtor has an interest in the collateral (inventory), and there must be a security agreement (commercial loan agreement). Bank then filed a financing statement with the Secretary of State, which is a proper way to perfect a security interest. As long as the financing statement was authorized by Nursery and meets the statutory requirements, Bank's interest in inventory now and after acquired should be perfected in 2013. Since it is only 2015 now, the financing statement is still valid and Bank's interest should still be perfected. If Uncle was ever perfected, his financing statement lapsed so Bank should be first priority unless some exception applies. Since the Bank has an interest in inventory the property that it would be able to foreclose on would be the items Nursery sells out to the public such as the landscaping and gardening business's law and garden

equipment, and the soil, mulch, etc.

(c) CreditNow

CreditNow gave value ($40,000) for a specific purchase of SnowKing snow blowers that debtor bought with the loan, and a security interest was signed between the parties in 2014. This type of arrangment is known as a PMSI (purchase-money security interest) and it comes with special priority rules. A PMSI creditor can sometimes take priority before another security creditor who is already perfected. In cases of inventory however, there are rules that must be followed in order to acheive the special priority pefection. SnowKing would have to notify previous perfected creditors who have interest in inventory (Bank) of the PMSI in the specific property (150 snow blowers) before the interest is created and within 20 days of the interest being created CreditNow would need to file a financing statement with the Secretary of State complying with all the statutory requirements. CreditNow did not seem to do either of those things so CreditNow is a secured but unperfected creditor in the snow blowers who would lose priority to Bank.

2. Superior Claims to the Following Property and the nature of the claim

(a) SnowKing Blowers

As stated under 1(c) above, Bank should win the priority in the SnowKing Blowers. Bank and CreditNow are both secured creditors (while Uncle's interest may never have fully attached and may be unsecured). CreditNow could have had priority even though Bank was first in time due to the special nature of CreditNow's interest (PMSI), however CreditNow did not comply with the specific requirements to gaining priority in the snowblowers and has not ever perfected and therefore the only perfected party is Bank who has an interest in all inventory now or afteracquired and should have the superior claim. If Bank forecloses and sells the property in a commercially reasonable sale, any leftover profits would then go to SnowKing Blowers since it is a junior secured creditor. This is assuming that the snowblowers were for sale, if they were for landscaping business and performed as equipment then

Bank would have no claim over them and CreditNow would win. The classification of collateral goes to what the purpose was when the Debtor purchased the collateral.

(b) All riding mower's in Nursery's possesion

The first consideration will be in classifying the riding mowers. All riding mowers that were for sale to customers would be part of inventory. Therefore, Bank would have superior interest in those. All riding mowers that were not for sale but instead were used as equipment would not be covered by the Bank's interest. Uncle could bring judicial action against Nursery if it can't recover its loan and gain a judicial lien in which it can use to to try to foreclose on some of the equipment but no secured party has any special interest in the mowers per say.

(c) Nursery's plants and trees

It will again matter on how the plants and trees are classified. The debtor's purpose when purchasing the items should be how the classification occurs. If the plants and trees were purchased to resell to customers, then they are inventory and Bank has a secured interest. If they are not inventory then any unsecured party or secured party who was unable to fully recover may move for a judicial lien to satisfy the debt owed to them by Nursery.

INDIANA ESSAY EXAMINATION
Question 5
February 2015

Ann (age 23) and Bob (age 25) have been married for four years and have two children, Jane age 1 and Joey age 2. The parties met in college and both graduated with nursing degrees.

Ann and Bob live in a large house on a dairy farm, Milky Way Acres, Inc. ("Milky Way") that has been in Bob's family for several generations. Bob, an only child, inherited sole ownership of Milky Way when his parents died suddenly in a car accident just before the parties' wedding.

The parties do not have any retirement accounts, investments, savings or assets of any value other than the Milky Way farming operation. They also do not have any debts, other than significant debts associated with Milky Way.

Bob is President of Milky Way and devotes all of his waking hours to running the business. He earns approximately $50,000 per year. Ann has not worked outside the home since Joey was born. Joey was born with significant developmental and cognitive delays and requires a great deal of care.

Bob filed a petition for dissolution of marriage after discovering Ann was having an extra-marital affair with a Milky Way employee. The parties were unable to reach a settlement so the case is submitted to the Court for final hearing. Ann is requesting that Bob pay her maintenance following the dissolution of marriage. Bob objects to paying maintenance.

(1) Is Milky Way Acres a marital asset subject to division by the Court? Why or why not?

(2) Will the fact that Bob inherited Milky Way Acres prior to marriage impact the court's division of marital property?

(3) For what reasons may spousal maintenance be awarded in a final dissolution?

(4) Should Ann receive an award of spousal maintenance following the final dissolution? Why or why not?

5)

1) Milky Way Acres is a marital asset subject to division by the Court. In Indiana, all property owned by the spouses, no matter when acquired, is part of the collected marital assets that are divided between the parties on dissolution of marriage. The only exception to this are certain contingent future interests (such as disability payments). Ann and Bob could have entered into a pre-nuptial agreement providing that Miky Way Acres would remain Bob's sole property and would not be included as a marital asset in the event of the marriage's dissolution. Such agreements are enforceable as long as the party waiving his or her rights was fully informed about the nature of what he or she was giving up. However, it seems that was not the case here and the farm will be included as a marital asset.

2) The fact that Bob inherited Milky Way Acres will likely impact the court's division of marital property and may weigh in favor of Bob's receiving more than his presumed 50% share. Courts consider a number of factors when determining the division of marital property, including the job skills, education, and employment history of the spouses, to what extent each spouse brought resources to the marriage at the time of marriage (e.g., Bob's inheritance), to what extent each spouse contributed value during the course of the marriage, to what extent each spouse dissipated the resources of the marriage, and, for issues such as who to give the residence, which spouse will be the custodian of the child. Bob and Ann appear to contribute equally to the marriage - Bob by running the business and Ann by caring for the household and their disabled child. Assuming neither spouse has dissipated the marital property,the fact that Bob contributed the single existing asset to the marriage may weigh towards giving him a higher division of the property. However, while Ann has a nursing degree and has the potential to find work in that profession, her lack of employment history outside the home and the fact that she is the primary caregiver for their disabled child seem to make it unlikely that she will pursue a job a nurse. These factors weigh against diminishing Ann's share. Moreover, because

Indiana has a no-fault divorce, the fact that Ann was engaged in an extra-marital affair will not affect division of the marital property. Ultimately, given the contribution both spouses have made to the marriage and the unlikelihood of Ann's working outside the home and bringing in money, the court will be unlikely to depart from the presumed 50-50% division of marital assets in this case.

3) Spousal maintanence may be awarded by the court only in very specific, limited circumstances: 1) when one spouse is unable to provide for him or herself due to a disability; 2) when one spouse is unable to support him or herself and has custody of a child with a disability; or 3) when one spouse requires job training to re-enter the workforce. (Note that in this third circumstance, maintenance is limited to three years.) Spouses also may provide for spousal maintenance in a settlement agreement.

4) Ann should receive an award of spousal maintenance because she is the primary caregiver of the couple's disabled child and very likely will be granted primary custody of him. In determining custody, courts employ a "best interests of the child" standard, considering the wishes of the parents, the wishes of the child (if the child is over 14; if the child is under 14 the court may consider his or her wishes), the health and age of the parents and the child, the degree to which the child is adjusted to its home and surroundings (such as school),any violence or abuse that has occurred within the family, the interest in keeping siblings together, the interest in maintaining relationships with other relatives, and any other factors the court deems appropriate. All other factors being equal, the court will preference the child's primary caregiver, although the court cannot consider the parents' gender of financial situation in a custody determination.

Here, in light of the fact that Ann has presumably been the primary caregiver of Joey since he was born, the court is more likely to grant primary custody to Ann. There may be additional facts that change this analysis (for example, if Ann has run off with her lover and has been neglecting her children or if there is any history of abuse or violence from either parent), but on the facts given, the court is more likely to award

primary custody of Joey to Ann. If that is the case, then Ann will fall into one of the few circumstances where spousal maintenance is permitted - she will have custody of a child with disabilities, presumably will be unable to seek work outside the home due to his special needs, and therefore will not be able to support herself or the child. Assuming she is granted custody of Joey, Ann should receive an award of spousal maintenance.

INDIANA ESSAY EXAMINATION
Question 6
February 2015

In a recent survey, three Indiana counties were listed among the top ten locations in the country where divorce is most prevalent. Studies further reveal that divorce rates are higher in urban communities than in rural settings and that couples who do not attend church are twice as likely to divorce than regular churchgoers. In response to these findings, the Indiana General Assembly passed a bill with two sections related to marriage and dissolution in Indiana:

> *Preamble:* This law is enacted to prevent further congestion of the already burdened Indiana state courts. It is intended to continue to protect the best interests of children during and following the dissolution of marriage by allowing all of the protections traditionally provided through a full dissolution proceeding, while expediting all other divorces.
>
> 1. In counties with a population greater than 200,000 residents, dissolution of marriages for families not involving minor children will be granted on an *ex parte* basis, without the requirement of notice or appearance by both parties, provided the final divorce decree is entered more than thirty (30) days after the petition for dissolution is filed.
>
> 2. Marriage licenses for unions that will be solemnized through a religious ceremony will be available to parties within twenty-four (24) hours of application. Marriage licenses for all other unions will be made available no later than seven (7) days after the application date.

Divorce in all other cases (marriages involving biological, adopted, or step-children under the age of 18) will remain unchanged by this new law.

For sections 1 and 2 of the bill, identify and discuss any issues that may arise under the Indiana Constitution should this bill become a law.

6)

A court reviews the constitutionality of a particular law by looking at the text of the statute, the history of its passage, the purpose and structures of the Indiana Consitution, and any relevant case precedent. Additionally, the Constitution has particular clauses that are applicable to the current proposed bill.

Special Laws Prohibited: Article 4 of the Indiana Constitution prohibits the legislature from enacting special laws. A law is "special" when it relates to particular persons or particular locations. Furthermore, Article 4 requires that the various subject matters of a given law be germane. This is determined by asking if there is a rational unity between the subjects. However, the legislature is afforded great deference and a special law may be enacted if it satisfies a two part test (assuming it isn't categorically prohibited). In analyzing the enactment of a special law, a court will consider whether the subject matter of the law is amenable to a uniform law of general application. If the subject matter is amenable to a general law, a court will consider whether the law is special in application. A court will permit a law to be restricted to population classifications if doing so is reasonable and will allow for eventual qualification of other populations.

This bill, if enacted, would withstand this scrutiny because the population classification of Section 1 permits eventual qualification and is a reasonable constraint in light of the fact that divorce rates are more prevalent in urban communities. Section 2 would also prove permissible because it does not identify particular persons or places. Rather, it only identifies similarly situated individuals as a group. The bill's subject matters are germane because a the expediency of marriage dissolutions and marriage unions share a rational unity.

Equal Protection and Immunities: Article 1 of the Indiana Constitution guarantees certain individual libierties, one of which is the right of Equal Protection and

Immunity. This is Indiana's corollary to the US Constitution's Equal Protection Clause, but the two protections are analyzed under different standards. Unlike Federal analysis, Indiana does not distinguish the classifications of groups by three levels of scrutiny.

A two part test is invoked when determining if a violation has occured under Indiana's Equal Protection and Immunities Clause. A court asks first, whether the inherent characteristics of a group are a reasonable basis for the disparate treatment between the groups, and second, whether all members of that group are afforded the same protection or privilege as other similarly situated members of the group. This is a primarily a rational basis test that asks whether the law is substantially related to a legitimate government interest. Again, the legislature will be afforded great deference in this context.

In light of this test and burden of proof, the bill would likely be upheld. The law's disparate treatment of the groups is based on the best interests of the children which is a reasonable basis, and the members of the group are all afforded the same protection or treatment. Again, legislative deference is key.

Freedom of Religion: Article 1 of the Indiana Constitution provides greater religious protection and freedom than the First Amendment of the US Constitution. Indiana's Constitution guarantees for the Freedom of Religion, the Freedom of Religious Opinion, the right to worship in accordance with the dictates of conscience, no religious oath for public office, no religious oath required for jury duty among others.

Here, this bill does not propose to violate any of these clauses.

Due Course of Law: Indiana's Due Course of Law is the state's corollary to the Federal Due Process Clause. It guarantees the right to a notice and hearing whenever a protected liberty interest is involved. These interests are akin to the fundamental rights at the federal level such as the right to marry, the right to travel, freedom of

speech, freedom of association, the right to raise your child, the rights of family, etc. In determinig if Due Course of Law has been violated, a court will consider the nature of the violation of the protected liberty interest at stake and what benefit added procedures would have provided.

Here, it seems that this bill again would withstand scrutiny because the couples are not being deprived of a fundamental right.