

INDIANA ESSAY EXAMINATION
QUESTION 1
February 2018

Tyler and Sherry are high school students residing with their respective parents in Indiana. Sherry, who is seventeen years old, just gave birth to Olivia. Sherry is certain that Tyler is Olivia's father. When Sherry told her parents that she was pregnant and Tyler was the father, Sherry's parents barred Tyler from coming to their home and prevented Sherry from contacting Tyler. Even before they learned Sherry was pregnant, Sherry's parents believed that Tyler may have battered her. Sherry's parents believe the less Sherry has to do with Tyler the better.

Sherry denies that Tyler has ever battered her. Sherry thinks that she and Tyler have a future together and wants to get married now.

Tyler is sixteen. He tried to keep in touch outside of school with Sherry while she was pregnant, but it has been next to impossible. He would like to marry Sherry, but even if they do not get married Tyler still wants to be a good father to Olivia. In fact, if he and Sherry do not marry, Tyler would like physical custody of Olivia. Tyler's parents are supportive of his desire to marry Sherry, provided he is Olivia's father. Tyler's parents are, however, suspicious that Tyler may not be Olivia's father.

1. Can Sherry and Tyler legally marry in Indiana? If so, who, if anyone, is required to consent? Would it make any difference if Sherry did not have a child (or was not pregnant)?
2. What steps can Tyler take to establish paternity of Olivia? Does he have to take these steps if Tyler and Sherry later get married?
3. What legal steps, if any, can Tyler's parents take to address their concerns over Olivia's paternity?

Assume that Tyler and Sherry do not get married and both remain in Indiana.

4. What parent presently is entitled to physical custody of Olivia? What steps must the other parent take to change custody, and what factors would an Indiana court consider in making a custody decision?

February 2018 - Question IEE 1

1.

Sherry and Tyler can legally marry in Indiana, but because of their minority they would have to get parental consent or

sufficiently demonstrate to the court that they are mature enough to enter into marriage.

In Indiana the minimum age of consent to a valid marriage is 18 years old. A valid Indiana marriage consists of a voluntary consent by both parties to enter into marriage, an intent to marry, a marriage license from the county where the ceremony is to occur, a solemnization ceremony, an official with authoritative capacity, and that the marriage license be recorded.

Voluntary consent is negated when either or both parties are minors. However, minor parties may obtain consent to marry from their parents; or in its discretion a court may validate their marriage upon a sufficient finding of the minor party's maturity.

It would make a difference if Sherry did not have a child or was not pregnant. The need for parental consent for a minor to marry is diminished if the couple seeking marriage have a child or the female is pregnant with the man's child. Accordingly, it would be more difficult for Sherry and Tyler to marry absent a showing that Tyler is the father of Sherry's child.

2.

In order to establish paternity of Olivia, Tyler must immediately put his name on the putative father registry which would give him standing later to initiate a paternity suit. A paternity suit should be brought within two years of Olivia's birthday. The court will likely order DNA samples be compared from Olivia and Tyler. In the event that Tyler is adjudicated the father of Olivia, he will be obligated to make child support payments, entitled to seek parenting time, and be able to help make decisions regarding Olivia's upbringing.

Because Olivia is already born, the time for Tyler to sign a voluntary acknowledgment of paternity (VAP) is quickly dissipating if not elapsed. Signing a VAP creates legal parental rights in the signor. The fact that Tyler did not sign a VAP is probably for the best because the Tyler is young, paternity has not been established, and a VAP is not rescindable absent real defenses like fraud and duress.

Even if Sherry and Tyler later get married Tyler must take steps to establish himself as Olivia's legal father. In Indiana there is a strong presumption that a man is a child's father if that child was born during the marriage or 180 days after the marriage-- this is called the marital presumption. A marriage occurring after a child's birth does not benefit from this legal presumption. So even if Sherry and Tyler later marry, this will not give Tyler the presumption that he is Olivia's father.

In fact, if Tyler and Sherry later marry the simplest course of action for Tyler to have parental rights with regard to Olivia would be to adopt her via an uncontested adoption. Upon adoption,

Olivia's and Tyler's relationship will have the same legal effect as if Tyler were her natural father-- with all parental rights and obligations.

3.

As paternal grandparents, Tyler's parent's have no legitimate course to halt Tyler seeking to establish paternity. The state has a strong interest in promoting child welfare and the parents' obligations of supporting their children. The most Tyler's parents can do is do their best to persuade Tyler to not act hastily and consider the outcomes of his potential actions.

4.

Sherry, the natural birthmother of Olivia is entitled to physical custody over Olivia. Absent a court order to the contrary, the child's natural birthmother (unmarried) is presumed to be the legal and physical custodian of the child. If the birthmother is married at the child's birth then both married spouses are the legal and physical custodian of the child under the marital presumption.

The other parent must move the state court to modify the original custody order in order to change the current custody decree. Under the Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA), a state court has jurisdiction to enter or modify a child custody order if that court sits in the child's "home state", (where born and presently resides), or where that the child has lived in that court's state for the past six months, or if neither of these are satisfied then in a court closest to the evidence that is substantial in making a custody determination for that child. The UCCJEA is somewhat irrelevant here because Olivia has not moved from Indiana since birth, so an Indiana state court will exercise jurisdiction.

In modifying a child custody order the court's determination is based on the best interests of the child (BIOC). BIOC factors include: child's standard of living, parent's willingness to cooperate, child's relationships with family members, history of domestic violence, and the well-being of all parties.

Here, if the allegations of Tyler's battery on Sherry are substantiated there will be less of a chance that Tyler would be granted joint physical custody. Instead it is likely that he would get parenting time, perhaps even supervised due to the past violence. However, the fact that Tyler seems willing to cooperate will benefit his position.

INDIANA ESSAY EXAMINATION
QUESTION 2
February 2018

Bert is an elderly widower. He and his wife worked a family farm, had one natural child, Elmer, and adopted Rosita when she was two. Once Elmer and Rosita reached adulthood, Bert and his wife took in a 12-year-old foster child, Paul, whom they came to love and cherish as one of their own. Paul eventually took over the farming operations for Bert. Even though they never formally adopted Paul, Bert and his wife always called him “son” and treated him as one of their own, including Paul in all family events and family photos, and making equal gifts to Elmer, Rosita, and Paul. Paul’s children referred to Bert as “Grandpa Bert” and Bert called them his grandchildren. Like Paul, Elmer and Rosita also stayed close by and were Indiana residents.

Tragically, Bert, Elmer, and Rosita were all killed in an auto accident. Elmer and Rosita died instantly. Bert survived, but was in a coma. He died 45 days later, having never awoken. No one in the family had ever executed a Will.

At his death, Bert owned \$1,000,000 in farmland and \$300,000 in liquid investments. Bert also carried a \$600,000 life insurance policy payable to Elmer, Rosita, and Paul equally. The policy provided that if no named beneficiaries survived, the proceeds of the policy are payable to the insured’s estate.

Estates were properly opened for all three decedents. Consider only the assets identified above. Assume Elmer has a surviving spouse and Elmer and Rosita each have surviving adult children.

1. Identify and explain who Bert’s heirs are and the respective share payable to each.
2. Explain how Bert’s life insurance proceeds will be distributed and to whom.

Assume Elmer’s children consist of two natural born children and a stepchild, who is the natural child of his second wife. All of Elmer’s children are adults.

3. Does the distribution of Bert’s Estate change? Explain why or why not.
4. Explain how Elmer’s personal assets will be divided in his Estate.

Now assume Rosita never had any natural born children but did adopt her late Husband’s children after he died. At the time they were adopted, the children were ages 15 and 22. At the time of Rosita’s death, the children were 16 and 23.

5. Does the distribution of Bert’s Estate change? Explain why or why not.
6. Explain how Rosita’s personal assets will be divided in her Estate.

The case of intestate Bert, his natural child Elmer, his adopted child Rosita, and the family's foster child Paul is complex. At the time of the accident, all three died intestate without wills having been executed. Elmer and Rosita died instantly. Bert survived for 45 more days. A living person has no heirs. Bert died forty-five days after Elmer and Rosita. Bert had no will, and therefore no assignments or modifications to a will. He died intestate.

Bert and his wife never took the time to formally adopt Paul as a child the way they did with Rosita. As the couple had taken the time to do so with one child, they did not care or love Paul enough to do the same for him. The old couple knew the process, but they were too cold-hearted to include Paul in their family in any legal and official capacity.

Therefore, Paul is not an official heir to Bert. Bert's proper heirs on his estate are Elmer's and Rosita's adult children. Rosita was properly adopted by legal methods, and is therefore Bert's child as well as his natural child Elmer. Elmer and Rosita's adult children will split Bert's estate of the \$1,000,000 in farmland and \$300,000 in liquid assets, and Elmer's

remaining spouse will be left out.

As for the life insurance proceeds, Paul will receive the entirety of the \$600,000. As was said earlier, a living person has no heirs. Bert lived on for 45 days after the accident that instantly killed Elmer and Rosita. Life insurance policies are private contracts and dealings between a life insurance provider and the deceased. Bert clearly listed his beneficiaries on the life insurance policy when he signed the contract for the policy. As Elmer and Rosita died prior to Bert, their interest dissolved upon their deaths. Paul was the only remaining beneficiary on the policy at Bert's death. The entirety of the \$600,000 life insurance policy will go to Paul as the remaining named beneficiary. His status as a non-adopted foster child is irrelevant here. Anyone can be named a beneficiary on a life insurance policy, and heirs do not have a right to usurp a sole living beneficiary named in the life insurance policy contract.

If Elmer's children consist of two natural born children and a stepchild who is the natural child of his second wife, this will change the distribution of Bert's estate. If Elmer never formally adopted the natural child of his second wife, or that child was already an adult by the time Elmer married his second wife, that child will not be considered one of Bert's heirs. If Elmer did formally adopt the stepchild, the stepchild of Elmer's second wife will be one of Bert's heirs.

Elmer's estate assets would go one-half to his living and remaining spouse. The remaining half will become two quarters, and Elmer's two natural children will each get those quarters. Therefore, his remaining spouse gets half, and his kids each get a quarter of the estate. The stepchild gets nothing if Elmer did not adopt the stepchild.

If Rosita adopted her late husband's children after he died, the distribution of Bert's estate would change with regards to the minor child who was 16 at the time of Rosita's death. The adult, 22 year old child, had already reached adulthood before being adopted, and is thusly locked out of being an heir to Bert. The minor adopted child (Bert's grandchild) is, however, included, and that changes the distribution of Bert's estate.

However, Rita's personal estate would be split evenly among her adopted and natural children. That was her choice to include them in her family. They would be given equal shares of Rosita's estate.

INDIANA ESSAY EXAMINATION
QUESTION 3
February 2018

On October 1, 2016, Dan and Mike signed an agreement with Landlord Lynn to lease an unfurnished apartment in Anytown, Indiana. The lease was for a period of one year, ending September 30, 2017, and required an \$800 security deposit and monthly rent of \$800. Rent was due the first of each month. The agreement included a clause that neither pets nor smoking was allowed in the apartment. The apartment had just been painted and new carpet installed. Dan paid the security deposit. Dan and Mike each paid one-half of the first month's rent and agreed between themselves to continue to share the rent obligation equally. The lease agreement specified that the security deposit could not be used for the last month's rent.

Dan and Mike paid their rent on time each month until August 2017. Unknown to Lynn, Mike moved out July 15. Dan paid the August rent, but realized he could not afford the apartment without a roommate. Dan told Lynn when he paid the August rent that he was moving out as of August 31 and that he would leave the keys on the kitchen counter. Along with the keys, Dan left a note on the counter giving Lynn forwarding addresses for both Mike and Dan. The note also informed Lynn that the security deposit should be sent back to Dan. When he moved, Dan believed he left the apartment in clean condition.

When Lynn inspected the apartment September 1, she found a couch and bed still there, broken blinds, and signs that a dog had been in the apartment, including scratch marks on the doors and urine stains on the carpet. The apartment reeked of marijuana smoke.

Lynn immediately cleaned and repainted the apartment. New tenants moved in October 1, 2017. Lynn's cost for the cleaning and repairs totaled \$2,500.

On November 14, 2017, Lynn filed an action in court against Dan and Mike asking for \$800 for the September rent and \$2,500 for damages based on the costs she incurred for cleaning and repainting the apartment. Dan filed a counterclaim for his \$800 security deposit. Assume service of process was properly made on both Dan and Mike. Lynn, Dan, and Mike were self-represented.

Applying Indiana law,

1. Assess and explain Lynn's chances to prevail in her claim against Dan and Mike.
2. Assess and explain Dan's chances to prevail in his counterclaim against Lynn.

February 2018 - IEE 3

Memorandum

To: Examiner

From: Examinee

Date: 27 February 2018

Re: *Landlord Lynn v. Dan and Mike*

I. Introduction:

On October 1, 2016, Dan and Mike signed a lease agreement for an apartment in Anytown, Indiana with Landlord Lynn. The lease called for \$800 in rent and a \$800 security deposit which was to be used for repairs. Dan and Mike broke their lease one month early. Dan left an address in writing for himself and Mike after notifying Lynn he would be moving out on August 31st. By Lynn's account, the pair left the apartment in disarray and it required \$2500 worth of repairs. Lynn filed a claim on November 14, 2017 seeking \$800 in rent and the \$2500 in property damages. Dan filed a counterclaim seeking the \$800 deposit.

II. What are Lynn's chances to prevail in her claim against Dan and Mike?

Indiana's Security Deposit Act requires that a detailed itemization or refund be sent to former tenants within 45 days of them vacating a premises. General claims for damage refunds are not permitted. The requirements of the act are strictly construed against the landlord. If the deadlines or obligations created under the Security Deposit Act are not met, the landlord forfeits any rights he might have to collect for property damage. It is incumbent on the tenant to collect his refund.

a. What are the tenant's obligations to collect his security deposit?

Dan, by leaving a writing containing his address after moving out has satisfied his obligation under the Security Deposit Act. He both informed Lynn that they were breaking the lease and gave her an address to send any bills for repair and any remnants of the security deposit. The security deposit act requires tenants to collect their own deposits so that landlords to not incur any unnecessary expenses tracking their former tenants down. Indiana Courts have previously held that merely a text message to the landlord is sufficient notice of the tenant's location. Therefore, leaving a note with addresses and instructions on where to send the excess security deposit is sufficient.

b. What are the landlord's obligations under the security deposit act?

Landlords are required to provide a detailed itemization of any repairs to their tenants within 45 days. Any failure to provide such an itemization explaining where the security deposit was spent, forfeits the landlord's rights to keep the security deposit or seek any refunds for repairs. Since Lynn never sent Mike and Dave a detailed accounting of how

their Security deposit was spent, she forfeited her right to keep the money. General claims with no details as to how the \$2500 dollars was spent is insufficient.

Lynn did file a claim in court against Dan and Mike seeking indemnification within 45 days of the lease ending. However, even if the act was interpreted to require notice at the end of the 45 days from the end of the lease, Lynn still never provided a detailed accounting, as per required by the act. Security Deposits are typically available to a landlord to pay for (1) any non-ordinary repairs or cleaning; (2) unpaid utilities; or (3) any unpaid rent (if so specified in the lease). In this case, Lynn did not intend to use the security deposit for rent. However, she did intend to use the security deposit to repair the apartment. The damage done to the apartment described by Lynn is above the ordinary and routine cleaning described in the act. Dog scratches, broken items, and permanent smoke smell (against tenant rules) would all be things that could qualify for security deposit usage. Since Lynn failed to provide a detailed accounting of the damage to her tenants within 45 days however, she waives her right to make claims for property damage and her right to keep the security deposit itself.

c. Can Lynn prevail on any claim?

Landlords who forfeit their rights to the security deposit may still make a separate claim for unpaid rent. In this case, Dan and Mike had a term of years lease which ended on September 30, 2017. Not counting that day, but counting the day Lynn initiated the cause of action that ends up being 76 days from the time Dan and Mike breached and 45 days from the end of the lease. This is well within the statute of limitations for Lynn to file a claim for money owed. These claims are separate and by not complying with her obligation under the Security Deposit Act, Lynn has not waived her claim for unpaid rent.

Landlords have a duty to mitigate their damages. The term of years lease between Lynn, Dan and Mike ended on September 30, 2017. By the nature of term of years leases, requires no notice for the parties' relationship to terminate on that date. Lynn had tenants occupy the premises on October 1, 2017 after she thoroughly cleaned the apartment. The cleaning process likely took time and Lynn's burden to mitigate includes showing the apartment and advertising. It is very likely that Lynn mitigated her damages appropriately and will prevail on her claim for one month's unpaid rent.

III. Can Dan Prevail in his counterclaim for the \$800 security deposit?

Tenants are required under the security deposit act to collect the remainder of their security deposit. As stated in part (II)(a) above, Dan met his burden to provide, in writing, his future address and provided instructions for Lynn to send the security deposit to that address. Lynn then failed to comply with the security deposit act by not provided Dan and Mike with a detailed itemization of the property damage done to the apartment and the bills incurred to clean the apartment. By not complying with the Security Deposit Act, as discussed above, Lynn has forfeited her right to both keep the security deposit paid by Dan and Mike and she has forfeited any claim she might have to collect on property damage.

For the aforementioned reasons, Dan should be entitled to collect the entire \$800 of his security deposit, despite the considerable damage done to the apartment. Furthermore, he will be under no obligation to pay for property damage to the apartment above that security deposit amount. In addition, he should be entitled to attorney's fees incurred in order to collect his security deposit from Lynn, as provided for in the act.

IV. Conclusion

Lynn cannot prevail in a damages claim against Dan and Mike. Furthermore, Lynn cannot keep the security deposit because she did not comply with the Security Deposit Act. Lynn can prevail in a claim for rent for the month of September. Additionally, Dan can prevail in a claim for the reimbursement of his security deposit.

INDIANA ESSAY EXAMINATION
QUESTION 4
February 2018

After the Indiana General Assembly passed a statute banning the sale and consumption of coffee in Indiana, three professors from different universities in Indiana organized a protest near the Indianapolis home of Terry Tea, the CEO of a tea company that had lobbied in favor of the legislation. At 6:30 a.m. on the Saturday of the protest, the professors and students converged on a public pocket park across the street from Tea's home. While they did not block traffic, the crowd of at least 75 spilled onto the sidewalk abutting Tea's lawn, and a few were on the lawn's edges.

The protest included speeches from passionate coffee lovers and loud chants such as "Terry Tea is Terrible!"; "End Latte Legislation!"; "Get Government Out of My Mug!!"; and "Bring Back Coffee!!" A few students also blew loud air horns.

The air horns awakened and frightened Tea's wife and elderly mother. They became even more scared when they saw how many people were protesting. When Tea's mother developed chest pains, Tea called 911. The protestors did not impede the police or paramedics. But they kept chanting and blowing the air horns at the same volume.

The police demanded the protestors lower their volume and leave Tea's lawn. The police also threatened to arrest anyone who did not comply. All of the protestors left the lawn, but a few continued to stand on the sidewalk by the lawn, chanting at the same volume and blowing the air horns. At about 8:30 a.m., the police arrested all who were on the sidewalk, including two of the professors and the students with air horns. After the arrests, those in the park fell silent.

The police transported those arrested to a nearby police station, read them their Miranda rights, and immediately began interrogating the two professors. The police placed the students in a holding cell to await questioning. No one asked for a lawyer.

Just as the police started to question the professors, one University counsel arrived, said she was representing one of the professors, and asked to see her client. The police said the professor had waived her right to counsel and they denied the lawyer access to her client. University counsel for the other arrested professor called from his car while driving to the station, said he was representing the other professor, asked the police to delay questioning until he arrived at the station, and asked to speak to his client by telephone. The police denied both requests.

The prosecutor ultimately decided to prosecute only the two professors for disorderly conduct pursuant to Indiana Code § 35-45-1-3, which provides that a person who recklessly, knowingly, or intentionally makes unreasonable noise and continues to do so after being asked to stop commits disorderly conduct, a Class B misdemeanor.

1. Limiting your answers only to defenses available under the Indiana Constitution, what defenses, if any, would the professors have under the Indiana Constitution?
2. Discuss the strengths and weaknesses of any identified constitutional defense.

Question 4

1. The courts interpret the Indiana constitution based on the text, illuminated by the history and by the purpose and structure of the constitution and the case law defining each provision.

Here, we have a statute that bans the sale and consumption of coffee in Indiana. Three professors from different Indiana universities organized a protest near the Indianapolis home of Terry Tea, the CEO of a tea company that had lobbied in favor of the legislation. It is not clear what the history or purpose of the legislation was, but we can turn to case law regarding the professors conduct and subsequent arrest.

Price v. State Defense: The defense analysis under the Indiana Constitution would likely begin with an analysis of **Price v. State**. In Indiana, political speech is given greater deference than under a U.S. Constitutional Free Speech analysis. In Indiana, political speech is 'popular comment toward a government actor' and considered a fundamental right.

Here, the professors appear to be engaging in political speech. They were chanting political speech based on opposed legislation. Unlike in Price, where she was yelling at a police officer, the professors were chanting outside the CEO of a tea company. In Price, she was shouting at a policeman, so more analysis is needed since Terry Tea is a private individual.

The chants were political in nature (End Latte Legislation! Get Government Out of My Mug!) and therefore could be construed as political speech and protected under the

Indiana Constitution, per Price. In Price, a group of people were in an alley way when a fight broke out. The police arrived and started physically arresting Price's boyfriend. She shouted at the policemen to leave him alone. Because she was shouting at policemen in a crowded alley, the court determined that her speech was political in nature and was not causing a private nuisance and therefore the disorderly conduct charges were dropped.

That is the best defense for the professors here. They were in a crowded public place, a public pocket park across the street from Tea's home. They did not block traffic, but the crowd of at least 75 did spill onto the sidewalk abutting Tea's lawn. These protestors were still in a public place (the sidewalk). The protestors that were on the lawn's edges probably were not on a public space, but later all of the protestors did leave the lawn. And, when Tea's wife and elderly mother were frightened and 911 was called, the protestors did not impede the police or paramedics, even though they did keep chanting and blowing the air horns at the same level. After the arrests, everyone fell silent, though. It could be construed that Terry Tea; the CEO of a tea company was a lobbyist and therefore a government actor.

The weaknesses are that it was a private individual including a wife and mother, and not a policeman, where the professors directed their speech. Also, it all happened on a Saturday at 6:30a.m. unlike Price which happened in a crowded alley at night. The professors' incident continued for two hours. Eventually the police demanded the protestors lower their volume and leave Tea's lawn. The police threatened to arrest anyone who did not comply. A few protestors continued to stand on the sidewalk by the lawn chanting at the same volume and blowing their air horns. At 8:30 a.m. the police arrested all who were on the sidewalk, including two of the professors and the students with the air horns. After the arrests, those in the park fell silent.

Case Law Analogy: There is another Indiana case where a man and woman were inside of an apartment (due to a domestic disturbance call). When the police entered the apartment, the police segregated the man and woman. The man was questioned about what happened while the woman kept screaming at the policeman. The court held in that case that the woman, because she interfered in the policeman's ability to do his duty and because it all happened inside of an apartment, the woman was held to have violated the statute. Her speech toward the policeman was not protected under Price because her behavior amounted to tortious conduct against an individual.

Here, our professors and protestors never impeded the police or the 911 responders. In fact, after the arrests, everyone fell silent. Therefore, unlike in the domestic disturbance case above, the professors should be able to show that under Price, their political speech is protected and that the arrests, as applied to them, was an unconstitutional burden on their fundamental right to political speech.

2. Because the courts interpret the Indiana constitution based on the text, illuminated by the history and by the purpose and structure of the constitution and the case law defining each provision and **the case law clearly supports the professors position**, they have a strong case under a Price analysis.

Other Defenses

Right to Counsel: Indiana defendants have a right to counsel. This is similar to the 5th and 6th amendments in the U.S. Constitution, defendants have a right to counsel under the Indiana Constitution. Here, the police transported those arrested to a nearby police station, read them their Miranda rights, and immediately began interrogating the two professors.

The court will likely find that the police denied one professors his right to counsel based on case law.

Analogous Case Law: There is case law in Indiana where a defendant's counsel phone in en route to the police station and the court found that not informing that defendant the opportunity to speak to the attorney **who had not yet arrived** did not violate the defendant's right to counsel. Here, just as the police started to question the professors, one University counsel arrived, said she was representing one of the professors and asked to see her client. The police said the professor had waived his right to counsel and they denied the lawyer access to her client. This is analogous to the precedent case and the court will likely find that this professor was denied his right to counsel.

Conversely, there is other case law that if the attorney is present at **the police station asking to speak to his client** and the police deny the attorney access to his client, and the police continue to interrogate the client, this is a violation of the defendant's right to counsel. Here, University counsel for the other arrested professor called from his car while driving to the station, said he was representing the other professor, asked the police to delay questioning until he arrived at the station, and asked to speak to his client by telephone. When the police denied this request, it is analogous to the above case where the court found that an attorney who had not yet arrived at the station house, the defendant was not denied his right to counsel.

This is a strong argument for the professor whose counsel had arrived at the station. But, for the professor whose counsel did not arrive before interrogation, this is a bad argument based on Indiana case law.

Search and Seizure: In Indiana, courts will look to the Totality of the Circumstances to determine if rights were violated. The courts will look at three factors to see if a search and seizure violation has occurred. The court will look at the (1) level of intrusion, (2) the nature

of the intrusion, and (3) the needs of the police officers. This is analogous to the U.S. Constitution 4th Amendment, but there is no right to privacy/reasonable person analysis involved.

First the level of intrusion was severe. The two professors were at a police station and were clearly not allowed to leave, nor would a reasonable person feel they were allowed to leave, since they were under arrest at a police station (post-Miranda and at the police station). The professors were presumably not armed and did not appear dangerous. The police could have cited the professors and sent them on their way, so this will favor the professors.

Second the nature of the intrusion was harsh. The police took them to the stationhouse and immediately began interrogating them. When one University counsel arrived and stated that she was representing one of the professors, and asked to see her client, the police essentially lied and said they had waived their right to counsel and they denied the lawyer access to her client. By not asking for a lawyer, the professor did not waive his right to counsel and should have been allowed to see his counsel. This is a severe intrusion since the professors did have a clear picture of their circumstances due to police behavior. This will favor the professors.

Third, the courts look at the needs of the police officers. Here, the police officers did not need to take the professors to the station house. They could have given them citations on the spot. But, since the facts state that the crowd did not fall silent until the arrest were made, this factor will favor the police.

Under the totality of the circumstances, the court might find that although the intrusion was severe and harsh, the police needs were sufficiently great enough to warrant the level of intrusion, therefore this is a weak argument.

Due Course of Law: Defendants in Indiana are allowed due process of law under the due course of law clause. This is analogous to the due process of law under the U.S. Constitution. Here, the professors were given notice that they violated the statute, the prosecutor is going to take them to trial where they can present evidence and cross examine witnesses. Therefore, the court will not find that their due course of law rights were violated.

Special Law: The Indiana Constitution bars special laws. Special laws are directed at specific people or instances. A court will look to see if the law could be general if possible, giving great deference to the legislature. Here, the law appears to be special because it only affects one type of beverage, coffee. It appears that it was passed based on one company's ability to lobby the legislature. There doesn't seem to be any way other types of beverages will be able to enter into the legislation because it specifically banned coffee. There are not any 'population' specifications to ensure that a special law would pass under a population analysis, so this law does seem to be special in nature. But, because great deference is given to the legislature, it would be difficult to argue why this law, as applied to the professor's defense, is a good argument, therefore, this is a weakness.

INDIANA ESSAY EXAMINATION
QUESTION 5
February 2018

Tom is a resident of Indiana. The following events occurred to Tom in 2017:

1. Tom has a rental property that he leases to Jane for \$1,000 per month. Jane has leased the property from Tom for the past several years. In 2017, Tom collected a total of \$10,000 in rent from Jane. Instead of paying her last two months of rent for 2017, with Tom's permission, Jane spent \$2,000 to remodel the bathroom.
2. Tom and his former wife were granted a final decree of divorce in December of 2016. Pursuant to his divorce settlement, Tom paid to his ex-Wife alimony of \$1,000 per month each month in 2017.
3. Tom traveled to a casino in January. He spent \$9,000 dollars and several hours at the tables. Tom won a \$25,000 jackpot.
4. In April, Tom received a bonus from his employer in the amount of \$30,000, out of which he properly contributed \$5,000 to the company 401(k) plan.
5. In May, Tom's mother died and Tom was paid life insurance proceeds of \$100,000.
6. In June, Tom received \$3,000 in dividends from stocks he owns; \$500 of the \$3,000 are qualified dividends.
7. In October, Tom paid \$20,000 in uninsured medical expenses for back surgery.

Identify and describe in detail the federal tax consequences to Tom resulting from each of the numbered events set out above.

Under the Internal Revenue Code (IRC) gross income includes any income from whatever source derived or realized gain.

1. Rental Property

Payments from rental property are included in gross income. Here, Tom will have to include \$10,000 of rent payment from Jane. The total \$10,000 payment is for the 10 months of rent he received. Even though the tenant did not pay for the last two months of rent for 2017, Tom will need to include the \$2,000 the tenant spent to remodel the bathroom as a property gain. The additional work of remodeling the bathroom has increased the value of his rental property. While it might not necessarily be in the form of a payment, it is a benefit that realized gain in his real property. Therefore, this information cannot be withheld and must be disclosed to his tax preparer.

2. Alimony

Beginning in 2018, alimony payment will no longer be included in gross income, nor will it be subject to deduction by the payor. However, since this is describing the federal tax consequences of the year 2017, Tom will be able to deduct a total of \$12,000 from his gross income. The \$12,000 is calculated by adding \$1,000 payment for the past 12 months in the year 2017. It is best to advise Tom that he will no longer have this tax deductible available for him in the future year.

3. Gambling Winnings

Gambling winnings are included in gross income. They are treated similarly as prizes except that the losses are offset from the winnings. Since Tom spent \$9,000, it is a loss that will be deducted from his jackpot winnings of \$25,000. Thus, Tom will have to include in his taxes \$16,000 of his gambling winnings as gross income.

4. Bonus from Employer

Bonus from employers are included in gross income. Here, Tom received a bonus of \$30,000 from his employer. This is included in his gross income. However, Tom contributed \$5,000 of that bonus to his company's 401(k) plan. The IRC allows certain contributions to retirement funds and IRA plans to be deductible from a taxpayer's gross income. If Tom's 401(k) company plan is valid and meets all the formal requirements, he would only include \$25,000 of the bonus in his gross income.

5. Life Insurance Proceeds

Life insurance proceeds are not included in gross income. Here, Tom is the beneficiary of his mother's life insurance. The \$100,000 life insurance proceeds would not be included in gross income.

6. Dividends

Dividend from stocks are included in gross income. Tom will have to include the \$3,000 of

the dividends he received from his stock as gross income. However, \$500 of that payment will be taxed at a different rate (ordinary tax) because it is classified as a qualified dividend meaning it gets special tax treatment.

7. Uninsured Medical Expenses

Uninsured medical expenses may be deductible, if the total costs of medical expenses exceed 7.5% of the person's total gross income. (It is important to note that this minimum percentage has been raised to 10% following the new tax revisions from December 2017). Although some medical expenses are not eligible such as cosmetic surgery, Tom will be able to deduct these medical expenses because they are uninsured, and they are for a back surgery he underwent.

INDIANA ESSAY EXAMINATION
QUESTION 6
February 2018

MegaCorp hired general contractor General Corp. (“General”) to build it a new headquarters in Indianapolis. General contracted with Construction Managers, Inc. (“Managers”), a construction management firm, to oversee the project. General also hired various subcontractors, including HeatCo, with whom it contracted to install the heating and cooling equipment for the building.

Ralph worked for HeatCo. On his first day at MegaCorp’s building site, Ralph asked someone there to direct him to the roof. The person instructed Ralph to access the roof through a maintenance room in the middle of the building. In the room was a 20-foot ladder propped against a hatch in the ceiling that opened onto the roof. While climbing up the ladder, Ralph fell to the floor and sustained serious injuries that left him permanently disabled.

Ralph filed suit in an Indiana state court against the building’s owner, MegaCorp, the general contractor, General, and the construction manager, Manager, seeking compensation for his injuries. Given the extent of his injuries, Ralph wanted to determine as soon as possible information about the three defendants’ net worth and their insurance coverage.

1. Identify all of the discovery methods that are available under the Indiana Trial Rules and identify which method Ralph’s counsel should use first to discover the three defendants’ net worth and their insurance coverage. Explain your choice.
2. If the defendants do not wish to produce information about their net worth, explain procedurally what options the defendants have under the Indiana Trial Rules. Depending on what the defendants do, how procedurally should Ralph respond?

MegaCorp filed a Motion for Summary Judgment asserting that, as a matter of law, it owed no duty to Ralph. The trial court subsequently granted that motion. Because neither Manager nor General has substantial assets or insurance, Ralph wants to appeal the ruling immediately, since it would likely not be worth the time and expense of proceeding to trial without knowing there was a defendant able to satisfy a large judgment or pay a large settlement.

3. Identify and discuss all of Ralph’s options to initiate an appeal of the trial court’s judgment in MegaCorp’s favor to the Indiana Court of Appeals. Identify what option Ralph should choose to initiate his appeal. Explain your choice.

1) Discovery Methods Available to Ralph and

What he Should do First Discovery methods

available to Ralph:

- Interrogatories-Ralph can send written questions to the Defendants that they must return within 30 days signed under oath.
- Requests for Documents-Ralph can send written demands for the Defendants to produce income statements, tax returns, bank records, and insurance policies.
- Subpoenas-Ralph can subpoena information concerning the Defendants' bank accounts, accountant records, and real estate holdings to find out their net worth. He can subpoena their insurance policies to discover their insurance coverage.
- Depositions on Written Questions-Ralph can depose the Defendants on written questions. Ralph needs to send his questions for the Defendants to opposing counsel. They then add their cross-exam questions. Finally, Ralph adds his re-direct questions. Then a court reporter reads the questions to the Defendant-deponents and takes down their answers.
- Oral Depositions-Ralph or his counsel can sit down with the Defendants in the presence of a court reporter and ask the Defendants questions in person.

Ralph's counsel should first send Interrogatories to the Defendants to ask about net worth and insurance coverage. Under TR 26, any matter relevant to the proceedings is discoverable. As a matter of course, Interrogatories are normally combined with Requests for Production into a single document. It would be helpful for Ralph to send both and try to get copies of any documents which might support the Defendants' Interrogatory answers (bank statements, account records, copies of insurance policies). Ralph needs the information that he can find using Interrogatories to make much use of the rest of the discovery methods. For example, how is he going to subpoena a bank record if he doesn't know what bank the Defendants' use. Interrogatory Answers are also normally useful in depositions to help guide the taker's questioning. More practically, Interrogatories are low cost and low risk. Interrogatories cost the least of all methods to prepare and send out. As such, it is good to send them out first and see what will be objected to by the Defendants and what can be easily obtained. For example, insurance policies are usually produced as a matter of course and there is no reason to bother with more expensive methods of discovery to obtain them. Net worth may be a more difficult ask, but sometimes is freely given (if MegaCorp is publicly held, it will probably easily produce this information). If Interrogatories do not yield good results, Ralph can resort to more expensive methods.

2) Defendants' Options for Protection of Confidential Information

If Ralph asks the Defendants for information through Interrogatories, they may simply object to the Interrogatories they, as a legal matter, find improper and return the answers to Ralph within 30 days (or any extensions he is willing to give them). In response, Ralph may challenge their objections by first attempting to informally work out their differences between the parties and then by filing a motion to compel them to respond to his questions. The motion will be ruled upon by the trial court judge.

The Defendants may also choose to file for a protective order. A protective order is an

order of the court that prescribes the manner or scope of discovery. As a matter of practice, most protective orders are agreed upon by the parties. The Defendants might contact Ralph and say that they will give him the information he seeks but specify that they do not want it to become public. They might offer to give him the information under the condition that he sign an agreed protective order that he will not publish or otherwise share what they have to give him. That order can then be tendered to the court and entered-giving it the same force as any other court order. If the Defendants do not want to produce the information at all or Ralph is uncooperative, they can file a motion for the court to enter a protective order. They should ask for the judge to prohibit or limit discovery concerning what they want to protect in the motion. Ralph can then respond to the motion. The trial court judge will rule on the motion.

3) Ralph's Appeal

If MegaCorp is granted summary judgment, Ralph's main issue is that the order is interlocutory. Under IN trial rules, a final order is one that disposes of all of the claims of all of the parties. An order that does not do so is called interlocutory. Ralph has three options to try to appeal this interlocutory order: 1) finality under TR 54, 2) interlocutory appeal, or 3) dismissal of all other parties.

Ralph can try to get the trial judge to convert the interlocutory order of summary judgment into a final judgment by asking the judge under TR 54. Under TR 54, a judge may add "There is no just reason for delay, this order is final." and direct the clerk to enter a final order. If Ralph is successful in this, the order will then be final and immediately appealable. Since the judge has disposed of all claims related to MegaCorp, the court will likely be give a final judgment. Ralph should try this method first.

Another, somewhat drastic, option for Ralph is to dismiss or settle with General and Manager. There is no law that states Ralph must sue everyone who might possibly be liable for his injuries or keep everyone in the case. The only condition on this is that Ralph must sue the "real party in interest." MegaCorp, as the owner of the premises, is a real party interest. Beyond this Ralph is free to choose to sue only those who he believes are the most liable or the most able to pay a judgment. If he truly believes that General and Manager have no money, he can dismiss them or try to settle with them for nominal amounts and proceed only against MegaCorp. (MegaCorp is free to re-sue them in contribution, indemnity or apportionment, but that is not really Ralph's concern right now.) Once they are dismissed, MegaCorp's summary judgment will dispose of all of the claims of all of the parties and will, as a matter of law, be a final judgment. As such, Ralph will be entitled to an appeal. I would recommend Ralph go to the trial judge after doing this and get the words of TR 54 ("There is no just reason for delay, this judgment is final." and directing the clerk to enter a final judgment.) added before filing his appeal as this will likely help move the appeal along. I recommend Ralph try this method if method one doesn't work.

Ralph could also try to get the court of appeals to take an interlocutory appeal of the case. The court of appeals has discretion to take the appeal of an interlocutory order. To determine whether or not the appeal will be accepted the court of appeals will consider why Ralph needs to appeal now rather than wait until the entire case is over, Ralph will need to show that he will be somehow harmed by waiting. Ralph honestly probably doesn't have much to show that he needs immediate appeal. The facts state only that he wants to know whether or not MegaCorp can pay as soon as possible. He can probably make some argument that he is injured and should not be made to wait for the proper appeal time because he needs money now, however, every plaintiff is injured so this is not terribly distinguishing for Ralph. Ralph will likely not be granted an immediate appeal. If Ralph wishes to take this route, he must file any appeal within 30 days. Ralph should skip this method.

I would recommend Ralph first move the trial court pursuant to TR 54 to add "There is no just reason for delay, this judgment is final." and directing the clerk to enter a final judgment. If this doesn't work, and Ralph is sure General, and Manager cannot satisfy a judgment and he wants immediate appeal, he can consider dismissing General and Manager from his case. I do not think he will be successful in trying to get the court of appeals to take his case as an interlocutory appeal, however, he has that option.