

INDIANA ESSAY EXAMINATION
QUESTION 1
February 2020

Smith, who recently completed graduate school in Ohio, where he resided his entire life, hosted a party to celebrate his May graduation. Party guests damaged the apartment Smith leased during law school. Although his lease would not expire until December, Smith decided to leave his apartment seven months early, at the end of May, without paying any additional monthly lease payments, repairing any of the partygoers' damage, or notifying his Landlord of his intended departure.

Smith's neighbors advised Smith's Landlord, a resident of Marion County, Indiana, of Smith's departure. The form lease agreement Smith signed contained the following clause: "The parties agree that any lawsuits arising from this lease will be filed in Marion County, Indiana."

Shortly after learning of Smith's departure, Landlord saw a post from Smith on social media that Smith was staying with a friend in Indianapolis for a few days before venturing on to Chicago. Landlord promptly hired counsel and filed a lawsuit against Smith in Marion County Circuit Court for immediate possession of the apartment, for lease payments, and for damages due to the poor condition of the apartment. A process server personally served Smith at his friend's home in Marion County just before Smith planned to leave for Illinois. Smith, acting *pro se*, filed a motion to dismiss for lack of personal jurisdiction, or, in the alternative, to transfer venue to Lake County, Indiana, which was just a few miles from Chicago, where Smith planned to remain and seek work.

For each of the following inquiries, answer the question(s) and provide an explanation for your answer:

1. Does the Indiana Court have personal jurisdiction over Smith? Explain.
2. Assume the Court does not dismiss the case for lack of personal jurisdiction. What is the likelihood that the Court will grant the motion to transfer venue to Lake County, Indiana? Explain.
3. Assuming the Court denies the motion to transfer venue, may Smith appeal the denial immediately? If so, what must Smith do to *initiate* the appeal?
4. What can the Landlord do to acquire testimony for trial from partygoers who reside in Ohio?

1. Does the Indiana Court have personal jurisdiction over Smith?

Personal jurisdiction over an out-of-state defendant must satisfy both constitutional due process and Indiana's long-arm statute. Constitutional due process over a defendant that is not at home in Indiana requires (1) minimum contacts, (2) conduct that arises out of the contacts in Indiana, and (3) fairness. Here, Smith has lived his entire life in Ohio. Smith's contacts in Indiana are that he rents an apartment from and entered into a contract with a landlord who lives in Indiana and he has a friend in Indianapolis, who he stayed with before leaving for Chicago. Thus, one of Smith's only contacts with Indiana is his Landlord. But in this case, Smith's contact with his Landlord is the very contact that gives rise to this lawsuit. Smith entered into a contract with an Indiana resident to rent an apartment. Additionally, Smith caused an Indiana resident harm by leaving his apartment seven months early without paying the remaining rent, repairing the partygoers' damage, or notifying Landlord of his departure. This caused harm to Landlord, and so while it is a close call because of Smith's minimal contacts in Indiana, it is fair to subject Smith to personal jurisdiction in Indiana.

Indiana's long-arm statute provides a list of separate instances that may illustrate that personal jurisdiction is proper. For example, the statute provides that there is personal jurisdiction over a defendant that causes injury or property damage in Indiana, that enters into a contract with an Indiana resident, that causes harm to an Indiana resident by conduct outside the state if the defendant regularly conducts business there, that provides insurance in Indiana, or that is married to a person in Indiana. Here, Smith caused harm to an Indiana resident, Landlord, by his conduct. He additionally entered into a contract with an Indiana resident. These actions fall within the actions under Indiana's long-arm statute.

Additionally, a person can agree that personal jurisdiction is proper in Indiana. Here, Landlord and Smith entered into an agreement that provides, "The parties agree that any lawsuits arising from this lease will be filed in Marion County, Indiana." In signing this agreement, even if it was a form agreement, Smith agreed to personal jurisdiction in Indiana and waived his argument to argue otherwise.

Additionally, Smith was personally served in Marion County, Indiana. Therefore, there is no question as to whether personal jurisdiction is proper in Indiana. The Indiana court has personal jurisdiction over Smith. The court should deny Smith's motion to dismiss.

2. Likelihood the Court will Grant the motion to transfer venue.

A defendant can move to transfer venue anytime that venue is not brought in a preferred venue. In Indiana, a case can be filed in any county in Indiana. However, venue is preferred in some counties over others. These preferred venues are in counties where, for example, one or more of the defendants reside, where the circumstances giving rise to the claim occurred, or where the parties agreed to lay venue. When a plaintiff has brought suit in a venue that is not preferred, the defendant may move to transfer venue to a preferred venue and can obtain the costs of transferring venue from the plaintiff.

Here, however, Marion County, Indiana is already a preferred venue. Smith signed an agreement providing, "The parties agree that any lawsuits arising from this lease will be filed in Marion County, Indiana." The parties therefore already agreed to a particular venue, and so that will be the preferred venue. A defendant cannot use a motion to transfer venue to move a case from a preferred venue.

Moreover, there is nothing to make Lake County, Indiana a preferred venue. While Lake County may be closer to the defendant's residence in Ohio, it is not the defendant's residence. One of the options for preferred venue is not the county closest to the defendant, but the county in which the defendant resides. Therefore, Lake County, Indiana is not a preferred venue and Smith cannot use a motion to transfer venue to move venue from a preferred venue to a non-preferred venue.

The Court will deny Smith's motion to transfer venue.

3. Is the denial of the motion to transfer venue immediately appealable? What is the procedure to initiate the appeal?

Denial of a motion to transfer venue is immediately appealable.

In order to appeal the court's denial of the motion to transfer venue, Smith must file a notice of appeal with the clerk of the appellate and supreme courts within 30 days of the order denying the motion to transfer venue. Smith must serve the notice of appeal on the other party, as well as the trial court clerk, reporter, and judge.

This will prompt the clerk of the trial court to begin preparing the trial court's record, which the clerk must complete within 30 days (although the clerk has 90 days to complete a transcript of all trial and substantive hearing proceedings). The record on appeal will include this clerk's record, as well as a chronological case summary, copies of all relevant court orders and opinions, and the transcript of trial and any substantive hearings. Smith will have 30 days after the clerk certifies the record below as complete to file his appellant's brief with the Court of Appeals. His appellant's brief must be limited to 30 pages or 14,000 words.

4. What can Landlord do to acquire testimony for trial from partygoers who reside in Ohio?

Discovery on non-parties is limited. A party cannot serve interrogatories on a non-party, although Landlord may use interrogatories to learn the identities and contact information of the non-party partygoers in this case.

To obtain deposition testimony from non-parties, a deposition notice alone is not enough. Instead, a party must serve a subpoena on the non-party to compel the non-party to appear for his deposition. A subpoena cannot compel a non-party to cross state lines, however, so Landlord will need to take the partygoers' depositions in Ohio. Landlord should move in the Marion County Circuit Court case for permission to serve an out-of-state subpoena. Landlord can then have the out-of-state subpoenas on these Ohio partygoers served personally or can serve them by certified mail. The subpoenas will direct the Ohio partygoers to appear for their deposition at some designated time and place in Ohio. Landlord's attorney can then take the Ohio partygoers' depositions and acquire their testimony in that way.

***** IEE 1 ENDS HERE *****

INDIANA ESSAY EXAMINATION
QUESTION 2
February 2020

Dick and Jane, Indiana citizens for their entire lives, married in 1980. They have three adult Children. Dick owned, in his name only, three parcels of Land (A, B, and C) now worth \$200K apiece. He bought the parcels of Land for \$50K apiece before he and Jane married. In 2005, Jane had an affair, and Dick and Jane separated for five years. Neither filed for divorce; they just lived apart. They reconciled in 2010 and rebuilt a loving, supportive marriage. The Children never forgave Jane for her infidelity. They hoped Dick would disinherit her.

During the separation, Dick did some estate planning. He placed Parcel A into an Irrevocable Trust (which had no terms permitting amendment) with the Children as equal beneficiaries. He also set up a Revocable Trust (which was silent as to the method of revocation) distributable equally to the Children. Dick deeded Parcel B to the Revocable Trust. Both Trusts distribute on Dick's death. Finally, he executed a Will with the Children as sole beneficiaries and Co-Personal Representatives. Each instrument said Dick intentionally excluded his wife Jane. Parcel C stayed in Dick's name only. All documents were legally executed and witnessed.

In early 2019, Dick wrote Attorney a letter and therein asked him to redraft his Will and Trusts to make Jane the sole beneficiary of each if she survived him. If Jane died first, the Children would be equal beneficiaries of the Will and both Trusts. Attorney met with Dick in his home. Dick signed the Amended Will and Amended Irrevocable Trust. Attorney was alone with Dick, so he advised he'd have his Secretary also sign as witness upon returning to his office. While meeting with Dick, Attorney discovered a drafting error in the Amended Revocable Trust. He promised to correct it and return later. Secretary signed the Amended Will and Amended Irrevocable Trust as the second witness as soon as Attorney returned to the office.

Dick died unexpectedly the next day before signing the Amended Revocable Trust. When Attorney met with the Children, they said they wanted Jane excluded from everything. Attorney told them about the Amended Will and Trusts. Attorney acknowledged Dick had not signed the Amended Revocable Trust, but Attorney felt Dick's intent was clear and the new terms should be honored. Secretary expressed her condolences to the Children, stating she was sorry she never met Dick face-to-face. Dick was mentally competent at all relevant times.

BASED SOLELY ON THE FACTS PROVIDED:

1. Explain the following:
 - a. Which instruments are binding?
 - b. Who are Dick's heirs?
 - c. For any heir whose share is reduced or eliminated, what are their legal options?
2. Which of Dick's assets will be subject to Indiana inheritance tax? Assume that the three Parcels of land are the only assets solely in Dick's name (or in one of his Trusts).
3. During the course of administration of the Estate and Trusts, each Parcel of land was sold for Fair Market Value (\$200K each, for a total of \$600K). For each Parcel, how much of the sales price is subject to federal capital gains tax, if any? Explain your answer.

***** IEE 2 STARTS HERE *****

1. A. Which instruments are binding?

The Parcel A irrevocable trust appears to be a valid, trust. There is a grantor, Beneficiaries at least one of whom isn't the grantor, and identified trust property. There doesn't seem to be a trustee mentioned, however, a trust won't fail for lack of a trustee (perhaps it was Dick until his death). The instrument by its face states it cannot be revoked. For all intents and purposes, Dick ceased being the "Owner" of parcel A on the date it was properly executed. When he died it passed by its terms to his children.

The Parcel B revocable trust- The facts don't indicate that Dick ever signed the amendment to the revocable parcel B trust? It says there was an error with it and he would sign it later. This does not seem to meet the execution requirements of a true trust. The court may find there is a constructive trust based on Dick's intent but it's not certain on these facts. (a constructive trust can be used to fulfill the terms of a failed trust if the circumstances support it).

The 2019 will was not properly executed. Two disinterested parties need to witness and sign in the physical presence of the testator. Here it appears nobody witnessed it. Even if the secretary had signed it she was not present at the time of Dick's signing. Dick died the next day without properly executing the will. Therefore the will is void. The original will stands.

1 B Dick's heirs (and beneficiaries) are his children. His wife would be an heir apparent but she was disinherited.

1 c. It's very difficult to effectively disinherit one's spouse in Indiana. And Dick and Jane were never actually divorced they simply lived separate and apart for five years, and it's unclear if they even had a legal separation as a separation needs to be renewed every year. Jane can obviously contest the will, or she is also entitled to a spousal allowance of \$25,000 AND can elect to take her "Spousal Election" if she requests it within 10 days of opening probate. Under that scenario, she will get what she would have gotten if Dick had died intestate, namely 1/2 of the assets not otherwise properly disposed of by trust. (with his children getting the other half). Here the only item not otherwise disposed of by trust would be Parcel C and MAYBE the Parcel B discussed above. Thus Jane is entitled to Half C's value (\$100,000) plus her allowance (\$25,000).

2. Indiana disposed of estate tax several years ago? At the federal level Estates up to \$10 million in value are exempt from the Estate tax, and Dick's estate doesn't come near that.

3. The children would take Parcel A at Dick's cost as it is an inter vivos gift under a irrevocable trust, and a gift receiver takes at the giver's cost. So they would pay along term capital gain on 15% on \$150,000 (200-50K).

The heirs would take Parcel B and Parcel C which were transferred via a testamentary trust and will respectively at a stepped up value determined by their value either at "The date of Dick's death or six months thereafter". Likely they will pay little or no Capital gains tax on these transfers as they have already been sold (they were valued at 200K each on the date of Dick's death and sold for 200K each. That's a wash by my math- No capital gains realized).

***** IEE 2 ENDS HERE *****

INDIANA ESSAY EXAMINATION
QUESTION 3
February 2020

In Indiana, it is illegal to possess marijuana in any form. Possession of less than 30 grams is a misdemeanor offense and more than 30 grams is a felony. Two states that border Indiana, Michigan and Illinois, both recently passed statutes legalizing possession and use of marijuana. Those states allow adult consumers aged 21 or over to buy marijuana for recreational use from licensed sellers. Even if purchased legally in Illinois or Michigan, marijuana cannot be brought into Indiana.

Law enforcement officials in Indiana recently created a task force to address the potential problem of marijuana being unlawfully brought into the state from Michigan and Illinois. The task force identified six major highways linking Illinois to Indiana and five major highways linking Michigan to Indiana. In anticipation of an increase in illegal marijuana entering Indiana, the task force recommended an initiative that mirrors the sobriety checkpoints used to curtail drunk driving. Under the proposed initiative, law enforcement officials would stop every third vehicle on certain public roadways to investigate whether the driver possesses marijuana. In order to assure fairness in the execution of this initiative, the task force recommended roadblock locations be randomly distributed among the eleven major highways the task force identified.

Putting aside the issue of whether Indiana should or should not legalize marijuana, discuss and analyze potential legal challenges to this proposed initiative based on the Indiana Constitution.

***** IEE 3 STARTS HERE *****

Indiana's Constitutional requirements for a proper search and seizure differ from the U.S. Constitutional requirements. While the federal analysis includes a consideration of the expectation of privacy of an individual in the location being searched, Indiana simply requires a consideration of the "reasonableness" of the search which becomes a balancing test. Typically, the balancing test for reasonableness under Indiana's Constitution includes an analysis of whether the police have a clear, articulable suspicion of illegal activity, the degree of intrusiveness of the search, and the interests of the police in conducting the search.

Historically, this has allowed for searches and seizures to be conducted by the police in a reasonable manner. There are a few specific instances of search and seizure methods that are subject to more scrutiny when assessing reasonableness in Indiana. First, the searching or collecting of garbage which has been considered reasonable if the garbage is placed on the curb and collected in a manner similar to that of a garbage man. Similarly, the Indiana Supreme Court has held that it is constitutional for a public school educator to require random drug tests of students who participate in sports and extracurricular activities and drive themselves to school. There is a similar reasonableness balance for the search of public school students that includes an analysis of the degree of intrusion and the level of necessity for stopping illegal activity balanced with a clear degree of suspicion based on the totality of the circumstances.

The third specific circumstance in which there is a different consideration of the reasonableness of a search is for a police established sobriety checkpoint. Historically, a sobriety checkpoint must meet certain factors, which include, (i) authorized by proper leadership within the police department, (ii) neutral basis for selecting the cars chosen for search, and (iii) the degree of necessity for the checkpoint. In the case of this proposed initiative for a task force to investigate the possession of marijuana using a police checkpoint similar to a sobriety checkpoint, there might be a few issues that arise regarding the reasonableness of the stop and search.

First, clearly the checkpoint established will have been authorized by the proper governing bodies, this will not seem to be an issue. Second, it has been previously ruled that the stopping of every third vehicle on certain public roadways would be considered a "neutral" process for selecting which vehicle to stop at the checkpoint. Also, in order to assure fairness in the execution of the initiative, the task force would be randomly distributing locations for the roadblock.

Third, the degree of necessity of the checkpoint would also likely be satisfied as there is a reasonable state interest for deterring illegal marijuana from entering Indiana and the checkpoint is a rational basis for providing this. However, it could be arguable that the purpose of the sobriety checkpoint is significantly different than what this task force intends to do. A sobriety checkpoint is put in place to deter drivers from drinking and driving or operating a vehicle while intoxicated which puts other drivers on our highways at a risk of being harmed by the drunk driver. Many deaths have occurred from drunk drivers causing accidents and this is a legitimate state interest to deter the death or serious injury of drivers on our highways. However, the roadblock proposed in this initiative is simply to search drivers and vehicles for the possession of an illegal substance, marijuana. The purpose of this stop and search is not to determine whether drivers are putting others in the general populous at harm, but simply to prevent the increase of marijuana entering the state. If considered in the totality of circumstances, the purpose or necessity for this checkpoint doesn't seem to balance against the degree of intrusiveness of the search.

Another issue that might arise outside of the factors listed above is that, historically, Indiana's constitutional requirement for reasonableness has prohibited the warrantless search of a vehicle that is surrounded by police officers. If the roadblock is fully staffed with multiple police officers and only one car at a time is pulled to be searched, there may be some limitations required. Similarly, in general, there might be issues that arise with the searching of the vehicle or the driver of the vehicle without additional suspicion. With a sobriety checkpoint, the police are typically requiring the individuals stopped to take a sobriety test to ensure they are not driving under the influence. In this case, this roadblock or checkpoint would actually be allowing the police to search the vehicles or the drivers of the vehicles for marijuana without any additional probable cause.

***** IEE 3 ENDS HERE *****

INDIANA ESSAY EXAMINATION
QUESTION 4
February 2020

Nancy and Mike meet in college and marry the summer after they graduate. Nancy gets pregnant right away, and the couple has a baby girl.

Several years pass. Nancy and Mike grow apart. Nancy is diagnosed with depression and is hospitalized for several weeks.

After leaving the hospital, Nancy begins an extramarital affair with a co-worker named Fred. Nancy terminates her relationship with Fred after a few months when she discovers Fred uses illegal drugs. Mike does not find out about the affair.

Shortly after her affair ends, Nancy discovers she is pregnant. Nancy works hard to repair her marriage. She succeeds at the task, and her affair remains a secret.

Fred learns of Nancy's pregnancy. He believes he is the father of the baby. Nancy gives birth to Alex, a healthy baby boy. Nancy rejects Fred's attempts to obtain information about the child, claiming Mike is Alex's biological father. She tells Fred he needs to back off.

Fred continues to believe he is Alex's biological father. Several weeks after Alex's first birthday, Fred decides to take action to preserve his rights.

1. What must Fred do to establish paternity of Alex?
2. Identify two circumstances in which a man is presumed to be a child's father.
3. Assuming Fred establishes paternity of Alex, what financial obligations will the Court order Fred to pay?
4. Assuming Fred establishes paternity of Alex, what steps, if any, can Nancy take to restrict his parenting time?

***** IEE 4 STARTS HERE *****

1)

Under Indiana law, a child born to a married woman is presumed to be the child of her spouse. Any party seeking to challenge such a presumption must show by clear and convincing evidence that the child is not the marital child of the woman's spouse. Under Indiana law, a third party may challenge paternity by filing an action within 2 years of the child's birth. Therefore, Fred should file an action within a year since the child has just turned 1 year old. Fred may also file with the putative father registry to receive any notices regarding the child. Fred may seek to have a biological test conducted to determine the probability that he is the father.

In Fred files an action to challenge paternity, the matter may proceed to trial. In an action to determine paternity, various evidence may be admitted at trial. For example, the parties may present the child to be compared to the alleged father, statements from deceased family members regarding paternity may be admitted, biological tests may be admitted, evidence regarding ability to have children or instances of sexual conduct, and admissions of the parties regarding paternity.

2)

There are several circumstances where a man is presumed to be a child's father. First, if the mother and father marry within 300 days of the child's birth. Second, if the mother and father attempt to be married, but an impediment to the marriage existed which voided the marriage, and the child was born within 300 days of the ceremony. Third, if a biological test indicates with 99% probability that the man is the child's father. Since Fred never attempted or in fact married Nancy, he must obtain a biological test in order to be presumed to be the child's father. Until then, Mike, as the husband of Nancy, is presumed to be the child's father.

3)

If Fred establishes paternity over Alex, Fred will be ordered to pay 50% of Nancy's hospital and birth expenses related to Alex. Also, Fred may be ordered to pay child support depending on who has custody of the child. Child support is determined based upon a child support worksheet which takes into account both parent's income and obligations and allocates an amount that each parent is responsible for paying. The court has little discretion in deviating from the child support guidelines. Child support is generally not modifiable until 1 year after the order. Child support is also not generally modifiable except in situations where there is a substantial and continuing change in circumstances affecting the needs of the child or the ability of the payor to comply. Child support may also be modified where the child support worksheet varies by 20% from the initial order. The parent obligated to provide for the child cannot intentionally cause his income to decrease to avoid paying support for the child. Child support payments will be automatically deducted by the payor's employer and forwarded to the county clerk's office, unless the parties agree otherwise and the court finds good cause. Child support is not deductible by the payor and is not income to the payee. Therefore, the amount paid in child support for Alex will not be deductible for Fred and will not be income to Nancy, if that is how the custody and child support arrangement results.

4)

Parents have a fundamental right to the care, custody, and control of their children. However, parents are not always awarded joint physical custody due to numerous factors. In Indiana, a parent who is not awarded physical custody of a child is entitled to parenting time (also known as visitation). Generally, a parent is entitled to parenting time as long as it would not significantly endanger the physical or psychological health of the child. However, even when there is an indication that there may be a risk to the child, Indiana courts are hesitant to fully eliminate parenting time. The courts may order different arrangements. For example, the court may order the parent with parenting time to cease and desist certain conduct, the court may allow the parent to visit with the child in the presence of a third party (like a social worker), or the court may allow parenting time only in the home of the custodial parent and in her presence. Overall, a full restriction is rare.

In this scenario, Nancy may file an order in the court seeking to restrict parenting time. Nancy may argue that Fred uses illegal drugs, so he is a danger to the child. The facts are not clear to the extent of his drug use and the impact on his life, so more information will be needed. Since the courts are hesitant to restrict parenting time completely, this drug use would likely have to be fairly significant. Furthermore, even if the drug use caused a risk to the child, the court may order parenting time in accordance with the three alternatives to a complete restriction. Nancy will have the burden of proving the risk of the danger to the child by clear and convincing evidence.

***** IEE 4 ENDS HERE *****

INDIANA ESSAY EXAMINATION
QUESTION 5
February 2020

Siblings Les and Roger were the only two shareholders in a closely held corporation that owns a chain of hotels in Indiana. They each owned 500 of the 1,000 outstanding shares. Roger and Les took modest salaries by industry standards (\$100,000/year). However, they enjoyed substantial shareholder dividends because it was standard company practice to declare annual dividends in the amount of the company's net profits for the prior year.

When Roger died in 2016, his 500 shares passed in equal amounts to his two adult children, Iris and Jay. Iris lived in Indiana her entire life, worked in and managed several hotel properties, and had a close relationship with both Roger and Les. Jay had been estranged from the family since his late teen years.

After Roger died, Jay decided to return to Indiana. Happy to see his nephew settle down, Les hired Jay to manage one of the smaller hotels. At the next annual meeting, the shareholders unanimously elected Les as President and Iris as Vice President and Corporate Secretary.

Jay often conflicted with Les and Iris. He performed poorly as a manager. Complaints at the property he managed soared, both from guests and from those working under Jay. After several warnings and attempts to counsel Jay, Les fired him. Conditions at the hotel improved.

The following year, Les and Iris increased their salaries to \$150,000 a year and, despite net profits of \$500,000, decided not to declare any dividends based on a proposed expansion. The next year, Les and Iris again voted not to declare any dividends and stated they expected to continue reinvesting in the business. Although the business expanded, Jay accused Les and Iris of getting rich off the corporation while he got nothing.

Following the vote, Iris and Les approached Jay and stated that if he needed cash they would buy his 250 shares for a price of \$500/share. Jay stated he would not sell until he examined all of the corporation's books and records. Les and Iris have refused Jay access to the records.

Assume all corporate formalities were followed:

1. Does Jay have a right to examine the corporation's records? Explain why or why not. If Jay has such a right, identify any steps Jay must take to obtain the records *other than* filing a lawsuit.
2. Jay wants to sue his fellow shareholder Les for breaching his shareholder duties by firing him. Explain whether or not Jay has a viable claim against Les.
3. If Jay brings a suit to compel the corporation to pay a dividend, does Jay first have to make a demand on the corporation? Explain why or why not.
4. Assuming Jay brings a procedurally proper suit to compel the payment of a dividend, is Jay likely to be successful? Explain why or why not.

***** IEE 5 STARTS HERE *****

This is a business corporations questions, specifically dealing with an Indiana closely-held corporation.

1. Does Jay have a right to examine the corporation's records?

If Jay wishes to examine the corporation's books to value his shares, then that is a sufficiently valid reason and Les and Iris cannot prohibit Jay from examining the records. Generally speaking, the test for examining whether a shareholder is entitled to examine corporate records considers four broad factors: whether the request is made in good faith, for a proper purpose, is reasonably calculated, and the information sought is tailored to request.

- Good Faith: If Jay wants to examine the books, then that is a legitimate purpose with which Les and Jay should comply. Jay clearly does not like Les, and while that would be insufficient a reason to allow Jay to examine the records (for instance, to look for leverage against Les), Jay should be allowed if his goals is to identify the value of his shares.
- Proper Purpose: As noted above, examining records for the purpose of valuing shares is almost always a proper purpose.
- Reasonably Calculated: Jay requested "all of the corporation's books and records." At this stage in the dispute, it is hard to say if such a request is reasonably calculated to actually determine the value of his shares. It is probably overly broad, but Les and Iris should allow him to review those records actually pertinent to determining the value of the company.
- Tailored to the information: As with the reasonably calculated analysis, asking to see all the books and records probably exceeds the information he reasonably needs.

Nevertheless, Jay should be entitled to view the corporate books and records related to his desire to value his shares, a valid and proper purpose. Generally, such a request should be made in writing. As an aside, the corporation's bylaws or Articles of Incorporation may well have altered the reasons from the Indiana Business Corporation Law for why a shareholder can view record, but whether that is the case is not clear from the facts.

2. Can Jay sue Les for breaching his fiduciary duties by firing him?

As a general proposition, shareholders ought to operate fairly, openly, and honestly with one another. They also owe specific duties such as the duties of care, loyalty, and fidelity to the corporate documents. Jay seeking to sue Les for firing him implicates the duty of care and the corresponding business judgment rule. The duty of loyalty is not at issue here because the situation does not involve a scenario where the corporate opportunity doctrine would come into effect.

The business judgment rule provides a great deal of cover for those in a corporation exercising governing functions. In effect, it provides cover, even for poor decision-making.

Jay would argue that the fact that he was fired and dividends were not paid out show that Les violated the duty of care. However, the business judgment rule requires something akin to gross negligence, and so long as there appears to be a valid business reason courts will not second-guess the decision.

Les will counter that Jay has never taken an interest in the business, and in any event he performed poorly as a manager as complaints from both guests and staff "soared." Les gave Jay several chances and yet Jay did not adjust his actions. And, importantly, after Les fired Jay, "[c]onditions at the hotel improved." Moreover, deciding not to pay dividends in anticipation of an expansion is a legitimate business reason, and one that courts will probably not second guess.

Jay will likely not succeed in suing Les for breach of the duty of care.

3. Does Jay have to first make a demand on the corporation?

In a situation like this, the usual process for bringing a suit as a shareholder is through a derivative action, which does in fact involve making a demand on the corporation. Under such circumstances, Jay would make a demand on the corporation (in effect Les and Iris), and the corporation would examine the demand/claim to determine whether there is any validity and what action to take. The committee established to do this has the ability to decide not to allow the suit to come forward, which, given the board composition, is exactly what would occur here.

To get around this problem, Jay could file a direct, rather than a derivative action. In Barth v. Barth, the Indiana Supreme Court approved, in some circumstances, of bringing a suit in a party's own name (rather than that of the corporation, as would occur in a derivative suit, since the party is alleging harm to the corporation). Instead of hotel corp v. Les, this suit would instead be Jay v. Les. Of course, that itself has its own hoops through which Jay would need to jump, but given that he is a minority shareholder in a closely held corporation where any suit would go nowhere and the other two shareholders appears to be in lock-step, a court could approve a lawsuit against the corporation as a direct action.

4. Is Jay likely to be successful?

Jay, in effect, is seeking to break the protection of the business judgment rule by arguing that it is imprudent to not declare dividends. That argument is likely unavailing as discussed above. However, Jay is also due certain minority rights, and that includes not freezing him out--Les and Iris cannot punish him or try to force him out, absent a legitimate business reason (which they might have, at least so far as his performance thus far goes). Jay is a shareholder, but to succeed he would need to reframe the argument from one that would certainly lead to invoking the business judgment rule to instead showing that the decision not to declare dividends is instead a way to freeze out a dissenting voice.

If he can show that the decision to not declare dividends is intended to force Jay to "sell-out," then Jay has a reasonable chance of success. Jay can point to the increased officer salaries (50%) as evidence that if Les and Iris really did intend to reinvest in the company, they would not have done so. And, he can argue that the company is retaining profits to offer him a buyout. Of course, Les and Iris' anticipated response is that why shouldn't we increase our salaries--the company is thriving because of us?

In short, Jay will probably succeed, but only if he successfully asserts that Iris and Les are attempting to undermine his minority rights by essentially forcing him out a less than fair market value for his shares.

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INDIANA ESSAY EXAMINATION
QUESTION 6
February 2020

1. Landlord and Tenants entered into a one-year written lease for a dwelling unit in Indiana. Rent was payable in advance and due on the first of the month. Tenants were awakened by two bats flying in their bedroom during the first week of occupancy. They notified Landlord who contracted with a reputable exterminator to remove the bats promptly and to take appropriate preventative measures. Two weeks later, there was another bat in the bedroom at night. Again, Landlord engaged an exterminator to remove the bat promptly. One month later, Tenants were again awakened by a bat in the bedroom. Tenants notified Landlord they were moving out based upon their experience with the bats. Tenants vacated the premises. Landlord sued Tenants for breach of the lease and sought the balance of rent due.

What arguments should Landlord raise in support of his position? What arguments should Tenants raise in support of their position? Who is likely to prevail? Explain.

2. Tenant entered into a written one-year lease with Landlord for a house in an Indiana City. The lease obligated Tenant to take care of the yard. Tenant failed to mow the lawn. The City cited both Landlord and Tenant for violating the local weed ordinance. Landlord provided written notice to Tenant reminding Tenant of Tenant's obligations under the lease, directing Tenant to mow the lawn, and explaining that continued failure to do so would result in Tenant's eviction. Tenant mowed the lawn once but then failed to do so again for the next eight weeks. After receiving another citation from the City, Landlord went to the house after Tenant left for work, mowed the lawn, had the locks changed on the house, and delivered notice to Tenant at his place of employment that he had been evicted.

a. Were Landlord's actions appropriate under Indiana law? Explain.

b. Are there any legal remedies available for Tenant? If so, describe the process obtaining any such remedies would entail?

3. Landlord and Tenants entered into a one-year residential lease for an Indiana property on December 1, 2018. The lease did not contain any language regarding renewal or extension. After the expiration of the year, Tenants continued to occupy the premises. Tenants continued to make timely payments and met all obligations under the original lease. On February 18, 2020, Landlord informed Tenants in writing that they must vacate the premises in ten days.

Do Tenants have to move out by February 28, 2020? Explain.

***** IEE 6 STARTS HERE *****

1. Under Indiana law, a Landlord must maintain the premises in a way that complies with local housing codes and does not violate the warranty of habitability. The most important information for this situation is what terms were in the lease as that is the controlling document. Although the landlord may not contract around his duties to maintain the premises in a way that complies with the warranty of habitability, he could place the cost of extermination on the tenant or require that the tenant provide notice to him within a certain amount of time of a problem occurring. He could also have put an acceleration clause in the lease that states if the tenant wrongfully vacates, the landlord may sue for the remaining rent due under the lease. As it stands based on the facts provided, the landlord did his best to respond to the problem with the bats. He promptly called an exterminator each time the tenants informed him of a bat problem. It is unlikely that the landlord would be faulted if the exterminator was simply bad at their job unless the landlord had reason to know that the exterminator was incompetent. In any event, the presence of bats in the dwelling will most likely be a violation of a local housing code, and therefore, be a breach of the warranty of habitability. Most courts will not find that the warranty of habitability is breached unless the tenants are substantially deprived of their use and enjoyment of the premises such as not having heat in the winter, no running water, having black mold in the house, or an insect infestation. The situation must be severe. In this case, it's likely that a court will find that bats flying into the dwelling unit on three separate occasions is a large enough problem to be a breach of the warranty of habitability. However, the landlord attempted to remedy the problem quickly and could argue that the breach was not substantial enough to warrant moving out of the dwelling.

Tenants could argue that they were constructively evicted because they promptly notified the landlord of the problem, the problem was not fixed, the bats were a substantial interference with their enjoyment of the premises, and they vacated the premises after the problem was not fixed. If this argument is successful, the tenants will not be responsible for the remaining rent due under the lease.

2. a. No, the landlord's actions were not appropriate under Indiana law. It is likely that the landlord had grounds to evict the tenant, but landlords are not empowered to engage in self-help when they determine that eviction is necessary. If a landlord wishes to evict a tenant who is currently in possession of the premises, the landlord must post written notice of intent to file an eviction in a conspicuous place on the dwelling or give the notice to the tenant 10 days before filing an eviction petition. The landlord **must** file an eviction petition with the court (usually small claims court) in the county in which the residence is found before the landlord may change the locks or otherwise physically prevent the tenant from coming onto the property. The landlord may NOT change the locks without a court order. In this case, the landlord changed the locks without a court order and provided notice to the tenant at his place of work. Neither of these actions comply with Indiana law.

b. The tenant should ask for a possession hearing. The hearing must be held within three days of the tenant's filing the petition, and the sole subject matter of the hearing will be who is entitled to possession of the premises. The tenant is also entitled to damages for the landlord's wrongful eviction and for giving him notice of eviction at work. As long as the rent is current, it is unlikely that a court will evict the tenant for failure to maintain the lawn. Instead, the court will likely order the tenant to comply with the terms of the lease regarding the yard. If the tenant still does not comply after this hearing, the landlord will likely be successful with an eviction petition.

3. The tenants likely have a periodic month-to-month tenancy since their previous written lease expired and the landlord continued to accept rent payments from them on a monthly basis. A periodic tenancy may arise by implication if the tenants hold over after the termination of a written lease, and the landlord continues to accept rent payments. If tenants wrongfully hold over and the landlord demands that they vacate the premises, the tenants have a tenancy at sufferance instead.

Although the tenants wrongfully held over after the automatic expiration of their written lease, the landlord waited to tell them to vacate the premises. Instead, the landlord continued to accept monthly rent payments from them for three months after the termination of the lease. For this reason, it is likely that a court will find that the current tenancy is a periodic month-to-month tenancy instead of a tenancy at sufferance. Under a periodic month-to-month tenancy, tenants are entitled to at least one month of notice before being forced to vacate the premises. The landlord cannot give notice halfway through a period and expect that the tenants comply with the request to vacate by the end of that period. If a landlord gives notice halfway through a period, the tenants will be given until the end of the next period to vacate.

***** IEE 6 ENDS HERE *****