

## Indiana Essay Question I

### Sample Answer

(Verbatim transcription of answer by an examinee)

July 2007

#### SAM'S RIGHTS AGAINST LON – NEGLIGENCE ACTION

Sam and Lon entered into a bailment when Lon agreed to keep Sam's car for repairs. As the bailee, Lon has a contractual obligation to return the bailed item to the bailor in the agreed-upon condition. A bailee is presumed liable to the bailor for damages when (1) the bailor delivers a good with the bailee (2) the bailor demands and has a right to the return of the good, and (3) the bailee does not return the good in the agreed-upon condition. The presumption is that the bailee cannot deliver the good because he was negligent.

Sam will be able to recover against Lon in negligence because Lon cannot rebut the presumption of negligence. Sam might have been able to recover without the presumption because a jury might find that Lon was negligent in how he secured the Camaro. Lon, as the bailee in a mutual benefit bailment, had a duty of ordinary care to maintain the Camaro. Not using a lock on the garage, not having an alarm system, not having lights, and having only chain-link with barbed wire may not have satisfied this duty.

Sam can recover the damages from Lon that would make Sam whole, as he was prior to the bailment. That amount would be the \$40,000 of Camaro parts and the \$1,000 stereo because Lon knew it was in the car. (If the fair market value of the car stereo was not \$1,000 on June 1, Sam will recover the fair market value of the stereo on June 1.

#### SAM'S RIGHTS AS TO ED – Replevin or conversion

Sam still has ownership of the stereo. Whoever obtained the stereo from Lon's garage gained possession of the stereo but could not have become the owner because he or she did not take possession by legitimate means. A person can only transfer title to property that he or she has. The stereo-taker had no title and could pass none. Even though Ed paid for the stereo, he does not own it against its true owner, Sam.

Therefore, Sam may bring an action in replevin to obtain the actual stereo or may bring a conversion action to obtain the value of the stereo. Sam will win despite Ed's lack of intent to purchase another's stereo because lack of intent or knowledge cannot be a defense.

Practically, I would advise Sam to try to recover from Lon first because Lon, as a merchant/business owner may

have insurance. Also, Sam may only recover damages for the stereo once, and he may prefer to recover them from Lon than from his friend, Ed.

## Indiana Essay Question II

### Sample Answer

(Verbatim transcription of answer by an examinee)

July 2007

Louise has consulted me regarding challenging her presumed-father's will and other dispositions. Additionally, tax issues have been raised, I will address each in turn as the circumstances and issues require it.

#### Validity of Dispositions

Initially it is important to note that any interested party may contest a will admitted to probate but must do so within three months. I will first discuss the issue of the will made by Thomas. Indiana does not recognize wills unless they follow the formalities for a valid will. The requirements for a valid will are, a testator who is of sound mind and over 18 (unless in the military in which case you can be younger) with the intent (present) to make a testamentary disposition (generally have to know what property you are giving away, the natural recipients of your bounty, etc.) it has to be signed by the testator and published and signed in or acknowledged in the presence of two; preferably disinterested (or they may lose any property devised to them) witnesses who must sign in presence of testator and each other. Here, there are several issues that can be raised. The first is whether Thomas was of sound bound. The facts state he was in extreme pain and was becoming delirious from the pain. Additionally there is an issue of whether the witnesses were competent. The only requirement for witness competency is whether they understand what they are doing. Although his friends did not read or write English, they may have realized what they were doing because of the grave nature of the situation. At this point I would advise Louise that we could contest the validity of the will in which case the rules of intestacy would apply. I would note however that \$1000.000 of personal property could be devised under these facts if it was admitted to probate even if he simply told of the devise to his two friends if they were able to write it because it would be in contemplation of death and he actually died.

#### Intestacy

Louise is entitled to nothing through intestacy (if will deemed invalid) until paternity is established. This must be done while father is alive or within 5 months of his death, she should institute a paternity hearing in Indiana (need personal jurisdiction) immediately. Hopefully Louise is 20 because the child can bring suit until that age and she cannot recover under intestacy without it (never signed paternity affidavit) assuming paternity is established, as the only surviving child of a spouseless descendent, she will get everything.

#### Included in Estate

The life insurance policy is a contract between Thomas and the company and it will be paid to the designated beneficiary per said contract. Louise will have no right to those assets. Additionally, Louise will not have to worry about her yearly gifts being advancements because there was no writing so specifying and she will take all under intestacy regardless. As for the trust, on the facts, it is not valid and the stock will be part of the estate. A trust requires a competent settler, competent trustee, identifiable beneficiaries, delivery of trust property (res) to trustee who holds legal title for the benefit of the beneficiaries and the trust has to have a legal purpose and be written and signed by settlor or settlor's agent. Here, the understanding of the broker and Thomas does not create a trust. For stock, the certificates would have to be delivered to the trustee and/or put in the name of the trust. The assets related to the stock will be part of the estate. Additionally it should be noted that if paternity is not established, Thomas' parents and siblings would take under intestacy dividing it among them based on number of takes but parents get at least  $\frac{1}{4}$ .

On the whole, Louise has good claims to make against the dispositions.

#### Tax Consequences

The federal gift tax and estate tax piggyback each other. Indiana has no gift tax. An estate need not make a federal

estate tax filing unless the estate is valued in excess of \$2M, which is obviously exceeded here. For the purposes of estate tax, the estate includes more than the probate estate! It will include trust monies if there are too many strings attached, it will include life insurance if payable to executor or if descendant retains incidents of ownership.

I think in this case the trust assets are in (because no valid trust) and the life insurance can be excluded. All of Thomas' other property will be included in his gross estate. \$1M lifetime exemption for gifts

#### Gift Tax

Each year you can give \$12,000 per person with no consequences (can do \$24,000 if married and split). Anything over that can be counted toward the \$1M lifetime exclusion, but if you use as gifts, can't take any as to estate. Charitable gifts are taxable if to qualified charity but no effective gift here. There is an exclusion for life insurance proceeds.

#### IN Inheritance Tax

Class A deduction of \$100,000. Class B is \$500 and Class C is \$100.00. His brother in law falls in C and can deduct \$100.00 Will be taxed on all tangible property in Indiana and all intangible. If Louise inherits she is entitled to the Class A deduction of \$100,000.00 as a lineal descendant.

It is important to remember that for the purpose of estate tax, the gross estate is larger than the probate assets, anything which descendent owned at death or retained incidents of ownership to all going to be included in the gross estate. Also, for gift tax, the gift is taxable to the giver, not the receiver. Finally for the purpose of gift tax a gift is anything given for less than full value and encompasses more than gift definition for income tax purposes (given out of detached and disinterested generosity). Finally, some additional research needs to be done regarding Louise's use of the \$50,000.00 give per year, if she is declared his daughter, amounts used for education and medical expenses would not be included as gift amounts.

## Indiana Essay Question III

### Sample Answer

(Verbatim transcription of answer by an examinee)

July 2007

1. Assuming the Vice President's affidavit is based on personal knowledge, the court should grant company's motion.

Summary judgment is appropriate where the pleadings and designated evidence established there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Initially, the moving party is required to designate evidence (deposition transcripts, affidavits, interrogatories, etc.) demonstrating there is no genuine issue of material fact. Thereafter, the non-moving party may designate evidence and state the issues over which genuine issues of material remain. If, after considering this evidence, the court concludes there is no genuine issue of material fact, summary judgment will be granted.

Here Company designated evidence that its employees was not driving the truck. Plaintiff attempted to counter this evidence—and thereby create a genuine issue of material fact—by designating evidence that a Company employee was driving the car. The problem, however, is that Plaintiff's evidence is not based on personal knowledge. Specifically, the affidavit recited hearsay information Plaintiff received from two eye witnesses about the driver's identity. This is not personal knowledge and the court will not consider it when it decides the motion. (obviously, Plaintiff should have obtained affidavits from the eyewitnesses, which would have been based on personal knowledge and probably would have precluded summary judgment.)

The Vice President's affidavit appears to be based on personal knowledge and establishes that the truck was stolen and therefore not being driven by a Company employee. Thus, assuming the Vice President's affidavit is based on personal knowledge, this is only evidence the court can consider regarding the driver's identity in deciding the motion. Because it establishes a Company employee was not driving the car, there is not genuine issue of material fact on this (dispositive) issue and Company's motion will be granted. (If, on the other hand, the Vice President's affidavit is stricken for lack of personal knowledge, summary judgment would be denied.)

B. This new evidence obviously creates a genuine issue of material fact regarding the driver's identity. The problem, however, is that the Court already has entered judgment on this issue. At this point, the options available are to either file a motion to correct error or a motion to reconsider.

A motion to correct error probably is mandatory in this situation. Typically, a motion to correct error is not required for purposes of preserving an appeal unless there is newly discovered evidence or the claimed error is the excessiveness or inadequacy of a jury verdict. The motion to correct error thus serves an efficient purpose; specifically, it allows error correction immediately at the trial level without going through the time and expense of correcting the same error at the appellate level. A party has 30 days from the date the Court issued its order (or judgment) to file a motion to correct error. If the motion is not ruled on within 45 days, it is deemed denied. As mentioned previously, the affidavit here is new evidence and therefore makes the motion to correct error mandatory. I would therefore file the motion and attach the affidavit.

Another option for relief would be to file a motion to reconsider. This motion, however, typically is only appropriate where the alleged error is a clerical one (e.g. misspelling, etc.) or the time for filing a motion to correct error has passed. In this case, only three days have passed since the court's entry of summary judgment, and therefore a motion to correct error is the proper course.

## Indiana Essay Question IV

### Sample Answer

(Verbatim transcription of answer by an examinee)

July 2007

#### (1) Sue's Rights--

##### a. Does a corporation exist?

A Corporation can be formed in Indiana under the Indiana Business Corporation Law. Assuming that Articles of Incorporation were filed with the Secretary of State stating all required information (named with "Inc.", names & addresses of incorporators, number of shares, types of stock, etc.) a corporation could be formed.

#### (B) Officer's duties to corporation & shareholders.

An officer/director owes a fiduciary duty to the corporation and its shareholders. They owe a duty of reasonable care, under the business judgment Rule to act in good faith as a reasonably prudent person under the circumstances and in the best interests of the company. It doesn't seem that the CFO could be liable for this if he didn't know John's ("J") wife was going to use it exclusively. But J can be liable for this because this large purchase wasn't in best interests of the Corporation.

A duty of loyalty is also owed by directors/officers. This includes no interested director transactions, usurping corporate opportunities, or competing ventures. This could be a breach of the interested director transaction since the money & computer were pretty much for J and his wife alone. The Corporation wasn't disclosed of this, as required (allowed if fair and consent, which wasn't done here).

Therefore it seems that J has breached his duty of care & loyalty to the corporation and can be personally liable for such.

##### b. What can Sue do?

Sue, as a shareholder, can file a derivative suit against John alleging the above breach of duty. A derivative suit is a suit by a shareholder in the name of the corporation against one who has wronged the Corporation. Sue can do such if: (1) She's an adequate representative holding shares at the time of action, (2) has a verified complaint, and (3) makes a demand noting such to the corporation.

Upon Sue's demand the corporation will appoint three or more to a committee to decide if the suit should be brought. A decision not to sue is valid against such claims as long as those were disinterested & good faith. Sue should have no problem here & if suit dismissed can claim the above. Indiana also allows direct shareholder suits against a closed corporation (we're not sure what this corporation is) as long as it won't burden the Corporation with multiple suits, won't prejudice creditors & fair to shareholders.

Should Sue win the derivative suit (or direct suit) that money will go to benefit the corporation only. Though it is possible to obtain attorneys' fees if she wins.

#### (2) Computer system—secured transactions & security interests are dealt with under Article 9 of the UCC.

##### c. Who has priority?

(i) Bank has an unperfected secured interest

Bank has a purchase money mortgage interest (PMSI) in the computer. A PMSI is created when the amount loaned is used to purchase collateral. This is a PMSI in non-inventory since Corporation doesn't sell computers and can be perfected by filing within 20 days a financing statement. A financing statement must include a debtor & creditor's names & description of the collateral; it may need the addresses of both debtor and creditor along with the type of organization the debtor is. Here, Bank recorded such financing statement stating a description of the collateral (assuming specific enough) with the Secretary of State in IN; where financing statements must be filed. Assuming this filing was done within 20 days, Bank had a perfected PMSI (secured) in the computer.

But a financing statement is only good for five years, so on July 1, 2006 Bank should've updated such to keep their perfected status. Since they did not, their perfection is gone and they are just an unperfected secured party.

(ii.) Charlie's has a statutory lien (assuming such) and is perfected.

Charlie's did \$100,000 work to repair the computer a month before Corporation defaulted. A statutory lien arises in some circumstances where repair work is done such as an auto-mechanic. Charlie's did this work on computer on credit so is unpaid. Should a statute give Charlie's this position as statutory lien claimant, he will win in priority to all other creditors.

(iii) Should Charlie's not have a statutory lien, they will have a status as an unsecured party.

If no statute gives Charlie's a statutory lien, they will have an unsecured interest and basically be a judgment lienholder. To prevail against Bank Charlie's would have to execute a levy to the sheriff to take the computer before Bank perfects. As of now though Bank has priority against Charlie's.

#### d. How can they enforce?

For Bank to prevail, they must either file a new financing statement as before, or because they are in priority they can repossess the computer, as long as no breach of the peace occurs. Once they have repossessed it they can retain it in partial or full balance of debt or resale, notifying all and using commercially reasonable sale.

For Charlie's to enforce they must serve sheriff with a levy prior to Bank taking action above. An unsecured creditor can beat a secured creditor by such being served and the sheriff levying. The computer would then be sold at a sheriff's sale & Charlie's could obtain \$100,000 first (since priority) and Bank getting rest of the money.



## Indiana Essay Question V

### Sample Answer

(Verbatim transcription of answer by an examinee)

July 2007

When interpreting the IN constitution, the intent should be examined with the text, it should be examined with the test, it should be illuminated by history, and case precedent, which has analyzed it. There are several successful challenges to this bill.

#### Germaneness

The IN constitution requires laws in IN to be germane. This means, laws should not cover more than 1 topic unless those topics are closely related. This bill violates the prohibition on germaneness because it deals with 2 entirely different topics: financing education for college students to prevent brain drain, and requiring persons attending universities or colleges in the state to submit to psychological evaluations as part of their college records. While both topics involve college students, I am not sure they are sufficient to pass the germaneness requirement, even though Courts are highly favorable to legislators and will uphold a rational law.

#### Special Laws

The IN constitution prohibits special legislation which are lose specifically directed at a population of persons. Generally special laws are utilized with population statistics to target specific counties. To determine whether it is Special legislation, the court will examine whether a general law would have been used and if so, whether the law is still being specifically applied. Again, Courts afford great deference to legislators so long as they can show reasonableness.

This bill probably does not qualify as special legislation, because it does not directly target a specific population county. However, it does expressly target students attending IN colleges or universities who live in the State of Indiana. It also targets college students in Indiana by requiring only them to get a psychological evaluation (not even faculty, support staff, etc). If it is found to be a special law, courts may overturn it if they do not find it to be rational.

#### Equal Privileges and Immunities

IN Equal Privileges and Immunities Clause is similar to the US Constitution Equal Protection Clause in its result; however, the analysis is different. Under the Equal Privileges Clause, Courts will examine whether classes of persons are being treated differently based upon inherent characteristics, and if so, whether persons in the class similarly situated are being treated differently. If so, the statute will violate the Equal Privileges and Immunities Clause.

I believe the current bill violates this clause as to both parts. First, requiring 5% from IN parents is treated persons living in IN with college students attending in IN differently from persons not living in IN and having college students in IN or alternatively persons who live in IN but don't have students attending IN colleges. Further, the persons within the group are being treated differently, because those who cannot pay 5% have their wages automatically garnished.

Secondly, college students in IN are being treated differently than all other students attending college elsewhere by being compelled to take and submit a psychological evaluation prior to attending. However, this is not discriminatory among the class, as all persons are subject to the evaluation.

Thus, this bill would at least violate the Equal Privileges & Immunities Clause with respect to the first part, and possibly will respect both parts by denying students & their parents in IN Equal privileges and immunities.

### **Due Course of Law**

**The Due Course of Law Provision in the IN Constitution is similar in analysis and effect to the Due Process of Law Provision in the Federal Constitution. The Due Course of Law Provision protects IN persons from violations or deprivations to their liberty, property, or reputation without due process of law. I believe this represents the strongest argument why the bill is unconstitutional.**

**The bill violates a property interest by requiring parents to pay not less than 5% of their yearly AGI to the State towards education. This is surely property, because it is income such persons have often worked to obtain and income they rely on to support their families. Further there is ABSOLUTELY NO DUE PROCESS before or after this property is garnished by the State. Thus, the bill is surely invalid as to the 5% garnishment.**

**Further, requiring all students to submit a psychological evaluation may implicate their reputation if they should have mental illness. Again, the bill creates no process for such persons to protest the requirement, but instead requires they all submit.**

**Thus, the bill surely violates the Due Course of Law Protection in the IN Constitution.**

### **Right to Education**

**IN guarantees all persons a right to public education, which has been determined to be the right to qualified tuition.**

**Although this provision has generally only applied to kids from kindergarten to 12th grade, the Court could find public education for college is guaranteed, and thus require no more tuition than students are already paying, and no 5% from parents.**

### **Taking-Demand of Services**

Finally, this bill may be found to be a taking via the State making a demand for services, which requires compensation under the IN constitution. A demand for services exists when: there is something traditional in the role of government and the government's actions in demanding payment makes it appear as a taking. If a taking is present, the State will have to pay before the services are taken and extrinsic benefits after.

I am not certain the court would find a demand for services taking here, but they could based on government providing public college education within the state, and now requiring 5% from parents. If so, this would require the government to pay just compensation based upon an extrinsic benefits analysis.

Overall, I think this bill can be successfully challenged based on IN constitutional provisions and overturned.

**Indiana Essay Question VI**  
**Sample Answer**  
**(Verbatim transcription of answer by an examinee)**  
**July 2007**

1) Who should be granted custody?

When determining custody following dissolution of marriage, the court always attempts to act in the best interests of the child. There is an issue of both legal custody and physical custody.

When determining whether there should be joint legal custody, the court considers: 1) the ability and willingness of the parents to cooperate; 2) the environment in each home; 3) the child's relationship with each parent; 4) the close proximity of the parents; 5) the child's wishes (especially if 14 or older); and 6) whether each parent is fit. Here, the parents have been married for twenty years, and by all indication are cooperative with one another when it comes to their children. The children are both close to their mother, but the younger boy would also like to spend time with his father; the daughter is nineteen and living at school, rather than home. The parents are not currently in close proximity to one another, but due to Husband's career as a naval officer, this has been the case throughout their marriage. Both parents generally seem fit, although Husband broke wife's wrist several years ago, and Wife is currently on anti-depressants following an accident that left her with excruciating physical pain. Based on these factors, it seems suitable for both parents to share legal custody.

As to physical custody, the court considers eight factors: 1) the age and sex of each child; 2) the wishes of the parents; 3) the wishes of the children, especially if 14 or older; 4) the interrelationship between the children and parents, siblings and anyone else having a significant impact on their lives; 5) children's adjustment to home, school, community; 6) the physical and mental health of all parties involved; 7) evidence of domestic violence in either home; and 8) evidence of a defacto custodian.

Here, the children are 14 and 19, and one is away at college. The 14 year old boy would like to spend more time with his father, but has always wanted this, as his father has physically lived outside the marriage home for six of the last twenty years due to his career. However, both children are also very close with their mother. Based on the information we have, both siblings seem to get along with their parents and each other, and we have no information regarding the parent's wishes – although one could presume both are happy with the arrangement they've frequently had. Because the 19 year old daughter is away at college, only the 14 year old son's adjustment to a new environment is at issue. Both parents moved him to Indiana last year, and if the Wife retains custody, it seems that she would like to return to St. Louis where he has already lived. Living with his father, on the other hand, requires adjustment to a new state, as well as possible frequent relocation. The mother has physical health problems and must take anti-depressants as a result. And although the Husband had broken Wife's wrist many years ago, there has been no evidence of domestic violence since.

Based on the totality of the circumstances, it would seem to be best for Wife to seek joint legal custody, but seek to be the custodial parent as for as physical custody goes. Although she has

had mental and physical health problems, overall she has provided a stable home for her children, where they have a close relationship. The Husband on the other hand, may relocate many times, creating the need for his son to continually adjust to a new home and community. In addition, the presence of this other woman may not be in the child's best interest – this has yet to be seen.

## 2) Child support for the children

Wife should seek child support for both her son and daughter while the dissolution is in process and permanently if she is granted full physical custody. Children are entitled to support until they turn age 21 or are otherwise emancipated earlier through entrance into the military, marriage, leaving the care and control of their parents, or upon turning 18, not attending school for 4 months and supporting or being able to support themselves through employment. Based on this standard, neither child is currently emancipated.

In addition, Wife can request Post-Secondary Educational support for their 19-year-old daughter. If requested, the court is likely to grant it in at least some amount. However, the court may also require the child to pay some college expenses, and the child support order may be lessened if she is living on campus so as to avoid double-payment of expenses.

## 3) Can Wife move back to St. Louis?

A move by either parent requires notice to the other, no matter how short or far the distance. The court must also consider whether the move is in the best interest of the child before a custodial parent can make that move.

In this case, since the family had lived in St. Louis the entire lives of the children and there is extensive extended family there, the court would likely find that this move is good for the children – to be back “home.”

In addition, Wife may want to consider jurisdictional issues. If dissolution has not yet been filed, she may be able to move back to St. Louis now with her son and go through divorce proceedings in a Missouri court instead.

## INDIANA ESSAY

### QUESTION I

July 2007

On June 1, 2007, Sam took his 1975 Chevrolet Camaro to Lon, who owned a classic automobile restoration business. Sam had placed in the Camaro's trunk a new stereo system for Lon to install in the Camaro. The box was unopened and had the words "Sam's Stereo #124" written on it in large purple letters. Lon agreed to charge Sam \$20,000 to restore the Camaro and install the stereo system.

Lon's business is completely enclosed by a chain-link fence, which is ten feet tall, with two feet of barbed wire on top of the chain-link fence. Lon placed the Camaro in an unlocked garage within the fenced-in area. Lon locked the gate to the fence with a padlock and chain. Lon had no exterior lighting for his business, and had not installed any security or alarm system at his business.

On June 2, 2007, Lon arrived at his business at 8:00 a.m. and found the chain cut off at the gate. Inside the garage, he found Sam's Camaro with many valuable parts stripped from it. The fair market value of the parts taken from Sam's Camaro was \$40,000. The box containing the stereo system was also missing.

On July 1, 2007, Sam visited his friend Ed. In Ed's garage, Sam saw a box with the words, "Sam's Stereo #124" written on it in large purple letters. The box looked identical to the box Sam had placed in the Camaro and delivered to Lon's business on June 1, 2007. Ed told Sam he had purchased the stereo from a friend for \$1,000, which was the stereo system's fair market value on July 1, 2007. Sam demanded that Ed return the stereo to him. Ed refused to return the stereo to Sam, saying, "I bought it fair and square."

On July 3, 2007, Sam came to you, an Indiana lawyer, and asked you what rights he has against Ed and Lon. What do you advise Sam? Give detailed reasons for your advice. Do not consider the Uniform Commercial Code in your analysis.

## INDIANA ESSAY

### QUESTION II

July 2007

Thomas is a very wealthy unmarried man who lives in Indiana. He believes that he may be the father of a nonmarital child, Louise. Since her birth, some twenty years ago, he has given Louise \$50,000 each year. Thomas is somewhat estranged from his sister and parents, but quite close to his brother-in-law. Thomas has named his brother-in-law as the sole beneficiary of his life insurance policy worth \$1,000,000. He told his broker that he considers his stock in Microsoft Corporation, worth some \$5,000,000, to be held in trust for the Sierra Club.

One of Thomas' passions is kayaking on Indiana's beautiful rivers. In June of this year, Thomas invited two friends from Germany to kayak the White River with him. Unfortunately, Thomas' kayak hit a submerged log, and he was severely injured. The party stopped on a sand bar in the river to render aid to Thomas, but he was bleeding from an artery. Knowing that he was dying, Thomas wrote out a will by hand while he was in extreme pain and beginning to become delirious from loss of blood. He made specific bequests of personal property to named friends and then wrote, "I give the rest of my estate to my brother-in-law if he survives me, or if he does not to my grandchildren, if any." Thomas signed the will and then his two friends signed as witnesses; they did not read or write English. Upon his death, Thomas owned property of various kinds (including the Microsoft stock), all located in Indiana and worth a total of \$20,000,000.

A. You have been consulted on behalf of Louise. She wishes to contest the validity of the various dispositions made by Thomas. What advice do you give her and why?

B. What are the estate, gift, and inheritance tax consequences of the above-described facts and events?

## INDIANA ESSAY

### QUESTION III

July 2007

You represent Plaintiff. Two eye witnesses observed a truck owned by Company run a red light and strike and injure Plaintiff. The driver fled the scene and the truck was found abandoned two miles away.

On behalf of Plaintiff, you sued Company asserting that a Company truck driver was negligent in running the red light. Two months after the suit was filed, Company filed a motion for summary judgment and attached an affidavit in support from the Company Vice President of Transportation. The affidavit stated that the truck had been stolen on the evening in question and that the truck was not being driven by an employee of Company when it ran the red light. In opposition, Plaintiff filed an affidavit in which Plaintiff stated that two eye witnesses told Plaintiff that the truck was clearly marked as a Company truck; furthermore, the driver appeared to be wearing a Company uniform. All affidavits were designated as evidence.

1. Under the facts of this case, should the court grant Company summary judgment? Why or why not?

Assume that the trial court granted summary judgment in favor of Company and dismissed Plaintiff's claim. Three days later the customer that had just received the shipment from the driver before the driver sped away, ran the red light and struck the Plaintiff came to your office. He identified the driver as an employee of Company and stated that the delivery was arranged by Company for that time. The receiving customer agreed to sign an affidavit attesting to the fact that the driver was delivering goods for Company at the time of the collision.

2. Armed with the affidavit from the receiving customer, discuss all available options you can take at the trial court level to reinstate Plaintiff's claim under Indiana Trial Rules.

## INDIANA ESSAY

### QUESTION IV

July 2007

Six members of the Smith family formed an Indiana corporation (“Corporation”) for the purpose of manufacturing widgets. John Smith is president of the corporation, and he owns 50% of the stock. Each other family member owns 10% of the stock. None of the other family members is an employee or has any role in operating the business.

John Smith directed the company's chief financial officer to borrow \$500,000 from Bank and to use the money to purchase a very expensive, high-speed computer system. Bank filed a financing statement (duly executed by Corporation) identifying the computer as collateral for the loan with the Secretary of State on July 1, 2001. The computer system was used for only one purpose, namely, to support an on-line auction business operated by John's wife.

In August 2006, the computer had a major mechanical breakdown and Corporation incurred \$100,000 in repair costs for repairs performed by Charlie's Computer Repairs (“Charlie's”). Charlie's performed the work on credit.

1. In September 2006, Sue Smith, a shareholder, learned that Corporation had purchased the computer and that John's wife had been using it to operate her on-line auction business. What are Sue's rights?

2. In September 2006, Corporation defaulted on its payments for the loan on the computer system. What are the relative rights of Bank and Charlie's in the computer and how might they be enforced?



## INDIANA ESSAY

### QUESTION V

July 2007

State legislators were concerned about a variety of issues related to Indiana college students, including a perceived “brain drain” from the state, costs of college, student debt, and violence on college campuses. After debate, a bill was passed that included the following:

1. Any citizen of the state of Indiana who is a parent of a child attending a public college or university within the State of Indiana, shall pay not less than five percent (5%) of his or her yearly adjusted gross income per child towards the cost of said education. This obligation shall be enforced by automatic garnishment from the income of such citizen upon written application by the relevant Indiana college or university.
2. All persons attending a public college or university within the State of Indiana shall, prior to attendance, have a psychological evaluation completed by a licensed health care professional and said evaluation shall be part of their college records.

Analyze the validity of these statutory provisions under the Indiana Constitution.

## INDIANA ESSAY

### QUESTION VI

July 2007

Husband and Wife have resided in St. Louis, Missouri, for most of their twenty-year marriage. They both grew up in St. Louis and have extensive family in that city. They have two children: a nineteen year-old daughter, who is a student at Indiana University in Bloomington, Indiana, and a fourteen year-old son. In August of 2006, the couple decided to move to Indianapolis, Indiana, from St. Louis after their daughter was accepted at Indiana University

Husband is a career naval officer and Wife is a homemaker. Husband has been stationed at various bases throughout the United States and has physically lived on bases outside of St. Louis for six of the twenty years of the marriage. Husband is currently stationed in Virginia Beach, Virginia. Many years ago, the couple briefly separated following their son's birth because Husband broke Wife's wrist during a verbal argument. At that time, Wife obtained a Temporary Protective Order but dismissed it shortly thereafter. For the last decade, Wife has suffered from excruciating physical pain due to a car accident. Two years ago, she was hospitalized following an overdose of pain medications. She has been on anti-depressants since that hospitalization. Both children are very close to their mother. However, the son has always wanted to spend time with Husband at the various bases where Husband has been stationed.

In April, 2007, Husband informed Wife that he has been involved in a long-term relationship and that he will be filing for a dissolution of marriage.

Wife has made an appointment with you for advice regarding filing for a divorce. She seeks counsel on issues concerning custody, child support for the children, and whether she can move back to St. Louis, Missouri. What advice do you give to Wife? Do not discuss property settlement in your answer.