INDIANA ESSAY EXAM

QUESTION I

July 2008

Amy Smith comes to your office. She brings with her a newspaper article which reports that the Estate of Paul Park, Plaintiff, has just obtained a default judgment against her adult son, Sonny, for $3,500,000 as a result of a collision which occurred one year ago. Sonny was seriously injured in the collision and has been incapacitated since. Amy filed for guardianship of Sonny six months ago and was appointed his guardian one month ago. She doesn't know if Sonny received the Summons and Complaint, but Sonny told her that he doesn't remember receiving it. Amy states that she did not know of the lawsuit until she read yesterday's paper.

Six months ago Sonny moved to 100 Washington Place, Anytown, Indiana. This is next door to Amy so that she can check his mail and look after him better. For the ten years prior to moving next door to Amy, Sonny lived at 2500 Jefferson Avenue, Anytown, Indiana. In fact, his driver's license and the BMV records still show that he lives at 2500 Jefferson Avenue, Anytown, Indiana.

After being retained, you go to the Courthouse and find the suit was filed 75 days previously. The Summons shows service by sheriff. On the return of service, the deputy marked the following: "Left on residence at 100 Washington Place, Anytown, Indiana" and dated it 70 days previously.

Question A. Explain what, if anything, you can do to set aside the default judgment.

Additional facts: Amy tells you that there was road construction at the time of the collision and the lane markings were not clear. It was a head-on collision and she believes that Plaintiff, Paul Park, was actually in Sonny's lane. She also believes that the Indiana Department of Transportation (INDOT) was negligent for not having cones or barricades erected during the construction.

Assume that the trial court set aside the default judgment and you now have the opportunity to file an Answer. You want to file a claim against INDOT on behalf of Sonny and you want to make certain that you obtain good service. You know the superintendent of INDOT. He lives at 500 Elm Street, Anytown, Indiana.

Question B. What should you do to get effective service over INDOT? Do not address the Indiana Tort Claim statute.

Additional facts: Amy believes that Paul Park was responsible.

Question C. How do you assert that claim and who do you serve?

INDIANA ESSAY EXAM

QUESTION I

July 2008

Seller Heating Corporation is an Indiana corporation located in Grant County, Indiana ("Seller"). Seller manufactured and distributed portable electric heating units for sale to retail stores across the country. Buyer HVAC, Inc., ("Buyer") another Indiana corporation, purchased some of Seller's assets including Seller's equipment, work-in-process, finished goods inventory, product designs, customer lists, and name. Buyer assumed Seller's building lease in Grant County. Buyer also assumed the liabilities to all of Seller's known trade creditors. The sale agreement states that no other liabilities were assumed by the Buyer.

Buyer has taken the assets and established a Seller Heating Division within its corporation and is continuing to manufacture and distribute portable electric heating units at the Grant County facility. Buyer hired seven of Seller's ten factory workers, but has brought in all new management. Buyer's officers, directors and shareholders have never had an ownership interest in or employment relationship with Seller.

After collecting and distributing its receivables to its shareholders, Seller voluntarily dissolved by filing Articles of Dissolution with the Indiana Secretary of State pursuant to the Indiana Business Corporation Law. Seller did not publish notice of its dissolution.

In the 27th month after the Seller has dissolved, Buyer doing business as the "Seller Heating Division" is sued by the Payne Family alleging that their home burned and was destroyed due to a defect in a portable electric heater manufactured by the Seller Heating Corporation. In checking the serial number of the allegedly defective heater, Buyer determined that Buyer did not manufacture the heater. According to the serial number, the Seller manufactured the heater prior to the asset sale. Buyer is aware that Seller has product liability insurance. Buyer's insurance carrier has advised Buyer that it does not insure Buyer for products that Buyer did not manufacture.

Buyer has come to you for advice. Prepare a memorandum analyzing the liability of Buyer and Seller to the Payne Family under Indiana law, and advise Buyer what it should do.

INDIANA ESSAY EXAM

QUESTION II July 2008

The General Assembly has passed a bill with two components:

1. To decrease property taxes, local expenditures for school busses will no longer be paid for by property tax. Instead, the State will fund a grant program providing money for all schools - public and private, including church-sponsored schools - to purchase school busses.

2. The General Assembly learns of new federal safety requirements on school busses. To protect Indiana's school bus manufacturing industry, the bill exempts from personal property tax new machinery that these manufacturers will have to purchase to comply with the federal safety requirements (the machinery would otherwise be subject to personal property tax). This exemption is limited, in the text of the bill, to two counties where school bus manufacturing plants currently exist.

The bill is sent to the Governor for signature. You are the Governor's legal counsel. Advise the Governor on the Indiana constitutional issues raised by this legislation.

INDIANA ESSAY EXAM

QUESTION IV

July 2008

John and Mary Smith were married in 1985 and had one child, David. The Smiths were divorced in 1987. Mary was awarded physical custody of David and the parties shared legal custody. John's child support obligation was $92 per week. In 2000 John turned 62, retired and began receiving Social Security retirement benefits. At that time, David started receiving dependent benefits from Social Security in the amount of $765 per month.

When David began receiving his Social Security dependent benefits, the parties agreed that John had no further duty to pay support since the Social Security benefits exceeded John's support obligation.

David received the Social Security dependent benefits from June 2000 until June 2005 when he turned 18 and graduated from high school, when pursuant to law, the dependent benefits terminated. Both John and Mary believed child support terminated at 18, so no further support was paid.

David began attending college and his parents contributed equally to his college expenses, although the divorce decree did not address any contribution to post-secondary educational expenses.

In 2007, shortly before David turned 21, Mary filed a Motion for Rule to Show Cause, alleging that John had a child support arrearage in excess of $33,000 since he had not paid support since June of 2000.

John does not have the ability to pay since he is retired and living on his retirement benefits. John seeks your advice on how to proceed. What advice would you give John?

INDIANA ESSAY EXAM

QUESTION V

July 2008

Auto Buys, Inc. is an automobile dealership with thirty locations throughout the state. All of the locations are owned and operated by Auto Buys, Inc. and managed by employees of Auto Buys, Inc.

Indiana law requires an auto dealer to pay an annual dealer licensing fee of $10,000. This licensing program is administered by the state's Automobile Dealers Licensing Commission, a state board with members appointed by the Governor. The Commission employs a director, who has interpreted the licensing regulation to require auto dealerships to pay the $10,000 licensing fee for each location where it operates. The Commission has no rule containing this interpretation.

The Commission sent Auto Buys, Inc. a written demand for payment of the fee for each of its locations, indicating that Auto Buys, Inc. would not be able to operate without paying the fee for each location. As a result, Auto Buys, Inc. has paid $10,000 per location for a total of $300,000.

Auto Buys, Inc. has contacted you for assistance. Auto Buys, Inc. believes that the interpretation by the Commission's director is incorrect and that Auto Buys, Inc. should only have to pay one fee per year since all of the locations are owned by one dealer: Auto Buys, Inc. Auto Buys, Inc. has asked you to file a court case to obtain a refund of the additional $290,000 in fees which they have had to pay.

Discuss Auto Buys, Inc.'s remedies.

INDIANA ESSAY EXAM

QUESTION VI

July 2008

Harry and Wilma married and had one child, Sam. They divorced in 1980. In 2005 Harry married Beth who had one child from a previous marriage, Jane. Harry and Beth do not have a prenuptial agreement. Harry develops cancer in December 2005. In 2006 Harry executed a Will in all respects in compliance with Indiana Law which contained the following provisions:

1. Article I provides for payment of all debts, administration costs, and taxes;

2. Article II bequeaths $25,000 to stepdaughter, Jane;

3. Article III divides the residuary estate equally between Sam and Beth;

4. No executor was named.

In January of 2006 Beth moves out of the marital home and moves in with Jane. From this date until Harry's death in October 2007, Beth never sees Harry again. In February of 2007 Harry made a handwritten notation on his Will by inserting the following between Article II and Article III: "I devise and bequeath all real estate I have an interest in at the time of my death to my son, Sam." Harry signed his name right after this addition and this is the only change to the 2006 Will. There is no evidence of any witnesses to this change.

Sam brings the Will to your office seeking representation in regard to his father's estate. He tells you the following additional facts:

1. The assets which Harry had any interest in at the time of his death are as follows:

    i. Residential Home worth $100,000 solely in Harry's name;

(b) Bank Account solely in the name of Harry in the amount of $50,000.

2. Sam further advises he has paid Harry's funeral bill in the amount of $9,000 from Sam's personal funds.

What advice would you give Sam with regard to his rights to his father's estate and the rights and claims of Beth and Jane?

Indiana Essay Question I

Sample Answer

(Verbatim transcription of answer by an examinee)

July 2008

Question A

I would file a motion to set aside the Default Judgment. A default judgment may be set aside for a number of grounds which are detailed in Indiana Trial Rule 55. A default judgment may be set aside for improper notice or service, excusable mistake or neglect, and where the default judgment is in such a large amount that it would be unfair to uphold it rather than decide the case on the merits. All three of these are present in this case.

First, Indiana Trial Rule 4 governs service of process. Service by leaving at somone's abode is an acceptable method of service; however, it must be followed up by also mailing a copy of the complaint and summons through the mail. There is no certificate of service indicating this was done.

Second, the service was performed on Sonny who is in an incapacitated mental state. His failure to read the summons and complaint, if it was actually received, may be considered excusable neglect or mistake.

Third, the default judgment orders Sonny to pay $3,500,000 which clearly is a substantial sum of money. Sonny should be entitled to have his case heard on the merits before having to pay such a large sum.

I would draft the motion and file it with the clerk of court. I would also mail a copy of my motion to opposing counsel and file a certificate of service with the court indicating the date I mailed the papers to opposing counsel. The certificate of service will have to be signed and verified by me.

Question B

Service of process is governed by Indiana Trial Rule 4. Service may be accomplished by serving someone personally, through registered or certified mail, by leaving a copy of the complaint and summons at the person's abode and following up by also mailing copies, and by serving a person's agent. There are additional rules for serving a government agency or organization.

In order to effectively serve a government agency, such as INDOT, you must serve both the Indiana Attorney General and the ultimate authority of the agency.

In order to get effective service, I would use the personal service method and either pay for the Sheriff or have anyone else over the age of 18 deliver the papers to the proper person at the Attorney General's Office and to the head of IDOT. These people could easily be located by contacting their offices. Because they a public offices, their phone numbers should be listed in a directory or easily located on the internet.

I would not serve the superintendent I know unless he is the head of the agency; however, I could always ask him whether he has the information I need. I would avoid speaking to him about the case due to ethical obligations.

In order to file the claim, I would first have to draft a complaint. Once that is ready, I would file that with Clerk of Court. I need to insure that both the Attorney General and the head of INDOT are served with a copy of the complaint and with a summons.

The summons must include the names of the parties, the case number, the title of the action, the name of the court with which it is filed, where the party is to be served, and my name and address. I must file the return of service with the court.

Question C

In order to assert my claim against Paul Park, I will have to include it as a compulsory counterclaim otherwise it will be waived.

I would include the counterclaim in my Answer to Paul Park's Complaint. I should have approximately 20 days to file my Answer and Counterclaim.

This is a compulsory counterclaim because it arose between the same two parties from the same transaction or occurrence.

I am responsible for following the same rules as those for a complaint; therefore I must use notice pleading, separate every count I am alleging and use individual numbers for each paragraph under the counts.

I must serve my counterclaim on every party to the proceeding. I can serve plaintiff by serving his attorney and filing a certificate of service with the clerk of court. I must also file my counterclaim with the clerk of court prior to serving the plaintiff's attorney. I may want to comply with service under Trial Rule 4 to ensure my counterclaim does not fail due to improper service; therefore I would personally serve the complaint on Plaintiff's Attorney and file the return of service with the court.

Indiana Essay Question II

Sample Answer

(Verbatim transcription of answer by an examinee)

July 2008

Liability of Seller: In Indiana, a corporation is a creature of state law wherein the owners of the corporation, or shareholders, have limited liability to all of the corporation's creditors. The liability is limited to the value of the shareholder's shares.

Even when the shareholders are not liable, the corporation is, but that liability is not perpetual. When a corporation dissolves, or ceases to exist, its creditors rights cease after a certain time period. When a corporation dissolves, it must give notice to all known creditors. This notice gives them a limited amount of time to make a claim. Notice on unknown creditors gives them 2 years within which to make claims. In this case, Seller never gave notice to unknown creditors like the Payne Family of its dissolution. As such, the Payne's claims for their home are not barred. Consequently, the Payne's could recover from Seller under Seller's product liability insurance despite the dissolution of the corporation.

Liability of Buyer: Buyer should not be liable for a product it never made or injected into the market place. Buyer, however, would be liable if it somehow assumed the liablility of the Buyers' claim from Seller.

The facts state that Buyer only purchased goods, customer lists, and the name from Seller. Further, the only liabilities it assumed were the building lease and the claims of Sellers' known trade creditors. As such, the only basis by which the Paynes could claim that Buyer is liable for a product made by Seller is if the Buyer-Seller transaction was a disguised merger.

A disguised merger is when two companies enter into a transaction that looks like an asset sale on the surface, but is really meant to effectuate a merger without the "buyer" assuming liabilities of the "seller". A court will look at many factors including the nature and quantity of the assets being sold, whether the consideration is in stock, whether employees of the "seller" are being transferred to the "buyer", whether the "seller" corporation ceases to exist after the sale, whether any management or board members assume positions at the "buyer," etc.

In this case, the facts state that Seller sold some equipment and inventory, but it also sold product designs, customer lists, and the corporate name. Further, Buyer took 7 of Seller's 10 factory workers, and operated out of Seller's location under Seller's name. In addition, Seller dissolved soon after.

Some important elements weigh against a disguised merger, however. First, Buyer assumed all of Seller's known trade liabilities, showing the transaction was not unlikely designed to skirt creditors. Second, no management or board members went to work at Buyer and none have ownership interests in Buyer. Finally, and very importantly, Seller still maintains product liability insurance; therefore, it made allowances for unknown product defect claims. These factors strongly suggest the transaction the Seller-Buyer transaction was not a disguised merger but rather was an orderly liquidation and dissolution by Seller. Therefore, Buyer should not be liable for a defect in a product made by Seller.

In light of the above, I would advise Buyer to file a motion to dismiss the claim or at least file a third-party complaint ag

ainst Seller to identify Buyer in case Buyer is found liable.

Indiana Essay Question III

Sample Answer

(Verbatim transcription of answer by an examinee)

July 2008

In advising the governor concerning this legislation, there are three areas of Indiana's Constitution which may hamper the validity of this bill. I will address each constitutional issue separately, as follows.

I. Article 4, Section 19

Art. 4, s. 19 of the Indiana Constitution relates to the germaneness of the legislation. This section is essentially a requirement that all bills passed by state law makers have one, and only one, subject matter. Created to prevent "logrolling" by legislatures, it is rather hard for courts to enforce due to our state separation of powers constraints.

Here, this bill may seem to generally effect school busses, but contains subject matter of both state grants to educational institutions and property tax exemptions for manufacturers. Because this single bill contains two separate subjects, it fails to meet the requirements of Art. 4, s. 19 and would be unconstitutional.

II. Article 1, Freedom of Religion

Constitution Article 1, Sections 2-8 deal with freedom of religion provisions. Indiana recognizes the freedom to worship as an inalieable right, and the constitution clearly outlines the clear separation of church and state.

Specifically, state funds cannot be used to confer a benefit onto a religious group or organization. In order for a benefit to a religious organization to be a constitutional violation, the benefit must be substantial. IN courts have held that allowing a public school teacher to teach one course at a Catholic school for a parochial program did NOT constitute a substantial benefit.

However, this bill proposes to provide state grants to fund the purchase of ALL busses needed by religious schools. This indicates that a substantial benefit is being conferred, in violation of our constitutions freedom of religion prohibitions.

III. Article 4, Sections 22 and 23 ("Special laws")

The constitution protects against the creation of "special laws," where a benefit is conferred on a certain group. These laws can be proper however, if they are found to be generally applicable to all classes under that "special" group.

First it is necessary to determine whether this bill presents a special law. Here, the bill only applies to two counties and provides property tax exemptions for bus manufacturers in these places. This is not generally applicable to the entire state, and therefore is a special law.

Is this law one of the 16 prohibited types of legislation outlined in s.22? This outlines laws which are local in nature, and cannot be addressed by state legislation. We can presume that this topic area is not one of the 16, and move on with analysis.

Finally, could this law be generally applied? Essentially, there needs to be some reason that this legislation is not applied state wide. Here, there could be still other counties home to school bus manufacturers, but they are not covered by this bill. This bill also does not account for other like manufacturers who could move into or within the state. The legislation depicts no special reason why these two counties housing manufacturers are treated differently from the other counties statewide. Because no circumstance is presented to justify this unequal treatment, this bill fails to pass a special law analysis, and would be unconstitutional under those grounds.

Overall, this bill is a Constitutional "bad seed" and my advise would be for the Governor not to sign this legislation into law.

Indiana Essay Question IV

Sample Answer

(Verbatim transcription of answer by an examinee)

July 2008

John should be advised that although his duty to support David existed until the child turned 21, he may be excused from payment of the back support due to a substantial change in circumstances, from the time of the original decree to present, at the courts discretion.

In the State of Indiana, parents owe their children a duty of support. When parents are no longer in custody of their children due to dissolution of the parties' marriage, the court will order payments of support by the non-custodial parent. Such duty of support generally continues until a child turns 21, unless the child is married, joins the military, or over 18, self sufficient, or no longer in school. This duty can be extended beyond age 21 for educational purposes, if the parties file a petition for educational support. It appears that such child support was ordered by the court in 1987 in the amount of $92.00 per week.

A party is generally required to pay the amount of child support ordered by the court unless a petition is filed by either party to alter the amount of the award based on a substantial change in circumstances. It does not appear that either John or Mary ever filed such a petition. Absent a petition and order by the court changing the amount of child support owed by a non-custodial parent, that parent remains obligated to pay the awarded amount. The failure of a non-custodial parent to pay child support could result in a wage garnishment, attachment of land, revocation of driver's & professional licenses, and holding that party in contempt of court.

Based on Indiana Law, technically, John is required to pay the child support owed to David. No petition to alter the court's order was filed, thus any alteration of payment schedule was in violation of the court's support order.

However, the circumstances of this case suggest that although John failed to comply with the support order, he could request and potentially be granted some relief in equity, at the court's discretion. In a responsive pleading or subsequent hearing on the matter, John could set forth the agreement of the parties to discontinue support payments in light of the social security benefits recieved by David, in a much higher amount than the original support award. It would be helpful if John had a copy of such agreement, in writing. John could also set forth as a defense the amounts he paid for David's college expenses. Although different in form that child support, payment of these expenses would be similar in substance. These payments could be evidenced by cancelled checks or credit card statements.

In addition to the above, John could also present to the court in a responsive pleading or at a hearing, that Mary's failure to raise this issue until 2007, seven years after the payments stopped, should precluded her from recovery. Mary's failure to bring this claim prior to 2007 will financially harm John, as he is presently unable to pay the large, accumulated sum owed, $33,000.00. Her failure to bring this to the court's attention at a time when recovery of past support would have been more manageable for John should be considered by the court when granting or denying her request.

Finally, John could show that David was not harmed by his failure to pay support in accordance with the courts

original order. David appears to have received adequate sums from social security payments and his father's educational contributions, thus no detriment to the parties appears to have occurred. John's current fixed income may also be a factor in his favor.

In sum, although, John is technically liable for the back child support, the court may consider there mitigating factors when determining the amount, if any, owed to Mary by John.

Indiana Essay Question V

Sample Answer

(Verbatim transcription of answer by an examinee)

July 2008

This question requires an examination of remedies when dealing with an Indiana administrative agency. First there must be a determination whether the Commissioner's interpretation is rulemaking, which would be governed by the Administrative Rules and Procedures Act. Because the Commissioner did not adhere to any of the rulemaking formalities (i.e. notice, public comment, approval) this does not appear to be rulemaking, but instead is the application of a pre-existing rule.

The best way to challenge the agency's action is by pursuing an order. Orders are governed by Administrative Orders and Procedures Act (AOPA). AOPA only applies to agencies with state-wide jurisdiction. Because the Automobile Dealer's Licensing Commission is a state agent it must adhere to the procedures in AOPA.

In order to challenge the agency's action, Auto Buys, Inc. must file a petition for review of agency's action with the agency. The agency will appoint an Administrative Law Judge to hear the action. The Administrative Law Judge (ALJ) has the authority to administer oaths, govern discovery, and the proceedings, hear motions, and create a Recommended Order.

Before a hearing is to be conducted, Auto Buys will receive notice. Notice must be reasonable and not less than five days prior to the hearing.

At the hearing, the ALJ must allow the parties to file pleadings and motions, and may allow parties to file briefs, proposed findings, and proposed orders. The ALJ must exclude evidence that is immaterial, irrelevant, or unduly repetitious.

After the hearings the ALJ will issue a Recommended Order. The Recommended Order must be based on the record and substantially supported by evidence. The ALJ can call on his or her own experience in interpreting the evidence. The Recommended Order must be in writing, contain findings of fact, and provide notice of deadlines and procedures for objection.

After the Recommended Order, Auto Buys would have fifteen days to file objections. If no objections are filed

the ultimate authority -generally the board- will affirm the Recommended Order and it will then be a final order. If objections are filed then the ultimate authority must conduct further hearings. After a final order, Auto Buys can either request a rehearing or petition a court for review.

If Auto Buys agrees with the final order but the agency does not comply, Auto Buys must seek enforcement through the court. Auto Buys must serve notice of non compliance on the agency and the attorney general at least sixty days prior to filing a petition with the court for enforcement.

If Auto Buys does not agree with the final order it can seek judicial review. In order to be eligible for judicial review Auto buys would have to exhaust its administrative remedies, which if it did the above, then it would have. Auto Buys would also need legal standings. Legal standings means that Auto Buys suffered an injury-in-fact, caused by the agency's action and the injury is redressable.

Auto Buys would then have to file a petition for review in the circuit court and serve notice on the agency and the attorney General within 30 days of the final order.

The agency's findings of fact would be reviewed on the record, but its findings of law would be reviewed de noro. If the court found that the agency's action was (1) arbitrary and capricious, or an abuse of discretion; (2) in excess of the agency's authority; (3) not in accordance with procedural requirements; (4) unconstitutional; or (5) not supported by sufficient evidence, the court could overturn the agency's order.

Indiana Essay Question VI

Sample Answer

(Verbatim transcription of answer by an examinee)

July 2008

A will must adhere to the requisite formality to be valid. This, on the party of the testator, legal capacity, testamentary capacity, and testamentary intent. It further requires a writing, signed by the testator, that the testator signed or acknowledged his signature before two witnesses, two disinterested witnesses must sign in the presence of the testator and the other witness, and finally the testator must publish the will. Any provision added later without adhering to the necessary formalities or a valid codicil, is ineffective and striken.

Any property not distributed via the will is distributed according to the interstate statutes.

Also, a spouse may elect to take against the will in the amount of ½ of the net personal and real property. A spouse who abandons the decedent prior to the decedent's death is treated as having predeceased the decedent for purposes of any intestate distribution.

Should issue survive from a prior marriage, the current spouse's elective share is reduced to 1/3 of the personal property and ¼ of any real estate.

Finally, if an executor is not named, the probate court will appoint one.

Here, as stated, Harry created a valid will under Indiana Law. Once filed with the probate court, the court will appoint an executor to administer the estate and to satisfy Article I of Harry's will.

However, the added provision devisily the real estate to Sam will likely be striken because it violates the will formalities. No witnesses were present (under the conscious presence rule) to observe or acknowledge Harry's signature.

Had Harry died intestate, Sam could successfully challenge Beth's share because it seems as though Beth abandoned Harry prior to his death. In fact, she left him January 2006 and he passed in October 2007-nearly two years of abandoned. However it seems that the majority of Harry's property will be distributed according to the will. If the abandonment rule applied to devises, Same could have taken Beth's residuary share – the antilapse statutes would not apply because Jane is not a descendant of Harry.

Beth will likely elect to take her share of ½ of Harry's estate. However, her elective share will be limited because Harry has a child from a pervious marriage. Consequently Beth's elective share is reduced to 1/3 of any personal property and ¼ of any real property. If Beth elects, she must do so within 3 months of Harry's will being admitted to probate. In effect it advantages for Sam if Beth elects because Beth would take more if she did not elect.

If Beth elects, Jane will receive 25,000 from the bank account, Beth will receive 25,000 of the real estate and a little more $15,000 from the bank account. As a residuary taker, Sam takes the remainder of the account and $75000 from the real estate.

The more likely scenario is that Beth will not elect. The result would be Jane taking $25000, Beth taking 12, 500 of the account and 50,000 of the real estate. Same takes 12,500 of the account and 50,000 of the real estate as a residuary taker.

Sam will likely be unable to recoup the $9,000 from the estate, but will at least take enough under the will to recover her personal expenses for the funeral.

Should any other unknown property exist and require distribution under the intestate scheme, Sam would take exclusively if he successfully advances the abandonment argument against Beth.