INDIANA ESSAY EXAMINATION
QUESTION I
July 2009

Ron operated Appliance Store, a sole proprietorship, in the State of Indiana. Appliance Store sold only televisions. He obtained a $50,000 loan for operating expenses from Bank, and in return gave Bank a security interest in all fixtures, equipment and inventory, whenever acquired. Bank completed a financing statement in the name of Appliance Store, which Ron signed, and Bank filed it with the Indiana Secretary of State.

Ron decided to expand Appliance Store's inventory. He obtained a $25,000 loan from Finance Company for the purchase of refrigerators. Ron signed a financing statement, which Finance Company made out in Ron's name, giving Finance Company a security interest in the refrigerators. Finance Company filed the financing statement, which Ron signed, with the Indiana Secretary of State immediately thereafter and gave notice of its security interest to Bank.

At first Ron sold enough televisions and refrigerators to make a profit, but within three years bad economic conditions led to a drop in sales and Ron was unable to make the payments on his loan from Bank. Ron's failure to make payments was an event of default, and Bank exercised its rights under the loan agreement to accelerate the debt so that the full amount became due.

Bank hired Repossessor to reclaim its collateral. Repossessor went to Appliance Store after hours, broke the lock on the front door, and took all the refrigerators and televisions as well as some fixtures and equipment. Bank hired Auctioneer to convert the collateral to cash. Auctioneer publicized the sale extensively, but sent no notice to Finance Company. Several inches of snow fell on the morning of the sale, making the crowd much smaller than at Auctioneer's typical sales. The sale of fixtures, equipment, and inventory brought only $35,000, which was $10,000 short of the amount Ron still owed Bank. Ron still owes Finance Company $25,000.

1. What are Bank's rights?

2. What are Finance Company's rights?

3. What are Ron's rights if Bank tries to collect the balance due?

4. Should those who purchased the televisions and refrigerators from Appliance Store be worried that Bank or Finance Company has any rights against them?

INDIANA ESSAY EXAMINATION
QUESTION II
July 2009

Henrietta and her husband, Herman, were in the process of purchasing their first home in Indiana. They had visited several subdivisions and settled upon building their own dream home, rather than buying an existing home. They signed a contract with a builder and were promised their new home in 90 days.

During those 90 days, to save money for their down payment, Henrietta and Herman lived with her parents, storing all their furniture in a unit at a Store-It-Yourself, a self-storage company. Store-It-Yourself was offering a special to first time home buyers – no contract, and a $20 monthly fee to maintain their furniture in storage. Under this special, at the end of the storage period, the property owners would have to pay a lump sum of $300 to retrieve their property. Henrietta and Herman took advantage of the special, stored their furniture at Store-It-Yourself and paid the $20 fee each month.

Store-It-Yourself maintained a sign, prominently displayed in the storage unit entrance: "Not liable for lost or stolen items." During the time the furniture was stored at Store-It-Yourself, Erick, one of the employees, would open the storage unit belonging to Henrietta and Herman and sit on the furniture during his lunch break, because he found the red leather living room set to be very comfortable and stylish. The management at Store-It-Yourself was aware of this practice and did not take any action, thinking it to be harmless. The management also viewed Erick's recreational gambling as harmless as well. When Herman lost his job, they were not able to complete construction of the house nor were they able to make the lump-sum payment to retrieve their furniture from Store-It-Yourself.

Six months later, Henrietta and Herman finally were able to pay the $300 fee to recover their furniture. When Henrietta and Herman opened the storage unit, they found that the furniture was missing. Subsequent investigation by the police disclosed that Erick, thinking that Henrietta and Herman had abandoned the furniture, took it as a form of "self-help," as he felt underpaid by Store-It-Yourself. Erick was hoarding the property at his house when his bookie, Boris, broke in and took the furniture in payment for Erick's unpaid gambling debts. Boris then sold the property to an unknown person, and it has not been recovered.

Henrietta and Herman come to your law office, seeking legal advice in this matter. What if any, claims do Henrietta and Herman have against Erick, Store-It-Yourself, and Boris? Write a detailed client letter to Henrietta and Herman identifying their legal relationship with Store-It-Yourself, and discussing their rights regarding the furniture under Indiana law and assessing their likelihood of success on each claim.

INDIANA ESSAY EXAMINATION
QUESTION III
July 2009

The City of Bigtown, Indiana, desires to implement a comprehensive redevelopment plan to revitalize its downtown area. To implement this plan, the City has decided to acquire certain properties in the downtown area. The City's budget, however, is severely limited.

The City has contacted its local state representative to sponsor legislation to amend the state's eminent domain statute. Specifically, this amendment would address only eminent domain proceedings initiated by the City of Bigtown and would include the following provisions:

1. No landowner who acquired its respective property after January 1, 2009 can receive more than 50% of the fair market value of the property if it is taken by eminent domain.

2. Compensation for each parcel taken would be capped at $750,000.

3. Any dispute regarding the amount of just compensation would be submitted to a three-member arbitration panel, the decision of which would determine the ultimate award of compensation to be paid the landowner. The decision of the arbitrators would not be subject to appeal or collateral attack. Arbitration would be the sole method for determining just compensation.

Discuss the legal challenges to these statutory provisions based on the Indiana Constitution that could be pursued by a landowner whose property is to be acquired by the City of Bigtown.

INDIANA ESSAY EXAMINATION
QUESTION VI
July 2009

Park Corporation, Inc. ("Park") is an Indiana corporation, doing business in Blue County, Indiana. Park is a closely held corporation owned by three siblings, Walter, Susan, and Mike Park, with each owning 50 common shares. Walter, Susan and Mike each serve on Park's Board of Directors.

Park is in the business of manufacturing various specialty plastic parts primarily for the automotive and the marine industries. Park's assets primarily include: machinery and equipment, inventory, accounts receivable, customer list, and the registered trademark, *"ParkPlastics®"*. Park also owns a manufacturing facility on real estate located in Blue County, Indiana., as well as three delivery trucks and three company cars.

Walter and Susan Park would like to retire and desire to find a buyer for their business. Mike is younger and is not sure whether he wants to sell the business. WorldWide Plastics Group, a Delaware corporation, based in New Jersey ("WorldWide") is interested in purchasing Park because it will give them a much needed presence in Indiana. WorldWide has had one meeting with Walter and Susan, but has done very little due diligence. Mike was not invited to attend the meeting. Walter and Susan have disclosed to WorldWide that Park has a line of credit for working capital with Blue County Bank ("Bank") in the amount of $1,000,000. Park's accounts payable to its trade creditors amount to $500,000.

WorldWide has come to your firm for legal advice. Please answer the following questions:

1. What public records or other documents would you recommend WorldWide check to determine if there are any liens filed against Park's assets?

2. If WorldWide purchases the assets of Park, what corporate approvals must first be obtained from Park's shareholders and directors, if any?

3. What happens if Mike does not want to sell?

4. If WorldWide purchases Park's common stock held by the three shareholders, who will be responsible for paying Park's creditors?

5. If WorldWide purchases the assets of Park and does not expressly assume its liabilities, who will be responsible for paying Park's creditors?

INDIANA ESSAY EXAMINATION
QUESTION V
July 2009

George is married to Lisa and they have one adult child, Sarah. George also has an adult son, Fred, born out of wedlock. Fred's mother is Brenda and shortly after Fred's birth paternity was established. George died without a Will. When George died he owned the following assets or property interests:

1. Residential home in Indiana valued at $3,000,000 titled in the names of George and Lisa, husband and wife, with rights of survivorship.

2. Term Life Insurance of $300,000 with Sarah and Fred as equal beneficiaries.

3. A $300,000 Individual Retirement Account (IRA) with Lisa as the sole beneficiary.

4. Joint bank account titled in the name of George and Fred with a balance of $25,000.

5. Bank account in George's name alone with a balance of $520,000.

George's only debt at the time of his death is a $500,000 loan to Bank. George's funeral bill is $15,000 and administrative costs of the estate are estimated to be $20,000 for attorney fees and $10,000 for Personal Representative fees.

Write a Memorandum that outlines the rights and claims of Lisa in regard to George's estate and the various assets, including a discussion of all tax issues.

Indiana Essay Question I
Sample Answer
(Verbatim transcription of answer by an examinee)
July 2009

This is a case of competing interests (some of which are secured interests) in property. Both Bank and Finance Company attempted to attach and perfect security interests in property purchased by Ron for sale or use in his Appliance Store. Only if both Bank and Finance Company successfully attached their interest could that have a security interest in Ron's property, and only if either perfected the interest could one have priority over the other with regard to that interest. Finally, Ron and his customers have interests, while not secured, in the property, and as the facts of this case indicate, these interests may be competing with those of the Bank and Finance Company.

1 First, I will examine Bank's rights in this case. Bank obtained a security interest in all of Ron's fixtures, equipment and inventory, whenever acquired, when it loaned Ron $50,000 for operating expenses of his Appliance Store. This security interest apparently attached, even though the facts are not exactly clear, because Ron and the bank likely created a security agreement at the time of loan, in writing for consideration, with both parties' signatures. This security interest did not perfect automatically however, because it was not a purchase money security interest for the purchase of consumer goods. A purchase money security interest occurs when a secured party loans money to the debtor so that the debtor can purchase property using that money and the secured party takes a secured interest in the property purchased with the loan. Here, the Bank loaned Ron money for his company's operating expenses and took an interest in his fixtures, equipment and inventory to secure that loan. As a result, the Bank must perfect the secured interest in order to have priority over another creditor that has a secured interest (or other interest) in the property.

There are several ways to perfect a secured interest, including taking control of the property and filing a financing statement with the Indiana Secretary of State, or with the county records office of real estate for secured interests in fixtures. Here, the Bank filed a financing statement with the Secretary of State. The financing statement must be filed under the appropriate name, with the signature of the debtor and an appropriate (yet generic) description of the property. Bank seemingly did this, and therefore likely perfected its interest in Ron's inventory and equipment. There may be two problems with the Bank's filing statement, however. The first is that the Bank filed it under the name of the Appliance Store. Because Ron is the sole proprietor of the Appliance Store, the Bank should have probably filed it under Ron's name so that any creditor going after Ron's property would have notice of the Bank's secured interest. This may not entirely invalidate Bank's perfection, however, because Bank could argue that a creditor taking an interest in equipment or inventory from Ron's Appliance Store should have looked under the name of the store before taking an interest. The second flaw, which is more fatal to a certain portion of the perfection, is the Bank's failure to file the statement in the county in which the Appliance Store is located; without doing so, Bank has not perfected its interest in Ron's fixtures (which are personal property that become real estate and therefore interest in fixtures must be recorded in the real estate records of the county in which the real estate sits). Finally, Bank's security agreement allows it to take an interest in all fixtures,

equipment or inventory, wherever acquired. This is a valid clause and gives Bank a secured interest in all future acquisitions of such goods by Ron.

As a result, assuming 5 years haven't passed since Bank filed the financing statement, Bank has a perfected, secured interest in all of Ron's inventory and equipment (assuming the use of Appliance and not Ron did not invalidate the financing statement), whenever acquired and including the refrigerators purchased by Ron with the loan from Financing Company, but does not have a perfected interest in Ron's fixtures.

Because of this perfected security interest, which predated the filing of a financial statement or perfection of Financing Company's secured interest, Bank had the right to repossess peacefully. Ron's inventory and equipment upon his default, but only his fixtures if it maintained priority because other creditors did take an interest. If Bank had to breach the peace upon repossession, however, the Bank would have to ask the sheriff to repossess the property or file an action of replevin. If, upon repossession, the Bank appropriately conducted a sale of the items, then the Bank would be able to secure a judgment against Ron for the remainder due under the loan.*

* I will address later if Bank followed these procedures

2 Second, Finance Company may have rights in Ron's property as a result of its loan to Ron of $25,000 for the purchase of refrigerators and its secured interest in the refrigerators. Here, Finance Company has a purchase money security interest ("PMSI") in Ron's inventory and that secured interest was perfected by an appropriate filing of a financing statement. Unlike Bank, Finance Company appropriately filed the financing statement under Ron's name and filed the statement appropriately with the Sec of State. If Bank's filing under Appliance is considered valid for purposes of priority, however, Finance Company will only have super priority as a holder of a PMSI if it appropriately notified Bank of its interest. In order to do so, Financing Company would have had to notify Bank and file the financing statement before Ron took possession of the property. The fact s are unclear as to whether that occurred here. If Finance Company did follow the appropriate procedures, then it would have rights in the refrigerators that take priority over Bank's rights.

3 As for Ron's rights, he can challenge both the method of Bank's repossession and the reasonableness of the sale. As to the repossession, Ron can argue that Bank used undue force in entering the store by breaking the lock. This argument may not succeed, however, because he does not have the same expectations of privacy in his store as he would his home. If he does succeed, Bank may have to pay for damages to the door. If no other party has an interest in Ron's Fixtures, then Bank rightfully took them despite its failure to perfect. As a result Bank would only have to pay for the damage to the property, not the diminution in value to the store caused by the removal of the fixtures.

Finally, as to the reasonableness of the sale, Ron could agree that Bank was unreasonable in failing to notify Financing Company of the sale and in failing to cancel the auction as a result of the snow storm. If he succeeds, he may not be required to pay the additional $10K he still owes Bank.

4 Finally, the customers who purchased refrigerators; TVs from Ron's Appliance Store need not worry about repossession. An individual consumer who purchases a consumer good for

personal or family use and takes without notice of perfected security interests takes free of the interest. They can keep their produce fresh and their TVs tuned to Law & Order.

In conclusion, if Bank failed to perfect by filing the finance statement in Appliance Store's name instead of Ron's, then Financing Company has priority in the refrigerators.

Indiana Essay Question II
Sample Answer
(Verbatim transcription of answer by an examinee)
July 2009

Dear Henrietta and Herman,

I am so sorry for the theft of your furniture. I am writing to address your claims against Store-It-Yourself, Boris, and Erick. As you will see, you have a good chance of recovering at least the value of your property, and possibly more. I will discuss each party separately.

Store-It-Yourself ("SIY") as Bailee

First, Store-It-Yourself had a relationship with you known as a "bailment." This means that you and SIY agreed that SIY would hold your property for you but you would get it back and you would keep title to it. Usually, a bailee (like SIY) has to know what the property is to be considered a bailment. However, courts have held that safety deposit boxes at banks are bailments, and the same logic applies here. As a bailee for your property, SIY owed you a duty of care. This duty changes based on the benefit of the bailment. Because you got to store your property and SIY got paid, this is considered a bailment for mutual benefit. The duty of care for a mutual benefit is that the bailee (SIY) has to act with an ordinary duty of care. Continuing to employ a person with a known gambling problem violates this "ordinary" duty of care. Allowing an employee to sit on your furniture also violates their duty of care

However, SIY had a sign where they sought to limit their liability for lost and stolen items. A professional bailee can limit his liability only if the bailor had notice or should have had notice of the limitation. In this case, SIY is a professional bailee because it routinely stores things as part of its business. If the sign really was prominently displayed, that limitation may mean that SIY'S liability as a bailee will not be successful. However, as I will explain below, SIY may be liable vicariously as Erick's employer.

Erick

Erick is liable for the conversion of your furniture. "Conversion" means that he took your property without your permission. Although Erick thinks you abandoned your furniture, "abandonment" in the law requires an intent to give up ownership and title. Giving property to a bailee to hold for you is not abandonment. Although the furniture was in SIY'S possession. It still belonged to you. Therefore Erick's taking of it was conversion. In Indiana, a person who commits conversion is liable for three times the amount of the property. However, since Erick has a gambling problem and no longer has your furniture, we can assume that he will not be able to pay for the value of the furniture. Therefore our best bet may be to go after SIY as his employer.

SIY as Erick's Employer

Although its liability as a bailee is limited, SIY may be liable as Erick's employer. An employer is liable for the acts of his employees that are committed within the scope of his employment. Here, I don't have sufficient information but it seems that we have a good argument that Erick was an employee, assuming he got regular paychecks, worked consistently, and had an employment contract. It may be harder to show that it was within the scope of

employment since this was what is called an "intentional tort," but the fact that the company knew he was sitting on your furniture & allowed him to do it works in our favor.

Boris

Even though Boris was not the original thief, he did have possession of your furniture wrongfully. This is not as clear of a case as the one against Erick but I think you would win a claim for conversion against Boris.

I hope this analysis has helped.

Sincerely,
Applicant

Indiana Essay Question III
Sample Answer
(Verbatim transcription of answer by an examinee)
July 2009

The City of Bigtown's proposed legislation is constitutionally flawed in several respects. Analysis with the Indiana Constitution, bearing in mind that the Indiana Supreme Court looks to the text of each provision, the history of the provision, the provision's context in the entire Constitution, and precedent indicates that a constitutional challenge to this legislation will likely prevail.

I. Special Law

The legislation proposed would be deemed a special law in violation of Article IV of the Indiana Constitution. As a general rule, laws must be made general whenever possible. Here, the law would probably not survive the 2-prong analysis well when a special law is challenged. First, the court will consider if this is a special law that could not be made general. If this is true then the law will often be upheld so long as it doesn't violate Art. IV, §21. Then, the court will look to see if the special law is necessary to achieve a legitimate purpose (e.g., funding a Superfund cleanup in 1 specific location). Here, neither is true—the law is special because it only deals with Bigtown and it could be made general and there is no special purpose justifying the special law. Therefore, it violates Article IV of the Indiana Constitution.

II. Takings

Article I, §21 requires that just compensation for a taking of property be paid before the property is taken, which is different from the federal standard. Compensation under §21 requires payment of extrinsic benefits which equals the value of the property taken plus any benefit received by the landowner minus any damage done by the taking. The proposed legislation would deviate from the constitutional requirement because it only allows compensation for 50% of the property's fair market value up to a limit of $750,000. This is <u>not</u> payment of extrinsic benefits as constitutionally required and is a violation of Art. I, §21.

III. Equal Privileges and Immunities

The equal privileges and immunities clause, Art. I, §23 of the Indiana Constitution, is essentially Indiana's equal protection clause. Unlike the federal analysis, which uses standards of scrutiny based on the classification drawn, Indiana uses rational basis review for all classifications. The 2 prong analysis requires that the state have a legitimate purpose for the classification and that it be rationally-related to this purpose. Prong 1 also requires that the classification be based on inherent characteristics of the class. If prong 1 is satisfied then the court assesses whether there are any subclasses present which would violate the requirement that all similarly-situated people be treated the same.

This legislation violated prong 1 because it classifies property owners based on the date in which they acquired their property. People acquiring property after January 1, 2009 will receive less compensation for their property than people who acquired their property before January 1, 2009. This classification is not based on any inherent difference between the two groups and it is not rationally-related to a legitimate state interest; therefore, prong 1 is not satisfied. Furthermore, there is a prong 2 violation because landowners with less valuable property may be more compensated than landowners with property worth over $750,000. This subclassification violates the second portion of the test. Thus, Art. I, §23 is not complied with.

IV. Due Course of Law

Article I, §12 guarantees a remedy by due course of law. The analysis used is identical to that in the federal system. Here, the legislation would take property without a proper hearing in violation of the guarantees of notice and a hearing provided by §12. Thus, this section is violated and a challenge should be brought

V. Open Courts

Article I, §10 provides that the courts shall be open to citizens. However, this legislation, which makes the decision of the arbitration panel non-appealable and not subject to attack effectively closes the courts to a set of the population. This challenge is related to the §12 challenge and should be litigated with it.

Although all of these challenges should be raised against the legislation, I believe that the Article I, §21 and Article I, §23 claims have the greatest likelihood of success given the court's reference to the legislature in Article IV analyses.

Indiana Essay Question IV
Sample Answer
(Verbatim transcription of answer by an examinee)
July 2009

1. John may sue all three defendants in Indiana. The City of Lawton, who employed the janitor and in whose building the accident occurred, obviously has personal jurisdiction in Indiana. Grimeminders, the cleaning and maintenance company, has its principal office in Indiana. It has general personal jurisdiction in Indiana due to its continuous, systematic contacts with the state and having its principal office in Indiana. Bluegrass Tile also has personal jurisdiction in Indiana. Indiana Trial Rules 4.4 is the state's long-arm statute. This statute lists several requirements for automatic personal jurisdiction. Bluegrass tile did business in the state and its alleged negligence caused injury in the state. For either of these reasons, Bluegrass can be sued in Indiana under the long-arm statute. It would be subject to specific personal jurisdiction even without the statute.

2. John may sue in any Indiana county circuit court of general jurisdiction. Subject matter jurisdiction dictates what courts may hear what cases. As opposed to courts of limited jurisdiction, trial courts at the county level may hear any matter. John may not sue in federal court. There is no federal question at issue, so his only chance would be under diversity jurisdiction. While he meets the $75,000 amount in controversy requirement, there is no adequate diversity of citizenship. Both the city of Lawton and Grimeminders are Indiana defendants. Therefore, John may not file suit in federal court.

3. Venue may be proper in a couple different counties. Indiana Trial Rule 75 lists the places where preferred venue lies. 1-9 on the list in the rules dictates preferred venue locations. Number 10 on the list is a catch-all if none of the others are applicable. Here, Tuft County, the accident site and location of one of the defendants, the City of Lawton, would be proper. The county where Blackstone, Indiana is located would also have preferred venue because one of the defendants has its place of business there. When more than one preferred venue exists, the plaintiff has the ability to "forum-shop" and choose between those venues.

4. Indiana Trial Rule 76 gives the situations in which there may be a change of venue. There are two instances: (1) where the county of the lawsuit is a party to the action; or (2) if the party would be unlikely to get a fair trial in that county because of local bias or prejudice. The City of Lawton, located within Tuft County, might be reason to change if the suit were brought there. However, the county itself may not actually be a party. If John could show a likelihood of an unfair trial in Tuft County, he might be able to get it changed.

5. The Indiana Tort Claim Act (ITCA) requires notice be given by plaintiff before bringing a lawsuit against a municipality. The City of Lawton would be able to file a Rule 12 (b)(6) motion to dismiss. This motion is available for failure to plead a claim, when a defense is pleaded, or a cause of action does not exist. Here, failure to file a tort claim notice as required by ITCA would be a valid defense for the City of Lawton. If the 12(b)(6) motion to dismiss is granted, the case against the city would be dismissed with prejudice and John would be barred from refiling.

Indiana Essay Question V
Sample Answer
(Verbatim transcription of answer by an examinee)
July 2009

Memo
To: Lisa
From: Applicant
Re: George's Estate

In this memo I will inform you of your rights to the assets that George owned when he died. Then I will advise you of the applicable Federal and Indiana taxes that resulted from George's passing.

Because George died without a will, his estate will pass in accordance with the Indiana intestacy statutes. The assets that are considered part of George's probate estate are different than those in his federal tax estate which I will discuss in a moment.

First let me address the property that will pass outside of probate. Lisa, you will take full ownership of the residence pursuant to the right of survivorship. Lisa, you will also receive the IRA. Fred and Sarah will receive the benefits of the life insurance.

Moving now to the probate estate; Lisa, you may take a $25,000 family allowance by statute. The $25K comes out of the estate before any creditors can take. George's bank account containing $520,000 is definitely part of the estate.

The joint account between George and Fred is a bit trickier. If it was in the form of a Totten Trust (i.e. George in trust for Fred) or had rights of survivorship then Fred would take the money outside of probate; but as it is written it appears that half of the account will be placed in the probate estate.

The estate contains $532,500 minus your family allowance leaves $507,500. Creditors claims amount to over $545,000, so the $25,000 family allowance is all you will take from the estate. If there had been any assets left in the estate they would have been split with Lisa taking ½ share as surviving spouse and parent of issue and each child taking ¼.

The federal government includes more assets in the "estate" for estate tax purposes.

The unified gift and estate tax exemption is $3.5 Million minus any gift tax exemption used during life, up to $1 Million dollars.

The Federal estate contains the same assets as the probate estate plus most of George's other assets.

Half the value of residence will be included in the estate, but Lisa will also received the stepped up fair market value basis in that half of the property.

Also there is a 100% marital exemption for property passing to a spouse.

The life insurance policy will be part of the estate as well if George retained any indicia of control in it such as the right to change beneficiaries, or surrender for cash or use as collateral. It is unlikely that George did not retain some indicia of control. The IRA stays in the estate under a similar rule.

All of the joint bank account will be considered part of the estate unless the personal representative can show that Fred contributed the money to it.

There are deduction's for debts paid, state taxes paid and funeral costs.

Because only half the value of the home goes into the estate and there is a marital exemption George should be exempt from federal estate taxes.

Indiana has inheritance taxes, but Lisa will not have to worry about those because the spousal exemption is unlimited. Sarah and Fred do not take from the probate estate so they don't have to worry about them either; but if they did they would fall into Class A as lineal descendants of the decedent and be entitled to a $100,000 exemption.

Indiana Essay Question VI
Sample Answer
(Verbatim transcription of answer by an examinee)
July 2009

1) Worldwide should check with the Indiana Secretary of State to ascertain any creditors who may have filed financing statements against any of the corporation's assets. They should also check the county Recorder of Deeds for any mortgages or other liens upon any real estate or fixtures owned by Park Corp. This search may also reveal (if recorded) if there are any judgments against Park Corp. They should also check the vehicle title certificates to the three delivery trucks and three company cars to see whether liens are owed on the vehicles, as must be indicated on the face of the title instrument. Worldwide may also request to inspect the accounting records to determine whether there are any other debts owed currently that may become a lien on the corporate assets in the future.

2) Sale of all or substantially all of a corporation's assets or stock is considered a fundamental change. A Board of Director meeting must be held to resolve to vote for this change to be put to the shareholders thereafter. A majority of the Board of Directors must vote in favor of the sale. As there are only 3 directors, and Walter and Susan are in favor, the matter should then be put to a shareholder vote at a special meeting for that purpose only. A majority of all shares held must be cast in favor of the sale. Since each owns 50 common shares, Walter and Susan's votes will constitute an approval of the sale of the corporation.

3) If Mike does not want to sell, he must take steps to protect his dissenter's rights. Prior to the shareholder meeting to vote on the sale, he must notify the other members of his intent to exercise his dissenter's rights. He must then not vote in favor of the sale (abstain or vote against), and immediately after the vote must demand that his interest be bought out. His shares are entitled to their fair market value immediately prior to the sale. If no agreement can be reached as to the value, within 60 days, he shall file a declaratory action in court to ask the court to determine the fair value of his shares. If Mike wanted to purchase the other two shareholders' shares himself, he could presumably do so as well if he had sufficient funds to do so, and the other 2 owners agreed.

4) If Worldwide purchases Park's common stock held by the three shareholders, the corporation will remain liable to all of the corporation's creditors. Absent a piercing of the corporate veil for reasons such as undercapitalization, comingling of funds, or other wrongdoing, a shareholder will not be held personally liable for the debts of the corporation. The corporation is a distinct legal entity and this is the primary purpose of limited liability that corporations and their shareholders assume by electing a corporate status. If the corporation defaults on its line of credit or otherwise does not pay any of its creditors, the creditors will have rights against the corporate assets just as any creditor, whether secured by security interests in the assets, or unsecured.

5) If Worldwide purchases the assets of Park without expressly assuming its liabilities, the corporation would presumably still retain liability on the corporate debts. However, it is possible that some of Park's creditors would not permit such sale of assets if it were in breach of any security agreement terms that provided that if the assets were sold, it would constitute a default. This may be the case with the line of credit, since it is presumably secured by some or all of the corporate assets, equipment, inventory, etc. The creditors may require Worldwide or its executive board members to sign personal guarantees to ensure payment in the event of default under the new corporate ownership. If Walter, Susan or Mike executed any personal guarantees, those may still remain if the creditor does not permit the assets to be sold or the original individuals to be released. However, the creditors are primarily interested in the assets of the corporation, especially one with significant assets such as Park, and therefore, presuming their interests are secured by the corporation's assets, will likely be more concerned with the corporation retaining profitability. If the assets are purchased by Worldwide, Park or Worldwide would likely have the obligation to notify creditors of the change so that they may take steps to protect their security interests.