

INDIANA ESSAY EXAMINATION  
QUESTION 1  
July 2010

Doug Jones and April Wilson met in 2004 and had 2 children, Sam (born in 2007) and Carol (born in 2008). Doug and April were not married, but resided in Doug's home since 2004. Doug sold insurance policies from his home and April was unemployed.

Sam's birth certificate stated that Doug and April were the birth parents. However, Carol's birth certificate only listed April as the birth parent.

In May 2009, Doug was convicted of fraud due to his involvement in selling bogus insurance policies to local small business owners. He received a five year sentence for the felony conviction and is presently serving his sentence in a nearby federal prison.

April continued to live in Doug's home after he began to serve his sentence. As permitted by the prison, April and the children regularly visited Doug at the prison. Since Doug was no longer employed, in September 2009, April began working as a teacher's aide at a nearby elementary school. In October 2009, April's mother, Sally, a widow who resided in California, moved in with April to help care for the children while April worked.

In December 2009, April was killed in a car accident. In January 2010, without Doug's knowledge or permission, Sally took the children to California to live with her. In June 2010, Sally filed a petition in California to adopt the children.

Doug was served in prison with the petition. He vehemently opposes the adoption and he wants the children back in Indiana.

What are Doug's rights and how can he assert his rights?

INDIANA ESSAY EXAMINATION  
QUESTION 2  
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Hoosier Monster Jam Corporation (“HMJC”) is incorporated under Indiana law and is managed by a nine member board of directors. HMJC builds stadiums for monster truck jams and operates monster truck jam events at these locations throughout the Midwest. HMJC directors have voted to build stadiums that use only natural light, and forego the installation of electric or artificial lights. This action precludes evening monster truck jams, which to Susan, an HMJC shareholder, wastes an opportunity to increase income to the HMJC and dividends to HMJC shareholders. Susan has researched the other monster jam operations around the United States and has found that they operate events on Friday and Saturday evenings using lights in their stadiums, all to great profit.

HMJC Shareholders have been pressuring the directors to increase dividends. The directors’ rationale for the adoption of the no lights rule is that they want to operate an environmentally friendly or “green” company, because they believe the lights cause light pollution. The directors also believe that using electric or artificial lights will cause more energy usage, leading to the depletion of carbon fossil fuels. The directors believe they are acting in HMJC’s best interest. However, they have not sought the advice of any light pollution or energy experts.

Susan has recently learned of the board’s vote and intends to make a written demand on the board that it reverse its vote and install lights in all the stadiums it builds. Upon further reflection, thinking this request would be futile, she instead has hired an attorney. The attorney is preparing to file a lawsuit.

1. What type of lawsuit can Susan’s attorney file?
2. What, if any effect, does Susan’s failure to make a demand on the directors have on the lawsuit?
3. If such a lawsuit is filed, how should a court rule?

INDIANA ESSAY EXAMINATION  
QUESTION 3  
July 2010

James and Mary are Indiana commercial driving license skills test (CDL-ST) examiners, who are licensed by the Indiana Bureau of Motor Vehicles (BMV). James has administered the CDL-ST for ten years. Mary has been administering the CDL-ST for eight years. They work at separate BMV approved testing sites.

James received notice that his CDL-ST license has been revoked effective immediately by the BMV commissioner for conduct the commissioner believes poses a threat to public safety. The order does not specify the conduct that resulted in the revocation, but six months ago James was convicted of Operating a Vehicle While Intoxicated, a class C misdemeanor.

Mary also received notice that her CDL-ST license has been suspended for one year effective immediately. Her order cites unprofessional conduct as the basis of the suspension but does not provide any specific incidents. Mary has a bad temper and uses profanity profusely. She knows complaints have been filed against her.

The written notifications James and Mary received advised each of them of their right to request a hearing before an administrative law judge (ALJ).

James contacted an attorney. His attorney advised him to immediately file a lawsuit in the local circuit court for an order requiring the BMV to reinstate his CDL-ST license. James followed his attorney's advice and filed the lawsuit. The BMV promptly filed a motion to dismiss, which the trial court granted, and the dismissal was ultimately affirmed on appeal.

Mary also contacted an attorney. Mary's attorney advised her to request a hearing before an ALJ. For purposes of this question, assume the ALJ is the ultimate authority for the BMV. At the hearing, the BMV presented evidence of the complaints against Mary, which consisted of affidavits from three test takers and testimony from four witnesses. Mary's attorney timely objected to the admission of the affidavits as hearsay. Fifteen days after the hearing, the ALJ sent a letter to Mary's attorney by certified mail affirming the BMV's decision to suspend Mary for one year.

1. Explain why the trial court dismissed James's lawsuit.
2. Discuss whether Mary has any judicial remedies available to challenge the decision of the administrative law judge and, if so, the nature of the remedies, the procedural requirements and the possible issues which could be raised.

INDIANA ESSAY EXAMINATION  
QUESTION 4  
July 2010

John was a widower, age 80. He had a daughter, Linda, and a stepdaughter, Emily. He lived alone in Indiana, but received assistance daily from a home health aide. He spoke to Linda, who lived in California, once every few months when she called to see how he was doing. Emily lived two miles from John, but had not seen or spoken to him in 10 years, until the last year of his life when John's vision was failing. When his vision began to fail, John called Emily and asked her to be his limited guardian for financial purposes. John's attorney prepared the documents and Emily was appointed as John's Limited Guardian.

John was an animal lover who executed a Will many years ago leaving  $\frac{3}{4}$  of his estate to the Humane Society and  $\frac{1}{4}$  to Linda. Last week, John was driven to John's attorney's office by Emily. Both of them met with John's attorney. John explained to the attorney that his assets consisted of the following:

- A. His house worth \$120,000 which he titled jointly with Emily last month. Emily's attorney prepared the Deed, Emily took the Deed to John's house and John signed it in the presence of a notary public employed by Emily.
- B. \$120,000 in a bank account in his name alone.
- C. \$60,000 in an IRA with Linda as beneficiary.

John told his attorney he titled the house jointly with Emily so it would equalize the IRA Linda is getting. He said he wanted the estate divided equally between the Humane Society, Linda, and Emily. John's lawyer prepared a new Will. The new Will leaves John's assets subject to probate  $\frac{1}{3}$  to Emily,  $\frac{1}{3}$  to Linda and  $\frac{1}{3}$  to the Humane Society. The new Will was signed the day it was prepared and was validly executed. John died of a heart attack the day after signing the new Will.

Linda wants to have the new Will set aside and receive as much of John's assets as possible.

1. Analyze what grounds can be used to set aside the new Will and the chances for success.
2. What actions should Linda take or not take to maximize her inheritance?
3. Advise Linda of the tax consequences regarding the assets she will receive resulting from John's death.

INDIANA ESSAY EXAMINATION  
QUESTION 5  
July 2010

Eric owned a medical practice in Indiana. Eric needed to replace his “XYZ” machine, which he used to diagnose certain medical disorders. The “XYZ” machine has no personal or household uses.

On February 1, 2009, Eric went to GH Clinic, an Indiana corporation, to purchase a used “XYZ” machine for \$20,000. GH Clinic is a medical clinic and had never sold used equipment before. This particular “XYZ” machine was the only piece of equipment the GH Clinic has ever sold.

Eric paid GH Clinic \$10,000 in cash and signed a document entitled “Agreement.” In the Agreement, Eric agreed to pay the \$10,000 balance to the GH Clinic in monthly installments beginning on March 1, 2009, until the balance is paid in full. In the Agreement, Eric agreed that GH Clinic would have a lien on the “XYZ” machine purchased by Eric to secure payment of the \$10,000 balance. GH Clinic took no action with respect to the Agreement, other than placing the Agreement in the GH Clinic’s filing system. The “XYZ” machine does not have a certificate of title, and there is no legal requirement that it have one.

On June 1, 2009, Eric was experiencing financial problems and went to the County Bank in the same town as his medical practice. County Bank loaned Eric \$50,000 and required Eric to sign a promissory note and a security agreement, which granted a security interest in “all equipment now owned or hereafter acquired by Eric, including but not limited to a certain “XYZ” machine.” County Bank perfected its lien by properly filing a financing statement with the Indiana Secretary of State.

On July 1, 2009, after Eric had failed to make any of the monthly payments due under the Agreement, Eric voluntarily returned the “XYZ” machine to GH Clinic, and GH Clinic agreed not to pursue Eric for the balance due under the Agreement.

On July 2, 2009, GH Clinic sold the machine to Ken, who practiced medicine in a different Indiana county, for \$10,000 cash, which was the “XYZ” machine’s fair market value on that date. GH Clinic gave Ken a Bill of Sale showing the sale to Ken for \$10,000 cash.

Eric failed to make any payments to County Bank as required in the note and security agreement. On August 1, 2009, the County Bank sued Eric and asked the court to foreclose the security interest in the “XYZ” machine. Eric told the County Bank’s attorney that Ken now had the machine, and thereafter County Bank joined Ken in the legal action.

As between Ken and County Bank, who has the priority interest in the “XYZ” machine? Give detailed reasons for your answer.

INDIANA ESSAY EXAMINATION  
QUESTION 6  
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FACTS:

Plaintiff was a 19 year-old male student at Suwannee High School in Suwannee, Indiana. Suwannee has a modern gymnasium equipped with side basketball goals to accommodate multi-station practice shooting. On 6-1-09, Plaintiff was stretching on the side of the floor in preparation for an upcoming intramural basketball game. At the same time, a school janitor was in the process of raising the basketball goal using an automated cable winch when the goal suddenly and without warning descended rapidly, striking the Plaintiff on the shoulder and arm and causing him to suffer a severe fracture of the upper arm. An investigation conducted by the school revealed that the cable involved in raising the basketball goal broke, causing the goal to fall rapidly. Further investigation revealed that the school had failed to install a safety strap designed to prevent this kind of accident.

PROCEDURAL HISTORY:

The Plaintiff contacted an attorney and that attorney timely filed the obligatory tort claim. Thereafter, that attorney filed suit against Suwannee. At the time suit was filed the attorney submitted a Request for Admissions asking the school to admit that it was solely at fault for failing to have a safety cable in place. Forty-five days after the service of Plaintiff's Complaint and Request for Admissions, Defendant filed his Answer denying Plaintiff's allegations, and filed Affirmative Defenses where the Defendant alleged that safety cables were not required by any safety codes, rules, regulations or ordinances. At the same time, Defendant formally denied Plaintiff's Request for Admissions. Plaintiff's attorney then filed a Motion for Summary Judgment and designated the Request for Admissions as evidence contending that the Requests were deemed admitted. The Plaintiff also filed an affidavit showing that the Defendant failed to have a safety cable attached to the basketball goal for use during the lowering process. Forty-five days after being served with Plaintiff's Motion, the Defendant school responded to Plaintiff's Motion for Summary Judgment by filing an unverified memorandum in opposition and attached its Answer, Affirmative Defenses and Denial of Plaintiff's Request for Admissions in support of its opposition memorandum and contended that the Plaintiff's Motion should be denied.

ASSIGNMENT:

Discuss how the motion for summary judgment should be decided and why.

**Indiana Essay Question 1**  
**Sample Answer**  
**(Verbatim transcription of answer by an examinee)**  
**July 2010**

Doug's situation presents issues relating to both jurisdiction and family. Each of these issues and sub-issues is discussed in detail below.

I. Doug may contest Sally's petition for adoption based on a lack of personal jurisdiction.

Due process requires that a state must have personal jurisdiction over an individual in order to bind him with a decision in court. In general, a defendant must have minimal contacts with the state. Personal jurisdiction may be achieved by general jurisdiction, specific jurisdiction, and transient jurisdiction. General jurisdiction is when a defendant has systematic and continuous contacts with a state. This is not present in Doug's case. Specific personal jurisdiction is satisfied when a defendant's acts in a certain state gave rise to a cause of action in the state; this is also not present. Doug was never served with process in California, so transient jurisdiction likewise does not apply.

In certain areas of law, jurisdictional statutes provide guidance as to whether personal jurisdiction is satisfied as a matter of law in certain situations. It is unlikely that such a statute, such as the Uniform Child Custody Jurisdiction Enforcement Act, would grant jurisdiction in this case. More likely, it would be the state in which the children are domiciled (in this case, Indiana).

Doug may challenge personal jurisdiction on these grounds by filing a 12(b)(2) motion to dismiss for lack of personal jurisdiction. He must do this within twenty days of service of the Complaint, or this defense is waived. He may also challenge jurisdiction by asserting it as an affirmative defense.

II. Doug may contest Sally's petition for adoption based on Indiana adoption law, as well as on equitable grounds.

Assuming that Indiana obtains jurisdiction over Doug, he may make the following arguments in challenging Sally's petition:

A. Consent of both parents is required to allow a child to be adopted in Indiana, absent four exceptions which do not apply to Doug if he takes certain action.

Consent of both parents to an adoption is required in Indiana unless:

- (i) parent abandoned the child for six months;
- (ii) parent has not been established as having paternity and did not file with the Putative Father Registry, and
- (iii) parent has certain criminal convictions.

Each of these exceptions is discussed in turn.

(i) Doug did not abandon his children.

Doug was arrested and sentenced to five years in jail. He did not voluntarily “abandon” his children. Further, his children made regular visits to see him in prison.

(ii) Doug may establish paternity by requesting a paternity test.

Doug lived with April and the children from 2004 until he was incarcerated. A parent who lives with a mother and children and holds himself out to be a parent is presumed to be the father under Indiana law. Further, the potential father is entitled to request, and the court must grant, a paternity test if the child is under two years of age. In this case, Carol is under two years, so Doug should request a paternity test immediately. Although Sam is older than two years, a representative appointed to him could also request such a test. If a DNA test shows a 99% likelihood that Doug is the father, he will be presumed to be the father.

(iii) Doug’s criminal conviction is not of the type that should preclude him from stopping the adoption of his children.

Doug’s conviction was for a non-violent offense, he was sentenced to a relatively short term (he will be eligible for release with credit for good time in two-and-a-half years), and he is serving his sentence near the children’s prior residence. Although a felony, Doug’s conviction should not preclude him from stopping the adoption.

B. Doug may challenge the adoption as being contrary to the best interests of the children.

Several factors support an argument that it is in the best interests of Sam and Carol to remain under the parentage of Doug. In Indiana, it is presumed that natural parents know what is best for their children. For a third party to even receive visitation rights for children, let alone adopt them, they must show by clear and convincing evidence that it would be in their best interests.

Further, Doug has maintained a relationship with the children since they were born. He lived in the same house with them since 2004 until he was sentenced. Through visitation at the prison, he continued to have that relationship. There has never been any allegation of domestic violence.

For these reasons, equity principles dictate that it is in the best interests of the children to remain under the parentage of Doug.

### Conclusion

In conclusion, Doug may challenge personal jurisdiction in California by filing a 12(b)(2) motion to dismiss. Both Indiana adoption law and principles of fairness and equity support an argument to deny Sally’s petition to adopt.



**Indiana Essay Question 2**  
**Sample Answer**  
**(Verbatim transcription of answer by an examinee)**  
**July 2010**

Issues

1. What type of suit may Susan's attorney file
2. What is the effect of Susan's failure to make a demand?
3. If such a law suit is filed, how would a court rule

Brief answer

1. Shareholder derivative suit
2. The suit will likely proceed if she can show that making a demand would have been futile.
3. HMJC's directors will likely prevail in the absence of a showing of recklessness, gross neglect, or bad faith in their decisions.

Discussions

1. What suit should Susan's attorney file?

When a shareholder believes that the directors actions are damaging the interest of the corporation (and the shareholder's) right to benefit), one may file a shareholder derivative suit. This is not a direct action on behalf of an individual shareholder, who would reap all of the benefits from any damages awarded. Instead, a shareholder derivative suit vindicates the right of the entire corporation. Such a suit requires contemporaneous ownership on the part of the shareholder: they must own stock before and during the suit.

Here, Susan, being a contemporaneous owner, seeking to vindicate and protect the corporation, rather than personal primary interests, will file a shareholder derivative suit

2. What effect, if any does Susan's failure to make a demand on the direction have on the lawsuit?

Under Indiana law, shareholders must make a demand on the corporation to file a lawsuit themselves in addition to contemporaneous ownership. However, an exception shall be made if the claimant can show that such an attempt to demand would be futile. When a demand is made, the board normally forms a committee of disinterested directors to make a decision concerning whether to move forward with a lawsuit

Here, Susan's lawsuit will likely go forward despite her failure to make a formal demand because she believes that it would be futile. However courts are weary of shareholders who claim futility just as a means to "skip a step" in litigation.

3. What is the likely outcome of a derivative suit?

Under Indiana law, directors have, among other things, a fiduciary duty to exercise due care. This is an expectation that the director will exercise the care of an ordinary, prudent person in the circumstances. Moreover, director actions are generally protected by the business judgment rule, which prevents courts from interfering with board and director decisions made in good faith and absent reckless or grossly negligent conduct.

This case will likely be decided along the lines of an old case involving a derivative suit against the dominant shareholder of the Chicago Cubs. The dominant owner refused to place lights in Wrigley field for night games and the shareholders brought suit, claiming that the lack of night games cost the corporation money. The court held that the controlling shareholder's decision was protected under the business judgment rule.

As a director, although his decision cost the corporation a lack of recklessness or gross negligence prevented courts from interfering. This also allows board members and individual directors to take necessary risks.

Here, the HMJC board will likely be successful under the business judgment rule. The directors have voted against artificial or electric light use to promote a more "green" initiative: definitely not a motive of recklessness or bad faith. They also believe that they are helping to lower energy usage in the process. Many "green" or eco-friendly initiatives require substantial investment and a court will likely dismiss this case on a timely motion.

**Indiana Essay Question 3**  
**Sample Answer**  
**(Verbatim transcription of answer by an examinee)**  
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(1.) James's Lawsuit.

James's lawsuit was dismissed by the trial court because James failed to first exhaust administrative remedies. Indiana courts lack subject matter jurisdiction to consider cases in which administrative remedies exist and have not been exhausted. There are only 3 exceptions to the exhaustion requirement. First, exhaustion is not required where it would be futile to do so. For instance Indiana courts have held that a hospital did not have to exhaust administrative remedies when it sought Medicaid reimbursement on a claim that had already been presented to the agency by the individual physician and rejected.

Second, administrative remedies do not need to be exhausted if the agency refuses to consider your claim. Finally, if the claim is a purely constitutional claim, administrative remedies need not be exhausted.

In this case, the facts do not support application of any of the exceptions. The BMV was obviously willing to consider the matter, as it provided James the process for seeking review from an ALJ. The futility and constitutional claims are clearly not implicated. James should have petitioned the ALJ for review.

(2.) The first thing Mary must do is ensure she has exhausted all of her administrative remedies. Since the ALJ is the ultimate authority for the BMV, it is likely that such remedies have been exhausted. Mary can now petition the circuit court in the county where the administrative hearing occurred for judicial review. She must file her petition within 15 days of receiving the ALJ order, and she must establish standing. Since the order was directed solely at her, Mary has standing.

On judicial review, the circuit court will not reweigh the evidence or generally admit new evidence. The court's review is generally limited to whether the administrative order is (1) arbitrary, capricious, or an abuse of discretion, (2) in violation of the state or federal constitution, (3) issued by an agency exercising proper jurisdiction, (4) issued in compliance with the statutory procedures outlined in the Administrative Orders and Procedures Act (AOPA), and/or (5) whether the order is supported by substantial evidence.

Mary can raise several issues, most of which argue that proper procedures under AOPA were not followed. Mary's most persuasive claim is that the ALJ failed to issue findings of fact with the order (as well as failure to provide the steps to take for review). Under the AOPA, as ALJ's order must present specific findings of fact. This allows the circuit court, upon judicial review, to evaluate the propriety of the order based on those facts, since the court does not reweigh the evidence.

Although the admissibility of the hearsay was objected to, it is unclear whether this is an adequate basis for review. Generally, hearsay is admissible under the AOPA. The only limitation is that an order may not be supported solely by hearsay. Since there were no findings in the order it is unclear whether the order was or was not based solely on hearsay.

The court will likely remand the case to the ALJ so that a properly supported order may be given. Mary may also have a state and federal constitutional claim.

The Indiana Due Course of Law Clause and the Due Process Clause of the U.S. Constitution provide minimal procedural due process to all. Both are interpreted in the same manner: by balancing the individual's interest against the government's, and asking whether more process would be beneficial. The AOPA is generally intended to protect these rights, but Mary may have an argument that the prehearing revocation was unconstitutional because she should have had notice and a hearing first. Unlike the allegations against James, which seemed to suggest that he was operating while drunk and causing danger to public safety, the only allegations against Mary dealt with her language. Thus, the government had a lesser interest in prehearing termination. Although it may not be as likely to prevail, a valid argument such as this should be made. If successful, the court would likely reinstate Mary's license while the action was pending or remand.

**Indiana Essay Question 4**  
**Sample Answer**  
**(Verbatim transcription of answer by an examinee)**  
**July 2010**

Issue #1: Analyze the grounds that may be used to set aside the new will and the chance for success.

The best grounds that could be used by Linda to set aside the new will is to contest the will for undue influence. Emily was appointed to be John's Limited Guardian and therefore was in a trusted position close to John which she may have used to her benefit. The facts state that Emily drove John to his attorney's office to change the will after reviewing his assets. She did so only a month after having her attorney prepare a deed and employing a notary public to help with the process. This suggests that, considering John had not seen Emily in 10 years, he may have been influenced by her.

However, there is reasoning to contradict this idea, as John did contact Emily to have her be his Limited Guardian, meaning that he may have had a mere change of heart and is not actually under her influence.

Another issue is John's failing vision. However, there is nothing to suggest that John did not have sound mind when he created the will, and it is unlikely that his failing vision would bring that into issue. Otherwise, John is over 18, appears to have had testamentary intent, and there was a proper attestation and execution.

Issue #2: What actions should Linda take or not take to maximize her inheritance?

John's House: First, Linda may want to try to have the deed between John and Emily invalidated. Linda could again argue undue influence and is more likely to succeed than with the new will, because the circumstances (as reflected above) suggest that Emily may have coerced John into re-titling his home. If she is successful, this would likely remove Emily from taking a share of the home, and would possibly put any possessory interest of Emily's into a constructive trust, allowing Linda to take as John's heir.

IRA: The IRA would likely pass outside of probate because Linda is named as the sole beneficiary. Therefore she should be in a position to take the entire amount. Linda probably should not try to have the new will be set aside because that act would make the old will valid again. Under the old will Linda would have only received a quarter share, rather than the 1/3 share she may receive now. Therefore, her best action would be to try to invalidate the deed and offer the will into probate within the next three years, assuming Emily will put the will into probate if she does not. If the will was not probated, Linda would take under the laws of intestate succession. Realistically this may maximize her share.

Issue #3: Tax Consequences

Federal Estate Tax:

There currently is no federal estate tax scheme for 2010 and therefore, there would be an unlimited exclusion for John's estate. Next year there will be a \$1 million exclusion available unless there is new legislation passed.

#### Indiana Inheritance Tax:

There are three classes for inheritance tax purposes and spouses receive an unlimited exclusion. Class A is for lineal descendants and they receive a \$100k deduction and are taxed between 1 and 10%. Class B is for other relatives, they receive a \$500 deduction and are taxed between 7 and 15%. Class C is for all other persons and they are taxed between 15% and higher, receiving a deduction of \$100. Linda is in Class A and therefore any amount above \$100,000 may be taxed by the state.

**Indiana Essay Question 5**  
**Sample Answer**  
**(Verbatim transcription of answer by an examinee)**  
**July 2010**

Art 9 governs secured transactions. A security interest is an interest in personal property (collateral) that secures an obligation of the debtor. The collateral here is the XYZ machine, the debtor is Eric, and the obligation that was secured was the payment of \$50,000 on a promisory note.

(1) Did County Bank Attach its Security Interest – Attachment of a security interest allows a secured creditor to enforce its rights on the collateral against the debtor. Art 9 requires 3 things per attachment: (1) agreement; (2) value given; (3) debtor has rights on the collateral.

- Agreement - Art 9 requires an authenticated security agreement or possession of collateral pursuant to an oral agreement, intent to create a security agreement and a description of the collateral. Eric did sign (authenticate) a written agreement that was intended as a security agreement as evidence by the name of it “security agreement”. The agreement also described the collateral in a way that reasonably indicates it. The Bank stated the XYZ machine as “all equipment” which is a specific Art 9 classification given to goods that are not consumer goods, inventory or farm products. The XYZ machine is equipment because it is a good – moveable at time of attachment. It is not a consumer good because it does not have household uses and it is not a farm product because it is used for a medical practice. It could possibly be inventory, but it is not to be sold in a business nor consumed in a business’s day activity. Therefore, the XYZ was adequately described as equipment and the after acquired property clause does not defeat its description.

- Value – Value was given when County Bank loaned Eric \$50,000.

- Debtor has Rights in Property – A debtor only need to have some rights on the property, and the security interest will only attach to the rights the debtor had. Eric paid \$10,000 down to acquire the XYZ machine and made installments on the other \$10,000 owed. Therefore, County Bank obtained a security interest in the XYZ machine that was limited to the amount of money Eric actually paid.

(2) Did County Bank Perfect Its Interest – Perfection provides notice to 3<sup>rd</sup> parties and determines the rights on collateral among 3<sup>rd</sup> parties. There are 5 ways to perfect once attachment has been completed: (1) File Finance Statement; (2) possession; (3) Control; (4) Automatic w/consumer purchase money security interest; and (5) notation on certificate of title. County Bank perfected by filing a financing statement. A financing statement must be filed in the location of the debtor. Eric is the debtor and he is a resident of IN, so filing in the Secretary of State’s office in IN was proper. Assuming the finance statement named Eric as the debtor, indicated the collateral, and named itself as the secured creditor, County Bank obtained perfected its security interest.

(3) Priority between Buyer & Second Party. A security interest that is perfected continues with the collateral in an unauthorized sale. Here, Eric had returned the collateral to GH Clinic who

then sold it to Ken without notifying or obtaining consent from Bank. Therefore, Ken has taken the XYZ machine subject to a security interest of Bank unless an exception applies.

One Exception is a bona fide purchaser who purchases from a seller in the ordinary course of business. However, Ken has two problems with this exception. First, GH does not regularly sell XYZ machines. Second a BFP may only take free of the SELLER'S security interest. The seller here is GH Clinic, not County Bank.

The garage sale exception not apply because XYZ is not a consumer good and because County Bank was perfected its interest will remain. Therefore, County Bank has priority in the amount of \$10,000 on the proceeds of the sale or to foreclose on the XYZ machine in the amount of \$10,000.



**Indiana Essay Question 6**  
**Sample Answer**  
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Summary Judgment

Summary judgment in Indiana is governed by Trial Rule 56. Any party can move for summary judgment. The court **MUST** grant summary judgment if “in viewing the facts in light most favorable to non moving party, there is no issue of material fact.” A motion for summary judgment requires a designation of evidence relied upon. It is not the responsibility of the court to examine the record.

Request for Admissions

Indiana Trial Rule 26 allows that discovery may be filed at any time during litigation (including filing with the original complaint. Indiana Trial Rule 36 allows for a Request for Admissions to the opposing party. The Requests are to be answered within 30 days of service or the admissions are deemed admitted.

Under Indiana Trial Rule 7, Defendant’s answer was due within 20 days of receipt of the complaint. According to Indiana Trial Rule 8(c), affirmative defenses must be raised in the Answer or they are considered to be waived.

Therefore, by not responding until 45 days after service of of the Complaint, the Defendant waived his affirmative defenses, was in default for not filing his Answer within 20 days, and the Request for Admissions were deemed admitted.

Ruling on Summary Judgment

Plaintiff’s Motion for summary judgment should be granted due to the fact that all issues of material fact were deemed admitted by Defendant’s failure to timely respond. Plaintiff properly designated the Admissions in his Motion for Summary Judgment, and therefore should be duly considered by the court. Plaintiff’s designated affidavit also eliminated issues of material fact.

In addition, Trial Rule 56 requires that the statement in opposition to summary judgment be verified and filed within 30 days of service of the Motion for Summary judgment, which defendant failed to do. Defendant also failed to properly designate the evidence he supplied in support of his Motion in Opposition.

Conclusion

Due to the above analysis, the Plaintiff’s Motion for Summary Judgment should be granted.