

INDIANA ESSAY EXAMINATION  
QUESTION 1  
July 2011

Brenda works for Clothing Company, an upscale clothing and accessories boutique aimed at “tween” girls (aged 8-14). While watching the Teen Choice Awards show, Brenda spotted tween icon Savannah Wyoming wearing bright purple cowboy boots with pink stitching. Recalling she had seen a nearly identical pair in a vendor’s catalog for \$10 per pair, Brenda immediately sent an e-mail to her contact at the manufacturer, Boot Company:

From: "Brenda M. Buyer" <bbuyer@clothingcompany.com>  
Date: Mon, Aug. 9, 2010 8:25 pm  
Subject: Savannah Wyoming Boots  
To: "Sam Salesman" <sam\_salesman@bootcompany.com>

Brenda Sam: Send as soon as possible 200 pairs of purple cowboy boots -- pink stitch (catalog pg. 27), sizing per usual.—

The next day, Brenda received a reply e-mail from Sam:

From: "Sam Salesman" <sam\_salesman@bootcompany.com>  
Date: Tues, Aug. 10, 2010 10:46 am  
Subject: Re: Savannah Wyoming Boots  
To: "Brenda M. Buyer" <bbuyer@clothingcompany.com>

Brenda: Thx for the order. We will ship half by week’s end, remainder by end of month.—Sam

After receiving the e-mail from Sam, and in anticipation that she could turn a large profit on the boots, Brenda placed several newspaper ads featuring the boots.

As promised, Brenda received her first shipment of boots the following Monday and promptly paid Boot Company \$750. The shipment contained 75 pairs of boots in assorted sizes. The boots proved very popular, and the initial shipment was sold within a matter of weeks.

Brenda received no further shipments of the purple boots from Boot Company. When she contacted Sam in early September 2010, Sam informed Brenda that because the boots were so popular, Boot Company could not fill Clothing Company’s remaining order of 125 pairs until sometime in January 2011.

Thereafter, Brenda obtained boots from another vendor at nearly twice the price Boot Company charged. She then called Sam and told him not to bother sending her any more boots, since her “tween” customers would likely be interested in another boot trend by the time Boot Company could ship the remaining pairs Brenda had ordered.

Clothing Company took no further action on the matter and had no further contact with anyone at Boot Company, until July 8, 2011, when Clothing Company sued Boot Company for breach of contract.

Assuming Indiana law applies and that an Indiana court has both subject matter jurisdiction over all potential claims and personal jurisdiction over Boot Company, describe and discuss any defense(s) Boot Company may have to Clothing Company’s claim(s) for breach of contract.

INDIANA ESSAY EXAMINATION  
QUESTION 2  
July 2011

Bob and James have been friends since high school. They decide to start a business (B & J Property Management) to acquire residential structures, fix them up, and then sell or rent them.

They used some of their retirement money to capitalize the business. Bob put up \$100,000 and James put up \$80,000 for a total of \$180,000. However, both men agreed that each one would have equal authority to manage and operate the business. They acquired six properties for \$30,000 each.

Without any formal or informal written agreement, they purchased the properties in the name of B & J Property Management and operated as a business for nine months. They leased an office, bought office furniture, opened a bank account, and obtained printed stationery.

James' sister Lisa moved into one of the homes. Lisa had not paid her rent for the last six months. Bob initiated eviction proceedings by sending Lisa notice to vacate the premises within ten days, as required by the lease. James challenged Bob's authority to file the eviction without his agreement. No court proceedings have yet occurred in the eviction.

Although the relationship between Bob and James is strained, Bob and James decide that they should seek legal advice on how they should structure their business as well as other outstanding legal issues. They have concluded that they should either incorporate as a corporation or form a limited liability company.

1. Explain the common characteristics and differences between corporations and limited liability companies.
2. Explain the advantages of corporations and the advantages of limited liability companies.
3. What would you recommend to Bob and James to resolve their disagreement over whether to evict Lisa?

INDIANA ESSAY EXAMINATION  
QUESTION 3  
July 2011

Floyd, a successful businessperson and respected Red County civic leader, married his high school sweetheart Carol in Red County on June 25, 2000.

Floyd and Carol had two children – Floyd, Jr., born in January 1997 and Rachel, born in June 1999.

Floyd was found dead in an apparent hunting accident on November 20, 2011. Floyd died without a will.

During the funeral service, Carol was approached by Mary, who identified herself as a former college friend of Floyd's. Mary lives in Chicago, Illinois. Mary told Carol that a college sorority sister read about Floyd's death in the local newspaper and emailed a copy of the story to Mary.

After the funeral, Carol received a disturbing long-distance telephone call from Mary regarding her past relationship with Floyd. "Floyd and I got married in Chicago, Illinois during our senior year of college. It was an impulsive thing to do, but at the time it felt so right. I soon realized I had made a foolish mistake. Floyd had a terrible temper, but I tried to make a go of our marriage when I discovered I was pregnant. Floyd left me six months after the birth of our son, Bryan, in 1986. I took our baby and went home to live with my mother in California. After my mother passed away in 2002, we moved backed to Chicago. Floyd and I discussed getting a divorce prior to my heading to California, but we just never got around to getting one. I just wanted you to know that I am Floyd's wife and you are not."

1. If Mary's allegations are true, was Carol's marriage to Floyd valid?
2. If Mary's allegations are true, what are Mary's rights?

INDIANA ESSAY EXAMINATION  
QUESTION 4  
July 2011

Galore Inc. is an Indiana corporation that makes wedding gowns. Galore sells its gowns only through major department stores. Ann bought her wedding gown from a store in Indianapolis. The gown cost \$7,000. Galore had equipment problems that delayed delivery of the gown until the day before Ann's wedding. Galore promised that the gown would be delivered in time for the wedding. However, the wrong dress, in a size too large for Ann to wear, was delivered. Galore could not get the correct dress to Ann before the wedding, and she wore an old prom dress. Ann feels the entire wedding was ruined, and her attorney filed a claim against Galore in state court for \$50,000, the cost of the entire wedding.

Service was by certified mail addressed to Galore Inc. Galore's receptionist who handles incoming mail was sick that day, and a temporary employee signed the certified mail card. Since the envelope was not addressed to an individual, he didn't know what to do with the envelope and put it in a desk drawer. When the receptionist returned to work, she did not find the complaint and summons until 35 days later and gave it to the company president, who contacted the corporation's attorney immediately. When Galore did not file a timely answer, Ann's attorney filed for default judgment. On the same day the receptionist gave the complaint to Galore's president, the court ordered judgment entered by default against Galore for \$50,000.

1. What action, if any, can Galore's attorney take to set aside the default judgment? Assess Galore's chances of success.
2. Assuming Galore succeeds in setting aside the default judgment, what pleadings or motions should Galore's counsel consider filing to defend Galore, and why?

INDIANA ESSAY EXAMINATION  
QUESTION 5  
July 2011

Sam and Betty were married and had one child, Jane. Sam had another child, Fred, born out of wedlock prior to his marriage to Betty. Sam did not have a will until Sam became ill and was physically unable to leave their house. Sam called his attorney and told him what he wanted in his will.

The attorney came to Sam's house with the will, which had been prepared pursuant to Sam's instructions. The attorney explained the terms of the will to Sam. Sam signed the will in the presence of the attorney. The attorney told Sam he would take the will back to his office and his secretary would sign as a second witness to the will. Sam died two days after signing the will.

The assets owned by Sam at the time of his death were:

1. House – valued at \$210,000, titled in the name of Sam and Betty, husband and wife.
2. Car – valued at \$20,000, titled in the names of Sam and Betty, with rights of survivorship.
3. Bank Account – valued at \$90,000 in Sam's name alone.

Sam's funeral had been prepaid and he had no other debts.

The will provides that all estate assets are to be divided equally between Betty and Jane. The will specifically provides that Fred shall receive nothing. Betty has the will admitted to probate and is appointed Executrix.

1. What are Fred's rights and what, if any, actions must he take to protect his claim for estate assets?
2. State what assets, if any, Jane, Betty, and Fred will receive from the estate if each of them exercises all of their legal rights. Explain the reasons for your answer.
3. What, if any, death taxes will be due as the result of Sam's death?

INDIANA ESSAY EXAMINATION  
QUESTION 6  
July 2011

The Indiana Department of Transportation is starting a new project to build light-rail public transportation. The Department has drafted a set of rules to govern the process of designing and building this light-rail transportation system. The project is not scheduled to start until 2015, so there is no emergency requiring immediate adoption of the rules.

The draft rules include provisions governing use of the eminent domain process to take land needed for the light-rail system. Department of Transportation staff members are concerned about unpredictable jury verdicts in eminent domain cases, which make it difficult to estimate construction costs. One provision of the draft rules states that any eminent domain trials arising from takings for the light-rail program will be bench trials, not jury trials.

Early plans for the light-rail system indicate that a hub will be located in Red County on property now owned by Land Corporation. Land Corporation has become aware of these plans and has written a letter to the Department of Transportation objecting to the bench trial provision in the draft rule.

1. What steps must the Department of Transportation take before its draft rule becomes final and binding?
2. Assuming the rule provision requiring bench trials in eminent domain cases becomes final and binding, what actions must Land Corporation take, and when must it take them, if it decides to challenge the bench trial provision in court?
3. If there is a court challenge, what are the best arguments to make against the bench trial provision of the rule?

**Indiana Essay Question 1**  
**Sample Answer**  
**(Verbatim transcription of answer by an examinee)**  
**July 2011**

The contract between Clothing Company & Boot Company is governed by Article 2 of the UCC because it deals w/ the sale of goods (boots).

Under the UCC, sale of goods that is \$500 or greater must be evidenced by a writing signed by the party to be charged with terms including quantity. Other terms generally may be filled in w/ the UCC gap fillers. Here, Sam/Booting may argue that no writing satisfies the Statute of Frauds (SOF). She may argue that her return email does not include quantity. This argument will not likely succeed b/c a group of writings can make up the necessary requirements for the SOF in Article 2. Also, when the transaction is between merchants (as it is here), a written order to purchase goods (or to sell) can bind the second merchant if the second merchant does not object w/in 10 days. When Sam received Brenda's email, Sam did not object & actually assented to the order. The parties typing their names after the email will suffice for the signature.

The next issue is whether Sam was under an obligation to ship by the end of Aug. Sam may also argue that Brenda's email only required that Sam ship as soon as possible & not by Aug. When a return document adds or changes a term of the contract, whether it becomes part of the contract depends on whether there was a seasonable expression of acceptance. Since there was no change in quantity or price & no privity language, a contract existed. When the contract is between merchants, as is the case here, the changed/added term becomes part of the contract unless the other party objects or it materially alters the obligations. Here, although there may be an argument that a change in delivery terms materially alters the contract, Sam is the one who offered it & is likely precluded from making the argument. Brenda did not object to the shipment terms, so they became part of the contract. Therefore, when Sam did not ship by the end of August, she was in breach.

In some situations, a breaching party has a right to cure. One circumstance is when the party thought that the nonbreaching party would accept nonconforming goods. However, Sam does not have a strong argument that she would have a right to cure late delivery in January. A belief can arise from course of dealing or usage of trade, but in the fashion world it is unlikely that 3 mo late delivery on seasonable items would be consistent w/ usage of trade.

To the contrary, Sam actual anticipatorily repudiated the contract by affirmatively telling Brenda that she would be unable to perform. Therefore, Brenda had a right to seek cover by finding replacement goods. As long as the replacement goods price is reasonable at the time of the anticipatory breach, the breaching party will be liable for the difference in the contract price & the price of cover & incidentals. Sam's strongest argument may be that Brenda did not reasonably cover.

Brenda purchased boots that were twice the price of Sam's, so Sam should investigate into the reasonableness of Brenda's actions: Where there other viable, less expensive options & where the boots comparable to Sam's. Sam may argue that Brenda did not seek reasonable cover.



**Indiana Essay Question 2**  
**Sample Answer**  
**(Verbatim transcription of answer by an examinee)**  
**July 2011**

1. Common characteristics between corporations and LLCs/differences

There are many common characteristics between corporations and LLCs. First and foremost, both corporations and LLCs enjoyed limited liability for their shareholders, officers and directors (for corps) and members and managers (LLC). This means that the members are not liable for the actions of the corporation or LLC past their original investment.

Both corporations and LLCs are formed using similar procedures. Both require filing with the Secretary of State. For a corporation, you must file Articles of Incorporation; for an LLC, you have an operating agreement that works very similarly to the Articles.

Also, in both contexts, control is exerted by the shareholders/members and the company is run in its everyday business by Directors and managers. Because of this plus the limited liability, if the directors or managers exert too much control or use the entity for their own, personal liability can be had by piercing the corporate (& LLC) veil. This is an extraordinary remedy but based on the totality of the circumstances, a court could pierce the veil if the following factors were present (and it applies to both corps and LLCs despite the language used): 1) fraudulent use of the corp by its shareholders; 2) whether it's a public or close corp; 3) lack of corporate records; 4) undercapitalization; 5) use of the corp to promote fraud, illegality or injustice; 6) commingling of funds; 7) failure to observe formalities; 8) manipulation of form; 9) payment of individual obligations. As while noting these, however, an important difference between corps and LLCs becomes clear—LLCs are much more flexible in their form and do not require all the formalities that a corporation must abide by. There are no strict meetings requirements, and rights of members are likely broader because they participate more in the LLC than shareholders in a corporation.

Under both corporations and LLCs, the managers owe duties of good faith and loyalty to the shareholders/members. They also act as fiduciaries and one duties of loyalty—that is, the directors/officers/managers cannot usurp opportunities belonging to the entity and cannot self-deal.

The main differences between corporations and LLCs is the tax treatment and the flexibility afforded LLCs. Corporations are taxed on the entity itself- that is, on the income received by the corp-and the shareholders are taxed when money is dividended out by a solvent corporation. LLCs, on the other hand, can elect their type of taxation. LCCs can be taxed as corporations but the default is to partnership taxation. Here, the tax “passes through” and only money distributed out is taxed.

Along with flexibility in taxation, as noted above, LLCs are more flexible and do not need to comply with the Indiana Business Corporations Law in all respects. The LLC can get away with less formality in its structure and function.

2. Advantages of Each Corps and LLCs

The advantage to forming a corporation is that the laws governing corporations are set and there is predictability in the laws. Corporations are governed by the Indiana Business

Corporation Law. If forming a corporation, liability is limited and the corporation works through a Board of Directors. Bob and James could both be on the Board and make decisions jointly.

The advantages to forming a LLC seen broader. Bob and James would enjoy limited liability while having greater flexibility in how the LLC operates. Both could be managers and make decisions. Additionally, LLCs avoid double taxation that corporations (except s-corporations) face.

### 3. Recommended for Bob and James re: dispute over Lisa

As it stands now, it is likely Bob and James have formed a partnership. A partnership is an association of two or more persons carrying on as co-owners a business for profit. Partners are both entitled to manage the partnership and are cloaked with apparent authority to act as a general agent for the partnership. Any partner can make decisions to bind the partnership. Bob's eviction would probably be okay under partnership laws. However, in their current state, Bob and James are exposing themselves to unlimited liability. I would suggest they form a LLC so that they have flexibility in managing the affairs of B & J Property Management and can avoid double taxation. They should file with the Sec. of State's office and add "LLC" to their name. Because there are only two of them, deadlock is likely. I would suggest adding a third manager to help and then decisions can be made by a majority. For now, the decision to evict would have to be joint and if they proceed without agreement, Bob may be liable for breach of duty of care or breach of the operating agreement.

**Indiana Essay Question 3**  
**Sample Answer**  
**(Verbatim transcription of answer by an examinee)**  
**July 2011**

(1) If the allegations are true, Carol's marriage to Floyd is void. Of course proper documentation must be shown of valid marriage without subsequent divorce. A valid marriage would be determined by Illinois law, since that is where the marriage took place. If similar to Indiana, this would require a marriage license and ceremony, of some sort, with an officiant, witnesses and an oath.

If the marriage to Mary is true and there was no divorce, Floyd would not be able to enter a marriage under Indiana law. There are three things which are impediments to entering a marriage: Bigamy (married to another), consanguinity (incest-unless over 65 and at least first cousins) and incompetence at the time of the marriage. These will each make a marriage void – as if it did not happen. These are not waiveable, even if the facts are later known.

The purpose process is often to annul a subsequent marriage – though not required – This can assist with records and court issues, such as children's rights, as will be discussed below.

As Floyd is now dead, there is no recourse. If Mary is telling the truth Carol's marriage is void and she is out of luck.

2) If true, Mary would still be considered Floyds spouse and would be set to inherit accordingly. In Indiana, disposition will go per the intestacy statutes if no will was devised by the decedent. Since Floyd did not make a will, intestacy shares apply.

Typically a spouse is entitled to one half the net estate unless she is a subsequent spouse of someone with children from a former marriage – in which case she would take one third net and one quarter the real property as there is a need to provide for the former kids.

There is no specific statute to deal with the opposite, where there are children from a later spouse. However this would likely be dealt with the same as if Floyd had the children out of wedlock by another woman.

Thus Mary should be entitled to one half the net and one quarter real property. Carol would receive nothing.

The disposition to Carol's two children would be based on two alternatives: 1) if Indiana will acknowledge the children as Floyds since he took them in the home and treated them as his own. The courts seek to ensure care for a child in such cases who were not of a valid marriage.

Alternatively, and perhaps a better route even if courts might accept the children as Floyds, Carol should seek, on behalf of the kids, to have paternity established. This should be done immediately since it must be determined in the fathers lifetime or within five months of death – provided it is not too late. Carol cannot assert the action herself since she (or the state) may only do so up to when the child turns two. A child may assert this claim until twenty, provided, as noted this is within the father's lifetime or five months of death.

If paternity is properly established, Floyd and Rachel will split the other half of the estate equally with Bryan. (Note, Bryan will not need to establish paternity since he is presumed a child of his mother's husband and Mary was married when he was born.) It is unlikely Mary could assert a claim for any past child support since they were not divorced and he is not alive to be sued for such a claim-Carol would have no obligation.

**Indiana Essay Question 4**  
**Sample Answer**  
**(Verbatim transcription of answer by an examinee)**  
**July 2011**

1. Galore's attorney must result to Indiana Trial Rule 60 to seek relief from this default judgment. TR60 governs relief from any judgment, including a default judgment resulting from a failure to answer.

Under TR60, Galore's attorney has several arguments that can be made. First, Galore should argue that it received no actual notice of the pending action. As such, Galore's failure to answer was in good faith as evidenced by the company's actions immediately after discovering the complaint. Galore's attorney must make efforts to emphasize the good faith of Galore and characterize the failure to respond as an excusable error.

Next, and most importantly, Galore should argue that the service of process made by Plaintiff under the Indiana Rules. Galore should argue that while certified mail to a corporation's headquarters is ordinarily appropriate, the failure to name any individual (most notably an officer, director or agent appointed to receive service) was ineffective service. This argument must be used in conjunction with the above good faith argument. Galore should argue that according to the Indiana Trial Rules, service must be made on an officer, director, or named agent. Without a name on the envelope, merely sending a complaint to a large corporation fails to meet the Mullane v. Central Hanover test in that it was unlikely to apprise defendant of the pending suit.

Galore may attempt to argue that it was entitled to notice of the default prior to its entry, but parties who never appear are not entitled to such notice.

Galore should argue that it would be unjust to enter a \$50,000 default judgment where a party never received any actual notice and has acted in good faith throughout. Such a large sum could raise issues of procedural due process.

Finally, Galore should argue that the delay imposed (only 15 days) has no material effect on Plaintiff while enforcing the default would greatly harm Galore. In short, Plaintiff would suffer no prejudice short of a 15 day delay in allowing Galore to now file an answer

I would argue that Galore has a fairly good chance of success on this issue. The combination of good faith, no actual notice, at the very least questionable adherence to the Trial Rules, and the great harm to be suffered by Galore offer a fair shot at winning on this issue

2. Assuming that Galore wins on its TR60 motion for relief from default judgment, Galore is then required to file an answer either with 20 days (as normally required) or within 15 days (as would be required if Galore had challenged Plaintiff's service of process under TR 12(b) and (c)). Clarity should be sought as to this issue.

It may be wise to file a TR 12(b)(iv) or (v) motion relating to the insufficiency of notice if Galore was somehow prejudiced by the action. However, I would be hesitant to recommend such a motion as notice has now been made. If Galore suffered prejudice, I would consider it, otherwise I would not pursue this out of fear of alienating the judge & quite frankly questions about its validity. This must be done before an answer is filed.

Galore could consider filing a TR 12(b)(6) motion (pursuant to 12(c)) arguing that Plaintiff has failed to state a claim upon which relief can be granted. Just looking to the plain

facts offered here, it looks like Plaintiff can maintain a breach of contract claim. If Plaintiff has filed in tort, Galore may have better chance. As the facts appear here, this too appears to be an unfounded motion.

Galore then is left having to file an answer. Galore may admit or deny or assert that it is without sufficient knowledge to answer any particular averment. Averments may be partially and specifically admitted to with the remainder denied or again asserting a lack of knowledge.

Galore must then determine what affirmative defenses, if any it wishes to include. Failure to assert could lead to waiver. The facts don't clearly point to any clear affirmative defenses, so additional investigation in to the complaint may reveal more. However, it is generally a good idea to include some standard affirmative defenses if the facts are such that further investigation could lead to a defense. No dates are listed here, so including a statute of limitations defense may be possible. Contributory negligence and comparative fault should also be included. Galore could include a failure to mitigate defense if Galore provided notice to Plaintiff of its inability to perform and Plaintiff failed to protect itself. If the contract between Galore & Plaintiff included an arbitration clause, that should be included.

Galore has indicated that there was an equipment malfunction which resulted in a delay. Also there was an error in delivery. If Galore had subcontracted either equipment maintenance or supervision or delivery out, Galore may be able to join additional defendants and either file cross claims or seek contribution. If these parties did exist, their joinder would be mandatory.

After asserting all affirmative defenses, Galore may wish to seek summary judgment under Rule 56. If this is a contract action and neither party disputes the facts (there exists no genuine issue of material fact), it would appear ripe for summary judgment. Such an action would probably not be successful in a negligence claim.

**Indiana Essay Question 5**  
**Sample Answer**  
**(Verbatim transcription of answer by an examinee)**  
**July 2011**

This question involves issues of Estate Law and Estate Tax Law.

First of all, this will may be held invalid as not conforming to the required formalities during formation. In order for a will to be valid it must be signed by the testator in the presence of two disinterested witnesses. Here, Sam only signed in the presence of one witness. Therefore, the will is likely invalid.

Sam also has certain assets that will not pass through his estate. The house is titled in the name of Sam and Betty and is, therefore, entirety property. This property will pass automatically to Betty. Also, the car is titled in the names of Sam and Betty, with rights of survivorship. This property will pass directly to Betty upon Sam's death. Therefore, the only probated asset is Sam's bank account worth \$90,000.

(1) Fred does have rights in this situation. Fred must challenge the will as invalid due to the aforementioned lack of cooperating with formation requirements. If he succeeds this will cause the \$90,000 to pass through intestacy. Under Indiana law, the surviving spouse and issue share in the estate each taking  $\frac{1}{2}$ . Therefore, Fred and Jane as Sam's only surviving issue will take and share equally  $\frac{1}{2}$  of his probated estate. If, however, the will is held valid (which is unlikely) Fred will not have any rights to Sam's estate, especially since the will specifically provided Fred would receive nothing.

(2) Betty will received \$32,500 from the bank account, a \$25,000 survivor allowance, and the house and car. Jane and Fred will share \$32,500.

The house and car automatically pass to Betty as entirety property and property with right of survivorship respectively. That leaves the \$90,000 bank account to go through intestacy, assuming the will is not valid. Betty can elect to receive a \$25,000 survivor allowance from the probated estate that comes from personal property or real property, or a combination of both. Assuming she gets the whole amount of the allowance from the bank account, this reduces Sam's estate to \$65,000. This remainder will pass through intestacy –  $\frac{1}{2}$  to surviving spouse and  $\frac{1}{2}$  to issue. Therefore, Betty will take \$32,500 and Jane and Fred will split the other \$32,500. Jane and Fred take as Sam's surviving issue. Fred will take because children born out of wedlock are treated the same as marital children to the father as long as paternity was proven. Under these facts there's no reason to assume paternity was not proven.

(3) There are two taxes that will apply: federal estate tax and Indiana Inheritance Tax. Indiana Inheritance Tax ("ITT")

The amount of tax depends on the relationship of the beneficiary to the testator and the amount each beneficiary receives. The surviving spouse gets an unlimited exclusion. Class A beneficiaries are lineal ancestors and lineal descendants. They get a \$100,000 exemption and enjoy the lowest tax rate. All of Betty's inheritances will be tax free. Fred and Jane are both

Class A beneficiaries. Neither of their inheritances go above the \$100,000 exemption, so therefore their inheritances are also tax free. Therefore, no ITT on Sam's estate.

#### Federal Estate Tax

This tax takes into account all probate and nonprobate assets, therefore Sam's whole estate is included. This equals \$320,000. However, no estate taxes will be due (assuming Sam dies in 2011 while the estate tax is still on the books).

First of all, there is an unlimited marital deduction. This applies as long as Betty and Sam were married at Sam's death. Sam is a US citizen or permanent resident, and Betty is a US citizen. Assuming these conditions are met, Sam's estate is reduced by the gifts to Betty for tax purposes. The remaining \$32,500 going to his children will be excluded and fall under the unified federal estate and gift tax cap of \$5 million, assuming Sam did not use up this lifetime exclusion. Therefore, there will be no estate taxes due on Sam's estate.

**Indiana Essay Question 6**  
**Sample Answer**  
**(Verbatim transcription of answer by an examinee)**  
**July 2011**

1. Agency Rulemaking

Indiana agencies are subject to the Indiana Administrative Rules and Procedure Act if they have statewide jurisdiction. Assuming the Indiana Department of Transportation (“IDOT”) is obligated under ARPA, certain procedures, outlined below, must be followed to make the rules binding.

- 1) Public notice of proposed rules – 28 days and published in the Indiana Registrar. The agency must invite and respond to public comments but are not required to incorporate those comments into the draft rules.
- 2) After 28 days the rules become proposed as final and the agency must give at least 21 days notice of a hearing on the proposed rules. At the hearing, anyone is allowed to present evidence or make comment. After the hearing, if needed, the agency can submit further proposed rules and do another hearing. Once the rules are final, the agency must get a report from the Legislative Services Agency if the project will have more than a \$500,000 impact on Indiana.
- 3) The legislative impact is due within 45 days.
- 4) Next the agency submits the proposed rule to the Indiana Attorney General for approval. If he does not object within 45 days the rules are deemed approved.
- 5) Next, the Governor has 15 days (or with good cause, an additional 15 days) to approve. If he does not object within that time, the rules are deemed approved.
- 6) Next the agency must file the rules with the Secretary of State. Once the rules have been accepted and filed, the agency must wait at least 30 days before the rules become effective.

Generally, the process should be completed within 1 year.

2. Land Corporation’s Challenge.

Generally, before an administrative rule can be challenged, it must be enforced.

However, in certain circumstances, for example where there is the potential for great harm or a violation of constitutional rights, a court may grant review of an agency’s rule prior to its being enforced. But, Land Corp. may have to wait for the law to go into effect before challenging.

Since the IDOT is not making a new agency adjudication procedure, the issue of exhaustion of administrative remedies is not an issue. However, Land Corp. would still have to show that it has standing. Given that its land is being targeted, this should not be difficult.



If Land Corp. wishes to challenge the process used to create the laws it would need to do so within 2 years.

### 3. Best Arguments

#### (A.) Agency's Rule is outside the scope of its power.

In Indiana, there is a separation of powers outlined in the constitution that serve to prevent any one branch from exceeding its authority. Here, IDOT is attempting to decide what type of trial is available.

A decision like that is generally left to the General Assembly, and the General Assembly is prohibited from delegating its authority.

#### (B.) Constitutional Right to a Jury Trial in Civil Cases

Indiana's constitution specifically provides for a right to a jury trial in civil cases. Looking at the history of when we ratified our constitution, land rights were certainly important rights. Thus, it would be good to challenge the constitutionality of the rule as violating the right to a jury trial.

#### (C.) Takings without Due Course of Law

Given the right involved, one could also make the argument that the procedure would result in a taking without due course of law.

#### (D.) Equal Protection

Because property owners whose land is being taken for the light rail system are being treated differently than those property owners whose land is being taken by eminent domain for other purposes, an equal protection argument could be made.

Indiana does not look at various levels of scrutiny in its equal protection analysis. Rather, the court looks to whether there is a rational reason for the groups to be treated differently.

There is generally great deference to the legislature in creating these different classifications. However, here, an agency made the rule so the same level of deference is not applicable.

Because of the important right involved and the disparate treatment and the low deference to an agency acting outside the scope of its authority, this would be another good option to challenge the rule.