INDIANA ESSAY EXAMINATION
QUESTION 1
July 2012

Warren Steel Company, a small steel making plant in East Chicago, Lake County, Indiana, has been named in a lawsuit filed by Mary Johnson, an environmentalist who resides in White County. White County is about 100 miles from East Chicago, Indiana. Mary Johnson is not a lawyer and is representing herself. Mary drafted and filed her Complaint in the White County Circuit Court.

Warren Steel Company is in the process of a stock offering. It needs to resolve this matter as soon as possible. The Complaint and Summons were left at a different steel company in Gary, Indiana. The plant manager at the other steel company sent Warren Steel Company the Complaint and Summons.

Omitting the caption and signature block, which you may assume are not relevant, the Complaint reads as follows:

COMPLAINT

1. The Plaintiff, Mary Johnson, resides in White County, Indiana.

2. The Defendant, Warren Steel Company, is located in the city of Gary, in Lake County, Indiana.

3. Warren Steel Company is engaged in the business of making steel.

4. The steel making process causes a large plume of smoke and dust to be thrust into the air.

5. My Husband, Joe Johnson, has the lung disease emphysema.

6. The Plaintiff demands a judgment in the amount of $100,000, and for all other just and proper relief.

State what type of pre-answer and pre-discovery motion Warren Steel Co. should file to dispose of this case quickly and discuss separately each of the legal bases supporting this motion. Start with your strongest arguments.

INDIANA ESSAY EXAMINATION
QUESTION 2
July 2012

1. Describe the differences in federal income tax treatment of a C corporation and an S corporation.

2. What are the similarities and differences between a limited partnership and a limited liability partnership?

3. Name and describe the legal principle that allows two persons who are not partners and have no express or implied agreement between themselves to be held liable to third parties as if they were partners.

4. List and briefly describe the ways in which a corporation may be dissolved.

1. A C corporation is subject to the corporate income tax rate. Dividends distributed to shareholders also are taxable. An S corporation retains the corporate form but elects to be taxed as a partnership, so that the corporation itself is not subject to federal income tax, but the profits and losses flow through to the shareholders and are taxable as income (or losses) to the shareholders. S corporations may have no more than 100 owners, who generally must be individuals who are U.S. residents, there may be only one class of voting stock, and all shareholders must consent to the S-corp treatment.

2. A limited partnership has one or more general partners and one or more limited partners. It must be created under specific statutory authority, and the liability of limited partners generally is limited to the value of the capital they pay into the partnership. The general partner is subject to all of the liabilities of a partner in a regular partnership, including the right to manage. A limited partner's liability is limited to paid-in capital except if the limited partner is also a general partner; the limited partner participates in the control of the business and the person dealing with the limited partnership reasonably believes based on the limited partner's conduct that the limited partner is a general partner; or, if the limited partner knowingly permits her name to be used in the name of the partnership, the limited partner is liable as a general partner to creditors who do not have knowledge that she is not a general partner. All partners are entitled to share in profits and losses as set forth in the partnership agreement

   A limited liability partnership also may be formed only in accordance with a specific statute. Partners in a limited liability partnership are not personally liable for the partnership's obligations or for the acts or omissions of other partners (but a partner is liable for her own actions or omissions). Other than those limitations, a limited liability partnership is treated like a regular partnership. An LLP must register with the secretary of state, and it must have a written partnership agreement.

3. A shareholder may bring a direct action to enforce his own claims against the corporation. Any recovery is for the benefit of the individual shareholder. The action must seek to enforce a personal right belonging to the shareholder.

   A shareholder brings a derivative action to enforce the corporation's own rights when no other qualified person (such as the board of directors) has sought to enforce the corporation's rights. Although recovery goes to the corporation, the corporation is generally a named defendant in the litigation. The shareholder must make a written demand on the corporation, and must allege in the complaint that a demand was made or explain why it was not made. Demand may be excused where it would be futile. If demand is made, the board or a committee may evaluate the demand and, if it finds in good faith after reasonable inquiry that the derivative action is not in the corporation's best interest, the suit may be dismissed on the corporation's motion.

4. This concept is partnership by estoppel. It occurs when a person represents herself or permits someone else to represent her as a partner. In that case, she will be liable to third parties who extend credit to the apparent partnership in reliance on the representation. A

person who holds out another person as his partner thereby makes the alleged partner his agent with the power to bind him to third parties as if there were a partnership.

INDIANA ESSAY EXAMINATION
QUESTION 3
July 2012

Charlie and Nancy met in Indiana during the summer of 2011 and began a monogamous sexual relationship. In November 2011, Charlie's employer transferred him to a position in California. Almost immediately after his transfer, Charlie fell in love with someone else, and Charlie and Nancy broke up. Charlie and Nancy cut off all contact with each other.

In the summer of 2012, a mutual friend called Charlie and told him that Nancy was in the hospital and had just delivered a healthy baby boy. The friend also stated that Nancy is considering placing the child for adoption. Nancy had not told Charlie she was pregnant. Based on the timing, Charlie is certain he is the child's biological father. Charlie very much wants to act as a parent to the child.

Discuss all the actions Charlie should take to assert his right to be the child's parent.

Assuming paternity is ultimately established and Charlie is the child's father, what rights and obligations does Charlie have?

INDIANA ESSAY EXAMINATION
QUESTION 4
July 2012

In January 1995, John was a widower with one child, Dan. His assets were:

1. Stock #1 $500,000.00
2. Stock #2 $200,000.00
3. Residence $300,000.00
4. Other Assets $250,000.00

John was planning to marry Betty, who had no children. Betty's only assets were $1,000.00 in the bank and a car worth $5,000.00.

John and Betty entered into a prenuptial agreement ("Agreement") in February, 1995 stating that each was to retain control of the assets brought into the marriage, and they agreed to waive any possible claims against the Estate of the other, including waiving any claim for Spousal Allowance or Election to Take Against the Will. Each retained the right to make gifts or bequests to the other if they desired. In the Agreement, Betty disclosed all of her assets, but John did not disclose his stock holdings.

In 1999, Betty discovered John owned the two stocks. She never told John that she knew about the stocks.

In 2001, John deeded the residence to John and Betty, husband and wife.

John executed a Will in 2001. (Assume John is competent and the execution of the Will complied with Indiana law.) John named his son, Dan, as Personal Representative. The Will provided that the net estate should be divided as follows:

50% to State University
25% to his son, Dan
25% to his wife, Betty

The Will also contains a clause that says any person who contests the Will shall not take under the Will.

John died on January 2, 2012. At the time of his death, John had no debts and his burial expenses had been prepaid. John's assets were as follows:

1. Stock #1 $0.00 (worthless)
2. Stock #2 $500,000.00
3. Residence $600,000.00
4. Other Assets $400,000.00

What actions should Betty take to maximize what she can receive from the Estate? State the legal reasons for your advice and the maximum distribution you believe Betty is entitled to receive from John's Estate.

INDIANA ESSAY EXAMINATION
QUESTION 5
July 2012

Sam Samuels bought a bar about a year ago. He is a great bartender, but is not good at keeping his books. When trying to get his books in order, he found several documents:

> **Document 1**: A slip of paper on which the following is written: "I.O.U. 5 kegs of beer." The paper is signed "Martha Martin." It is not dated.
>
> **Document 2**: A form, fill-in-the-blank "Note" for $1,200 dated March 31, 2012, payable to the order of Adam Adams. The note is signed by Denise Davis. The blank space for the due date was never filled in. On the note, Adam signed his name and wrote the words "pay to Sam Samuels." When Sam presented the note for payment, Denise refused to pay it, saying she agreed to pay Adam $1,200, but not until March 31, 2013. Sam knew nothing about the payment date when he accepted the note from Adam as payment for Adam's debt.
>
> **Document 3**: A check drawn on a customer's checking account dated July 1, 2012, signed by the customer and payable to the order of Sam Samuels in the amount of $195.00. The check was certified by First Bank. When Sam attempted to cash the check, First Bank told him there were "Non-Sufficient Funds" in the customer's account and refused to pay the check.
>
> **Document 4**: A check dated September 7, 2011, in the amount of $200.00 drawn on Second Bank and signed by the account holder in payment of his bar tab. Sam believes the check must have gotten lost in the drawer. He has never tried to cash the check.

For each of the four documents, state the following:

(1) Using the requirements set out in Indiana's U.C.C., analyze and explain whether the document is negotiable.

(2) Regardless of whether the document is negotiable, discuss and explain whether Sam can enforce the obligation signified by the document in any way.

Limit your answer to Indiana law.

INDIANA ESSAY EXAMINATION
QUESTION 6
July 2012

WeCare Services operates a group home for developmentally disabled adults in Indianapolis. WeCare is licensed as an Intermediate Care Facility by the Indiana State Department of Health.

Two days ago, WeCare was featured in a front-page article in the largest statewide business periodical. The article touted WeCare's success in integrating its developmentally disabled residents into the community and the workforce. The article also stated that WeCare planned to open a second group home in Smallville, Indiana. The article stated that WeCare had just applied for a license for this planned facility, WeCare South. WeCare South is scheduled to open in the fall of 2013.

Jack owns a bed and breakfast in Smallville, located directly across the street from the planned site of WeCare South. Jack became aware of the plan to open this facility when he read the article described in the previous paragraph. He is concerned that WeCare South will have a negative impact on his business and harm its value. Jack does not want WeCare South to go into operation at the currently planned site, and he has learned that the license application for the WeCare South facility is still pending.

Assume the Indiana Administrative Orders and Procedures Act applies. Identify and describe what actions Jack must take to object to the license. Include in your answer all steps of the process to challenge the license.

Indiana Essay Exam Question 1
Sample Answer
(Verbatim transcription of answer by an examinee)
July 2012

Warren Steel Co. has several options for a pre-answer and pre-discovery motion, but the best option is to file a Motion to Dismiss for failure to state a claim under Rule 12(b)(6). A motion for failure to state a claim should be granted when the complaint on its face fails to state a claim upon which relief may be granted. This can be shown in several ways. First, a failure to state a claim may be shown on the face of the complaint -- for instance, if the complaint shows that the action is barred because of the Statute of Limitations. Second, there may be a failure to state a claim if the claim is not recognized under Indiana law. Third, the allegations in the complaint may simply not make out a claim that the court could provide relief for. This is the case here: the complaint fails to allege all of the elements of the claim. Specifically, the complaint fails to allege causation between the actions of Warren Steel Co. and the plaintiff's husband's injury. Without this crucial aspect, the complaint fails to state a claim upon which relief may be granted. There is no allegation that the damage caused was the result of Defendant Warren Steel's actions. Another problem noticeable on the face of the complaint (which is the only document that may be considered when deciding how to rule on a motion to dismiss) is the Plaintiff's named defendant. The complaint names Warren Steel, but Warren Steel Co. is located about 100 miles from where Mary Johnson lives. From the face of the complaint, it seems unlikely that there is any causal relation between Warren Steel and Joe Johnson's injuries. Warren Steel Co. is probably not the proper defendant in this case. If the motion to dismiss for failure to state a claim is denied, then Warren Steel would have an additional period to file an answer. If the motion to dismiss is granted -- which it should be on these facts -- the Plaintiff is automatically given some time to re-draft the complaint. In any event, it seems likely that Warren Steel could avoid any liability because of the distance in location.

Warren Steel Co. could file a 12(b) motion to dismiss for failure to join a necessary party. If Plaintiff does not join a party necessary to adjudication, the court may dismiss the case, may order that the Plaintiff add the party, or may allow the suit to proceed without that party. Here, the issue is the lack of Plaintiff's husband's involvement. Joe Johnson is the individual who has suffered the harm in this case. Although I recognize that Mary Johnson might have a claim if the

family has suffered because of Joe's inability to work because of his illness, but the proper plaintiff in this case is Joe. Joe is indispensible to the litigation -- there is no way to adjudicate this claim effectively without him because he is the party who suffered the injury; complete relief could not be granted without him. Additionally, if the lawsuit were allowed to proceed without Joe, that might expose Warren Steel to double liability. These factors weigh heavily in not allowing the lawsuit to go on without the additional party.

Another option is to file a 12(b) motion to dismiss because of insufficient service of process. When filing a complaint, the plaintiff must serve the Defendant with the summons and complaint. There are three ways to do so when the defendant is a company. First, personal service may be made on the highest officer of the company that can be found (e.g., CEO) or an agent of the company. Second, service by certified mail will suffice. Third, leaving the summons and complaint at the company's last known address, and following up with service by regular mail. It is unclear whether the complaint and summons were addressed to a specific individual, but regardless there is a problem with the service because the complaint and summons were left at a different steel company in a different city. The manager there sent Warren the complaint and summons, but this was improper service under the Indiana Rules. There are additional defects with the complaint as well. It alleges that Defendant Warren Steel is located in Gary, Indiana, but it is really located in East Chicago.

Finally, if the action was not dismissed above, Warren Steel could move to transfer venue (or move to dismiss for improper venue). In Indiana, an action may be commenced in any circuit court in any county, but there are some counties that are preferred venue counties. These are generally counties where it is easy for the defendant to defend himself/itself: where the defendant resides, the defendant's place of business, where the injury occurred, where the real property is located if the dispute involves property, etc. Here, the plaintiff filed in her county of residence, which is usually a last resort if there is no other preferred venue county available. If an action is commenced in a non-preferred county and the defendant does not object, it will remain there; however, the defendant has an automatic right to have the venue transferred to a preferred venue county. Here, the defendant could move (assuming of course, that a motion to dismiss for failure to state a claim is not viable) to transfer venue to Lake County, where the Steel Company is located and does its business. This would probably be granted.

Indiana Essay Exam Question 2
Sample Answer
(Verbatim transcription of answer by an examinee)
July 2012

1. Differences in federal income tax treatment of a C corporation and an S corporation.
A corporation (C) is essentially doubly taxed. The corporation is itself taxed as an entity, and individual shareholders are also taxed on the dividends they receive. There are also less restrictions on the formation and make-up of a corporation (governed by Indiana Business Corporation Law). An S Corporation is a pass-through business entity. The corporation itself pays no tax-only shareholders report their respective shares of the corporation. Shareholders must elect to be an S corporation and must: have fewer than 100 shareholders, be U.S. residents, not have more than one class of stock, and must typically be individuals

2. Similarities and Differences between a limited partnership and a limited liability partnership:

The formation of an LP and an LLP are pretty similar-must file with the Secretary of State, must use the name "LP" or "Limited Partnership" for a limited partnership, or "LLP" or "Limited Liability Partnership" for a limited liability partnership, (and provide operating agreement, etc. to file with the Sec-of State). They are also both pass through business entities that are not taxed as an entity (individual partners report their share of the partnership). Also, both an LP and an LLP have the benefit of operating and existing with limited liability.

The differences are in a limited partnership there are general partners and limited partners, while in an LLP there are only limited liability partners. In an LP, there is limited liability for limited partners and nearly unlimited liability for general partners (LP is used mostly as an investment tool). The LP itself is liable for contracts or torts committed within scope of employment, as are the general partners potentially liable, but the limited partners will not be held liable for contracts or the torts of others unless they personally guarentee a contract, or directly supervise them. For a general partner, Recovery on a contract claim could be joint Recovery, Recovery on a tort claim could be joint and several. Exhaustion of the partnership resources is required for contract claims but not required for tort claims.

In an LLP, the partners all have limited liability so will not be held liable for torts of the LLP or contracts of the LLP or its members. Partners in an LP and LLP would still be liable for their own contract breaches or torts.

3. The legal principal of Partnership by Estoppel allows two persons who are not partners and have no express or implied agreement between themselves to be held liable to third parties as if they were partners. This legal principal may be applied when someone (or more than one person) holds themself (ves) out to be a Partnership in order to receive a benefit, like the extension of credit, and a third party relies on their misrepresentation and actually extends the credit. This principal protects innocent third parties as such who rely on the misrepresentation and then change their position by extending credit.

4. A corporation may be dissolved at the end of a definite term, when a certain end is accomplished or by judicial decree (A.G. bringing suit, petitions for dissolution due to fraud, Sec of State petitions for dissolution because of failure to provide biennial report, creditors petition for dissolution due to insolvency, etc). In these scenerios, the Indiana Business Corporation Law governs.

Additional, incorporators may decide to dissolve anytime before articles are filed, stocks issued, board of directors and officers are selected. Also shareholders may vote to dissolve themselves, or could petition for a judicial decree to dissolve due to lack of filling a vacancy on the board for 2 annual meetings, or director deadlock.

Indiana Essay Exam Question 3
Sample Answer
(Verbatim transcription of answer by an examinee)
July 2012

I. Actions to take now

Charlie needs to act quickly to establish himself as the father of this child. The first thing that he should do is register his name on the Puntative Father Registry. Under Indiana law, a puntative father must register here to ensure that he receives notice in the event of an adoption. In order for the registration to be effective, the father must register 1) before the child's birth, 2) within 30 days of the child's birth, or 3) before the adoption action is filed. Assuming that we are still within the 30 day window of time, Charlie should register immediately.

Even if the adoption action has already been filed, it may still be possible for Charlie to have his voice heard. Indiana law requires a mother to notify the father unless 1) he has abandoned the child for more than 6 months, 2) he has been convicted of a class A felony or sexual crime, or 3) if he is not on the Puntative Father Registry. Additionally, the mother is required to make a deliberate search for the father before excluding him from the proceedings. The fact that Charlie and Nancy have a mutual friend suggests that, if she wanted to, she could find out where Charlie currently resides. Therefore, if Charlie is on the Puntative Father Registry and Nancy can reach him, there is no legal reason why he should be excluded from any adoption proceedings.

Another option would be for Charlie to sign a paternity affidavit at the hospital. I would not advise he do this, though, on the off-chance that he might not be the father. If a puntative father signs such an affidavit he will only be able to revoke it for 60 days before his obligations are permanently fixed.

If Nancy ultimately decides to keep the child, Charlie will still have an opportunity to establish his paternity through a paternity action. Under Indiana law, any puntative father can file a paternity action within two years of the child's birth. Mother, puntative father, and child are all necessary parties to the acton. If Charlie requests a DNA paternity test, he must be given one, and Nancy will only be able to object to the validity of the test within 30 days. If the DNA test

comes back positive for Charlie, there is a presumption of his parentage.

In an adoption proceeding, if it is determined that Charlie is the father of the baby boy, he has a fundamental right under the US Constitution to raise his child. Therefore, it Nancy wanted to give up her parental rights, the baby would be placed with Charlie unless the court made specific findings that the Charlie would serious endanger the physical safety or emotional development of the child.

II. Charlie's parental rights and obligations

Once a father has established his paternity of a child, several rights and responsibilities kick in-

· Right to parenting time under the Indiana Parenting Time Guidelines:

A non-custodial parent is entitled to "parenting time" under the Indiana law. This right is separate from a parent's obligation to pay child support, and therefore failure to make payment will not result in loss of time with the child. In this particular situation, Charlie is probably not entitled to the full parenting time allocation while he is still living in California. Either by agreement with Nancy or by the court's own decision, the court will order a parenting time schedule that may include weekends, holidays, and vacations. There is no indication in the record to suggest that Charlie's right to parenting time should be limited by anything other than his distance from Indiana, but if the court did want to restrict visitation, it would have to make specfic findings that Charlie posed a danger to the child's physical safety or emotional development.

· Right to petition the court for joint or sole custody:

Once paternity is established, the proven father has the right to petition the court for a new custody arrangement. In situtations like this, there is a rebuttable presumption that physical and legal custody will remain with the mother. However, if Charlie can show that it is in the child's best interests to either be with him, or to split time with the Nancy, joint physical custody will be an option. Additionally, the court could order that physical custody remain in one of the parents,

while both parents share legal custody (which includes the right to determine the religion, healthcare, and education of the child). Any kind of custody agreement can be agreed to by the parties in a settlement agreement, or it can be ordered by the court.

If the court has to become involved in a custody determination, they will weigh the best interests of the child and determine by a perponderance of the evidence standard which parent should have custody. The factors involved in a best interest analysis are--

1. age and sex of the child
2. the parents' requests
3. the child's request
4. the interrelationships with the child and his parents
5. whether the child is acclimated to his home community
6. the physical and mental health of the parents and child
7. evidence of domestic violence in the home
8. presence of a de facto guardian

· Obligation to pay child support and other expenses:

In addition to the rights of parentage, Charlie will also be responsible for child support and other expenses to be used toward the child's upbringing. Before child support, by establishing paternity, Charlie has also probably incurred an obligation to repay Nancy for some of her pregnancy and birthing expenses. Additionally, and child support that would have accrued to a puntative father before Charlie got his paternity determination will be owned by him as an arrearage.

In Indiana, child support is meant to maintain the child in the style of living that he would have if the parents had been married. To that end, in determining child support, a court will look at a spreadsheet to determine how much Charlie will owe. This is based on his current income (both earned and imputed, if he is voluntarily unemployed or underemployed), and the presence of any preexisting child support obligations. The child support order is in "gross order" meaning that the obligation may be different when multiple children are born to the same mother (generally, the

obligation increases at a decreasing rate for each additional child born). If he does not have custody of the child, he will likely owe the whole amount that the spreadsheet suggests, unless there is reason for deviation. Some reasons that deviation would be appropriate would be if Charlie spent multiple overnights with the child, or if Charlie had joint custody with Nancy.

Additionally, it is important to note that Nancy may not disclaim her child's right to Charlie's child support obligation. If Nancy is the custodial parent, she is a gratutious bailee of the payment and she is charged with using it for the benefit of her child. An accounting of the child's expenses is not required, and it would be permissible if some of the benefit of the child support payments accrued to her as well (if, for example, she and the baby were able to live in a bigger home because of the monthly support payments.

In addition to child support payments, Charlie might also be responsible for non-child support incidental expenses. These would included child care, medical expenses, and in the future, extracurricular activities for the child. The obligation of each parent for these expenses is generally determined pro rata on the basis of income. In the context of medical expenses, the custodial parent will start by pay 6% of the total year's child support obligation toward the child's medical expenses, and the parents will split any remaining obligation pro rata.

When it comes time for the child to go to college, Charlie may be responsible for Baby's continuing education. The court will consider the Charlie's means, his child's aptitude, and the reasonableness of the child's college choice when making such a decision. The child would have to request this additional support before his 19th birthday.

Finally, Charlie's child support obligations will otherwise end when the child turns 19. There are several exceptions to this: When, before the child turns 19, he gets married, joins the military, or is no longer under the care and control of his parents. Additionally, if at 18 he is out of school for at least 4 month or is (or is capable of) supporting himself, Charlie will no longer will required to pay child support. If Charlie believes that he no longer has an obligation to the child for any of the above-mentioned reasons, he will have to file a petition with the court for modification. Until modification is reduced to writing, filed with the court, and made into an order by the judge, it will not be enforceable.

Indiana Essay Exam Question 4
Sample Answer
(Verbatim transcription of answer by an examinee)
July 2012

First, Betty should know that no-contest clauses are not valid in Indiana. Regardless of what the will says, Betty is free to challenge the will without risking the loss of any gifts to her in the will.
Second, because John surely deeded the house to himself and Betty as joint tenants or tenants by the entirety, Betty should have a right of survivorship in John's interest, meaning that she owns the entire interest in the residence. In other words, the house avoids probate.
Because Betty is a subsequent childless spouse, her intestate share of the estate would be ¼ of the real property and ½ of the remaining net estate. This would matter because if Betty successfully challenged the will and had it set aside, she would likely recover her intestate share. However, it is more likely that Betty could have the prenuptial agreement invalidated and elect against the will because there don't seem to be any indications of problems with the validity of the will itself.
She has a decent chance of having the prenuptial agreement invalidated because of John's failure to disclose his assets at the time of the agreement. Indiana has adopted a form of the Uniform Premarital Agreement Law and full disclosure of assets is required because it follows that a future spouse should know what he/she is signing away his or her interest to. It is sometimes unclear how much disclosure is required, but John disclosed nothing in this case and therefore a Court might invalidate the agreement.
If the Court does invalidate the agreement, Betty could take a $25,000 spousal allowance for herself and then elect to take her spousal share against the will, which would be ¼ of the real property (there is none) and 1/3 of the remaining net estate. This would result in her getting more total money from the estate of John, although it wouldn't increase the amount by that much and as her lawyer I would advise her to consider any family implications that might result from her electing against the will. If she still wanted to take the election, I would inform her that she has 90 days to do it after the will is admitted to probate or 90 days after the completion of her successful action to set aside the premarital agreement (which would have to happen in order for election to be possible).
Total Distribution to Betty if she took the spousal allowance AND elective share: $316,666
If she just takes 25% of the remaining $900,000 as given in the will, she'll receive $225,000 and of course she still owns the $600,000 residence.

Indiana Essay Question 5
Sample Answer
(Verbatim transcription of answer by an examinee)
July 2012

Negotiable Instruments Generally

Negotiable Instruments are governed by the Uniform Commercial Code, Article 3, as adopted in Indiana. The relationship between banks and their customers is dealt with in Article 4. To constitute a negotiable instrument, the instrument must meet the following conditions. It must be:

- 1) In writing
- 2) Signed or authenticated
- 3) Unconditional
- 4) Promise or order to pay
- 5) A Fixed Amount of Money
- 6) To the order of (the "words of negotiability")
- 7) Without any other undertakings (a courier without luggage), and
- 8) At a time certain (or on demand if no time is stated).

If a instrument does not meet *each and every one* of the foregoing requirements, it is not a negotiable instrument. The instrument still may constitute a simple contract, however.

Negotiable instruments may be Notes or Drafts. A Note is a two party instrument, where the Maker promises to pay a sum certain to the Payee. A Draft is a three party instrument, where the Drawer orders the Drawee to pay a sum certain to the Payee. Drafts are typically bank checks. The Drawer is the person writing the check, the Drawee is the bank on which the check is drawn, and the Payee is the person whom the check is made payable. Parties are liable on the instrument in the capacity in which they sign. A party can also be liable "off the instrument" on the underlying obligation and/or by way of transfer and presentment warranties.

Negotiable instruments are negotiated by physically transfering the instrument, plus indorsing it (unless the instrument is bearer paper).

Document One

This document is not a negotiable instrument. First, an "IOU" is not an unconditional promise to pay, but is merely an acknowledgment of a debt. Second, although many people would prefer five kegs of beer instead of money, Article 3 requires that the instrument be payable in money. Beer is not money. Finally, the instrument also lacks the "words of negotiability." Accordingly, this document is not a negotiable instrument. Sam Samuels may be able to enforce it as a contract, though.

Document Two

This document is negotiable. It is 1) in writing 2) signed 3) unconditional 4) promise to pay 5) $1,200 of money 6) includes the magic words "pay to the order of", and 7) is not burdened by any other conditions or undertakings. Although the instrument does not have a date when it is due, this is not fatal to the negotiability of the document. If an instrument does not contain a due date, is presumed payable on demand. In other words, if Samuels presents it for payment now, the instrument is due now.

Although this Note was payable to the order of Adam Adams, it was properly negotiated to Sam Samuels. Adams transferred possession of the Note, and made a special indorsement on the Note to make it payable to Sam Samuels. Accordingly, the Note was properly negotiated and Sam Samuels is now the holder. It is also worth mentioning that Adams' indorsement only said "pay to" and not "pay to the order of." The "pay to" language is sufficient for negotiations.

Not only is Sam Samuels a holder, but he is also a Holder in Due Course ("HDC"). An HDC is someone who:

- Is a holder
- Obtains the instrument in good faith

· Obtains the instrument for value (in this case, satisfaction of Adams' debt to Samuels) , and

· Obtains the instrument without notice

· a) that it has been dishonored

· b) that it is overdue

· c) that there are any claims or defenses against it, and

· d) that any signatures are altered or unaurhorized

An HDC is not subject to personal defenses, but only "real defenses." The real defenses are: minority, incapacity, fraud in the factum, and discharge in bankruptcy. Denise's assertion that she agreed to pay Adams on March 31, 2013 is ineffective against Samuels, who is an HDC. Denise's arguement is not a real defense, and will therefore fail. Samuels can enforce this obligation against Denise, and Denise must pay the instrument according to its terms.

Document Three

This document is negotiable; it is a Draft. Typically Drawees (like First Bank) are only obligated to pay an instrument only after accepting it. Certification of an instrument IS an acceptance by the Drawee; the certification discharges the obligation of the Drawer and any previous indorsers as well. When a Drawee certifies a check, they typically debit the account of the Drawer immediately. Regardless, the Drawee must honor the certified check that is subsequently presented for payment.

First Bank's claim of "insufficient funds" is without merit. According to these facts, First Bank has accepted the instrument by certifying it; First Bank is therefore liable to pay according to its terms, and the Drawer has been discharged. Samuels will be able to enforce the instrument against First Bank.

Document Four

This document is negotiable; it is a draft; the check is stale, but still enforceable. Under Article 4, a bank can only accept and pay instruments that are properly payable. A bank is not

required, however, to accept any draft older than six months. A check that is older than six months is still properly payable, but banks can refuse to accept it if they choose. Many banks would accept this instrument, even though it is stale. Samuels should present the check for payment, and see if Second Bank refuses to accept it. If the instrument is accepted, Samuels gets his $200.00 immediately.

If Second Bank dishonors the check, Samuels will have to enforce the instrument against the Drawer. The underlying obligation (the bar tab, in this instance) is suspended until the check is dishonored. If Second Bank dishonors the check, Samuels can enforce the check against the Drawer based on either the underlying obligation ($200 bar tab) or dishonored instrument ($200 check). Regardless, Samuels will be able to enforce the instrument for $200.

Indiana Essay Question 6
Sample Answer
(Verbatim transcription of answer by an examinee)
July 2012

The Indiana Administrative Orders and Procedures Act ("AOPA") applies to the adjudicatory powers of administrative agencies in Indiana. When an agency is exercising its adjudicatory powers, its final decision is an order, which applies retrospectively to a few parties involved in the matter. AOPA applies to agencies with state-wide authority, and it does not apply to cities and towns. The adjudicatory powers of AOPA must be exercised in substantial requirements of Due Process, which requires notice, a hearing, the right to present evidence and to cross-examine evidence, and for specific findings of fact in writing.

To challenge the issuance of a license to WeCare Services ("WeCare"), Jack must file a petition with the relevant agency to challenge the issuance of the license. Because there are no standing requirements at the agency level, Jack will be able to bring this action. Because a hearing is required before the issuance of any order (in order to satisfy Due Process standards), the agency must conduct a hearing on the matter. The agency must give notice of a hearing at least five days prior to the hearing. An Administrative Law Judge ("ALJ") presides over the hearing, and the ALJ has many of the same duties as a judge of the judicial branch. For example, the ALJ must remain impartial, may not have an interest in the proceedings, may not publicly comment on the matter, and must dispose of the action in a reasonable period of time. An ALJ may be disqualified for any such actions but, under the "Rule of Necessities," a disqualified ALJ may nevertheless preside over the matter because there is no other suitable alternative. The ALJ must allow the parties to present evidence, and he may allow them to file motions, proposed orders, and other types of pleadings. The parties may conduct discovery, and they may use all of the tools provided for in TR 26-37. However, where a discovery dispute arises, the ALJ may issue an order to compel, but the ALJ has no enforcement powers. In order for any discovery disputes to be enforced, the parties must find such enforcement powers in a Circuit or Superior Court that has the contempt power. The Indiana Rules of Evidence and the Federal Rules of Evidence do not apply at the administrative level. Indeed, the administrative process is much more liberal in terms of what is admissible. An ALJ has wide discretion in admitting evidence, and even hearsay evidence is not altogether excluded. Under the "Residuum Rule," where hearsay evidence is not objected to, it may form the basis of an Order; however, where hearsay evidence is objected to and does not fit within any recognized exception, it may not form the sole basis of an Order.

After a hearing is conducted, the ALJ (if he is not the "ultimate authority" of the agency) will issue a Proposed Order stating all of his findings. All findings must be based on substantial evidence in the record. If the Order is not in Jack's favor, he must file an objection within 15 days in order to preserve his right to appeal the Order in the judicial branch. If the ALJ is not the ultimate authority of the agency, the Board (usually the "ultimate authority" of an agency) will then review the Proposed Order and issue a Final Order. If there are no objections to the ALJ's Proposed Order and if the Board finds no reason to upset the decision, it shall affirm the Proposed Order. However, if an objection is made or the Board determines that some issues merit reconsideration, it shall hold an evidentiary hearing, in which both sides can present evidence and submit briefs. The Board may affirm, reverse, remand, or dissolve the Proposed Order. A party against whom a decision was rendered may petition for a Rehearing, although

these are rarely granted. If, even after a second hearing, a party disputes the agency decision, it may turn to the judicial branch and appeal the decision in a circuit or superior court. Because an Order will not be automatically stayed pending appeal, the party filing an appeal must file a Motion to Stay the Order in the agency, which requires a showing of likelihood of success on appeal and posting a bond. (Alternatively, if a party is satisfied with the decision but the order is not being complied with, a party may file a Verified Petition for Civil Enforcement in order to have any such agency decision enforced, since the agency lacks enforcement power. In order to file the petition, the petitioner must give notice of non-compliance to all parties 60 days prior to filing the Petition. Notice must be given to the agency executives, the Attorney General, and all parties.)

If Jack is not content with the agency decision, he may appeal the decision in the court system. Under the Indiana Constitution (Article 1, § 12—Open Courts and Due Course of Law), a litigant is entitled to judicial review of an administrative hearing. Unlike at the administrative level, standing requirements are enforced in the courts. Jack, or any other aggrieved appellant, must demonstrate that he has a demonstrable injury. Assuming Jack has satisfied the standing requirements, he must file a Notice of Appeal within 30 days with the clerk of the court. He must also file the Notice with the Attorney General, the heads of all agencies involved in the action, and all parties. The court will only have jurisdiction over the matter if the plaintiff has demonstrated the need for review, obtained and purchased the administrative record, and exhausted all administrative remedies (unless the agency is not capable or otherwise qualified to handle the type of matter). The court's jurisdiction over the administrative decision is limited. A court will only grant a remedy where there was a decision based on unreasonable grounds, such that a decision was rendered wholly without a basis in the record, without competent evidence, or otherwise clearly errouneous. A court will not go beyond the facts in the record, and will not re-weigh evidence. A court may not modify any part of the Order—in fact, a court's only possible decisions are "affirm" or "remand." As to the standard of review, the trial court will not review facts *de novo*. It will only look to the administrative record to determine whether the Order was based substantially on evidence contained therein. As to issues of law, however, the court is not so constrained. Under the Indiana Constitution, the court is permitted to re-examine issues of law *de novo*.

If Jack remains unsatisfied with the court's decision, he may continue to appeal up the line to the Indiana Court of Appeals. In such a case, he must file his Notice of Appeal within 30 days of the trial court's decision and must abide by the Indiana Rules of Appellate Procedure.