

INDIANA ESSAY EXAMINATION
QUESTION 1
July 2013

Maria and John share an interest in South American art. Maria and John decide to form what they call a “limited partnership” to open a gallery featuring only art by South American artists in a building Maria owns. John is the limited partner. He contributes \$100,000 in working capital and takes no active role in the business. Maria is the general partner with full authority to buy and sell the art works. Maria’s contribution is her time and expertise. Title to Maria’s real estate remains in her name only, and the partnership pays nominal rent, \$100 a month, to Maria for the building. They called their business Indy-SA Arts.

They agree that profits will be divided as follows: 70% to John and 30% to Maria until John’s initial capital contribution plus 11% interest is repaid. Thereafter, profits would be split 50%-50%.

Maria and John did not put their agreement in writing or take any other action to formalize the agreement. After one year, John’s initial contribution plus interest was paid, and, according to their agreement, profits were then split 50%-50%.

After two years, Maria developed a website and began selling online under the business name, Maria’s Art. Within six months, the online business outstripped the store in sales. Based on the success of the Internet business, Maria wants to dissolve her business relationship with John, close the retail store and only do Internet sales. John knew that Maria was selling online, but thought she was doing so as part of their business, Indy-SA Arts. Maria lists the partnership assets as the inventory worth \$70,000 and \$15,000 in a bank account. All bills are paid. She does not list any of the inventory or profit of the Internet business as a partnership asset.

John claims that Maria has no right to dissolve the partnership, but will agree to do so if Maria pays him one-half of the bank account balance, one-half of the inventory, one-half of the value of the building, and one-half of the profits from past online sales.

1. Is Maria’s and John’s business relationship a general partnership, a limited liability partnership or neither? Explain.
2. Does Maria have the right to dissolve her business relationship with John? Explain.
3. Assuming the business relationship is dissolved, how should John’s demand for one-half of various assets be resolved? Explain.

INDIANA ESSAY QUESTION
QUESTION 2
July 2013

Bob and Sally were married in Nevada in 2010 where they both were born and raised. In January 2011, Sally gave birth to a baby boy. They named him Joey. Bob, Sally, and Joey lived together in Nevada until October 2012, when Bob caught Sally emailing with her former boyfriend, Edward. Sally and Edward also reconnected on Facebook.

Shortly after discovering the emails, Bob filed for divorce in Nevada. The parties were divorced in January of 2013. The dissolution decree awarded Bob and Sally joint legal and physical custody of Joey. The decree provided that Bob and Sally would each have physical custody of Joey on alternate weeks.

Following their divorce, Bob and Sally continued to reside in Nevada until May 2013, when Sally loaded up her minivan and drove to Indiana to meet up with Edward. Without Bob's knowledge or consent, Sally took Joey with her to Indiana. Bob was frantic when Sally did not bring Joey to him for his parenting time. Sally would not return Bob's calls, texts, or emails.

A week after relocating to Indiana, Sally filed a Petition to Modify Custody and requested that an Indiana court grant her sole legal and physical custody of Joey. A couple of days earlier, Bob had filed an emergency petition in Nevada requesting an order returning Joey to Nevada and requesting that he be granted sole legal and physical custody of Joey. The Nevada court issued an emergency order requiring that Joey be immediately returned to Nevada.

1. What law determines whether Indiana or Nevada should exercise jurisdiction in this situation? What principles does the law apply to determine which state has jurisdiction?
2. Should the Indiana court deny jurisdiction? Why or why not?
3. Does the Indiana court have to enforce the Nevada custody order? Why or why not?

INDIANA ESSAY EXAMINATION
QUESTION 3
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For many years, ABC Plumbing Supply has entrusted all accounting responsibility to Trudy, the owner's sister. Trudy's responsibilities include taking in the daily receipts, including checks received in the mail and at the showroom. Trudy's practice is to endorse the checks as they come in by writing "ABC Plumbing Supply" and signing her name underneath. At day's end, Trudy takes the stack of checks to ABC's bank, where her signature is on file. Trudy handwrites all company checks, including payroll checks.

Jane is a receptionist for ABC. After discovering no-limit Texas Hold 'Em poker games, Jane found herself in serious financial trouble as a result of her gambling losses. To cover her losses and continue playing poker, Jane decided to take funds from ABC, which she intended to pay back with her anticipated winnings. When Trudy was away from her desk, Jane slipped a few endorsed checks out of the stack. She then took them to her bank and cashed them. She did this several times, and her losing streak continued.

Concerned that Trudy would notice checks were missing, Jane decided to intercept some of the mail before it even got to Trudy. Jane then forged ABC's endorsement by writing "ABC Plumbing Supply" and signing Trudy's name on the checks. She then cashed the checks.

Still, Jane's problems persisted. After her landlord threatened to evict her if Jane did not pay \$3,000 in back rent she owed, Jane offered to sign over her payroll check as payment. Without the landlord's knowledge, Jane altered the handwritten \$2,000 payroll check by carefully turning the number "2" into a "3." She then wrote over the word "Two" in "Two Thousand Dollars" to make it look like it said "Three." Because the payroll checks were handwritten, it was easy to do. After Jane endorsed the altered check over to her landlord, the landlord deposited the check and it later cleared.

Last week, Jane overheard Trudy calling several customers and demanding payment. Knowing that she had taken the checks those customers sent, Jane left for lunch and never came back. Police later discovered that both Jane's apartment and her bank account were empty.

Assume Indiana law applies and that Jane cannot be located to answer for her actions. Identify all *other* persons or entities (including banks) that may bear the loss for each of the following actions and explain why they (as opposed to some other person or entity) would bear the loss:

1. Jane's cashing of ABC customer checks that Trudy had endorsed.
2. Jane's intercepting, forging the endorsement, and subsequent cashing of ABC customer checks; and
3. The altered ABC payroll check cashed by Jane's landlord (include in your answer a discussion of the process of how the ABC payroll check cleared).

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QUESTION 4
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Sam was born January 1, 1930 and died July 1, 2012. Sam was married to Julia in 1950 and they had a son, David, born in 1952. Julia died shortly after David was born. Sam then married Tess in 1954. Tess ran off with a traveling salesman in 1956, and Sam never saw her again. Sam and Tess were never divorced. Sam and David resided together in Sam's house until Sam's death.

At the time of his death, Sam had the following assets and debts:

ASSETS:

1. House	\$75,000.00
2. Cash	\$15,000.00

DEBTS:

1. IRS Tax Lien for unpaid income taxes	\$5,000.00
2. Credit Card debt	\$90,000.00

A year has passed since Sam's death and the credit card companies still are sending threatening collection letters addressed to Sam. David also received a letter from Tess stating that she is still Sam's wife and, therefore, now owns the house where David resides. Tess's letter says her lawyer will be contacting David soon. David has nowhere else to live, no savings, and earns minimum wage. Sam died without a will and no legal proceedings have been started.

1. What legal procedures or actions would you recommend David take in regard to the Estate?
2. Assuming Tess, David, and the creditors exercise all of their legal rights and assert all of their claims, state the following:
 - a. What debts will be required to be paid and what will be the priority of payment?
 - b. What, if any, assets will be paid to Tess and why?
 - c. What, if any, assets will be paid to David and why?
 - d. Will any funds be available to pay the attorney for the Estate?

INDIANA ESSAY EXAMINATION
QUESTION 5
July 2013

Paramount University is a four-year public university located in Indiana. An appropriation from the state budget supports the University. The governing body of the University, the Board of Trustees, is appointed by the state's governor. The Trustees are responsible for hiring and evaluating the performance of the University's President.

President Jones began service as Paramount's president in 2007. Since then, student enrollment increased 40 percent, faculty salaries improved dramatically, fundraising quadrupled, and the campus benefited from more than \$100 million in new construction and renovation.

Six months ago, the Trustees unexpectedly fired President Jones, citing "philosophical differences." At a press conference, the University spokesperson also indicated that the Board acted on advice of counsel.

The Trustees appointed a committee of University faculty, staff and students to conduct a search for a new president, and soon announced the hiring of a President Smith. Just after President Smith started, the campus newspaper reported extensive renovations to her office, paid from university funds.

The Paramount News, the local city newspaper, contacted the University and requested the following information under Indiana's Access to Public Records Act ("APRA"):

- (a) Records showing the advice the Trustees received from legal counsel regarding the termination of President Jones; and
- (b) Records showing how much was spent on renovating President Smith's office.

The day after the request was submitted, an attorney representing the University contacted *The Paramount News* and informed the newspaper that the University will not provide any records responding to the newspaper's request.

1. Does APRA apply to the request by *The Paramount News* for the University's records? Why or why not?
2. If APRA applies, is *The Paramount News* entitled to receive the two types of records it requested? Why or why not?
3. Assuming APRA applies, describe all of the remedies *The Paramount News* can pursue to obtain the records that the University has refused to provide?

INDIANA ESSAY EXAMINATION
QUESTION 6
July 2013

Robert owns a two-acre parcel of land in Northwest Indiana. A small creek runs through the property. In the last year, Robert has built a used motor oil purification system on his property without any permits, approvals, licenses, or authority from any local, state, or federal agency. Robert has applied for a patent on this process, which is pending.

There are three 1,000-gallon tanks on the property. The first tank contains used motor oil; the second tank contains Robert's purification system; and the third tank contains the end product, which Robert claims is as pure as the crude oil currently being processed by a local refinery. Robert plans to sell this end product to the refinery. Robert tested his process last week for five days. All three tanks leaked, and a substantial amount of petroleum product leached into the nearby creek. Despite this problem, Robert has announced plans to operate the system for the next thirty days to troubleshoot and correct problems.

South of Robert's property is a dairy farm that has operated for at least fifteen years. The same creek that runs through Robert's property runs through the dairy farm. This creek is the only source of drinking water for the Farmer's cows. Last week, three of his dairy cows became sick and died from drinking petroleum-contaminated creek water.

The Farmer wants to stop the operation of Robert's used motor oil purification system immediately and to sue for damages relating to the loss of his cows and damage to his property.

Considering the injunctive remedies that may be available to the Farmer under the Indiana Trial Rules, state the following:

1. Identify what injunctive remedies the Farmer may seek before trial;
2. Describe the procedural requirements to obtain each remedy;
3. Describe the factors the Farmer must demonstrate to the Court to obtain injunctive relief;
4. Explain why you believe the Farmer will or will not be able to obtain injunctive relief; and
5. If the Trial Court denies the Farmer's request for injunctive relief, what must the Farmer do to initiate an appeal of the Trial Court's ruling? Include in your answer any deadline(s) that may apply.

For the purpose of your response to this question, you are to ignore all remedies that may be available through any local, state, or federal governments/agencies. Restrict your answer to relief available through the Indiana civil courts.

Indiana Essay Question 1
Sample Answer
(Verbatim transcription of answer by an examinee)
July 2013

1.

Maria and John's business is a general partnership. A partnership is an association of two or more individuals with the intent to carry on as co-owners a business for profit. Indiana's Uniform Partnership Act governs such business organizations. Modern statutory schemes, including Indiana's, have incorporated additional business organizations such as the "Limited Partnership", the "Limited Liability Partnership", and the "Limited Liability Company." These forms incorporate different features of traditional partnerships and corporations to achieve different goals as far as equity and ownership structures, tax liability schemes, and limitation of liability for owners. These new creatures of statute require more than the traditional partnership. Specifically, Limited Partnerships ("LPs") and Limited Liability Partnerships ("LLPs") must, among other things, file with the Secretary of State their partnership documents (including a written Partnership Agreement), and contain the appropriate designation in their official organization name (e.g. "ACME, LLP" rather than merely "ACME"), so that the public, vendors, clients, etc. are on notice of the business organization's form, which has implications as to whether individuals can be liable in tort or contract.

Here, Maria and John did not follow the technical requirements, and therefore have formed a traditional partnership, which does not require the formal filing, partnership agreement, or name requirements of the LP, LLP, or LLC. All that is required is that multiple individuals have the intent to carry on as co-owners a business for profit. Furthermore, the IUPA presumes a partnership where individuals hold themselves out to be co-owners of a business for

profit. We have that here implicitly through conduct, if not the attempt to hold themselves out as a partnership (albeit “limited”) despite not satisfying the formalities.

Also, Maria and John successfully formed a partnership despite the lack of a written partnership agreement. Generally partnerships do not require a written agreement or contract in order for such agreement to be binding, unless the partnership is such that it cannot be performed within one year, and must be written to satisfy the Statute of Frauds. Maria and John’s business does not have a specified duration, and either partner may withdraw from the partnership at any time, as is reflected in the definition of a partnership. The specific property contribution ratios and loan payment / distribution scheme here does not bar the existence of a partnership. While the IUPA provides default rules (e.g. that profits and losses are to be split equally), those can be altered by contract between the parties, and as stated, we have a binding partnership agreement, albeit a non-standard (and non-recommended) oral agreement.

2.

Maria does have the right to dissolve her business relationship with John. As stated above, a partnership is an association of two or more individuals with the intent to carry on as co-owners a business for profit. Therefore, the existence of a partnership explicitly relies upon the continued intent of the partners to carry on conducting business. Here, Maria has the right to dissolve the partnership, as a partnership not for a definite term is deemed to be “at will”, and thus terminable by either party at any given time; however, the mere termination of the partnership’s existence does not extinguish liability for (i) breach of contract (to wit, any binding partnership agreement), (ii) breach of one of the fiduciary duties owed by a partner to the partnership, or (iii) wrongful dissolution, if applicable.

3.

John could, presuming extra-judicial efforts to resolve the matter are unsuccessful (mediation or arbitration may be useful here), file an action against Maria for wrongful dissolution or breach of fiduciary duty due to Maria's breach of her duty of loyalty to the partnership, and for failure to account for profits earned while conducting partnership business. All partners owe duties to the partnership and their fellow partners. Duties arise to (i) be loyal to the partnership, that is not to compete against the partnership or usurp partnership opportunities for personal gain, (ii) act with reasonable care when conducting partnership business, and (iii) to account for profits earned while conducting partnership business, that is not absconding with any gains properly owed to the partnership itself, and no individual partner.

Here, Maria will be held to have breached the duty of loyalty, and may be ordered to disgorge profits earned in her operation of Maria's Art, depending on the degree to which the two entities are intertwined. The breach of the duty of loyalty occurred when Maria, (i) while serving as a partner of a partnership, (ii) operated a separate and competing business, (iii) directly within the partnership's commercial "space", and (iv) failed to disclose or provide opportunity to the partnership to receive the benefit of the deals she struck. Whether Maria is liable to account for the profits depends largely on facts outside the scope of the question. For example, was Maria using existing contacts to procure inventory, using existing customer lists to market Maria's Art, using partnership facilities and equipment (computers) to conduct their business, etc. If such entanglement exists, a court could hold that Maria's Art is effectively a trade name or "DBA" of the partnership, and Maria is therefore liable for disgorgement of John's share of the profits pursuant to the distribution terms in the partnership agreement. Even

if not, the mere fact that Maria developed a business as a logical outgrowth of the partnership business may be sufficient to require disgorgement of the profits, as there was a clear breach of the fiduciary duty of loyalty in either event.

As far as John's demands, we note that as all John's capital contribution has been paid, any further distribution is 50%-50%. As a preliminary matter, we note again that John "allowing" Maria to dissolve the partnership is irrelevant, as a partnership continues to operate on an at will basis unless otherwise agreed by the parties. However, opting to settle rather than litigate this may be John's intent by "allowing" the distribution. John will absolutely be entitled to his one-half share of partnership assets, i.e.: half of both the \$70K worth of inventory, and the \$15K in the bank.

Whether the real estate is deemed to be partnership property is a less clear matter; however, it appears Maria has a superior claim. Factors used to determine whether property belongs to the partnership or an individual partner include: (i) the funds used to procure the property, (ii) the origin of funds used for improvements to and maintenance of the property, (iii) to whom the property is titled if the property requires a certificate of title (e.g. automobile) or is real estate, like we have here, (iv) how the property is used, (v) the predominant purpose of the property, and (vi) the status of the property on the partnership's books. We balance the following facts to assist our determination: Maria presumably paid for the purchase of the property out of pocket at some point prior to the partnership. The property is titled in Maria's name.

As to the profits from past online sales, it would depend on how the court construed the issues regarding the analysis discussed in Question 3 Paragraph 2 above, as to whether the duties

were breached, and whether Maria is liable to account for profits. More facts are required, but I would say that John has a good faith argument that the business is effectively partnership business, and if not, that Maria usurped the opportunity that rightly should have belonged to the partnership, and should be liable for John's share.

Indiana Essay Question 2
Sample Answer
(Verbatim transcription of answer by an examinee)
July 2013

1. Controlling Law

The UCCJEA (Uniform Child Custody Jurisdiction and Enforcement Act) controls whether Indiana or Nevada should exercise jurisdiction in this situation. Both Indiana and Nevada have adopted versions of the UCCJEA, like all other states in the United States. The UCCJEA deals directly with child custody and jurisdiction. Because each state is entitled to draft its own laws regarding child custody and jurisdiction over divorce, the UCCJEA was adopted to give full faith and credit to the determination of courts in other states, to guide states on where jurisdiction should be, to protect parents whose children might be removed to other states to avoid custody determinations, and to ensure that a child custody determination in one state will not be overturned by a court in another jurisdiction.

Under the UCCJEA, the court where jurisdiction is being sought looks to a variety of factors. Initially, jurisdiction is in the child's home state. The child's home state will be the one where the child has resided for at least six months. If the child does not have a home state, jurisdiction can exist in the state where the child is located. The state with preferred jurisdiction can also choose to waive its jurisdiction to another state and the UCCJEA also contains provisions for emergency jurisdiction when no state has clear jurisdiction. In this case, however, Joey has a clear home state- Nevada. The only reason Joey is even in Indiana is because his mother violated the Nevada order and secretly brought him here.

2. Indiana's Jurisdiction

Here it is clear that Nevada has jurisdiction. This is not a case where the jurisdiction needs

to be determined before the custody matter can be reached. Nevada already had jurisdiction over the issue of Joey's custody and already made a (presumably) valid custody determination. Indiana cannot accept jurisdiction over Sally's Petition to Modify Custody because doing so would be a violation of the UCCJEA. By adopting the UCCJEA, Indiana agreed to give jurisdiction the state that already had it. Unless Nevada waives its jurisdiction to Indiana, which given Bob's emergency order it seems unlikely to do so, Indiana must deny jurisdiction. It would be improper for Indiana to accept jurisdiction over this case when Nevada already had it.

3. Enforcement of Nevada's custody order

Indiana has to enforce Nevada's custody order, including the emergency order requiring Joey's return to Nevada. Without agreement between the states as to custody and jurisdiction, a parent would be free to move about the country from court to court until he/she received the custody determination he/she was looking for. The UCCJEA directly prevents this situation from happening. Indiana is required under the UCCJEA to give full faith and credit to the determination made in Nevada. Sally may not circumvent the valid Nevada custody determination by running away to Indiana with Joey. In order to modify that custody order, she must have the court of original jurisdiction (Nevada) make the modification. Once the court in Nevada has decided on Bob's petition to be granted sole legal and physical custody, Sally (and the courts in Indiana) will be bound by that, too.

Indiana Essay Question 3
Sample Answer
(Verbatim transcription of answer by an examinee)
July 2013

1. Endorsed Customer Checks

Once Trudy endorsed the checks, Jane became a holder upon stealing them, because it was a blank endorsement. She did not become a holder in due course because she did not give value for the checks. The check was properly payable at that point. No forgery was required on Jane's part to turn the check over to a bank where she has an account and have it paid. Jane's bank does not require Holder in Due Course Protection because it can merely remove the money from any resulting liability from its customer's accounts. Jane's bank would then present the check to the payee bank, which would pay it, assuming the entity who wrote ABC the check was solvent.

When the customer called to complain to the Payee Bank after hearing from Trudy, they would attempt to push the loss back on the Depository Bank, where Jane took the check. However, the check, when honored by the Depository Bank, had all necessary components. The check, though obtained through dishonest means, did not have a forged endorsement, so the Depository Bank did not violate its presentment warranty to the Payee Bank. ABC may have an action in conversion against the Depository Bank, but Trudy's negligence may complicate matters for ABC.

Realistically, ABC will bear this loss due to Trudy's negligence. Her practice of endorsing checks so that they were blank endorsements and leaving them in a stack until the end of the day is not a practice that is within the ordinary course of business for a company of that type. Trudy should be waiting until she reaches the bank to endorse the checks or locking them up once they

are endorsed. In modern times, more often than not, an electronic system is what is used in the ordinary course of business by businesses that handle many checks.

ABC's only real option is to maintain an action against Jane, who has skipped town.

2. Stolen Customer Checks

A forged endorsement means that no one can achieve the status of a holder and also that presentment warranties are violated. Presentment warranties are given by the party that presents the instrument for final payment. Among the presentment warranties is an assurance that the instrument and the endorsements on it are not forged or altered. Here, the depository bank, which cashed Jane's check, violated the presentment warranty by presenting a forged endorsement to the payee bank for final settlement.

When the Payee Bank receives a call from its customer, ABC's payor, it will be able to recover the value of the check it paid from the Depository Institution for the breach of the presentment warranty. The client's account will be recredited and it can re-issue a check to ABC.

The Depository Bank can only go after Jane in an attempt to make itself whole, and as she has skipped town and is insolvent, it will most likely bear the loss in this scenario.

3. Altered Payroll Check

The altering of the payroll check and the subsequent payment to the landlord once again puts ABC in a bad position thanks to the acts of its employee. First, no matter what happens, the most that ABC can recover for this loss is \$1,000.00, as \$2,000.00 was the authorized amount of payment to Jane for services rendered.

When the landlord deposited the check with his Depository Institution, his account would be provisionally credited pending the clearing of the check at the Payee Institution. When the

check arrives at the Payee Institution, the requirements for physical scrutiny of the check would be rather small. The check would have been scanned in and processed electronically. A bank may choose to honor a check even if it will cause an overdraft for the account holder. That decision belongs entirely to the bank. The check cleared under this process. Presumably it did not cause an overdraft, the credit became final for the landlord, and ABC was out \$1,000.00

The loss here will most likely be borne by the landlord. The Depository Institution once again violated its presentment warranty to the Payee Bank, meaning that it must make the Payee Bank whole. The Depository Institution will pay the Payee Bank \$1,000.00 in order to recompensate ABC. Most banks have provisions in their banking contracts allowing them to take the money they have credited to customers back in the event of dishonor or circumstances such as this.

The Depository Institution will take \$1,000.00 back from the landlord's account, and his only alternative will be to attempt to recover from Jane, who has left town and is insolvent, meaning he will bear the loss.

Indiana Essay Question 4
Sample Answer
(Verbatim transcription of answer by an examinee)
July 2013

1. Sam passed away without a will, therefore David's first claim against the estate comes under the intestacy statutes of Indiana, under which he is entitled to $\frac{3}{4}$ of the net real property and $\frac{1}{2}$ of the net personal property. Since Tess and Sam were never divorced, Tess was still legally married at the time of Sam's death. Tess, who is not David's mother, would take under the intestacy statutes as a "subsequent wife" with "deceased having other children (David) from a previous marriage."

However, Indiana law also provides that intestacy can be terminated upon a showing of abandonment. David would have to show that: 1. Tess and Sam were married, 2. Tess abandoned Sam (left the marital state with no intent to return), 3. Tess abandoned the marital state for another relationship; 4. Tess never returned to Sam. If David can show "abandonment" Tess's intestate share will be voided. An intestate share is intended to provide the surviving spouse with a measure of protection upon the death of the decedent. However, if the surviving spouse has not availed him/herself of the duties and obligations of marriage, and if said 'abandonment' can be shown to be for a significant amount of time, 'abandonment' will be found. And, in this case, David would take the house and cash free and clear of Tess' claim.

2. a. A court-appointed administrator would be required to pay off the \$5,000 lien for unpaid income taxes. It is an attached and perfected debt. The \$90,000 credit card debt are unsecured and would depend on many creditors respond to Notice of the Deceased' Death. Upon death of an intestate, the court will appoint an administrator to oversee the legal resolution of the deceased person's estate. An administrator is responsible for providing notice to all creditors,

gathering all estate assets, using said assets to pay off estate debts and distributing the balance of the estate to the appropriate parties. Upon sufficient and adequate notice, creditors have 3 months to file a claim with the administrator. Failure to do so results in a waiver of the claim.

In this case, it does not appear that any notice has been given to creditors. Thus, the administrator would be starting from scratch. Note, however, that the administrator is empowered and legally obligated to use estate assets to pay all appropriate debts. Ninety days after the notice to creditors, the administrator will have a better idea of what other debts (beyond the IRS tax lien) has to be paid. The IRS tax lien is considered 'attached and perfected' – it must be paid.

b. If "abandonment" is found, Tess will receive nothing. If "abandonment" is not found, she receives an intestacy share of Sam's estate. It is impossible to determine what that will be until all creditors have had a chance to respond. It could be "nothing" - - and it also be that by stepping into the matter, she could be found responsible for Sam's outstanding debts. She could come out of this losing money. Tess states that she has contacted an attorney. If I were her attorney I would advise her to stay clear of the situation. The abandonment claim is too strong.

c. David's situation is similar to Tess'. What David can receive also depends on how many of Sam's creditors respond to the Notice to Creditors. Following payment of the creditors, and depending on the outcome of case of "abandonment" against Tess, we can better determine David's claim to Sam's assets

d., where an administrator will have to be appointed, his/her fee will be paid prior to any distribution to David/Tess. The order of payment is: 1. Secured creditors (IRS), 2. Attorney's fees, 3. Unsecured creditors, and 4. Distribution to legatees.

Indiana Essay Question 5
Sample Answer
(Verbatim transcription of answer by an examinee)
July 2013

1. APRA Applies to the request by The Paramount News

Indiana's Access to Public Records Act was instituted under the same reasoning as Indiana's Open Door Act was in regards to making meetings of state agencies open to the public. In order to have a better informed citizenry, it is imperative that they be able to access the records produced and maintained by public agencies. APRA applies to all public records issued and maintained by the Executive Branch, Legislative Branch, Judicial Branch (which is important since the Open Door Law does not apply to the Judicial Branch), executive agencies, and any other public institution. Public universities are one of the public institutions covered by APRA because they are funded by State funds. Therefore, if any public records are issued and maintained by Paramount University, those records are subject to APRA.

2. APRA applies to the Renovation Records but not the Legal Advice

Even though the firing of a public university President is a very important decision to be made in State government, The Paramount News will not be able to obtain the records showing the advice of legal counsel regarding President Jones' termination. First, it is not a public record per se. It is legal advice given to the trustees. Even though this was a decision that had a great affect on the State, the State still must be able to seek legal advice before it takes an action without being expected to be forced to make it public. If they did have to do so, it would have a negative affect on the governance of the State. Second, this document can easily be considered

work product from an attorney in anticipation of litigation or privileged communication under the attorney-client privilege. The government receives the same attorney-client privileges that individual citizens receive, and therefore work that falls under its umbrella cannot be forced to be made public. Second, and in probably a weaker argument, it could be argued that the advice was given in anticipation of the inevitable litigation that would come with an abrupt firing of a high-up state official. This would also protect it from being made public under APRA.

Even though the advice may not be made public, the records regarding the renovations to the new President's office most certainly would be. These records were most likely prepared in order to pay the contractors their fees with state funds. Holding state officials accountable for their spending while in an office is certainly a highly protected interest of the citizens of Indiana, so when a project of this magnitude is paid for with their tax dollars, the APRA would certainly allow them the authority to see the records of such payment.

3. The Paramount News' Remedies to Obtain the Refused Records

Once the university declines to provide the records sought, The Paramount News must file an action under APRA in an appropriate state court seeking access to those records. Assuming the court agrees with them on either or both of the documents, the university must comply with that court order. If the University still refuses to comply with the order (after any appeals it may seek), the Paramount News can file a Motion to Compel, a Motion to Show Cause, and/or a Request for Attorney's Fees against the University. Even though the university has technically already been compelled to provide the documents, it wouldn't hurt the Paramount News to seek one final order that doesn't have accusatory undertones. If the university still

refuses to produce the documents, the News should file a motion to show cause on why they have still not provided the documents. Along with this filing, they should file a request for attorney's fees because of the university's insistence on refusing to comply with both the statute and the court order attempting to enforce the statute. Absent any excusable reason for not providing the records, the News should be awarded attorney's fees if it gets to that stage.

Indiana Essay Question 6
Sample Answer
(Verbatim transcription of answer by an examinee)
July 2013

In this situation, prior to trial, Farmer will want to seek a Temporary Restraining Order (TRO) against Robert and immediately initiate a claim for a preliminary injunction. The processes for obtaining each remedy are essentially alike, however, a TRO is more often granted in emergency situations and typically only good for no longer than 10 days. A TRO is essentially a very quick and mini version of a preliminary injunction. In both situations one must demonstrate imminent and irreparable harm. They must demonstrate their likelihood of success on the merits if the injunctive relief is granted prior to trial. They must show that the damages done to the party against whom the injunction is granted will be substantially outweighed by the harm that will be done if injunctive relief is not granted. A plaintiff must show that an injunction is in the best interests of the public. Finally, a plaintiff must show that monetary damages are insufficient in the situation if they seek to permanently enjoin the action.

I would advise Farmer to seek the TRO immediately. Because three of his cows have already died from drinking the water in the creek, it is likely that the court will see the emergency situation that exists with regard to this order. It is likely that Farmer will be granted this relief. Then I would advise Farmer to immediately get his preliminary injunction claim together to be ruled upon as soon as the court can hear the issue. Such hearings usually can take place within 30 days if the harm is of a serious nature. Farmer will want to show in his claim that he will suffer imminent and irreparable harm if injunctive relief is not granted. Farmer uses his land for agricultural purposes. He has used his land in this manner for at least 15 years. Farmer has used

this creek as his cows' only source of drinking water for the past 15 years. As a result of Robert's testing of his refinery process, the creek has become polluted and three of Farmer's cows have died. The harm presented by more cows dieing is imminent and irreparable as it can be concluded that more of Farmer's cows will die if Robert is not enjoined from using his land in a manner which pollutes the creek.

Farmer must also show that the damage that done to Robert and his refinery will be outweighed by the harm that will occur if the injunction is not granted. Here, Robert is not in any way licensed or approved to use his land in this manner. His patent for the process is still pending. It is not certain that Robert will even be able to sell his product to a refinery at this point. Thus, the damages that could be done to Robert if the injunction is granted are outweighed by those that could occur to Farmer's cows and his dairy business. Farmer will also assert that an injunction is in the best interest of the public because he runs a dairy farm. The public are likely the individuals that consume Farmer's end products. If the cows are contaminated the product could become contaminated. Further, if Farmers cows continue to die it could cause the cost of his dairy products to increase to cover the cost of replacing the cows. Thus, an injuction would be in the publics best interest and not at all against public policy. Farmer's most difficult point to prove will be his likelihood of success on the merits. However, I believe that Farmer will be able to successfully demonstrate this factor. Here, Farmer would likely bring a suit to permanently enjoin Robert's conduct. He would need to demonstrate that monetary damages will not be sufficient to remedy the situation and that Robert's use of his land is inappropriate. Roberts processes are polluting a creek. His processes are in no way licensed or approved or authorized

by any state or local agency. Thus, he is polluting a natural resource using a process that he “hopes” will become patented and produce purified oil. The facts state that Robert’s system may only be as pure as the oil that is currently already being processed by a local refinery. Robert is not bringing business to a town. In fact, he is shutting down a long standing local dairy farmer by way of a process that apparently already exists. Based on these facts, it seems that Farmer will be able to sustain his burden in proving that he is entitled to a preliminary injunction while he awaits trial. If, however, Farmer’s request for a preliminary injunction is denied, he will then be able to appeal the Trial Court’s ruling. Because this is an emergency situation, he will want to initiate the appeals process immediately. However, he will have 30 days after the trial court issues their order to appeal to the appeals court. He will draft an appeal and file it with the court of appeals. The court of appeals will then receive the record from the trial court. No new evidence will be considered. They will rule on the injunction based on the record received from the trial court and the briefs prepared by both parties.