INDIANA ESSAY EXAM
QUESTION 1
July 2016

After shopping at the store, customer Mary Smith slipped and fell on ice in the parking lot of Big Box Retail ("BBR"), a department store located in Blue County, Indiana. Mary sued BBR in an Indiana state court for damages relating to the personal injuries she sustained from the fall.

Pursuant to a written Lease, BBR leases its Blue County building and premises, including the parking lot, from Store Rental Properties, Inc. ("SRP"), an Indiana corporation. Under the terms of the Lease, SRP is responsible for the maintenance of the building and its parking lot. SRP has a contract with We Plow & Salt Company ("WP&S") to clear snow and ice from the parking lot.

That same month, BBR had to pay for the emergency repair of frozen pipes in the building. Under the terms of the Lease, SRP is responsible for such repairs as maintenance. Despite numerous requests by BBR that SRP reimburse it, SRP has still not reimbursed BBR. BBR was already planning to sue SRP at the time it was served with the Smith Complaint.

1. Identify and describe when BBR must respond to Smith's Complaint.

2. Identify and describe what BBR should include in its Answer to Smith's Complaint.

3. Identify and describe any other document(s), if any, BBR could file in lieu of an Answer.

4. If BBR contends another person or entity is responsible for Smith's injuries, under the Indiana Trial Rules, what can BBR do to act on its contentions?

5. Can BBR's claim against SRP for reimbursement for the frozen pipe repair be included in the same proceeding as Smith's lawsuit? Why or why not?

Indiana State Board of Law Examiners

Question: 1
Exam Name: INBar_7-26-16_PM

1)

Big Box Retail must comply with the Indiana Trial Rules in their defense against Mary Smith's claim and in any other suits in the state of Indiana against Store Rental Properties.

1. Big Box Retail (BBR) must respond to Mary Smith's complaint within 20 days of being served with the complaint. As a business entity, Smith must serve the highest officer found at BBR or a registered agent. BBR may be allowed an additional three days if they respond to the complaint via the mail (they would have 23 days in that instance).

2. In its Answer to Smith's complaint BBR must include either an admission or denial of the allegations in the complaint. BBR may also respond by asserting that they do not have enough information to admit or deny the allegations, this will be deemed a denial. Additionally, BBR must assert any affirmative defenses in its answer or they will be waived. Defenses that will be waived if they are not asserted in the answer are: accord & satisfaction, waiver, fraud, estoppel, and lack of jurisdiction.

3. In lieu of an Answer, BBR may assert a number of Rule 12 motions: motion to dismiss for lack of personal jurisdiction, motion to dismiss for lack of subject matter jurisdition, motion to dismiss for improper venue, motion to dismiss for a failure to state a claim for which relief can be granted, motion to strike, motion to dismiss for failure to join a necessary party, motion to dismiss for improper process, and motion to dismiss for improper service of process. Just like the affirmative defenses in their Answer, these motions are deemed waived if not filed within 20 days of being served with the compliant. If a Rule 12 motion is filed and subsequently denied by the court, BBR will have 20 days from the denial to file their Answer.

4. If BBR contends that another person or entity is responsible for Smith's

injuries, under the Indiana Trial Rules, BBR can join them as a necessary party via impleader. In this case BBR may assert that Store Rental Properties, Inc. (SRP) or We Plow & Salt Company (WP&S) are liable for Ms. Smith's injuries. Because they are parties that are responsible for maintenance of the parking lot, BBR may assert that they are primarily or secondarily liable to Smith for her injuries.

5. If SRP is successfuly joined in the action via impleader then BBR may assert their claim against SRP for reimbursement for the frozen pipe repair in the same action. Even though this claim does not arise out of the same transaction or occurance as the Smith case it may be asserted by BBR as a permissive crossclaim as long as the court has valid jursidiction and venue over the action.

INDIANA ESSAY EXAMINATION
QUESTION 2
July 2016

Joe Brown, a sole proprietor, owned Joe's Bakery in Blue County, Indiana. He wanted to expand his business to include a café and catering. Joe owned the building that housed his bakery and had space in the building for his expansion. He needed funding, however, for the extra equipment needed for the café and catering expansion and to cover operating costs while the new ventures got established. He planned to operate under the name of Joe's Bakery and Café.

Joe borrowed $50,000 from First Bank and entered into an enforceable security agreement giving First Bank a security interest in all of Joe's inventory and equipment and after-acquired inventory and equipment. First Bank correctly filed a UCC financing statement with the Indiana Secretary of State reflecting its interest.

Still a bit short of his cash needs, Joe then asked his sister Sue for a loan of $15,000. They entered into an enforceable security agreement giving Sue a security interest in all of Joe's inventory and equipment and after-acquired inventory and equipment. Sue correctly filed a UCC financing statement with the Indiana Secretary of State reflecting her interest.

Joe owned one delivery van for his bakery business. He held that van's title free and clear of any liens. For the catering business, he bought a second delivery van for $30,000 that he financed through Acme Truck Sales. Title to the van was in Joe's name. Acme painted the van with Joe's Bakery and Café logo. The title to the van correctly identified Acme's lien on the van.

After three successful years of operation, business declined precipitously after local media reported the Blue County Board of Health found numerous critical health code violations at Joe's Bakery and Café. Joe closed the catering part of the business, but still struggled to make payroll. Joe fell behind in his payments to First Bank, Sue, and Acme and then stopped making any payments on all three loans. All security agreements included acceleration clauses making the full balance of each loan due immediately upon default.

Acme sent an employee to repossess the van, but Joe refused to surrender the keys to the van. Subsequently, a different Acme employee returned at night and towed the van away. Joe's father had given him the money to satisfy Acme's lien, but when he went to pay for the van, he was told Acme had sold the van at an auto auction. Joe owed $26,000 on the van, and it sold at auction for $11,000. The fair market value of the van was $19,000.

1. Acme filed suit against Joe for the balance due on the van. What defense(s) or counterclaim(s), if any, can Joe assert? Assess Joe's chances of success.

2. What legal steps could Bank take to collect on Joe's debt?

3. What legal steps could Sue take to collect on Joe's debt?

Indiana State Board of Law Examiners

Question: 2
Exam Name: INBar_7-26-16_PM

Grade: ____________

2)

I. Introduction

Article 9 of the UCC governs secured transactions. A secured transaction takes place when a secured party (or creditor) gives value to a debtor who puts up collateral as security interest for the creditor. Then, if the debtor fails to repay his debt, the creditor may take possession of the collateral, sell the collateral, and take the proceeds in satisfaction of the debt. Collateral under Article 9 can include both tangible and intangible items. Tangible items include inventory, equipment, farm equipment, and consumer goods.

In this fact pattern we have several creditors: First Bank, Sue, and Acme. Joe Brown, as a sole proprietor, is the debtor. The collateral includes inventory, equipment, and the van.

II. Acme v. Joe

There are several defenses and/or counterclaims that Joe may assert against Acme. Joe may defend by saying Acme breached the peace when taking away his van. Joe may claim his right of redemption was violated and file a suit in conversion. Finally, Joe may argue that Acme did not fulfill Article 9's requirements for foreclosure of notice and a commercially reasonable sale.

Breach of Peace

First, Joe may claim that Acme's actions in taking the van was a breach of peace, but he will probably not succeed on this claim.

Creditors may use self-help in foreclosure by going and taking away the collateral and putting themselves in possession. However, they may not do so if it constitutes a "breach of peace." A breach of peace occurs when the actions violate privacy rights, or taking away the collateral includes violence or argument. If the owner refuses to surrender the collateral, normally a creditor must then file a replevin action in court to possess the collateral.

Here, a court would probably find that the creditor did not breach the peace. Joe refused to surrender the keys at first. If Acme had attempted at that moment to take they keys away from him or against his will, it would probably be a breach of peace. However, Acme waited until night and towed the van away. Assuming that the van was on a public street and the employee did not break an entering or otherwise violate an important privacy right, a court would probably find this an acceptable method of self-help. Thus, Joe will lose on this defense.

Right of Redemption

Next, Joe could assert that Acme violated his right of redemption and sue Aceme in a counterclaim for damages for conversion. Joe will succeed on this claim provided that Acme did not notify Joe of the sale first.

When a creditor forecloses on collateral, the debtor has a right of redemption. This right means that any time up until sale, a debtor can satisfy the debt owed. This may include any amount owed udner any acceleration clauses. This right may not be waived by the debtor in an agreement. Additionally, a creditor must give reasonable notice of sale (usually ten days) to the debtor and all interested parties. If it does not, then the debtor's right of redemption may have been violated because he never had a chance to exercise it. If a right of redemption is violated, the debtor may sue the creditor for conversion.

Here, it appears that Acme did not give Joe notice of the sale, thus, Joe was stripped of his right of redemption. Joe can sue Acme for conversion.

Failure to Meet Article 9 Forclosure Requirements

Finally, Joe could assert that Acme both failed to give reasonable notice and failed to make a commercially reasonable sale as required by the UCC. Instead of a conversion claim, Joe could argue that this failure gives rise to a rebuttable presumption that the sale proceeds is in full satisfaction of his debt.

The UCC requires that after foreclosure, a creditor give the debtor and all reasonable parties notice of ale (usually ten days). It may be a public or private sale. Thereafter, the sale must be conducted in a commercially reasonable manner. A court will consider the sale price, conditions of sale, time and location of sale, and any efforts the creditor made for proper resale in determining whether a sale is commercially reasonable. If a creditor fails to comply with these requirements, there is a rebuttable presumption that the sale proceeds satisfy the entire debt.

Here, it appears Acme both failed to give notice and the sale itself is suspect. The fair market value of the van was $19,000 and it only sold for $11,000. This is not conclusive the sale was unreasonable, but a court will consider this. The court will also look to other surrounding facts. If Joe can show failure to notify and/or failure of a commercially reasonable sale, he will succeed arguing for the rebuttable presumption of satisfaction. This way, Acme could not go after Joe for any deficiency judgment after sale. However, this presumption is rebuttable, so Acme may rebut Joe's claim.

III. Bank's Actions

The bank may collect on Joe's debt by foreclosing on all inventory and equipment and either keeping it in satisfaction of the debt or selling it and keeping the proceeds in satisfaction.

First, for the bank to have priority in the proceeds, it must be a secured party who perfected before other creditors. To be a secured party and have rights against the debtor and other creditors, both attachment and perfection must occur. Attachment occurs when a creditor gives value, the debtor has rights in the collateral, and a written security agreement is signed indicating the intent of both parties of the security agreement. Perfection gives notice to the world that a creditor has a security interest. It includes attachment plus an additional step. A party can usually satisfy this by filing a financing statement with the Secretary of State. If a creditor perfects first, it will have priority over all other creditors except certain circumstances with purchase money security interests, who may have superpriority.

Here, the bank's interest attached and it was perfected first. The creditor gave value (50,000), Joe had rights to his inventory and equipment, and there was a written security agreement. It was perfected when the bank filed a UCC financing statement with the Indiana Secretary of State.

Now, the bank must take several steps to collect on the debt. It may foreclose on all of Joe's inventory and equipment that existed at the time it gave value and any after acquired inventory and equipment (except the van because Acme had a PMSI interest in the van). After acquired clauses are permissible and appropriate. As discussed above, the bank may engage in self-help and posses the items itself if it can do so without breach of peace. If it cannot, it must seek a replevin action. Then, the bank must give the debtor and all interested parties (here, Sue as another creditor) notice of its possession. If the bank intends to keep the collateral in full or partial satisfaction of its debt, it must notify the parties and if either party objects, then the bank must sell the collateral. Here, Sue will probably object because she would want her debt satisfied if there is any amount remaining after bank's debt is paid. If the bank does sell, it must give reasonable notice and conduct a commerically reasonable sale. If it is a public sale, the Bank itself may bid on the collateral.

Once a sale takes place, the Bank must distribute the proceeds. If the proceeds are insufficient to cover Joe's debt to the bank (including expenses of sale), the bank can seek a deficiency judgment for the remaining amount. If it is sufficient, then any remaining proceeds go to any other creditors with a security interest in the collateral. Any surplus after that goes to the debtor.

IV. Sue's Actions

Sue is also a secured party like the bank, so all of the attachment and perfection requirements above must be met to have rights against the debtor and other creditors. Sue may also foreclose, but it will only take the proceeds existing after bank is paid.

Here, there was attachment and perfection. Sue gave value (15,000) and Joe had possessory rights in the inventory and equipment. They also executed a written security agreement. Perfection occurred when she filed a financing statement.

Here, Sue took the collateral as a junior creditor, junior to the bank's interest. However, she may foreclose herself, following the process listed above. If the bank forecloses first, she must object to the bank holding the collateral in satisfaction of the debt, because she wants to get paid. If there are insufficient proceeds to satisfy Sue's debt, she may seek a deficiency judgment against Joe for the remaining amount.

INDIANA ESSAY EXAMINATION
QUESTION 3
July 2016

For purposes of this question, assume that Indiana legalized the sale and possession of marijuana for prescribed medical use and, in so doing, established a new statewide agency, the Indiana Medical Marijuana Commission (IMMC), to regulate the sale of marijuana from licensed dispensaries to persons with a doctor's prescription. The IMMC is a statewide agency subject to the Indiana Administrative Rules and Procedures Act (ARPA).

A few months after the dispensaries opened, there were prominent news stories on whether the notoriety of dispensaries encouraged marijuana use among the general public. After two children who ate marijuana-containing candy had to be hospitalized, concerns were also raised over the sale of so-called "edibles," food items containing marijuana or its psychoactive ingredients.

In response, the IMMC proposed two rules. The first rule sought to immediately ban the sale of edibles. The second rule banned dispensaries from erecting outside signage and prohibited all advertising other than in directories. The rule gave dispensaries one year to comply with the sign and ad bans. The IMMC sent all licensed dispensaries a written notice of the proposed rules and of a scheduled public hearing. The notice included an overview of the rules' intent and scope and of the statutory authority for the rules.

The agency received a number of written comments in response to the notice it sent of the proposed rules. Several dispensary owners attended the public hearing to challenge the rules on multiple grounds, including that the ban on advertising unfairly burdened smaller dispensaries, violated their speech rights, and was anticompetitive. An oncologist who learned of the proposed rules through her patients, spoke in opposition, asserting edibles should remain an option for patients and that the rule banning them lacked a rational basis. Another doctor who appeared at the hearing was told time had expired and the IMMC refused to accept that doctor's written comments or allow him to speak.

Shortly after the hearing, the IMMC adopted verbatim the rules as set out in the notice it sent to the dispensaries and submitted the rules, unchanged, to the Indiana Attorney General and Governor, both of whom approved the rules. The IMMC then filed a copy of the rules with the Indiana Secretary of State noting that the rules were effective immediately and submitted a copy of the new rules to the publisher of the Indiana Register and the Indiana Administrative Code.

Three days after the rules were submitted to the Secretary of State, the IMMC cited a dispensary for selling marijuana butter to a cancer patient. That dispensary and another dispensary that was not cited filed a lawsuit to challenge the new rules.

1. The IMMC claimed the dispensary that was not cited for violating the rules had no standing. Explain how the court should rule and why.

2. The Court determined that a number of ARPA's procedural rulemaking requirements were violated in connection with the two new rules. Identify all rulemaking violations and, for each violation, specify what should have been done to adopt the rules properly.

Indiana State Board of Law Examiners

Question: 3
Exam Name: INBar_7-26-16_PM

Grade: ____________

3)

1.Standing

The court should find that the dispensary has standing. Standing to contest a rule adopted by an agency exists when the party is a adversely affected or a subject to the rule. A dispensary, although not cited, would be subject to the rule because it applies rules regarding singage, advertising, and sales. The dispensary would have been adversely affected by the rule because it wouldn't be able to sell edibles and would be banned from having signage or advertising. Further, a party does not need to be cited in violation of the rule to challenge it. A party may challenge a rule based on incorrect procedure in its adoption. There is a statute of limitations of 2 years for procedural violations.

2. Rule-Making Process

Agencies may act in a number of capacities including rulemaking. It's rulemaking authroity comes from the Indiana Administrative Rules and Procedures Act (ARPA). IMMC is an Indiana agency and subject to ARPA. Below are the steps an agency must take when engaging in rulemaking:

1. Notice

First notice: the agency must give notice of its intent to adopt a rule, itsscope, authority, solicit comments, and provide the proposed rule in the Indiana Register 28 days before its second notice.

Second notice: the agency must give notice of the rule in the Indiana Register and in a newspaper of general circulation in Marion County. This notice must come 21 days before a hearing to discuss the rule. The agnecy must provide the date, time, location of the hearing in the newspaper of general circulation. It must provide the date, time, location of the hearing in the Indiana Register and a full text copy of the rule. This second notice acts as preliminary adoption of the rule.

2. Specific Comment Requirements

If the rule will impose costs or requirements on small businesses, the Small Business Ombundsmen are required to submit comments within 7 days of the hearing. The agency is required to consider and respond in writing to these comments.

Additionally, if the rule will have an economic impact of $500,000 or more, the rule must be submitted by the agency to the Office of Management and Budget 50 days before the hearing for fiscal analysis and comments. The agency must consider and respond to these comments as well.

Lastly, if the adopted rule will impose costs and requirements on small businesses, the agency must file an annal economic impact analysis regarding these costs, requirements, and alternatives.

3. Hearing

21 days after the second notice, a hearing must be held where all interested parties must have an opporunity to be heard regarding the rule. The agency must consider these comments and any other written comments received, but is not required to base its decision solely upon them. The rule adopted after this hearing must be a logical outgrowth of what was noticed and commented.

4. Sent to Attorney General and Governor

The rule is then sent to the attorney general. The attorney general has 45 days to disapprove, or it is deemed approved. It is then sent to the Governor, the governor has 15 days to disapprove, or it is deemed approved. There is a possible 15 day time extension for the governor.

5. Sent to Indiana Register Publisher

The rule is then sent to the publisher of the indiana register. There are a number of effective dates it may have, including 30 days after sending.

6. File Copies with Secretary of State

Copies of the rule are then filed with the secretary of state. The rule cannot be effective less than 30 days from this.

The rule making process must take less than a year or the rule is void.
Judicial review of the rulemaking process is available. The court will determine whether the rule was: within the legislative will, within the agency's statutory authority, meets the purposes of the agency, and reasonable.

Here, the first violation occured when IMMC only sent notice written notice to the dispensaries. It was required, as listed, above to give two separate notices with particular publication and time requirements. The IMMC should have noticed the rule first in the Indiana Register 28 days before it second noticed the rule in the indiana register and a newspaper of general circulation in marion county. The hearing that it held would have had to be 21 days after this second notice.

The second violation occured at the hearing that IMMC conducted. Any person may present relevant comments and must have the opportunity to be heard at the hearing. Any interested party may submit written comments for the agency to consider. The agency violated this when it did not allow the doctor to submit written comments or to allow him to speak at the hearing. At the hearing, the agency should have allowed the doctor to speak and submit his written comments.

The third violation occured when the IMMC adopted the proposed rule that was noticed (ineffectively). This is a violation because it clearly did not consider any of the comments it received before the hearing or at the hearing. The substance of the comments was highly relevant and should have been considered by the agency. Further, it does not appear that the Small Business Ombundsman submitted comments, which it would have been required to since there is an impact on small dispensaires (likely small businesses). Further, if the proposed rule was likely to have an economic impact of $500,000 or more, IMMC was required to send the propsoed rule to the Office of Management and Budget for analysis. The agnecy's adopted rule should have been a logical outgrowth of what it noticed and what was commented on. No revisions despite extensive comments with merit does not seem to be a logical outgrowth.

The fourth violation occured when the agency filed the rule with the Secretary of State indicating that it was effectively immediately. A rule filed with the Secretary of State may not be effective less than 30 days after filing. The filed rule should have been effective 30 days after filing. Additionally, if the submission to the Indiana register and Indiana adminsitrative code also indicated that the rule was effective immediately this would have been a violation.

A fifth violation occured when the IMMC cited a dispensary for selling three days after the rule was submitted to the Secretary of State. As already indicated, a rule may not be effective less than 30 days after filing with the SOS. Therefore, the rule was not effective at the time the dispensary was cited. IMMC could not cite anyone subject to the rule until it was effective, which at the earliest could have been 30 days from filing with the SOS.

Lastly, requirement that the dispensaries comply with the proposed (and not adopted) rules within one year is also a violation. The rulemaking process can only be completed within a particular time frame and must be completed within a year. It is possible that the rule would have been effective within one year and require compliance, but until the rule went through the rulemaking process the dispensaires wouldn't be required to comply. Further, the proposed rule is subject to revision based on the notice and comment process and thus requiring compliance with it would have risked inconsistent obligations and impose costs and burdens on the business that may have ultimately been unnecessary once the rule was adopted.

INDIANA ESSAY EXAMINATION
QUESTION 4
July 2016

Gary and Mike are starting a business in Indiana together where they will each own 50% of the business. With respect to the type of business entity they might form, their concerns include the following:

- Protection of their personal assets not contributed to the business;
- Gary and Mike's having equal authority and liability exposure;
- Neither one of them appearing more or less important to the business from the perspective of those with whom they deal; and
- Simplicity over complexity.

They are considering four potential types of business entities:

- General partnership;
- Limited partnership;
- For-profit corporation; and
- Limited liability company.

1. For each of the four types of business entities Gary and Mike are considering:

    a. Identify the name or title given to an owner of that type of business;

    b. State whether an owner is shielded from personal liability for the debts of the business (assuming all corporate/business formalities are followed); and

    c. Assess both how that particular entity serves the concerns of Mike and Gary and how that particular entity does not serve the concerns of Mike and Gary.

2. Assume Gary and Mike have narrowed their choices to a general partnership on the one hand and a member-managed limited liability company on the other. Which of these two entities better serves Mike and Gary's concerns? Explain your reasoning.

3. Assume Gary and Mike opted to form a limited liability company. Each thought the other would file the company's biennial business entity report with the Indiana Secretary of State. As a result, for several years no report was filed. Identify and describe all consequences and potential consequences of their failure to file the LLC's biennial report.

Indiana State Board of Law Examiners

Question: 4
Exam Name: INBar_7-26-16_PM

Grade: ____________

4)

1.

General Partnership

The name of an owner in a partnership is a partner.

Partners are not shielded from personal liability for the debts of a partnership and in many cases can be exposed to a greater risk of liability than even a sole proprietorship as any partner can potentially bind the partnership contractually and subsequently expose the partnership to debt for which every partner in the partnership is liable. To this end, the general partnership is not an entity that can effectively protect Gary and Mike's personal assets not contributed to the business. While any debts will be paid by the partnership "first" before reaching Gary and Mike's personal assets, in the event of the Partnership dissolving under the burden of debts for which the partnership assets cannot stand then each partner will be liable for his sale of the remaining debt out of his personal assets.

A General Partnership will grant both Gary and Mike equal authority (unless they contractually agree with each other to the contrary) and they will have equal liability exposure for the debts of the partnership.

Neither Gary or Mike will appear more or less important to the business from the perspective ofr those with whom they deal as partners. This does have the downside however when coupled with personal liability. Since those with whom they deal view Gary and Mike as "partners" each partner can potentially bind the business contractually when dealing with outside parties even if the parties had an understanding between themselves that one partner or the other would deal with certain aspects of the business.

A general partnership emphasizes simplicity over complexity. There are no papers to file with the Secretary of State, etc. Under the Indiana Uniform Partnership Act, a partnership can be formed by two or more people who intend to form a partnership for the purposes of carrying on a business. A general partnership would be the easiest of the four entities to form.

Limited Partnership (LP)

The name of an owner in a limited partnership is either a General Partner or a Limited Partner. Each LP must have one General Partner.

While limited partners in an LP enjoy limited liability protection for their assets not contributed to a business, the General Partner is still personally liable for the debts of the business. Choosing this form would mean that either Gary or Mike would need to be personally liable.

In addition to unequal liability exposure discussed above, Gary and Mike would not have equal authority in an LP. Limited partners cannot exercise management or control of a LP without making themselves personally liable. This would mean that either Gary or Mike would have to be "in charge" of the business with the other limited partner is an unequal role.

The general partner is naturally going to appear to be more important in the business to outsiders as this is the partner that controls the business. An LP would be very poor for addresses this concern of Gary and Mike.

LPs must be filed with the state and a partnership agreement needs to be created naming the General Partner. While less complex than a corporation, the LP will more than likely be more complex than an LLC and a General Partnership.

For-profit corporation

The name of an owner is a for-profit corporation is a shareholder.

A corporation is a limited-liability entity which would protect Gary and Mike's assets (unless they did something to pierce the corporate veil).

As long as Gary and Mike ensured that an equal number of shares of the same class were distributed to each of them then they would have equal authority and liability exposure.

While corporations have to have certain named officers, Gary and Mike could more than likely reach a compromise (e.g. Co-President or one serving as President and the other as CEO) in order to both appear important to outsiders.

A for-profit corporation is not simple at all to create even for two shareholders that want to hold the corporation privately. You must file with the state, pay a fee, provide annual reports to shareholders, conduct an annual shareholders' meeting and observe other corporate formalities in order to not exposure yourself to liability exposure for piercing the corporate veil.

Limited Liability Company

The name of an owner of an LLC is a member.

A LLC is a limited-liability entity which would protect Gary and Mike's personal assets.

As long as the operating agreement granted Gary and Mike equal authority then they would have equal authority and liability. (This would also be the case by default since there are only two members).

Gary and Mike could decide on their titles in the Operating Agreement but they would have the flexibility to make titles such as "co-owner" so that they both appear equal to outsiders. This assumes that Gary and Mike would run the LLC as a member-managed LLC instead of a manager-managed LLC which could create a perception of unequal positions by outsiders.

LLCs are very easy to form under Indiana law. There is a one page form to fill out with the Secretary of State, a small filing fee and then you must file a small report every two years with the Secretary of State.

2. An LLC serves Gary and Mike's need better than a partnership. Gary and Mike can address all of their four stated concerns discussed above with the LLC's operating agreement while also enjoying several advantages that a General Partnership will not give them. Limited Liability alone would be enough of a reason in most cases to choose an LLC over a partnership. Anything appealing about a partnership such as equal authority and equal liability exposure or no one appearing more important than the other can be addressed in the operating agreement of the LLC. Gary and Mike can grant themselves equal authority, equal liability exposure (but at least this liability will be limited in an LLC!) and even the same titles. The only arguable advantage related to their stated concerns is a partnership doesn't require the filing of a formal form with the state but this is a negligible concern. An LLC can be formed in less than an hour and being a statutory entity also can have some advantages that Gary and Mike might not have even considered yet such as ease of succession planning. A two-person partnership will dissolve on the death of a partner. An LLC, by contrast, can survive the death of a member. If Gary and Mike plan on this business being around for a long time and potentially pass on to their children, it is best to do it right from the beginning and form an LLC.

3. Failure to file the biennial business entity report with the Secretary of State can result in the state dissolving your entity status. This can result in the loss of limited-liability status for members. It can also potentially put the members in breach of contracts if the contracts were signed in the entity's name (though you could argue the LCC operated as a de facto corporation though this is beyond scope of question). Members could also be liable to each other for a breach of duty to each other for failure to file the biennial report. Finally, if the LCC was dissolved for several years as the question states then you could potentially lose your trademark or DBA name if another active entity came along and filed it while your LLC was dissolved.

INDIANA ESSAY EXAMINATION
QUESTION 5
July 2016

After graduating from college, Glen was in an automobile accident in which his passenger died. Glen was charged in the death of the passenger, lost his job, and sank into a severe depression. Glen ultimately pleaded guilty to reckless homicide, a level 5 felony, and was given a term of probation.

After being unemployed for several years, Glen's uncle Robert, a successful art dealer in Indiana, hired Glen and taught him all about buying and selling art internationally. Robert saw that Glen was very bright and talented and encouraged Glen to attend law school and specialize in Art Law. Robert was very proud of Glen, and repeatedly made public statements such as, "Glen is the son I never had. I love him as if he were my biological child."

In 2012, Robert married Teresa. Neither Robert nor Teresa had ever been married before and neither had any children. Glen continued to be very involved in Robert's life, although Glen and Teresa never really got along. Glen thought Teresa was a "gold digger" and Teresa thought Glen was simply using Robert to get by. However, Teresa and Glen were always polite and cordial with each other when in the company of Robert.

In 2013, Robert hired an attorney to draft his will. Robert showed the draft to both Glen and Teresa, stating, "This is my will. I want you both to be witnesses when the time comes. I'm still considering some revisions, and will let you know when I am ready to sign it." Neither Glen nor Teresa read the will, nor did they ever sign as witnesses. Robert never signed any version of the will, but kept the copy he showed Glen and Teresa in an envelope labeled "Robert's Last Will and Testament."

Glen graduated from law school in 2014. In a card to Glen, Robert wrote, "I give you the *Blind Justice* sculpture in my living room in celebration of your graduation from law school. You can take the sculpture upon my death, but I will keep possession of *Blind Justice* for as long as I live."

Blind Justice remained in Robert's home until he died in May 2015. At his death, Robert's estate, not including the sculpture, was valued at $2,500,000, and *Blind Justice* was valued at $750,000.

Unbeknownst to Glen, Teresa filed a *Petition for Probate of Will and Appointment of Personal Representative* in the Blue County Indiana Probate Court. One day after Teresa's filing, Glen separately filed a petition to be appointed as Personal Representative of Robert's estate, feeling that he owed it to his uncle, and that his legal training made him well qualified to serve in that role.

1. Applying Indiana law, evaluate both Glen's and Teresa's respective requests to be appointed the personal representative of Robert's estate. Identify who the court should appoint and explain why.

2. Discuss the validity of Robert's 2013 will, explaining the requirements for a valid will in Indiana and the formal execution requirements.

3. Should *Blind Justice* be included as part of Robert's estate? Explain your reasoning.

Indiana State Board of Law Examiners

Question: 5
Exam Name: INBar_7-26-16_PM

Grade: ____________

5)

1. Personal Representative Requirements

A personal representative of an estate must be 18, must be an Indiana citizen, must be of soundmind, and may not be a convicted felon. If a will does not explictly appoint a personal representative, one may be appointed. Glen and Teresa are both among those that may be appointed as personal representative. Those that may be appointed include: a surviving spouse that is a devisee in the will, another devisee in the will, a surviving spouse not a devisee, and any other interested person. Teresa likely meets all the requirements to be a personal represenative, as listed above. However, Glen does not because he pleaded guilty to a felony after college. Glen is disqualified from being a personal represenative and Teresa should be appointed by the court. Notwithstanding Glen's felony, Teresa would have been the more appropriate choice as personal representative since she is the surviving spouse (if there was a valid will, likely a devisee under it).

2. 2013 Will is Invalid

The Indiana code governs the requirements for a valid will and formal execution. In order for a will to be valid, the testator must signify to 2 witnesses that he intends the document to be his will; the testator must sign or acknowledge his signature in front of the 2 witnesses; and the 2 witnessess must sign in front of the testator and each other. Additionally, the testator must be 18, of sound mind, have testatmentary intent to make a present will not future, and have testatmentary capacity to understand the nature of his actions, his property, and their effect.

Here, the 2013 will that Robert attempted to make was invalid. He was still considering revisions, so it was merely a draft and was unsigned by him. While Robert likely had testatmentary capacity to make his will, his testamentary intent is unclear as he indicated that the was not ready to sign the will. Thus, he did not have the present intent to make a will but reserved the right to make that his will in the future prending revisions. Further, this will does not meet the requirements for a validly executed will. Robert did indicate to Glen and Teresa that "this is my will." However, did not not sign it in their presence or any other witnesses, nor did he have two witnesses sign the will in his presence and in the presence of each other.

Even if Glen and Teresa would have signed it, they would not have been disinterested witnesses and the devises left to them would have been limited to the share they would have taken by intestacy. Glen, being of no relation, therefore would receive nothing and Teresa as a survivng spouse with no children with Robert and Robert having no cildren before marrying, would have taken the entire estate (subject to other devises made in the will not to her).

Because the will is invalid, Robert's estate will pass by intestacy. Robert is survived by his wife teresa and has no previous children or children with her, therefore she will take the entire estate.

3. *Blind Justice*

The blind justice sculpture is personal property may be considered an inter vivos gift, in which case it will not be included in Robert's estate. A gift requires 1) donative intent; 2) delivery; 3) acceptance.

Donative intent means that the donor intends to give a present, not future, gift that is complete, irrevocable, and uncontitional gift. Here, Robert's card to Glen indicated that he wanted to give him the sculpture, but that he would remain in possession of it until he died. This is not an unconditional gift because Glen must outlive Robert in order to receive it. Further, while the sculpture is in Robert's possession many things could happen to it whereby Glen would not be able to receive it at Robert's death. If Robert would have given the sculpture to a third party in trust for Glen to receive when he died this may have been a gift. However, because he retains possession he still has control over it and could potentially revoke the gift, so it fails as an intervivos gift.

Delivery means that the donor gives up all control and claims of ownership to the gift. Delivery is a complete relinquishment of the gift. Here, Robert still has control over the sculpture until he dies so the gift is not delivered. Although Glen is told he can take it once he dies, until that point Robert hasn't given up all claims to the sculpture.

Acceptance is presumed by the donee.

Because the gift remained in possession of Robert, it is unlikely that he made an inter vivos gift. Therefore, the sculpture will be included in Robert's estate.

INDIANA ESSAY EXAMATION
QUESTION 6
July 2016

Mabel and Stan met in nursing school and married in June of 2010 when they were each 22 years old. They both work full time as nurses at the same hospital. They did not have children.

Mabel and Stan liked to travel and spend money. They lived in a rented home and lived paycheck to paycheck. They accumulated no assets during the marriage (other than Stan's inheritance) and have no debts.

In January of 2015, Stan's grandmother died and left Stan $100,000 in cash. Stan deposited the cash into a savings account in his sole name. He has not used any of the funds in the account.

On June 1, 2016, Stan filed a Petition for Dissolution of Marriage seeking to divorce Mabel.

Assume Indiana law applies to all questions:

1. Will Stan be able to keep his $100,000 savings account out of the marital estate? Why or why not?

2. What is the presumption regarding what constitutes a just and reasonable division of property?

3. List the factors the Court must consider in determining whether the presumption should be rebutted.

4. Discussing the factors the Court must consider, explain whether Stan will be able to rebut the presumption?

Indiana State Board of Law Examiners

Question: 6
Exam Name: INBar_7-26-16_PM

Grade: ____________

6)

TO: Bar Examiner

FROM: Examinee

DATE: July 26, 2016

RE: Mabel and Stan Marital Dissolution

Memorandum

At the outset of this memo, it should be noted that Indiana law regarding dissolution will apply.

I. Stan's $100,000 Inheritance

Stan seeks to keep the $100,000 his grandmother left him in her will out of the marital estate during the marital dissolution process. However, the Indiana Code defines marital property very broadly. With limited exceptions, it includes all property acquired during the marriage, including property gained through inheritance that the spouse contributed nothing to its acquisiton. Although how Stan acquired the property may affect a court's distribution of the assets of a marital estate, including deviating from the presumption that each spouse should receive half the marital estate, it will be considered part of the marital estate.

II. Presumptive Split

Indiana courts presume that a just and reasonable division of property in the marital estate is distributing the estate equally to each spouse. Each spouse presumably should get half (fifty percent) of the marital estate.

III. Deviating from that Presumption

However, as mentioned previously, the equal split of the assets not irrebutable. Although courts presume the marital estate should be split equally at dissolution, several factors may warrant a court to deviate from the rebuttable presumption. These factors include: (1) each party's contributions to the marital estate; (2) whether property in the marital estate was received before the marriage or through a will; (3) each party's conduct as to the disposition of that property during the marriage; (4) each party's economic circumstances; and (5) each spouse's earning capacity.

IV. Can Stan Rebut this Presumption

Addressing the factors below, Stan likely will be able to convince a court to deviate from this presumption:

A. Contributions

Both Stan and Mabel worked as full-time nurses during their marriage, and during their marriage accrued no assets or no liabilities until January 2015. The money they earned, they appear to spent in the same manner as they were living paycheck to paycheck because of their passion for traveling. They both contributed equally to this lifestyle, except for the $100,000 Stan will contributed as a result of his grandmother's passing. As result, he contributed the most significant part of the marital estate. Stan did not acquire this property by any of Mabel's actions. It is not a case where her conduct created the opportunity for Stan to receive this money, as a stay-home spouse might for his or her working spouse.

B. Inheritance

This is the most favorable factor to Stan. The $100,000, which appears to be the entire marital estate, given the couple has no assets of liabilities, was inherited by Stan at his grandmother's death.

C. Conduct

Neither Stan or Mabel appeared to try and conserve any of the marital property for most of their marriage. Although they both had full-time jobs, the spent the money they earned and lived paycheck to paycheck. One spouse does not appear to be the culprit of the lack of marital assets. However, when Stan received the inheritance in 2015, he did not spend the money the same way he and Mabel had spent their mone in the past. Instead, he put it in a savings, where it could accumuluate more value through interest. Mabel took no similar actions during the marriage, where she attempted to save or invest any of the couple's property. Instead, it appears, she continued act the same way throughout the marriage, unlike Stan, who changed his actions.

D. Economic Circumstances

This factor does not appear to favor either spouse. Other than the $100,000 in the savings account, both spouses appear to be in the same economic circumstances. They have the same job at the same hospital and there is no indication one makes more than the other. There is also no indication in the record that either are in dire financial circumstances, that might justify a deviation from the presumed split.

E. Earnings Capacity

This factor similarly does not appear to be favor either spouse. As mentioned previously, both spouses work the same job at the same hospital. There is no indication either has some type of specialized training that might give one spouse the ability to make more in the future. As it stands currently, they appear to have the same earnings capacity.

F. Balancing These Factors

Given that multiple factors favor Stan, including that Stan obtained the $100,000 when his grandmother died and Stan immediately put the money in a bank account for safe keepings, and none appear to favor Mabel, a deviation likely is proper in this case. However, it will be in the court's discretion how much to deviate from this presumption.