INDIANA ESSAY EXAMINATION
QUESTION 1
July 2017

Ben and Linda were married for 10 years and had one child, Davon, born in 2001. In 2011, Ben died. At the time Ben died, Linda was working as a nurse. As the sole breadwinner, Linda's work schedule did not provide enough flexibility for her to take Davon to child care and various school events. Ben's father, John, who was a widower, lived close by and invited Linda and Davon to live with him. Linda and Davon moved into John's house in 2011.

Davon became very close to John and they spent a lot of time together. John got Davon interested in football. Davon was exceptionally good and became a star in his youth football league. Over the years, John took Davon to and from school and all of his team practices, paid for special football camps, and attended all Davon's football games.

After living with John for five years, Linda was able to purchase a home and she and Davon moved into their own home near to John's home. John remained heavily involved in Davon's life and continued to take Davon to and from school and to his various sports and other activities. Davon also stayed at John's home after school and on weekends if Linda was working. In the fall of 2016, in his sophomore year, Davon was named starting quarterback on his football team. Based on his stellar performance, his coaches assured Davon that with continued hard work he should expect to field numerous scholarship offers from colleges.

In October of 2016, John was arrested for operating a vehicle while intoxicated. Although it was his first and only arrest for OWI, John was eventually charged with a felony since Davon (a minor) was in the vehicle at the time. Linda was furious at John's actions in endangering Davon and refused to allow John to see Davon at all, even after John swore to stop drinking entirely. When Linda learned John was still coming to football practice and Davon's games, she removed Davon from the football team.

It has been months since John has had any contact with Davon and Davon is devastated that he no longer sees his grandfather. Ever since he was barred from seeing John, Davon's grades have suffered and he was recently caught with marijuana, something he had always avoided in the past as a student athlete. When Davon's school contacted Linda about Davon's substantial behavioral changes, Linda stated Davon will "get over it" and ignored the school's suggestion that Davon return to playing football and see a counselor, steps the school believed would restore some needed structure to Davon's life and help with his failing grades and recent drug use.

John has filed a Petition for Visitation. Assume Indiana law applies.

1. Does John have standing to seek visitation? Why or why not?
2. Assume John has standing. What factors would a trial court consider in determining whether to award visitation?
3. Discuss how a court might apply the identified factors in ruling on John's Petition for Visitation.

1)

1. Whether John has standing to seek visitation.

Although unusual, due to the fact that Davon's father is deceased, John may have standing to seek visitation with Davon. After the United States Supreme Court ruling in *Troxel v. Granville*, a grandparent (or third party) does not have standing to seek visitation if it is against a parent's wishes. Parents have a fundamental right to raise their children as they see fit. If a parent chooses to restrict or eliminate grandparent visitation, it is within that parent's right. Generally, awarding visitation to a grandparent when a parent has explicitly refused to do so would be violating that parent's constitutional rights. Under this ruling, John would not be able to seek visitation with Davon.

However, this is not absolute in every situation. Grandparents and other third parties may seek visitation in limited circumstances. Courts will permit grandparents to seek visitation if one of the child's parents is deceased or imprisoned. A court may also permit grandparents or third parties to seek visitation in instances where the grandparents or third-parties assisted in raising the child. However, a court will exercise caution as to not upset a parent's constitutional right to raise the child and control the child's upbringing as deemed by the parent.

In the case at hand, Linda has refused to allow John to see Davon at all. When Linda learned John was still coming to football practice and Davon's games, she removed Davon from the football team. It has been months since John has had any contact with Davon, due to Linda's actions. Under the usual circumstances, John would have no recourse. It is Linda's right to parent Davon as she sees fit. If part of Linda's parenting is to refuse John to see Davon, then that would be binding as the parent's decision. However, John has a cause of action here, because Ben is deceased. John originally lived close to Linda and Davon. After Ben's death, Linda and Davon

moved into John's house in 2011. John played a very active role in Davon's life. They spent a lot of time together, John got Davon interested in football, and John took Davon to practices. Even when Linda and Davon moved out, John remained heavily involved in Davon's life and continued to provide Davon with transportation to school and athletic activities.

Because Ben, John's son, died in 2011, and because John became heavily invested in raising Davon, a court may declare that John has standing to seek visitation. If a court determines that Linda was within her constitutional rights, John will not succeed in challenging her decisions.

2. What factors a trial court would consider in determining whether to award visitation.

The best interests of Davon will be considered when determining whether to award visitation to John. When a court determines this type of visitation, the best wishes of the child are considered. These factors include the wishes of the child; the wishes of the parent; the child's adjustment to home, school, and the community; the child's interrelationships with the necessary parties; the age and sex of the child; and any evidence of domestic violence within the family. The child's preference is given more weight if the child is above the age of fourteen. The court will weigh and balance all of these factors to determine what scenario will be within Davon's best interests.

3. How a court will apply factors in ruling on John's Petition for Visitation.

Using the "best interests of the child" factors, John may receive visitation. Under the "wishes of the parent" element, it is clear that Linda does not want John to have contact with Davon. Linda was furious with John when he was arrested and refused to allow John to see Davon at all. Linda was so adamant that when she learned John

was still coming to football practice and Davon's games, she removed Davon from the football team.

Using the "wishes of the child" factor, Davon's wishes are that he would like to see John. Davon has stated that he is devastated that he no longer sees his grandfather. Growing up, Davon became very close to John and they spent a lot of time together. John was the one who got Davon interested in football, an activity in which Davon later excelled.

Further, Davon's adjustment to school and the community is deteriorating because he cannot see John. Ever since he was barred from seeing John, Davon's grades have suffered and he was was recently caught with marijuana, something he avoided when John was taking him to football practice. When John was involved in Davon's life, Davon was named starting quarterback on his football team. He was assured that he could even receive college scholarships. Without John, Davon's possibility of receiving these scholarships seems to be lessened, especially if there is an indication that Davon might begin pursuing criminal activities. Davon's school has also determined that Davon needs structure in his life, although Linda has dismissed any notion of Davon returning to football or seeng a counselor.

Davon has close interrelationships with John. Presently, Davon's interrelatinships with his mother are unknown. Again, Davon and John used to spend a lot of time together, and they were quite close. Davon is devastated that he cannot see John. John and Davon used to live together, and Davon is used to John being an active part of his life. Their interrelationship is very close.

Davon is a male and a sophomore in high school, meaning he is approximately fifteen or sixteen years old, if Davon is the age of a standard sophomore in high school. Davon is experiencing critical transformative years, and a court may find that a male role model would be within Davon's best interests as he grows and develops during his teen years. In the end, because Davon is over the age of fourteen, his

preference will be give more weight.

There is no evidence of domestic violence within this family unit between any of the members. Linda may argue that, although not domestic violence, John placed Davon in a dangerous situation when John decided to consume alcohol prior to driving Davon in the car. This resulted in John being arrested for Operating While Intoxicated, as a felony charge. A court will take this into consideration, but it is not evidence of domestic violence. Furthermore, John has sworn to stop drinking entirely, which might lead a court to be more forgiving of the felony arrest.

In sum, the factor given greater weigh is Davon's preference, because he is over the age of fourteen, Davon and John have a close relationship, Davon has suffered severe behavioral changes since being barred from seeing John, and that there is no evidence of domestic violence. Factors that lend to the conclusion that John should receive visitation. Factors that will harm John's chance at visitation are the fact that Linda does not want John to see Davon and John has received a felony for operating while intoxicated while Davon was also in the car. A court will weigh all of these factors, but it is likely that John will receive visitation.

INDIANA ESSAY EXAMINATION
QUESTION 2
July 2017

Brothers Tom, Richard, and Harold decided to start an outdoor adventures business consisting of a retail store and adventure tours. Tom was responsible for entity formation and the retail operation, Richard managed the tours, and Harold was in charge of accounting and human resources.

On January 1, 2014, Tom filed Articles of Organization for Bold Adventures, Inc. ("BAI"). The filings were accepted by the Indiana Secretary of State, despite the fact that they were technically defective (a fact not noticed at that time by anyone). BAI was very successful from the outset and for Christmas 2014 declared bonuses totaling $100,000 ($25,000 for each brother, with the remainder shared by the other employees). Business stayed robust and the same bonuses were paid at Christmas in 2015. In 2016, the retail business began to spiral downward. Richard's tours, though still going strong, were not enough to carry the enterprise, and BAI soon fell behind with its retail creditors. On July 1, 2016, Tom received a notice from the Secretary of State that BAI's Articles of Incorporation filed in 2014 were defective, and that BAI had until October 1, 2016, to take corrective action or BAI would be administratively dissolved. Tom ignored the notice, never fixed the problem, and did not tell his brothers about the notice.

To reinvigorate the business, the brothers decided to re-brand BAI as a "survivalist" one-stop shop. On August 1, 2016, Tom negotiated with Survivalist Wholesalers to immediately ship to BAI $250,000 worth of survivalist gear for retail resale. No personal guaranties were required. But the rebranding failed, and BAI fell behind on all its debts.

On September 30, 2016, Widget Group paid BAI $100,000 toward a tour. On October 1, 2016, Tom received a notice that the Indiana Secretary of State had formally dissolved BAI. Only then did Tom advise his brothers of what had occurred. The next day, Harold paid out the $100,000 annual employee bonus (using Widget Group's deposit money). Tom and Richard refused their bonus checks. By October 15, 2016, BAI had completely run out of funds and closed its doors. After liquidating its merchandise and properly paying creditors those funds, BAI still owes Survivalist Wholesalers $150,000. Widget Group is also demanding its $100,000 back. BAI has no funds to pay anyone.

Assume Indiana law applies.

1. What is the legal status of BAI as of the following dates: April 30, 2016; July 31, 2016; and October 1, 2016? Explain your reasoning and any limitations on BAI's actions at those times.

2. Do any of the brothers have potential personal liability in this matter? If so, explain why and to whom? (Do not include any potentially available defenses in your discussion.)

2)

It appears Tom, Richard, and Harold intended to create a corporation together. Corporations are governed by the Indiana Business Corporation Law (IBCL). Corporations require three things: people, paper, and an act. Here Tom, Richard, and Harold were the people as they were the ones who started/incorporated the business and would serve as directors. Tom was to be responsible for entity formation and the retail operation, while Richard managed the tours, and Harold was in charge of accounting and human resources. The paper required to form a corporation under Indiana law is the articles of incorporation. The act required to form a corporation is filing these articles of incorporation with the Indiana Secretary of State. Here, the brothers had the articles of incoporation drafted. Tom committed the act required as he filed Articles of Organization for Bold Aventures, Inc. ("BAI"). The corporation's named included the "Inc." as required by the IBCL. The filings were accepted by the Indiana Secretary of State, despite the fact they were technically defective (a fact not noticed at the time by anyone).

1. BAI's Legal Status:

On April 30, 2016, BAI would be considered a de facto corporation. Despite the fact that the articles of organization filed with the Indiana Secretary of State were technically defective, no one had noticed at that time. To be considered a de jure corporation under the IBCL, the corporation must comply with all the formalities (people, paper, act). On April 30, 2016, BAI would not be considered a de jure corporation because their filing was defective. However, they would be considered a de facto corporation. A de facto corporation is when a corporation and its incorporators believe that all the formalities of a de jure corporation have been complied with. The corporation and its incorporators/directors must have no notice that de jure corporation requirements have not been satisfied. The actions of the corporation toward third parties must be that of one who believes it is a corporation under the IBCL. In BAI's case, none of the brothers had any reason to think they were

not a corporation on April 30, 2016. BAI was doing business and holding itself out as a corporation to creditors. Therefore, BAI would be considred a de facto corporation as of April 30, 2016.

On July 31, 2016 BAI would not be considered a corporation, but may be a corporation by estoppel to creditors. This is because Tom received notice from the Secretary of State that BAI's Articles of Incorporation were defective. BAI received notice that it had under October 1, 2016, to take corrective action or BAI would be administratively dissolved. Tom did not tell the other brothers of this notice and did not fix the problem. But since the other brothers did not know, they would still be under the belief that they were operating a de jure coporation. To third parties and creditors, a corporation by estoppel may have been established as they were relying on BAI's incorporation status in making deals with BAI. BAI was holding itself out to be a corporation, even having "Inc." in its name. Since BAI fell behind with creditors in 2016, a court could find a corporation by estoppel existed.

On October 1, 2016, BAI would be considered a dissolved corporation. On this date Tom received a notice from the Indiana Secretary of State that BAI had been formally dissolved. Tom adivsed all his brothers that this occurred, so they all had notice that the corporation was no longer in existence. They should notify creditors as soon as possible.

2. Potential Personal Liability of the Brothers

The brothers may be liable to Survivalist Wholesalers for $150,000 and Widget Group for $100,000. Corporations provide their directors/owners with limited liability for the debts of the corporation. While courts may pierce the corporate veil and hold directors individually liable for the debts of the corporation, they are reluctant to do so. Courts will only pierce the corporate veil where the corporation's formalities have been so ignored, misused and abused that the corporation is a mere instrumentality of its owners and not holding them personally liable would result in fraud or injustice.

When determining whether to pierce the corporate veil, courts look at a number of factors including: whether the corporation is public or closely held, undercapitalization, fraudulent misrepresentation, lack of formalities, the identity of

shareholders/directors/owners, comingling of funds, and paying personal debts out of corporation assets.

The brothers may be liable to Survivalist Wholesalers for $150,000 and Widget Group for $100,000. Tom should face more potential liability than the other brothers here because he knew about BAI not being incorporated, took no corrective action, and did not notify the brothers until October 1, 2016. The deal with Survivalist Wholesalers was negotiated on August 1st, 2016, after Tom knew about the corporation not being in compliance with IBCL. The other brothers had no notice of this so the court may consider them not to be personally liable.

The court could look at the PCV factors and determine that the corporation was a mere instrumentality of Tom and not holding him liable would result in fraud or injustice. The court could find that BAI is undercapitalized (biggest factor), closely held (by three brothers), the shareholders/directors/owners identities are all the same, corporate formalities were not followed (defective articles), and that Tom was misrepresenting BAI as a corporation when he knew it wasn't. The court would probably pierce the corporate veil and hold Tom liable for the debts of the corporation to both Widget Group and Survivalist Wholesalers.

Further, the court could pierce the corporate veil and hold Harold liable for takinga $100,000 annual employee bonus after he learned of the corporation's dissolution. Harold knew of the debts the corporation had and still used the corporation's assets for his personal gain in order to avoid having to pay creditors. The court will likely hold him liable to Widget Group for this $100,000, which was their deposit money. A court probably will not find Richard liable for anything, as he took no bonus check after the dissolution, and had no notice that the corporation was not in compliance with the law until October 1, 2016.

INDIANA ESSAY EXAMINATION
QUESTION 3
July 2017

John and Mary are Indiana residents and the owners of a baby grand piano manufactured in 1935 by a world-renowned Indiana company. They purchased the piano in the 1960s from an elderly couple, the piano's original owners. John and Mary's children all played the piano while growing up, but after the children reached adulthood, the piano served essentially as a piece of furniture.

Wanting to downsize and seeing an ad for a school seeking used musical instruments, John and Mary donated the piano to Ace Academy, a local private school. The school immediately sent the piano to Jenny, a local piano tuner, for some minor repairs and to be tuned. While performing the work, Jenny discovered several dozen valuable British coins that had been wrapped in cloth and stashed beneath the piano keys in such a manner that the piano could still be played.

The initial estimate is that the coins are worth about $750,000. Jenny is claiming that she is entitled to the money. So is Ace Academy. John and Mary believe that they should receive some share of the money, even though they acknowledge they did not know the coins were there. After media reports about the finding of the coins appeared, heirs of the couple who sold the piano to John and Mary in the 1960s are claiming the money is rightfully theirs.

A suit has been filed in an Indiana court to determine the ownership of the coins and the four competing claims. Assume that Indiana law applies.

1. Identify and evaluate the legal arguments supporting the claims to the coins brought by the following:
   a. Jenny;
   b, Ace Academy;
   c. John and Mary; and
   d. Heirs of the original owners of the piano.

2. Who or what has the superior claim to the coins? Explain your answer.

3)

A. LEGAL ARGUMENTS SUPPORTING CLAIMS TO THE COINS

To determine who has rights to the coins, the court must look at rights of ownership to the coins and the type of property they are. There are three types of property, lost, mislaid or abandoned. Lost property is property that was involuntarily placed somewhere without the intent to leave it behind or lose possession. Mislaid property involves voluntarily putting property somewhere and losing possession of it. Abandoned property is property that was voluntarily placed somewhere with the intent to lose possession of the property. It is likely in this case that the property should be considered mislaid. The coins were clearly placed in the piano in a thoughtful manner, but the original owners of the coins lost possession and control over them. When someone finds mislaid property, they function as the quasi bailee until the original owners reclaim the property. However, due to the long nature of time that has passed, some parties may argue that this property was abandoned.

1. JENNY

As the piano tuner, Jenny is the finder of the coins in question. While performing her work duties, Jenny discovered coins wrapped in cloth that were concelaed in a way that previous owners were not aware of their placement there. However, ownership status is at issue because Jenny was acting within the scope of her employment when she discovered the property. In Indiana, if you are an employee then the employer will take ownership of the property that is discovered while you are working. However, Ace Academy hired Jennry to do this job. As an independent contractor, Jennry may argue that she was not acting within the scope of her employment and may keep the property. Usually finders of mislaid property may take the property but not until they hold quasi bailee status over the property for an extended period of time. If this applies to Jenny, then she may have to turn the

property over to Ace Academy since they employed her to tune the piano. Alternatively, if Jenny can successfully argue that she is an independent contractor and that Ace Academny has no claim to the property then she is likely going to be able to keep the property. In order for Jenny to win a claim to the coins, her best arguments would be that she is an independent contractor who found abandoned property. This would give her the strongest chance of keeping the coins.

2. ACE ACADEMY

Ace Academy received the piano as a donative gift from John and Mary. When a gift is given, it is the intent to pass title to another party without compensation of money or consideration of an act in return. John and Mary successfully gifted the piano to Ace Academny therefore transferring title to the Academny. First, Ace Academy may argue that since the coins were found in a good that they have title over that they are the owners of the coins that were found inside of it. However, this may not be the case. If the items are considered mislaid, then they owe a duty to the coins original owners to search for the owners. But if Ace Academy can successfully argue that the coins were abandoned, they will likely win in the claim that they are the owners. The finders of abandoned property are able to immediately take title. Ace Academy would also need to prove that Jenny was acting within the scope of her employment when she found the coins and therefore she must surrender them to Ace Academy. If Ace Academny can demonstrate that the property was abandoned, found to be in their control due to the transfer of title and found within the scope of their employee's employment, Ace Academy would have a strong claim to the title of the coins.

3. JOHN AND MARY

John and Mary purchased this piano from the original owners and later donated it to Ace Academy. Throughout the duration of their ownership they were not aware that they had the coins in their possesion. In order to have a claim to property, you

must be aware of its existence and have the intent to posess or control it. It is unlikely that John and Mary have any claim to the coins because they were not aware of their presence to begin with and should not be compensated or rewarded. Although they possessed title over the piano because they purchased the good, it is impossible to raise an ownership claim for property you were never aware you even owned.

4. HEIRS OF THE ORIGINAL OWNERS OF THE PIANO

The heirs of the original owners of the piano may also raise a claim for the property in the piano by arguing that the coins are mislaid property. If the coins are considered by law to be mislaid, then the true owners are able to recover the property from the holder of the mislaid property. However, the piano was purchased from their ancestor and later donated. This severs the ties the heirs have to the piano because of the trasnfer of title. The heirs may consider arguing that the piano title was transferred but it was never intended that there be a transfer of title regarding the coins to the John and Mary and later the Ace Academy. It would be helpful for the heirs to have documentation on the original owners of the coins and the chain of possession intended for them in order ot strengthen their claim. If the original owners listed the coins as property in a trust or will that is to be given to the heirs, they would have a stronger chance of recovery. The court should also consider the chain of title and what the intent of the sale of the piano was, which on its face was the sale of the piano, never the transfer of the coins. If the court draws its conclusion based on the intent for the property transfers and history in the family, the heirs would have a stronger claim to the property.

B. SUPERIOR CLAIM TO THE COINS

The heirs have the strongest claim to the property because of the family significance and the lack of intent to transfer the coins to the couple with the purchase of the piano. If the heirs can provide evidence the sale of the piano was not to include the coins then their chances of recovering the value of the coins increase over

the other parties. Next, Jenny would likely have the strongest claim to the property because she is the true finder of the coins. Although she was working when she found the coins, she may argue that she was an independent contractor and therefore acting independently from Ace Academny. If this is true, then she will not have to turn the property over to Ace Academy. Additionally, she may be able to argue that even if the coins were originally mislaid, they became abandoned over time due to the lack of searching for the coins. If she can prove the coins were abandoned, then she is their rightful owner. Next, Ace Academy may have a slight claim because Jenny found the coins while tuning the piano for them. Last, John and Mary likely do not have any claims because they were never aware of their accession to the property to begin with. The court will most likley hold that the heirs or Jenny are the entitled to the coins found in the piano.

INDIANA ESSAY EXAMINATION
QUESTION 4
July 2017

Alex Smith is an Indiana resident. His first wife, Nora, predeceased him. Alex and Nora had two children: Jane, their natural child, and Bob, their adopted child. Both Jane and Bob are living adults. Five years ago, Alex married Christie. Alex had no children with Christie. When he turned 75, Alex decided to make a Will for the first time. Alex told his lawyer that he wanted to divide his entire estate as follows:

a. 60% to his natural child, Jane;
b. 20% to his adopted child, Bob; and
c. 20% to his present wife, Christie.

Subsequently, Alex's lawyer prepared a Last Will and Testament for Alex, in accordance with Alex's wishes. When Alex arrived at the lawyer's office to sign his Will, the lawyer went through the entire document with Alex and Alex told his lawyer the Will looked fine and accurately represented his intent. Alex's lawyer then left the room to get two attesting witnesses. Immediately upon his lawyer's leaving the room, Alex suddenly fell ill, clutched his chest, collapsed, and died instantly of a massive heart attack. Alex had no prior history of heart disease, had no known symptoms of heart disease, and had felt fine on that particular day.

Alex is survived by Christie, Jane, and Bob. At the time of his death, Alex owned or had an interest in only the following property:

a. Farm valued at $200,000 in Alex's sole name with a mortgage of $100,000.
b. Life Insurance policy in the amount of $100,000 payable to "The Estate of Alex Smith."
c. Miscellaneous items of personal property valued at $60,000 in Alex's sole name.
d. $100,000 certificate of deposit with the following language written on the face of the certificate: "Alex Smith, Jane Smith, and Bob Smith as joint tenants with the right of survivorship."

1. Can the document Alex's lawyer prepared be probated as Alex's Last Will and Testament? Explain why or why not.

2. If Alex never made a Will, explain how and why the property will be distributed to his survivors and identify what each of his survivors (Christie, Jane, and Bob) will receive.

4)

1. The document that Alex's lawyer prepared cannot operate as his last will and testament. For a valid will to exist in Indiana, it must be executed in accordance with the law of: the state of Indiana; the state where the testator was domiciled when the will was executed, or: the state of the decedent's domicile at death. Indiana does not recognize holographic wills, meaning that a valid will executed in Indiana by an Indiana resident must be attested.

In order to have a valid attested will in Indiana, it must be shown that: the testator had testamentary intent, including testamentary capacity at the time the will is exectued; the testator publish the will (i.e. delcare the document as his will); that there be two attesting witnesses; the testator sign in each of the witnesses presence; the witnesses sign the instrument in the testator's presence, and; the witnesses sign in each other's presence. Under the facts provided, several elements are missing. It does not appear that any individual signed the will.

Alex's verbal representation to his attorney that the will looked good is inadequate to fulfill the requirements that the testator publish the will or that the testator sign the will. While any mark affixed to the document with the intent that it operate as the testator's signature will satisfy the requirements, the facts state merely that Alex represented to his lawyer that the will looked fine and adequately represented his intent. At best, this could be construed as a publication of his will, but even this is dubious considering the witnesses were not actually in the room when the statement was made by Alex to his lawyer. Moreover, the witnesses were not present when Alex made this acknowledgement. In Indiana, the witnesses must be in the "conscious presence" of the testator when he signs the will. This requirement entails that the witnesses be close enough in proximity to be aware of what the testator is doing. Here, the facts state that they were in a separate room, which would generally not qualify as being in the testator's conscious presence. Finally, it does not appear that

either witness actually signed the will.

In order to have testatmentary capacity in Indiana, the testator must be at least eighteen years old and of sound mind. The sound mind requirement generally entails that the testator have the capability of knowing the value and extent of his property, the natural objects of his bounty, and the nature of the disposition (i.e., that the will disposes of the testator's assets at death). Given the facts presented, Alex likely had testamentary capacity to execute his will, but the will was never actually executed by him.

Indiana allows nuncumpative wills in narrow circumstances. The requirements are that the testator orally declare the will before two disinterested witnesses while in immediate peril of impending death. Moreover, the will must be reduced to writing within thirty days and must be admitted to probate within six months. Also, unless the testator is in the military during active wartime, the disposition is limited to $1,000 of personal property. Here, the will disposes of far more than $1,000 in peronsalty and it was not recited in front of two disinterested witnesses. It appears that Alex was in the room with only his lawyer when he acknowledge that the will looked adequate. Moreover, at the time the statement was made by Alex, he was not facing imminent peril; it was only after the lawyer left the room that Alex was given any indication that he might die shortly thereafter.

This case does not implicate the doctrine of dependent relative revocation. In such a situation, testator revokes a disposition under the mistaken belief that another disposition is valid. The party asserting the claim must demonstrate that the revocation would not have occurred but for the mistaken belief that the alternative disposition is valid. In such a situation, the revocation of the prior instrument is rescinded if doing so will be closer to the testator's intent than allowing the estate to pass via intestacy. Here, however, Alex did not have a prior instrument disposing of his assets. In such a case, the assets will be distributed in accordance with the laws of intestacy.

2. Assuming Alex does not have a valid will, his property will pass by intestate succession. Intestacy occurs when the decedent does not have a will, the will is not admitted to probate, or the will fails to dispose of all of the decedent's assets.

In this situation, since Christie is not the parent of either Jane or Bob, Christie's share of Alex's probate property will be one-half of the value of Alex's personal property at the time of death, and one-quarter of the fair market value of Alex's real property at death.

Alex owned approximately $60,000 in personal property at death. Therefore, Christie, under the law of intestate distribution, would be entitled to $30,000.

The fair market value of the real property takes into account liens and mortgages on the real property. Thus, Alex's farm, worth $200,000 and encumbered by a $100,000 mortgage, has a fair market value to Christie of $100,000. Of that, Christie has a right to $25,000. In addition, Christie is entitled to $25,000 before any other disposition is made as a family allowance The purpose of the family allowance is to provide for the decedent's family while the court probates the estate and distributes the assets.

The life insurance policy has the designated beneficiary of the estate of Alex Smith. As such, the money passes to his heirs, which include Jane, Bob, and Christie. As such, the property will pass the same as it would under intestacy. Since the insurance policy is not real property, it must be considered personal property. Therefore, Christie will be entitled to one-half of the account and the children will split the remaining one-half interest.

In total, Christie could expect to receive approximately $113,000 with the family allowance, one-half interest in personalty, and one-quarter interest in real property.

Jane and Bob are entitled to one-half of Alex's personal property and three-quarters of the fair market value of his real estate. Bob, as an adopted child, is entitled to the same rights as a natural child of Alex. The effect of adoption is to cut off the parental relationship between the adoptee and his biological parents, and create a new legal parental relationship between the adoptee and his adoptive parents. A properly adopted individual is regarded as the child of the adoptive parent(s) to the same extent as natural children.

Intestacy disposes of the probate assets of Alex, the decedent. However, nonprobate assets, such as certificates of deposit and life insurance policies, are distributed according to the terms of each. The certificate of deposit was given to Jane, along with Bob and Alex. The assets was given as joint tenants with the right of survivorship. As such, when one of the joint tenants dies, the interests of the remaining joint tenants swell to fill the ownership interest in equal shares among the remaining joint tenants. Here, Alex's passing means that Jane and Bob's interests swell such that each has an undivided one-half interest in the $100,000 certificate of deposit account. The two may decide to terminate the account and, if they make such a decision, each will receive approximately $50,000.

INDIANA ESSAY EXAMINATION
QUESTION 5
July 2017

Office World operates a retail store in Central Indiana. Sadie Smith was hit by an empty shopping cart at Office World when walking to enter the store. There were several empty shopping carts moving around in Office World's parking lot due to the high wind that had been occurring for the last few hours. When the shopping cart hit Sadie, she tripped near the entrance of Office World and hit her chin on the brick wall of the building. Sadie sustained injuries to her chin, hands, and legs.

Sadie filed a lawsuit against Office World in an Indiana state court for damages as a result of her injuries, claiming the store failed to clear the empty shopping carts from the premises and that there was a defect in the parking lot because, at the place where she tripped, the pavement was buckled.

At the time Sadie fell, Office World was not the owner of the strip mall and did not design the parking lot. Office World was leasing its space from Mall Properties, which owns the strip mall and parking lot where Office World is located. The Lease between Mall Properties and Office World provided that Mall Properties was responsible for the maintenance of the parking lot and all other common areas and also contained an indemnification provision that provided in part:

> Mall Properties shall indemnify and hold Office World and its agents, officers, and employees harmless from and against any and all lawsuits, claims, demands, damages, liabilities, losses, and expenses (including attorneys' fees and administrative expenses) that may arise or be alleged to have arisen out of or in connection with the premises and parking lot surrounding the Office World building.

Office World has hired an attorney to timely file a response to the lawsuit.

1. Without Mall Properties being a party to the lawsuit, can fault be apportioned to it? Explain why or why not.

2. Identify all ways in which Mall Properties could be brought into the lawsuit as a party and, for each way, describe the procedure for bringing Mall Properties in.

3. If Mall Properties is made a party to the lawsuit, procedurally what should it include in any responsive pleading it files?

5)

1. Fault can be apportioned to Mall Properties even if it is not a party to the lawsuit, because it would violate the rights of Office World for a court to prevent a jury from being able to find another party partially liable (and thus allow the fault apportioned to Mall Properties to reduce Office World's liability). Any party who is responsible, even the plaintiff, can have fault apportioned to him/her/it, even if they are not present at the actual litigation or trial of the matter.

[Note: Apportionment is not factually appropriate if Mall Properties' liability is based solely on its agreement to indemnify Office World. In that circumstance, the parties would be equally liable (with Mall Properties being liable for whatever Office World was liable for via indemnity) and thus there would be no need for apportionment. But, assuming that there is potentially some liablity for this injury outside of the indemnity situation, a jury could apportion fault to Mall Properties.]

2. One way for Mall Properties to be brought into the lawsuit is by Office World filing a **third party complaint** against Mall Properties, based on the contract and specifically the indemnity provision. Office World could do this in its Answer to the lawsuit by filing a Third Party Complaint with its Answer, in which it would respond to the allegations against it (in the Answer), and then file a Third Party Complaint in which it would state a factual claim explaining how Mall Properties is liable for some or all of the damages claimed by Plaintiff Smith, and then setting out its cause of action for indemnity. (Office World should include the contract upon which its claim against Mall Properties is based as an attachment to the Complaint.)

Plainiff Smith could also bring Mall Properties into the lawsuit by **filing an Amended Complaint** to add Mall Properties as a defendant and then setting forth a claim against Mall Properties based on Mall Properties' responsibility for the parking lot or her injury. Plaintiff Smith can amend her lawsuit without leave at any time

before Office World files a responsive pleading. Otherwise, she would need to seek permission from the Court to amend her Complaint.

Mall Properties could also bring itself into the lawsuit by **intervening in the lawsuit.** A party can intervene in a lawsuit when the lawsuit is going to adjudicate a matter for which it could be at fault, or that will affect its rights. Mall Properties would do this by filing a **motion to intervene** in the lawsuit. In a motion to intervene, a party sets forth the reasons for its request to intervene, including any rights it has at stake or any rights to be a party.

3. If Mall Properties is made a party to the lawsuit, presumably by Plaintiff Smith or Defendant Office World filing a Complaint against it, it should include an **Answer** to the allegations set forth against it. The Answer should address each individual allegation set forth against Mall Properties in any Amended Complaint or Third Party Complaint, and it should admit or deny each allegation or say that it is without knowledge or information sufficient to form a belief as to the truth of the matter asserted. The responsive pleading filed by Mall Properties should also include **affirmative defenses** that it has to the claims pled against it **and any other defenses that should be raised** (subject matter jurisdiction, personal jurisdiction, venue issues including preferred venue, insufficient service of process or failure of service of process, failure to state a claim upon which relief can be granted, and/or failure to join an indispensable party). Alternatively, it could file a motion to dismiss on any grounds it had for not either having to be brought into the forum or not being responsible for responding (such as failure to state a claim). Mall Properties should also set forth any other **required counterclaims** it has against any other parties. The responsive pleading could also include any other permissible counterclaims or cross claims.

INDIANA ESSAY EXAMINATION
QUESTION 6
July 2017

Mack, Inc. ("Mack"), an Indiana corporation, borrowed $100,000 from Green Bank, an Indiana bank. On behalf of the corporation, Mack's president signed a written security agreement, dated July 1, 2016, giving Green Bank a security interest in Mack's Green Bank checking account (a demand account) to secure its obligation to repay the loan. Green Bank did not file a financing statement reflecting that interest.

On August 1, 2016, Blue Bank, another Indiana bank, loaned $75,000 to Mack. Mack's president, on behalf of the corporation, signed a written security agreement granting Blue Bank a security interest in all of Mack's "office equipment and deposit accounts." On August 2, 2016, Blue Bank filed a financing statement with the Indiana Secretary of State and listed the collateral as "office equipment and deposit accounts." The financing statement correctly identified Blue Bank as the secured party and it correctly gave Mack's address. However, Blue Bank's financing statement incorrectly listed the name of the debtor as "Mack Corporation," rather than "Mack, Inc.," the correct name of the company as reflected on its certificate of incorporation and other public records. Despite this error, the results of a search for the name "Mack, Inc.," using the Secretary of State's standard search logic, would include the financing statement listing "Mack Corporation" as the debtor.

Shortly after receiving the loan from Blue Bank, Mack defaulted on its obligations to Green Bank and Blue Bank. At that time, Mack's checking account at Green Bank had a balance of $20,000.

Green Bank filed suit in Indiana against Mack to collect on its unpaid loan and obtained a default judgment against Mack on October 1, 2016. Green Bank promptly filed a writ of execution to attach Mack's office equipment to help satisfy the debt. The writ was granted, and Green Bank took possession of Mack's office equipment on October 30, 2016.

Assume Indiana law applies to all questions.

1. Which bank's security interest in Mack's checking account has priority? Explain.

2. Is Blue Bank's financing statement effective to perfect its security interest? Explain.

3. Assuming Blue Bank's security interest in the office equipment is perfected, does Green Bank's judicial lien have priority over Blue Bank's perfected security interest? Explain.

6)

Priority in Checking Account: Green Bank will likely have priority in the checking account because Green Bank perfected before Blue Bank did. Priority amongst secured creditors requires both attachment and perfection. Attachment is satisfied when there is a signed security agreement evidencing an intent to create a security interest and adequately describing the collateral, the creditor gives value, and the debtor has rights in the collateral. Attachment instills the creditors rights against the debtor (not other creditors). After attachment, there are five ways to perfect a security interest and maintain priority against other creditors in the same collateral: (1) filing a financing statement (most common), (2) automatic perfection in purchase money security interests, (3) notation on a certificate of title (ex. with cars, boats), (4) possession, and (5) control. Creditors may consider perfecting in multiple ways, if feasible, to ensure priority is valid and make known to others, but one will suffice. When two secured creditors are determining priority, the first to file or perfect wins.

Green Bank both attached and perfected its interest in Mack's account before Blue Bank did. On July 1, Green Bank gave Mack $100,000 as a loan, Mack had rights in the account, and a written security agreement was executed on the same date. The security agreement is likely valid because it was signed by the debtor and stated the collateral to serve as the security interest. Although Green Bank did not file a financing statement, it did not have to because it could perfect by control. Control really only applies to some collateral under the UCC, but bank/deposit/checking accounts suffice. By being the bank where the account is located, Green Bank could easily argue it had control over the account and thus its interest in the account was perfected. To be safe, Green Bank perhaps should have filed a financing statement to avoid future conflict with other creditors like it is now facing with Blue Bank, but Green Bank should be fine. Part of the purpose of perfection is to provide notice to other potential creditors of an interest in collateral, which is why a financing statement is an easy way to determine whether any other creditors have an interest in the

debtor's assets. Control of a bank account works the same way. Blue Bank should have anticipated that the bank where the account is located and the debtor engages in financial transactions, such as loans, may have a superior interest in the account. There's the policy argument Blue Bank could make that this form of notice in perfecting is inadequate, but the UCC controls.

To be thorough, Blue Bank also had validly attached and perfected its security interest in the account. On August 1, it gave Mack $75,000, the debtor has rights in its own equipment and accounts, and a security agreement was executed. Perfected was established on August 2 when a financing statement was filed. To perfect in an account, control was almost automatic for Green Bank because it was the bank where the account was located. It would be different for Blue Bank to perfect in an account at a different bank. Control would require Mack putting Blue Bank's name on the account or some sort of notice with Green Bank that Blue Bank had an interest, which of course would immediately raise red flags with Blue Bank. Thus, the financing statement was a good way for Blue Bank to go, but it unfortunately did not precede the date of Green Bank's perfection and attachment. However, this means that if part of Mack's accounts that serve as collateral existed at Blue Bank, that account could be perfected for Blue Bank through control as mentioned above.

Under the UCC, "accounts" and "deposit accounts" are separate categories of collateral and are in some ways treated differently for filing purposes. "Accounts" refers to accounts receiveable, while "deposit accounts" align more with what is involved in this case, and refers to bank accounts and checking accounts.

Blue Bank's Financing Statement: Blue Bank's financing statement is effective to perfect its security interest despite the incorrect name on the statement. For a financing statement to be effective, it must be in writing, filed with the Secretary of State, authorized by the debtor, contain a general description of the collateral, and have the debtor and creditor's names. The addresses of both the debtor and creditor should also be included to ensure validity. The facts state that Blue Bank correctly

filed the financing statement with the Secretary of State in Indiana, where the debtor, an Indiana corporation, is located. The authorization by the debtor is satisfied through the valid security agreement previously created between Mack and Blue Bank. The main issue with the statement is the incorrect debtor's name as "Mack Corporation" instead of "Mack, Inc." Having the debtor's correct name on a financing statement is a big issue for creditors to make sure they get correct, as having a wrong debtor's name can lead to invalidating the financing statement, which would destroy priority against other creditors in the same collateral. The debtor's name, when the debtor is a corporation, should be the name as it appears in its corporate filings with the Secretary of State. Blue Bank was in error by not including the debtor's name as it appears on the certificate of incorporation and in other public records. However, to Blue Bank's great relief, the financing statement will not be void because of the error. Under the UCC, if the results for the search of the correct debtor's name under standard search logic would still bring up the financing statement listing the incorrect debtor's name, the financing statement remains intact. Therefore, Blue Bank's financing statement is still effective despite the error in Mack's name. Blue Bank should be more careful in the future to ensure the correct debtor's name is on the financing statement. As it requires simply checking the certificate of incorporation, this issue could have been avoided at little effort and would have bypassed potentially significant financial risk.

Priority in Office Equipment: Blue Bank would be perfected against Green Bank as to the office equipment. As between a judicial lien creditor and a perfected secured creditor, the first to levy or perfect wins. Here, Blue Bank attached and perfected its security interest in the office equipment by August 2, whereas Green Bank was not able to get a judgment or levy until October. Statutory liens, such as mechanic's liens, are treated differently and this would present a stronger argument for Green Bank's interest to stand in priority before Blue Bank, but that is not what we have here. In Blue Bank's favor is the fact that under the UCC, proceeds of collateral are automatically included, but it is unlikely that office equipment generates any proceeds

and this will then not result in much, if any, gain to Blue Bank to increase its chances of regaining its loan amount. Blue Bank was the first to perfect and came before Green Bank levied, and thus, Blue Bank wins and will be able to pursue a variety of remedies for getting back the amount of its loan to Mack.