

INDIANA ESSAY EXAMINATION  
QUESTION 1  
July 2018

Slate Rock & Gravel Corp. (“SRG”), an Indiana corporation, owns and operates an underground limestone mine and adjacent quarry. Limestone is a raw material in the manufacture of cement. Bedrock Cement, Inc. (“BCI”), also an Indiana corporation, manufactures cement and sells it to building material suppliers. Fred is a director of SRG, but owns none of its shares. Fred is a 50% shareholder of BCI, but does not serve as a director of that corporation.

In January of 2018, SRG and BCI entered into a requirements contract whereby SRG agreed to provide BCI with the limestone it required for a two-year period of time at the current fair market price of \$27.50 per ton. The contract was approved by the SRG board of directors by a five-to-three vote, with all the directors of SRG present and voting, including Fred who voted in favor of the contract. Fred did not disclose that he was a shareholder of BCI, and none of the other directors was aware of Fred’s financial interest in that corporation.

In February of 2018, a series of natural disasters in Egypt, home to some of the largest limestone quarries in the world, caused an unexpected worldwide limestone shortage. As a result, the fair market price of limestone rose to \$75 per ton in March of 2018, at which time SRG advised BCI that it would continue to supply BCI’s requirements of limestone for the contract period, but at an increased price of \$55 per ton. BCI subsequently placed an order with SRG and advised SRG that it expected SRG to honor the original contract price. SRG advised BCI that it would not fill the order or any future orders unless BCI agreed to the higher price.

After BCI filed a breach of contract action against SRG, Fred disclosed to SRG’s board of directors that he is a 50% shareholder in BCI and recused himself from discussions regarding the lawsuit. In responding to BCI’s complaint, SRG raised as a defense that the contract was void due to Fred’s undisclosed significant financial interest in BCI.

1. Describe Fred’s duties to SRG as a director and discuss whether Fred breached any duties by failing to initially disclose his financial interest in BCI.
2. Explain the Business Judgment Rule and what impact, if any, Fred’s interest in BCI has on the application of that rule in this case.
3. Define the Corporate Opportunity Doctrine and discuss what tests a court may apply to determine whether an opportunity belongs to a corporation.

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Directors have twin fiduciary duties of care and loyalty. For a director to exercise his duty of care, he must act as an ordinary person would in his or her position and in good faith. Generally speaking, the duty of care is to ensure that the director is acting in a reasonable way to maximize the benefits of the corporation. In doing so, directors can look to the effects on not only shareholders, but the community, employees, customers, the environment, and any other group that the director believes should be considered. In this regard, Indiana is directly going against the harsher rule of Delaware, which determines that directors may only consider maximizing benefits for shareholders.

To exercise his duty of loyalty, a director must act in the best interests of the company and in good faith. This means that directors should not have conflicts of interests, or if they do, should minimize the harm of these conflicts. So, directors must usually disclose any conflicts or potential conflicts they have to their fellow directors and those directors would vote on whether the conflict should stop the work of the director from serving as an individual who is acting in the best interests of the company. Alternatively, sometimes a directors conflict must go to the shareholders for a vote on whether or not that decision should move forward or the director should remain in his or her position on the board. Generally, this arises in very serious situations, such as when a director abuses his position to start a new competing business or perpetrates fraud as the director.

Here, the main issue is Fred's ability to exercise the duty of loyalty. By failing to disclose his financial interest, Fred most likely violated his duty of loyalty. All directors must disclose any financial interests they may have in any other business that may be working with the corporation with which they are dealing and the corporation must then approve of that conflict. Fred could have avoided his troubles if he had taken the time to notify the other corporate director's of his potential conflict and then they (the other disinterested directors) could have voted to allow the contract to go through. Because Fred owned no stake in SRG, there was nothing for him to personally lose if the contract was more favorable to BCI. This is the precise issue the duty of loyalty sets out to negate: personal enrichment on behalf of a director who had nothing to lose and everything to gain from a transaction.

Fred also likely violated the inherent duty that runs throughout all of a director's duties: that of good faith. Here, it seems that Fred purposefully left out that he was a significant shareholder in the other company so that he could personally vote on the matter and benefit from the bargain. And it was a close vote: five-to-three. If Fred would have been absent, the vote would automatically have been four-to-three and the impact of Fred's vote cannot necessarily be so easily calculated. Perhaps Fred was able to talk some other directors into voting for the agreement. Or maybe it was even less obvious--some directors saw Fred vote for the contract and decided that they would too, without ever explicitly stating as such.

## 2. Business Judgment Rule

Directors are offered the protection of the Business Judgment Rule. The Business Judgment Rule states that directors are presumed to exercise care when making decisions, and may rely on officers, shareholders, directors, or any other individuals or materials who could help them determine what would be best for the corporation. This is essentially a shield for directors to protect them from judicial "20-20" oversight. In other words, the business judgment rule operates to disallow second-guessing the decision of a director of a corporation just because it turned out to be a poor business choice. This would be too high of a standard to hold directors to and there may be problems getting individuals to agree to become directors if that was the case. Instead, directors are merely asked to operate in a reasonable manner, outside of conflicts of interest. But if a director has a conflict of interest by owning a stake in a company that competes with or does business with the corporation, then the presumption of the business judgment rule is destroyed. Here, Fred had a 50% stake in a corporation doing business with SRG, of which he was a director. By failing to disclose this financial interest, and then voting for the contract, Fred is not protected by the Business Judgment Rule. Indeed, his lack of full disclosure to the corporation showed the opposite of what the business judgment rule operates to presume--Fred did not act like an ordinary person in his position because he was secretly profiting from the contract.

And if Fred is held liable for violating these duties, he may also have some protection, however, with Director & Officer insurance. D&O insurance should be something that every director asks about when starting a new position on a board because it can help him or her ensure that they will not be held liable for any violations of duties of care. That said, some D&O insurance does not cover egregious violations, and that could be the case here due to the lack of good faith and the large amount of money that Fred stood to make from the contract.

### 3. Corporate Opportunity Doctrine

Under the Corporate Opportunity Doctrine, Directors must furnish any opportunity that "belongs" to a company before they are able to take on the opportunity for themselves. In other words, if an opportunity arises that would ordinarily be in the course of business of the corporation, then the director must first present that opportunity to the corporation, the corporation must reject that opportunity, and then the director may use the opportunity for him or herself. To determine this, courts will look at whether the corporation has engaged in this type of work in the past or whether it would be something that the corporation reasonably could engage in in the future. The corporation may also have an opportunity "belong to it" if it is something that if it had known about, it would consider as a potential new way to profit or make money. In other words, even if it is somewhat unrelated to the business in which the corporation is engaged, the opportunity is one which could have been something the business would have considered doing in the future.

Here, it seems that the corporate opportunity with Fred would be inapplicable because SRG only operates a quarry and does not manufacture anything from the raw material. On the other hand, BCI uses the raw material and produces it into cement. These are two different types of work, although they are somewhat similar in the materials with which they engage. That said, SRG could decide to "cut out the middle man" and start manufacturing the raw limestone into cement and directly sell it to building material suppliers. So, here, this question is a bit more difficult one than that of Fred's violations of his fiduciary duties.

INDIANA ESSAY EXAMINATION  
QUESTION 2  
July 2018

Mary and Susan started working 40 hours per week as baristas for Cooper's Coffee on May 1, 2016. Their regular wage was \$10/hour, paid monthly on the last day of each calendar month. When they started work, Cooper, the owner of the business, orally explained they would be eligible for 40 hours of paid vacation time per anniversary year, starting May 1, 2017. He also handed each woman three "Cooper's Coffee" t-shirts and told them never to come to work without wearing one. Cooper orally explained he would deduct \$60 from each woman's May 31, 2016, paycheck to pay for the t-shirts. On each subsequent May 1st, Cooper handed each of them three new t-shirts, and on each subsequent May 31<sup>st</sup>, Cooper deducted \$60 from each of their paychecks.

Sales were extremely slow during May 2018. None of the shop's employees took any vacation, because they were afraid they would not have a job upon return. When Cooper handed out paychecks at the end of the day on May 31, he also gave Mary and two other employees termination notices. All three left immediately. Susan and two other employees remained.

The first few days of June passed; business did not increase. The remaining employees feared there would be no June 30 paycheck. The three of them went together to Cooper on Friday, June 8, and asked him to start paying them twice a month (semi-monthly) rather than once a month. Cooper angrily denied their request.

Susan got a new job and resigned her position with Cooper's Coffee effective at the close of business on Friday, June 15, 2018. Susan's written resignation letter included her home address, and she asked Cooper to send her a check on Monday, June 18, 2018, for (1) the 80 hours she worked between June 1 and June 15; and (2) her unused 2018 vacation time. As Susan was leaving, Cooper angrily told Susan she could "forget about the vacation pay" and that she would be "lucky" if she received a final paycheck on June 30. Susan never received any additional compensation from Cooper's Coffee.

In mid-July, Susan drove by Cooper's Coffee. The parking lot was full of cars. A banner stretched across the front of the shop announced that the business now sold exotic iced teas and fruit smoothies. Two new employees were working the cash registers. Susan's two former co-workers were also busily serving customers. On July 17, Susan called one of the remaining co-workers and asked if Cooper was now paying semi-monthly. The employee told her nothing had changed.

1. Identify all possible claims that Mary might have and all possible claims that Susan might have against Cooper's Coffee under Indiana state law.
2. For each claim, explain:
  - (a) The basis for the claim;
  - (b) The proper forum in which to bring the claim;
  - (c) The type and dollar amount of potential damages available; and
  - (d) How Cooper's Coffee might have avoided the claim through changes in its personnel policies or procedures.

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Susan and Mary each have multiple claims against Cooper under Indiana law. Susan can bring a claim under the Wage Payment Act due to Cooper's policy of only paying employees once a month and because she was not paid for her accrued vacation time. It is unclear whether Cooper paid Mary for all wages owed to her when she was fired. To the extent Cooper still owes Mary wages or accrued vacation time pay, Mary could bring a claim under the Wage Claim Act since she was fired. Because Mary was not fired for cause, Mary could also file for unemployment benefits. Since Mary did not have an employment contract and Indiana has a presumption for at-will employment, Mary would not have a claim for being fired from her job. Mary and Susan both can make claims against Cooper for him taking an unauthorized wage assignment from their paychecks for the uniforms.

### Claims applicable to Mary and Susan

Cooper's required its employees to wear uniforms to work. An employee is permitted to deduct the reasonable cost of work uniforms from an employee's paycheck where certain requirements are met. This is called a wage assignment, and Cooper did not meet the requirements. Valid wage assignments must be in writing, signed by the employee, and for a lawful purpose. Further, the employee must be able to revoke the authorization at any time upon giving notice to the employer and the employee must deliver the signed wage authorization to the employer within ten days. Wage authorizations could be used for things like health or life insurance premium payments, 401k contributions, union dues, and uniform monies owed to the employer. Although the wage assignment was for a valid purpose, Cooper did not follow any of the formal requirements to make a valid wage assignment. Susan and Mary could contact the Department of Labor or Commission of Labor regarding this issue, as this agency deals with many issues in employment law. If the Commissioner investigated and found a violation, Cooper's would be required to change its policy to conform with the law. The proper forum for this issue would be administrative.

### Susan's Claim under the Wage Payment Act

Cooper's has violated the Wage Payment Act, which requires four things - that employees are paid bi-weekly or semi-monthly, payment in US dollars, that each paycheck pays the employee for hours worked up until ten days before the paycheck is issued, and that if the employee quits, that the employer pays the employee her last paycheck at the next regularly scheduled pay period. The Wage Payment Act applies to employees who are currently employed or voluntarily left employment, like Susan. "Wages" under the Wage Payment Act include normal compensation, earned vacation time, and bonuses, if the bonus is tied to the employee's success. Wages do not include severance pay or bonuses which are tied to the employer's success.

Cooper's has violated the Wage Payment Act in several ways. First, he paid employees once a month, on the last day of every month. This is not bi-weekly (every two weeks) or semi-monthly (twice a month) as is required. Presumably, Cooper's paid the employees in US Dollars and paid for the entire month when he would pay them at the end of the month.

When Susan quit at Cooper's, she provided her address to get her final paycheck, which should have included her hours worked from June 1 - June 15, as well as her accrued and unused vacation time. Susan asked to get her check on June 18. Assuming Cooper's followed the law and paid his employees bi-weekly or semi-monthly, Susan would not have been entitled to receive her check on June 18, but would be entitled to receive it at the next regularly-scheduled pay period, around June 29. Cooper's never paid Susan for her June time worked or the accrued vacation pay, so he again violated the Wage Payment Act.

Under the Wage Payment Act, Susan can sue in court and does not have to pursue administrative remedies. If she prevails over Cooper, she is entitled to payment of her wages, attorney fees and costs, and, if Cooper acted in bad faith in failing to pay Susan's wages, she is also entitled to twice the amount of the pay withheld as liquidated damages. Cooper refusing to pay Susan was not in good faith. Although, when Susan quit, the business was not doing well, the next month business was booming for Cooper's. Cooper didn't have the financial inability to pay Susan; he just didn't want to pay her, which shows bad faith actions on his part. Susan should be awarded the liquidated damages of twice the amount owed to her, in addition to what was owed to her and attorney fees and costs.

Cooper's could avoid these claims in the future by following the requirements of the Wage Payment Act and paying employees bi-weekly or semi-monthly, in US Dollars, and paying employees what they are owed, including accrued vacation time, when the next regularly-scheduled paycheck is owed after the employee quits.

## **Mary's Claims**

### **Wage Claim Act**

Mary had accrued 40 hours of vacation pay because she had worked at Cooper's for over a year, and she did not take any vacation because she was concerned she would not have a job when she returned. Assuming Cooper paid Mary all the wages that were due to her in May 2018, she may still have a claim under the Wage Claim Act for the vacation pay she was owed, because as explained above, accrued vacation pay is considered wages. The Wage Claim Act applies to employees who were fired by the employer. If, after an employee is fired, the employee and employer dispute the amount of wages that the employer owes the employee, the employer must pay the undisputed amount owed to the employee. Since Cooper told Susan to "forget about the vacation pay", he would also presumably dispute that he owed this to Mary. Then, the employer must file a claim with the Commissioner of Labor regarding the wage dispute with the employee. If the Commissioner of Labor sides with the employee, the Commissioner can work with the employer to ensure the employee is paid what is owed to her. Alternatively, the Commissioner of Labor can notify the Attorney General or give the employee a right to sue letter, so the action can be brought in court.

The Wage Claim Act requires exhaustion of administrative remedies. If the employer disagrees with the Commissioner's findings, the employer must administratively appeal. The employee cannot bring an action in court until administrative remedies have been exhausted or a right to sue letter has been issued. The remedies are the same under the Wage Payment and Wage Claim Acts. If Cooper's is liable, he owes Mary the wages he owes, attorney fees and costs, and potentially double the wages owed to her if his actions were in bad faith. If Cooper's refused to pay vacation pay owed just because he didn't want to pay it, that may be a bad faith action. However, if Cooper's was financially unable to pay the vacation pay at that time, the may not be liable for the liquidated damages.

In the future, Cooper's should pay employees the proper amount owed after he fires them. If a Wage Claim is filed, Cooper's should work with the Commissioner of Labor to ensure a prompt resolution, so he does not risk having to go to court and pay attorney fees in addition to potentially paying liquidated damages for any bad faith actions.

### **Unemployment Benefits**

Mary should also be able to make a claim for unemployment benefits with the Department of Workforce Development (DWD). Unemployment benefits are calculated equal to 47% of the employee's weekly wages for a maximum of 26 weeks. The benefits cannot exceed \$390 per week. To make a claim, Mary should submit her claim to DWD. Then, DWD will submit a request to the employer to obtain information on why Mary is no longer employed there. A person is not eligible for unemployment if they voluntarily leave the employment or are fired for cause. Some examples of being fired for cause include attendance issues, going to work under the influence of drugs or alcohol, and insubordination. Mary did not have any of these issues - rather, it seems Cooper fired Mary because business was slow.

Cooper's has seven days from the date it receives the request from DWD to respond. If it does not respond, or there is no basis for denying benefits, Mary will be able to take unemployment. If Cooper's does not agree with DWD's eligibility determination, it must appeal administratively and exhaust administrative remedies before appealing to the Indiana courts. Cooper's would not be responsible for any damages, since these benefits are paid by the state.

INDIANA ESSAY EXAMINATION  
QUESTION 3  
July 2018

Jane and Ted have been married for 20 years and have resided in Indiana during their entire marriage. They have two children, Ana (age 12) and Sam (age 18). After discovering Jane was having an affair with her boss, Ted filed for divorce in their county of residence on July 1, 2018. Ted became suspicious after he found a receipt for a very expensive watch, which he later learned was a birthday gift Jane had purchased for her boss.

Jane is the primary breadwinner of the family, earning over \$100,000 per year. Ted works part-time in a hardware store and earns \$15,000 per year. Because Jane typically works 60 hours a week, Ted has been in charge of most of the child-related activities over the years.

Jane has worked at the same company for the past 18 years and has saved \$250,000 in her 401k retirement plan. Ted has an IRA worth \$25,000. Jane and Ted have a savings account with a \$40,000 balance and pay their credit cards off in full each month. The parties each drive cars that are paid for. They have \$100,000 of equity in their home. Jane and Ted did not save at all for their children's college education.

On July 15, 2018, Jane's favorite aunt died and left her \$50,000. Jane immediately put the money in a separate bank account.

Sam is a senior in high school. He has earned mostly C's in high school but very much wants to attend a four-year college. Ted did not attend college himself and does not believe a college education is necessary for Sam. Jane graduated from college and is a civil engineer. She believes a college education is necessary for Sam.

The parties have decided that they will share joint legal and physical custody of Ana. Each party will have custody of Ana half of the time.

1. Explain whether either party will have to pay the other child support. If child support is ordered, what will the Court consider in determining the support amount?
2. Can Jane's affair be considered by the Court in dividing the property? Explain why or why not.
3. What is the earliest the parties can be divorced if they agree on all issues and execute a settlement agreement?
4. If the parties are not able to settle, what factors will the Court consider in determining if Jane and Ted must contribute to Sam's college expenses?
5. Will the \$50,000 Jane inherited be subject to division by the Court? Explain why or why not.

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At issue is the amount of child support that will be awarded. Indiana uses an income shares model when determining what child support costs will be imposed on a party.

The goal of the income shares model is to give children the same support they would have as if their parents were still living together. Other considerations courts look to when determining a child support award is: the age of the children, if there are any other support obligations of the parents, unusual needs of the children, any medical expenses not covered by insurance, the standard of living for the children, and the best interests of the children.

Here, the children are 12 and 18. The parents do not have any other support obligations, and there are no facts to indicate that the children have any unusual needs or medical expenses.

The children have the standard of living of being in a household where their parents make approximately 115,000 per year. Because Jane is providing most of this income, \$100,000, she is likely to owe Ted child support for the time that he has physical custody of Ana.

The best interests of the child include: the age and gender of the child; the wishes of the child (especially if over 14); the wishes of the parents; the interrelationships with parents, siblings, and anyone else who may have an impact on the child's best interests; the child's adjustment to school and community; the mental and physical state of all parties involved; any existence of domestic violence; any evidence of a the children being cared for by a de facto custodian.

#### *Age and Gender*

Here, the children are ages 12 and 18. The 12 year old, Ana, is a female, and Sam is a male. This factor is neutral when awarding the support award.

#### *Wishes of the Child*

Here, there are no facts to indicate that either Sam or Ana has a preference for either parent. Ted and Jane have already decided to share equal custody of Ana. Sam is 18, so his custody is likely no an issue. Thus, this factor is neutral when determining child support

#### *Wishes of the Parents*

Here, neither parent has any outstanding wishes for custody of the children. Both have agreed to share joint and physical custody of Ana and that they will have custody of her half of the time. Thus, this factor is also neutral.  
Interrelationships with parents, siblings

Here, Ana is likely to have a better relationship with her father because Ted has been in charge of most child-related activities over the years. Also, Ana works over 60 hours a week and has less time to spend with the children. Thus, this factor weighs heavily in favor of Ted receiving support as he usually is caring for the children.  
Adjustment to School and Community

Here, no facts indicate that there is any issue with the children's adjustment to school and community. Therefore, this factor is neutral when determining whether support should be awarded.  
Physical and Mental State of all involved

Here, no facts indicate that there is any issue with the physical and mental state of any party. Therefore, this factor is neutral when determining whether support should be awarded.

#### *Evidence of Domestic Violence*

Here, no facts indicate that there is any issue with domestic violence in the family. Therefore, this factor is neutral when determining whether support should be awarded.

#### *Existence of a De Facto Custodian*

Here, no facts indicate that there is any issue with the existence of a de facto custodian. Therefore, this factor is neutral when determining whether support should be awarded.

Based on the above, Jane is likely to be required to pay child support to Ted.



## **2. Impact Jane's Affair will have on Division of Property**

At issue is whether Jane's affair will have an impact on the court's division of marital property. Indiana uses an equitable distribution approach with dividing marital property.

The presumption is that all property is marital and a 50/50 distribution is just and reasonable. However, courts will consider other factors when dividing property such as: the dissipation of property by one spouse, whether property was obtained by inheritance or gift, the contribution each spouse has made to marital assets, the current economic circumstances of each spouse, whether a party has custody of a child.

Based on the factors above, Jane's affair will not have an impact on marital distribution per se. Having a marital affair does not fall into any category under Indiana law that would require an unfaithful spouse to be considered when dividing property. However, Ted can argue that he should receive half of the money that Jane spent on the expensive watch for her boss.

## **3. The Earliest Parties can be Divorced**

At issue is the earliest Jane and Ted can be divorced. In Indiana, a party can file for divorce as long as they have been residents of Indiana for at least 6 months preceding the divorce. Here, Jane and Ted have lived in Indiana during their entire marriage of twenty years. Therefore, they should have had no issue quickly filing their divorce in an Indiana county court with jurisdiction over their case.

Additionally, parties must wait 60 days before the final decree of divorce can be issued. Therefore, if Jane and Ted can file for divorce and have settled all issues, they would be able to have the decree completed within 60 days.

## **4. Ted and Jane Contribution to Sam's College Expenses**

At issue is what factors the court will consider in determining if Jane and Ted should contribute to Sam's college expenses. Parents may be required to pay support for a child up until the age of 19, and that support may continue through college. The factors that courts will examine are the aptitude of the child, the contribution the child can reasonably make to his or her college expenses, and the willingness of the parents to pay for the expenses of the child.

Here, Ted may state that Sam does not have an aptitude for college because he earned mostly C's in high school. However, Jane is likely to argue that despite Sam's average grades, he still very much wants to attend a four-year university. Second, there are no facts to indicate that Sam can pay the expensive tuition of a four-year college on his own, and he will likely need financial help from Ted and Jane. Third, Jane is willing to help Sam pay for his college expenses and believes college is important. However, Ted did not attend college himself and does not believe college is necessary for Sam.

Therefore, because of Sam's willingness to attend college and that he likely cannot support himself, court is likely to find that Ted and Jane should contribute to Sam's four-year college expenses.

## **5. Jane's Inheritance**

At issue is whether Jane's inheritance has an impact on the court's division of marital property. Property that was acquired after a divorce petition was filed is not included in the equitable distribution of property.

Here, Jane received a large inheritance of \$50,000 from her aunt and placed it in a separate bank account on July 15, 2018. Ted filed for divorce on July 1, 2018. Because Jane received the property after the petition for divorce was filed, it will not be included within Jane and Ted's marital assets.

INDIANA ESSAY EXAMINATION  
QUESTION 4  
July 2018

On May 30, 2016, Stanley invited Karen and her husband to his lake house in Blue County, Indiana for the weekend. While on the deck, Karen stepped on a loose plank, causing her to lose her balance and fall down the stairs. As a result of the fall, Karen broke her arm and fractured two ribs. On February 28, 2018, Karen filed a lawsuit against Stanley for her injuries and subsequent damages. Karen filed the complaint in the Superior Court of Yellow County, Indiana, the county where she resided.

Karen obtained proper service on Stanley, and he filed an Answer to her Complaint denying the allegations and alleging as an affirmative defense that Karen failed to name the correct party at interest. The parties conducted discovery over the next three months, and it was revealed that the true owner of the lake house was Stanley's brother, Walter, even though Stanley and his wife had lived there for over 10 years and paid all the bills. Discovery further revealed that Walter resided in the state of Illinois.

Karen filed a motion to amend her complaint to add Walter as a defendant and the court granted it on May 29, 2018. Karen sent a copy of the Amended Complaint and Summons to Walter via certified mail on May 31, 2018. It was addressed to Walter at the lake house address in Blue County. Stanley's wife signed for the certified mail. Stanley gave Walter the summons and complaint on June 2, 2018. On June 15, 2018, Walter filed an answer to Karen's amended complaint and included as an affirmative defense improper/incorrect venue, as well as a request for a change of judge.

1. Explain whether Karen sued Stanley in the proper venue.
2. Explain whether Karen properly served Walter.
3. Explain whether Walter's affirmative defense and request for change of judge were proper.

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In Indiana, a lawsuit can be brought in any county in the state. However, Indiana recognizes preferred venues, and the Indiana Trial Rules designate nine preferred venues for a lawsuit (e.g. where the property at issue in the lawsuit is located or where the relevant injury occurred). Here, Karen was injured at the lake house in Blue County, and Karen filed suit in Yellow County, where she lives. While the venue is technically "proper" because suit can be brought in any county in the state, the venue is certainly not a preferred venue. A preferred venue would be in Blue County, where the lake house is located and where Karen's injury occurred. However, in order to be granted a transfer of venue, Stanley would have needed to move for a transfer of venue to a preferred venue within ten days after the issues were first closed on the merits. Because he did not, he waived his opportunity to get the suit moved to the preferred venue in Blue County.

#### Whether Karen Properly Served Walter

Service can be executed several different ways in Indiana. First, a party can be served by personal service of the complaint and summons. Next, a party can be served by sending the complaint and summons through registered and certified mail with return slip attached to the defendant's usual place of abode. The defendant can also be served by a copy of the complaint and summons being posted at his usual place of abode. If a plaintiff chooses this method, he must also mail and copy of the summons and complaint to that same address. Finally, but only as a last resort, a plaintiff can serve process by publication. This can only be done after the plaintiff shows in an affidavit of the previous unsuccessful attempts he made to serve the defendant or of the fact that the defendant cannot be located. Service will be posted in a newspaper of general circulation not long after the complaint is filed and must be done three times. After the first publication, the next two publications must be made at least seven but not more than fourteen days after the previous publication. Service is deemed completed at the end of the day on which the third publication is run.

Here, Karen did not properly serve Walter. Karen sent the summons and complaint to the lake house, which Walter owns. However, the lake house is not Walter's usual place of abode; in fact, Stanley and his wife have lived there for the past ten years. So, Karen could not have properly served Walter by mailing service to the lake house or by posting a copy of service there, because the lake house is not Walter's usual place of abode or residence. It is irrelevant that Walter owns the lake house; what is more important is that he does not live there. It also also irrelevant that Stanley's wife signed for the certified mail and gave Walter the summons and complaint because Walter never actually received proper service. Walter should have been served at his place of residence in Illinois or Karen could have served Walter personally. Service by publication would not be an option here because it is clear that Walter has been located and can be served by any other method.

#### Whether Walter's Affirmative Defense and Request for Change of Judge Were Proper

Under the Indiana Trial Rules, any party can request a change of judge for any reason or no reason at all once as of right. This request must be filed later than ten days after the first responsive pleading is filed. Therefore, because Walter was just added as a defendant, Walter's request for a change of judge was proper in this situation and will likely be granted.

In order to raise the issue of improper or incorrect venue, the issue should be raised at the time of the opposing party's first responsive pleading, whether that be a pre-answer motion or an answer. If a party does not raise the issue of venue at that time, he waives his right to challenge it. Therefore, because Walter raised the issue of venue in his first responsive pleading and because he was just added as a party, Walter properly raised the issue of venue. However, it likely would have been a clearer option if Walter had asserted his venue claim in a motion to dismiss before he filed an answer.

INDIANA ESSAY EXAMINATION  
QUESTION 5  
July 2018

Geriatric Gear, Inc. is an Indiana corporation that sells and leases home medical and mobility aids in Indiana. All of the following events occurred in 2017. On February 1, Geriatric Gear borrowed \$500,000 from MegaBank and granted to MegaBank an enforceable security interest in its inventory and equipment, whether now owned or hereafter acquired, in order to secure the loan. On February 8, MegaBank filed a valid financing statement with the Indiana Secretary of State that correctly described the collateral.

When Geriatric Gear's business continued to slide, its officers decided to rebrand the company to be more appealing to baby boomers. Effective July 1, it changed its name to Freestyle Living Solutions, Inc. ("FLS") and registered that name with the Indiana Secretary of State's office.

On September 1, FLS ordered 20 scooters from Icango Scooter Company. Icango retained a valid, enforceable security interest in the scooters to secure payment of the purchase price. On September 4, Icango sent a notice of its security interest in the scooters to MegaBank. The notice complied in all respects with Indiana's UCC. MegaBank received the notice two days later. On September 8, Icango filed a valid financing statement with the Indiana Secretary of State that correctly described the collateral. On September 14, the scooters were delivered to FLS.

FLS had to purchase a new multifunction printer on December 4. The seller, OfficeWerks, retained a valid, enforceable security interest in the printer to secure repayment of the purchase price. The printer was delivered and installed on December 5. On December 29, OfficeWerks filed a valid financing statement that correctly described the collateral. Although it knew about MegaBank's security interest, OfficeWerks did not give notice to MegaBank of OfficeWerk's interest in the printer.

FLS later closed its doors due to poor sales and defaulted on its obligations. FLS had sold none of the Icango scooters and still had the multifunction printer it purchased from OfficeWerks.

1. Discuss and describe if, when, and how MegaBank acquired and perfected a security interest in both the 20 Icango scooters and the printer sold to FLS.
2. Discuss and describe if, when, and how Icango acquired and perfected a security interest in the 20 Icango scooters it sold to FLS.
3. Discuss and describe if, when, and how OfficeWerks acquired and perfected a security interest in the printer it sold to FLS.
4. Explain which entity's interest has priority in the scooters and which entity's interest has priority in the printer.

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In order for a security agreement to be enforceable, it must first attach. In order for a security interest to attach, 1) value must be given, 2) debtor must have rights in the collateral, and 3) the debtor must authenticate a security agreement that reasonably describes the collateral, or the creditor can retain possession of a tangible item or retain control of an intangible item. In order for a security interest to perfect, it must first attach, and a financing statement must be filed with the Secretary of State's office. A creditor can also obtain perfection by retaining possession of tangible property or retaining control of intangible property. There are also certain circumstances where automatic perfection can occur or an alternative perfection system exists, none of which apply here.

### **MegaBank's Security Interest**

MegaBank has a perfected security interest in the scooters and an unperfected security interest in the printer. MegaBank's initial security interest attached on February 8, 2017, when it filed a valid financing statement with the Indiana Secretary of State that correctly described the collateral. Value had been given through the loan, FLS had rights in the collateral, and granted MegaBank an enforceable security interest on February 1, 2017. The security interest in inventory and equipment attached on February 1, 2017, and was perfected on February 8, 2017.

The Scooters are considered inventory, because FLS holds them out for sale in their business and the Printer is equipment. MegaBank retained a perfected security interest in all collateral covered by the security agreement until November 1, 2017. On July 1, 2017, FLS changed its name to FLS from Geriatric Gear, Inc. When a debtor changes its name, the creditor has four months to amend its financing statement to correct the name change or else it will no longer be perfected. Any property acquired during those four months will remain perfected and any collateral that was perfected before November 1, 2017 will not lose its perfection. Any collateral acquired after November 1, 2017 will not be perfected. MegaBank's security interest is good in after acquired property because it had an after-acquired-property clause in its security agreement. The security interest in the scooters is perfected because they were acquired before November 1, 2017 and the security interest in the printer is attached, but not perfected, because it was acquired after November 1, 2017.

### **Icango's Security Interest**

Icango's security interest in the scooters was perfected on September 8, 2017, when the financing statement was filed with the Secretary of State. Icango has a PMSI in inventory because it sold the scooters on credit and retained a valid security interest in the scooters. Value was given on September 1, 2017, when the scooters were ordered. When an extension of credit is offered, that is when value is given. Further, that is when Icango obtained rights in the collateral, not on September 14, when it was delivered. A valid security agreement was entered into on September 1, 2017. All of the requirements of perfection have been met.

Further, it is of note that Icango has superpriority in the scooters due to the status of being a PMSI in inventory. A security interest that is a PMSI in inventory has superpriority over other claims when the financing statement is filed and notice has been sent to the other creditors prior to the delivery of the collateral. Here, Icango sent notice and filed the financing statement prior to delivery of the scooters, and therefore it will enjoy superpriority over other claims.

### **OfficeWerks Security Interest**

OfficeWerks obtained perfected its security interest on December 29, when the financing statement was filed. Here, OfficeWerks has a PMSI in equipment because it sold the printer on credit and retained a security interest in the printer. On December 29, when the financing statement was filed, there was already attachment because value had been given, FLS had rights in the collateral, and there was a valid security agreement.

It is of note, that a security interest in a PMSI in equipment enjoys superpriority over other claims if the financing statement is filed within 20 days of the delivery of the collateral. No notice is required. Here the filing statement was outside of the 20 days, so although there security interest is perfected, it does not enjoy superpriority.

### **Priority**

#### **A. Scooter**

Icango has priority in the scooters. Although, the general rule is that between two perfected security interests the first to file to perfect will have priority. Here, although, MegaBank was first to file and perfect and had a perfected security interest at the time that Icango's security interest was perfected, as stated earlier, Icango has superpriority because it followed the proper procedures to obtain superpriority in inventory.

#### **B. Printer**

OfficeWerks has priority in the printer. When there is a security battle between a perfected security interest and an unperfected security interest, the perfected security interest will win. Even though OfficeWerks did not obtain its superpriority, due to the fact that MegaBank never amended its financing statement OfficeWerks has priority in the printer.

INDIANA ESSAY EXAMINATION  
QUESTION 6  
July 2018

Jack and Diane had a child, Billy, but Jack was not identified as the father on the birth certificate. Jack and Diane were not married before Billy was born. Jack died intestate, having had no other children. He was not married at the time of his death and left a sizeable estate.

1. Under what additional factual conditions could Billy be considered an heir and entitled to share in Jack's estate? Identify all potential factual scenarios in which Billy could be considered an heir under Indiana law.

Alice and Charles were married, there was no abuse by either party, and each provided financial support to their union. One day, Alice told Charles she was in love with another man, had moved in with the other man, and would be happy for the rest of her life. Charles was not happy about this development. He told Alice he would divorce her if she did not return to the marital home. It took Charles almost a month to get an appointment with a family law attorney. On his way to the appointment, Charles was killed in an accident. Alice was named as primary beneficiary in Charles's Will and in his Trust, both of which involved sizeable assets. Alice and Charles also owned significant assets jointly. The secondary beneficiaries under the Will and the Trust were Charles's adult siblings. Alice, through her attorney, opened an Estate for Charles and began the process of liquidating and distributing Charles's assets.

Charles's brother, who is the Trustee of Charles's Trust and one of the secondary beneficiaries of the Will, hired an attorney to attempt to keep Alice, whom he claims broke Charles's heart, from getting any of the assets, whether in the Trust, in the Estate, or jointly titled.

2. Explain whether Charles's brother can prevent Alice from getting any of the Trust assets, the Estate assets, and the assets that are jointly titled.
3. Would the answer to whether Charles's brother could prevent Alice from getting any of the assets be the same if Charles was abusive and Alice had moved back to her parents' home for her own safety? Explain why or why not.

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Under IN law, Billy could be considered an heir and entitled to a share of Jack's estate if someone such as Diane or another family member filed a claim within 5 months after the death of Jack to assert that Jack was Billy's father if not done previously. By preponderance of the evidence was shown that Billy is Jack's son.

Under IN law, Billy could inherit from Jack's estate if Jack had filed with the Putative Father Registry in IN identifying himself as the putative father.

Under IN law, Billy could inherit from Jack's estate if he had held the child out to be his to the public, provided for him and did not deny him as his own child in any court proceeding the presumption is that Billy is his child. By preponderance of the evidence is shown that Billy was held out to be Jack's son.

Under IN law, Billy could inherit from Jack's estate if any person had filed for paternity testing claiming that Jack is Billy's father within the first 2 years of his life. By preponderance of the evidence is shown that Billy is Jack's son through DNA testing.

Under IN law, if Billy asserted a claim within 2 years after he turned the age of majority (18), and requested paternity testing claiming he was Jack's son and this was prior to Jack's death. By preponderance of the evidence is shown that Billy is Jack's son.

Under IN law, Jack and Diane eventually got married at some point before Jack's death and Diane consented to Jack adopting Billy. Adoption of children receive all the same rights as a biological child.

Under the laws of intestacy, if Billy is found to be Jack's son and Jack has no other children or parents, then Billy would receive the entire estate. If he has parents then they receive 50% and Billy would receive 50%.

2. Under IN law, Charles' brother may contest the Will and the Trust based on Alice's abandonment of the relationship with Charles and the separation, but not likely the jointly titled property. Under IN law, if a spouse abandons the marriage then they are considered predeceased and their portion of the will and trust passes by intestacy.

Here, Charles' Brother could contest the will and trusts by filing a claim within 6 mos of the filing of the will in probate court and claim that Alice abandoned Charles. If Charles can show by clear and convincing evidence that Alice did indeed abandon Charles then her portion would pass through intestacy.

However, property held jointly titled to Charles and Alice would come with rights of survivorship which automatically transfers to the other tenant/owner upon the death of one of the tenants/owners. Whatever assets jointly owned by Charles and Alice would have automatically transferred to Alice under her rights of survivorship at Charles' time of death.

3. Yes, the results would be very different had Charles been abusive to Alice, because Charles' brother would not be able to prove with clear and convincing evidence that Alice abandoned the relationship. Likely, the court would find that Charles would have been at fault for Alice leaving to seek safety and not intentionally abandon it.