

FEBRUARY 2012

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INSTRUCTIONS FOR THE  
ILLINOIS ESSAY EXAMINATION

*The Illinois Essay Examination consists of the 3 questions contained in this booklet. You are required to answer all 3 questions.*

**Laptop users** – If you are typing your answers on a laptop, be sure to type them in the correct fields, i.e., type the answer to Question 1 in the field for Question 1, then advance to the field for Question 2 before typing the answer to Question 2, etc. Be aware that you will be limited to 4,600 characters for each answer. Scratch paper for notes and outlining is available from your proctor and will be collected at the end of the exam.

**Handwriters** – If you are handwriting your answers, you have been provided with 3 answer booklets that are numbered to correspond to the 3 questions. Be sure to write each answer in the correct answer booklet and confine the answer to that booklet. There is no cover to the answer booklet – begin your answer on the front page. Write your answer on the printed lines only, and do not exceed one handwritten line per printed line. Portions of answers that exceed these limitations will be disregarded by the Board. The printed lines are on one side only. The back sides of any pages may be used for notes and outlining. Do not remove pages from or disassemble any booklet. Answer booklets must be intact when handed in.

(Questions begin on next page)

1. Howard Homeowner ("Howard") hired Calvin Contractor ("Calvin") to renovate Howard's house in Winnetka, Illinois. Their contract, which was written and signed by both parties, provided that the work would commence September 2, 2011, and be complete by September 30, 2011. They further agreed that Howard could pay the cost of the renovation services, \$100,000, in a promissory note (the "Note"). The Note provided in pertinent part as follows:

*I, Howard Homeowner, in consideration of renovation services to be performed by Calvin Contractor, hereby agree to pay to the order of Calvin Contractor \$100,000 in equal installments of \$10,000 on the first of every month beginning October 1, 2011, until paid in full. If I fail to pay any installment, I acknowledge and agree that the entire unpaid balance shall be immediately due and payable.*

The Note was dated September 1, 2011, and signed by Howard.

Calvin did not start work on September 2, as agreed. Instead, on that day he took the Note to Bank A, where he maintained an account, in order to sell it to the bank. Donald Dollar ("Dollar"), the branch manager of Bank A, and Calvin's longtime banker, occasionally purchased from Calvin promissory notes payable to him, provided that the makers of the notes (for example, Howard) appeared to be credit-worthy.

While running a credit check on Howard, Dollar asked Calvin how business had been. "Terrible," said Calvin, "This is the only job I've had in the last two months. I think I am going to take off today for a long vacation."

Dollar looked at the Note and then at Calvin. "Have you already finished the job?" Dollar asked.

Calvin blushed and said, "Oh, no. Actually, I was just kidding. I will get right to work." Because he believed Calvin was joking, Dollar accepted this explanation. Because Howard's credit appeared satisfactory, Dollar agreed to purchase the Note from Calvin for

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\$80,000 on behalf of Bank A. Calvin signed the back of the Note and gave it to Dollar, who put it in the Bank's vault. Dollar then deposited \$80,000 into Calvin's account.

In fact, Calvin did no work for Howard. Instead, he withdrew the \$80,000 received from Bank A and fled to a foreign country, which has no extradition treaty with the United States.

On September 15, Bank A sent Howard a notice stating that it was in possession of his Note, and that he should make payments to Bank A, rather than to Calvin. Since Calvin had never performed any of the work under his agreement with Howard, Howard informed Bank A that he had no intention of paying on the Note.

Howard has come to you for help. Please explain your answers to the following:

- (a) What body of Illinois law governs Howard's obligations under the Note?
  - (b) What is Bank A's status with respect to the Note?
  - (c) What defenses, if any, can Howard assert to avoid paying the Note?
  - (d) How can Bank A overcome such defenses, if any?
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2. Jim owned Lot 1 located on Garden Street. Jim divided Lot 1 into Tract A (the larger tract, on the north end) and Tract B (the smaller tract on the south end). Jim built a duplex on Lot 1 so that the center wall of the duplex ran along the boundary line between Tract A and Tract B. The street numbers assigned the parts of the duplex were seemingly reversed, because the south part of the duplex (on Tract B) bore the street number 336-A, and the north part of the duplex (on Tract A) bore the street number 336-B. Jim put the assigned street number, in large brass numerals, next to the

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front door of each part of the duplex. The fair market value of Tract A (336-B) was \$120,000. The fair market value of Tract B (336-A) was \$100,000. Jim put "For Sale by Owner" signs, that stated his email address, by both parts of the duplex.

Nancy asked Jim to show her both parts of the duplex. When Nancy entered the north part of the duplex, she asked what its street address was. Jim patted the street number, 336-B, by the front door and said, "This is the B side of 336 Garden Street." Jim did not want to seem pushy during the showing, so he did not mention the price that he desired for either part of the duplex. Nancy later emailed Jim asking how much he wanted for *Side B*. By that, she meant 336-B on Tract A, but her email did not indicate what she intended by using the term *Side B*. Jim thought that Nancy, by using the term *Side B*, meant Tract B (336-A). His reply email stated "\$100,000." Nancy wrote back, in a final email, "Sounds good to me. We have a deal for my purchase of *Side B*."

Jim asked his attorney to draw up a contract that sold – and a deed that conveyed – Tract B to Nancy for \$100,000. The contract stated that it constituted the entire agreement between the parties. Although Nancy read the contract and deed, she did not realize that Tract B was different from *Side B* (as she had used the term, in reference to 336-B). At the closing, Jim gave Nancy the keys and deed to Tract B (336-A). Nancy accepted them and took the deed to the County Recorder's Office for recording that same day.

The next day, when the keys did not work, Nancy called Jim, and only then did they both realize that they had been talking about opposite parts of the duplex. Jim said, "336-B is worth \$120,000, but you only paid me \$100,000. You can have that part, but only if you pay me an additional \$20,000." Nancy replied, "That is out of the question." Jim said, "Why don't you move into 336-A?" Nancy answered, "No, I refuse. Give me back the money I paid you." Jim answered, "336-A is yours. Goodbye."

Nancy filed a two-count complaint in the Circuit Court. In Count I, she sought to **reform** the contract and deed, on the ground

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of *mutual mistake*, to provide that Jim should convey Tract A (336-B) to her for the \$100,000 that she had paid him. In Count II, she sought, in the alternative, to *rescind* the contract and deed, on the ground of *mutual mistake*, and to recover from Jim the \$100,000 that she had paid him. Count I and Count II each contained well-pleaded allegations of the facts material to the cause of action stated therein. In Count II, Nancy offered to do everything necessary to restore Jim to the *status quo* existing immediately before their transaction.

Jim filed a motion for summary judgment on both Counts. Because the contract stated it constituted the entire agreement between the parties and provided that Jim should convey Tract B to Nancy, Jim asserted the contract should be enforced as written. Nancy filed a reply in opposition to the motion for summary judgment, supported by her affidavit, that (1) Jim had orally described the north part of the duplex as “the B side of 336 Garden Street”; (2) Nancy’s first email had inquired how much Jim wanted for *Side B*; (3) Nancy’s second email had stated, “We have a deal for my purchase of *Side B*”; and (4) Nancy had understood, by her use of the term *Side B*, that she was purchasing the north part of the duplex (336-B) on Tract A. Jim asserted, in a written rebuttal, that the parole evidence rule should prevent the trial court from considering the facts set forth in Nancy’s affidavit.

(a) Should the parole evidence rule prevent the trial court from considering the facts set forth in Nancy’s affidavit that Nancy had understood – and her reasons for so understanding – that, by the contract, she was purchasing the north part of the duplex, numbered 336-B, on Tract A? Explain your answer.

*In answering (b) and (c), assume that the parole evidence rule does not prevent the trial court from considering the facts set forth in Nancy’s affidavit.*

(b) Does Nancy have a meritorious cause of action to *reform* the contract and deed, on the ground of mutual mistake, to provide that Jim should convey Tract A (336-B) to her for the \$100,000 that she had paid him? Explain your answer.

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(c) Does Nancy have a meritorious cause of action to *rescind* the contract and deed, on the ground of mutual mistake, and to recover from Jim the \$100,000 that she paid him? Explain your answer.

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3. McCorpin considered himself a crusader on behalf of Mother Nature. In August 2011, McCorpin started fires inside four New Zealand Petroleum (“NZP”) gas stations in Chicago in “retaliation” for a large oil spill caused by a mishap with an NZP supertanker off the coast of Australia. Based on video surveillance from the gas stations, Illinois State Police identified McCorpin as their lead suspect.

On September 15, 2011, McCorpin was validly arrested, based on probable cause to believe he had committed arson, outside his home in Barrington, Illinois. He was immediately transported to a State Police post, where he was handcuffed, placed in an interrogation room, and read his *Miranda* rights. McCorpin told the investigators he would not answer any questions without the assistance of counsel. Aware that McCorpin would be kept under surveillance until formal charges were brought by the Cook County State’s Attorney, the State Police released McCorpin that day.

Invigorated by his arrest, McCorpin spent the next two days handwriting a lengthy manifesto against NZP and the oil industry. In it, he took credit for the Chicago fires and demanded an immediate halt to the transport of oil on ocean-going supertankers. The otherwise-anonymous document was signed, “The Toxic Avenger.” McCorpin mailed the original to NZP’s headquarters in New Zealand and sent a copy to the Chicago Tribune. No fingerprints were recovered from the Tribune’s copy. However, after the original manifesto reached NZP’s headquarters on October 1, 2011, investigators were able to recover a fingerprint from it that matched one of McCorpin’s.

Based on the fingerprint and video surveillance evidence, investigators secured an arrest warrant for McCorpin on charges of

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arson. He was arrested again on October 6, 2011 (21 days after his original arrest). He was again handcuffed, placed in an interrogation room, and read his *Miranda* rights. This time, he validly waived his *Miranda* rights giving a full, voluntary confession without the presence of counsel. Later that day, at his initial court appearance on four counts of arson, a judge appointed a lawyer to represent McCorpin.

Several weeks later, over McCorpin's Fifth Amendment objection, the judge ordered him to provide a handwriting sample by transcribing a series of 200 nonsensical phrases – to permit prosecutors to compare McCorpin's handwriting to the Toxic Avenger's manifesto. A State Police handwriting expert eventually prepared a sworn report, based on her analysis of McCorpin's writing sample and the manifesto, concluding that McCorpin wrote the manifesto. The report was produced to McCorpin's lawyer well before trial, but the expert was never questioned at any pretrial hearing or interview.

McCorpin's lawyer filed a motion to suppress McCorpin's confession, arguing that it was improperly secured after McCorpin invoked his right to counsel. The judge denied the motion.

The case proceeded to trial. Due to a health crisis, the handwriting expert was not available to testify. Instead, over McCorpin's Sixth Amendment objections, prosecutors were permitted to introduce into evidence the expert's sworn report. Prosecutors also introduced evidence of McCorpin's confession. At the conclusion of a three-day trial, the jury returned guilty verdicts on all four counts.

(a) Did the court err by ordering McCorpin to provide a handwriting sample over his objection? Explain your answer.

(b) Did the court err by denying McCorpin's motion to suppress his confession? Explain your answer.

(c) Did the court err by allowing prosecutors to put the handwriting expert's sworn report into evidence? Explain your answer.