

**FEBRUARY 2014**

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**INSTRUCTIONS FOR THE  
ILLINOIS ESSAY EXAMINATION**

**(90 Minutes)**

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

**Laptop users** – Be sure to type your answers in the correct fields. 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 being provided and will be collected at the end of the exam.

**Handwriters** – 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. On October 11, 2010, Agnes, a 75-year-old retiree whose license had expired six months earlier, was driving through downtown Naperville, Du Page County, Illinois while completing errands related to her impending move to Utah. Agnes and her husband -- a beloved teacher who had just retired from the local junior high -- were moving to Utah to be closer to their adult children. Agnes was driving despite her doctor's warning that the symptoms of Agnes's early stage Parkinson's disease (a condition that impairs muscular control) would prevent her from properly controlling a motor vehicle. Agnes was driving her car south on Park Drive, a major street with a clearly defined bicycle lane running parallel to the curb.

At the same time, 15-year-old Joe, a former student of Agnes's husband, was riding his skateboard south on Park Drive while commuting to his after-school job. Mounted to Joe's helmet was a compact digital "Eye-Zoom" video camera designed to endure rugged conditions while capturing video suitable for sharing on the web. As always, Joe was careful to remain within the bicycle lane.

Agnes's car veered into the bicycle lane, knocking Joe off his skateboard. Joe suffered a broken leg and a severe concussion. Naperville Police Officer Bob investigated the accident. After reviewing the Eye-Zoom video, which clearly showed that Joe was within the bicycle lane in the seconds before the accident, Officer Bob issued several traffic citations to Agnes.

Agnes moved to Salt Lake City, as planned, on October 31, 2010. Joe's parents considered filing a lawsuit against Agnes to recover their out-of-pocket medical costs and to seek compensation for the pain and suffering their son had endured, but they were reluctant to pursue a lawsuit against the wife of their son's former teacher.

After long-term cognitive complications from Joe's concussion became apparent, Joe's parents spoke with a lawyer in early December 2012. The lawyer was initially concerned about the statute of limitations, but was relieved to learn that Agnes had

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moved to Utah in late 2010. The lawyer advised Joe's parents that they still had time to file a lawsuit because "Agnes's move from Illinois suspends the deadline for you to file a lawsuit against her." By then, however, the Eye-Zoom camera's batteries had died, and the video of the accident had been lost.

On January 15, 2013, Joe's parents filed a one-count negligence complaint against Agnes in the Law Division of DuPage County Circuit Court. Agnes was properly served in Utah. As her response to the complaint, Agnes filed a section 2-619 motion to dismiss the case as untimely filed. The judge denied the motion. Agnes then filed an answer to the complaint.

Later, at the appropriate stage of the case and pursuant to Illinois Supreme Court Rule 216, the plaintiff's lawyer served Agnes with the following Requests to Admit with the appropriate warnings:

- (1) Admit that on October 11, 2010, you did not possess a valid Illinois driver's license.
- (2) Admit that in the six months before October 11, 2010, you had been advised by a physician not to drive a motor vehicle.
- (3) Admit that you received a citation from the Naperville Police Department for failing to ensure that your motor vehicle did not enter the designated bicycle lane before the incident on October 11, 2010.
- (4) Admit that your entering the bicycle lane constituted negligence.

Agnes inexplicably failed to respond to the Requests to Admit within the 28-day period specified by Rule 216.

(a) Did the judge err by denying Agnes's section 2-619 motion? Explain your answer.

(b) Should the judge allow the Requests to Admit served on Agnes to be admitted against her? Explain your answer.

(c) If the case proceeds to trial, could Agnes's attorney prevent

the plaintiff's attorney from introducing testimony from Officer Bob about the content of the Eye-Zoom video by offering a hearsay objection? Explain your answer.

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2. At 2:30 a.m., September 30, 2012, Hawk and Owl entered the GasMart on the outskirts of Marion (located in Williamson County), Illinois. The only person in the GasMart was store clerk Dove. While Owl kept watch, Hawk approached Dove, who was on his knees restocking the milk cooler, kicked him in the jaw, and demanded the key to the cash register. Stunned, Dove hesitated but produced the key. The men fled in Hawk's blue pickup truck with \$315.44. Dove struggled back to the cash register, activated the alarm, and waited for help.

Observing Hawk and Owl drive erratically through Marion, police officer Eagle pulled them over. By then, she had learned by radio of the robbery that had just occurred at the GasMart, including Dove's description of his attackers as men resembling Hawk and Owl who had fled in a blue pickup truck. Eagle handcuffed the men and locked them in the back seat of her patrol car.

Hearing over the radio that paramedics described Dove as a "bloody mess, with missing teeth and a broken jaw," Eagle opened the patrol car door next to Hawk and said, "Was it worth it, you animals?" Hawk defiantly yelled, "Yes!" Owl, ashamed that the robbery had gone astray when Hawk became violent, said nothing. The men made no further statements, even after they were transported to the Marion police station and Mirandized.

On October 2, 2012, Hawk and Owl were formally charged by a Williamson County grand jury with the GasMart robbery and battery. Both received appointed counsel and were each held on \$100,000 bond. In negotiations with the local prosecutor's office, Owl agreed to plead guilty and cooperate against Hawk. Hawk, on the other hand, refused to consider a plea. His lawyer, Starling, filed a motion to suppress Hawk's statement to Eagle, which the judge granted.

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Unable to use Hawk's statement to Eagle at trial, the prosecutor conceived another way to get more evidence of Hawk's guilt: sending Owl, who was still being held at the Williamson County jail while awaiting sentencing, into Hawk's cell to question Hawk about the crime, all while wearing a hidden recording device. Owl and his lawyer agreed to the plan.

On January 15, 2013, Owl went to Hawk's jail cell and asked Hawk why he had deviated from their plan by attacking Dove, instead of just demanding the cash register key. Hawk told Owl he decided to kick Dove because it would "be faster than giving him any time to think." After the conversation, Owl met with a detective who removed the recording device.

Hawk's case went to trial in March 2013. At trial, Starling raised a hearsay objection to the use of Owl's recording or any evidence concerning what Hawk had told Owl in jail. Starling had learned of the conversation four weeks before the trial began. The judge denied the motion and admitted the recording of the conversation, which was played during part of Owl's testimony against Hawk. Owl's testimony about the jailhouse conversation was corroborated by the recording. Dove also testified about the crime and his injuries. Hawk did not testify. Hawk was convicted and sentenced to 10 years of imprisonment.

On appeal, Hawk was represented by a different lawyer, Bird. Bird cited the plain error doctrine (embodied by Illinois Supreme Court Rule 615(a)) to pursue an issue that was not raised at trial: that the use of Hawk's statements to Owl violated Hawk's sixth amendment rights. Bird also alleged that Starling's failure to pursue that claim amounted to constitutionally ineffective assistance of counsel.

(a) Did the court err by granting the motion to suppress Hawk's statement to Eagle? Explain your answer.

(b) Did the court err by denying Starling's motion to bar the use of Hawk's jailhouse statements to Owl based on hearsay? Explain

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your answer.

(c) Did the use of Hawk's jailhouse statements to Owl violate Hawk's sixth amendment rights? Explain your answer.

(d) Regardless of your response to question (c), what legal standards must Bird satisfy in order to prevail on the ineffective assistance of counsel claim? Explain your answer.

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3. In January 2012, believing that the decline in U.S. housing prices had finally hit bottom, Meg, a savvy investor, thought it was a great opportunity to buy a new home. Working with her real estate broker, Meg found a wonderful lakefront house in Evanston, Illinois. The property, owned by Seller, was listed with Gem Realty ("Gem") in Chicago. The listing agent was Luke.

During price negotiations, Luke said that Seller had had other offers fall through when the buyers could not arrange financing for the expensive property. As a result, Seller required Meg to provide 10% of the purchase price as earnest money – payable to an escrowee who would hold it as a fiduciary from the time the Seller and Meg signed a sale contract until the closing.

In February of 2012, Meg and Seller agreed on a purchase price of \$2,000,000, making the earnest money \$200,000. Not having \$200,000 in cash, Meg offered to provide \$100,000 in cash and a document transferring ownership of 200 shares of stock in Apple, Inc. Those shares were worth \$100,000 at the time. Seller agreed to the arrangement.

On February 15, 2012, Meg and Seller executed a standard, written contract for the sale of real estate. The contract referred to the cash and stock transfer document collectively as the "Earnest Property." Under ¶10 of the contract (the "Inspection Provision"), Meg retained full discretion to cancel the contract if, within 60 days of its signing, she determined, based on the advice of a certified home inspector, that the property was in an unacceptable physical

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condition. If she cancelled the contract based on the Inspection Provision, Meg would be entitled to receive all Earnest Property back within 14 calendar days of her transmission of a cancellation notice to Luke.

As a licensed Illinois real estate broker, Luke was authorized to act as the escrowee. Luke and Meg executed a separate written Escrow Contract on February 15, 2012, that provided for a \$100 escrow fee in exchange for the following: Luke, as escrowee, would (1) deposit the \$100,000 in an interest-bearing account; (2) store the stock transfer document in a safety deposit box owned by Gem; and (3) return all Earnest Property within 14 calendar days if Meg cancelled the contract pursuant to the Inspection Provision. Just before Meg signed the Escrow Contract, Luke orally provided her with an identifying number for the safety deposit box and informed her that he had opened an account for that safety deposit box the day before in Gem's name. Meg paid the \$100 escrow fee, and Luke took possession of the Earnest Property on February 15, 2012.

Forty days later, Meg learned from a certified inspector that the home had serious structural defects. Faced with that, Meg properly notified Luke on March 27, 2012, that she was cancelling the real estate contract pursuant to the Inspection Provision. After that, Luke failed to return any of Meg's emails, letters or calls seeking return of the Earnest Property. In the meantime, Apple's stock had climbed higher, and the 200 shares were then worth \$125,000 and still climbing.

Three weeks later, Meg and her lawyer met with Luke's supervisor at Gem's office. Disturbed by the apparent misconduct of Luke and the possibility of a lawsuit, the supervisor quickly conducted a review of the company's files and prepared an "Employee Incident Report," summarizing his belief that Luke had, in fact, violated company policies by failing to return the Earnest Property. Among other things, the report noted that (1) the identifying number of the safety deposit box given to Meg matched a box that had been opened on February 14, 2012, in Luke's name; (2) the box was currently empty and had never been accessed since the date it was opened.

On June 1, 2012, Meg filed a two-count complaint against Luke and Gem in Illinois state court. Count 1's fraud claim alleged that: (a) Luke falsely informed Meg on February 15, 2012, that he had opened an account for the safety deposit box in Gem's name on February 14, 2012; (b) Luke knew the assertion was not true; (c) Meg had a right to rely on Luke's assertion and did rely on it; and (d) Meg's reliance on Luke's assertion led to her injury. Count 2 alleged breach of the Escrow Contract. The complaint sought \$100,000 in damages and an order compelling Luke to return the stock transfer document.

The defendants moved to dismiss Count 1 by filing a motion under section 2-615 of the Illinois Rules of Civil Procedure. The trial court denied the motion.

(a) Did the court err by denying the motion to dismiss Count 1? Explain your answer.

(b) Can Meg secure a court order directing Luke to return the stock transfer document? Assess Meg's chances of securing such an order in a court of equity. Explain your answer.

(c) Assume Meg attempts to introduce the Employee Incident Report at trial to demonstrate that Luke violated the Escrow Contract by failing to store the stock transfer document in the safety deposit box. If counsel for the defendants objects based on hearsay, would Meg's lawyer prevail by pointing to the business records exception to the hearsay rules? Explain your answer.