

FEBRUARY 2017

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. Do not remove pages from or disassemble any booklet. Answer booklets must be intact when handed in.

Scratch paper for notes and outlining is being provided and will be collected at the end of the exam.

(Questions begin on next page)

1. Ann had long wanted to purchase from her neighbor, Bob, the vacant subdivision lot that he owned next to her house in Aurora, Kane County, Illinois. Bob had financial problems in the summer of 2015, and he offered to sell the lot to Ann for \$50,000. Ann replied that she wished to buy the lot, but not for the amount of \$50,000, because she thought that price to be too high. Ann told Bob that she would compile a list of recent sales of comparable vacant lots in Aurora, Illinois, so that they could determine together what a reasonable price for the lot would be.

After Ann compiled the list of recent sales of comparable vacant lots, she was dismayed to discover that the fair market value of the lot was at least \$50,000. Before Ann showed the list to Bob, she reduced the prices supposedly paid for the comparable vacant lots in order to persuade Bob that his lot was worth only \$25,000. Under the circumstances, it was reasonable for Bob to rely on Ann's list to conclude that his lot was worth only \$25,000. Bob agreed to sell the lot to Ann for \$25,000.

Ann and Bob signed a valid written contract for the sale of the lot on August 5, 2015. The contract contained Bob's complete name, Ann's complete name, and the correct legal description of the lot; set the price of the lot at \$25,000; and provided that the sale should be completed and closed at the office of Storefront Title Insurance Company ("Storefront") on August 19, 2015.

On the morning of August 19, 2015, Ann and Bob rode together in Bob's automobile to attend the closing of the sale at Storefront. Ann had a cashier's check for an amount sufficient to cover the \$25,000 purchase price, plus Storefront's title search fee and charges for title insurance, which she was supposed to give to Storefront at the closing. Bob was supposed to sign, at the closing, the warranty deed that would convey the lot to Ann.

While Ann and Bob were on the way to Storefront, however, a pickup truck crashed into the automobile and injured Bob severely. Ann and Bob never reached Storefront. The closing did not occur. Ann did not give the cashier's check to Storefront, and Bob did not sign the warranty deed.

Bob was in the hospital for three months. He told Ann that he did not want to reschedule the closing during his hospital stay. While Bob was in the hospital, he reviewed the list of recent sales of comparable

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vacant lots that Ann had given him. Upon checking the information about those sales available in the online databases maintained by Kane County's Recorder and by Kane County's Assessor, Bob determined (1) that Ann had reduced the sale prices of all the comparable vacant lots contained in her list, and (2) that the fair market value of his lot was at least \$50,000.

On November 19, 2015, the day that he left the hospital, Bob personally delivered to Ann a written notice that he rescinded the contract as being unfair to him. Ann objected to the purported rescission and asserted that the contract remained in effect.

Ann took the cashier's check back to the bank that had issued it, opened a savings account at the bank, and deposited \$25,000 into that savings account, so that - when she succeeded in enforcing the contract against Bob - she would have the money to pay for the lot. Ann filed an action against Bob in the Circuit Court of Kane County on December 2, 2015, to enforce the contract for the sale of the lot for \$25,000.

(a) What equitable remedy should Ann seek in her action against Bob in her effort to enforce the contract for the sale of the lot? Explain why it would be appropriate for Ann to pursue that equitable remedy.

(b) If Ann seeks the equitable remedy that you identified in your answer to (a) above, what defense or defenses, if any, does Bob have against the granting of that equitable remedy? Explain your answer.

(c) Evaluate Ann's chance of obtaining the equitable remedy that you identified in your answer to (a) above, in view of the defense or defenses (if any) available to Bob that you identified in your answer to (b) above.

2. Gutterz is an Illinois corporation that cleans gutters and downspouts on houses in the Chicago suburbs. The company's two-person crews use company-owned equipment: pickup trucks, ladders, scaffoldings, backpack-mounted blowers, power water hoses, safety harnesses, and a device called "the Snoop." The Snoop is a flexible, 48-inch-long wand that contains a fiber-optic video camera and monitor, which is meant to be used only for inspecting downspouts for debris and

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damage - something every Gutterz crew member is required to do at the end of each job. Gutterz employees must sign a form acknowledging they are financially responsible for any repairs of the Snoop that become necessary as a result of its misuse.

Gutterz crew members follow a careful regimen for the setup of the ladders, scaffolding, and safety harnesses they use each day. They also follow a strict approach to cleaning and inspecting the gutters and downspouts. Gutterz expects its crews to adhere to these standards in order to service as many houses as possible. Gutterz reserves the right to terminate the services of any crew member who fails to follow Gutterz's procedures, a fact stressed to each new crew member during his or her two-day training period. Each Gutterz crew member earns \$25 per hour, paid every two weeks by check from the Gutterz payroll account, before taxes are withheld.

At 7:30 a.m. on October 15, Gutterz crew members, Joe and Ralph, began a job at a three-story house on a five-acre parcel in Libertyville, Illinois. The crew followed all Gutterz-mandated procedures and began removing leaves and other debris from the home's gutters at approximately 9:30 a.m.

While Ralph was on the ground hooking up the power washer to the home's water spigot, Joe found himself alone on a scaffolding outside a window that he knew looked into the home's master bathroom. Noticing that the window was open but the privacy blinds were closed, and hearing a shower running, Joe decided to use the Snoop to peek inside. For three minutes he secretly recorded Homeowner taking a shower. Ralph was unaware of this. Ralph's voice could be heard, although faintly, near the end of the recording, shouting, "Water's all set to go, Joe!"

Ralph and Joe completed their cleaning and inspection of the gutters and downspouts around 2:00 p.m. that day. Soon after, while disassembling the scaffolding system, Ralph was accidentally injured when a brittle, rusty piece of the metal framework broke and fell onto his shoulder. He suffered a broken collarbone and was unable to work for six weeks.

Due to Joe's unfamiliarity with the video capture software for the Snoop, he failed to properly delete the video before returning the Snoop to Gutterz for use at another job site. Gutterz's owner discovered the

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video of Homeowner and used company records to determine when and where it had been taken. He contacted the local police department, which notified Homeowner and referred the matter to the local state's attorney's office for possible prosecution.

Ralph sued Gutterz in a negligence action at common law in Illinois circuit court, alleging that Gutterz failed to properly maintain the scaffolding system. During the lawsuit, Gutterz's attorney asserted the Illinois Workers' Compensation Act as an affirmative defense to Ralph's cause of action.

Separately, Homeowner sued Gutterz and Joe for invasion of privacy in Illinois circuit court, seeking damages in excess of \$50,000. Gutterz and Joe were represented by different lawyers.

(a) Are the members of Gutterz's two-person crews agents/employees of the company or independent contractors? Explain your answer.

(b) What must the court handling Ralph's lawsuit determine, under Illinois injury law principles, to permit Gutterz to maintain its affirmative defense? Will that defense be successful? Explain your answer.

(c) Limiting your analysis to the theory of respondeat superior, will Homeowner be able to recover from Gutterz? Explain your answer.

3. Flim Flammer, unemployed and with no savings or assets, traveled door-to-door in Pontiac, Illinois, looking for older homeowners to victimize with a reverse mortgage scheme he perfected. Legitimate reverse mortgages are complex transactions that allow a homeowner with significant equity in his or her home to receive a lump sum loan equivalent to that equity, which the homeowner then pays back over time, using the home's value as collateral. Flammer capitalized on that complexity by tricking senior citizens into transferring title of their homes to him, in exchange for \$1,000 in cash and the false promise of a large lump sum that would arrive by certified mail 15 days later. Flammer made money by selling the fraudulently acquired titles to real estate developers who did not realize how Flammer had obtained title.

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Some lucky breaks led investigators from the Pontiac Police Department ("PPD") to Flammer as the possible fraudster responsible for causing a string of local residents to lose their homes. PPD officers approached Flammer at a local restaurant, saying they needed to speak with him. They transported Flammer to PPD headquarters, where he was handcuffed, placed in an interrogation room, and Mirandized. Flammer refused to speak with the investigators, invoking his right to the assistance of counsel. Stymied by his silence, the officers released Flammer.

Days later, a local television station aired the story of Ron Mora, an 85-year-old former Army medic who was forced out of his home of 60 years by a man who had tricked him into a fraudulent reverse mortgage. Mora described the man who defrauded him as shy and soft-spoken. The TV reporter referred to the unknown fraudster as "The Shy Bandit."

Mora's heartbreaking story and description of The Shy Bandit struck a chord with Flammer's mother, who also lived in Pontiac City and had herself served as a Navy medic. Flammer's mother had become suspicious of her son, partly because of his frequent trips to Chicago, where he stayed at the posh Skyhigh Hotel, often paying \$750 a night for a room. Flammer's mother contacted the PPD to share her concern that her son was The Shy Bandit.

Thirty days after he was first questioned by police, Flammer was arrested on suspicion of criminal financial fraud. He was again handcuffed, placed in an interrogation room, and read his Miranda rights. This time his mother was also present, at the request of PPD investigators. Although she said nothing, Flammer was embarrassed by his mother's obvious suspicion that he had defrauded a vulnerable senior veteran. Flammer validly waived his Miranda rights and gave a full, voluntary confession about his scheme with Mora. He denied, however, any involvement in the reverse mortgages that other local homeowners had signed.

Immediately following his confession, Flammer was placed in a lineup with five other men who shared his general physical appearance. Mora correctly identified him during the non-suggestive lineup. Flammer never asked for a lawyer or otherwise invoked his right to counsel that day.

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The next day, Flammer was formally charged with one count of criminal financial fraud. At his initial court appearance on those charges, a judge appointed a defense attorney to represent Flammer.

Pointing to the fact that the lineup took place before Flammer had the benefit of a lawyer, Flammer's lawyer filed a timely motion to suppress any evidence concerning Mora's identification of Flammer during the lineup. The judge denied the motion.

Flammer's lawyer also filed a timely motion to suppress Flammer's confession, arguing that it was improperly secured after Flammer invoked his right to counsel. The judge denied that motion as well.

The case proceeded to trial six months later. Flammer's lawyer informed the jury in opening statements that the evidence would show that Flammer was not The Shy Bandit because Mora's memory of his encounter was faulty and the officers who prepared reports about Flammer's alleged confession misstated Flammer's actual statements during their interview with him.

During her case-in-chief, the prosecutor sought to introduce: (a) records from the Skyhigh Hotel demonstrating that Flammer had charged \$9,000 to his credit card on rooms there after The Shy Bandit acquired title to Mora's home, and (b) records showing that Flammer's credit card was fully paid off before he was first questioned by PPD investigators.

Flammer's lawyer objected based on relevance, arguing that Flammer's financial decisions, whether wise or foolish, had no bearing on the issues at trial.

(a) Did the court err by denying Flammer's motion to bar the introduction of any evidence regarding the identification made during the lineup? Explain your answer.

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

(c) How should the court rule on the relevancy objection? Explain your answer.