

FEBRUARY 2018

**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.

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)

Question 1

Sam Seller has owned and managed Sam's Bicycle Sales and Repair Shop (the "Shop"), a sole proprietorship in Peoria, Illinois, for 20 years. A successful business, the Shop has provided Sam with a good living. Bonnie Buyer is a regular customer of Sam's and a very successful investment manager. She is a bicycling enthusiast who has always wanted to own a bicycle shop.

In June 2017, Bonnie asked Sam if he would be interested in selling the Shop and its contents. Sam replied that he had been thinking about retiring and would seriously consider it. In July 2017, Bonnie asked Sam if he had made a decision concerning the sale of the Shop. Sam said he was still thinking about it. "Well," said Bonnie, "here is something to help you focus your thoughts." She then handed Sam a letter agreement (the "Letter Agreement") that included the following provisions:

1. Bonnie offers to buy the Shop for \$1 Million "subject to the execution of a purchase and sale agreement satisfactory to buyer (Bonnie)."
2. Until August 15, 2017 (the "Lockup Period"), Sam agrees that he will "not offer to sell, or discuss or consummate the sale of, the Shop to any person other than buyer (Bonnie)" (the "Exclusivity Provision").
3. During the Lockup Period, Bonnie will conduct "due diligence" on the Shop to make sure it is a sound investment.
4. Bonnie agrees to pay her own due diligence expenses (for example, legal fees) unless Sam sells the Shop to someone else during the Lockup Period, in which case Sam will have to pay Bonnie \$25,000 "as liquidated damages for the costs and expenses incurred in conducting due diligence."

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Both Sam and Bonnie signed the Letter Agreement on July 15, 2017. Bonnie hired lawyers and other advisers to begin conducting due diligence.

During the Lockup Period, Iggy Interloper, another customer of Sam's, offered to buy the Shop for \$1.5 Million. Sam told Iggy that he could not agree to sell the Shop because he was subject to the Exclusivity Provision during the Lockup Period. Iggy told Sam to call him if the deal with Bonnie fell through. Sam did not tell Bonnie about Iggy's offer.

By early August, unaware of Iggy's interest, Bonnie realized that her own deteriorating financial condition would prevent her from buying the Shop. On August 7, 2017, she called Sam. "I would like to do this," she told Sam. "But with the market the way it is, I am not sure that I can." On the same day, she told the lawyers and other professionals conducting due diligence to halt their work, leaving her with a bill for about \$20,000. She did not, however, explicitly tell Sam that she was terminating the Letter Agreement. Neither she nor Sam executed a written release.

Believing that Bonnie was no longer interested in buying the Shop, Sam called Iggy on August 8. "I think Bonnie isn't going to go forward," Sam said. "I think she doesn't have the money."

Sam and Iggy consummated a sale of the Shop on August 21 for \$1.5 Million.

When Bonnie learned that Sam sold the Shop to Iggy, she was furious. She was sure Sam was negotiating with Iggy during the Lockup Period in violation of the Letter Agreement. "That store should have been mine. If anybody was going to sell it for \$1.5 Million, it should have been me," she said.

- a) Did the Letter Agreement create an enforceable contract between Bonnie and Sam? Explain.
- b) What effect did Bonnie's August 7 phone call to Sam have on the enforceability of the Letter Agreement? Explain.

(Question continued on next page)

- c) What effect did Sam's contacts with Iggy have on the Letter Agreement? Explain.
- d) Assuming the Letter Agreement created an enforceable contract, what damages, if any, could Bonnie recover due to Sam's sale of the Shop to Iggy? Explain.

Question 2

On February 24, 1998, Michael Woods, then 25 years of age, married Julie in a simple ceremony at Ferne Clyffe State Park in Johnson County, Illinois. They resided in Carbondale, Illinois. On April 23, 2000, they had a baby girl they named Lori. The marriage was not successful; Julie and Michael amicably divorced in 2008, with the final judgment entered in the Circuit Court of Jackson County, Illinois. Michael Woods continued to be an active parent and involved in Lori's life.

In June of 2013, Michael decided he would purchase a will kit from Big Box Store while on a shopping trip in St. Clair County, Illinois. He completed a will form from the kit without consulting an attorney. On the form in the indicated sections, Michael wrote "I leave the savings account at the Mid-Illinois Bank to my friend and former wife Julie Woods." He also wrote "I leave my 1973 Ford Mustang to my friend and fellow auto-lover, Sam Mitchell." Finally, he wrote that he wished to leave the "rest and residue of my estate to my daughter, Lori Woods." Michael signed the will at his home in Pomona, Illinois later in June, 2013, in the presence of his friends Sam Mitchell and Jean Totten, who then signed as witnesses. They were the only witnesses to the June 2013 document.

In 2014, Michael began dating Isabella Johnson. Michael continued to live in his own home separately from Isabella. In 2016, Michael was diagnosed with end stage colon cancer. During his last

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few months, Isabella cared for Michael in her home except when he needed hospitalization. Michael was admitted to the hospital in Carbondale, Illinois, on October 4, 2016. On October 5, 2016, Michael, who was competent at the time, asked a nurse to write down his last will and testament. The nurse agreed to do so, and on the back of a blank chart wrote what Michael said: "All of my estate is to pass to Isabella Johnson." That was all that he dictated to the nurse. There were no other persons in the room. The nurse left the document with Michael and continued her rounds.

Michael died on October 6, 2016. The nurse did not type the document she wrote at Michael's request. Michael did not sign the document, and no one signed it as a witness.

At the time of Michael's death, Julie, Lori, Sam, and Isabella were alive. At the time of his death, Michael still owned a 1973 Ford Mustang and a savings account at the Mid-Illinois Bank in the amount of \$56,920. The Mid-Illinois Bank account had always been in Michael Woods' name only. In addition, at the time of his death Michael was the owner of an account at the Second National Bank as a joint tenant with Isabella. The Second National Bank Account totaled \$2,937. Michael had no other assets other than some personal property such as clothes, a few furniture items, a motorcycle and some jewelry.

Michael had no estate plans other than those discussed above. For each of the questions below, state a conclusion and give reasons for your conclusion.

- a) What is the effect of the 2013 document?
- b) What is the effect of the 2016 document?
- c) Who inherits:
 - 1. the Mid-Illinois account;
 - 2. the Ford Mustang;
 - 3. the Second National Account; and
 - 4. the rest of Michael's estate?

Question 3

Bob had a tumultuous youth and as a result acquired two felony convictions for possession of illegal drugs. After his release from the Department of Corrections, Bob decided city life and the associated bad elements were not for him and he moved into his mother's basement in Galesburg, Illinois.

Trouble found Bob anyway. The evidence at trial, revealed by Bob's cousin and co-defendant Dave, was that Bob found some friends on Facebook once he moved to Galesburg. One of those new friends, Fred, drove a car in which Bob was a passenger on the night in question. Fred stopped to collect Dave. Fred drove the group to a local gas station. Bob mentioned the desire for a handgun, as his mother's basement was easily accessed from the outside and Bob felt unsafe. Dave handed Bob a handgun. Bob said his parole officer told him he could not have a gun, and Fred told him to put it in the trunk. Dave put the gun in the trunk of the car and went into the gas station for a Red Bull and some snacks. Dave returned, and Fred announced that he did not like the fact that there was a gun in his car. The group drove around for some thirty minutes. Fred stopped at a fast food establishment. He got out of the car, while Dave and Bob remained. Dave testified Fred was in the restaurant when the police showed up.

The responding officer testified that she received a report that someone, later identified as Fred, had called the police while in the restaurant, so she responded to the scene. Upon arrival, she questioned the person she identified as Fred, and asked what the problem was. Fred told the officer that they were riding around when Dave gave Bob a gun for protection, but Fred decided after about a half hour that he wanted the gun out of his car. The officer asked who the men were, and Fred told her they were Bob and Dave. The officer recovered a .357 Magnum from the trunk of the car and arrested Dave and Bob. Bob was charged with Unlawful Possession

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of a Weapon by a Felon in Count I, and Unlawful Possession of a Weapon without an FOID card in Count II.

The case went to a jury trial in Knox County, Illinois. At the conclusion of the State's case-in-chief, it sought to admit into evidence a properly certified copy of official court documents showing Bob's felony convictions for possession of a controlled substance. The State also introduced a letter from the Illinois State Police which stated:

"Based on the information provided by the Knox County State's Attorney's Office, I, Mary Smith, an employee of the FOID records department of the Illinois State Police, state that I conducted a search of our records, and Bob has never had an FOID card."

In response to objections to the certified copy of the convictions and the letter from the State Police, the prosecutor said, "these are admissible because they are government documents."

Fred did not testify at trial or in any proceeding. The State requested three continuances to subpoena Fred prior to trial, but were unsuccessful in locating him.

At all appropriate points, Bob's attorney objected on confrontation clause violation and hearsay grounds to the following:

- a) The officer's testimony repeating Fred's statements to her.
- b) The certified copy of the court records of Bob's prior felony convictions.
- c) The document from the State Police asserting the lack of an FOID card.

How should the Court have ruled on each of the objections pursuant to federal and Illinois state law? Explain your answers.