

FEBRUARY 2019

**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

A grand jury in Macon County, Illinois, indicted Dave for the offense of robbery on August 7, 2017.

At trial, Connie testified that she drove to Hub Foods in Decatur, Illinois, about 1:00 a.m. on August 2, 2017. Connie placed her purse in her shopping cart. Connie finished her grocery shopping and left the store. Her purse was still in the front of her shopping cart. As soon as Connie was outside, a man grabbed the wallet out of her purse and began running east out of the parking lot. Connie saw a second man join the first man, and they ran east out of the parking lot together. The second man wore white tennis shoes, blue jeans, and a gray sweat shirt.

Bob testified next. Bob explained that he had pleaded guilty to the robbery of Connie and had received a short prison sentence in exchange for testifying against Dave. Bob testified that Dave told him snatching a purse at Hub Foods was an easy way to get money. Dave promised that he would stand as a lookout and protect Bob if Bob tried to snatch a purse.

Bob said that he and Dave walked to the Hub Foods about 12:30 a.m. on August 2, 2017. While Dave paced the parking lot and kept watch, Bob grabbed the wallet out of Connie's purse and took the money. Bob and Dave ran east out of the parking lot onto Prairie Street. The two men split up, Bob running north and Dave running south. Bob held on to the cash and planned to meet up with Dave later.

Police Officer Jeff testified that he was listening to a police dispatch relaying Connie's description of two men who had just robbed her at Hub Foods, when he saw a man he later identified as Dave jogging southbound down Prairie Street, four blocks south of Hub Foods. Dave was shirtless, but he was wearing white tennis shoes and blue jeans, just like the second man in Connie's description. Officer Jeff called out to Dave, "Stop! Police! I want to talk to you!" However, Dave began running faster, away from Officer Jeff. The officer ran after Dave and

(Question continued on next page)

soon caught him. Officer Jeff arrested Dave, suspecting Dave was one of the robbers.

Officer Jeff testified that Dave said, "I know my rights; I refuse to answer any questions," immediately upon his arrest. Nonetheless, Officer Jeff asked Dave if he had been near Hub Foods around 1:00 a.m. Dave retorted: "I know better than to say I've been near Hub Foods."

Dave testified that he played basketball until well after midnight and into the morning of August 2, 2017, in a park halfway down Prairie Street between Hub Foods and where Officer Jeff confronted him. Dave said he ran from Officer Jeff because he was afraid of the police.

On cross-examination, the prosecutor asked Dave: "Did you tell Officer Jeff that you knew better than to say you had been near Hub Foods?" Dave testified: "I may have said that, because he was trying to get me to say I was there."

During closing argument to the jury, the prosecutor stated: "Now, what innocent person says, 'I am not going to tell a police officer what I know about this case because it may incriminate me'?"

The trial court accurately instructed the jury concerning legal accountability for the criminal acts of another. The jury found Dave guilty of robbery. The trial court denied defense counsel's motion for new trial, and sentenced Dave to seven years in prison. Dave appealed.

Before the Illinois Appellate Court, the defense lawyers argued that the trial court violated Dave's constitutional privilege against self-incrimination by allowing Officer Jeff's testimony that Dave told him "I know better than to say I've been near Hub Foods", the prosecutor's cross-examination of Dave about that statement, and the prosecutor's closing argument regarding that statement. Defense counsel had raised these objections at trial and in the motion for new trial.

The appellate prosecutors argued that neither the challenged testimony nor the closing argument violated Dave's privilege against

(Question continued on next page)

self-incrimination, but even if error occurred, it was harmless and did not affect the jury's verdict.

1. Did the trial court violate Dave's constitutional privilege against self-incrimination when it allowed the jury to consider Officer Jeff's testimony that Dave said, "I know better than to say I've been near Hub Foods," the prosecutor's cross-examination of Dave about that statement, and the prosecutor's closing argument regarding that statement? Explain your conclusion, discussing any relevant Illinois and federal law.
2. Assuming there was a violation of the constitutional privilege against self-incrimination, was it "harmless error" such that Dave's conviction stands and he cannot receive a new trial? Explain your conclusion, discussing any relevant Illinois and federal law.

Question 2

Sara Student stepped into the intersection of Grand and Illinois in Carbondale, Illinois, and into the path of a Prius driven by Paul Professor, the chair of the anthropology department. Student suffered a broken arm and a concussion. Professor's Prius sustained moderate damage. Each sued the other in Jackson County, Illinois, Circuit Court, alleging negligence. All parties submitted to discovery depositions. The parties stipulated to damages, and trial proceeded on the issue of liability only.

At trial, in his case-in-chief, Professor testified that he was driving to his office with his passenger, Gloria Gradstudent, well under the speed limit of 45 mph. It was a sunny day and the pavement was dry. He said he saw he had the green light and continued through the intersection. When he was almost to the crosswalk, he saw Student step directly into his path, looking down at her phone and wearing earbuds.

(Question continued on next page)

Two days before trial, Professor's attorney tried to serve Gradstudent with a subpoena. The attorney's investigator went to her last known address, only to discover she had moved. The investigator went to the post office for a forwarding address, and was given a post office box in Chicago. The investigator performed a skip trace and called the number he was given for Gradstudent, to no avail. Unable to find Gradstudent, at trial Professor's attorney moved to admit Gradstudent's discovery deposition testimony that about a week after the accident, Gradstudent casually mentioned to Professor the fact she saw Student standing at the curb looking down at her phone at the time of the accident, and that "Student is never looking anywhere else but at her phone."

In her case-in-chief, Student testified that while she spent a lot of time walking and looking down at her phone, she always dropped her phone down by her side when approaching intersections. She admitted that she always had earbuds in her ears, but said that when walking she never used audio on her phone so that she could hear her surroundings. Student said that when she approached the intersection of Grand and Illinois she put her arm down by her side, looked both ways, and stepped into the intersection when she saw she had the walk signal. She said Professor just "barreled" into her.

Will Witness testified he was walking near the intersection of Grand and Illinois and saw Student, whom he knew from the art class they were taking. Witness, a music major, waved at Student, but Student was looking down at her phone and did not respond. He noticed a Prius enter the intersection. He testified that he lives near that intersection and has observed traffic there many times. In his view, the Prius appeared to be "going at least 50 mph," based on when he first saw it and how quickly it entered the intersection. He did not see Student move her arm down because he began talking to someone else.

Pamela Passerby testified she was walking along Illinois near the intersection with Grand when she saw a woman she identified as Student approach the intersection. Passerby did not remember if Student was

(Question continued on next page)

wearing earbuds or had a phone. She passed Student and a few seconds later heard the accident. On cross-examination, Professor's attorney showed Passerby her discovery deposition testimony that she had told the officer Student had earbuds in and was looking at a cell phone. She testified she could not recall that, so Professor's attorney moved for admission of the statement from Passerby's discovery deposition.

Carla Coed, Student's roommate, testified that Student was a careful and cautious person.

Assume that all appropriate objections and motions were timely made. Should the court have admitted:

1. Gloria Gradstudent's deposition testimony? Explain your answer.
2. Will Witness' testimony as to the speed of the Prius? Explain your answer.
3. Pamela Passerby's statement from her deposition that Student was wearing earbuds and was looking at her phone? Explain your answer.
4. Student's testimony as to the fact she always turned off her audio when she walked and always put her phone down when crossing streets? Explain your answer.
5. Carla Coed's testimony of Student's being careful and cautious? Explain your answer.

Question 3

Ted and Alice met at Illinois State University, and it was love at first sight. They dated exclusively through college. They married in a large ceremony in Alton, Illinois, one month after Ted graduated. Two weeks prior to their marriage, Ted's father sent Ted a note that read: "Son, I am so proud of what you have

(Question continued on next page)

accomplished. In honor of your upcoming marriage, enclosed find a check for \$25,000 which is yours to use as you see fit but I hope you will use it for a down payment on your marital home. Love, Father." A check for \$25,000, made out to Ted only, was enclosed. Ted had opened a savings account prior to the marriage, and he placed the check for \$25,000 in that savings account held in his name only.

At the time Ted and Alice married, Ted had completed a bachelor's degree and was employed. He had no debts from college. Alice had completed two years of college. They agreed that Alice should finish college and she applied for student loans for her final two years of college. In the years after she graduated, Ted and Alice paid off the student loans, with interest, in the amount of \$45,000 from their jointly held household accounts.

They lived in Bloomington, Illinois, for their entire fifteen-year marriage. Ted and Alice are now divorcing. The divorce is due to Alice's adultery with a co-worker.

During a court hearing on property distribution, the evidence showed that:

The marriage was irretrievably broken in 2017 upon Ted's learning of Alice's marital misconduct. As for assets, Ted and Alice jointly own a home valued at \$350,000; household savings and checking accounts in the amount of \$65,000; and an investment account valued at \$300,000. Each owns, in his or her own name, a retirement account, checking and savings accounts, and a vehicle, all procured during the marriage. Ted also owns in his name only the \$25,000 savings account he started prior to the marriage, plus interest which accrued over time on the deposit. In 2016, Alice spent \$3000 from the checking account held in her name for gifts for the coworker with whom she had the affair.

After the close of evidence, the court took under advisement

(Question continued on next page)

the following disputed matters:

1. Whether the \$25,000, plus interest, received from Ted's father prior to the marriage was a gift to Ted and is therefore his sole property.
2. Whether Ted should be reimbursed from Alice's assets the \$45,000 used to pay the student loans incurred to further Alice's education. Ted argues that the loans used for Alice's education were a joint investment that would increase marital assets in the future, but since the marriage is ending he will not receive any benefit from the investment.
3. Whether Alice should reimburse the marital estate for the \$3000 used for gifts for her coworker with whom she had the affair.
4. Whether Ted should also receive all of the \$65,000 in the jointly held household accounts. Ted argues that he should be compensated in some way for Alice's marital misconduct.

How should the Court rule on each of the four issues taken under advisement? Explain your answers.