

JULY 2012

**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 – Be sure to type your answers 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 – 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. Nick King lives in Valparaiso, Indiana and owns 10 restaurants there. Although each restaurant has a different name, all are owned by Nick's company, Restaurant King, LLC, which is organized and has its principal place of business in Valparaiso. To generate business at his restaurants, Nick created a separate corporation, Valparaiso Sightseeing, Inc. ("VSI"), which operates a small booth in a Valparaiso shopping mall and maintains a website on the internet.

Nick hired Jess, a 25 year-old Indiana resident, as VSI's only employee. VSI's booth and website are primarily devoted to describing the cultural and civic attractions in Valparaiso but also advertise the sale of coupon booklets containing, among other things, 50% discounts at every Restaurant King eatery. While the booklets are advertised online, they can only be purchased at the booth because the website cannot receive orders or process payments. In fact, to limit the work required to maintain the website, viewers cannot even use it to contact VSI by email. Instead, the website directs its viewers to VSI's booth at the mall, where Jess sells the booklets for \$200 each. VSI bought banner ads for its website on a variety of webpages for Indiana newspapers, as well as on www.ChicagoTribune.com. Nothing in the coupon booklet, on the website, or at the booth indicates any affiliation between Restaurant King and VSI or between Nick himself and VSI.

Schmidt lives in Chicago and commutes 55 miles to his job at Valparaiso University. He learned about the VSI booklets from the Chicago Tribune website. Noticing that his favorite restaurant, Sushi King, was featured among the coupons, he purchased a booklet at the VSI booth several days later. At the time of sale, Jess validated each of the coupons in Schmidt's booklet by signing her name on all of them in the space next to "Seller."

Schmidt later took 15 of his colleagues to dinner at Sushi King. After dinner, he presented the correct coupon for 50% off the cost of the \$1,200 meal. Nervous about processing a \$600 discount, Sushi King manager, Winston, phoned Nick. Winston advised Nick that nothing on the coupon seemed to prevent Schmidt from using it. Nick responded that, when he created the coupon booklets, he never considered the possibility that a coupon would be used for such a large discount.

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Winston said he worried that the restaurant's reputation would suffer if Schmidt and his 15 guests were denied the discount. Nick ended the conversation by saying, "Tell them whatever you want, but if you let them use that coupon, you'll be looking for a job tomorrow." Winston then falsely informed Schmidt that, "Our restaurant's owner Nick King just told me you cannot use this coupon because VSI printed it without Mr. King's permission."

Convinced that VSI had defrauded him, Schmidt prepared breach of contract and Illinois Consumer Fraud Act claims against VSI and Jess, seeking to enforce the Sushi King coupon-contract plus \$10,000 in damages. He filed the complaint in Cook County Circuit Court in Chicago. Service of process on VSI and Jess was proper.

Different lawyers represented VSI and Jess. As its first responsive pleading, VSI's lawyer moved to dismiss for lack of personal jurisdiction. The court granted the motion. The case proceeded against Jess in her personal capacity because her lawyer did not object to jurisdiction.

At trial, Schmidt compelled the testimony of Winston through the use of a subpoena. While testifying on direct examination for Schmidt, Winston repeated what he had told Schmidt about Nick's reason for rejecting the use of the coupon. Jess's attorney raised a hearsay objection to that testimony, which the court overruled.

(a) Did the court err by granting VSI's motion to dismiss for lack of personal jurisdiction? Explain your answer.

(b) Did the court err by overruling the objection to Winston's testimony? Explain your answer.

(c) Assuming Schmidt can prove that his purchase of the Sushi King coupon was a valid contract with VSI, what is the likely result, under agency principles, of his breach of contract action against Jess? Explain your answer.

2. Ginger correctly anticipated a demand for luxury residences in Chicago's trendy South Loop neighborhood. In early 2003, she purchased an abandoned warehouse there with plans to convert the space into nine luxury residences. She called the project the Cloud City Club in honor of the sky-high prices she planned to charge. Ginger developed strict financial formulas that allowed her to determine which prospective buyers had sufficient income to qualify for membership in the exclusive condominium community she was creating.

Upon seeing a Cloud City Club brochure, Rex, a website designer with a modest income, knew he had to own the only penthouse unit in the building. He was able to secure a bank's guarantee to loan him the funds to make the purchase; however, his income did not meet the financial threshold that Ginger had publicly established for buyers. Rex got his colleague Lucky, who worked in their company's accounting department, to agree to create fake payroll statements that overstated Rex's income. On September 1, 2003, Rex met Lucky, who brought along his new girlfriend, Peaches, at a coffee shop. There, Rex gave Lucky \$100 in cash and said, "Triple my income, at least on paper, so I can get into this club." Peaches, disgusted by Lucky's willingness to help Rex in this deception, ended her relationship with Lucky. As a result, Peaches never saw Rex again.

Rex submitted the fake payroll statements to Ginger with an offer to purchase the penthouse unit. Ginger reviewed the materials and accepted the offer. On September 15, 2003, Rex signed a Cloud City Club Purchase Agreement to buy the unit for \$400,000. Rex put down the required \$10,000 deposit. The real estate closing was set for September 15, 2004.

Cloud City Club's preconstruction sales were enormously successful, and all of the units were under contract by May 2004, with the first closings scheduled for September 15, 2004. Then, in July 2004, a Chicago celebrity who had recently made a big splash in Hollywood approached Ginger and offered to buy the penthouse unit for \$550,000. Faced with the opportunity to increase her profits by \$150,000 and bring further attention to the Cloud City Club by selling to a celebrity, Ginger sent Rex a letter on July 15, 2004, informing him that his Purchase

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Agreement had been cancelled and returning the \$10,000 deposit.

Following weeks of unsuccessful pleas for Ginger to reconsider, Rex finally hired a lawyer and filed a lawsuit on September 1, 2004, in the Chancery Division of Cook County Circuit Court. Ginger first learned that Rex's payroll statements had been faked during the discovery phase of the lawsuit.

Later, at the appropriate stage of the case and pursuant to Illinois Supreme Court Rule 216, Rex's lawyer served Ginger with the following requests to admit:

1. Admit that on September 15, 2003, you signed a document titled "Cloud City Club Purchase Agreement," which the parties have agreed to refer to as the "Purchase Contract."

2. Admit that on July 15, 2004, you sent Plaintiff a letter, which the parties have agreed to refer to as "The July 15, 2004 Letter."

3. Admit that The July 15, 2004 Letter constituted a material breach of the Purchase Contract.

Ginger inexplicably failed to respond to the requests to admit within the 28-day period specified by Rule 216.

(a) What equitable remedy is most appropriate for Rex to pursue to compel Ginger to comply with the contract? Explain your answer and assess Rex's chances of prevailing.

(b) Should the judge permit the matters inquired about in the requests to admit to be admitted against Ginger? Explain your answer.

(c) If the case goes to trial, could Ginger's lawyer elicit testimony from Peaches about what Rex said to Lucky at the coffee shop? Explain your answer.

3. Dr. Banner specialized in performing and analyzing medical images of patients at Ant & Bee Hospital ("Hospital") in Rockford, the county seat of Winnebago County, Illinois. During the fall of 2007,

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Dr. Banner, who lived in neighboring Boone County, began scanning patients using a brand-new imaging technology called "Vista," which had just been approved by the Food and Drug Administration for use on humans. Each scan lasted precisely 90 seconds.

On Monday, September 10, 2007, Dr. Banner performed a Vista scan on Angela, a 25 year-old Winnebago County resident who had been admitted to the Hospital after a hunting accident. The Vista scan correctly revealed that Angela had suffered only soft-tissue injuries in the accident, and she was released from the Hospital that day. Unbeknownst to Dr. Banner or Angela, the Vista machine had not been properly calibrated that morning by a Hospital employee. As a result, the scan exposed Angela to radiation levels 75 times higher than intended. The increased radiation was not high enough to cause noticeable damage to Angela's body, but it left her prone to thyroid problems later in life.

Dr. Banner continued to use the miscalibrated Vista machine through Friday, September 14, 2007. During that time, 10 other patients received radiation overdoses during their Vista scans. Like Angela, none of these patients showed signs of their increased radiation doses, but all were left with the same increased risk of thyroid problems in the coming decades. Seven of these patients lived in Winnebago County; the other three were from Boone County.

The Hospital continued to use the Vista machine without calibration errors for the next several years – until new technology made the machine obsolete in early 2011. In March of 2011, when the Hospital was removing the Vista machine to make space for the newer medical imaging system, an astute Hospital technician decided to download and analyze the machine's calibration records. When the technician discovered that the machine had not been properly calibrated for one week in September of 2007, he quickly notified Dr. Banner, who instantly realized that several patients had been exposed to dangerous levels of radiation during that week. In fact, the machine's records showed that Angela and the 10 other patients had received identical overdoses of radiation during their 90-second Vista scans.

Dr. Banner discussed the calibration error with the Hospital's

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senior administrators on March 10, 2011, but the administrators elected not to disclose the error until October 10, 2011. The Hospital's eventual disclosure received heavy media attention among Rockford and Chicago-area news outlets. Only then did Angela and the other patients learn of the error and the dangers they would face later in life.

On November 17, 2011, Angela and the 10 other patients filed a negligence lawsuit in the Circuit Court of Winnebago County against the Hospital and Dr. Banner. The complaint sought monetary damages in excess of \$50,000 for the defendants' failure to exercise due care in calibrating and performing the Vista scans. In anticipation of a motion to dismiss the complaint as untimely filed, the complaint alleged fraudulent concealment by the Hospital and Dr. Banner.

The plaintiffs' claims are governed by the two-year statute of limitations and four-year statute of repose set forth in 735 ILCS 5/13-212 ("Physician or hospital"). That statute expressly incorporated the discovery rule, but only with respect to the two-year limitations period.

The defendants' first responsive pleading was a section 2-619 motion to dismiss the case as untimely filed. Relying on the plaintiffs' fraudulent concealment allegation, the court denied the defendants' motion to dismiss. The defendants then filed a motion alleging misjoinder of plaintiffs under 735 ILCS 5/2-404, which provides in part:

All persons may join in one action as plaintiffs, in whom any right to relief in respect of or arising out of the same transaction or series of transactions is alleged to exist, whether jointly, severally or in the alternative, whenever if those persons had brought separate actions any common question of law or fact would arise. If upon the application of any party it shall appear that joinder may embarrass or delay the trial of the action, the court may order separate trials or enter any other order that may be expedient. Judgment may be entered for any one or more of the plaintiffs who may be found to be entitled to relief, for the relief to which he or she or they may be entitled.

The court denied this motion as well.

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(a) Were the plaintiffs allowed to file their complaint in Winnebago County? Explain your answer.

(b) Did the court err by denying the defendants' motion to dismiss? Explain your answer.

(c) Did the court err by denying the defendants' motion alleging misjoinder of plaintiffs? Explain your answer.