

JULY 2013

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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. Residents in Okschop Falls (a mythical small city in Illinois) ("City") had just about had it with "Occupy." The protesters had a surprising presence in the small city and had camped in the City Square for nearly three months. More recently, the protests had grown violent, and the City was determined to dismantle the encampment (dubbed "Tent City"), particularly now that the summer tourist season was approaching. To do that, the City passed an ordinance that prohibited overnight camping anywhere within the city limits. Once the ordinance was in place, the mayor arranged a news conference, complete with bull horns, in front of Tent City where the mayor declared Tent City illegal and told the protesters to take their tents home or the City would confiscate them and arrest anyone found in a tent.

After the new conference, about a third of the protesters packed up and left, but the hearty remainder believed the ordinance was an unconstitutional pander to the "one percent" and decided to defy the mayor. At 11 p.m. that night, the police "swept" the area, arresting the remaining 30 protesters and removing their tents and belongings from Tent City. The next day, the 30 were brought before a local judge who, instead of fining them pursuant to the ordinance, decided he would advance the ordinance's spirit by issuing an injunction to prevent "Occupy" protests from occurring in the first place. From the bench he read the injunction he was issuing at that very moment:

All persons are hereby ENJOINED from engaging in "Occupy" protests concerning income inequality within the city limits of Okschop Falls until further ORDER from this court.

The bailiff gave each of the 30 protesters a copy of the injunction.

Some of the 30 protested that the injunction was unconstitutional as a violation of their free speech and association rights, but the judge would hear none of it. As they left, he told them, "Don't defy me!"

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The injunction was clearly unconstitutional. May and John, two of the thirty, thought it was and decided that they would protest the next day. April and Ben, a couple of May's friends, were in from out of town and were unaware of the injunction. May wanted them to join her, and John didn't want to scare them off, so neither told them about the court order.

All four joined a few others the next day with "Occupy" signs. They were promptly arrested, to April and Ben's surprise, and taken before the judge that had issued the injunction. The judge was furious at the defiance and held the four in contempt of court. As soon as they admitted they had been protesting, he sentenced each of them to six months in the county jail "for defying my order." All four posted bond and took an immediate appeal.

(a) All four have contended on appeal that the court could not jail them on the basis of an injunction that is unconstitutional as a violation of their first amendment rights. How should the court rule on this question? Explain your answer.

(b) What grounds, other than the unconstitutionality of the injunction, do April and Ben have for challenging their contempt citations? Explain your answer.

(c) Of the grounds you have identified in (b), which would be best for April and Ben? Explain your answer.

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2. Lot 1 straddled a small hill. Lot 2 was behind Lot 1 and further down the slope of the small hill. The small hill was a natural feature of the area and had not been made artificially. Lot 1 faced First Street. The rear line of Lot 1 was contiguous with the rear line

of Lot 2. Lot 2 faced Second Street.

The front half of Lot 1 sloped down to First Street. The surface water, from the rain that fell on the front half of Lot 1, naturally flowed toward First Street.

The rear half of Lot 1 sloped down to Lot 2. Lot 2 itself sloped down to Second Street. The surface water, from the rain that fell on the rear half of Lot 1, naturally flowed down on to Lot 2.

Lot 1 and Lot 2 were both vacant initially.

Bob purchased Lot 2 and built a house facing Second Street. While Lot 1 was still vacant, the drainage of surface water from the rear half of Lot 1 did not cause a problem on Lot 2.

Al purchased Lot 1 and built a house, of ordinary size and construction, facing First Street. The building of Al's house increased slightly the amount of surface water that drained from the rear half of Lot 1 down on to Lot 2. Bob noticed that after an ordinary rainstorm the grass in his backyard remained soggy for about a day longer than previously.

Al thought that the surface water from his front yard that collected on First Street during a rainstorm was unsightly. To fix it, he installed drain tiles on the front half of Lot 1 that collected surface water there and discharged it on the rear half of Lot 1. Al thereby caused the surface water from the front half of Lot 1 also to drain down on to Lot 2. Now, during a rainstorm, the amount of surface water that flowed from Lot 1 down on to Lot 2 was doubled. Bob asked Al to remove the drain tiles he installed so that the surface water from the front half of Lot 1 would once again flow toward First Street. Al refused.

The next day, during an ordinary rainstorm, so much surface water drained from Lot 1 down on to Lot 2 that it rose to a substantial height against the two rear basement windows in Bob's house. The

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pressure from the collected water caved in the windows and allowed the water to flood Bob's basement.

Within a week, Bob constructed a three-foot high concrete wall across the back of Lot 2. The wall prevented all surface water on Lot 1 from draining down on to Lot 2. The surface water from Lot 1, during a rainstorm, now collected at the wall and formed a large pool on Lot 1 that remained for days until it dried up.

(a) When Al constructed his house on Lot 1, did he have the right to increase slightly the flow of surface water from the rear half of Lot 1 down on to Lot 2? Explain your answer.

(b) Did Al have the right (in connection with preventing the collecting of surface water from his front yard on First Street) to install drain tiles on the front half of Lot 1 that doubled the amount of surface water that flowed, during a rainstorm, from Lot 1 down on to Lot 2? Explain your answer.

(c) Did Bob have the right to build the three-foot high concrete wall across the back of Lot 2 and thereby to prevent all surface water on Lot 1 from draining down on to Lot 2? Explain your answer.

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3. Ken owns Ken's Horse Farm ("KHF"), a Kentucky-based farm that breeds, trains, and sells high-priced "dressage" horses to clients in Kentucky, Ohio, and Indiana. Likely because KHF only advertises in Kentucky and Ohio publications, KHF had never sold a horse to a client in Illinois. That changed in May 2013 when Illinois resident Ida traveled to Kentucky to arrange the purchase of "Dreamer," a two year-old horse that was bred and trained at KHF. After giving Ken a cashier's check for the \$50,000 purchase price

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of the horse, Ida arranged to have Ken personally deliver Dreamer to Ida's farm in southern Illinois.

On June 4, 2013, Ken, along with two of his staff – veterinarian Vic and horse trainer Tom – loaded Dreamer into a custom-built horse trailer and attached the trailer to Ken's pickup truck. After traveling roughly 200 miles, they arrived at Ida's farm in Alexander County, Illinois. Upon their arrival, Ken and Vic got out of the pickup truck to greet Ida and her family. Tom, who remained in the driver's seat, then handled the delicate task of backing the vehicle and trailer down an inclined driveway into the barn where Dreamer could safely be led out of the trailer. As Ken and Vic stood nearby and watched Tom maneuver down the driveway, Tom suddenly became distracted by a text message on his cellphone. As a result, he inadvertently triggered the electronic hitch release on the trailer, which disconnected the trailer from the pickup truck and allowed the trailer to roll 50 feet – until it slammed through the doorframe of Ida's barn. Both the barn and Dreamer were injured.

Veterinarian Vic spent several hours examining Dreamer, after which he concluded that the horse's injuries did not require significant medical intervention. In essence, Dreamer had been frightened, but not significantly injured, during the incident. The barn, however, sustained structural damage that would cost \$20,000 to repair. In Vic's presence, Ken apologized to Ida and offered to pay for the barn's repair.

Following standard KHF procedure, Vic prepared an Animal Injury Report while still at Ida's farm that he later filed at KHF's office. Most of the three-page report addressed Dreamer's injuries and the medical care that Vic administered on the scene. But, one sentence in the report described Dreamer's injuries as having been caused by "Tom's inattentiveness while driving."

Upon leaving Ida's farm later that day, Ken, Vic and Tom decided to stop for a bite to eat in preparation for the long drive back

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to KHF. While at the restaurant, the men discussed the incident at Ida's farm. Ken scolded Tom, "Today's mess at Ida's wouldn't have happened if you had focused on driving instead of reading texts from your girlfriend." A waitress at the restaurant overheard the discussion and later learned about the incident at Ida's farm. The waitress did not know Ida.

Dreamer has never been the same after the incident. Now a skittish animal, Dreamer refuses to enter any horse trailer, preventing Ida from transporting him to dressage competitions. When Ida demanded that KHF buy back Dreamer for \$50,000, Ken refused and claimed the incident was caused by a mechanical malfunction for which he and KHF were not responsible.

Ida filed a two-count lawsuit against KHF and Ken in Alexander County Circuit Court, alleging negligence and conversion claims. KHF's first responsive pleading was a motion to dismiss for lack of personal jurisdiction, which the court denied.

(a) Did the court err in denying KHF's motion to dismiss for lack of personal jurisdiction? Explain your answer.

(b) Assume that Ida attempts to introduce the Animal Injury Report at trial to demonstrate that the incident was not caused by mechanical failure. If counsel for Ken objects based on hearsay, would Ida's lawyer prevail? Explain your answer.

(c) Could Ida's lawyer elicit trial testimony from the waitress about what Ken said to Tom at the restaurant? Explain your answer.