

JULY 2015

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. Sam, who was of sound mind and memory, resided in Rock Island County, Illinois, with his wife Sue. Sam had no children. Sam's younger brother Bob resided in White County, Illinois, with his wife Bess. Bob was also of sound mind and memory. Bob had two children by a previous marriage: a son Dan and a daughter Deb, both of whom were in their 20s.

Sam invited Dan to visit him in Rock Island one summer. They went to see Sam's lawyer, Fred. Sam executed his Will before Fred and Dan. Fred and Dan signed the Will in Sam's presence as witnesses.

Sam's Will gifted Sam's house in Rock Island to Sue, in lieu of the spouse's award, i.e., at least \$20,000 for the reasonable support of the surviving spouse for nine months after the death of the deceased spouse, which is otherwise provided under Section 15-1 of the Illinois Probate Act of 1975. Sam's Will also gifted his entire residuary estate to the following persons in succession: (1) his brother Bob, should Bob survive him; or (2) should Bob not survive him, his nephew Dan; or (3) should neither Bob nor Dan survive him, his niece Deb.

A month later, Sam, while alone in his house, had a change of heart and attached a note to his Will with a paper clip, stating that he desired to gift his entire residuary estate to Dan instead of Bob. Sam then placed the Will – with the note attached by paper clip – in his safe.

Bob decided that *he* should make a Will as well. Bob asked his lawyer Joe to prepare his Will and properly executed this first Will before two witnesses in Joe's office in White County. Bob's first Will left his entire estate to Bess.

The next day, Bess said to Bob, "I'm sorry I married you." Angered by these words, Bob tore his first Will into pieces and burned them in his fireplace while Dan and Deb watched.

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Bob had Joe prepare a second Will that left his entire estate equally to Dan and Deb. Bob executed the second Will before Joe, and Joe signed the Will in Bob's presence as a witness. Joe said that his secretary, who was out of the office, would sign the Will as a witness when she got back. She signed Bob's second Will the next day while Bob was not present in the office, then mailed the Will to Bob.

Hearing of Bob's anger toward Bess, Sam drove to Bob's home to calm him. Despite severe flood warnings, the two men went for a drive. Flood waters washed the car into a pond, and Sam and Bob drowned. It was impossible to determine whether Sam or Bob had died first.

Sam left one heir: his wife Sue. His estate consisted of the house in Rock Island and a residuary estate worth \$1,000,000. Bob left three heirs: his wife Bess and his children Dan and Deb. The cost of reasonable support for Bess, for nine months after Bob's death, was \$36,000. Bob's estate was worth \$236,000.

Sue filed a petition to probate Sam's Will in Rock Island County Circuit Court under Section 6-2 of the Illinois Probate Act of 1975. She attached to her petition Sam's note about his desire to make Dan, not Bob, the primary beneficiary of his residuary estate. Sue did not renounce Sam's Will.

In White County Circuit Court, Bess filed a petition to probate a photocopy of Bob's first Will, while Dan and Deb filed a petition to probate the original of Bob's second Will, both pursuant to Section 6-2 of the Illinois Probate Act of 1975.

For the purpose of answering (c) only, assume that (1) if White County Circuit Court decides to admit one of the documents to probate, as constituting Bob's valid Will, Bess will not renounce that Will pursuant to Section 2-8 of the Illinois Probate Act of 1975; and, in the alternative, (2) if White County Circuit Court decides

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that neither document constitutes a valid Will and that Bob died intestate – one or more of Bob’s heirs will file a petition for letters of administration pursuant to Section 9-4 of the Illinois Probate Act of 1975.

- (a) Who should receive Sam’s \$1,000,000 residuary estate in the Rock Island County Circuit Court proceeding? Explain your answer.
 - (b) Which document should the White County Circuit Court admit to probate as Bob’s valid Will: (i) that submitted by Bess; (ii) that submitted by Dan and Deb; or (iii) neither document? Explain your answer.
 - (c) State the dollar amount that each of Bess, Dan, and Deb should receive from the correct administration of Bob’s estate. Explain your answers.
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2. Small Time Builders (“STB”), an Illinois limited liability company, builds apartment complexes in the Illinois counties of Will, DuPage, and Cook. STB is based in Will County. One of STB’s recent developments is a 10-unit building in Chicago, Cook County, known as Ellis Place.

Ellis Place’s electrical wiring was manufactured overseas by a company that used a defective coating to insulate the wires. The defect was not discovered until two years after STB sold Ellis Place to Pam, a Chicago resident. Pam owns several buildings and always conducts her real estate transactions in Chicago. Because the wiring defect had an associated risk of fire, Pam was forced to relocate all of the tenants of Ellis Place during the three months it took to replace the wiring. Pam incurred \$200,000 in relocation costs and repairs.

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After STB refused to pay for the relocation costs and repairs, Pam consulted with several lawyers about suing STB. A lawyer in DuPage County convinced Pam to pursue a negligence action, correctly advising that nothing in the contract between Pam and STB formed the basis for a breach-of-contract or fraud claim. Pointing to the efficient court docket and sophistication of the judges in DuPage County Circuit Court, the lawyer convinced Pam to file the lawsuit there. The single-count complaint alleged that STB negligently failed to select, inspect, and test the electrical wiring installed in Ellis Place.

STB filed a timely motion to transfer based on improper venue, seeking to transfer the case to Cook County Circuit Court. The court denied the motion.

STB then moved to dismiss by filing a motion under section 2-615 of the Illinois Rules of Civil Procedure, citing the *Moorman* doctrine. The court also denied that motion.

Later, pursuant to Illinois Supreme Court Rule 216, Pam's lawyer served STB with 15 requests to admit ("RTA"). RTA #6 asked STB to admit that the technical specifications it received from the overseas manufacturer of the wiring, prior to the wiring being shipped, stated that the wires were coated with the identical polyvinyl material found on the wires in Ellis Place. STB still had the relevant two-page document; however, the technical specifications were written in a language other than English. STB officials elected not to pay \$300 for an English translation and instead instructed their lawyer to respond by asserting that STB "had insufficient knowledge to admit or deny," which the lawyer did.

RTA #15 asked STB to admit that its failure to exercise reasonable care when selecting, inspecting, and testing the electrical wiring installed in Ellis Place constituted negligence. STB timely filed a pleading responding to RTA #s 1-14 but inadvertently omitted

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its response to #15.

- (a) Did the court err in denying the motion to transfer based on improper venue? Explain your answer.
 - (b) Did the court err in denying the motion to dismiss? Explain your answer.
 - (c) Was STB's response to RTA #6 proper? Explain your answer.
 - (d) Should the court permit the statement in RTA #15 to be admitted against STB, given STB's failure to respond? Explain your answer.
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3. Jack and Jill enjoyed making videos of their crimes and posting them online. They used digital editing to obscure their identities, hoping to avoid prosecution for the vandalism and petty thefts they committed. Recently, the two drove to a parking lot near O'Hare airport to aim a laser pointer at approaching aircraft. Jack was amused when a Happy Airlines plane seemed to make abrupt movements when he aimed his laser beam at the cockpit windows – all while Jill filmed the episode. The laser temporarily blinded the pilot, causing him to lose control of the airplane. Fortunately, the co-pilot's swift work saved the plane from disaster.

Bo, who lived in the same apartment complex as Jack, frequently saw Jack and Jill aiming a laser pointer into the windows of other residents in the complex. Bo also knew that they carried a camcorder to record their petty criminal activity.

Learning of the Happy Airlines mishap and suspicious of Jack, Bo decided to search a backpack in Jack's car, left unlocked in the apartment complex's parking lot. Bo found a laser pointer in the backpack and pocketed it. He then took a few moments to watch the

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most recent videos on a camcorder also found in the backpack. Bo saw the footage of Jack pointing a laser beam at incoming airplanes and recognized the "Happy Airlines" logo on a plane at which Jack could be seen aiming a laser. Bo recognized Jill's voice as the camera operator. While watching the footage, Bo was startled by an approaching car; he dropped the camcorder on a seat in Jack's car and left.

When Jack returned to his car and found the camcorder on the seat and the laser pointer gone, he removed the camcorder's memory card and destroyed it. He and Jill had not yet transferred the Happy Airlines video to a computer for digital editing and online posting.

Bo went to the police to report his discovery and turn over the laser pointer. An analysis of the laser pointer revealed it to be powerful enough to have been the one used in the Happy Airlines incident. The police then secured a search warrant for Jack's home and car but found nothing incriminating. Still, based on the strength of Bo's statement about the video and discovery of the laser pointer, Jack and Jill were charged with a violation of 720 ILCS 5/26-7 ("Disorderly Conduct with a Laser or Laser Pointer") for aiming a laser at the Happy Airlines plane.

After her arrest and the administration of Miranda warnings, Jill wrote and signed a confession admitting she was with Jack when he aimed a laser at an incoming Happy Airlines flight from a parking lot near O'Hare. She agreed to testify at Jack's trial.

Jack's attorney filed a Fourth Amendment motion to bar any evidence at trial related to the laser pointer taken out of Jack's car. The judge denied the motion.

At trial, Jack's attorney raised a hearsay objection to Bo's testimony about the video discovered in Jack's car. The judge overruled the objection.

Later, when Jill testified for the prosecution, she stated that she

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did not recall seeing Jack aim a laser pointer at any Happy Airlines aircraft. Faced with that, the prosecutor first showed Jill her signed statement and got her to admit she had written and signed it. The prosecutor then asked the judge for permission to impeach Jill by offering into evidence the written statement as a prior inconsistent statement. Jack's counsel objected, based on hearsay. The judge overruled the objection.

- (a) Did the judge err by denying Jack's motion to bar evidence related to the laser pointer? Explain your answer.
- (b) Did the judge err by overruling Jack's hearsay objection to Bo's testimony about the video? Explain your answer.
- (c) Did the judge err by overruling Jack's hearsay objection to the prosecutor's attempt to impeach Jill? Explain your answer.