

JULY 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

Ralph and Pearl Davis, lifelong residents of Hamilton County, Illinois, had been married for forty years. On April 25, 2016, they took delivery of a new motor home, titling and registering it in Illinois. On May 1, 2016, they decided to take their new motor home on its maiden voyage to Mobile, Alabama. After spending three weeks exploring various places on the way to Mobile, they made their journey back north.

On May 22, 2016, they embarked on the final leg of the return trip. Outside of Jeffersonville, Indiana, it began to rain. The couple decided that lunch and shopping in Evansville, Indiana would cap off a lovely vacation. It was still raining when Ralph began to negotiate the exit ramp from Interstate 64 to Highway 41, towards Evansville. Ralph noticed at that point that the turn signals on the motor home were not working. He immediately pulled over to the left-hand median about half way down the off ramp, intending to call the dealership about the lights. Meanwhile, Troy Trucker was approaching the off ramp in his empty semi. Trucker hit the Davis' motor home and in the process injured Pearl.

Paul Paramedic arrived on the scene within ten minutes and attended to Pearl. Paramedic performed first aid and decided within five minutes that Pearl should be taken to the hospital. While Paramedic was strapping an alert but injured Pearl to the gurney for transport, Travis Trooper asked Pearl what happened. According to Trooper, Pearl said that Ralph was busy trying to use the hands-free system in the motor home to call the dealership while he proceeded to the off ramp, and she told "that moron" to "hang up and drive." In her deposition prior to trial, however, Pearl testified she could not recall anything from that day.

Trooper then spoke to Ralph and to Trucker. Ralph told Trooper that he did not even see Trucker until after Trucker hit the motor home. Trooper asked Trucker how fast he was going, and Trucker said he did not know. Trucker did say, however, that he was trying to get home in time to see his daughter graduate from high

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school in Evansville.

On December 24, 2016, Pearl filed a two-count complaint in the Circuit Court of Hamilton County, Illinois. In Count I, she alleged that Ralph's negligence due to inattention and for not waiting until they were on a level surface was a cause of the crash and her injuries. In Count II, she alleged Trucker was negligent for speeding down the ramp, and his negligence was a cause of her injuries.

The parties began and concluded discovery. Prior to trial, Ralph filed a motion to dismiss, alleging that Indiana law operated to bar Pearl's lawsuit. He cited an Indiana statute which contained an interspousal immunity provision. The Indiana law stated that when one spouse is operating a motor vehicle, the spouse of that operator cannot sue for damages for injury or death as a result of the operation of the motor vehicle. Illinois law, conversely, contains no interspousal immunity provision when spouses sue one another for injuries or deaths resulting from motor vehicle operation.

In the alternative, Ralph filed a motion in limine to bar Trooper from repeating Pearl's statement to Trooper in Paramedic's presence. Trucker, for his part, filed a response to Ralph's motion in limine, arguing that the court should allow Pearl's entire statement.

1. How should the Court rule on Ralph's motion to dismiss? Explain your answer.
2. How should the Court rule on Ralph's motion in limine and Trucker's response? Explain your answer.

Question 2

John Jeffers retired after thirty-five years of toil and realized his life-long dream of owning a bed and breakfast at the edge of Starved Rock State Park in LaSalle County, Illinois, the Dew Drop Inn. He deliberately selected that inn because it is contiguous to some of the more rustic areas of the park, with the idea that he could

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attract avid trail bikers who would make a weekend of riding the unpaved and rocky trails. As part of the amenities, he wanted to offer bikes for the guests to use on all of the nearby bike trails. He bought several styles of bikes, but also wanted a particular type of tandem bike. After research, Jeffers decided that the Couplet Tandem bike would best suit his needs.

Happy Harry's Bicycles in Joliet, Illinois, made the Couplet Tandem. It is owned and operated by its founder, Harry Harris, a former bicycle racer who became an engineer after his last bike race. He designed the Couplet Tandem using a special lightweight polycarbonate composite. Harris gave Jeffers a copy of the Couplet Tandem brochure, which made no mention of the special lightweight composite. This design prevented their use on rough terrain or by heavy riders, which Happy Harry's notes in its brochure.

On May 1, Jeffers went to the Happy Harry's showroom, met with Harris, and discussed the purchase. Jeffers told Harris that he wanted to buy the Couplet Tandem bikes for guests of his new inn but did not mention that guests would use them on the rustic trails of Starved Rock State Park, as he assumed Harris would know this. Jeffers decided to buy five Couplet Tandems. Harris prepared a purchase agreement ("Purchase Agreement"), which he emailed to Jeffers the next day. The Purchase Agreement accurately described the proposed sale terms. It also contained the following terms:

In the event of any defects in materials or workmanship, Seller shall, at its election, repair or replace the items purchased. Seller makes no other warranties, express or implied, concerning the items sold. SELLER SHALL IN NO CASE BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOSS OF TIME, INCONVENIENCE, LOSS OF USE OF THE ITEMS OR COMMERCIAL LOSS.

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The Purchase Agreement contained no other warranty terms.

After reviewing the Purchase Agreement, Jeffers sent Harris the following email: "The agreement looks good. I will sign and deliver it tomorrow. It is vital that I get these bikes by June 1, in time for the start of the vacation season." The next day Jeffers mailed the signed Purchase Agreement and a check for the purchase price.

On May 31, Harris called Jeffers to tell him that the bikes were ready. Jeffers went to Happy Harry's on June 1 to inspect them. He looked them over, rode one around the block, told Harris that they appeared fine, loaded them into his rented U-Haul, and drove away.

When he inspected the bikes, Jeffers did not notice that the composite Harris used had microscopic cracks. Nor did Jeffers know that, in order to deliver the bikes by the June 1 delivery date, Harris had to use a type of composite he had never used before, made by PolyCom. Harris had not been concerned about the PolyCom material, however, because it was used in many high-end bikes, although to Harris's knowledge never in a tandem bike like the Couplet.

As Jeffers hoped, Dew Drop Inn guests loved the bikes, and some used the Couplet Tandem bikes. The tandem bikes were used in a variety of locations, including some rough bike trails in the park. On June 15, the frame of one of the Couplet bikes cracked when used on the Starved Rock Bike Trail.

Jeffers contacted Harris immediately to report the problem and get a solution. Harris told Jeffers that it could have been the PolyCom material rather than the composite he ordinarily used. "But," he said to Jeffers, "I trust you restricted the weight limit of riders and did not let them use the bikes on rough trails. As you know, bikes made from composite are more fragile and you have to be careful with them." Jeffers admitted that he had not done so.

After inspecting the damaged bike, Harris, also ignorant of the microscopic cracks that existed at the time of purchase, concluded that the bike had broken because of the weight of the riders and the

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roughness of the terrain on which they rode. He agreed to take this bike back and replace it but said he would not take back the others unless Jeffers imposed weight restrictions and prevented guests from riding the bikes on trails.

Jeffers did neither of those things, and soon the remaining four bike frames had also cracked (the replacement bike, made with the usual composite, was fine).

Jeffers did some research and learned that some bike enthusiasts believed that PolyCom was not appropriate for tandem bicycles, as it tended to have microscopic cracks that would grow in time. Others disagreed, believing that it was the use rather than the material that mattered. Nevertheless, based on his research, Jeffers demanded that Harris replace the four bikes made with the PolyCom material. Believing the problem was caused by overweight guests riding the bikes on rough terrain as opposed to the use of PolyCom in their construction, Harris refused.

Jeffers has come to you, wanting to sue Harris.

1. What law controls? Explain your answer.
2. What are the claims that Jeffers can make under the applicable law, and what would Harris's responses be? Explain your answers.
3. What are the defenses under the applicable law that Harris can raise to Jeffers's claims, and what would Jeffers's responses be? Explain your answers.

Question 3

Plaintiff Abe Apartments, LLC, is a company that formed to develop and operate apartments in Springfield, Sangamon County, Illinois, its principal place of business. Abe Apartments purchased property and constructed townhomes in Springfield, Sangamon County, Illinois. They selected a general contractor,

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WeBuild, an Illinois partnership with its principal place of business in Chicago, Cook County, Illinois. One of WeBuild's partners lives in Belleville, St. Clair County, Illinois. Further, WeBuild frequently works on construction projects in St. Clair County. Abe Apartments had no dealings with the Belleville partner, and the Belleville partner had little knowledge of the day-to-day construction jobs. Abe Apartments' point of contact with WeBuild were partners and employees located in Chicago.

WeBuild used a subcontractor, Roofers Inc., to construct the roofing at Abe Apartments. One of the materials used was a fire resistant treated plywood ("FRT plywood") manufactured by Wood Pulp, Inc. The construction was completed, and occupancy occurred during March and April, 2016.

FRT plywood is used in certain construction processes because it does not burn; rather, it breaks down upon contact with high heat. Wood Pulp's particular product broke down in high heat as designed, but did so at temperatures as low as 110 degrees. A typical roof in central Illinois will reach that temperature in the summer, and the roof at Abe Apartments did. The roof did not last past September. While luckily no one was injured, the tenants complained of rainwater leaking into their closets and ruining clothes, furniture suffering water damage, destroyed mattresses, and in one case a pigeon flying around in a kitchen. Abe Apartments discovered mold problems in the attic areas and in some tenant bathrooms. Abe Apartments had to replace tenant property, relocate some tenants, mitigate mold, and repair the roof. The damages exceeded \$500,000.

Abe Apartments demanded that WeBuild repair or replace the roof. WeBuild refused to repair the damage or to pay for the repairs. Abe Apartments filed a lawsuit in St. Clair County, Illinois alleging a negligence claim against the partnership of WeBuild. Abe Apartments alleged that WeBuild negligently failed to properly construct the roof with proper materials. For damages, Abe Apartments claimed the losses for having to repair the roof,

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mitigate mold, replace tenant property, relocate tenants, and the loss of rent for the damaged apartments that remained empty during repairs.

WeBuild moved to transfer the case to Sangamon County, and moved pursuant to 735 ILCS 5/2-615 to dismiss the complaint.

1. How should the Court rule on the motion to transfer?
Explain your answer.
2. How should the Court rule on the motion to dismiss?
Explain your answer.