

FEBRUARY 2016

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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. While Ken was mowing his lawn, Ron, who did yard work, approached Ken and offered an array of year-round yard services. Ken was interested, and they discussed the scope and cost of the services. When they were done, Ron said, "I'll write down some terms, but you understand that if we get some unusually severe weather, the price might have to go up by as much as \$100 a month." Ken nodded. Ron wrote the following terms on a yellow pad:

1. Ron performs work on Ken's property for a two-year period beginning August 1, 2012.
2. Work includes lawn mowing and shrub trimming in spring and summer, leaf raking in fall, snow removal from sidewalks and driveway in winter, and general cleanup after storms.
3. Ken pays Ron \$300 at the end of each month for these services.

Ron showed what he wrote to Ken, who said, "Let's sign it." The two men signed. Ken said, "Now we have a deal."

Ron started working for Ken on August 1, 2012. The first year proceeded smoothly with all the work being done and paid for. In 2013, weather forecasters predicted a very bad winter with severe blizzards. At the end of the first of the blizzards in November 2013, Ron demanded \$400 per month to the end of the contract to compensate for substantially increased winter work completed and forecasted. Ken balked. However, given the severe winter they were facing and the lack of good alternatives, he agreed and began paying Ron \$400 at the end of November 2013. Ken made \$400 payments to Ron through the end of March 2014.

At the end of April 2014, when the bad weather was clearly over, Ken paid Ron \$300. Ron protested that the price was \$400 a month as they agreed and refused to do further work until he received the additional money. The two men reached an impasse. In May 2014,

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Ron sued Ken for breach of contract in the proper Illinois Circuit Court. Ron requested \$1,300 in damages (\$100 for April and \$400 each for May, June and July) plus costs. As evidence of the contract price, his complaint stated that, before they made their contract, Ron and Ken discussed the possibility that the price might go up by as much as \$100 a month if unusually severe weather occurred and that Ken agreed to pay more under these conditions. Ken objected to the admissibility of this evidence. Ron also asserted that, as agreed, Ken paid \$400 from November 2013 through March 2014 due to severe weather.

(a) Should the court admit Ken and Ron's discussion about the weather and possible price increase into evidence? Explain your answer.

(b) Does the fact that Ken paid \$400 from November 2013 through March 2014 modify the contract price from \$300 to \$400 per month? Explain your answer.

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2. Jon, a software developer, owned all the shares of Big Scary Data, Inc. ("BSD"). He married Kay, and together they had a daughter Lil. Jon properly executed his Will. The Will left Jon's entire estate to Kay should she survive him and to Lil should Kay not survive him.

Jon and Kay purchased a house in Evanston, Illinois, as their marital residence. They held title to the house as tenants by the entirety, rather than as joint tenants or as tenants in common. When their marriage broke down, Jon remained in the house, and Kay moved out. Their marriage was dissolved by a judgment of the Circuit Court of Cook County. Under their marital settlement agreement, Kay received substantial assets from Jon, but no interest in the shares of BSD stock. The marital settlement agreement and

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the judgment did not state anything about the ownership of the Evanston house.

Jon then married Mae and soon became ill. He signed a revocable trust agreement that created Jon's Living Trust ("JLT"). The trust agreement named him as the initial trustee and Mae as the successor trustee. The trust agreement provided that the trust property be used to provide, during Jon's life, for both Jon and Mae in accordance with the standard of living to which they were accustomed, and that, upon Jon's death, all of the trust property be distributed to Mae. Because Jon was certain that Mae would outlive him, he did not include in the trust agreement any other provision concerning distribution of the trust property upon his death.

Schedule A of the trust agreement listed assets of Jon to be part of the trust property of JLT. Listed on Schedule A, in Jon's words, was "my undivided one-half interest in the Evanston house," followed by a correct legal description of the land on which the house was located. Jon then executed and delivered a deed from himself, as grantor, to "Jon, trustee of JLT," as grantee, which stated that it conveyed an undivided one-half interest in the Evanston house into JLT, to be part of the trust property.

Also listed on Schedule A, in Jon's words, was "all my shares of stock in BSD." Jon did not execute a deed of gift or bill of sale that explicitly transferred the shares of stock into JLT as trust property; nor did he endorse anything on the shares of stock to indicate an assignment thereof to JLT; nor did he cause BSD to issue new share certificates, for the shares of stock, in the name of JLT.

As his illness progressed, Jon worried that Mae, as his wife, might be held personally liable for his medical bills not covered by health insurance. At Jon's suggestion, Mae had a judgment of dissolution of their marriage entered by the Circuit Court of Cook County. The circuit court found, in the judgment, that the undivided one-half interest in the Evanston house and the shares of stock in

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BSD were Jon's separate nonmarital property. The judgment did not address the question whether either of those assets was part of the trust property of JLT.

After the dissolution of his marriage to Mae, Jon did not revoke, amend, or restate the trust agreement which had created JLT. Jon never revoked or amended his Will.

Jon died from his illness. At Jon's death, his daughter Lil was an adult living independently. She filed a petition in the Circuit Court of Cook County to probate Jon's Will. The Will was admitted to probate. Lil now asserts that under the Will she should receive an undivided one-half interest in the Evanston house and all the shares of BSD stock.

Kay asserts that as the surviving tenant by the entirety of the Evanston house, at Jon's death, she is now the owner of the entire fee simple interest in the house. Kay also asserts that, because Jon had failed to execute any document that explicitly transferred the shares of stock in BSD into JLT, the shares of stock had not become part of the trust property. Finally, Kay asserts that, under Jon's Will, she should receive the shares of BSD stock.

Mae asserts that as the beneficiary of JLT, at Jon's death, she should receive, as a distribution of the trust property of JLT, an undivided one-half interest in the Evanston house and all the shares of BSD stock.

(a) Who now owns the undivided one-half fee simple interest in the Evanston house that Jon had owned during his life? Explain your answer.

(b) Who owns the shares of stock in BSD? Explain your answer.

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3. On June 5, 2014, police officers Green and Jones were on their way to their patrol car after eating dinner in northwest Chicago. Walking by a legally parked car occupied by Tim and Rich, Green glimpsed what appeared to be an assault rifle on the floor of the backseat. As they continued walking, Green told Jones what he had seen. Knowing that the possession of an assault rifle is a violation of state and municipal laws, the officers circled back to investigate.

Tim and Rich saw Green and Jones approaching with hands on their weapons. When the officers got to the car, Green spoke with Tim through the driver's side window, telling him to put his hands on the steering wheel. Tim complied. Green opened the door and ordered Tim out of the car. At the same time, Jones ordered Rich out of the car and told him to put his hands in the air. Both suspects were patted down to search for weapons on their bodies, but none were found.

While Jones watched Tim and Rich on the sidewalk, Green reached into the car to retrieve the rifle. Picking it up, he immediately realized that it was a plastic toy replica. Located elsewhere on the floor were a plastic canteen and a plastic helmet labeled "Army." Green left the items in the car and whispered to Jones, "It's just a toy." The officers determined that there were no outstanding arrest warrants for either Tim or Rich.

The officers continued to question Tim and Rich for 15 minutes about what they had been doing in the parked car. Sensing that the questioning was going nowhere, Green asked Tim for permission to search the rest of his car, which Tim gave. Green then found a plastic bag containing 12 grams of what appeared to be heroin in the glove compartment. The officers arrested Tim.

The arrest of Tim caused Rich to panic. He blurted out, pointing to Tim, "I can't do this anymore – I was buying heroin from him." Rich also told the officers that Tim would only sell heroin from his car and that he had been buying it for 10 months, paying \$100 per

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gram.

Tim was charged in Cook County Circuit Court with possession of a controlled substance with intent to deliver. His lawyer filed a Fourth Amendment motion to suppress the discovery of the heroin, relying on *Terry v. Ohio*, 392 U.S. 1 (1968) and its Illinois progeny. The court denied the motion.

Rich agreed to testify against Tim. Before trial, the court issued an order pursuant to Illinois Rule of Evidence 404(b) properly permitting the introduction of evidence of Rich's history of purchasing heroin from Tim. Such evidence was relevant to establishing Tim's intent to distribute the heroin found in his car.

At the May 2015 trial, the prosecutor on direct examination elicited testimony from Rich that: (1) he had been purchasing heroin from Tim for 10 months, (2) Tim charged Rich \$100 per gram, and (3) Tim would only sell Rich heroin while inside his car. The prosecutor then asked Rich, "What, if anything, did you tell the officers at the scene about your history of purchasing heroin from the Defendant?" Defense counsel objected based on "improper bolstering," but the court overruled the objection and allowed Rich to answer, which he did by accurately recounting what he had told the officers at the scene.

On cross-examination, defense counsel sought to impeach Rich by introducing evidence that he had been convicted of felony possession of crack cocaine in 2000, for which he served an immediate 24-month sentence in prison. The prosecutor objected, citing Rule 609 of the Illinois Rules of Evidence. The court sustained the objection and barred the introduction of any evidence of Rich's 2000 conviction.

(a) Did the court err in denying the motion to suppress the discovery of the heroin? Explain your answer.

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(b) Did the court err in overruling the “improper bolstering” objection? Explain your answer.

(c) Did the court err in sustaining the objection regarding impeachment? Explain your answer.