

JULY 2014

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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. Gourmet food trucks operating in Chicago provide high-end, curbside cuisine to customers who are alerted to the locations of the trucks by mobile phone applications. The trucks are equipped with full kitchens powered by large, commercial-grade propane tanks. A cook, server and driver staff each truck. TexMex, an Illinois sole proprietorship, owns three such trucks.

Anne owns PropAnne, Inc. ("PropAnne"), an Illinois corporation that manufactures propane tanks used in backyard barbeque grills. To capitalize on the emerging market for the commercial-grade propane tanks needed by food trucks, Anne hired Lex as an independent contractor to market PropAnne products to TexMex and other food truck companies in Chicago. PropAnne and Lex entered into a written sales agreement (the "Agreement") that provided that Lex would receive 20% of the overall value of the contracts he entered into with food truck companies for the purchase, maintenance, and refills of PropAnne tanks. The Agreement required Lex to use a contract (the "Contract") prepared by PropAnne, but allowed Lex to select the price for refills, provided it was at least \$150. The Agreement prohibited Lex from modifying any other terms in the Contract. To get Lex started, Anne personally introduced him to the owner of TexMex, advising the owner that PropAnne had hired Lex and given him full authority to market PropAnne's products.

Days later, Lex struck a deal with TexMex for a two-year term at a cost of \$100 per refill. TexMex's owner signed on behalf of TexMex; Lex signed on behalf of PropAnne. Lex immediately hand-delivered the Contract to Anne, along with TexMex's check for the \$1,000 cost of the tanks. Right after she had reviewed the Contract, Anne called Lex to criticize him for failing to negotiate an agreement for refills of at least \$150 each. Anne told Lex she would terminate the Agreement if he did not abide by its terms in future negotiations with food truck owners. The next day, PropAnne's tanks were installed in all three TexMex trucks.

Several weeks later, all three tanks were refilled by PropAnne. TexMex immediately received a \$450 electronic bill for the refills. When TexMex's owner contacted Anne about the \$150 of

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unexpected charges, Anne explained that Lex had improperly written the Contract to allow TexMex to pay only \$100 per refill. Anne then modified the original Contract by crossing out "\$100" and writing "\$150" as the per-refill price. Anne marked that version of the Contract "Corrected" and mailed it to TexMex's owner. Knowing that his costs during the two-year term of the "Corrected" Contract would be \$5,000 greater than anticipated, TexMex's owner filed a breach-of-contract claim against PropAnne in small claims court, seeking monetary damages.

A week later, one of the PropAnne tanks in a TexMex truck exploded while the vehicle was serving customers in front of Daley Plaza in Chicago. The truck's cook was killed, and the driver, server, and a customer were seriously injured. A second customer, Ian, a resident of Will County, received minor injuries. Within weeks, a lawsuit on behalf of those injured or killed (except Ian) was filed in Cook County Circuit Court, alleging a product liability claim against PropAnne (Count 1) and a separate negligence claim against TexMex (Count 2). During the discovery phase, PropAnne produced a schematic of the type of valve used on the tank. Following the discovery stage, the plaintiffs dismissed their claim against TexMex.

The product liability claim in Count 1 proceeded to trial a year later. The jury reached a verdict, concluding – as demonstrated by their answers on a special verdict form – that a defective valve on the PropAnne tank caused the explosion. The plaintiffs were awarded \$2.4 million. PropAnne appealed, but the decision was affirmed by the Illinois Appellate and Supreme Courts.

Six months after the Illinois Supreme Court issued its decision affirming the lower courts' rulings, Ian filed a personal injury claim against PropAnne in Will County Circuit Court. He sought damages for the injuries he suffered in the explosion, alleging that the valve on the tank was defective. His claim was identical to the lawsuit filed in Cook County. Three months later, Ian's lawyer filed a motion for summary judgment, relying on the judgment entered in the Cook County case. The summary judgment motion argued that the Cook County case established, as a matter of law, the defective nature of the valve.

- (a) Under agency principles, what should be the result in the small claims court case that TexMex filed against PropAnne for breach of the Contract? Explain your answer.
  - (b) Under agency principles, can PropAnne recover in an action against Lex any losses PropAnne sustains as a result of Lex's modification of the refill-price clause? Explain your answer.
  - (c) How should the Will County Circuit Court judge rule on Ian's motion for summary judgment? Explain your answer, including a discussion of the relevant doctrine that supports the judge's ruling.
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2. Big Machines, Inc. acquired a 2013 "Monster" brand supercomputer worth \$200,000 from Monster Computers, LLC. The contract effecting this acquisition was a lease contract. The rental for the supercomputer was \$5,000 per month, and the term was five years from the date of delivery of the supercomputer to Big Machines. The rental was not terminable by either party before the end of the lease term. The contract further provided, among other things, that

- payment was due at Monster Computers on the 1st day of each month and a late charge would be assessed on payments arriving after the 15th day of each month;
- in the event of default, all rentals for the entire duration of the lease would be immediately due and owing;
- in the event of default, Monster Computers had the right to repossess the supercomputer and Big Machines would permit Monster Computers to have access to the supercomputer for purposes of repossession;
- at the conclusion of the 5-year lease, Big Machines had an option to purchase the supercomputer for a one-time payment of \$100.

Both parties retained properly executed copies of the documents for

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this transaction; nothing was filed in any public filing office.

On July 1, 2013, Big Machines took delivery of the supercomputer. The business relationship operated without incident until March 2014 when Big Machines, encountering financial problems, missed a payment for the first time. Despite pressure and threats of repossession from Monster Computers, Big Machines made no further payments.

After the third missed payment, Monster Computers determined that it would repossess the supercomputer. Before it could take action, however, Corruthers, an unpaid creditor of Big Machines who had recovered a judgment, executed on its judgment and had the Sheriff make a proper levy on the supercomputer (but not the leasehold) at Big Machines' headquarters. The levy gave Corruthers a lien on the supercomputer dating from the moment the Sheriff levied on it. The levying Sheriff has scheduled a sheriff's sale of the supercomputer for August 1.

Monster Computers has properly intervened in the sheriff's sale proceedings and, through appropriate procedure, has filed a motion with the court to order the Sheriff to halt the sale and turn over the supercomputer inasmuch as Big Machines had only a leasehold interest and Monster Computer, as lessor, was the owner.

Corruthers contends that Monster Computers holds only the interest of an unperfected secured party rather than a lessor's interest as the owner of the machine. It further argues that the sale should proceed and Corruthers should have first claim to the proceeds of the sheriff's sale. In response, Monster Computers contends that because its contract with Big Machines was a lease, its interest as a lessor/owner is valid and entitles it to priority over Corruthers and therefore to release of the computer. Monster Computers further contends that Big Machines' default on the lease contract entitles it to all remaining rentals due under the contract.

- (a) Assuming the contract between Big Machines and Monster Computers is governed by the Illinois Uniform Commercial Code (UCC), discuss which Article or Articles of the UCC

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this contract falls under and explain your answer in detail.

- (b) Based on your answer in (a), how should the court rule on Monster Computers' motion to obtain possession of the supercomputer and claim for the amount of money still due under the contract? Explain your answer.
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3. Ace was a licensed pilot and avid photographer who kept his small airplane at a rural airport 40 miles west of Chicago. One morning in March 2014, Ace wanted to take photographs of the Chicago skyline from the air above Lake Michigan at dawn. While it was still dark, he checked the airplane's engine and flight controls. He had known for six months that the airplane's fuel gauge and low-fuel warning light were broken. He usually tried to compensate for these defects by filling the airplane's fuel tank before taking off and limiting the outbound distance of his flight to 20 miles. On that morning, because he was thinking about the shots that he wanted to take with his camera, he forgot to put any aviation gasoline in the fuel tank. When Ace took off, the airplane barely had enough fuel to reach the Chicago lakefront.

Flying at an altitude of 1,900 feet, Ace approached Chicago's Lake Shore Drive. The airplane's engine began to sputter. Ace realized he was almost out of fuel. He took the airplane lower to find a place to land. The only place where he had a chance to land safely was in a northbound lane of Lake Shore Drive, immediately north of an automobile stopped at a traffic signal that had just turned red.

Bob, the driver of the automobile, called his girlfriend on his cell phone while he sat at the red light. Holding the cell phone in his left hand and a cup of coffee in his right, Bob laid the side of his right hand (that held the cup) on top of the steering wheel. When the light turned green, Bob, still talking on the cell phone, started his automobile moving. He used the side of his right hand to guide the automobile's steering wheel, trying not to move the steering wheel

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too much, for fear of spilling the coffee.

At that moment, Ace landed his airplane 100 feet north of Bob's automobile. If Bob had watched the road ahead and had kept both hands on the steering wheel without the distractions of talking on his cellphone or trying not to spill his coffee, he would have been able either (1) to stop his automobile before hitting the airplane or (2) to steer his automobile around the airplane without hitting it. As it was, though, Bob was unable to do either; his automobile struck the airplane and swerved into a tree. The first collision slightly damaged Ace's airplane. The second collision, with the tree, destroyed Bob's automobile. Neither Ace nor Bob was injured.

Public Act 98-506, which took effect on January 1, 2014, amended subsections (a) and (b) of Section 12-610.2 of the Illinois Vehicle Code (625 ILCS 5/12-610.2) to read as follows:

§ 12-610.2. Electronic communication devices.

(a) As used in this Section:

“Electronic communication device” means an electronic device, including but not limited to a hand-held wireless telephone, hand-held personal digital assistant, or a portable or mobile computer, but does not include a global positioning system or navigation system or a device that is physically or electronically integrated into the motor vehicle.

(b) A person may not operate a motor vehicle on a roadway while using an electronic communication device.

None of the exceptions set forth in subsection (d) of Section 12-610.2 – such as “using an electronic communication device in hands-free or voice-operated mode” – applied, and, so, Bob was guilty of operating a motor vehicle on a roadway while using an electronic communication device.

Bob filed a complaint against Ace in the Circuit Court of Cook County, alleging that Ace had been guilty of negligence by having

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(1) flown the airplane while knowing that it had a broken fuel gauge and a broken low-fuel warning light; (2) failed to fill the airplane's fuel tank before taking off; (3) attempted a trip that was farther than the airplane's fuel would allow, so that the airplane ran out of fuel in flight; and (4) landed the airplane on Lake Shore Drive.

Ace knows that he must file an answer to Bob's complaint. Ace also wants to file a counterclaim against Bob, alleging negligence on Bob's part, to recover the cost of repairing the airplane. In particular, Ace wants to allege that Bob had failed to use ordinary care for the safety of Ace's airplane by operating his automobile on Lake Shore Drive while using an electronic communication device, in violation of Section 12-610.2(b) of the Illinois Vehicle Code.

- (a) Can Ace properly rely – in an affirmative defense raised in his answer to Bob's complaint – on Bob's having operated his automobile on Lake Shore Drive while using an electronic communication device, in violation of Section 12-610.2(b) of the Illinois Vehicle Code? If so, what is that affirmative defense, and what are its elements? Explain your answer.
- (b) Can Ace properly rely – in his counterclaim, as a specification of Bob's failure to use ordinary care for the safety of Ace's airplane – on Bob's having operated his automobile on Lake Shore Drive while using an electronic communication device, in violation of Section 12-610.2(b) of the Illinois Vehicle Code? Explain your answer.