FEBRUARY 2013

INSTRUCTIONS FOR THE ILLINOIS ESSAY EXAMINATION

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, *i.e.,* 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 available from your proctor 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.

Note to Examinees - You may keep this test booklet.

(Questions begin on next page)

1. Larry Landowner owned a 10-acre parcel of land in the downtown area of Rivertown, Illinois (the "Site"). Larry, a lifetime resident of Rivertown, has owned and developed many properties in Rivertown during his career.

In May 2010, Larry and his first wife Francine divorced. In their dissolution of marriage agreement, Larry and Francine agreed that if the Site were ever sold, Larry would pay Francine the net proceeds from that sale. In June 2011, Larry married his second wife Sophie.

The Site was located in an urban part of Rivertown and was covered in industrial debris. In September 2011, Big Tech, a large corporation, decided to locate its corporate headquarters in Rivertown. Because of all of the new activity that Big Tech's headquarters would bring to Rivertown, Diane Developer was interested in entering the real estate market in Rivertown. Diane had been a real estate developer for many years but had never developed a project in Rivertown.

Diane and Larry met on January 1, 2012, to discuss the possibility of Diane purchasing and building a hotel on the Site. After three months of negotiations, on April 1, 2012, Diane purchased the Site for $300,000. In a written contract dated April 1, 2012, Larry and Diane entered into a consulting agreement in which Larry agreed to advise Diane on all aspects of the development of the hotel on the Site for one year starting immediately.

Larry left the April 1 closing with a check for the net proceeds of sale in the amount of $250,000. Larry endorsed the $250,000 check over to Sophie. Sophie, who was aware of the contents of Larry and Francine's dissolution of marriage agreement, nonetheless deposited the money into a one year, $250,000 certificate of deposit at her local bank.

On April 15, 2012, Diane and Chris, a Rivertown contractor, met at the Site to discuss clearing the Site of the industrial debris.

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Based on his prior experience in clearing debris off of construction sites, Chris told Diane the job would take four weeks and cost $15,000. Chris said his crew could start the next day. Diane said, "Let's see if you can do the job in three weeks. See you tomorrow." On the following day, April 16, Chris and his crew started clearing the Site. While they worked, Diane drove by the Site and, catching Chris' eye, gave him a 'thumbs up' sign.

On May 1, 2012, Larry told Diane that he wanted to retire and could not fulfill the rest of his obligations under the consulting agreement. Without Larry's expertise, Diane decided to stop work on the project. On May 5, she sent Chris a letter stating that she wanted him to stop clearing the Site. In response, Chris sent Diane a bill for $10,000 with a detailed accounting of his time and expenses for clearing the Site. In the accounting, Chris estimated that 2/3 of the Site had been cleared. Diane refuses to pay Chris' bill for $10,000.

(a) Diane files an action with the Circuit Court asking for an order of specific performance that would require Larry to fulfill the rest of his obligations under the consulting agreement. What result and why?

(b) Francine files an action with the Circuit Court seeking an interest in Sophie's certificate of deposit. Does Francine have any remedy in equity? Explain your answer.

(c) Chris files an action with the Circuit Court asking the court to order Diane to pay his bill. Under what theory can Chris recover? Explain your answer.

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2. Amy and Bob were law students in Chicago who became friends. They decided to rent the two units of a duplex together. The building owner, Gradgrind Rentals, LLC ("GR"), gave Amy and Bob each a copy of its standard one-year lease form, which required a $3,000 security deposit, the applicant's signature, and the signature

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of a parent or other financially responsible person as surety for the applicant. The form contained the following two paragraphs:

> 10. Tenant's Liability for Repairs. Tenant acknowledges that he or she has inspected the Unit and found it to be in good condition on the date of execution of the lease. Tenant shall be liable to, and shall pay, GR for the repair of any and all loss or damage to the Unit and to the building as a whole, to the extent such loss or damage is caused by Tenant or Tenant's visitors.
>
> 11. Surety. The person who signs this lease as surety acknowledges that he or she does so in return for GR's leasing the Unit to Tenant, and that he or she thereby incurs an obligation to GR to pay any and all amounts owed by Tenant to GR under the lease. The surety's obligation is joint and several with respect to Tenant's obligation to GR and is not conditioned upon Tenant's default.

Amy signed her lease, obtained the signature of her father, Al, as surety, and delivered the lease and payment of the security deposit to GR. Bob signed his lease, obtained the signature of his stepmother, Beth, as surety, and delivered the lease and Beth's $3,000 check for the payment of the security deposit to GR. GR signed the two leases. Amy and Bob moved into the two units of the duplex.

The next day, Bob discovered that the burners on the gas stove in his unit would not ignite. He asked Amy for help. Amy and Bob each experimented with a different burner, trying to get it to ignite. They failed and inadvertently left the knobs on the burners in a slightly "on" position. Amy said, "I haven't tried the burners on my stove yet. Let's go see if they work." Amy and Bob then discovered that the burners on the gas stove in Amy's unit also would not ignite. Again, Amy and Bob each experimented with a different burner, and again, they failed, inadvertently leaving the knobs on the burners in a slightly "on" position. The two left the

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duplex and went to a nearby restaurant. Before they could return, a natural gas explosion destroyed the duplex. GR became aware that Amy and Bob's actions, concerning the burners on their respective stoves, had allowed gas to escape and to accumulate in both units, thereby causing the explosion. The duplex was worth $400,000.

GR filed a four-count complaint in the Circuit Court of Cook County. Count I named Amy as a defendant based on her lease. Count II named Bob as a defendant based on his lease. Count III named Al as a defendant based on his having signed Amy's lease as surety for Amy. Count IV named Beth as a defendant based on her having signed Bob's lease as surety for Bob. All Counts relied on paragraph 10 of the relevant lease to allege that the tenant was liable for the destruction of the duplex. Counts III and IV relied on paragraph 11 of the relevant lease to allege that the surety was also liable for the destruction of the duplex. All Counts prayed for damages in the amount of $400,000.

GR's president became aware that his son, who was dating Amy, objected strongly to Count I of the complaint, as it named Amy as a defendant. GR executed and delivered to Amy a written release from liability. The release stated that GR retained its right to seek payment from Al, as surety for Amy. The release did not state, however, that Al's rights as surety to recourse against Amy as the principal obligor on Amy's lease would continue as though the written release had not been granted to Amy. GR then voluntarily dismissed Count I of the complaint against Amy.

GR's president also knew that Bob was broke and desperately needed the $3,000 security deposit (that Beth had paid for him) to find another place to live. GR gave the security deposit to Bob but did not release Bob from liability. Beth did not consent to GR's giving the $3,000 security deposit to Bob.

(a) State whether Al, as surety for Amy under Amy's lease, has a meritorious affirmative defense against Count III of GR's complaint and, if so, what that affirmative defense is. Explain your answer.

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(b) State whether Beth, as surety for Bob under Bob's lease, has a meritorious affirmative defense against Count IV of GR's complaint and, if so, what that affirmative defense is. Explain your answer.

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3. Urgent Technologies, LLC ("Urgent") designs custom computer software that permits city and county governments to retrofit their 911 telephone systems to become capable of making thousands of automated telephone calls per second to residents who need to be notified of a disaster or emergency in their neighborhood. After significant success in California communities, Urgent's president, Jim Lang ("Lang"), recently targeted counties in northern Illinois for Urgent's newest sales efforts. Instead of deploying one of Urgent's existing employees to approach Cook County, Lang decided to hire the former Emergency Management Coordinator ("EMC") for Cook County, Sam Drew ("Drew"), to pitch Urgent's products to his former colleagues in Cook County government. Lang also sent a personalized letter to Cook County's current EMC director, Mary Mack ("Mack"), advising her that Urgent had hired Drew and had given him full authority to market Urgent's services.

Urgent entered into a written sales and agency agreement (the "Agreement") with Drew. The Agreement provided that Drew would receive 5% of the overall value of the contract that he entered into with his former colleagues on Urgent's behalf. The Agreement also required Drew to use a standard-form contract (the "Contract") specifically prepared by Urgent for use with Cook County, but permitted Drew to negotiate: (a) the term of the contract for services between Urgent and Cook County, provided that term was at least 7 years, and (b) the fee for Urgent's services, provided the fee was between $1.5 and $2.0 million per year. The Agreement specifically prohibited Drew from modifying any other terms in the Contract. The Contract required Urgent to make the reverse-911 service operational in Cook County within six months of the Contract being formally approved by the county's board of directors, and to make

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monthly onsite software diagnostic visits.

During his negotiations with Mack, Drew explained that his Agreement with Urgent required him to charge Cook County $2.5 million per year. Days later, after further negotiations, Drew struck a deal with Mack and her colleagues for a seven-year term at a cost of $2.5 million per year. To compensate Cook County for the non-standard annual costs, Drew modified the "software maintenance" portion of the Contract to require Urgent to make weekly onsite visits to run diagnostics on the reverse-911 system. As required by county government procurement rules, the Contract with Urgent was later formally approved by the Cook County Board. Drew then personally delivered the fully-executed and approved Contract to Urgent. Five days later, after reviewing the Contract, Lang personally congratulated Drew for reaching such a favorable deal with Cook County. Urgent made the reverse-911 service operational in Cook County four months later, and received $2.5 million for the first year's services. Soon after, Urgent informed Mack that Urgent would only conduct onsite diagnostics on a monthly basis over Mack's protests.

Following six months of unsuccessful attempts to resolve the dispute over software maintenance visits, Urgent and Drew (in his personal capacity) were properly served with a complaint filed by Cook County in Illinois state court alleging breach of contract and fraudulent misrepresentation counts. The entire fraudulent misrepresentation count read as follows:

> Defendant Drew: (1) made false statements of material fact to the Plaintiff; (2) knew or believed the statements to be false; and (3) intended to induce the Plaintiff to act. The Plaintiff acted in reliance on the truth of these false statements. As a result of its reliance, the Plaintiff has been damaged in excess of $3 million.

Drew's attorney filed a motion under section 2-615 of the Illinois

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Code of Civil Procedure asking the court to dismiss the fraudulent misrepresentation count for failure to properly allege that cause of action. The judge denied the motion.

(a) If Cook County seeks monetary damages for Urgent's breach of the modified software maintenance clause, what will be the result under agency principles? Explain you answer.

(b) Under agency principles, can Urgent recover in an action against Drew for any losses it sustains as a result of Drew's modification of the software maintenance clause? Explain your answer.

(c) Did the judge err in denying Drew's motion to dismiss the fraudulent misrepresentation count? Explain your answer.