JULY 2011

INSTRUCTIONS FOR THE
ILLINOIS ESSAY EXAMINATION

Answer all 3 questions using the provided answer booklets. Write your answer to each question on the printed lines in the correspondingly-numbered answer booklet and confine your answer to that booklet. 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 to make notes or outlines. Do not remove pages from or disassemble any booklet. Answer booklets must be intact when handed in.**

1. In January of 2011, Principal Technology Partners ("PTP") purchased 200 iPads as part of a new business venture: Leasing the sleek devices to upscale restaurants, which would discard their traditional printed menus and replace them with iPads. Each iPad would be loaded with interactive menus, including pricey wine lists, tailored to the particular restaurant's offerings. Aside from the novelty of providing customers with cutting-edge technology during their dining experiences, PTP planned to pitch the idea to restaurants by paying each restaurant a monthly "revenue sharing" fee, derived from targeted, third-party advertising that PTP would load onto each iPad.

PTP prepared a boilerplate contract ("Contract") governing the lease of iPads to restaurants. The Contract governs the relationship between the "Lessor - *i.e.,* owner of the iPads," and the "Lessee - *i.e.,* the restaurant leasing the iPads." The Contract requires each restaurant to lease 100 iPads for $1,500 per month over a two-year term. Each restaurant must pay an additional fee of $5,000 at signing, which is refundable if the iPads do not arrive at the restaurant within

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10 days. (The iPads are shipped directly from PTP to the restaurants.) To offset the $1,500 monthly payments, the Contract's "revenue sharing" clause provides that Lessor will pay the restaurant $500 a month as a share of the advertising fees that Lessor expects to generate from advertising programmed onto each iPad. However, the Contract's "Independent Duty" clause clearly states that the restaurant must make its monthly payments *regardless* of whether it receives a revenue sharing payment from Lessor. The Contract does not mention PTP by name, but simply reads "the Lessor is ______."

PTP entered into a written distribution and agency agreement ("Agreement") with Scott Salazar ("Salazar"). The Agreement provides that Salazar will receive a flat fee for every set of iPads he leases to a restaurant. The Agreement also provides that Salazar must use the Contract prepared by PTP, may sign his name on behalf of "Lessor" at the bottom of the Contract, is prohibited from modifying the Contract's terms, and must immediately deliver all executed Contracts and down payments to PTP. Salazar knows he must write "PTP" in the space on the Contract after the words "the Lessor is."

Salazar first leased a set of 100 iPads to an upscale steakhouse called Chicago Choice. In response to concerns from the restaurant's owner, Salazar crossed out the Independent Duty clause. Salazar properly inserted "PTP" in the relevant space on the modified Contract, and signed his name as "Lessor" at the bottom. Salazar properly delivered the executed Chicago Choice Contract and $5,000 signing fee to PTP on January 15, 2011. On January 30, Salazar received a call from one of PTP's partners instructing Salazar not to delete the Independent Duty clause on any other Contract. Salazar apologized and agreed. Chicago Choice made its scheduled $1,500 payments in February, March, and April of 2011. PTP sent Chicago Choice $500 revenue sharing checks during those months, too.

On May 15, 2011, Salazar leased another set of 100 iPads to a swanky new Thai restaurant called City Shine. Salazar did not delete the Independent Duty clause in the City Shine Contract, but

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he forgot to insert "PTP" after the words "the Lessor is." He signed his name in the appropriate space at the bottom. Without mentioning PTP's role in the transaction, Salazar collected the $5,000 signing fee and promptly submitted the money and executed Contract to PTP.

On May 20, 2011, PTP concluded that it could never sell enough third-party advertisements to make its iPads leasing business profitable. PTP immediately notified Chicago Choice and City Shine that it would cease making all revenue sharing payments. However, PTP continued to demand the $1,500 monthly payments from both restaurants for the remainder of their two-year Contracts. Chicago Choice refused to pay, pointing to the fact that the Independent Duty clause had been eliminated from its Contract. City Shine, which had not even received its iPads yet, also refused to pay, and demanded the return of its $5,000 signing fee. PTP refused to return the signing fee, but never sent the iPads to City Shine.

(a) If PTP seeks to enforce the redacted Independent Duty clause by suing Chicago Choice, what will the result be under agency principles? Explain your answer.

(b) Under agency principles, can PTP recover in an action against Salazar for any losses it sustains as a result of the redaction of the Independent Duty clause? Explain your answer.

(c) If City Shine sues Salazar for the return of its signing fee, what will the result be under agency principles? Explain your answer.

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2. Ann resided in the City of Rockford in Winnebago County, Illinois. She intended to live in Rockford for the rest of her life.

Ann met Bob, a wealthy man who resided in Beloit, Wisconsin. They began a romance. While Ann and Bob were at a restaurant in Beloit, they discussed for the first time (without making any decision) the possibility of getting married. When Bob drove Ann to her

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home that evening, he suddenly stopped his car on a street in Rockford, Illinois. He led Ann by the hand to the sidewalk, got down on one knee, and asked, "Will you marry me?" Ann said, "Yes."

Bob and Ann began looking for a house to buy in Rockford. They set the date for their wedding at a church in Rockford. Bob took Ann shopping for an engagement ring in Chicago. He purchased a diamond ring for $80,000 and immediately placed it on Ann's finger. As for Ann's expenses, she paid $11,000 of her own money for a wedding dress, and for a non-refundable deposit on the rent of a banquet hall in Rockford, and for a caterer for the wedding reception.

A week before the date set for the wedding, Bob submitted to Ann (at her home in Rockford, Illinois) a proposed premarital agreement that favored him. After reading it once, Ann said, "I will not sign this." Bob replied, "Then the wedding is off. Give me back the ring." Ann refused and stated, "The ring is mine." The next day, Ann mailed to Bob the written notice, signed by her, required by Section 4 of the Illinois Breach of Promise [to Marry] Act (740 ILCS 15/4) as a prerequisite to filing an action for breach of promise to marry. She stated in the written notice the date upon which the promise or agreement to marry had been made, the date upon which the marriage ceremony was to have been performed, the fact that she had suffered damages in the amount of $11,000, and the fact that she was still willing to marry Bob.

When Bob received the written notice, he thought to himself, "I am glad that I did not buy a house in Rockford. I will never move away from Beloit now." Bob filed a verified complaint for replevin in the Circuit Court of Winnebago County, Illinois. In the verified complaint for replevin, Bob described the ring, asserted that it was worth $80,000, and sought to require Ann to deliver the ring back to him.

Five days later, Ann was served with a summons, to which a file-stamped copy of the complaint for replevin was attached. Thirty

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days after Ann was served with the summons, Ann filed in the United States District Court a signed *Notice of Removal* that "contain[ed] a short and plain statement of the grounds for removal, together with a copy of all process, pleadings, and orders served upon such defendant or defendants in such action," as required by Section 1446(a) of Title 28 of the United States Code. After filing the *Notice of Removal*, Ann promptly gave notice thereof to Bob and filed a copy of the *Notice of Removal* with the Clerk of the Circuit Court of Winnebago County, Illinois, as required by Section 1446(d) of Title 28 of the United States Code.

Ann filed in the United States District Court (and served on Bob) an answer to the complaint for replevin and a counterclaim against Bob for his breach of promise to marry her, in which she sought actual damages (as permitted by Section 2 of the Illinois Breach of Promise [to Marry] Act [740 ILCS 15/2]) in the amount of $11,000. Ann attached to the counterclaim a copy of the written notice that she had mailed to Bob and alleged therein that she had sent the written notice in a sealed envelope with first class postage prepaid and deposited in the United States mail, within the period allowed by Section 4 of the Illinois Breach of Promise [to Marry] Act (740 ILCS 15/4).

Bob filed, in the United States District Court, under Federal Rule of Civil Procedure 12(b)(6), a motion to dismiss Ann's counterclaim for failure to state a claim upon which relief can be granted. In that motion, Bob asserted only that Section 768.01 of the Wisconsin Statutes ("All causes of action for breach of contract to marry ... are hereby abolished") should apply to - and should abolish - Ann's cause of action against him for breach of promise to marry, because they had first discussed the possibility of getting married while they were in Wisconsin.

(a) Did the United States District Court have subject matter jurisdiction over the action for replevin that Bob had filed in - and that Ann had removed from - the Circuit Court of Winnebago County, Illinois? Explain your answer.

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(b) Should the United States District Court grant Bob's motion, under Federal Rule of Civil Procedure 12(b)(6), to dismiss Ann's counterclaim for failure to state a claim upon which relief can be granted? Explain your answer.

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3. Mike owned a one-story house with a basement in Emerald County, Illinois. Mike knew that the house's roof leaked badly during even a light rain and that the house's basement flooded after every hard rain. Mike decided to sell the house. He cleaned and painted the basement to conceal the marks left by the flooding on the basement walls (which actions are hereinafter called the *"Concealment"*). He advertised the house for sale.

Pam came to see the house when a light rain was falling. Mike took her on a tour of the house. Pam saw water running down an exterior wall of a room, but she said nothing about the water. Pam noticed, when she was in the basement standing next to Mike, that the basement appeared to be clean, neat, and dry. Pam did not ask Mike whether the basement ever flooded, and Mike did not tell Pam that the basement flooded after every hard rain (which failure to speak is hereinafter called the *"Omission"*).

When Pam left the house, she asked whether the roof leaked. Mike asserted that the roof was in good shape and did not leak (which assertion is hereinafter called the *"Statement"*). Pam wondered - because of the water that she had seen running down the exterior wall of the room - how the *Statement* could be true. Nevertheless, she decided to trust Mike and to believe that the *Statement* was true. If she had thought that the *Statement* was false, she would not have bought the house.

Pam also would not have bought the house if Mike had told her, when she was standing next to him in the basement, that the basement flooded after every hard rain. (Mike's *Concealment* and *Omission* concerning the condition of the basement are hereinafter together called the *"Concealment-Omission."*)

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If the house had been in the condition that Pam thought it was in (because of Mike's *Statement* and *Concealment-Omission*), the fair market value of the house would have been $150,000. Pam bought the house from Mike for $150,000.

After purchasing the house, Pam discovered that (l) the roof leaked badly even during a light rain and (2) the basement flooded after every hard rain. She also discovered that it would reasonably cost her $10,000 to repair the roof and $25,000 to make the basement waterproof: that is, a total of $35,000. She discovered, finally, that each defect caused a decrease in the fair market value of the house that equaled the cost of repairing or correcting the defect. In other words, the actual fair market value of the house was $10,000 less because of the leaking roof and $25,000 less because the basement flooded after every hard rain. One month after purchasing the house, Pam filed a complaint against Mike in the Circuit Court of Emerald County.

In answering the following questions, <u>ignore</u> the terms of the contract between Mike and Pam, other than the fact that Mike sold the house to Pam for $150,000. Also <u>ignore</u> any cause of action that Pam might have for breach of contract or for a violation of an Illinois statute.

(a) What cause of action should Pam allege in her complaint against Mike? Explain your answer.

(b) Should Pam base her cause of action on (i) the *Statement* or (ii) the *Concealment-Omission* or (iii) both? Explain your answer.

(c) Assume that Pam does have a valid cause of action against Mike. Describe in detail all the remedies - including damage remedies and alternative restitutionary remedies (if any) - available to Pam in connection with that cause of action.