

Sample Multiple Choice Questions

Remedies - 2013

The following questions have been used on previous Remedies final examinations between 1991 and 2012.

- 1) Some are valid questions and can be used again; some are flawed, but can be revised; some are too difficult or confused, or too simple, and are unlikely to be used again.
- 2) No answers or explanations are provided.
- 3) You should view the questions as raising the type of issues that will be tested in some format on the final examination.
- 4) Some topics and subjects are not covered every semester. In some instances the substantive law has changed over the years.
- 5) Other examples of multiple choice questions can be found on CALI programs or in various review books.
- 6) My questions in classes such as Civil Procedure and Professional Responsibility have been fairly uniform in their format. See examples posted on line for other courses.

In contrast, the questions in Remedies have been far more varied in their format. You will find:

- a) fill in the blank questions;
 - b) questions based specifically on Arkansas cases discussed in class;
 - c) matching questions;
 - d) simple questions, calling for “choose the remedy”
 - e) questions based on Arkansas statutes;
 - f) multi-part questions;
 - g) questions based on the historical development of remedies.
 - h) financial calculations.
 - i) questions from CALI
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- 7) The questions fall generally into five categories:
 - a) Equity (Questions 1 - 99)
 - b) Damages (Questions 100-199)
 - c) Restitution (Questions 200-299)
 - d) Substantive Areas (Questions 300-399)
 - e) Miscellaneous (Questions 400-449)

Equity:

1. Mitch and Karyn are married in Arkansas in 1994. In 1995, Mitch and Karyn purchased 20 acres of land outside Fifty-Six and built a home. In 1996, Josh is born. After twelve years of marital bliss, the relationship became unbearable for Karyn and she leaves, taking Josh, for Kansas to be with her mother. A few months later, Karyn headed for the Kansas courthouse where she filed for divorce. While on a visit to Kansas to beg Karyn to come home, Mitch is served with the divorce papers. The Kansas court issues a decree granting Karyn the entire 20 acres upon which the house is located in Arkansas. Mitch, however, refuses to sign the transfer of title to the property to the land and is subsequently tossed into jail for contempt. After thinking about the situation and coming to his senses, Mitch agrees to sign the transfer of title to the property and is released. Upon reaching the reasonable and rational confines of Arkansas, Mitch files suit to void the forced transfer of the deed.

Mitch is likely to:

- a) win his lawsuit because the Kansas court had neither in rem jurisdiction nor subject-matter jurisdiction.
 - b) win his lawsuit because the Kansas court had neither in rem jurisdiction nor in personam jurisdiction.
 - c) lose his lawsuit because the Kansas court had subject matter jurisdiction and in personam jurisdiction.
 - d) lose his lawsuit because the Kansas court had in rem jurisdiction and subject-matter jurisdiction.
2. During the development of equity (1066-1500), which of the following was not a difference between equity and law?
 - A) Courts of law were following the writ system which was very strict, rigid, easy to make mistakes and very technical. Courts of equity basically said, "file some type of petition explaining what's unfair and we will take it from there."
 - B) Courts of equity were very concerned with precedent. Courts of law were more concerned with what was right, fair, and proper.
 - C) Courts of law were far more likely to decide issues based upon written documents. Courts of equity wanted witnesses.
 - D) Courts of law were beginning to develop the jury system. Equity had no jury.
 - E) Courts of law issued judgments in rem. Courts of equity issued judgments in personam.
 3. This question comes from a CALI program. Some areas of substantive law owe their development to equity. Which doctrines have primarily equitable roots?

- 1) fiduciary obligations
 - 2) fraud
 - 3) contract
 - 4) constructive trust
 - 5) bailment
 - 6) mistake
- a) All but 1 and 3
 - b) All but 2 and 5.
 - c) All but 3 and 5.
 - d) All but 4 and 6.
 - e) All but 2 and 6.

4. Which of the following remedies developed historically in courts of law and which developed in courts of equity?

- 1) subrogation
 - 2) waiver of the tort and suit in assumpsit
 - 3) abatement
 - 4) quo warranto
- a) Only 1 and 2 developed in the courts of law.
 - b) Only 3 and 4 developed in the courts of equity.
 - c) Only 1 and 3 developed in the courts of law.
 - d) Only 2 and 3 developed in the courts of equity.
 - e) Only 2 and 4 developed in the courts of law.

11. An injunction that orders the defendant to correct the present situation by undoing some past action is best described as:

- a) structural
- b) preventive
- c) restorative
- d) prophylactic
- e) punitive

12. A corporation is ordered to instruct all employees on the subject of sexual harassment and to publicize the proper procedures for filing a complaint. The injunction is best described as:

- a) structural
- b) preventive
- c) prophylactic
- d) restorative

13. In an employment discrimination suit against a private corporation, the court orders the corporation (1) to rehire the plaintiff Patty and (2) to set up an internal mechanism to deal with any future events of sexual harassment.

The two parts of the injunction are best described as (in the corresponding order):

- a) preventive and structural
- b) restorative and prophylactic
- c) corrective and structural
- d) internal and preventive
- e) prophylactic and reparative

14. Modern injunctions come in different forms. In class we read an excerpt from the Brown v. Board of Education (1955). Which form of injunction did the United States Supreme Court employ in that decision?

- A) Preventative
- B) Restorative
- C) Curative
- D) Prophylactic
- E) Structural

15. Andy and Keith are neighbors. Keith's dog continuously barks throughout the night. The dog's barking prevents Andy and his family from sleeping at night. Andy has talked with Keith on several occasions about the disturbance.

Keith did not take any measures to prevent the dog from barking throughout the night.

Andy has sued Keith to enjoin the disturbance.

The likely result is that an injunction will be:

- a) denied, because there is an adequate remedy at law.
- b) granted, in the form of a mandatory injunction.

- c) denied, because of the difficulty of supervision.
 - d) granted, in the form of a prohibitory injunction.
 - e) denied, because equity does not enjoin private nuisances.
16. A new baseball park is built in Fayetteville as home to the new Fayetteville Ferrets minor league baseball team. It has met all zoning requirements. However, attendance is greater than anticipated. As a result, the noise, garbage and congestion are excessive and burdensome to the local residences. The residents sue on a nuisance theory. Assuming they prevail on liability, what is the most likely appropriate remedy?
- a) permanent nuisance
 - b) prohibitory injunction
 - c) mandatory injunction
 - d) unjust enrichment
21. The Razorback foundation has arranged a giant barbeque party to celebrate the Hogs' participation in the Sugar Bowl. The party is to take place in Jackson Square the day before the game, and the organizers expect "four or five thousand" to attend. However, local residents are somewhat nervous at the prospect of hearing "Wooooooo! Pig Sooie!" for twenty-four uninterrupted hours, and seek to enjoin the Razorback Foundation from having its party. The residents present the following concerns to the court:
1. Traffic around the site of the barbeque will be hopelessly congested.
 2. Public health and safety will be threatened by the unsanitary conditions which will necessarily result from piles of leftover beans, slaw, and bones.
 3. The prospect of disorderly conduct and public intoxication arising from the gathering will place an undue strain on the city's police department. (Note: Jackson Square is part of the French Quarter.)
 4. Damage to public property will undoubtedly result.
- Which of the above concerns, if any, should the Razorback Foundation be required to address, in the form of responding to the residents' request for an injunction?
- (A) only 1
 - (B) only 2
 - (C) only 3
 - (D) only 4
 - (E) All of the above
22. Mike Tiger, a champion heavyweight boxer, was recently convicted of assault because during a fight he bit off a portion of his opponent's ear. The National Boxing Association

has given three days notice of a hearing, wherein the Association will decide whether to ban Mr. Tiger from ever competing in a fight again in lieu of his criminal conviction.

Mr. Tiger sues the Association and seeks a preliminary injunction to stop the hearing. Which of the following factors should the court consider when determining whether to grant the preliminary injunction?

- 1) the likelihood of success on the merits.
- 2) success on the merits, demonstrated by clear and convincing evidence.
- 3) the threat of irreparable harm to Mr. Tiger if the request is denied.
- 4) the fairness to the NBA in granting the request.
- 5) success on the merits, as demonstrated by a preponderance of the evidence.
The court will consider:
 - a) only (1) and (3).
 - b) only (2) and (4).
 - c) only (4) and (5).
 - d) only (1) and (4).
 - e) only (3) and (5).

23. Skippy, a sophomore at the University of Arkansas, is a big Razorback basketball fan. Skippy watches the Hogs play every time he can. He has only seen the Hogs play live once, last year, when a friend of his had an extra ticket. Skippy is very upset over the manner in which the Razorback basketball tickets are sold to the students. Very few tickets are actually sold to the students, and only to those who camp out overnight in the freezing cold just to obtain tickets. It is the Friday before the tickets will be sold on Sunday. Skippy comes to you and asks what he can do to stop the school from selling the tickets in the same way they always do. What do you tell Skippy?

- a) He should go down to chancery court and ask to speak to a judge. The chances are good that Skippy will be able to obtain a TRO against the University because he has no adequate remedy at law.
- b) At this stage of the proceedings, Skippy does not need to be troubled by his legal theory, for a showing of likelihood of success on the merits is not necessary for a TRO to be issued.
- c) Any attempts to obtain judicial relief before the ticket distribution are likely to be unsuccessful because Skippy cannot demonstrate irreparable harm.
- d) A chancellor is likely to refuse any relief because of the practical considerations in stopping the sale of the tickets.
- e) The chancellor will not grant relief until written notice of the request of a TRO has been given to appropriate university officials.

24. Acting on behalf of his company, Bill Baker contracts with a shopping mall for the lease of a space in the Mall for 36 months, at a rent of \$500 a month, plus 3% of the gross revenues. The contract provides that 1) the company will have the only bakery store in the Mall; and that 2) Bill will keep the store open on a daily basis during regular business hours.

After 3 months of operation, Bill finds that the operation of the business is too costly, and that it would be cheaper to go out of business and pay off the lease. The owners of the Mall sue Bill's company in equity, seeking specific performance of the lease.

- a) The court of equity must dismiss the action because of the difficulty of supervision.
 - b) The court of equity will dismiss the action because damages are an adequate remedy at law.
 - c) The court is likely to grant the shopping mall's request and order Bill's company to operate a bakery in the Mall for the remainder of the lease.
 - d) The court is likely to deny the request because the parties were obviously mistaken when they entered into the lease.
 - e) The court will deny the request because the mutuality of remedy rule is not satisfied.
31. In which of the following situations would it be appropriate for a litigant to successfully assert the Doctrine of Unclean Hands?
- (1) Pam the Painter enters into a contract with Doug to paint the exterior of his home. The contract calls for Pam to use only the highest quality of paint on the market, Cadillac Paint. Unbeknownst to Pam, Doug witnessed her pouring a generic brand of paint into a Cadillac can to make it appear that she was using the high quality paint. After repeated attempts to bill Doug, Pam finally decided to sue Doug for breach of contract and she asked for money damages.
 - (2) Dan sells a new break through golf ball that allows a golfer to drive an average of 45 yards further than with a regular golf ball. The only problem is that Parker holds a patent on this type of ball. Therefore, Parker sues Dan seeking injunctive relief. During the trial Dan learns that Parker lied during his testimony about how long he had owned the patent on the golf ball.
 - (3) Pamela brought a declaratory action asking the Court to declare her as the sole taker and beneficiary under Old Man Jed's will. Her brother Carl, who is contesting the will, found out just hours before Old Man Jed passed away that Pamela had taken the Old Man to her husband, who happened to be an attorney, to draft a new will which cancelled Carl's interest and established Pamela as the sole taker. Carl also learned that the only witnesses to the signing of the new will were Pamela and her husband.

Unclean hands is a viable defense:

- a) only in (1).
- b) only in (2).
- c) only in (3).
- d) in all three situations.
- e) in none of the situations.

32. David Debtor owes Connie Creditor \$5,000 for landscaping work which her company provided to David. In anticipation of a forthcoming lawsuit by Connie to collect the outstanding debt, David enters into a contract with Terry Third-party whereby David "sells" Terry his classic '57 Corvette for the consideration of \$10.00 with the understanding that once the financial trouble between David and Connie is settled, David will repurchase the car from Terry. After obtaining a judgment against David, Connie attempts to collect. She is unsuccessful however, (David's only valuable asset being the Corvette which he sold Terry) and gives up after four years. David then approaches Terry to repurchase the Corvette. When Terry refuses to sell back the auto, David brings suit in Equity for specific enforcement of a breached contract. What will be the likely outcome of the suit?

- a) Because David waited four years before he sought to reclaim the Corvette, Terry will win under a theory of laches.
- b) David's suit will be transferred to a court of law, because specific performance is not an available remedy when damages are available under the law.
- c) Both David and Terry will be thrown in jail (because they are crooks) and the chancellor will keep the Corvette for herself.
- d) Terry will win under the equitable defense of unclean hands, because David's attempt to hid the car from Connie tainted any claim that he may have against Terry for it.
- e) David will win, because a contract for the sale of a '57 Corvette for \$10.00 is unconscionable and will not be enforced by the court.

33. Plaintiff, recognizing impending bankruptcy and not wanting Blackacre to be sold to the benefit of his creditors, sells his property to Defendant, who knows of Plaintiff's purposes. The parties agree that once Plaintiff is free of the bankruptcy, Defendant will reconvey the property. Following the conclusion of his bankruptcy, Plaintiff asks Defendant to reconvey the property. Defendant refuses. Plaintiff sues in equity to regain the property. Defendant raises the defense of unclean hands because the Plaintiff conveyed the property to defraud his creditors. What result is likely in Arkansas?

- a) Unclean hands is not a proper defense as the Plaintiff has a remedy at law.
- b) The defense of unclean hands will not be allowed because the defendant is not an innocent party.
- c) The court will allow unclean hands because the Plaintiff's conduct is directly

- related to the cause of action.
- d) The court will allow the use of the unclean hands doctrine because the courts should not aid bad plaintiffs.
34. Judge Lineberger believes the biggest problem chancellors face today in 1997 is:
- a) the use of the clean-up doctrine.
 - b) the determination of whether the chancery court has jurisdiction.
 - c) domestic violence.
 - d) the determination of whether the plaintiff has met his burden of proof.
 - e) the implementation of a constructive trust.
35. Sue, who was very wealthy, decided to divorce her poor husband Harry. Sue didn't want him to gain any of her wealth as a result of the divorce action. So Sue decided to hide much of her wealth from him in order to defeat his interest in any of her property. Sue enlisted the aid of her mother Mary. Sue gave her mother 250 American liberty coins with a considerable amount of money to place in her mother's safe deposit box. Both Sue and her mother knew that no gift was intended. After the divorce, Sue asked her mother to return the coins. Her mother refused. She needed a new car and Sue had too much money anyway!
- Sue sued her mother in equity alleging she was entitled to the return of the coins. Her mother defended her refusal on the grounds that Sue's hands were unclean; therefore, she could not enlist the aid of equity to gain their return.
- How is the Arkansas chancellor likely to rule?
- a) The court must dismiss the action, even in the absence of any defense motion, because Sue seeks the return of personal property and she has an adequate legal remedy in replevin.
 - b) The mother will not be permitted to raise the defense, because she has unclean hands herself by being a part of the fraud on the husband.
 - c) The mother will be permitted to raise the defense because Arkansas law does not require that the defendant have been injured or prejudiced.
 - d) Sue's claim is essentially based on unjust enrichment, and accordingly she has erred by suing in equity.
41. The Andersons (Megan and Morris) entered into a contract for the purchase of a home from Cambridge Homes, Inc., a company in the business of constructing and selling residential homes. The Andersons moved into their home but shortly thereafter began experiencing problems with water leaking into the house and moisture building up in the walls. The Andersons filed a lawsuit against Cambridge Homes alleging fraud/misrepresentation, negligence, and breach of warranty. They are seeking rescission of the contract and damages to fix the home; the case is set for a trial two months from

now. Cambridge files a motion to compel the Andersons to elect their remedy. Which of the following statements applies best to this case?

- A. The Andersons should be required to elect their remedy because the election of remedies doctrine prohibits them from seeking inconsistent remedies.
 - B. The Andersons should not be required to elect their remedy because the remedies are not inconsistent and therefore the election of remedies doctrine would not apply.
 - C. The Andersons should not be required to elect their remedy because the motion is premature; the election of remedies doctrine does not apply yet but may apply later.
 - D. The Andersons should not be required to elect their remedy because the election of remedies doctrine does not apply to inconsistent causes of action.
 - E. The Andersons should be required to elect their remedy so long as discovery has been completed because at that point, they will have all of the information available to make their determination.
42. Peter Plaintiff purchased a Toyota Camry from David Dealer in August of 2009. In September, the car broke down. The mechanic stated, "it needs \$3,000.00 worth of mechanical work, must have been a wreck previously, and by the way, this is a 2008, not 2009 model. You incorrectly noted that on the initial form."

Peter, not having the funds for this type of upkeep, visited his lawyer, and said, "This car is a piece of junk, and I want my money back! My girlfriend Ashley is embarrassed to be in this car." Peter's lawyer writes David a letter demanding money damages, and immediately thereafter files a complaint, alternatively pleading for rescission or money damages.

After receiving the complaint, David tells his lawyer that he and Peter had been long time friends, and Peter got exactly what he wanted. They had agreed to structure the transaction so it looked like Peter was getting a new model for \$17,000, though it was a 2008, worth \$15,000. Doing this would allow Peter to trade in his worthless clunker to be destroyed and realize a \$5,000 rebate through the federal government program.

Which of the following will result in an Arkansas Court?

- a) Though he cannot raise it himself, David should rely on the court, *sue sponte*, to raise the equitable defense of unclean hands, to protect the integrity of the court.
- b) The judge should allow only a suit for damages to continue, as it is likely that Peter elected his remedy of damages out of court.
- c) David should highlight the maxim "Equity will not suffer a wrong to be without a remedy," arguing the court should create a remedy to guard against the reputational harm his business may suffer as a result of this suit.
- d) David should raise the defense of unclean hands affirmatively, and present proof of this in order to wipe out entirety of Peter's claim.

43. Billy Bob Burton buys a brand new pick-up truck from Tony's Truck World in Hot Springs. Shortly after the purchase, Billy Bob discovers that the truck has a faulty electrical system. If Billy Bob sues Tony for fraud, under which of the following circumstances is a court least likely to find that Billy Bob has irrevocably elected to affirm the sales contract and sue for damages, rather than seek rescission of the sale?
- a) Billy Bob waited nearly two years after discovering the defect to file suit against Tony.
 - b) After consulting an attorney, Billy Bob writes a letter to Tony in which he states, "I'm not very happy about this lemon you sold me, and I'm going to sue you for compensatory damages."
 - c) Prior to the present suit, Billy Bob had obtained a money judgment against Tony for damages arising out of this same transaction, but he was unable to enforce the judgment after Tony fled the state and took his trucks with him.
 - d) Prior to filing suit against Tony, Billy Bob repairs the electrical system, paints the truck purple, and installs enormous "monster truck" tires on the vehicle.
 - e) On the way to the courthouse to file his complaint against Tony, Billy Bob's truck is hit head-on by another driver, causing significant damage to the vehicle.

44. Buyer purchases a waffle restaurant from seller. In the contract for sale, the seller agrees not to open another breakfast restaurant within one mile of the buyer for a one year period. Three months later, the seller opens a pancake restaurant across the street from the buyer's waffle restaurant. The number of patrons at buyer's restaurant drops dramatically. Shortly thereafter buyer converts the waffle house to a Japanese steakhouse in an attempt to maintain profitability.

One month later the buyer sues in Arkansas chancery court. May the buyer rescind his purchase of the waffle restaurant?

- a) No, because rescission is not an available remedy for breach of contract.
 - b) Yes, because his acts in converting to a Japanese steakhouse were reasonable and necessary to preserve the value of the property.
 - c) No, because having knowledge of his right to rescind the contract, he treated the property as his own.
 - d) Yes, because he has not made an in-court election.
 - e) No, because he is barred by laches.
51. Adam discovers a diamond tiara on his front lawn. He wants to keep it under the principle of finder's keepers. But it is claimed by Sarah, Tracy, and the AAA Jewelry Store. Although he doesn't want to be involved in their dispute, he would like to end up with the diamonds.

The remedy most likely to produce the result he seeks is:

- a) impleader
- b) interpleader
- c) accounting
- d) master
- e) receiver

52. A person is concerned about a legal instrument that purports to affect the person's rights. The legal instrument, which has not been filed or recorded at the courthouse, is allegedly forged.

The most appropriate remedy is:

- a) Bill of Peace
- b) Bill of Cancellation
- c) Bill to Remove Cloud from Title
- d) Writ of Ne Exeat
- e) Writ of Assistance

61. Bill Lambert has been elected to the local school board. But his defeated opponent argues that Bill does not live in the district and is not eligible. What is the proper remedy for the defeated opponent to seek?

- a) mandamus
- b) habeas corpus
- c) certiorari
- d) prohibition
- e) quo warranto

71. In 1997 Bill and Marcia developed a computer program that would write law school exam questions. They agreed to market the program jointly, but Marcia formed a separate corporation and started marketing the program on her own. Bill considers both money damages and an injunction preventing Marcia from marketing the program through her new corporation. Which of the following scenarios is proper?

- a) The suit was filed in Washington County Chancery Court. The court found that damages constituted an adequate remedy and on its own motion transferred the case to circuit court.
- b) The suit was filed in Washington County Circuit Court. The court held that damages were not an adequate remedy because Bill had not yet suffered any financial loss. It entered an injunction prohibiting Marcia from marketing the software.

- c) Bill decided that meeting the requirements for an injunction was too much trouble, and therefore he filed his damages claim in Washington County Chancery Court. Marcia moved to transfer the case, but the chancellor denied the motion, opting instead to decide the damages issue under the clean-up doctrine.
- d) Bill filed his damages claim in Washington County Circuit Court. Marcia pleaded an equitable defense and moved to transfer the case to chancery court. Bill opposed the motion because it would prevent him from having the case heard by a jury. In the alternative, Bill argued that only the equitable defense should be transferred. The circuit court refused to transfer the case.

72. In Arkansas in 1998 a court of equity is:

- a) wholly incompetent to hear a mandamus action, but is exclusively authorized to hear mortgage foreclosures.
- b) wholly incompetent to hear a wrongful death case, but has concurrent jurisdiction to hear an ejectment suit.
- c) wholly incompetent to hear a habeas corpus action, but has concurrent jurisdiction to hear a declaratory judgment action.
- d) wholly incompetent to hear a criminal prosecution, but has exclusive jurisdiction over criminal contempt matters.
- e) wholly incompetent to hear an interpleader action, but has exclusive power to grant the remedy of abatement.

73. Horatio sues Earl for an injunction in an Arkansas state court in October 2002. Earl files a compulsory counterclaim, seeking compensatory and punitive damages, and demanding a jury trial.

The issue is whether, according to existing Arkansas law, the Arkansas trial judge should grant a jury trial.

- A) Yes, because the right to a jury trial is guaranteed by the Arkansas Constitution.
- B) No, because the clean-up doctrine overrides the claim of a jury trial.
- C) Yes, as provided by Amendment 80.
- D) No, because the decisions of the United States Supreme Court conclude this action is exclusively equitable.
- E) None of the preceding four statements are correct.

Damages:

101. Defendant, a resident of Winslow, Arkansas, borrowed his neighbor's chain saw in July and has refused to return it. He has used it to cut and sell firewood. Plaintiff brings a statutory action to recover his chain saw. In addition to his chain saw, the plaintiff seeks:

- 1) the reasonable rental value for the period defendant had it;
- 2) the net profits made by the defendant in using the chain saw;
- 3) reasonable attorney fees;
- 4) interest on the value of the chain saw during the time Defendant improperly retained possession.

Plaintiff is likely to be awarded:

- a) only (1).
- b) only (1) and (2).
- c) only (1) and (3).
- d) only (2) and (3).
- e) (1), (2), (3), and (4).

102. Mark has been given a family watch that has been in his family for several generations. The fair market value of the watch is \$400, but the special value to Mark is \$1000. Due to the age of the watch, it hasn't been working properly. Therefore, Mark goes into an Arkansas jewelry store to get the watch fixed. He gives the watch to Nick, the store owner, and they have an oral agreement to fix the watch. A few days later, when Mark returns to get the watch, Nick refuses to give him the watch.

Mark goes to court and sues under the Arkansas replevin statute to recover the watch. Which of the following procedural statements is false?

- a) If Mark gets an order for the defendant to show cause, and the defendant doesn't object to the order and fails to show up to the hearing, then the order for delivery is issued.
- b) Nick has 20 days to respond to the notice of the hearing.
- c) If the order for delivery is issued, and Mark wants possession immediately, then Mark must post a bond for value of the watch.
- d) If Nick wants to retain possession of the watch until trial, he must post a redelivery bond to the sheriff within 2 days.

103. Plaintiff Kristin loaned a car to defendant. Defendant kept it and painted a confederate flag on the hood. Plaintiff wants the car back, but not the flag.

Under the governing Arkansas law, the plaintiff (assuming she is successful) is likely to recover, in addition to the return of the car:

- a) the cost to the defendant of painting the flag on the car.
 - b) attorney fees.
 - c) the cost to the plaintiff of removing the flag.
 - d) punitive damages.
 - e) interest based on the value of the car.
104. Barbara Bride was married ten years ago and is still happily married. For her wedding she purchased a designer gown for \$2000. She had it professionally dry cleaned and protected after the wedding. It has never been worn since her wedding. But now it has been negligently destroyed in a fire. She is devastated by the loss.

How much can she recover for her losses from the tort-feasor?

- a) the original cost.
 - b) the original cost, minus depreciation of ten years.
 - c) the fair market value of the gown.
 - d) the fair market value, plus a reasonable amount for mental anguish.
 - e) the fair value to her.
105. The day before Christmas, Polly Parent and Charlie Child are shopping at Hallmark in the Northwest Arkansas Mall. While there, Charlie accidentally trips and falls into a shelf breaking a \$100.00 "Precious Moments" figurine. There is a sign on the wall behind the cash register that reads, "You break, you buy." The store owner of Hallmark could reshelve the exact item for a cost of \$50.00.

Which of the following amounts is Polly Parent responsible for?

- a) \$100.00, the full sticker price of the item.
 - b) \$50.00, the amount it would cost the store owner to replace the item.
 - c) \$25.00, because the item was to be marked 75% off after Christmas.
 - d) Nothing, because Charlie accidentally broke it.
106. Eldorra Gelblum is an 87 year old spinster, who, in 1930, as a young woman, visited the beach at Galveston, where she had, for the first and last time in her life, a genuinely joyful experience, during which she acquired a small, common seashell that she has kept ever since as a souvenir. She has kept the shell on display in a what-not cabinet in her living room since 1930 in Fordyce, Arkansas. Recently a careless visitor, Morris Phillips,

negligently knocked down the entire what-not cabinet. The cabinet -- worth \$350 as listed in the antique catalogs -- broke irreparably. So did the shell. Miss Gelblum has sued for a large sum of money. She has not explained the exact nature of the experience for which the shell was a souvenir, but there is little doubt that the jury will appreciate it and understand its personal significance to her. She is intensely upset and demoralized by the loss of the shell. Phillips is probably liable for the following sum under the generally stated rule:

- a) \$350, plus some small additional sum as nominal or "value to the owner" damages.
 - b) \$350, plus sentimental value.
 - c) \$350, plus substantial general damages.
 - d) \$350, plus some small additional sum as nominal or "value to the owner" damages, plus interest on \$350 from the time of the accident.
 - e) \$350, plus sentimental value, plus interest from the time of the accident on the entire judgment.
107. Michael was driving down the street in a 1989 brown Chevy Blazer. All of a sudden a woman in a minivan crashes into the bumper of his car. Liability is not a question; it was the woman's fault. The Blazer was worth \$1,000 before the accident and there was no change in fair market value to the car after the accident. The cost to fix the Blazer is \$300. The evidence is undisputed that the Plaintiff will not use any recovered money to fix his car. What amount of damages should the plaintiff receive?
- A. No damages, because the fair market value did not change.
 - B. \$300, because that amount is the cost of repair.
 - C. \$1,000, because the Blazer had that fair market value.
 - D. No damages, because Michael will not use the money to fix his car.
108. 20 years ago Tom asked a no-name artist to paint a portrait of his father, who died tragically years before. Soon after the portrait had been painted, Tom's house burned to the ground and his only remaining possession was the portrait which had been encased in fire proof glass. The portrait was the only remaining image of his father, and Tom treasured it above all things in his life. Although the portrait was not burned, it had incurred some smoke damage. So Tom took the portrait to a painting reconditioning expert named Darren. Tom told Darren the entire story of the painting. Tom told Darren the portrait was the last image of his father, it was priceless to him, and said that he needed a guarantee that nothing bad would happen to it. At that point, Darren said, "not to worry Mr. T I'll give it back to you in its original condition before you know it." Tom said, "Great. I'm counting on you. Jest send me the bill when you are done." Darren later applied the wrong chemical and stripped away the image of the grandfather from the

canvas. In Arkansas what would be the best argument Tom could make to maximize his damages in an action for breach of contract?

- A. Darren should have foreseen that negligently applying the wrong chemical would cause damage to the painting.
- B. An objective reasonable person would have reason to foresee sentimental damages to result from applying the wrong chemical.
- C. Darren was aware of the sentimental value the painting had and agreed to assume the risk if the painting was damaged or lost.
- D. None of the above.

111. Billy Bob owns a hunting dog Lucy, who is also his best friend and prized possession. Billy Bob and Lucy were walking through the Ozark National Forest one day when Ronnie Redneck came flying through in his monster truck. Ignoring road conditions, he hit and seriously injured Lucy, but barely missed Billy Bob.

Billy Bob hurried to Vince the Veterinarian and pleaded with the vet to take care of his Lucy. The vet assured him: "Don't worry. She will be fine. If anything happens to her, I will take full responsibility." Later that day, the vet's office staff mixed up Lucy with another dog who was to be put to sleep. Lucy died peacefully.

Billy Bob is crushed by the accident and the vet's mistake, He has suffered severe, prolonged and unusual grief. He is determined to sue both Ronnie Redneck and Vince the Vet. Which of the following elements of recovery are likely to be awarded by an Arkansas court?

- 1) the fair market value of a good hunting dog
- 2) the personal and sentimental value that Billy Bob had for Lucy
- 3) mental anguish (from either Ronnie or Vince)
- 4) mental anguish (only from Ronnie under the Arkansas rule permitting mental distress damages for loss of a good hunting dog)
- 5) mental anguish (only from Vince, under the tacit agreement rule)
- 6) punitive damages (only from Ronnie)

The court is likely to award:

- a) (1), (3) and (6) only.
- b) (1) and (5) only.
- c) (1) and (3) only.
- d) (2), (4) and (6) only.
- e) (2) and (5) only.

112. For six years George, a lifelong bachelor, has enjoyed the companionship of Rambo, a hybrid wolf dog. He retrieved Rambo from the pound without cost, cared for him after the amputation of his rear leg, paid \$500 for veterinarian bills over the years, and invited Rambo into his bed.

Rambo has now been killed by a negligent driver. George is heart-broken. What damages can George recover under Arkansas law?

- 1) the fair market value of Rambo.
 - 2) \$500 for the out of pocket expenses.
 - 3) loss of companionship.
 - 4) emotional anguish.
 - a) only (1)
 - b) only (1) and (2)
 - c) only (1) and (3)
 - d) All four elements. All four are actual damages caused by the tort-feasor.
 - e) None are recoverable. He did not purchase the dog.
113. Ross loved his dog Barrel, a three year old purebred chocolate lab. Ross was given Barrel as a gift from his uncle, who normally sells puppies like Barrel for \$600. Every day, Ross would play with Barrel and spend a half hour simply grooming him. He made sure that Barrel had the finest food, the best dog toys, and is seen monthly by the area's best veterinarian. Ross generally spends \$300 a month on Barrel. Lately, Ross has been reading about the money a model dog can earn. In the local market, Ross discovered that a dog who is much more plain than Barrel has made upwards of \$300 a photo session for advertising purposes. Ross is convinced that Barrel could easily make \$500 a session and begins to advertise Barrel's availability.

Not long after, Ross is contacted with a job for Barrel and is offered \$500, provided that Barrel is as cooperative and photogenic as promised. On the day of the shoot, while driving to the photographer, Ross is in a horrific accident and Barrel is fatally wounded. The cause of the accident was a drunk driver and the matter of fault is not contested.

What is the likeliest recovery for Ross?

- a) Ross receives nothing. He originally received Barrel as a gift and Barrel earned nothing.
- b) Ross receives the accumulated value of the care and upkeep spent on Barrel.
- c) Ross receives the fair market value for a three year old purebred chocolate lab.
- d) Ross receives fair market value.
- e) Ross receives fair market value plus \$500, plus mental anguish for the loss of his best friend.

121. Real property may be valued for purposes of condemnation, taxes, damages or conveyance. Which of the following is not an valuing real property?
- a) Basic Analysis Method.
 - b) Sales or Market Method.
 - c) Income Approach.
 - d) Replacement Cost
122. Sam and friends were driving around town one evening drinking. They became intoxicated. One of Sam's friends stated that he was mad at another individual named Joe. Sam said, "Well, we will fix him" and proceeded to drive through Joe's yard making ruts in the yard and damaging some small trees recently set out. Joe waited for 6 months to sue Sam and in the meantime did nothing to the damaged yard and trees. Then a lawn repairman repaired the ruts at a cost of \$500. The trees died and had to be replaced at a cost of \$350. The repairman testified that if the damaged lawn and trees had been tended to immediately the trees could have been saved and the ruts could have been fixed at a cheaper price.
- He estimated the total cost of repair if done immediately at \$250. Joe seeks damages for the trespass.
- Under common law principles, which of the following damages are appropriate?
- a) \$850 compensatory, plus punitive damages, plus attorney fees.
 - b) \$850 compensatory, plus punitive damages.
 - c) \$250 compensatory, plus punitive damages, plus attorney fees.
 - d) \$250 compensatory, plus attorney fees.
 - e) \$250 compensatory, plus punitive damages.
123. Donald maliciously trespassed upon the land of Pluto. Pluto sued and the Arkansas jury awarded \$1 for the trespass and \$500 for punitive damages. The trial judge then directed each party to pay its own court costs.
- a) The jury's award was improper, because there must be a reasonable relationship between compensatory damages and punitive damages.
 - b) The jury's award was improper, because punitive damages cannot accompany nominal damages.
 - c) The jury's award was proper, because punitive damages may be assessed against an intentional tort-feasor.
 - d) The court's order was proper, because there was no "clear winner" in the lawsuit.
 - e) The court's order was proper., because the award of \$1 constituted a victory for the defendant Donald.

124. The Arkansas Betterment Statute allows a mistaken improver to:
- a) avoid liability for damages if he removes the improvements within twelve (12) months time from the date of the discovery of the erroneous placing.
 - b) recover the cost of the improvements if he mistakenly builds on another's land.
 - c) initiate the suit against the owner of the land based on the theory of unjust enrichment.
 - d) recover some damages for the improvements if he believes he has title to the land and has documentation to show title.
125. In which of the following examples is ejectment the correct remedy?
- a) Plaintiff has a deed to Greenacre. Defendant is in possession of Greenacre and asserts adverse possession.
 - b) Plaintiff was unilaterally evicted from her apartment for failure to pay the rent.
 - c) Plaintiff occupies Blackacre. Defendant claims it through a deed.
 - d) Defendant has remained in possession of his apartment despite the termination of the lease. Plaintiff is the owner of the apartment.
 - e) Plaintiff owns a vacant residential lot. Defendant owns an adjoining lot and the roof of his new garage extends over the boundary with plaintiff.
126. While he worked in downtown Little Rock, Defendant parked his car five days a week on a vacant lot owned by the plaintiff. Plaintiff was not using the lot in any way. Plaintiff is now determined to prevent further parking on the lot and to recover \$100 for the prior parking. Plaintiff is most likely to succeed if:
- a) he utilizes the ejectment statute.
 - b) he goes to a court of equity.
 - c) he utilizes the forcible entry and detainer statute.
 - d) he waives the tort of trespass and sues in assumpsit.
 - e) he resorts to self help.
127. Don is a wealthy, middle-aged business man living in Los Angeles. He is an only child who was raised in Fayetteville, but has lived in California for the better part of 20 years. In fact, he has only returned to Arkansas for the occasional holiday visit. His parents remained in his antiquated and humble childhood abode until their death in November, 1996, and through the laws of intestacy, Don acquired the house. For one reason or another, Don has left the house unoccupied and falling to waste. Assuming the house and lot could be declared a nuisance (under substantive law) due to a substantial interference in the use and value of the neighbors' properties, which of the following is true in Arkansas?

- a) A circuit court could remedy the problem by issuing a mandatory injunction to fix the mess (mow the yard, paint the house, etc.) and resolve any damages under the "clean up" doctrine.
 - b) The fact-finder should measure damages, if any, according to the change in fair market value of the neighbors' properties due to the nuisance.
 - c) The fact-finder should measure damages, if any, according to the loss of use of the neighbors' properties through a determination of the change in fair rental value.
 - d) A court would lack the power to act because Don lives in California, visits Arkansas very infrequently, and owns only one piece of property in this state.
 - e) The fact-finder should measure damages based on the fair market value of Don's property.
131. Watermelons in Hope, Arkansas are planted in April and harvested in late August. A farmer's entire crop is negligently destroyed in early August. The measure of recovery is:
- a) the annual rental value of the land.
 - b) the change in the fair market value of the land.
 - c) the market value of the watermelons.
 - d) the market value of the watermelons, minus the cost of harvesting and marketing.
 - e) the cost of seeding and planting.
132. Home builder, HB, purchases a wooded lot in Bella Vista, Arkansas in order to build a new home. In order to permit the house and septic system to fit on his property, HB clears all of the trees that are on his lot. HB sells these trees to a local lumber company. Neighbor, N, who lives adjacent to HB's lot claims that while HB was clearing the trees on his lot, he also cut down five trees that were very close to the property line, but were nonetheless on N's property. Assume that N is correct and HB did in fact inadvertently cut down five trees on N's property. What options are available to N?
- 1) Sue HB for conversion and claim for the value of the five trees.
 - 2) Sue HB pursuant to A.C.A. § 15-32-301 and ask for double the value of the five trees that were removed and sold.
 - 3) Sue HB pursuant to A.C.A. § 18-60-102 and ask for treble damages for the value of the five trees that were removed and sold.
 - 4) Sue HB pursuant to A.C.A. § 18-60-102 and ask for single damages only.
- a) Only 1 is correct.
 - b) Only 1 and 2 are correct.
 - c) Only 1 and 4 are correct.
 - d) Only 2 and 3 are correct.
 - e) Only 2 and 4 are correct.

133. Bill recently relocated with his company from Colorado to Northwest Arkansas. He and his wife of seven years purchased a home on five acres of land. The property was within fourteen miles of a local sawmill. Growing on the property near a fountain next to the home were quaking aspen, Colorado blue spruce and narrow-leaf cottonwood, all transplanted from Colorado. The trees averaged six inches diameter breast high (d.b.h.). Also on the property were native species of trees such as short-leaf pine, mockernut hickory and post oak. Bill's five year old son particularly enjoyed playing in a tree house built around the trunk of an old southern red oak. Exactly three days after closing on the property, a trespassing firewood cutter dropped the mighty red oak and whittled it up into six cords of firewood which he then sold for \$100.00 per cord to four different innocent buyers. In the process of felling the red oak, the ten trees transplanted from Colorado were destroyed. Bill comes to you for help. Of the following, which remedy is most appropriate?
- A. Have a timber buyer from the sawmill value the trees and sue the trespasser in tort for triple the fair market value of the stumpage of the red oak, quaking aspen, Colorado blue spruce and narrow leaf cottonwood.
 - B. Sue the seller of the property in equity to abate the contract to reflect the true valuation of the property subsequent to the trespass.
 - C. Bring a cause of action against the firewood cutter for unjust enrichment, trace the proceeds from the sale of the firewood into the hands of the purchasers and impose a constructive trust.
 - D. Seek replacement costs for all eleven trees from the trespassing firewood cutter.
134. Complete these sentences from the case book material on damages to real property. "Plaintiffs have been entitled to recover the costs to remove the hazardous substances from their property and to restore their property to its pre-contamination condition. Further, they are often permitted _____ damages when the market value of their property remains depressed because of lingering buyer concerns about the effect of environmental contamination on the property even after it has been cleaned. Such _____ damages compensate for loss to the property market value resulting from this long term negative perception of the property. The damages are in excess of any property the plaintiff receives for the temporary injury itself."

What is the missing word?

- a) perceived
- b) apparent
- c) stigma
- d) imaginary
- e) consequential

141. Johanna Smith is a stay at home mother who has 4 children. Johanna recently divorced and as part of her entry back on the dating scene, Johanna decided to get a gastric by-pass operation to “shed a few pounds.” Dr. Doolittle performs the gastric by-pass operation on Johanna. During the operation, Dr. Doolittle negligently performs the surgery by making a minor error. The operation, however, has caused some serious complications to Johanna’s lifestyle. The surgery has caused irreparable injury to Johanna’s stomach. There is no surgery available that can correct Johanna’s injuries. Johanna is now bedridden for most of the day and can only eat certain foods. She is not able to perform her normal everyday tasks. Johanna has substantial unpaid medical bills for the surgery.

Personal injury attorney Bobby McDaniel spoke to the class in March 2009. Assume he brings a lawsuit for Johanna Smith against Dr. Doolittle for medical malpractice. What damages are available if he establishes liability?

- 1) Medical bills for the surgery;
 - 2) Mental anguish;
 - 3) Inability to provide household services;
 - 4) Loss of consortium;
 - 5) Punitive damages.
- a) Only (1).
 - b) Only (1) and (2).
 - c) Only (1) and (2) and (3).
 - d) All but (5).
 - e) All of the above.

142. While working in his home shop, the pastor lost his left hand in a tool accident. He is paid an annual salary by the church. He missed several weeks of work, but has now returned to his pastoral position. His salary was not reduced during his absence.

Which of the following elements of damages can he successfully claim in a products liability suit?

- 1) lost wages.
 - 2) loss of future wages.
 - 3) loss of earning capacity
- a) None of the above.
 - b) Only 1.
 - c) Only 1 and 2.
 - d) Only 1 and 3.
 - e) All of the above.

143. A personal injury case involves the permanent disability of a 50 year old office worker. Which of the following are likely to be considered by the fact finder in an Arkansas court when presented with the task of determining future lost wages?

- 1) the gross pay of the worker at the time of the injury.
 - 2) the after-tax net pay of the worker at the time of the injury.
 - 3) wage increases (guaranteed by a union agreement) to be effective in the next three years.
 - 4) the higher salary he would have earned if the accident had not barred completion of his further education.
 - 5) the interest rate that would be paid on a safe investment.
- a) Only (1), (3) and (5) are likely to be considered.
 - b) Only (2), (3) and (4) are likely to be considered.
 - c) Only (1), (4) and (5) are likely to be considered.
 - d) Only (2), (3) and (5) are likely to be considered.
 - e) Only (1), (2) and (5) are likely to be considered.

144. An Arkansas law student joins friends for dinner at a local restaurant. She pays for her meal when ordering. Following delivery of the meal, she takes a drink of water and spits it right back out; she has almost swallowed a large, dead fly. She becomes violently ill and rushes to the washroom. She leaves without finishing the meal, and her friends drive around with the car windows open to give her air. When she continues to be nauseous, they take her to a doctor. The doctor gives her a shot to stop the vomiting, but the doctor and her friends can't stop laughing as they sing:

There was an old woman who swallowed a fly.
I don't know why she swallowed that fly.
Perhaps she'll die.

In fact, the doctor is so amused that he doesn't charge her. Nevertheless, the law student turns in a claim on her medical insurance and collects \$50 as a reasonable fee for the doctor's services and the shot.

Then she sues the restaurant and claims:

- 1) the cost of her meal.
 - 2) \$50 for medical treatment.
 - 3) compensation for mental distress.
 - 4) attorneys' fees
 - 5) punitive damages
- a) She is likely to recover only (1), (2) and (3).
 - b) She is likely to recover only (1), (3) and (5).
 - c) She is likely to recover only (2), (3) and (4).

- d) She is likely to recover only (1), (2) and (4).
- e) She is likely to recover only (1), (2) and (5).

145. On Thursday, October 21, 2010, Don Elliott spoke to the class about trying personal injury cases.

He gave advice from the perspective of the plaintiff's attorney.

What advice and opinions did he give? Of the following 7 statements, he made 5. Which two did he not make?

- 1) Search Facebook and Google to obtain background information on potential jurors.
- 2) It is most helpful to use a per diem argument for pain and suffering.
- 3) "Loss of life" damages are found in most jurisdictions, and should be adopted in Arkansas
- 4) Plaintiff attorneys should use words such as "SOS Machine" (instead of fetal monitoring device) and "pain" (instead of discomfort) and "health industry" (instead of health profession).
- 5) Jurors expect attorneys to suggest a dollar amount for pain and suffering during closing arguments.
- 6) For loss of consortium damages, argue (for instance) that the wife can no longer go to the movies with her injured husband, and thus has been deprived of his companionship.
- 7) The value (or economic losses) of a full time home maker is best established by examining her educational level.
 - a) He did not advise or state (1) and (4).
 - b) He did not advise or state (2) and (5).
 - c) He did not advise or state (3) and (6).
 - d) He did not advise or state (4) and (7).
 - e) He did not advise or state (3) and (7).

146. On Tuesday, October 25, 2011 Lance Cox and Jamie Estes spoke to the class, from the perspective of defending personal injury cases.

Which statements did they make?

- 1) Defense lawyers prefer educated jurors.
- 2) If your doctor client has left a clamp in the patient's abdomen during surgery, you

should settle the case because there is no way you can win, and a large award is likely.

- 3) The credibility of the parties, both the plaintiff and the doctor defendant, are crucial, and perhaps determinative, in a medical malpractice case.
- 4) If you find something beneficial to your client on the opposing party's Facebook page, print it, even at 2:00 a.m., before the information disappears.
 - A) They made all the statements except (1).
 - B) They made all the statements except (2).
 - C) They made all the statements except (3).
 - D) They made all the statements except (4).
 - E) They made all five statements.

151. David, a college student, was making an airplane trip to the Dominican Republic. During the flight the plane took a sudden nose dive. For five terrifying minutes David and the other passengers thought they would certainly crash. They had verifiable demonstrable mental anguish during those five minutes.

But then the pilot brought the plane under control. It landed safely. David had no physical injuries.

Does David have a claim for mental anguish for the airplane's negligence under Arkansas law? (Ignore any issues of federal law or regulations).

- a) Yes. Common carriers are liable for the mental anguish of their passengers.
 - b) No. Airplane passengers assume the risk of mental anguish.
 - c) Yes. Mental anguish claims may be asserted in connection with negligence claim.
 - d) No. The absence of physical injuries bars a claim for mental anguish.
152. Bobby McDaniel spoke to the class on Monday, March 9, 2009. He gave examples of the types of evidence presented to a jury to establish mental anguish. The case involved an 81 year old woman killed in a two car accident. Of the following examples, which one is inadmissible?
- a) Photographs of the woman and her children.
 - b) Home videos of the grandchildren at the victim's 80th birthday party, telling her how much they loved her.
 - c) Testimony from a grand-daughter, that the victim knew the grand-daughter was pregnant, but was not alive to see the new born baby.
 - d) Videos of the victim playing golf two days before the accident.
153. Diane and her eleven year old daughter, Jane, are traveling to Wal-Mart in her 1962 Corvette. The Corvette breaks down in the middle of highway 62, on the way to the southwest Fayetteville Wal-Mart store. There is a pay telephone at the sidewalk immediately adjacent to the Corvette. Diane leaves Jane in the car and runs over to the

telephone booth to call for a tow. As she reaches the phone booth she hears tires squealing and turns just in time to see another vehicle strike her Corvette with Jane inside. Jane is severely injured in the collision. Diane is emotionally distressed and seeks counseling. Which of the following statements is true?

- a) Diane will be able to recover for any emotional distress she experienced as a result of the collision because she was in the "zone of danger" when the accident occurred.
 - b) Diane will be able to recover for any emotional distress she experienced as a result of the collision because Jane is her immediate family member.
 - c) Diane's recovery is limited to her out-of-pocket expenses for counseling.
 - d) Diane's recovery is limited to the amount determined by the objective standards of a reasonable parent.
 - e) Diane will be unable to recover damages for any claim based on emotional distress.
161. In each of the following situations, a plaintiff sues in Arkansas state court and requests punitive damages be assessed against the defendant. In which of the following situations is a court most likely to not award punitive damages to the plaintiff?
- a) The defendant wrongfully expelled the plaintiff from a public bus.
 - b) The defendant unintentionally collided with the plaintiff's car and intentionally left the injured plaintiff at the scene of the accident.
 - c) The defendant drove his vehicle after consuming several cans of beer. He accidentally collided with the plaintiff's car. He immediately stopped his car and called the police.
 - d) The defendant canceled his contract with the plaintiff which called for the plaintiff to build a vacation cabin for defendant. Defendant told others that he canceled the contract because plaintiff was a "convicted child molester." The statement, it turned out, had no factual basis.
 - e) The defendant sold the plaintiff an automobile after turning back the odometer. Plaintiff sued the car dealership.
171. The Civil Justice Reform Act of 2003 changed the law of punitive damages. What changes were made?
- 1) The standard of proof was changed to clear and convincing.
 - 2) Punitive damages cannot exceed 10 times compensatory damages.
 - 3) One quarter of the punitive damages award is distributed to the State of Arkansas.
 - 4) Bifurcation is required at the request of any party.
 - 5) Punitive damages are barred in products liability cases.

- 6) Punitive damages are capped at \$1,000,000.

Which changes were made?

- a) Only 1, 2 and 4 are statutory changes.
- b) Only 1, 2 and 6 are statutory changes.
- c) Only 1, 4 and 6 are statutory changes.
- d) Only 2, 3 and 5 are statutory changes.
- e) Only 3, 5 and 6 are statutory changes.

172. Assuming that the Arkansas Supreme Court followed its reasoning from *Johnson v. Rockwell Automation, Inc.*, which of the following hypothetical statutes would the court be *most likely* to strike down?

- a) A statute requiring motorists to carry \$25,000 in liability insurance coverage.
- b) A statute abolishing the common-law tort of alienation of affection.
- c) A statute requiring a corporate party to sign pleadings in the name of its CEO.
- d) A statute raising the filing fee for civil actions.
- e) A statute limiting the amount of punitive damages a plaintiff can recover.

181. On January 1 Baker entered into a contract to purchase 1000 bushels of wheat at \$3.00 per bushel from Peterson, payment and delivery to take place on October 1. On September 1 Peterson wrongfully repudiated the contract and Baker immediately obtained replacement wheat in the open market for \$4.00 per bushel.

Baker sent a notice to Peterson demanding the \$1,000 differential between the cost to cover and the contract price, reimbursement of expenses incidental to effecting cover, and lost profits. Peterson refused to pay any amount and Baker filed suit for breach of contract claiming each of the stated elements as damages.

Two years later the trial is concluded, and the court awards Baker the \$1000 differential, \$300 for incidental expenses, and \$500 for lost profits. Baker now seeks prejudgment interest from the time the lawsuit was filed until the day of judgment. Is the court likely to award prejudgment interest?

- a) Yes, but only on the \$1000 and \$500.
- b) Yes, but only on the \$1000.
- c) Yes, but only on the \$1000 and \$300.
- d) Yes, on all three elements of damages.
- e) No.

182. Bill raises toy poodles. One evening he goes into his back yard to feed them. Since this only takes a few minutes, Bill decides not to latch the gate. While Bill is getting the dog

food, one of the more vicious poodles escapes out the gate and attacks the ankle of a passerby on the sidewalk, Tom. While attempting to flee, Tom trips over his attacker and falls on the sidewalk, breaking his arm and completely destroying his Rolex watch. Tom's brother is a doctor and he treats Tom's arm and other injuries without charge. Tom sues Bill in Arkansas for personal injury and property damage. Assume liability is proved.

- a) Tom should bring suit in [a chancery court] where any legal questions which are incidental to the equitable question can also be decided by the court under the clean-up doctrine.
- b) Tom may recover for both physical pain and mental anguish that he may have suffered.
- c) If the court follows the collateral source rule, Bill will be allowed to show that Tom's medical treatment cost him nothing.
- d) The general damages for the watch will most likely be measured by the purchase price of the watch at the time Tom purchased it.
- e) Because Bill intentionally left the gate open, Tom will be able as a matter of right to recover some amount of punitive damages.

183. Mary Ann and Cynthia both live in a small town in northwest Arkansas. Mary Ann owns and runs an interior design firm specializing in Holiday decor. As a marketing ploy, Mary Ann goes through the phone book and picks at random a resident to receive free Christmas decorating by her firm. Her finger landed on Cynthia's name. Cynthia was excited to have her home decorated by such a prestigious firm and thanked Mary Ann many times over.

After the firm finished, Cynthia entered her house in the state-wide Christmas display contest. She easily won the \$10,000 prize. Mary Ann hears of Cynthia's winnings and sues to obtain the \$10,000 on a Quasi Contract theory. Cynthia defends, arguing that there was no contract, implied or express. Which of the following answers is correct?

- a) Mary Ann will lose, but recover attorneys fees since the claim is based on breach of contract.
- b) Mary Ann will win and recover attorneys fees since the claim is based on breach of contract theory.
- c) Cynthia will win and recover attorneys fees since the claim is based on breach of contract theory.
- d) Cynthia will win, but will not recover attorneys fees.

Restitution:

201. Restitution is best described as a:

- a) theory
- b) cause of action
- c) claim for relief
- d) type of remedy
- e) legal fiction

202. To rely on the theory of unjust enrichment, an Arkansas plaintiff must establish that:

- (1) the defendant knew or should have known that he had unjustly received a benefit.
- (2) the defendant received a benefit.
- (3) the defendant physically or verbally accepted the benefit.
- (4) it is unjust for the defendant to retain the benefit.
- (5) the defendant is at fault.
- (6) the plaintiff has given the defendant a reasonable period of time to return the benefit.

- a) only (2), (4), and (5).
- b) only (1), (3), and (6).
- c) only (2), and (4).
- d) only (2), (3), and (4).
- e) only (3), (5), and (6).

211. Ashley, a second year law student, comes to you at the end of the spring semester telling you that someone made off with her cherished first-year Civil Procedure text. The book has a market value of \$14 but a sentimental value to Ashley that is priceless. She tells you that she has discovered who stole the book and that the thief sold the text for \$150 to an unknowing political science student who will be starting law school in the fall. She has come to you for advice. What is the best available and likely remedy?

- A) She may claim \$150 in conversion damages from the political science major.
- B) She may claim \$150 in conversion damages from the thief.
- C) She may claim \$150 on an unjust enrichment or assumpsit theory from the thief.
- D) She may claim \$150 on an unjust enrichment theory from the political science major because the book was priceless.
- E) She is limited to \$14 from the thief.

212. Lenny leaves a paper bag containing \$500 cash on top of his car when he runs into a convenience store. Millhouse sees the paper bag sitting on top of the car and decides he wants to add it to his paper bag collection at home. Much to his surprise, he discovers the \$500 cash. Millhouse then goes to Gossett Motors to buy a used car. He purchases what appears to be a rusted out piece of junk for \$500, pays cash, and drives his purchase home. When he gets home, his neighbor tells him that he has in fact purchased a rare 1960s era collector's edition which, even in its current shape, is worth \$7000. Lionel Hutz, a local attorney and owner of Gossett Motors, learns of Millhouse's windfall from Millhouse's father at the next Chamber of Commerce meeting.
- Gossett Motors can rescind the contract based on the doctrine of mutual mistake since both the Millhouse and Gossett Motors believed the value of the car at the time of the sale was \$500 and this mistake is essential to the contract.
 - If Millhouse was 16 at the time of the sale, Gossett Motors can assert his infancy and void the contract.
 - Assuming Lenny can trace the \$500 taken from the top of his car to the \$500 used to purchase the car, he can go use equity to get a constructive trust placed on the car and have the court order Millhouse transfer title to him.
 - Gossett Motors can rescind the contract if it can show that Millhouse knew the car was in fact worth significantly more than the \$500 purchase price but said nothing, thereby committing constructive fraud.
 - Gossett Motors can sue Millhouse for unjust enrichment and recover the \$5000 value of the car.
213. Eddie comes over to Wally's house and tells Wally that he is in trouble – his car is broken down and it is going to cost \$200 to repair it at a local garage. Eddie won't have the money to repair it until he gets paid next Friday, but he has a job interview in Little Rock *this* Friday, and if he doesn't get the car repaired before this Friday, Eddie is going to miss his interview. Wally's little brother, Beaver (a shade-tree mechanic), is also sitting in the room and he hears the conversation.

The next morning, the Beaver goes down to the auto-repair store and buys the parts for \$58 so he can repair the car. Beaver put \$45 worth of labor into the repair. When the store manager heard how Beaver was helping Eddie, he told Beaver that was an extremely kind thing to do, to which Beaver replies, "Oh no, he'll pay me back when he gets paid next Friday!" Beaver then goes over to Eddie's house and begins to work on the car in the driveway. Eddie looks outside, smiles, and waves. Beaver fixes the car. Eddie makes it to his interview and he gets the job.

Not surprisingly, Eddie hasn't paid Beaver and Beaver sues using a contract-implied-in-law theory. What is Beaver's likely remedy?

- \$103 (the total of labor and parts)
- \$200
- \$103 plus attorney fees
- \$200 plus attorney fees
- Nothing, because Beaver was an officious meddler.

221. Brian and Jeff are partners in a very successful casino. Due to their business endeavor, large amounts of cash are kept in their office, and each partner is paid in cash. Brian keeps his cash in a safe in his office. Jeff had an investment opportunity and was short on cash, and he misappropriated \$50,000 from Brian's safe.

Jeff immediately purchased Blueacre for \$25,000. It is unimproved real estate that is adjacent to his residential property. He then spent \$20,000 to install a pool in the backyard of his residential property. Finally, Jeff bought \$5,000 worth of XYZ Stock.

When Brian discovered the misappropriation a year later, he sued Jeff in equity. Blueacre has declined \$2,000 in value; the stocks have increased in value by \$1,000; and Jeff is still living at his residence and enjoying his pool.

Under generally accepted guidelines, which of the following forms of relief are likely to be available to Brian in the appropriate court?

- 1) A constructive trust on Jeff's residential property for \$20,000.
 - 2) A constructive trust on Blueacre for \$23,000 plus \$2,000 for a deficiency judgment.
 - 3) An equitable lien for \$20,000 on Jeff's residential property.
 - 4) A constructive trust on the stock for its current \$6,000 value.
 - 5) An equitable lien on Blueacre for \$23,000 plus a deficiency judgment for \$2,000.
 - a) (1), (2), and (4) only.
 - b) (1), (4), and (5) only.
 - c) (2), (3), and (4) only.
 - d) (2), (3), and (5) only.
 - e) (3), (4), and (5) only.
222. Defendant embezzled \$1,000 from his Arkansas employer and deposited the money in a bank account with \$3,000 of his own money. He withdrew \$800 and spent it on a trip to the Cotton Bowl.

He then withdrew \$2,000 and invested it in Amazon.com stock, which now has a value of \$1,600. Only \$1,200 remains in the bank account (where it draws no interest). Seeking relief in an Arkansas court of equity [and following established decisional law], Plaintiff is likely to be granted \$1,000 in the form of:

- a) a constructive trust on the stock
- b) a receivership on the stock and the bank account
- c) an equitable lien on the stock
- d) a money judgment
- e) a partial constructive trust on the bank account

223. Jon steals \$10,000 from Sue while working for her during the summer. Jon uses the money by putting it into a high technology stock that he hears developing a new superconductor. Jon gets lucky and the company does in fact prove to have developed a new superconductor. The stock rises to the price of \$50,000. Jon decides to sell the stock. He takes the proceeds and buys a \$40,000 sports car and deposits \$10,000 in the bank. Select the most appropriate remedy Sue has against Jon.

- a) Legal restitution for the \$10,000 in the bank account only.
- b) Constructive trust on the car and the \$10,000.
- c) Equitable lien against the \$40,000 sports car.
- d) Tracing of the money.
- e) Subrogation against the assets of Jon.

224. Which remedy goes in the missing space?

"With respect to real property, _____ is created by implication when a party standing in a confidential relationship with the legal owner of the property makes payments from his or her own funds toward the purchase price."

- a) constructive trust.
- b) lis pendens.
- c) equitable lien.
- d) assumpsit.
- e) subrogation.

225. William H. Bonnie, more commonly referred to as Billy the Kid, is a notorious gunslinger who roams the open plains of New Mexico. Billy begins his rampage as a result of the brutal killing of his employer and after committing a few of his dastardly deeds, he has become a most wanted outlaw by various lawmen, bounty hunters and the Internal Revenue Service.

In pursuing his endeavors, Billy, has collected a band of misfits that ride along and assist Billy in any way possible. One of these misfits, Pat Garrett, is particularly close to Billy and it is common knowledge that Billy trusts Pat more than any other gang member.

Governor Lou Wallace offers reward money for the capture of Billy the Kid and Pat finds it difficult to resist the fame and fortune offered by the Governor. Pat eventually kills Billy.

Pat goes on to write a book about the adventures of the gang and how he eventually killed the Kid. Pat uses the secrets that Billy entrusted with him and the book hits the best seller list for several months.

The executor of Billy's estate brings an action for breach of an implied confidential relationship between Billy and Pat under a New Mexico survival statute. The executor prays that all profits from the sale of the book be placed in constructive trust for the benefit of the estate.

Assuming the estate can win on the merits of the case and that there is no adequate remedy at law, which of the following is the most likely to occur?

- a) The court will impose a constructive trust because Billy's estate lost the profits that it expected to receive from the story of Billy's life.
- b) The court will not impose a constructive trust because Pat acted in accord with public policy.
- c) The court will not impose a constructive trust because Pat Garrett deserves some profit for his contributions to the book and the court has no authority to apportion the profits.
- d) The court will impose a constructive trust because Pat breached a confidential relationship and was able to profit from the breach.

226. Jane and Robert decided to live together after several months of close friendship. They first moved into Robert's apartment, but later decided to buy a small house in the country. They did so, their only agreement about their relations being a clear understanding that marriage was not a part of the deal. No arrangement was made about property. Jane worked at a record store in a nearby city earning net \$200 a week. Robert worked, when he could get work at all, on construction jobs, and though he earned a higher hourly rate, brought in net about the same sum. House payments ran \$250 per month. Costs of various things ingested, transportation and utilities accounted for virtually all the rest of their joint earnings. After five years of this pleasant relationship both agreed it was time to split, but they fell into a dispute about the proceeds of the house. Robert claimed it was his money that paid for the house and he expected to keep the sale price since the deed was made out to him. Jane disagreed. Jane filed suit to establish a trust or lien on the house, claiming an equitable interest. Assume that, on the facts given, this particular jurisdiction would not bar relief because of any provision of the statute of frauds. Assume there are no creditors. The best remedy for Jane, if she could attain it, would be:

- a) resulting trust in one-half of the property.
- b) assumpsit.
- c) constructive trust on one-half, or, if possible, all the house.
- d) express equitable lien.

241. Consider this scenario: It is early fall (say October 15th) and your yard is covered with leaves. Everywhere you look, you see nothing but leaves. When you left for work this morning, you decided that it was time to hire someone to come to your residence and rake the leaves. However, while you were away at work, your next door 10-year-old neighbor, Eddie, comes over and rakes the leaves. When you get home from work, Eddie approaches you and tells that he raked your leaves. The yard looks great (there is not a leaf to be found). He then tells you that he wants \$20.00 for his services rendered. Do you have to pay Eddie?

- a) Yes, because if you do not pay you have been unjustly enriched.
- b) Yes, but only \$10.00, since the reasonable value of his services was not \$20.00.

- c) No, because you did not hire Eddie to rake your leaves, and you have been deprived of your right to contract.
- d) No, because Eddie is only 10-years-old and, therefore, not old enough to form a contract.
- e) Yes, because the law of infancy protects minors who act in good faith.

242. Bob and Theresa own homes next to each other. Bob has been saving money for six months to plant a hedge fence between the houses. Not only will this benefit his privacy, but it will increase the value of his house. One day Theresa approaches Bob while he is mowing the lawn and asks him if he would have any objections to her planting a hedge between their property, specifically stating that she would not if Bob objected. Bob replied that he certainly did not object.

After the hedge is in place, Theresa learns of Bob's saving money to do the exact same thing and also of his property's increased value. Theresa sues under unjust enrichment for the benefit of Bob's increased property value for restitution. Will Theresa likely succeed?

- a) Yes. Bob knew of the benefit and did not object. Therefore, he will be estopped from claiming Theresa as a volunteer.
- b) Yes. Bob's benefit was tangible in that he was able to keep the money that he had been saving to build the hedge.
- c) No. Theresa cannot recover restitution for benefits incidentally given while pursuing matters of personal benefit.
- d) No. Theresa did not ask to be paid for the benefits of her work.

243. Scottie comes out of work one day to find his once very disgusting and dirty Dodge Durango all shiny and clean. Actually, it is so clean that it looks brand new. Of course, Scottie is very happy. However, before he can even get in his car and take off, Angie, an expert car cleaner and detailer, asks him to pay up. He says, "No Way, Jose!" Angie files a suit for unjust enrichment. Which of the following factual arguments made by Angie is most likely to support her claim in court?

- a) Angie argues that she went ahead and cleaned Scottie's Dodge Durango because she overheard him tell a friend that he was going to hire someone that day to do it.
- b) Angie argues that while she was cleaning his car Scottie looked out the window of his office and smiled at her.
- c) Angie argues that she was hired to clean another owner's Dodge Durango and she made a mistake by cleaning Scottie's Durango and that because of this it is unfair that he should be able to have a clean car for free.
- d) Angie argues that Scottie's Dodge Durango was so disgusting and dirty that she just knew he would want it cleaned, therefore, she went ahead and cleaned it for the low price of \$19.95.

244. Every year your neighbor puts up a huge Christmas display. You find Christmas lights to be garish and you always dread seeing so many lights. One day, after studying for finals, you come home to find a giant Christmas light display in your yard and one at your neighbor's house. You are appalled, but your neighbor comes running over and says that he got a really good deal this year, it was two for one! They were so cheap, he decided to put some in your yard. He then asks for \$20 to pay for the lights (which is an extremely good price, normally they would be over \$500!) However, you hate Christmas lights and don't want to pay him, so you tell him no.

When you refuses to pay, he sues. What is the likely outcome in an Arkansas court? Will you have to pay?

- A) Yes, you had a contract implied in fact to pay for the Christmas lights and you must pay.
- B) Yes, the value of the Christmas lights far exceeds the price he is asking and you have already benefitted by having them; therefore you have been unjustly enriched and a court will find that you must pay.
- C) No. It might be morally right for you to pay for the lights, but there is never a legal requirement to pay for things that someone else gives you.
- D) No. You did not want the Christmas lights, and therefore you received no benefit and were not unjustly enriched.

Substantive Areas of the law:

301. A young sales clerk at Wal-Mart mistakenly labels a lawn mower with the price of \$99, while the intended price was \$199. Smith purchases the lawn mower. Two days later, on discovering the sale, Wal-Mart sues to rescind. Under general principles of law, rescission is:
- a) likely, because it is a mutual mistake.
 - b) likely, because Wal-Mart's mistake was clerical, not a mistake in judgment.
 - c) unlikely, because it was a unilateral mistake that does not approach unconscionability.
 - d) unlikely, because public policy bars a merchant from rescinding a sale to a good faith consumer.
 - e) unlikely, because Wal-Mart may not avoid its own negligent acts.
302. Jenny Martin, a 16 year old resident of Fayetteville, purchased a used automobile from an adult friend for \$1,000. She used the car to travel from her parents' home to her part-time job at Wendy's. Two months after her purchase she loaned the car to her brother, who drove into a telephone pole, reducing the fair market value of the car to \$200.
- Jenny wishes to rescind her purchase of the automobile and recover her \$1,000.
- a) Rescission will be granted if she returns the wrecked car.
 - b) Rescission will be granted only if she returns the car and the reasonable value of use of the car for two months.
 - c) Rescission will be granted only if she returns the car and \$800.
 - d) Rescission is not available because she is emancipated.
 - e) Rescission is not available because the car was a "necessary."
311. The general rule for general damages from Wrongful Discharge of an employee is Expectation Damages; meaning, the remaining amount of money on the contract or what the employee expected to receive. Does Arkansas follow this rule, or does it have its own measure of general damages?
- a) Arkansas follows the general rule for general damages in an action for Wrongful Discharge.
 - b) Arkansas does follow the general rule for general damages, and also allows the employee to recover punitive damages for wrongful discharge.
 - c) Arkansas does not follow the general rule for general damages, but instead allows the employee to only recover damages for Wrongful Discharge up until the time for trial on the matter.

- d) Arkansas does not follow the general rule, but instead allows the employee to only recover damages for Wrongful Discharge up until the time for trial on the matter and also allows punitive damages.

312. The Arkansas school teacher was earning \$20,000 a year. But she was wrongfully discharged. She spent \$500 looking for a comparable job. She drew unemployment compensation of \$1500. Then she took two jobs, and earned \$2000 as a substitute teacher, and \$5000 working in a shirt factory. Now the teacher sues the school district and wins.

Under basic rules of damages, she is entitled to:

- a) \$11,500
- b) \$12,000
- c) \$13,500
- d) \$18,500
- e) \$20,500

321. On November 20, 2007 Bill Callahan was fired as the head coach of the University of Nebraska football team. He had five years (2008-2011) remaining on his contract.

Assume that he obtains a job as head coach at a comparable university, but at a 20% lower salary.

Further assume that Nebraska obtains permission to negotiate with the head coach currently at Hawaii; and that Nebraska hires that coach and pays him 35% more than he was making at Hawaii, and more money than Bill Callahan was making at Nebraska.

Which of the following statements is correct?

- 1) Bill Callahan general damages are based on the 20% reduction in salary.
- 2) His special damages are based on the 20% reduction;
- 3) His incidental damages are based on the 20% reduction;
- 4) His general damages are based on the salary being paid to the new Nebraska coach;
- 5) Under the rules of mitigation, he is not entitled to any damages because he has found a comparable position as head coach.

322. Coach Ron Zook was fired as the head football coach of the University of Florida Gators in late October when his team suffered an embarrassing loss to Mississippi State. He was allowed to finish the season. He had three years (2005-2007) remaining on his contract.

In December 2004 he was hired as the new coach of the University of Illinois football team, beginning in January 2005. He has signed a contract with the University of Illinois for 3 years (2005-2007).

What damages can he recover from the University of Florida?

- a) None. He will still be the head football coach at a Division I-A institution. He has mitigated any losses .
 - b) As special damages, he can recover the difference between his University of Florida salary and his (lower) University of Illinois salary for three years.
 - c) As general damages, he can recover reasonable compensation for the embarrassment and humiliation of being fired in mid-season.
 - d) As incidental damages, he can recover the difference between his University of Florida salary and his (lower) University of Illinois salary for three years.
 - e) None of the four preceding statements are correct.
323. Bill Button, with 4 years remaining on a contract with the University of Idaho, quits to accept a job coaching the University of Maryland basketball team.
- a) The University of Idaho cannot obtain an injunction to prevent him from coaching at Maryland, because the mutual remedy (an injunction to order Idaho to retain him) is not available.
 - b) The University cannot recover any general damages if it can obtain a comparable replacement coach.
 - c) The University can recover general damages equal to his new [and increased] salary at Maryland.
 - d) The University can recover punitive damages for his wilful and malicious breach of contract.
 - e) Special damages, such as the travel expenses of the athletic director to look for a new coach, may be recoverable under the "within the contemplation of the parties" rule of Hadley v. Baxendale.
324. As of December 5, Bret Bielema is the new head Hog. Given the experiences with college coaches in the past decade, several provisions are likely to be included in his contract with the University of Arkansas. For example,
- a) A financial incentive for having his players graduate at a higher rate;
 - b) A one year prohibition against coaching with any other SEC school;
 - c) A one year prohibition against coaching with any professional football team;
 - d) A provision permitting discharge for cause (and without pay) for acting against the best interest of the University of Arkansas, as determined by the University;
 - e) A provision requiring him to pay a large sum of money if he leaves the University before completion of the five year contract.

Which provision is not likely to be included in the new contract?

- A) A
- B) B
- C) C
- D) D
- E) E

331. A multi-state construction company is building an addition to a department store. The construction company breaches the contract.
- a) A court of equity is unlikely to decree specific performance because personal services are involved.
 - b) A court of equity is likely to decree specific performance because the public interest demands it.
 - c) If the store sues on the contract, the general measure of damages is the increased cost of construction resulting from a third party completing the addition.
 - d) If the construction company has substantially performed the contract, it may sue on the contract and recover its profits on the project according to the expectancy rule.
 - e) If the construction company has not substantially performed, its unclean hands bar it from affirmatively seeking relief on an unjust enrichment basis.
341. Seller owns a condo on Mud Island at Memphis, Tennessee. Buyer, an attorney recently admitted to the Tennessee bar, needs a safe, quiet, place to live near her office in downtown Memphis. She makes an offer on Seller's condo. Seller warrants to the Buyer that the condo has been built to withstand earthquakes. Seller knows that this is not the case, as such reinforcement is expensive. An agreement to sell is made, but the Buyer eventually breaches. The Seller seeks specific performance. Is specific performance appropriate?
- a) No, because a seller cannot seek specific performance of a land sale contract, especially of a condo unit.
 - b) No, because of Buyer's affirmative defense of unclean hands.
 - c) Yes, because Buyer breached while Seller was ready, willing, and able to sell.
 - d) Yes, because there is no adequate remedy at law and damages do not suffice.
 - e) Yes, because he who seeks equity must do equity.
342. Buyer and Seller enter into a contract for Blackacre for \$90,000. One provision states "If the buyer fails to purchase, he will forfeit the \$5000 deposit, which shall be treated as liquidated damages and retained by the seller." Upon buyer's breach, what remedies may the seller obtain?
- a) Specific performance is not available against a buyer.

- b) The \$5000 deposit violates the 5% rule and is therefore an invalid and non-enforceable penalty. Seller cannot retain it.
- c) Regardless of the actual damages suffered, seller is limited by the contractual provision to the amount of the liquidated damages.
- d) Because of the contractual language, seller is limited to either liquidated damages or actual damages.
- e) Seller may only recover one of three remedies: liquidated damages, actual damages or specific performance.

343. In which of the following examples is the plaintiff likely to be entitled to the remedy of abatement?

- a) Plaintiff relied on seller's good faith statement that the land being purchased for \$25,000 was 25 acres, but in reality there were only 20 acres.
- b) Plaintiff sells a ring for \$100, but by mistake delivers to defendant a ring worth \$1000.
- c) Plaintiff buys a tract of land known as Blackacre, expecting that it has 80 acres. After purchase a survey reveals Blackacre only has 77 acres.
- d) Plaintiff orally agrees to pay \$5000 for a used car, but by mistake the written agreement signed by both parties states the purchase price is \$5500.
- e) Plaintiff owns Greenacre and believes it has 50 acres. He sells it for \$7500, but then discovers it had 65 acres.

344. Buyer and Seller have a written agreement to buy and sell Blackacre in Little Rock for \$86,000. Pursuant to the agreement, the seller puts pink carpeting and valentine wallpaper in the master bedroom. The buyer understands that the seller will be immediately moving into another home in Little Rock.

A day before the scheduled closing the buyer breaches the contract because her marital plans were canceled when her fiancé ran off with another woman.

If the seller sues the buyer for damages, the seller is likely to:

- a) collect nothing, because the breach was innocent and unintentional.
- b) collect general damages, based on the difference between the contract price and the fair market value of the home at the time the agreement was signed.
- c) collect special damages, in the amount of a reasonable interest rate on the purchase price of \$86,000.
- d) collect special damages, based on the cost of installing the carpeting and wallpaper.
- e) collect special damages, based on the increased value in the house because of the carpeting and wallpaper.

Please use the following fact pattern to answer Questions 351-354:

Captain Horatio Hornblower of the Navy had spent many months at sea. After quelling a mutiny, he was on his way back home to Arkansas when he came across the ship Napoleon II. The ship, which was flying an Afghani Flag, had many munitions staked aboard the vessel. Since he had been told to destroy all Afghani ships that might seek to attack the United States, Horatio quickly decided to demolish the Napoleon II.

The captain of the Napoleon II was Earl, a well known practical joker. He had formed fake munitions and flew an Afghani flag on the ship simply to create humor on the high seas.

Horatio fired at the ship and, after the explosion, scooped up the valuable jewels that he saw floating in a bag and took them home to his beloved wife, Maria. He did not know that the jewels belonged to Earl. Nor did he know that Earl, who jumped overboard before the ship met its demise, swam the remaining distance home. At home, an angry Earl met up with Horatio and started beating him up. Horatio was gravely injured and taken to the hospital for medical treatment. During his lengthy recovery, Horatio turned away from his wife. Horatio had taken to dating Lady Barbara Wellington, his nurse.

351. Earl wants to bring suit against Horatio in Chancery Court to recover his jewels and for damage for his ship. Assume that there are separate courts of law and equity in the jurisdiction in which this suit has been filed. Can Earl sue here?
- a) Earl cannot sue for damages to his ship in Chancery Court, but can sue for return of the jewels.
 - b) Earl cannot sue for the return of his jewels, but can sue for damages to his ship.
 - c) Earl can sue for both under the clean-up doctrine.
 - d) Earl can sue for neither because no equitable relief is sought.
352. Assume that Earl has sued for an injunction against Horatio. The action is filed in a jurisdiction that has recently implemented a court merger (similar to Arkansas' Amendment 80 merger of the courts). Horatio files a counterclaim for his injuries and also seeks punitive damages. Parties who seek equitable relief do not have a jury trial. However, a party seeking punitive damages typically has a jury trial. How will the state trial judge resolve the merger and jury trial issues?
- a) The judge may sever the suit and transfer the personal injury claim to another division of the court so that a jury can hear the case involving punitive damages.
 - b) The judge may hear the entire claim and look to federal case law for guidance. The federal court will examine the cause of action and whether a similar cause of action would have been entitled to a jury trial in 1791 (or 1836 in Arkansas).
 - c) The judge may decide that the right to a jury trial is so strong that he will hear the entire claim with a jury.

- d) The judge may conclude that no right to a jury trial exists.
- e) All four are options. There is no way to predict the result.

353. Maria and Horatio have now decided to sue Earl for damages for personal injuries, mental anguish and loss of consortium.

- 1) Maria is likely to recover for mental anguish.
- 2) Maria is likely to recover for loss of consortium.
- 3) Horatio is likely to recover for mental anguish.
- 4) Horatio is likely to recover for loss of consortium.
- 5) Which elements of damages are most likely?

- A) Only 1 and 3.
- B) Only 1 and 4.
- C) Only 2 and 3.
- D) Only 2 and 4.
- E) All four elements are likely.

354. Lady Barbara Wellington, unable to keep her mouth shut about her relationship with Capt. Hornblower, confides all to her best friend, Lady Artemis Gadwall-Stufflebeam. Lady Artemis (fashionable only daughter of Earl of Huffington-Southfork) tells her couturier, the infamous Sophia Staniskowski (who claims to be descended from Romanian royalty but everyone in polite society knows she is Polish). Sophia tells all to everyone.

When faithful wife, Maria, finds out, she wants to sue for divorce. She tells her barrister that she and Horatio had an oral agreement: If Maria would support him through ship captain's school, he would support her while she became the first Englishwoman to earn a law degree. They never talked about how long it would take, how much support they would give each other, whether Maria had to become a practicing barrister or solicitor, or other essential terms. However, Maria remembers they had a deal. Maria says she kept her end of the bargain, but Horatio reneged. Which remedy would have the best chance of being successful for Maria?

- a) She can sue Horatio for breach of contract.
- b) She can sue Horatio on a contract implied in fact.
- c) She can sue Horatio on a contract implied in law.
- d) She can sue him for breach of promise.
- e) No remedies have any significant chance of success.

361. Freezco, a refrigerator manufacturer located in Rogers, contracted with Goody Humor, an ice cream company located in Russellville, to provide refrigeration units for Goody's ice cream delivery trucks. Goody's president explained to Freezco's sales representative that Goody's ice cream, to retain its perfect creamy consistency, must be kept at exactly 30

degrees Fahrenheit. Freezco's salesman assured Goody that Freezco's refrigeration units would keep Goody's frozen treats at the perfect temperature.

Freezco delivered and installed the wrong refrigeration units on Goody's trucks, resulting in mechanical malfunctions. Ten of the units malfunctioned on empty trucks and simply ceased operating. Two of the units malfunctioned with ice cream in transit, spoiling 200 cartons of Goody Humor Nutty Butty Bars en route to the IGA in Siloam Springs. Goody Humor spent \$30,000 total replacing the malfunctioning refrigeration units on all its trucks. Goody Humor lost profits of \$2,000 on the spoiled Nutty Butty Bars. The IGA in Siloam Springs cancelled its contract for future delivery of Nutty Butty Bars, costing Goody Humor \$10,000.

Under common law principles, for which of these damages is Freezco liable in contract in Arkansas?

- A) The \$30,000 cost of replacing the malfunctioning refrigeration units.
 - B) The \$2,000 lost profits on ruined Nutty Butty Bars.
 - C) The \$10,000 lost profits on the IGA contract.
 - D) Only A and B.
 - E) A, B, and C.
362. Craig raises chickens and has a real problem in the winter time with keeping the chicken houses warm. In an effort to remedy this situation he enters into a repair contract with Fred's Electrical Supply Company. The contract covers repairs, payment terms, and future maintenance and service. The heaters are overhauled in July but are not tested as to avoid exposing the chickens to excessive heat. Several months later, on the first cold night of the winter, the heaters are turned on for the first time but they fail to work properly. In a matter of minutes all of the chickens in the house are frozen solid and are considered hazardous under USDA standards. Under general common law principles applicable in Arkansas (non-statutory) what can Craig recover?
- a) the repair cost under the contract
 - b) the expected profits on the destroyed chickens
 - c) the replacement cost of the chickens
 - d) both (a) and (c)
 - e) both (a) and (b)
363. Alex Michael, a local promoter, contracts with the Fayetteville Hilton to have a concert in their ballroom the night before the Alabama game. The ballroom will hold 1,000 people and Alex expects a packed house. He orders 1,200 tickets printed, advertises on local radio stations, hires security guards for the concert and signs a binding contract with the

band. Two days before the concert, the Hilton informs Alex that they have a prior booking on the ballroom and cannot honor their contract. They offer a smaller room with a seating capacity of 250 but Alex, miffed, refuses. Alex returns the \$2,000 to ticket purchasers. His car is repossessed two weeks later because he pledged it on a loan he had to take out to meet costs of organizing the concert.

If Alex sues the Hilton for breach of contract,

- a) he will be denied any recovery because he failed to mitigate his losses by putting the concert in the smaller room.
- b) he will be able to recover, among other elements, for his equity in his car (based on the fair market value at the time of repossession).
- c) he is likely to recover for his expected net profits on the concert.
- d) he has a strong claim for mental anguish damages in light of the intentional breach of contract by the Hilton.
- e) his recovery will be limited to his out of pocket expenses in organizing and promoting the concert.

364. Farmer Frank has a late model tractor that he bought second hand. One day he left the tractor running, in neutral, while he stopped in the kitchen for a morning snack. To his shock, the tractor kicked into drive and crashed into Frank's barn. The resulting damages are three fold: 1) the cost of repair of the tractor; 2) the cost of repairing the barn; and 3) lost profits on his crops, which he partially mitigated by obtaining a rental tractor.

He sues the manufacturer in negligence. Under general principles of law, what is he likely to recover?

- a) Only (1)
 - b) Only (2)
 - c) Only (2) and (3)
 - d) All three are recoverable.
 - e) None are recoverable.
365. It was almost midnight when Wilbur Wheels, a pizza delivery man, was making his final delivery of the evening. As Wilbur drove toward his destination, he slowly drifted to sleep. He was suddenly awakened when the air bag inflated and hit his chest. He wasn't injured, but when he surveyed the situation, he decided to remain in his car since he had knocked down an electrical pole and the wires dancing in the street looked like a close up view of the northern lights.

Meanwhile, a half mile away, a wheel factory's production had come to a screeching halt. Later, a closer inspection revealed that the surge of electricity had blown two fuses at the factory. The electricity was off for over four hours and the molten metal at the wheel factory solidified. Because of the loss of production, the factory had to work its employees overtime to make up the loss. The factory brought suit against Wilbur. It is stipulated that

the two fuses cost \$4 total, the loss of production totaled \$75,000, and the overtime wages they had to pay were \$10,000.

What can the wheel factory recover from Wilbur?

- a) \$85,004. All these losses were directly caused by the tort-feasor.
- b) \$75,004. The overtime wages were an inevitable cost of doing business, and thus are not recoverable.
- c) \$10,004. Wilbur could not have foreseen the loss of production, and thus is not responsible.
- d) \$4. Recovery of any additional losses is barred by the rule that economic losses may not be recovered from a negligent tort-feasor.
- e) \$0. The tacit agreement rule bars recovery.

366. Stephen owned a home next to a home owned by Betty. Betty recently repainted her home using paint sprayers powered by compressed air. Betty unwisely chose to paint her home on an especially windy day. As a result, a fair amount of paint blew onto the exterior of Stephen's home and portions of Stephen's white home had noticeable blue splotches. In addition, Stephen's air conditioning unit drew in some of the airborne paint and became hopelessly clogged. Stephen's home became so hot that he had to abandon it and rented a nearby home for the duration. Stephen knew the owner of the home and was able to negotiate a reasonable rate for rent.

Stephen claims four elements of damages: 1) \$1000 for repainting his house; 2) \$2000 for a new air conditioner; 3) \$500 in lost profits, because he was unable to hold Tupperware parties at his house while it was being repaired, and otherwise enjoy the use of his property; and 4) \$800 for the additional cost of the rental house.

Stephen sues Betty on a general negligence claim. Assume that Stephen prevails, what can he recover?

- a) Only (1). The other expenses were not foreseeable.
 - b) Only (1) and (2). Damages are limited to reasonable costs of restoration.
 - c) All but (3). The lost profits were not within the contemplation of Betty when she began painting.
 - d) All but (4). The additional cost of the rental house would constitute a double recovery.
 - e) All four elements fall within either general or special damages.
367. Moe, Larry, and Curly own a house in Arkansas and last summer they installed a large above-ground pool in their backyard. They hosted a large social gathering for their friends. Well, a few too many people decided to jump into this pool and the pool burst, sending all 26,550 gallons of water rushing into their neighbor Betty Miller's yard. The sudden flood destroyed her prize-winning garden and broke the leg of Betty's poor little Pomeranian Lucky. To make matters worse, Betty had long planned a business event for the next day in her garden. She could not re-schedule the event, and she was forced to

cancel the event, thus forfeiting her expected profits.

Betty has now brought suit against Moe, Larry, and Curly for negligence. She claims three elements of damages:

- 1) The cost of repair of the garden;
- 2) The cost of the veterinarian for Lucky;
- 3) Lost profits from her cancelled business event.

All three elements can be established with reasonable certainty as to the amount. Which elements are likely to be granted?

- A) None of the above; they are barred by the economic loss rule.
- B) Only 1 and 2; 3 is barred by the tacit agreement rule.
- C) Only 1; the others were not within the contemplation of the parties.
- D) Only 2 and 3; the first is barred by the mitigation principle.
- E) All of the above; they were proximately caused by the acts of Moe, Larry and Curly.

371. Mark Motorhead, ecstatic about getting tickets to the Rolling Stones concert in Little Rock, frantically calls all of the hotels in town trying to find a room for the weekend. Finally after about a dozen attempts, he makes a reservation at "Joe's Hotel." Mark pays for the rooms in advance with a personal check.

Mark owns his own organic farm deep in the Ozark Mountains of north central Arkansas. He likes to live in the mountains because he feels in-tune with nature and himself. Friday, after tending his herb patch, he loads up in his Volkswagen van (rumored to have been at Woodstock) and heads to Little Rock for the concert that night. Fortunately, after several break downs, he reaches Little Rock just in time to make the concert. After a totally radical concert, Mark finally makes his way, around 1:00 a.m., to Joe's Hotel. Mark checks in at the desk only to learn that Joe's has given his room to someone else and that there are no vacant rooms at Joe's, let alone in the greater Little Rock area. Mark, highly agitated, verbally abuses the desk clerk and storms out of the hotel. On his way out of the hotel, Mark is stopped by a security guard; the guard tells Mark that he understood how he felt, that the desk clerk regularly takes \$20 and rents reserved rooms. Mark ends up sleeping in his cold van on a vacant parking lot at a local grocery store and is arrested for loitering and fined \$200.

If Mark sues Joe's Hotel, Inc. for breach of contract, what is he likely to recover?

- 1) the payment for the room, with interest
- 2) the money spent on the tickets
- 3) expenses incurred in traveling to Little Rock
- 4) damages for inconvenience
- 5) punitive damages
- 6) attorneys' fees
- 7) the cost of the fine

- a) only (1), (4).
- b) only (2), (4) and (5).
- c) only (3), (5) and (7).
- d) only (1), (5) and (6).
- e) only (2), (3) and (7).

381. In 1966 Mike Magoo wrote the words and music for "California Dreaming," and copyrighted both under his name. He permitted the Beach Boys to record the song that same year. This month the song is performed by a band performing at a \$10 a ticket university concert, the record has been played on an "Oldies but Goodies" show on KUAF, and Bruce Springsteen has recorded his own version of the song.

- a) Federal law grants Mike Magoo slightly more than \$.02 each time KUAF plays the Beach Boys' record.
- b) The Beach Boys are entitled to slightly more than \$.02 for each copy of Bruce Springsteen's version.
- c) Mike Magoo may legally bar the band from playing his song at the concert.
- d) The Beach Boys have a common law tort of unfair competition claim against the band at the university concert.
- e) The passage of 17 years bars any statutory causes of action.

382. ABC Electronics Corporation designs and produces a variety of electronic components used in the manufacture of home electronics. One device which it produces and sells (the Gateway Amplifier) is a highly efficient, low power consumption amplifier used in CD players. The amplifier is highly desired by manufacturers because of its low cost and superior performance. ABC applied for a patent on the design of the Gateway, but the patent was denied because of an article written 10 years earlier by a prominent metallurgical physicist that described the advantages of using carbon-aluminum contacts in electronic devices. This rendered the Gateway design obvious, and therefore nonpatentable. ABC, in its efforts to keep the design confidential, encapsulated the secretive portion of the design in a hermetically sealed, titanium unit. ABC also contained sworn statements from its employees pledging confidentiality of the Gateway design.

Pirate Electronics embarked on a mission to steal the Gateway design. It hired Jack Ripoff to break into ABC's offices, but Jack had a change of heart and became a monk instead. Pirate's CEO then legitimately purchased a set of the Gateway Amplifiers and instructed her engineers to "tear them apart" if they had to, "but I want to know what makes these things tick." By cutting open the titanium housing units, the engineers discovered the Gateway's use of carbon-aluminum contacts. Pirate electronics now produces its amplifiers using the technology, and has displaced much of ABC's market.

When ABC sues Pirate for unjust enrichment based on a theory of trade secret infringement, what will be the result?

- a) ABC wins because the trade secret has economic value and is the result of reasonable efforts to keep it secret.

- b) ABC wins because Pirate engineers broke into the hermetically sealed titanium unit and stole the design.
- c) ABC wins because the defendant's hiring of an industrial espionage thug is evidence of its bad faith.
- d) Pirate wins because ABC did not take reasonable measures to protect its secretive design.
- e) Pirate wins because the design was not patentable, and was therefore discoverable through the efforts of its engineers.

Miscellaneous:

401. One of the authors of the casebook used this semester is a graduate of this law school. Name the author.
- a) Robert A. Leflar
 - b) Bill Clinton
 - c) Murray Tabb
 - d) Al Witte
 - e) Sandra Day O'Conner
402. Thursday, April 23, 2009 was a special day. It was the last class of the semester. We celebrated the birth of William Shakespeare in 1565, and remembered his death on the same day in 1616. The topic was Employment Contracts. This quotation comes from a case discussed in class. Fill in the missing blank:
- “Courts have traditionally, from the time of _____, viewed a forfeiture out of all proportion to the breach of contract as an unenforceable penalty.”
- a) “The Merchant of Venice”
 - b) Moses v. McFerlan
 - c) “Bleak House”
 - d) the merger of law and equity
 - e) the Bill of Rights
403. It was December 28th. Victoria was celebrating her birthday, incidentally the birthday also of President Woodrow Wilson. As she was reminiscing about the semester and Remedies, she remembered that one of the authors of the Remedies casebook was a graduate of the University of Arkansas Law School. Name the author.
- a) William Rehnquist
 - b) Philip Norvell
 - c) Murray Tabb
 - d) Robert Laurence
 - e) Richard Posner
404. The authors of our text indicate that the plaintiff in West Allis Memorial Hospital, Inc. v. Bowen, 852 F.2d 251 (7th Cir. 1988) faced a "Hobson's choice." A "Hobson's choice" is:
- a) An election of remedies.
 - b) No real choice at all.
 - c) A choice between two or more undesirable alternatives.
 - d) A choice between the statute of limitations or laches.
 - e) A choice between conversion and equitable conversion.

405. Identify the color of the casebook used in this course this semester.

- a) Red
- b) Brown
- c) Blue
- d) Green
- e) White