

# Fall 1990 Remedies Final

## REMEDIES

Mr. Brill

1. Questions 1, 2 and 3 are worth 20 points. 40 points

Answer two of them.

Question 4 is worth 10 points. Answer it. 10 points

The multiple choice questions are worth 50 points. Answer them and `return` the questions. 50 points  
100 points

2. This examination is designed for four hours. The questions will be graded on the quality of analysis, thought and conclusions, not on the number of words. You have 4 1/2 hours to complete the exam. The additional time is to permit better organization, more careful thinking and neater handwriting.

3. Read the questions carefully. Particularly note whether you are to be a judge, advocate, adviser or dispassionate scholar.

4. In answering the essay questions:

a) You may answer the questions in any order you wish.

b) Begin the answer to each question on a new page of the blue book.

c) Write on each line, but only on one side of the page. (The other page may be used for corrections and belated additions to your answer.)

d) On the front of the blue book, put the number of each question answered within.

5. You may use the Arkansas Statutory Supplement to complete this examination.

6. The multiple choice questions are to be answered on the scantron. Failure to `return` the multiple choice questions will result in failure in the course.

7. Turn your blue books, Scantrons, pencils, qualification sheets and the multiple choice questions into Room 113 by 1:00 P.M.

8. You may keep the essay questions.

9. Your grade on the essay questions is based upon the context of your answers and the manner in which you communicate your knowledge. Grades may be lowered for essays that so violate fundamental rules of grammar and style that the reader's ability to comprehend the content is impaired.

A

Oliver Oversight owned a pasture containing a spring from which he supplied household water to four dwellings owned by him and two-dwellings owned by others whom he had agreed to supply. Oversight sold the pasture (but not the dwellings or other lands) to Bill Buyer, intending to reserve a right to take water from the spring to supply the six dwellings. Through a mistake of the scrivener no such right was reserved in the deed. On the other hand, Bill Buyer was unaware that the spring existed, was unaware of the use being made of it by Oversight, and was unaware of the scrivener's mistake.

Oversight's original outlay in building the water aqueduct and other parts of the system was greatly in excess of the selling price of the pasture. Bill Buyer, upon receipt of the deed, immediately made arrangements to purchase several head of cattle to be pastured on his new land.

Oversight has come to your law office seeking advice as to what remedies he might have. Write a memorandum to the senior partner discussing all the possible remedies and the likelihood of your success in seeking them.

2. A fertilizer plant has negligently discharged chemical wastes into the White River in Arkansas. Fishing in the river has been forbidden for one year. An action has been in Arkansas circuit court seeking damages on behalf of four classes of claimants: 1) sport fishermen and guides who take customers on trips on the river; 2) motels and restaurants adjacent to the river which benefit from the tourist attraction of the river; 3) seasonal employees of the motels and restaurants; 4) farmers who own land on the river and irrigate from the river; and 5) the State of Arkansas which has a state park on the river. The claim is based on common law negligence and nuisance. There are no applicable state or federal statutes.

You are the law clerk to the Arkansas judge. She asks you to prepare a preliminary memo, discussing all the relevant principles of damages that she will need to evaluate in ultimately ruling on this case. She reminds you that the case is only in the pleading stage, and that discovery has not yet begun in earnest. She reminds you of the need for clear organization and a logical presentation, and emphasizes that a broad overview is essential, even if some details are necessarily omitted.

3. Donald and Theresa Stauffer are life long residents of Stuttgart, Arkansas, marrying in 1963. Soon thereafter, they had a home constructed for them which was paid for primarily, if not entirely, out of the earnings of Donald.

In late 1989, Theresa became suspicious that her husband was involved with another woman. When confronted, Donald finally confessed his adultery and further admitted that the other woman was Theresa's own sister, Victoria Gavin of Pine Bluff. Subsequently, Edward Gavin, the husband of Victoria, came to the Stauffer home. Following an angry meeting, Donald wrote out a letter of confession.

In the following weeks relations between the Stauffers and the Gavins were non-existent. The Stauffers, particularly Theresa, were concerned that Edward Gavin would bring a lawsuit against Donald, relying upon various common law actions. The Stauffers consulted a local attorney, who informed them of large jury verdicts that had been upheld by the Arkansas Supreme Court. At a meeting on January 23, 1990 with the lawyer, Donald expressed concern over the security of the homestead for his wife and children. Following a prolonged hysterical outburst by Theresa, he transferred his interest in the jointly held property to Theresa, giving her a fee simple title free of any liens or encumbrances. The prevailing mood at the time was that Donald and Theresa would continue living together as husband and wife.

Despite that prevailing mood, marital relations between Donald and Theresa immediately ceased. Theresa and the children soon acted as if Donald did not exist, ignoring his presence in the house. Finally, he just moved out.

Donald has commenced an action in chancery court to compel reconveyance of his interest in the property. His basic argument is that the transfer was fraudulently induced by the threats and misrepresentations of Theresa and that she held his former interest as a constructive trustee.

In response, Theresa contends that Donald is barred from any affirmative relief in equity by the unclean hands doctrine, either because of his attempted fraudulent conveyance or his adultery with Victoria.

You are the law clerk for the chancellor. She is confused by the facts, which have not yet been fully developed, and troubled by the governing legal principles. She asks for your help in developing the two issues: the constructive trust put forward by Donald, and the affirmative defense of unclean hands. She wishes a review of the controlling law, application of the law to these sketchy facts, recommendations for further inquiries, and any suggestions.

4. Helen and Louis are citizens of Magnolia, Arkansas. They have been married for 22 years and have accumulated approximately \$500,000 in assets. Because of increasing marital tension, she has sued for divorce in Chancery Court of Columbia County. The parties are unable to reach a property settlement. The trial is scheduled for the first week of January 1991 before the chancellor.

Helen is represented by Alice Attorney. Yesterday Helen came to Alice and reported that Louis had physically assaulted her, causing a broken nose, a cracked rib and other injuries.

You are the law clerk for Alice Attorney. She has asked you to write a memo, discussing the procedural options available, and evaluating the advantages and disadvantages of them.