

Fall 1991 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 328 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.

The Anderson family wished to have individual portraits painted for each of seven family members. The portraits were wanted as an integral set with similar style and design so that they could be hung as a group on the living room wall. Cavender, a locally well-known artist, was sought for the job. They entered into a single contract with Cavender to have seven portraits painted for \$14,000. By custom the parties expected Cavender to furnish all supplies.

The Andersons became dissatisfied with Cavender after the completion of two of the portraits. The work was progressing much more slowly than they had been led to expect, and they did not find the two finished portraits sufficiently flattering. They notified Cavender that they did not want to continue the contract. No money had been paid at that point except a \$1000 advance, and the Andersons refused to pay any more.

Cavender had expended \$300 on each of the two portraits on supplies. The overhead costs in running the commercial studio added another \$200 in expenditures attributable to painting each of these portraits.

The Andersons turned the unwanted portraits over to an art auctioneer for sale. An out-of-town art collector who was intrigued by Cavender's refreshing and honest portrait style bid up the price on each. The collector ultimately paid \$7000 for one of the portraits and \$9000 for the other. The auctioneer's commission was \$1600, so the Andersons netted \$14,400 from this sale.

The painter, Cavender, sues the Andersons for breach of contract.

A) Assume the court decides that the contract did not require that the Andersons approve, or be satisfied by, the portraits. What should the measure of damages for their breach be? Discuss the relevant issues. (10 points).

B) Does Cavender have other remedies available? Discuss. (5 points).

C) Assume the court decides that the Andersons were justified under the terms of the contracts in rejecting the portraits. What are their remedies? Discuss. (5 points).

2. A fertilizer plant has negligently discharged chemical wastes into the White River in Arkansas. An administrative order now forbids fishing in the river for one year. An action has been filed 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; and 4) 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. Each of the following actions is brought before a Arkansas trial judge. How should the judge rule? Write one brief paragraph. (4 points each).

a) Bill Builder seeks a building permit from the city authorities. He satisfies all requirements and pays all fees. The city officials refuse a building permit because they have made a policy decision that the city is growing too fast. Bill seeks a writ of mandamus from the chancellor. How should the chancellor rule?

b) Dad Douglas builds a treehouse for his children. By mistake he constructs it over his boundary line. The following month, when notified by his neighbor Ned of the mistake, he enters Ned's property without permission and removes the treehouse. In so doing he causes \$75 worth of damages to Ned's flower beds. Ned sues Dad for \$10 for trespass and \$75 for damages to the flower bed. The facts are not in dispute. What should the judge award?

c) Wilma Wife sues Harry Husband for divorce and property settlement in Count I, alleging physical cruelty. In Count II she seeks \$5,000 in compensatory damages for assault and battery that occurred during the

marriage. Harry Husband moves to transfer Court II to circuit court. How should the chancellor rule?

d) Mr. Cook's Mazda is damaged when Ruth Reckless backs into the fender. Mr. Cook has the fender repaired for \$729.08. He sends her a written notice and the receipt, but she refuses to pay the repair charges, denying any

negligence. Three months \$729.08. The judge finds judge award?

e) Plaintiff Green wishes to \$30,000. They enter into previously entered into a

later, his lawyer sues her for Ruth liable. What should the

buy Blackacre from Higgins for a contract. But Higgins had contract giving a right of first refusal to a third party. Green and Higgins scheme and draft a fictitious contract for \$40,000; this contract is shown to the third party; the third party decides not to exercise the right of first refusal at this inflated price.

But now Higgins the seller changes his mind and refuses to sell to Green. Green sues for specific performance. Higgins raises the equitable defense of unclean hands, arguing that the fictitious contract used to deceive the third party bars Green from equity.

How should the Arkansas chancellor rule on the defense?

4. You have recently been hired as a Law Clerk for Chancellor Wisdom of the Chancery Court of Sebastian County, Arkansas.

He has asked you to prepare a memorandum on motions filed by the defendant, Deke Properties, Inc. (Deke), to strike complainant's jury demand and to dismiss a portion of complainant's complaint for lack of subject matter jurisdiction. The facts are as follows:

Complainant, Clare Brown (Clare), who supplies linen products to various property managers, files a complaint in Chancery Court seeking an injunction to prohibit Deke, a former employee, from inducing Clare's customers to breach their contracts with her. In addition Clare seeks unliquidated damages from Deke for tortious interference with her business relations as a result of Deke's alleged activities in disrupting her contractual relations with other customers. Clare has demanded a jury to try all issues in the complaint.

Deke has filed a motion to strike Clare's jury demand. In his motion, Deke contends that Clare has no right to have any of the issues raised in her complaint tried by a jury. Deke has also filed a motion to dismiss, for lack of subject matter jurisdiction, the portion of her complaint seeking unliquidated damages for tortious interference with her business relations.

In your memorandum advise the Chancellor whether or not Clare has a right to a jury trial on any issues in this action. Specify the reasons for your conclusions. Further advise the Chancellor whether he should grant or deny Deke's motion to dismiss the tortious interference action on the basis that Chancery Court does not have jurisdiction over such an action. Specify the reasons for advising Chancellor Wisdom whether to grant or deny the motion to dismiss.