

# Fall 1995 Remedies Final

## REMEDIES

Mr. Brill

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

Answer two.

Question 4 is worth 10 points. 10 points

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

2. This examination is designed for 4 hours. The questions will be graded on the quality of analysis, thought and conclusions, not on the number of words. You have 4 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. You may also use the back of the supplement or a comparable number of pages for other written materials.

6. 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.

7. Put everything (multiple choice questions, pencils, scantrons, qualification sheets, blue books) in the box at the front of Room 328 by 1:00 p.m.

8. 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.

1. This question is based on a reported appellate decision from Sebastian County, Arkansas:

Ivory and Zella (Parents) have a son, Jimmy (SON), who is married to Anna (Daughter-in-law, or DIL). With permission of the parents, Son and DIL built a house on a tract of land owned by Parents. They did most of the labor themselves, with the assistance of parents and friends. Son and DIL completed construction and occupied the house for approximately 24 months. Title to the land is still in the hands of the parents.

DIL filed for divorce. Son ordered her to move out of the house. DIL has now amended her lawsuit to assert a claim against the parents in regard to the house.

The testimony of DIL is that all four individuals had an agreement that, upon completion of the house, parents would convey the title to the house and the surrounding six acres to Son and DIL. She states that the parents have refused to convey the property to her and her husband Son. She stated that she and Son initially invested \$8000 in construction of the house and additional money each month they lived on the property. The house has a fair market value of approximately \$45,000, and the entire tract is worth \$55,000.

The testimony of the parents is that they never agreed to convey the land, but had only orally agreed that Son and DIL could live on the property, rent free, for five years.

Before the chancellor can decide the divorce and divide property between Son and DIL, it must first must decide the issue between the parents and the younger couple. DIL has asked the chancery court to declare that the parents held title to the six acre tract in trust for her and SON. Parents deny that SON and DIL are entitled to any equitable interest in the land.

Instructions: You are the Arkansas chancellor. Write an opinion resolving the issue between the parents and the younger couple. You should indicate your logic, your reasons, your remedy. (However, a discussion of precise dollar amounts is not needed).

2. Carter has never been in the restaurant business before, but has always dreamed of operating his own independent business when he retired from the Air Force. He decided to open a new restaurant in Fayetteville to be called Pizzatown. He signed a written contract with a local carpentry company (LCC) to custom design, build and install furniture and equipment. The contract expressly called for delivery and installation in time for the grand opening on September 1. Carter expended \$5000 for promotional materials which advertised the September 1 opening.

But the furnishings did not arrive when scheduled, resulting in the delay of the restaurant opening until December 1. Today, December 15, Carter comes to your law office and seeks advice on whether he should sue LCC for damages. He is an articulate, intelligent client, and you agree to analyze the situation to determine the relevant governing principles of damages, the chances of success, the nature of proof required, any disadvantages to litigation and any other factors. (You should ignore the UCC).

Write an opinion letter to your client Carter.

3. Plaintiff First National Bank (FNB) sues Dan Debtor for failure to make payments on a promissory note. It seeks foreclosure on the secured property and a default judgment. The action is filed in Arkansas chancery court. Each of the following parts is worth 5 points.

(A) Dan Debtor files a compulsory counterclaim, alleging that the Bank committed acts of common law fraud in making the loan in question. Dan seeks compensatory and punitive damages and demands a jury trial. The Bank moves to dismiss the counterclaim as "lacking subject matter jurisdiction in equity." How should the chancellor rule?

(B) Same as (A), but this time along with his counterclaim Dan also files a motion to transfer the action to Circuit Court. How should the chancellor rule?

(C) In response to the complaint, Dan alleges the following facts: During the time that the loan was made to Dan, the bank intentionally engaged in a series of misleading business practices. In particular the promissory note signed by Dan (like hundreds of others) had collection provisions that were arguably unconscionable and perhaps a violation of banking law. The bank no longer uses such provisions and indeed had notified Dan (and the others) that it viewed those provisions as null and void.

Dan asks that the plaintiff's complaint be barred in equity. Assume the facts are established. How should the judge rule?

D) In response to the complaint, Dan alleges the following facts: Two months ago a bank Vice-President told Dan that the Bank had decided to forego collection of the loan in light of the accident that had occurred to a member of Dan's family and the resulting enormous medical expenses. Dan thanked the Vice-President for the bank's kindness and notified the bank that he would be now able to start the rehabilitation treatments at the hospital. Accordingly, Dan stopped payments on the loan and instead paid the money to the hospital. The Bank states that the Vice-President (who has left the bank) had no authority to make any such statement or concession as he was in charge only of advertising matters.

Dan moves for dismissal of the complaint. Assume the facts are established. How should the judge rule?

4. Rose is an employee of Rent-A-Video (RAV). As an employee she was permitted to take videotapes home for her personal use without checking the tapes out or paying a rental fee. (The normal rental is \$3 a day).

She was terminated on November 1 (for reasons irrelevant to the present issues). Earlier that day she had placed eight video tapes in her car. They were 1960's musicals such as "My Fair Lady", children's movies

such as "My Little Pony", and 1980's Vietnam documentaries. At the end of the day she took them home and innocently put them in a storage closet. Ten days later she discovered the tapes while cleaning. She immediately returned them to RAV and apologized for her mistake in keeping them. The manager of RAV accepted the `return` of the tapes. Neither she nor her family had ever watched any of these eight tapes during the ten days they were in her possession.

RAV has sued Rose seeking a monetary recovery. You are the law clerk to the circuit judge sitting in Washington County, Arkansas. The judge says to you, "Write me a memo and give me advice. I don't understand the pleadings. All the lawyers have given me is the facts - no cause of actions, no rationale for relief, no suggested recovery. I need help."

Note: This question comes directly from a 1990 Illinois appellate decision.