

Fall 1997 Remedies Final

REMEDIES

Mr. Brill

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

Answer two.

The 60 multiple choice questions are worth 60 points. Answer them and `return` the questions. 60 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 4½ 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 113 at the time posted at the front of the room.

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. Debbie Wilson was the owner of Poinsett Abstract Company (PAC). She entered into a contract to sell the entire business to Al Hall. The purchase price of \$60,000 included the personal property, "including, but not limited to . . . the abstract books of the company."

The contract had two other key provisions: (1) for three years the seller Debbie would not compete with the buyer Al. (2) Al would hire Debbie for 18 months at a salary of \$1500 a month.

Because of personal conflicts, Al told Debbie after two months that he did not want her in the office any more. She demanded money, but he refused to pay. She left the office, but she did not bring a lawsuit or contact an attorney for assistance in collecting the other 15 months salary.

Without telling Al, Debbie made a microfilm copy of the abstract books made before leaving PAC. These tract books, about which this litigation centers, are indices of deeds and mortgages affecting title to land within Greene County, Arkansas. The indices are arranged by legal descriptions of the property. Thus, by use of these books a list of citations to the books of record, wherein all transactions affecting a given parcel may be located, can be readily compiled. From this, an abstract of title may be quickly prepared. These tract books are both a practical and legal necessity for engaging in the business of abstracting the title to land. They are a practical necessity because the time which would be required to trace the chain of title to a particular tract of

land is expedited by use of indices maintained by the recorder.

Two years later Debbie opened a competing abstract company in the same county. She made use of the microfilm copy in setting up her business and being licensed by the state. She has operated the suddenly prosperous business for six months.

Al has brought a lawsuit against Debbie in chancery court alleging breach of contract and seeking "appropriate equitable and legal relief." You are the law clerk for the chancellor. The chancellor tells you that "the contract is valid and the three year provision is reasonable and valid under Arkansas law." The chancellor wants a memo from you discussing the appropriate remedies that might be granted to the plaintiff.

2. Paula Plaintiff is a 29 year old woman who was injured in a collision caused by the defendant, XYZ Inc. XYZ does not dispute liability and is fully insured.

Paula, who has a high school education, is the office manager at a local stock brokerage and earns \$20,000 a year. She is taking evening classes at the University of Arkansas and eventually hopes to become licensed as a stock broker. Her husband Pete is employed as an accountant by a local bank. They have a 6 year old son Roosevelt.

In the accident (which occurred two months) Paula sustained a broken back that required surgery to repair discs on her spine. Her medical bills totaled \$20,000; her medical insurance paid \$18,000 and she paid a \$2000 deductible. The doctor foresees the possibility of a need for future corrective surgery. The doctor further recommends that Paula go three times a year to Little Rock for a comprehensive examination. She also suffered facial scarring which will require plastic surgery to remove the evidence. She is fearful of any further surgery.

Paula was in the hospital for one week and then was bed-ridden at home for another three weeks. Her employer did pay her during that time.

Paula and Pete have always played competitive tennis as a doubles team and enjoyed ballroom dancing. They are unable to engage in such activities now. The doctor is unable to give a specific prognosis as to the resumption of those activities. In addition, her ability to complete her normal household responsibilities has been hampered. Paula's mother (who lives in Springdale) has come to the house on a daily basis to help with household chores and with Roosevelt. Paula is wearing a back brace for at least six months.

You represent Paula and Pete Plaintiff. You are to write a demand letter to the attorney for the defendant. Keep these points in mind as you write the letter: 1) your client will receive a copy of the letter. 2) Your grade will not be based on the dollar amounts that you seek or demand. Your grade will be based on your knowledge of the elements of recovery and the related issues and your presentation of those in this context. In other words, it is irrelevant how much you claim for the broken back (and the other items).

3. Dan Dalton owns a hobby shop that sells many items, including model railroad equipment for both child and adult enthusiasts. In his store Dalton has a display containing a few expensive brass engines. Dalton had a Model 12 engine from the Lionel Company in inventory for several years. He acquired it when the limited production was made, and he priced it at \$300, based on his cost plus his standard mark-up. The engine had appreciated in value considerably during the years it sat in Dalton's display. The item had become popular nationally among hobbyists. It often commanded a price of \$600.

Ted Tompkins is an adult hobbyist who belongs to a model railroad club. From the display of Dalton, Tompkins purchased the small scale brass engine made by Lionel Company at a price of \$300 in preparation for an upcoming public show sponsored by his club. Dalton had never reconsidered the price of \$300 nor paid any attention to this Lionel engine as it set in his display until Tompkins bought it.

Shortly after selling the engine to Tompkins, Dalton received a letter inquiring if he had a Model 12 engine in his inventory and, if so, offering to buy it at a premium price. The letter explained that this model had sentimental value for the writer, who was seeking to replace one that had been lost. Therefore the offer was for \$1000.

Dalton, who was facing high bills at home from the recent hospitalization of a child, was eager for the extra cash. Therefore, he attended the public show sponsored by Tompkin's club and he put the Lionel engine in his pocket at an opportune moment. He promptly sent it to the letter writer Larry in exchange for the \$1000 offered.

The theft was not discovered until several days later, after the show was over. With the assistance of some friends who had noticed Dalton's strange behavior at the show, Tompkins successfully traced the theft to Dalton. Dalton now admits all these facts. What remedies does Tompkins have against Dalton? Discuss.