

Fall 1998 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. You have 42 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:

You may answer the questions in any order you wish.

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

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.)

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

5. 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 questions will be graded on the quality of analysis, thought and conclusions, not on the number of words.

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. 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.

8. 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. You may keep the essay questions.

1. For years Vince Villain was a trusted employee of Bill Boss. He was responsible for the acquisition of confidential marketing data, the development of new territories, and long range planning. During 1997 Vince engaged in two intentional acts of disloyalty to Bill Boss. a) He embezzled \$5000 from Bill's office accounts. With \$1000 he took out and paid the premiums on a life insurance policy on himself with a face value of \$100,000 payable to his wife. He kept the other \$4000 in a shoe box in his garage. b) With his inside knowledge of future growth plans, he purchased Blackacre with his own funds and put title in the name of his innocent wife, Imogene Innocent. Blackacre has since increased in value.

Imogene is not only innocent, but independently wealthy and self-sufficient. However, she did consent to the purchase of the life insurance policy as good financial planning.

In January 1998 Bill discovered the \$5000 embezzlement and confronted Vince. Vince admitted his guilt and begged for mercy. Bill agreed not to file criminal charges, provided Vince quit his job and repaid the \$5000. Vince quit his job, but died two weeks later before repaying the \$5000.

Upon investigation, Bill discovered the extent of Vince's disloyalty. Bill Boss has now filed an action in chancery court in Arkansas, seeking a constructive trust on the \$4000, on the life insurance proceeds of \$100,000, and on Blackacre.

You represent the innocent wife and Defendant Imogene. Make the best argument you can that equity should not grant a constructive trust. Be imaginative, but do not alter the facts. (Do not rest your argument entirely upon her innocence, which is undisputed. Respond to the obvious arguments of Bill Boss).

2. Carol Cushman is in the bakery business. Two years ago she signed a 5 year lease, renting space in a shopping center in Pine Bluff. The 29 page lease included the following paragraph three:

AThird: As one of the inducements for the making of this lease, Tenant hereby agrees, beginning as soon after the commencement of the term as is reasonably possible and continuing during the full remaining term of this lease, to operate its business in the demised premises; to keep its store open daily for the regular conduct of its business therein during the same hours at least as are customarily employed by other similar stores in the neighborhood of the demised premises, and to keep and maintain the show window displays in an attractive and dignified manner. * * * *

The lease provided for a minimum annual rental of \$7000 plus a shifting percentage of gross sales in excess of the minimum rent. Carol took possession 18 months ago and began business, and has paid the monthly minimum rent. But last month, she notified the landlord-owner, Riverside Mall, Inc., that she was permanently ceasing operations, indicating that she had found the enterprise unprofitable and had decided it would be less costly to pay the minimum rent than to resume operations of the bakery.

Riverside Mall, Inc. subsequently initiated this action for a mandatory injunction directing Carol specifically to perform the covenants contained in Paragraph 3. Carol has answered the lawsuit by contending that (1) RMI has an adequate remedy at law; (2) a mandatory injunction is not appropriate in this instance because of the problem of supervision of personal services; and (3) equity should not grant specific performance because the benefits to RMI from the store being open would be slight in comparison to the substantial injury sustained by the defendant.

You represent RMI. You are standing before the chancellor. Make the best argument you can to obtain the desired relief for your client.

3. Chronology

November 1995 - Buyer and Seller enter into a written contract for the purchase of Greenacre, a wooded tract in southwest Arkansas, "containing 80 acres more or less." Buyer pays \$10,000 at the closing, and agrees to make three annual payments of \$10,000. A competent real estate appraiser valued the land at \$40,000. Upon payment of the three installments, seller will transfer title by a warranty deed.

February 1996 - Pursuant to the contract, buyer takes possession.

March 1996 - Buyer clears half of the land in preparation for farming.

May 1996 - Buyer hires a surveyor who reports that Greenacre contains only 62 acres.

June 1996 - In response to buyer's letter reporting the surveyor's information, the seller responds that he had no idea how many acres were involved, but he was only selling a tract of land that had been in his family for generations.

July 1996 - Buyer constructs a simple two room cottage on the property.

August 1996 - Buyer demands that seller consent to an abatement of approximately 25% in the purchase price to reflect the shortage in acreage. Seller does not respond.

November 1996 - Buyer makes the \$10,000 annual payment.

March 1997 - Buyer writes: "I'm trying to be patient; I'll give you 6 months to agree to reduce the price. Otherwise, I have no choice but to sue for damages." Seller does not respond.

September 1997 - Buyer's yield from his agricultural efforts is significantly less than he expected.

November 1997 - Buyer makes the \$10,000 payment.

January 1998 - On grounds of mutual mistake, buyer demands rescission of the contract and that all payments be restored to the buyer.

March 1998 - Buyer files a pro se law suit for rescission, which he dismisses without prejudice five days later, before the seller responds.

June 1998 - An appraiser evaluates the land at \$65,000 with the improvements.

October 1998 - In drilling a well on the land, buyer hits oil. The oil find is expected to yield several million dollars at current rates.

November 1998 - The Buyer sends the final installment of \$10,000, but seller rejects it, responding that he is accepting the buyer's January 1997 demand for rescission.

December 1998 - Buyer comes to you for legal assistance. His primary goal is to obtain title to and continued possession of the land. But he wants to be treated fairly. Write him a letter discussing options, evaluating difficulties and suggesting a course of action. Be specific.