

# Fall 1999 Remedies Final

## REMEDIES

Mr. Brill

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

Answer 2 of the first 3. 40 points

Question 4 is worth 10 points. Answer it on the separate sheet. 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. 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. 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 328 at the time posted at the front of the room. You may keep the essay questions.

1. Danny raises pit bulls and other dogs for fighting. He secretly holds matches in rural areas of Arkansas. Hundreds of people attend and bet on the outcome.

Ark. Code Ann. § 5-62-120 prohibits unlawful dog fighting as defined in the statute (and Danny's conduct is covered by the statute). The statute provides for criminal penalties, forfeiture of any dogs, and restitution to the state for any medical treatment or expenses for caring for the dogs. The statute does not mention injunctive relief in any way.

The Attorney General has brought an action in chancery court, seeking an injunction against any future unlawful dog fighting contests by Danny.

You represent Danny. You are standing in front of the chancellor. Make an argument against any injunction against Danny. Be thorough. Be creative. Be organized. Be sure to refute the obvious arguments of the attorney general.

2. The Bell 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. Post, a locally well-known artist, was sought for the job. They entered into a single contract with Post to have seven portraits painted for \$14,000. By custom the parties expected Post to furnish all supplies.

The Bells became dissatisfied with Post 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 Post that they did not want to continue the contract. No money had been paid at that

point except a \$1000 advance, and the Bells refused to pay any more.

Post 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 Bells turned the unwanted portraits over to an art auctioneer for sale. An out-of-town art collector who was intrigued by Post'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; therefore the Bells netted \$14,400 from this sale.

The painter, Post, sues the Bells for breach of contract.

A) Assume the court decides that the contract did not require that the Bells 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 Post have other remedies available? Discuss. (5 points).

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

3. The Beyers are antique dealers in Conway, Arkansas, who want to purchase a distinctive older home as their personal residence. They own many fine pieces of antique furniture as their personal property and they are quite particular about the kind of house appropriate for them.

One day they saw exactly the house they wanted, but it was not for sale. The Beyers rang the doorbell and spoke to the homeowners, the Owens. At first the Owens refused to sell, but after several days negotiations the two parties reached an agreement. Each couple was represented by counsel and they signed a contract for the sale of the property for \$150,000.

Two weeks later the Owens called the Beyers and said they would not go through with the sale because they had just learned that their daughter Opal was engaged and she wanted the wedding in the family's old home. The Beyers happened to be having marital difficulties at the time and responded, "Fine. You keep it. But you'll be hearing from our lawyer about our costs." The lawyer wrote and demanded \$750 to compensate for the expenses.

The Owens proceeded to repair the house in anticipation of the wedding. The front porch was removed and completely replaced with an expensive new entrance; a gazebo was built in the backyard; and extensive renovations were made throughout the house. (Total cost was \$15,000). The wedding was lovely. In the meantime the Owens refused to pay the costs claimed by the Beyers, and the attorney for the Beyers filed a complaint alleging breach of contract in the Circuit Court of Faulkner County. The prayer for relief asked for substantial damages (beyond the \$750).

Two months later the Beyers reconciled their marital difficulties. As a reaffirmation of their marriage, they decided that they wanted to purchase the Owens' house as originally planned. The Beyers' attorney seeks to amend the complaint to ask for specific performance of the land sales contract and to transfer to Chancery Court.

You are the attorney for the Beyers. Make the best argument you can to the trial court. Be sure to anticipate the obvious arguments of the defendant as to why the action should remain in Circuit Court. Your argument will, obviously, have to include a discussion of and comparison of the remedies available in the two courts.

Student Exam Number \_\_\_\_\_

#### 4. Matching Essay Question (10 points)

In the left column are 10 maxims of equity. In the right columns are 10 remedies, concepts or principles. One of those goes with each maxim. You are to match them up correctly by putting the letter from the remedy,

concept or principles in the left hand column next to the number of the maxim.

You should use each letter and number only once. You do not need to write anything. However, if you have the wrong answers, I will read anything you have written at the bottom.

- \_\_\_\_\_ 1) Equity will not suffer a wrong to be without a remedy.
- \_\_\_\_\_ 2) Equity acts in personam, not in rem.
- \_\_\_\_\_ 3) Equity delights in doing justice and not just by halves.
- \_\_\_\_\_ 4) Equity regards that as done which ought to be done.
- \_\_\_\_\_ 5) Equity looks to the substance and not merely the form.
- \_\_\_\_\_ 6) He who comes into equity must come with clean hands.
- \_\_\_\_\_ 7) Equity favors the vigilant, not those who slumber on their rights.
- \_\_\_\_\_ 8) He who seeks equity must do equity.
- \_\_\_\_\_ 9) Where equities are equal, the first in time will prevail.
- \_\_\_\_\_ 10) Equity abhors forfeitures.

- a) equitable conversion
- b) specific performance
- c) laches
- d) unclean hands
- e) reformation
- f) equitable jurisdiction
- g) equitable creativity
- h) clean up doctrine
- i) no punitive damages
- j) priority