

REMEDIES

Fall 2002

Prof. Brill

1. Essay questions 1 and 2 are worth 20 points. 40 points
Answer them.

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 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.

ESSAY QUESTION

1. Debbie Wilson was the owner of Poinsett Abstract Company (PAC), an unincorporated business. 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 had 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 circuit court alleging breach of contract and seeking "appropriate equitable and legal relief." You are the law clerk for the judge. The judge tells you that "the contract is valid and the three year provision is reasonable and valid under Arkansas law." The judge wants a memo from you discussing the appropriate remedies that might be granted to the plaintiff.

Note: This question is based generally upon the facts of Holland v. Walls, 3 Ark. App. 20, 621 S.W. 2d 496 (1981).

ESSAY QUESTION

2. Hector and Harriet Homer live in a small rural community (near to Dover and Hector in Pope County, Arkansas). They have full time day jobs in Russellville, but they have livestock and do some farming on their 40 acres.

They were returning home in October, enjoying the foliage, and were terrified to see flames rearing up at the end of their gravel road. In fear they drove for 5 minutes. While their house was not damaged, their only barn was destroyed by fire. In addition, a half acre of spruce trees that they were growing for the Christmas tree market was destroyed. It has been determined that a utility company had negligently connected power lines. The utility company has admitted liability.

Hector and Harriet, through their attorney, have filed a demand on the utility company. They have demanded compensation for the following seven items: 1)the cost of a new barn; 2)the cost of replacement for the tools and household furniture that were stored in the barn and destroyed in the fire; 3)the lost Christmas trees; 4)their mental anguish; 5)the cost of an appraiser for the first 3 items; 6)their lost wages for two weeks resulting from the necessity to take care of the results of the fire and their inability to work in Russellville during that time; 7)attorney fees for the costs of hiring the attorney to present this claim to the utility company.

You are a young lawyer working for the utility company. The head of the claims department says to you:

Please evaluate this demand. I am interested in basic legal principles. I am not interested in dollar amounts at this time. Are these seven elements of their demand justified and permitted?

In addition, I need to know about issues that we might assert, questions we should ask and defenses to claims that we might have.

The Homers are hard-working honest people, and there is nothing suspicious about the basic facts. But I am just afraid their lawyer is demanding more than the law permits. We are willing to pay for legitimate and justified losses.

I know you are under a time pressure and therefore may not be able to go into detail on every issue. Accordingly I need a comprehensive discussion on everything, even if it cannot be in depth on all the issues.

You may wish to alert us to issues or concerns, either legal or factual, that need to be evaluated more thoroughly in the future.

And remember, Lucy (or Larry) Lawyer, what I told you when I hired you. I need matters clearly organized and presented.

Your task: write the memo.