

1. In March a public university fired its long time head basketball coach. He had a five year contract, and was fired after one year of the contract. He has sued to be restored to his position, or, in the alternative, for substantial general and special damages. The action is in the early stages.

You are a law clerk to the general counsel of the university. The general counsel gives you the following instructions:

"Ignore issues of liability. I have someone else working on that. Likewise, ignore dollar amounts. The parties may stipulate to those. Finally, there are no unusual contractual or statutory provisions that are relevant to his claim.

"I want you to focus on basic principles of equity and damages that are relevant to his claims for relief. In particular develop principles and issues that will be helpful to our defense against his claims for reinstatement and damages (just in case we lose on the merits). I recognize that this is a huge task. Organization and clarity are very important. I would prefer that you cover all issues, even if you are unable to go deeply into some of them."

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 antique dining room set that were stored in the barn and were destroyed in the fire; 3)the lost Christmas trees, which they planned to sell at gas stations and grocery stores in the area; 4)the cost of a licensed and qualified appraiser for the first 3 items; 5)their mental anguish, for which they received professional counseling; 6)their lost wages for two weeks resulting from the necessity to take care of the results of the fire and their inability to hold down their hourly jobs at a factory 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."

"Do not concern yourself with other issues or with other possible claims. In particular, don't worry about loss of use arguments or punitive damages."

"Incidentally, we know they have homeowners insurance with State Farm Insurance Company. We believe they have received compensation from State Farm for items (1) and (2)."

"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. You do not need to follow a particular format.

3. Donald and Theresa Stauffer are life long residents of Stuttgart, Arkansas, marrying in 1986. Soon thereafter they had a home constructed for them which was paid for primarily, if not entirely, out of the earnings of Donald.

In late 2002, Theresa became suspicious that her husband was involved with another woman. When confronted, Donald finally confessed his adultery and further admitted that the other woman was Theresa's own sister, Victoria Gavin of Pine Bluff. Subsequently, Edward Gavin, the husband of Victoria, came to the Stauffer home. Following an angry meeting, Donald wrote out a letter of confession.

In the following weeks relations between the Stauffers and the Gavins were non-existent. The Stauffers, particularly Theresa, were concerned that Edward Gavin would bring a lawsuit against Donald, relying upon various common law actions. The Stauffers consulted a local attorney, who informed them of large jury verdicts that had been upheld by the Arkansas Supreme Court. At a meeting on January 23, 2003 with the lawyer, Donald expressed concern over the security of the homestead for his wife and children. Following a prolonged hysterical outburst by Theresa, he transferred his interest in the jointly held property to Theresa, giving her a fee simple title free of any liens or encumbrances. The prevailing mood at the time was that Donald and Theresa would continue living together as husband and wife.

Despite that prevailing mood, marital relations between Donald and Theresa immediately ceased. Theresa and the children soon acted as if Donald did not exist, ignoring his presence in the house. Finally, he just moved out.

Donald has commenced an action in circuit court to compel reconveyance of his interest in the property. His basic argument is that the transfer was fraudulently induced by the threats and misrepresentations of Theresa and that she held his former interest as a constructive trustee.

In response, Theresa contends that Donald is barred from any affirmative relief in equity by the unclean hands doctrine,

either because of his attempted fraudulent conveyance or his adultery with Victoria.

You are the law clerk for the trial judge. She is confused by the facts, which have not yet been fully developed, and troubled by the governing legal principles. She asks for your help in developing the two issues: the constructive trust put forward by Donald, and the affirmative defense of unclean hands raised by Theresa. She wishes a review of the controlling law, application of the law to these sketchy facts, recommendations for further inquiries, and any suggestions.

A: disk #1Remedies
D: Remedies #1