

Spring 1994 Remedies Final

REMEDIES

Mr. Brill

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

Answer two.

Question 4 is worth 10 points. 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. The questions will be graded on the quality of analysis, thought and conclusions, not on the number of words. You have 4-1/2 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 for 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 328 by 1:00 p.m.

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. A locomotive of The Cotton Belt Railroad derailed in North Little Rock, Arkansas. Potentially dangerous gas (ethylene oxide) was released from a tank car. Pursuant to a directive from local government officials, nearby residents vacated their homes for at least a day. Nobody suffered any physical injuries or harm.

A group of residents has sued the Railroad in Arkansas state court, seeking compensatory damages for their out of pocket expenses, inconvenience, fear of future development of illness, the increased probability of the development of cancer or other maladies, and mental and emotional distress. The claim is based on negligence. There are no relevant federal or state statutes.

Your law firm represents the Railroad. Your senior partner has asked you to prepare an introductory memo analyzing the issues presented. She tells you to ignore liability and procedural issues. "There is no doubt that we were negligent. I have a civil procedure expert working on the procedural problems. From you, I need a broadly based overview of the issues related to the prayer for damages. It needs to be well-organized and logically presented. I recognize that the facts are not all developed, but I need an awareness of the issues, particularly those that we might develop to assist our client." Write the memo.

2. Ray and Carolyn Hoff were ready to retire from their middle level management positions in Illinois and start a new career in the Ozarks. They contacted the Moores who had a rural resort known as "The Pines" to sell.

The printed brochure described the land as consisting of "28 acres." When the Hoffs looked at the property, the Moores told them that the property (which was not on a municipal water system) had a good water supply. The system was somewhat complicated, consisting of four wells interconnected by a series of shutoff valves. The Hoffs emphasized that they were concerned about the water supply because they would add a swimming pool to the resort, which would obviously increase the demand for water. The Moores responded "No problem."

The Moores also showed the potential buyers the financial records of the resort. Although the records were incomplete, the Moores stated that the buyers could "make a living off the resort." The buyers agreed to purchase the resort for \$260,000. Payment was made, the deed was executed and possession was transferred on December 1st, 1993.

In January 1994 the Hoffs spent \$3000 to clear, level and prepare 4 acres of the land for the Olympic size swimming pool and all-weather tennis courts. In March they were disappointed when the resort did not fill to capacity with guests enjoying the dogwoods in the Ozarks. To their shock their careful examination of the financial records indicated that in 1993 the resort had a net loss of \$12,000. In early April they spent \$2000 to re-paint the entire resort.

In late April the swimming pool consultant reported that their water supply was not sufficient for the pool, and that an expenditure of \$4000 would be necessary to bring the water supply up to the necessary standards. The surveyor reported that they only had 26.32 acres of land.

On May 1, 1994 the Hoffs wrote the Moores and said "You lied to us about the water supply and the expected income. We want money to compensate us for what we have lost." The Moores did not respond.

Today, May 10, 1994, the Hoffs have come to your office, seeking advice. You are to assume that the elements of common law fraud can be established in regard to the water supply and the expected income. (In other words, do not discuss the 5 elements of common law fraud!). Write a letter to your clients, discussing the options available, the advantages and disadvantages, and your recommendations. Remember they want practical advice and specific details (for example, as to dollar amounts) as far as possible. (Remember that your grader wants to see your understanding of the underlying legal principles.)

3. Plaintiff First National Bank (FNB) sues Dan Debtor for failure to make payments on a promissory note. It seeks foreclosure on the secured property and a default judgment. The action is filed in Arkansas chancery court. Each of the following parts is worth 5 points.

(A) Dan Debtor files a compulsory counterclaim, alleging that the Bank committed acts of common law fraud in making the loan in question. Dan seeks compensatory and punitive damages and demands a jury trial. The Bank moves to dismiss the counterclaim as "lacking subject matter jurisdiction in equity." How should the chancellor rule?

(B) Same as (A), but this time along with his counterclaim Dan also files a motion to transfer the action to Circuit Court. How should the chancellor rule?

(C) In response to the complaint, Dan alleges the following

facts: During the time that the loan was made to Dan, the bank intentionally engaged in a series of misleading business practices. In particular the promissory note signed by Dan (like hundreds of others) had collection provisions that were arguably unconscionable and perhaps a violation of banking law. The bank no longer uses such provisions and indeed had notified Dan (and the others) that it viewed those provisions as null and void.

Dan asks that the plaintiff's complaint be barred in equity. Assume the facts are established. How should the judge rule?

D) In response to the complaint, Dan alleges the following

facts: Two months ago a bank Vice-President told Dan that the Bank had decided to forego collection of the loan in light of the accident that had occurred to a member of Dan's family and the resulting enormous

medical expenses. Dan thanked the Vice-President for the bank's kindness and notified the bank that he would be now able to start the rehabilitation treatments at the hospital. Accordingly, Dan stopped payments on the loan and instead paid the money to the hospital. The Bank states that the Vice-President (who has left the bank) had no authority to make any such statement or concession as he was in charge only of advertising matters.

Dan moves for dismissal of the complaint. Assume the facts are established. How should the judge rule?

4. Rhonda is an employee of Select-A-Video (SAV). As an employee she was permitted to take videotapes home for her personal use without checking the tapes out or paying a rental fee. (The normal rental is \$3 a day).

She was terminated on April 1 (for reasons irrelevant to the present issues). Earlier that day she had placed eight video tapes in her car. At the end of the day she took them home and innocently put them in a storage closet. Twenty days later she discovered the tapes while cleaning. She immediately returned them to SAV and apologized for her mistake in keeping them. Neither she nor her family had ever watched any of these eight tapes during the twenty days they were in her possession.

SAV has sued Rhonda seeking a monetary recovery. You are the law clerk to the judge. The judge has asked you to write a brief memo, evaluating the law in light of the legal issues presented and evaluating possible recoveries.

Note: This question comes directly from a 1990 Illinois appellate decision.