

Spring 1997 Remedies Final

REMEDIES

Mr. Brill

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

Answer two.

Bonus 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 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. 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.

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 326 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. (Pretend it is mid-September 1997). Sally Speculator comes to your office with the following information. She owns a 2 acre tract of land south of Fayetteville on Highway 71. She bought it 5 years ago for \$8,000 and hopes that she will eventually make a large profit.

She just discovered that on the first Saturday in September a trespasser came on her property, set up a large portable kitchen, posted large signs and sold enormous amounts of chicken, pork and ham to football fans going to the game. Since the Razorbacks won 47-9, with a wide open passing attack and an incredibly stingy defense, the fans bought even more food on the way back home.

Sally has found out that the trespasser is Tom Trespasser, a citizen of Texas who apparently travels from one campus to another during football season. In light of his financial success, she suspects that he will be back here in 3 weeks for the next game of the year. (The Hogs are now ranked in the Top 25, and the fans are dreaming of a showdown for the national championship in the Orange Bowl).

She wants your legal advice and help. You have told her that you will write her discussing the options, the advantages and disadvantages of each, the likelihood of success, and your recommendations. (Liability is not an issue: she has complete and clear ownership of the land, and he had no permission or authority to be on the land).

Write the letter.

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.

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 \$450 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. 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 damages.

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. 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.

3. The State of Montana passed a statute regulating the hauling of certain toxic wastes within the state. Violation of the statute was made a criminal offense and the maximum penalty provided for each violation was specified in the statute as \$1000.

Dennis, an interstate motor carrier, was charged with violation of the Montana Act in January. He was found guilty and fined the maximum penalty of \$1000, which he paid. In March Dennis was again found in violation of the Act. He was again fined \$1000, which he paid. This time the court also issued an injunction prohibiting Dennis from violating the statute.

In May Dennis repeats the offense once again and is charged with contempt. He is found guilty and assessed \$5000. The court rejects the arguments raised by Dennis's attorney that (1) the court lacked equity jurisdiction to issue the injunction; (2) \$5000 exceeds the maximum penalty under the statute for this single offense; (3) the Montana statute is unconstitutional because federal regulation in this area has preempted the field; and (4) the station manager in charge of the truck weighing station at the entrance to Montana had expressly told him that the waste materials in his truck did not fall within the scope of the statute.

Each of the following questions is worth five (5) points. You are to assume that Dennis did engage in the prohibited behavior each time he was so accused. You are not to discuss the merits of the substantive preemption question. Assume Montana has merged law and equity. Assume Montana has personal jurisdiction over Dennis. The facts are not in dispute.

- (a) Did the court have equity jurisdiction to issue the injunction? Explain briefly.
- (b) In light of legal principles, how should the trial court evaluate the statements made by the station manager? Explain briefly.
- (c) Assume now that on appeal it is held that the trial court lacked equity jurisdiction. Does this decision affect the contempt conviction of Dennis? Explain briefly.
- (d) Assume now that on appeal it is held that the lower court did have equity jurisdiction and that the state statute was constitutional. Is the \$5000 penalty valid? Explain briefly.