

# Summer 1993 Remedies Final

Mr. Brill

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

Question 3 is worth 10 points. 10 points

The 34 multiple choice questions are worth 50 points. Answer them and `return` the questions. 50 points  
100 points

2. This examination is designed for 3 hours. The questions will be graded on the quality of analysis, thought and conclusions, not on the number of words. You have 3@ 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 326 by 12:30 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.

Each of the following actions is brought before a Arkansas trial judge. How should the judge rule? Write one brief paragraph. (4 points each).

a) Bill Builder seeks a building permit from the city authorities. He satisfies all requirements and pays all fees. The city officials refuse a building permit because they have made a policy decision that the city is growing too fast. Bill seeks a writ of mandamus from the chancellor. Should the chancellor grant the writ?

b) Dad Douglas builds a playhouse for his children. By mistake he constructs it over his boundary line. The following month, when notified by his neighbor Ned of the mistake, he enters Ned's property without permission and removes the playhouse. In so doing he causes \$75 worth of damages to Ned's flower beds. Ned sues Dad for \$10 for trespass and \$75 for damages to the flower bed. The facts are not in dispute. What should the judge award?

c) Wilma Wife sues Harry Husband for divorce and property settlement in Count I, alleging physical cruelty. In Count II she seeks \$5,000 in compensatory damages for assault and battery that occurred during the marriage. Harry Husband moves to transfer Count II to circuit court. How should the chancellor rule?

d) Mr. Cook's Mazda is damaged, when Ruth Reckless backs into the fender. Mr. Cook has the fender repaired for \$729.08. He sends her a written notice and the receipt, but she refuses to pay the repair charges, denying her any negligence. Three months \$729.08. The judge finds judge award?

e) Plaintiff Green wishes to but Blackacre from Higgins for \$30,000. They enter into a contract. But Higgins had previously entered into a contract giving a right of refusal to a third party. Greene and Higgins scheme draw a fictitious contract for \$40,000; this contract is shown to a third party decides not to exercise the right of first refusal at this inflated price.

But now Higgins the seller changes his mind and refuses to sell to Green. Green sues for specific performance. Higgins raises the equitable defense of unclean hands, arguing that the fictitious contract used to deceive the third party bars Green from equity.

How should the Arkansas chancellor rule on the defense?

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 Hoff's looked at the property, the Moores had 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 Hoff's emphasized that they were concerned about the water supply because they would add 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, 1992.

In January 1993 the Hoff's spent \$30,000 to clear, level and prepare 4 acres of the land for an Olympic size swimming pool and all-weather tennis courts. In February they spent \$20,000 to re-paint the entire resort. 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 1992 the resort had a net loss of \$12,000.

In April the swimming pool consultant reported that their water supply was not sufficient for the pool, and that an expenditure of would be necessary to bring the water supply up to the necessary standards. The surveyor reported that they only had 26.1 acres of land.

In May the Hoff's 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.

The Hoff's have now 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. In a residential area of Harrison, Arkansas, dog owner Danny Dog keeps dogs for his own enjoyment. He also breeds pedigree dogs, boards dogs, and trains dogs. His property is surrounded by a 6 foot chain link fence.

His establishment does not violate any zoning or health ordinances. But the dogs smell, yelp, bark, howl through the night, and growl at pedestrians on the street.

Unable to obtain relief in any other way, the neighbors bring an action in equity to have the operation declared a nuisance. After an evidentiary hearing, the chancellor declares the establishment a private nuisance and orders Danny Dog to eliminate the offending practices that interfere with the neighbors' use and enjoyment of their land.

The injunction is obeyed for several weeks, but the irritating practices then resume. The neighbors have returned to court and have filed a motion seeking to "waive the tort and sue in assumpsit."<sup>11</sup> The chancellor has scheduled arguments on whether Danny Dog's profits, in whole or in part, should be awarded to the neighbors.

You represent the neighbors. You are standing in front of the chancellor. Make an argument that such relief should be granted. Be imaginative and creative.