



Remedies (Law 642)
Final Exam

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General instructions.

This is a closed book exam.

Do not remove the exam, blue books, or any exam materials from the room in which you are taking the exam.

Do not speak with any person other than the faculty member who is administering this exam until you have turned in your exam answers.

This exam consists of two parts. You will have three hours to complete the exam. Answer all questions. Do not answer a question by referring to an answer to a different question.

Identify yourself on your blue books only by your exam number. By placing the exam number on your blue book and by submitting your blue book for credit, you are agreeing to the following pledge as required by law school policy:

"On my honor I have neither given nor received improper assistance. And I will report any improper assistance that I am made aware of."

PART I. SHORT ANSWERS (recommended one hour)

Instructions. Write a coherent literate response to each of the following problems. Each problem in this part can be answered adequately with a response that is no longer than one paragraph.

1. Dr. Merle Blackbird is a wealthy surgeon in Tupelo, Mississippi. Merle is also a great admirer of Elvis Presley. He subscribes to the Presley Fan magazine.

The March 1993 Presley Fan magazine published an advertisement placed by the Tupelo Vintage Guitar Store. The advertisement offered for sale "a 1957 Gibson J-200 guitar actually owned and used by Elvis, with his initials scratched on the back of the guitar." The asking price for the guitar was \$50,000.

Merle called up the the store and spoke to its owner, Sidney Slick. Slick assured Merle that the guitar was authentic; he guaranteed that Elvis had owned and used the guitar; and he guaranteed that Elvis had scratched his very own initials right on the back of the instrument.

Relying on these promises, Merle agreed to buy the guitar and Slick agreed to sell it. On March 12 Merle sent Slick a check for the guitar in the amount of \$50,000. After Slick cashed the check he promptly left town without sending the guitar.

On March 15 involuntary bankruptcy proceedings were initiated by a large number of Slick's creditors. The total claims asserted by creditors against Slick exceed \$75,000. In contrast, Slick's assets, not including the "Elvis guitar" or the cash in his possession, consist of office furniture and inventory worth about \$1000.

Merle has retained you. The bad news is that your preliminary investigation has established beyond question that the guitar was never owned or used by Elvis. You have located an eyewitness who confirms that Slick himself scratched the initials in the guitar for the purpose of defrauding your client. The bad news is also that Slick gave the guitar to his girlfriend Miss Minnie as a going away present.

The good news is that you have learned that the guitar really is a virtually unused Gibson J-200 from 1957 with an exceptionally fine sound. Without the forged initials the instrument would be worth about \$20,000. But even with the damage, it is worth over \$15,000.

Please advise Merle with respect to his remedies.

2. Define the collateral source rule and the collateral bar rule and explain the difference.

3. Bill Smith has operated a bookstore for five years at a mall in Smalltown, a small college town. He derives a

significant part of his income from sales of clothing, souvenirs, and other items that display the college emblem and logo. He pays the college \$800 per year for the privilege to sell such items.

Over half of the bookstore's sales occur during six weekends in the fall when home football games are played in Smalltown.

On the day before the first home football game, when Smith goes to open his store, he discovers that the mall owner, Mall Mart Company, has changed the locks on his bookstore and will not allow him entrance. The local manager of the mall explains that he was "just following orders." Smith calls the Mall Mart Company office in Chicago and is told that he is being evicted for non-payment of rent.

Smith protests that he has paid rent every month on time. But the spokesman for the company just laughs and says, "Sure."

Smith comes to your office later that morning. He explains that he expects to make more than \$2500 profits on the the day before and during the day of the first home game. In response to your queries, he confesses that he has occasionally made less less than that amount, but he has never made less that \$1200 and he usually makes much more. He also tells you that the amount of money he will lose if forced to close over the weekend will render him unable to pay his current debts and he will be forced to close the store and lose his job.

Smith asks if there is any way to force the mall to let him reopen the store. Please explain what factors the court would consider in deciding whether to issue a temporary restraining order.

4. Same facts. Please describe to Smith the procedure for obtaining a T.R.O. and advise him about any costs and risks associated with the procedure.

5. Explain and agree or disagree with:

$$P \times H_p > (1-P) \times H_d$$

6. What are the elements of damages for wrongful death in Mississippi?

PART II. ANALYTIC ESSAYS (recommended two hours total for this part)

Instructions. Write coherent literate essays in the Blue Book that respond to each of the following problems.

A. The Case of Premarital Stress (recommended one hour)

Kathy and Dan lived in Lamarville, Mississippi. Kathy and Dan fell in love. In early 1992 they decided to get married. Because they wanted friends and family members from all over the country to participate in the wedding, they carefully planned the wedding far in advance. After many discussions in 1992, Kathy and Dan decided to schedule the wedding for August 14, 1993 in Lamarville.

Preparations for the wedding included the wedding ceremony itself. They decided to get married at the Big Baptist Church. They also decided to schedule a reception party immediately after their marriage in the church's Big Hall.

In December 1992, they made most of the arrangements for the wedding and reception. They reserved the church and reception hall; they arranged for the minister, Reverend Friendly, to celebrate; they contracted with professional musicians to provide music for both the wedding and reception; they contracted with the florist for flower arrangements; and they made numerous other arrangements with a baker, a food caterer, and other persons to provide services at the wedding and reception. The costs for all services connected with the wedding and reception totaled \$5000.

In February Dan and Kathy made plans for a large rehearsal dinner party for August 13, the night before the wedding. Lamarville is a small town, and Kathy and Dan looked at every restaurant in town. There were three restaurants in Lamarville-- Abe's Hamburger Joint, Bob's Family Diner, and Charlie's Bed and Breakfast. Kathy and Dan felt that Abe's was too informal. So they limited their choice to Bob's and Charlie's. They asked Bob (owner of Bob's) and Charlie (owner of Charlie's) to estimate the costs of meals for fifty guests. Bob estimated costs at \$35 per person. Charlie estimated costs at \$20 per plate, but in order to get the lowest price, Charlie explained that guests would be limited to a choice of three meals (beef, pork, or fish), and Charlie required advance notice of the number of each meal selected by the guests. Charlie further required that Kathy and Dan guarantee that at least ten rooms would be occupied by guests at the bed and breakfast hotel (at a cost per room of \$75 per night for two nights).

The only other local hotel, the Route 7 Motel, charged \$70 per night and did not include breakfast. Consequently, Kathy and Dan concluded that Charlie's offer was best and decided to have the rehearsal dinner at Charlie's. They reserved ten rooms at Charlie's, and they arranged to have Charlie cater dinner for

fifty persons. They paid Charlie a \$500 deposit to reserve the restaurant and rooms. They asked Charlie to provide them with a written itemized bill and Charlie said, "No problem. It's in the mail."

In March, Kathy and Dan sent out formal invitations for the wedding and reception. The invitations cost \$750. Fifty of the invitations included separate invitations to the rehearsal dinner in which guests were required to select one of the three meal choices. Invitations for the rehearsal dinner included a special postcard by means of which guests could communicate their menu selection directly to Charlie. The rehearsal dinner invitations cost \$150, and the stamped postcards cost an additional \$15.

In April, Kathy and Dan contracted with Cornie Bahl, an accordion player, to provide musical entertainment at the rehearsal dinner. They agreed to pay Bahl \$300 after his performance.

In months that followed Kathy and Dan became worried because Charlie still had not sent an itemized bill. Their fears were increased when Dan's friend Zeke told them that Charlie was not reliable. Zeke explained that he had planned a party at Charlie's in 1991 after receiving a low estimate. Zeke recounted how Charlie refused to provide a written bill until one week before the party. When the bill finally arrived, Zeke told them that it required payment in advance of an amount exactly twice the amount Charlie had estimated. Dan asked Zeke what he had done.

Zeke replied, "At first I tried to find somewhere else to have the party, but every place else was booked. So, of course, I had to pay Charlie."

In July, Kathy and Dan repeatedly called Charlie, and Charlie kept assuring them that the bill was in the mail. The costs of their various efforts to contact Charlie were \$15.

On August 2, 1993, Kathy and Dan finally received the itemized bill. As they feared, it fixed the cost per person at \$40 (twice the original estimate) and further required payment in advance.

The entire experience has frustrated and vexed Kathy and Dan. They have spent many hours discussing the problem. Each of them has taken days from work to discuss the problem and to drive to restaurants in surrounding towns to try to find alternate locations for the rehearsal dinner. (They each lost \$200, or \$400 total, in wages for the time off.) But, as they feared, Bob's Family Dinner has been reserved by someone else, and the restaurants in surrounding towns are unavailable at this late date.

Kathy and Dan have been so upset by the experience that they have lost sleep and suffered other symptoms of stress and depression. They have had their first argument, and have visited a marriage counselor (costing \$100).

In desperation they call you for advice (costing \$100).
Before making any final decision about paying the bill,

cancelling the party, or even cancelling the marriage, they want you to inform them about all of their legal rights and possible remedies.

Please advise fully with respect to their rights and remedies.

B. The Case of Fordice Reprise (recommended 30 minutes)

Assume that the state of Mississippi, in response to the decision in United State v. Fordice, 112 S. Ct. 2727 (1992), changes its policy for student admissions to all institutions of higher education. Rather than providing for a differential (and higher) score on the ACT for automatic admission to the historically white institutions, the state changes the standards for automatic admission so that they are identical for all institutions of higher education. Assume that the new standard for automatic admission is either an ACT score of 18 (the higher score previously sufficient for admission to a historically white institution) or a combination of some lower score and grade point average (GPA).

Students will be admitted automatically with the following combinations:

- ACT of 13 and GPA of 4.00
- ACT of 14 and GPA of 3.75 or better
- ACT of 15 and GPA of 3.50 "
- ACT of 16 and GPA of 3.25 "
- ACT of 17 and GPA of 3.00 "
- ACT of 18 regardless of GPA

Students who are not admitted automatically may nevertheless be admitted after their files are reviewed. The grounds for nonautomatic admission will be determined by each institution and will, presumably, vary from school to school depending on a number of factors including the number of applications.

Assume also that an expert is prepared to testify that because black applicants, as a group, perform more poorly on the ACT than white applicants, as a group, the new automatic admission standards will result in fewer blacks being automatically admitted to any school than were admitted under the previous policy.

The chancellor of one of the state universities calls and wants to know whether this new admissions policy satisfies the state's obligations under Fordice. Please advise fully.

C. The Case of the Horseless Carriage (recommended 30 minutes)

Roy agreed to sell his horse "Trigger" to Wayne for \$1000. The agreement was memorialized in a writing signed by both Roy and Wayne. Roy agreed to deliver Trigger to Wayne at Wayne's farm at the end of the month. And Wayne agreed to tender payment upon delivery of Trigger.

While waiting for delivery, Wayne built a new stable on his farm to house Trigger at a cost of \$1500. He bought a new

carriage for Trigger to pull at a cost of \$600. And he bought an insurance policy on Trigger's life at a cost of \$25.

Trigger's fair market value was \$1200.

Before deliver, Roy changed his mind and decided not to sell Trigger. Though Wayne was angry, he might have done nothing. But he was enraged to learn that Roy sold Trigger two month later to Tim Peterson for \$2000.

Wayne has come to you for legal advice. Please evaluate his remedies.