

Remedies
Final Examination

Professor Field

Fall 2005

Instructions

This is a three-hour, open-book exam; you may consult any written materials. You may not discuss the exam with others.

The exam is in three parts. Answer only 5 of 8 questions in Parts I and II. Do not waste time by answering more; I will grade only the first five.

Write your *carefully labeled and well-organized* answers on *only one side* of blue-book pages (preferably in the order presented). Unless your handwriting is unusually large, I expect *no more than* one page for each Part I answer, two for each Part II answer, and three for the answer to Part III.

I. 25 Points

Answer any FIVE questions (5 points each)

1. Explain how expectancy and compensatory damages are fundamentally the same. Contrast the circumstances in which they are potentially available.
2. In what major way are unclean hands and *in part delicto* similar? When will (which?) one of them be unlikely to bar relief permanently?
3. As discussed in class, the notion that government cannot be estopped is, at best, misleading. In some circumstances, it is wrong. When is it misleading; when, wrong?
4. What is remittitur; additur? In what important way(s) do they differ?
5. What is the principle advantage of an injunction over replevin in circumstances where the latter is available?
6. What are rescission and reformation? When are they, respectively, appropriate?
7. When are permanent injunctions denied for undue hardship; when not?
8. When are declaratory judgment actions unavailable for testing the constitutionality of criminal statutes; why?

II. 50 Points

Answer any FIVE questions (10 points each)

1. Under what circumstances might both damages and profits be available? Discuss differences between them in terms of needed proof and the parties' respective burdens.
2. Discuss the main differences between (a) temporary restraining orders, (b) preliminary injunctions and (c) permanent injunctions. Give examples of when a court would, and would not, need to exercise continuing jurisdiction following a permanent injunction.
3. What are the three types of contempt? What are their functions; who prosecutes each? Which is subject to a collateral bar?
4. What relief is available against states under 42 U.S.C. § 1983? How does the treatment of states and their officers differ; what compels it? How does 42 U.S.C. § 1988 differ?
5. How do awards of damages and specific performance serve the same end? Discuss two situations in which specific performance is likely to be granted; compare two when it is not.
6. How are one-way fee shifting and punitive damages similar? To what extent is each limited by the ratio of respective recoveries to the amount of compensatory damages awarded?
7. What justifies the American fee-shifting rule (compared to what alternative)? When does one-way fee shifting raise serious ethical problems? Why is two-way fee shifting uncommon?

8. Discuss the main differences and similarities between laches and statutes of limitation, on one hand, and estoppel on the other. Why are the respective differences important?

III. 25 Points

Eighteen months ago, Charley was a mechanic who repaired large earth movers for Apex, Inc. Unlike some mechanics, he owned his own tools. His pride and joy was a new \$5000 set that would enable him to make expensive repairs that others could not.

Before he got much chance to use them, he was injured in a traffic accident. Hoping to return soon, he asked Apex's manager, Fred, if he would leave his tools there. Fred said "Sure."

Recently Charley was told that he will probably never be able to return to that type of work. Hearing that, he offered to sell his tools to Apex. Fred refused the offer, however, saying that no one else at Apex knew how to use them.

A week later, when Charley went to get his tools, Fred wasn't there. Looking around, he finally found them — being used by Mary. Charley walked over and introduced himself.

Obviously unaware of what Fred had told him, Mary said "Oh, then these are your great tools!" She then related that Fred had hired her soon after Charley's injury. She thanked him for the loan of the tools and pointed out how well she had cared for them. She was particularly eager to point out that, thanks to her skill and his tools, Apex itself had cleared at least \$25,000 on jobs that it otherwise would have been unable to take.

After Charley mentioned that he would have no further use for them, Mary quickly offered to buy his tools (in installments) for \$4,000.

Charley said that he would think about it. Yesterday, he called you. Mary's his pal, but Charley's very upset with Fred.

He related everything stated above and said that \$4,000 is a fair price -- especially because such tools would rent for at least \$100 per week. But he wonders about their drop in value as a result of being used for the past eighteen months.

At a minimum, Charley should be able to recover the \$1,000 lost through depreciation (that, plus the \$4,000 raised by selling his tools, would satisfy an important goal by putting him essentially where he started). What is the name of that remedy?

Assume that any court where you file suit will follow the law set out in the closest case covered this term. In light of that, identify Charley's other realistic possibilities for financial recovery from Apex? Be sure to compare them in terms of amount and likelihood of recovery.