

REMEDIES FINAL EXAM
Sparrow Spring 2010
General Instructions

IMPORTANT: By submitting your answers to this final exam, you acknowledge that you are bound by Pierce Law's Honor Code, and that any material that is plagiarized, even if negligently so, is a violation of the honor code.

- This is an open-book take-home exam.
- You have from 8:00 a.m. to 4:00 p.m. to complete the exam.
- **You may take this exam any one of the following days:** Monday, April 26, Tuesday, April 27, Wednesday, April 28, Thursday, April 29, or Friday, April 30, 2010
- **This is an individual exam – do not collaborate or discuss this with anyone.**
- As negotiated earlier in the semester, this examination is worth **38.5%** of your grade in the course.
- Lory Attalla in the Registrar's Office will email the exam to you – **please let her know IN ADVANCE.**
- You will be required to email the exam back to Lory Attalla by 4:00 p.m.
- I will **not** answer any questions during the exam.
- Because some of your classmates are taking the exam at a different time, **do not discuss the exam until you are authorized to do so. You are responsible** for ensuring that **no information** about this exam is heard or made known to any student who has not yet taken this exam and fully completed it.
- This exam has **6 pages** (including 2 for these directions). Be sure you have all of them.

Exam number identification only:

1. Use **only** your assigned **Exam Number** for this exam.
2. **Do not** use your name or Social Security Number anywhere.
3. **Do not** provide any identifying information anywhere on the exam.
4. **Providing any identifying information on or after the exam and before the exam is returned is a violation of the Pierce Law conduct code.**

Typeface, font, and format for questions:

1. All parts of this exam must be typed.
2. Put your **exam number in the header** of your exam document – on the right-hand side. This ensures that your exam number is on each page.
3. Use 12-point Times New Roman or Garamond type.
4. Double-space lines throughout.
5. 1" margins all around.
6. Include page numbers at the bottom of the page.
7. Indent each new paragraph .5" or 5 spaces
8. Email to Lory Attalla in the Registrar's Office as a Word document.

This exam consists of two questions (with sub-parts). There are **no multiple choice** questions.
Question 1 (50 points) 1250 words (5 pages max) Question 2 (50 points) 1250 words (5 pages max).

For all questions:

- All three problems take place in Franklin, a fictional US State. **Sources of law:** Remedies text

- Assume, unless given otherwise, that there are no additional applicable relevant laws, ordinances, or statutes, which would change the analysis.
- Assume the material written is accurate and reliable.
- Assume all claims, defenses and counterclaims are within relevant statutes of limitation.
- Assume that all remedies are governed by US law.
- Do not** include an analysis of punitive damages.
- Do not** include an analysis of attorneys' fees.
- Do not** include an analysis of present value, taxes, or interest.
- Use law, facts, and policy in answering the questions below. Policy arguments do not need to be made for each point. Instead, apply policy to the overall analysis or to one of the more ambiguous elements.
- Scoring these essays** is similar to scoring on the team assessments and essays from previous years. Identifying legal issues and applying specific facts to legal principles – showing the analysis to the reader – is most important. **About 5% of the grade** is on policy. **Around 10% of the grade** will be based on writing and organization. Because of the word/page limits, focus your analysis on the areas with the greatest ambiguity.

"Tips" for taking this examination:

- Read the "call of the question" and the specific instructions first. Determine the specific relevant legal issues before reading through the entire fact pattern.
- **Map out or outline** your response. Often there will be multiple parts – elements, factors – that require you to address many different points. Having a sense of how many different points you need to address will help you allocate the time you spend on each.
- You know a lot about remedies. Remember that I can assess your knowledge and abilities only by what I see and can understand in your written responses; **EXPLICITLY** show the steps in your reasoning.

**Relax, breathe, and do your best.
I believe that each one of you can be a successful lawyer!**

Criteria for evaluating exam responses	
1. Identifies basic legal issues and ambiguities in legal issues	<input type="checkbox"/> Identifies major kinds of remedies available <input type="checkbox"/> Identifies which remedies are definitely available <input type="checkbox"/> Identifies which remedies <i>may</i> be available <input type="checkbox"/> Accurately uses terms recognized by legal sources
2. Uses law and reasoning	<input type="checkbox"/> For major kinds of remedies available, identifies and analyzes tests, rules and authorities - cites to Remedies text - page numbers or case name ok <input type="checkbox"/> Explains basics about designing or measuring remedies <input type="checkbox"/> Explains other considerations in designing remedies, such as identifies weaknesses in the analysis
3. Applies facts from problem	<input type="checkbox"/> Identifies and applies key facts <input type="checkbox"/> Draws reasonable inferences from facts <input type="checkbox"/> Names assumed facts
4. Responsiveness to questions asked and organization	<input type="checkbox"/> Responds to assigned task <input type="checkbox"/> Organizes writing so easy to follow <input type="checkbox"/> Provides a coherent and accurate summary/conclusion at the beginning of each section <input type="checkbox"/> Uses headings and subheadings to help the reader follow content <input type="checkbox"/> Clear and precise prose

EXAM: Factual Scenario

Riley lives in a residential neighborhood in Springfield, a college town, which has an excellent public school system. Riley and her partner have two children, ages 7 and 10, and have lived in their home for 15 years. When Riley purchased her home, its backyard bordered 4 acres of undeveloped woodland forest owned by the local private college (College). A year ago, College cut down trees and prepared the area near Riley's home for a sports field (Field). College put in a road, parking area, and playing field suitable for intercollegiate sports events such as field hockey, lacrosse, baseball, softball, and soccer. College also installed high voltage, elevated stadium lighting, stadium seating, a snack bar, toilet facilities, and loud speakers near the Field. The College started using the Field for sports practices last fall, and has started using it for intercollegiate sports events this spring.

Before the College constructed the Field, it held a series of open meetings where College officials informed community members about the Field - including showing designs, layouts, and projected impact on the homes surrounding the field. Riley and her neighbors were reassured that the impact of games or practices would not affect them.

Starting last fall, Riley noticed that when College sports teams were practicing on the Field in the late afternoon or early evening, when it was dark, the illuminated elevated stadium elevated emitted extremely bright and glaring light into her home. In addition, College sports team players took shortcuts across her lawn on their way back to the main College campus, and tended to yell extremely loudly on the Field and walking past her home, frequently yelling obscenities at each other. She and her partner were upset that their children were subjected to these expletives on a regular basis.

During the winter, which is similar to winters in New Hampshire, College did not use the Field. Starting this spring, however, College used the Field for competitive intercollegiate sports events. During almost all events, loud music and commentary emitted from the loud speakers on the Field. In addition, fans and players walked across Riley's front lawn and gardens, parked cars encroached on her front yard and blocked her access to her garage, and the area surrounding her home was littered with garbage from the events, such as beverage and food containers, cigarette butts, napkins and facial tissues, and sports signs and banners. Before, during, and after events, as fans and players walked by, they would frequently yell loudly, use profane language, and make obscene gestures.

The College is an important economic feature of Springfield. It is one of the biggest employers of Springfield residents. The 5000 College students bring in substantial revenue to Springfield businesses, as do the College's many employees. Many Springfield residents enjoy watching competitive collegiate sports and attend College sports events. People residing outside the area, including alumni, also travel to Springfield to attend these events. College sports events tickets generate a substantial source of revenue for the College, and contribute to alumni pride in the school. Sports ticket revenues and the sense of community generated by community members, alumni, and student attendees are also important to making College attractive to prospective students.

A month ago, Riley had her driveway redone, replacing old and cracked concrete with paved asphalt. It cost her \$3000 to pave the driveway from the street to the garage. Because asphalt has to cure for several days before any heavy loads are placed on it, Riley placed yellow tape and orange cones on the driveway from the street to the garage to prevent others from using it. Riley and her partner also worked on the front lawn and yard, paying an experienced wall builder \$1500 to build a 3-foot high stone wall at the edge of the property. Riley believed that the stone wall would keep college students and others attending games and practices at the Field off her front lawn. Riley and her partner bought and planted \$800 worth of shrubs and plants inside the wall. In addition, Riley placed a green marble Buddha — a recent gift from her uncle and valued at \$4200 — inside the wall in the garden. Inside the wall she also placed a large handcrafted metal sculpture of a bird, which she purchased for \$580.

On a recent Wednesday night, April 21, College hosted a high profile game on the Field. The visiting team was from a nearby college and intense rivals with College. The teams were closely matched, with hundreds of fans attending the game and staying through 11:45 p.m. The bright lights, loud game announcements, band playing, and screams from the crowd kept Riley, her partner, and their children awake. The noise persisted until 12:15 a.m., when the fans and players had finally dispersed. Riley's children had school early the next morning, and usually went to bed around 7:30 p.m. Riley and her partner each worked full-time at jobs where they started at 8:00 a.m. each weekday morning; they rose at 5:45 a.m. each weekday and usually tried to be asleep by 10:00 p.m. on weekday nights.

The morning after the April 21 game, Riley observed damage from the game. A vehicle had crashed into the stonewall, breaking 12 feet of it and causing stones to land upon and destroy half of the shrubs and plants she and her partner had planted. She could see tire marks on the yard and automobile paint left on the stones. Tire marks also were deeply embedded into the asphalt driveway, meaning that she would need to have the driveway redone. Trash was strewn around her home. The Buddha had been knocked over and the head broken off from the body. The large metal bird sculpture was gone.

Riley received an estimate of \$1000 to restore the stone wall. The Buddha statue could be repaired for \$250, but because it had been broken and was no longer in perfect condition, as fixed, it was worth half of its original value. The asphalt would cost \$800 to fix. The plants and shrubs could be replaced for \$400, but Riley would have to spend extra time cleaning out the ruined ones and preparing the garden for new ones. Riley saw the large metal bird sculpture a week later. It was on the third floor balcony of a College dorm, and was draped with lingerie. Some of the metal tail feathers were missing.

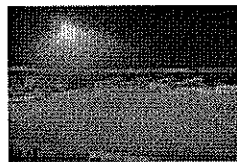
The value of homes in Riley's neighborhood averaged around \$350,000 the last time the neighborhood was assessed, two years ago, before College constructed the Field. People buy homes in Riley's residential Springfield neighborhood because of the high quality public school system, the congenial atmosphere of the neighborhood, and the consistently solid home values. Before the Field was constructed, Riley's neighborhood was highly sought after because of it was a safe, quiet, family-friendly clean area. Property values are expected to decrease with the new Field and its attendant noise, crowds, trash and associated problems.

Riley had come to you for advice. She is concerned that as College continues to use the Field for more practices and games, she and her family will continue to suffer. She would like to stay in her home; her children attend the local school, and have friends in the neighborhood. She wants to know what remedies she may have to prevent the disruption from past and future events at the field, what she can do about the damage and loss to her property, and the potential loss in value in her home. But, as a member of the Springfield community, she wants to maintain cordial relations with her neighbors, many of whom work for the College or in jobs that benefit from the College's presence, and she does not want to cause unnecessary friction and tension with the College.

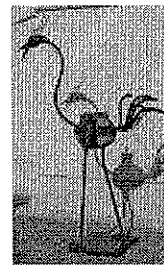
There is no evidence that the College intended to cause Riley any harm. Under Franklin common law, plaintiffs may recover legal damages or obtain equitable relief for a nuisance claim if they prove that the defendant substantially interfered with the use and enjoyment of the plaintiffs' land. College has **not violated any** relevant statutes or ordinances. All permits were appropriately obtained before College constructed the field. College is very satisfied with the Field, and wants to keep using it as planned. It acknowledges that sports events are loud and attendees often become boisterous, however it has stated that this is the nature of collegiate sports. It has stated that it regrets the damage caused by fans, but notes that it is not responsible for its fans. College officials privately think that Springfield residents should be grateful that the College brings so much to the local economy.



Marble Buddha Statue



Field with stadium lights



Large metal bird sculpture

Question 1 (50 points) 1250 words maximum – 5 pages:

Riley plans to send a letter to College, following it up with a phone call and, she hopes, a meeting. Given the College's non-responsiveness in the past, however, she doubts that the College will do anything differently, or compensate her for her losses. Riley is not interested in seeking a TRO, but has asked you to inform her of the **3 best legal remedies (equitable, legal or combination)** you would recommend she could pursue **against College** to achieve her goals.

- Prepare a memo identifying the **best equitable and legal remedies** you would recommend that Riley pursue against College. Identify the **3 best remedies** in total, using any combination of equitable and legal remedies. For example, you might decide that the best ways Riley could achieve her goal is to pursue 2 equitable and 1 legal remedy **OR** to pursue 1 equitable and 2 legal remedies.
- For any equitable remedies, specify the details of the equitable relief and the basis for that relief.

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- For any legal remedies, explain what Riley would be entitled to and how you arrived at those figures.
- For all 3 remedies, identify which remedies are mutually exclusive.
- Do not address weaknesses in the claims - address those in Question 2.
- Include one paragraph explaining why the 3 remedies you have chosen above are likely more effective than other remedies.

Question 2 (50 points) 1250 words maximum – 5 pages:

Assume that no conflicts prevent you from representing College. Advise College about its possible realistic arguments against Riley's 3 claims from Question 1 for equitable and legal remedies. Using law, facts, and policy:

- Prepare a memo identifying at least 3 specific arguments that College could make to prevent or limit Riley's claims.
- For equitable claims and identify specifically how College could use these to prevent or limit Riley's claims.
- For legal claims, identify specifically how College could prevent or limit Riley's legal remedies, explaining how you arrived at any figures.
- For all 3 arguments, identify which are mutually exclusive.
- Include one paragraph explaining why the 3 arguments you have chosen above are likely more effective than other arguments.