Legal & Equitable Remedies: Final Examination (January 1972)

William & Mary Law School
The examination consists of five questions of varying weight, totaling 100 points. Each problem states the weight to be given to such problem and a suggested time limit. The suggested time limits are based solely on a proportion of the total time for the entire examination equal to the percentage weight given to individual problems. Answer all questions. Do not put your name on your bluebook. Be sure that your examination number appears on all bluebooks used.

Concentrate on questions of equity, restitution, remedies, and damages. Assume substantive rights unless you feel they bear directly on the foregoing.

Facts are intended to be complete unless the problem raises additional possible facts to be considered in answering. If you need more facts, state them clearly and use them.

1. Weight: 30  
Time: 54 minutes

Ted Andrews and his wife Carol are both chemical engineers. In addition Ted is a lawyer specializing in international business transactions. They live in a modest home adjacent to Interstate 95. On the back of the lot they have a small building which houses their two cars and their "hobby"—an experimental chemical processing laboratory. Ten years ago they realized that "plastics" was the key-word to their future. Over the years they have succeeded in developing a process for the manufacture of resins which utilizes the waste products of other common industries and which has just recently revolutionized the plastics field.

The process is unusual in both its input (above) and output. The process allows their resin number 1013 to be turned into any type of plastic desired without any of the drawbacks of plastic, i.e., it may be hard but not brittle, it may be soft, elastic and fire-proof, etc. They have invested everything they have in a processing plant on the other side of and adjacent to the interstate highway. The plant began operation on a one 8 hour shift per day basis on April 1, 1971. This limited operation was necessary only to "shake-down" the operation and to allow for the recruiting and training of personnel for the other two shifts which were to begin on June 1, 1971.

Ted's brother Bill Andrews, a marketing expert, has been so successful in his handling of the sales end of the enterprise and the product is so exciting, that they decided to start the second shift on May 1, 1971 and the third shift on May 7, 1971. In addition the "family" has financed the acquisition of 12 other plant sites in the United States. Construction starts were planned to begin when specifications were settled with the contractors involved and Ted and Carol's fathers could settle their business and financial affairs. Also, Ted has formulated plans for taking the enterprise into other countries.

Overall management of the enterprise is handled by the fathers, Thomas B. Andrews and Augustus T. Mathews, who have recently resigned from their positions as presidents of IT&T and Eastman Kodak, respectively. Their resignations were effective April 1, 1971 but their business and financial affairs were not to be settled until May 30, 1971.

On the evening of April 29, 1971 Ted and Carol hosted a small family gathering to discuss plans and celebrate the success of the enterprise. At 9 P.M. Carol asked Ted, Bill, Thomas, Augustus and those others present who had an interest to accompany her to the lab building to see the latest development. The five persons named went to the building along with Ted and Carol's six year old son, Ben. At this time Carol was five months pregnant. In the lab Carol revealed the new development in the process which would increase production output by 10% in a given time period. She indicated that implementation of the necessary changes in the plant would proceed under her direction during the next week and that she would draw up the necessary specifications the next day.
At approximately 9:10 to 9:20 the following sequence of events occurred. Mrs. Thomas Andrews started cleaning up the kitchen, Mrs. Augustus T. Mathews was on the back porch shaking the table cloth, and Mrs. Bill Andrews was in the front hall telephoning her baby sitter.

Meanwhile two Fast Freight Inc. semi-trailer trucks were proceeding in a southerly direction on I 95. They were travelling at 80 mph. A Xerox semi-tractor & 2 trailers) was proceeding north at 35 mph. The two south bound trucks were almost side-by-side, as one was passing the other. Suddenly, the Xerox rig went out of control. It swerved onto the slightly depressed median and came up onto the southbound lanes with its trailers swinging wildly. The two Fast Freight drivers attempted to avoid collision by splitting apart quickly. The Xerox driver had the power on also trying to get his rig under control.

As a result of this event the Fast Freight trucks went out of control. They each went down embankments but on opposite sides of I 95. One of them finally crashed into the Enterprise Plastics plant, where the building and its equipment were damaged. The other truck crashed into the lab building on the back of Andrew's lot.

There were no personnel in the plant at this time. The training area and its equipment were destroyed. The planning and development section and its plans and specifications for other plants were destroyed. In addition the most essential section of the production process was damaged.

At the lab building Ted, Carol, and Augustus were severely injured. They require at least nine months of intensive care during which time they will be incapacitated. Thomas, Ben, and the unborn child were killed. The three women at the house have suffered emotional distress. Bill suffered a broken arm and a sprained ankle. The lab building is in a shambles and both cars in the garage were totaled although they could be rebuilt. One of the cars was a 1965 Mercedes sedan. The other one was a 1927 Ford Model T which has been in the Andrew's family since it was purchased new in 1927.

Bill has consulted your law firm concerning this matter. Your partner seems confident of establishing the liability of Xerox or Fast Freight or both, but he wants you to handle the portion of the claim. Bill has asked for your evaluation of the situation, including an explanation of the law, any problems you foresee, and your plans to handle the matter. Please advise him.

II. Weight: 20

-Time: 36 minutes

On March 4, 1971 J.P. Jones, a farmer from Blue Earth, Minnesota, and the Jolly Green Giant Company entered into a written contract whereby Jones agreed to grow peas on ten acres of his farm in Faribault County, and to sell and deliver all the peas grown thereon during the season of 1971 (except those used domestically) to the cannery of the J.G.G.C. at a price of $48 per ton. Clause 24 of the contract read as follows: "It is understood by Grower that the Company, depending upon the performance of this and numerous similar agreements, has entered into and intends to enter into agreements for the sale of its products, and that if Grower shall fail to deliver to the Company any part or all of the Peas herein contracted for, except as aforesaid, the Company will sustain substantial damages, uncertain in amount, and not readily susceptible of proof under the rules of evidence, and great and irreparable damage to the Company will result from a breach of this agreement on the part of the Grower, and Grower hereby covenants and agrees with the Company that in case of such failure on Grower's part Grower shall and will pay to the Company the sum of $850.00, as liquidated damages and not as a penalty, and in such case the Company may deduct and retain the said sum or any part thereof from any moneys due or to become due to Grower under this agreement, but the failure of the Company to do so shall not be construed as a waiver by the Company of such damages. This provision shall not be construed as rendering this agreement an alternative one, or as giving Grower an option to perform this agreement, or to refuse to perform the same and pay damages as specified."

The Company requested this provision because from past experience the Company estimated that it would normally be advantageous to a grower, during the "glut" period when market prices were low, to deliver one-third of his crop under the contract, and sell two-thirds on the open market. Taking into account the average yield per acre and the range of prices in the previous year, the prospective loss to the Company in the event of default was estimated at about $85 per acre.
Jones delivered 3 loads aggregating 18 tons of peas to the Company on August 31 and September 1, 1971. The third picking, 4 loads of about 24 tons, he sold in the Minneapolis market at a price of $1.67 per bushel or $55.55 per ton. Jones then sold 10-12 more loads, about 50 to 59 tons, on the open market at a price of $1.83 per bushel, or $61.05 per ton.

The Company paid Jones $14.00 on account of the peas he delivered to it, claiming the right to deduct liquidated damages of $850 from the contract price.

Jones has consulted you for advice. Please advise him regarding theories and potential of recovery.

III. Weight: 20

Leo Perillo managed financial investments for his father, three uncles, a god-father, four brothers, and two sisters. Leo handles these matters in time which he can spare from his work as Financial Investment Consultant with the Home-Free Management Advisors, Inc., a consulting firm.

Five years ago the god-father purchased 300 acres of Wyoming grazing land. He had a need for cash last year and asked Leo to sell the land for him. Leo could not find a buyer after 6 months of trying and finally on April 30 he purchased the land himself for $30/acre. While on vacation this past summer Leo inspected the land which neither he nor the god-father had seen before. At that time he learned that "greener" land (closer to the river) was selling for $60/acre. In addition he fell into a small hole on the side of a hill, which is near the western boundary line of the property. It was about a 12 foot drop and he sprained his ankle in the fall. He quickly forgot about the ankle, however, because he discovered that the "hole" was an entrance into a vast series of underground caverns complete with dripping water, bats, and both weird and beautiful rock formations. He limped back to his car. After securing rope and lanterns in Sundance, he proceeded to explore the cave. He found six large "rooms" connected through a series of smaller "rooms" and tunnels. There were many other "rooms" that he did not explore. At one point he slipped on wet rocks and fell into a pool of water. When he emerged he claimed that the water had "cured" his sprain. Because of this event and several Biblical scenes in the rock formations he plans to promote the site as The Miracle Caverns. He estimates a $100,000 development investment and a net income of $75,000/year.

Leo purchased the "Miracle" using funds from his "investment" account. Into this account he puts all profits from his investments. He maintains separate accounts for each of the relatives above. He also maintains an exchange account for cashing dividends and other income for them before placing cash deposits in their accounts. Over a 15 year period using manipulations of these accounts and without knowledge of his wife he has "appropriated" over $1,500,000 for his investment account.

From this account he has purchased shares of stock which are now worth $300,000. The initial investment in these stocks was $150,000. Leo still owns one-third of it to his college foundation and the other one-third is in trust for his only son. Leo has no interest in the trust and the trustee is the 1st Bank and Trust Co. of Boston. Also, he used investment account funds to the extent of $4,000 in a $12,000 purchase of life insurance. The policy has a face value of $100,000 and a cash value of $25,000. In addition Leo used $25,000 of the investment account as a down payment on a $60,000 home. The house is now worth $75,000 and is paid for. Leo and his wife have redecorated the house and landscaped the yard. Leo's wife has made small repairs and otherwise kept the house in top shape. With an income of $35,000 per year, it is uncertain whether further payments were made from the "investment" fund since at all times this account contained funds which were clearly Leo's.

Over this 15 year period Leo has squandered a great deal of money on world travel. He now has debts in excess of assets.

What are the rights and liabilities of the parties? Raise and treat all issues whether or not dispositive of the case.
Suit by a number of homeowners in a residential neighborhood of a community to enjoin the Sears Co. from erecting and operating a shopping center with a parking lot for 800 cars. The site is adjacent or close to lots and homes owned by the plaintiffs. The site is zoned for general business and there are no restrictions in the deeds forbidding such use. Because there is a large amount of shift work in the community the stores in the center will be open 24 hours a day and 7 days a week. The establishments which will operate in the center include a department store, gas station, auto service, auto body shop, Swedish massage parlor, dance hall & studio, dry cleaner, restaurant, movie theater, bar, common worship and rehabilitation center, liquor store, State unemployment office, State driver's license testing center, State vehicle license office, funeral home, drug store, magazine and book store, penny arcade, and tavern-pizza shop.

The parking lot will be illuminated at night by overhead lights and the merchants plan neon signs both by the roadway and on their buildings. The plaintiffs claim that the center will attract large numbers of cars with the resulting traffic confusion; that there will be excessive noise and odors, aggravated by trucks delivering supplies and removing garbage and trash; that the residents will suffer depressing emotional effects from the presence of the funeral home; that the State offices will attract large crowds and undesirable; that massage parlors are known to be covers for prostitution; that the entertainment establishments will attract low-life and irreparably injure the morals of the neighborhood; and that the church center will bring in criminals for counseling which will increase crime in the community.

The plaintiffs further fear that they will find the homes continuously obstructed; that the bright illumination will create a sleep-disturbing glare; that the signs will be obnoxious to the view; and that the various operations will endanger their health and interfere seriously with the comfortable enjoyment of their homes.

The above appearing at the hearing (Construction having been suspended pending the litigation) what should be the result?

V. Weight: 15  
-Time: 27 minutes

Albert Abalone owned "Swift-Swell", a 35 foot Chris Craft Cruiser with a flying bridge, 1955 model. He paid $50,000 for the boat in 1955. In March of 1971 he decided to sell the boat because he wanted to purchase a new more enclosed model with up-to-date furnishings. Bernie Barracuda and Constance Channelcat had both admired the boat in the past, but since Danny Devilfish had been pleading with Albert for the boat for 5 years, Albert decided to give Danny the first chance to buy it.

The boat was kept in the boathouse at Ethel Eel's Scogg's Bay estate. Albert told Danny the boat was for sale and that he wanted $10,000 for it. Danny asked to try the boat out and to inspect it. This he did on April 3rd with Albert's permission. On April 5th he offered Albert $5,000 for it. Albert said that it would have to be in cash before he would sign over the boat. On April 25th Danny used the boat for a party despite the fact that he had not yet paid Albert. In May Bernie heard the boat was for sale and he offered Albert $10,000 for the boat. Albert explained about Danny and Bernie backed off for a week. Bernie then pressed Albert to "clear up" the situation with Danny. Albert agreed and said he would do it on June 2nd when he saw Danny. On June 3 Bernie took the boat from its berth at Lola's Lease-A-Berth Pier and Yacht Landing where Danny had left it. Bernie then commissioned the G & D Engine Shop to remove the engine from the boat in exchange for the latest model. This was done. The old engine was valued at $1,000 in exchange for the $8,000 new one. The engine compartment required extensive modifications in the process and G & D valued that part of the job at $1,000.

Bernie took the boat to Ethel's for storage. Meanwhile Constance had heard the boat was for sale and talked to Ethel about it. Ethel had just returned from Europe and knew nothing but said Constance could try the boat. Constance took the boat to Hernando's Hideaway in Spy Cove and hid it there. She then took a dory out into Scogg's bay, sunk it, and swam ashore. She is sticking to her story that the boat was lost at sea.

Albert did not see Danny on June 3rd but on June 10 Danny refused to be put off the deal.

What are the civil rights and liabilities of the parties?