EXAMINATION

Equitable and Legal Remedies
Three (3) Hours

January 6, 1971
Professor Collins

1. Read the following question carefully, and answer the questions raised by them. There are 350 points, twice the 180 minutes of the Exam. Allocate time in general accordingly.

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

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

GOOD LUCK

QUESTIONS

1. (25 Points)

Solzberg Cement Company operates a cement plant valued at $2,000,000.00 in Chester, Illinois a city of 1700. The plant employs 125 persons and is the only major manufacturing activity in this farm marketing center. The plant discharges large amounts of pollutants onto Force's land (as well as his neighbors) causing damages to Force of $3,000.00 annually for the last two years. It would cost $42,500.00 to install equipment to stop the pollution. What remedies should Force seek and the court grant? Why is the remedy that should be granted superior to others? Would it make a difference if Force's private residence were on the land that is polluted and his children has suffered respiratory illnesses because of the pollution which resulted in medical costs of $1,700.00? If the damage were to a farm which reduced income so Force could not meet payments on his farm equipment?

2. (25 Points)

Smith Electric Company informed King Construction Company upon request for an estimate that it would sell to King an electric overhead crane as specified in a contract solicitation for work by the Atomic Energy Commission for the sum of $16,750.00. King thereon entered a bid of $42,660.00 for the construction requirement, of
which $37,770.00 was for materials including the crane, and $9,370.00 for labor and other overhead expenses, the remainder being profit.

King was awarded the contract and requested Smith to deliver the crane. Smith, asserting no contract existed between Smith and King, stated their estimate was based on a crane that did not meet the Atomic Energy Commission standards and that a crane could not be delivered to King. King, upon investigation, discovered no other company manufactured such cranes and that the crane of Smith's did meet specifications. Meanwhile, King's counsel notified King that time was of the essence in the contract with the Atomic Energy Commission and King would be liable for substantial damages and prejudiced in future government bids if it did not perform the contract with the Atomic Energy Commission within two months. In order to meet the deadline, the crane was required immediately. King contacted Smith, who agreed to deliver the crane upon which his original estimate was based and which did meet the specifications, if King paid $31,500.00 for it. King signed a contract to this effect with Smith and Smith performed.

Does King have a remedy against Smith? What?

3. (25)

Franz Krazhof first obtained fame after graduation from law school as a successful litigant in closing several large industrial concerns who were major polluters in the New York City metropolitan area. The legal theory which resulted in the closing was based upon a series of ideas which Krazhof had developed while a law student in seminar papers and in a law journal note. The litigation was complex, difficult and innovative, straining his every resource. Thereafter, he became an assistant and then an associate professor at a prominent law school, where he remained engaged in controversy, both personally pursuing his former goals as executive secretary of a national antipollution association and basing his teaching method upon his own successful experience as a student and litigant. This led on professor at an even more prominent law school to describe him as "a nut intent on destroying both our legal and commercial systems, as well as the values of a legal education." The general attitude was shared by many alumni of his school and some fellow faculty as was the view that his methods of teaching failed and were mere fronts for his personal vendettas.
Krazhof also became involved in matrimonial difficulties. On December 3, 1970, the date that the Tenure Committee of his law school was to vote on whether to make him a tenured member of the faculty, his wife asked for a divorce. Krazhof, shocked, immediately left his house, became quite drunk, wrecked his car, assaulted the arresting officer, and was jailed, being freed at 2:30 a.m. on bond.

The next morning, at 7:30 a.m., Professor Joseph Sprinkle, Chairman of the Tenure Committee, called on Krazhof at Krazhof's home and informed Krazhof the committee had voted 3 to 2 the previous afternoon, after much urging by Professor Sprinkle, to recommend tenure. However, Professor Sprinkle expressed considerable reservation as to whether tenure would not be granted. He stated that much resistance had previously existed and that the events of the last night would create even greater problems. The dean of the law school was on extended inspection of European law schools, so Krazhof called one of three associate deans and the President of the Alumni Association, both of whom concurred with Sprinkle's view that Krazhof's future at the school was limited. They, along with Sprinkle, recommended that he resign to protect his professional position. He immediately did so. Krazhof wishes reinstatement. Can he achieve it? If so, how and why?

4. (30 Points)

O'Brien of Maryland entered into a contract with Townsend of Illinois to convey real estate to Townsend which O'Brien owned that was located in Kansas. Two days later O'Brien entered into a similar contract with Smull, a resident of Kansas. O'Brien refused to perform on either contract. Smull then sued for specific performance of the Kansas contract in Maryland, and in a Kansas's Court sought issue of a deed by equitable decree. Townsend intervenes in Maryland. What device would the Kansas Court use to aid Smull, assuming it could and would do so? Assuming that all legal questions are decided in Townsend's favor, what can the Maryland Court do to protect them? What effect does this have on the Kansas proceedings? How does it accord with the traditional view of equitable jurisdiction?
5. (25 Points)

Matthews-Caradonna, a well established furnishir, manufacturer and seller of the Boston, New York and Philadelphia area, designed an unpatentable line of modern furniture which was extraordinarily successful. Thereafter, Peardon Company, an East Coast discount firm, marketed and promoted an "C Line of furniture indistinguishable from that of Matthews-Caradonna and significantly cheaper. Thereafter, Matthews-Caradonna experienced a decline in sales, with an aggregate profit on this new line of furniture of $27,835.00 less in the six months following the introduction by Peardon Company of its line then in a like proceeding period. Does Matthews-Caradonna have a remedy? What? Could Peardon Company, at least in part, avoid the result that Matthews-Caradonna will seek by changing his business methods.

6. (30 Points)

Mike and Gregory Davis, brothers, own two-thirds of the stock of CONVARTEC, a computer software company which was not particularly successful but which held patents a large computer company desired. A large computer's company secretly approached the Davis brothers about purchase of CONVARTEC, indicating a willingness to buy all outstanding stock for $100,000.00. The brothers thereon went to the owner of the other third of the stock, Nathaniel Samuels, and told him CONVARTEC had little future in their opinion, noting its lack of success to date, but that they were willing to chance it as a family enterprise. Samuels, after stating that he too was disillusioned at the failure of CONVARTEC, sold his stock to the Davis's for $3,000.00, the amount of his initial investment. The Davis's then sold the entire stock of CONVARTEC to the large computer company for $100,000.00. Samuels thereafter discovered the transaction. What remedy does Samuels have? Distinguish possible legal and equitable remedies, and indicate which is superior from plaintiff's view and which the court might favor.

7. (30 Points)

Rodrick Pembroke, long time owner of a farm in the Pernadales River Valley, sold it to Edward Busch for the sum of $75,000. Busch fully inspected the farm before purchase. Pembroke represented to Busch (a) that the 200 acres of highland, which were wooded, would yield an average of $1,200.00 per acre every five years if the timber were regularly harvested. In fact, timber buyers indicated to Busch
after the purchase that this was a somewhat liberal figure, albeit generally accurate, and Busch should expect $1,000.00 to $1,100.00 every five years from timber sale; and (b) that the 250 acres of lowlands adjacent to the river were outstanding grazing and crop lands upon which Busch could maintain a 400 head herd of cattle and cultivate 100 acres. Busch after purchase placed 400 head of cattle on the lowlands, and in anticipation of spring planting constructed a barn for $3,000.00 and placed in it $17,000.00 worth of farm equipment. Busch reasonably anticipated a profit of $40 per head on the cattle annually and $100 per acre from cultivation based on his observations and upon Pembroke's assurances.

Wilson, owner of the adjacent farm, offered Pembroke $62,000.00 before Busch bought the former Pembroke farm and upon learning that Busch had offered more, told Busch that he would buy the farm at the $62,000.00 figure at any time. Busch jokingly mentioned that he had borrowed the entire sum for the farm, equipment and improvements (but not the cattle) and expected to pay the debt off in five years from profits from the farm, but would consider the offer if disaster struck.

That Spring, as occurs about 3 out of 4 years, the lowlands were flooded by the Pernadales River, the entire herd of cattle perish, the barn was destroyed, and the equipment in it was washed away. Busch no longer took a joking attitude towards his indebtedness for purchase of the farm.

What recovery may Busch have from Pembroke? Why?

8. (35 Points)

Abercrombie Quarrying Company purchased 200 acres of a 600 acre farm from George McAllister. At the time of purchase, McAllister agreed to permit Abercrombie to transport all the limestone quarried on the 200 acres across his land for a fee of $3,000.00 annually. Thereafter Abercrombie purchased from the Hess estate their farm, adjacent to the 200 acre tract purchased from McAllister, and opened a quarry thereon. The quarry operation extended onto the land of William Benton, with whom Abercrombie had no agreement of any kind.

For many years, Abercrombie had quarried approximately 1,000 tons of limestone from his McAllister quarry, and in 1970 quarried and transported 1,017 tons from that quarry over the McAllister farm.
However, Abercrombie also transported 402 tons from the "less estate quarry and 137 tons from the part of his operations that extended on to the Benton property over the McAllister farm.

Abercrombie records indicate that the cost of extracting limestone, exclusive of the transportation across the McAllister land, was $173 per ton, of which $17 was assigned to management costs not directly related to extraction, and $11 to transportation, other than that its costs for transport over the McAllister land. In addition, these records indicated an expenditure of at least $10,000.00 would have been required to open a road across the "less estate property to remove the limestone quarried outside the McAllister quarry, and that the minimum maintenance cost of $1,000.00 would have been required to keep this road open.

9. (45 Points)

Davidson Drive Through Delicatessens franchise their operations after surveys, usually conducted by others than themselves, determine that the business would prosper. Such was done in Charlotte, North Carolina by Charles Marketing Research Group, who reported that over 120,000 cars passed two locations A and E daily. Davidson purchased these locations and represented to James Hilton the traffic rate of 120,000 cars daily and that one of the delicatessens had never failed with such a volume of traffic, which was true. Hilton entered into two contracts, designated A and B per the sites, to operate delicatessens on the sites. Davidson Drive Through Delicatessens agreed to train Hilton, construct facilities, and provide all needed supplies, which it did. Hilton orally agreed to pay $47,000.00 for construction costs and personal property located upon the two sites, to undertake a lease rental agreement and franchise agreement for a period of twenty years, and to pay under this lease rental and franchise agreement $1,200.00 monthly and 10% of the gross over $21,000.00 monthly to Davidson Drive Through Delicatessens. In contract A, the writing conformed with the foregoing, but in contract B, the percentage of gross figure was set at 5% of the gross over $31,000.00. The contracts were in both cases prepared by Davidson's attorney, and in both cases Hilton's attorney,
after conversations with Davidson's attorney, advised Hilton to enter into the contracts.

Before any business was done, all the foregoing was discovered by the parties. What remedies do they have? If Hilton operates A for five months, crossing $22,000.00 in the first 2 months with a gross profit before payment to Davidson of $3,000.00 and a gross of $20,000 per month in the next three months with a gross profit for payment to Davidson of $1,200.00, what obligation, if any, does Hilton have to Davidson or Davidson to Hilton thereafter? If Hilton operates B for five months, losing money continuously, how does this affect the remedy either party may have on the contract?

10. (45 Points)

Kerr Enterprises, Inc. owned a resort area 4 miles from Jackson, Michigan. On August 26, 1969, Kerr conducted a rock festival on the premises. While no violence occurred, and property damage was minimal outside the resort area, a large number of the 150,000 attending the festival openly violated the criminal laws of Michigan by selling and consuming narcotics or other illegal drugs. In the face of community outrage, the Prosecuting Attorney in the county sought and received an injunction in the County Circuit Court against further rock festivals in the following terms:

Rock festivals being a public nuisance, corrupting the morals of the community, Kerr Enterprises, Inc., its officers, agents, servants, employees and attorneys, and those persons acting in concert or participating with any of the foregoing, or any other persons whatsoever, with or without notice of these proceedings, is permanently enjoined from conducting, or aiding and abetting the conducting of a rock festival or like enterprise in this county.

In September, 1969, Kerr sold its entire interest in the resort to Deadtree Amusements, Inc. Except for Elmira Schmidt, a stockholder of 2% of the stock of each corporation, who resided in Omaha, Nebraska, and held no office in either corporation, the ownership and management of Deadtree Amusements was totally different from that of Kerr Enterprises, Inc. Deadtree held a rock festival in the resort area on July 7, 1970. Essentially the same events occurred as in August, 1969. The concert was held peacefully, but again many violations of the Michigan criminal law concerning narcotics and other illegal drugs occurred. The peacefulness of the rock festival could, perhaps, be attributed to the feature band at both occurrences, the
extremely popular Quarter Moon Tribe, who praised non-violent means of achieving social change in many of their performances.

Is the injunction enforceable against the persons or entities mentioned in the facts, or any of them? Consider all the possible analogies for and against enforcement.

11. (45 Points)

John Gould was a highly successful wholesaler and retailer of jewelry, specializing in the manufacture and sale of various items of gold alloy and plate, pursuant to proper licensing by the United States government. His previous supplier of gold, Rand-Veld McIntosh Ltd. of Pretoria and London had refused further material except on a cash basis when it discovered that Gould had invested all of his vast fortune in an incorporated Utopian Village in western Colorado and was diverting his business's assets, the business being a sole proprietorship, to support of the Utopian Village. Gould then arranged with Giovanni Pouvoir-Wolfgang Stahlkopf of Geneva to supply him on a credit basis, providing them with forged references from Rand-Veld McIntosh Ltd. and his New York banker which represented him as an extremely good credit risk, which accorded with his financial status prior to his Colorado adventure. Giovanni Pouvoir-Wolfgang Stahlkopf provided gold on credit as follows.

On July 1, 1970, 1,000 ounces valued at $3,635.00 were provided. The entire amount was made into 2,000 gold figurines, all but 12 which have been sold at retail for cash at $40 each. The proceeds of the sales were paid into Gould's business bank account except that $4,000.00 was used to purchase a 10 acre tract from the Colorado Utopian Village upon which his brother, who had earlier retired from a successful career as a Persian rug merchant, was to build a cabin, which in fact he did. The property is presently held as tenants in common by John Gould and his brother.

On August 1, 1970 a second shipment of 1,000 ounces valued at $3,677.00 was received. This shipment was made into 1,000 gold goblets which were to be wholesaled in 100 goblet lots at $4700.00 per lot. Of these lots, 6 have been wholesaled and paid for in their entirety. The funds from these sales were paid into the Gould business account, except for $2,000.00 which was added to the previous
$4,000.00 for construction of the cabin with his brother. Two additional lots are carried on Gould's books as bills due from a fully solvent Chicago, Illinois and Dallas, Texas department store, and one is been credited against Gould's account of $6,780.00 over Gould's protest, by a Denver, Colorado department store which has delivered various merchandise to the Colorado Utonian Village upon Gould's order. The tenth lot was distributed as follows: 10 goblets to Gould in lieu of salary due him as manager of his business, 10 goblets to his brother as an in lieu payment for material purchased for the cabin, and 80 goblets to the Colorado Utonian Village for use in its grand ballroom.

Both Gould and the Colorado Utonian Village are bankrupt with many unpaid creditors, but Gould's brother is solvent. What remedy is there for Giovanni Bouvoir-Wolfgang Stahlkopf against whom?