

INSTRUCTIONS

There are four additional pages to this examination. You have three hours.

Do not change the facts. Do not challenge any stated legal conclusions.

There are two parts (A or B) to question V. Answer either Part A or Part B. Do not answer both. Support each answer with appropriate legal reasoning. Citations are not necessary.

Budget your time. Be sure to answer all of the questions.

Legibility will be appreciated.

GOOD LUCK!!!

1. THIRTY MINUTES

Anne Smith and Betty Robinson were born within minutes of each other in Charleston Memorial Hospital on December 12, 1977. In early 1989, Anne was diagnosed as having a severe liver disease. Her best chance at survival was a liver transplant. Modern surgical advances now enable doctors to remove part of a healthy liver from a live donor and transplant it to a living donee. The best match in such a situation is a parent, since the risk of rejection is reduced. Routine medical tests prior to the transplant revealed that it was genetically impossible for Mr. or Mrs. Smith to have been Anne's biological parents. Anne died before a suitable donor could be found. In searching for a suitable donor, the Smith's searched the records of Charleston Memorial Hospital and discovered that the Robinson's had mistakenly been given the Smith's child and vice versa. The Smiths sue for custody of Betty and succeed. Following this decision, which is not challenged on appeal, both the Smiths and Robinsons sue Charleston Memorial Hospital for damages. As the trial judge sitting without a jury, please identify each component of the damage award you will make in favor of the Smiths and Robinsons, based upon the hospital's stipulated negligence in switching the babies.

II. FORTY-FIVE MINUTES

Brides R Us, Inc. sells wedding gowns on the retail level. Rather than operate from its own locations, it contracted with the Hooker Dept. Store chain to operate the bridal department in each Hooker store. The license contract was from June 1, 1987 through May 31, 1990. On April 1, 1988, Hooker, fearing the

potential insolvency of Brides R Us, unilaterally terminated the lease contract without just cause. Hooker told each of Brides' employees that they now work for Hooker and told Brides' management that they can no longer enter Hooker's stores. Brides insisted on reclaiming its inventory in order to open freestanding stores. Hooker refused to give Brides back its inventory maintaining it had an obligation to its customers.

On April 1, 1988, the value of Brides' inventory at retail was \$350,000. Its cost to Brides was \$150,000. Of the \$350,000 in retail inventory, \$50,000 of it was goods ordered for specific customers who had already paid Brides' deposits totaling \$25,000, which is what the merchandise cost Brides. The remaining \$300,000 of inventory consisted of samples; that is, gowns and accessories that potential customers would try on in the stores and orders would be taken based on these samples. While Brides was willing to sell these samples, normally only a small percentage of samples were ever sold at retail with most of them being sold at cost when styles were discontinued.

Following the termination of the contract Hooker delivered the \$50,000 in customer ordered goods to the appropriate customers and collected the \$25,000 outstanding. It also took \$50,000 worth of orders based on Brides' samples. It placed its own orders for samples with various manufacturers, which it received over the next few months. When all of the newly ordered samples had arrived,, Hooker boxed: up Brides' remaining inventory and tendered it to Brides on August 1, 1988. Brides refused the tender.

As counsel for Brides R Us, Inc., please write a letter to Hooker's counsel outlining your theories of recovery and the damages you expect to recover. You may safely assume that Hooker has previously admitted that it wrongfully terminated the lease agreement on April 1, 1988, so your letter should focus exclusively on the damages recoverable by your client.

III. THIRTY MINUTES

On June 3, 1988, Martin Mercurial brought his car in for servicing at Friendly Motors. When he came back at 5:00 p.m. to pick up his car, he was told by the service manager that he could not have his car unless he agreed to pay his 27 year old daughter's outstanding bill to the dealership for \$800.00. The service manager argued that Mercurial guaranteed his daughter's account when she brought her car in and Mercurial argued that all he said was that he would make sure she paid her bill. After two hours of violent argument, Mercurial gave the dealership \$200.00 to be credited against his daughter's account and was given his own car, The incident greatly angered Mercurial to the point where he was irritable at home, could not sleep, and had trouble concentrating at work. He did not achieve peace of mind until attorney G.O. Getum agreed to sue Friendly Motors on Mercurial's

behalf. The lawsuit sought \$200.00 in compensatory damages and \$200,000.00 in punitive damages.

As law clerk to the trial judge assigned to the case, draft a proposed bench memo to your judge on the punitive damages issues likely to arise during the course of the litigation.

IV. FORTY-FIVE MINUTES

Frosty Winterperson practices law as a sole practitioner in Anchorage, Alaska. Last summer, the Exxon Corporations tanker Exxon Valdez ran aground in Prince William Sound spilling thousands of gallons of crude oil into a pristine and environmentally fragile area. In the weeks following the spill, Frosty was contacted by the following potential clients each of whom wanted to retain Frosty on a contingent fee basis to recover damages from Exxon as a result of the spill:

A. Fred Fisherman, who fishes in Prince William Sound and who expects his business to be off 50% for the next three years as a result of the spill.

B. Peter Processor, who owns and operates a fish processing plant in Anchorage that processes the fish caught by Fred and the other fishermen.

C. Steve Scaler, an employee of Peter's who was laid off by Peter following the spill.

D. Tom Trapper, a native Alaskan who leads tourists on backpacking trips in summer, traps animals in winter, and believes that the land has sacred values that have been desecrated by Exxon. Tom expects his touring business to be off 20% and his trapping business to be unaffected. He is spiritually devastated by the damage to the land.

E. Dan Driver, a resident of California, where gasoline prices increased 20 cents per gallon, immediately after the spill and who wants Frosty to commence a class action suit on behalf of all California drivers.

F. Karen Karing, a resident of Kansas, who while having no plans to visit Alaska, feels that she has been deprived of the opportunity to visit a pristine wilderness.

Which, if any, of the foregoing potential clients should Frosty accept on a contingent fee basis assuming that Frosty does not want to donate his services, to any of the potential clients.

V. THIRTY MINUTES

A.

Several years ago, Anheuser-Busch adopted the slogan "Where there's life, there's Bud" in order to promote Budweiser beer. Millions of dollars were spent advertising this slogan and it came to be associated with Budweiser beer. Recently, Bugout, the manufacturer of a home insecticide, began advertising the slogan "Where there's life, there's bugs" in order to encourage sales of its products. Anheuser-Busch has sought an injunction Prohibiting Bugout from using the slogan "Where there's life, there's bugs." As the trial judge assigned to the case, please Write your decision granting or denying Anheuser-Busch's request for equitable relief.

OR

B.

Early in the casebook, the following quote appeared:

"As in tort the limits to the duty are employed to protect the wrongdoer at the expense of the injured party, but in contract, unlike tort, the law makes demands of the injured party, and if those demands are not met, his interests will then be ignored with far more freedom than is ever possible in tort."

Please write an essay agreeing or disagreeing with the foregoing quotation drawing on examples from the material covered in the casebook to support your argument.