

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.

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

Legibility will be appreciated.

GOOD LUCK

Lam, Inc. a major retailer of women's clothing believes it has spotted a new fashion trend in Europe, bell bottom jeans in colorful geometric prints. It orders twenty thousand pairs in Europe for its east coast stores and another twenty thousand pairs in Asia for its west coast stores. The goods manufactured in Europe cost Lam, Inc. \$500,000.00 including air freight. The goods manufactured in Asia cost \$450,000.00 including air freight. The Asian shipment arrived without incident and was distributed to Lam's west coast stores on December 1, 1991. Sales were brisk for the first two weeks in December and then fell off. By December 24, 1991 12,000 pairs had been sold in west coast outlets at \$45.00 per pair. Another 3,000 pairs were sold in after Christmas sales at \$30.00 per pair. The remaining 5,000 pair were sold out of season to a discount chain for \$10.00 per pair.

The goods shipped from Europe were carried by Cargo Haulers, a world-wide cargo airline. The goods arrived in New York on November 24, 1991 and were to be stored in Cargo Hauler's warehouse at the airport until they cleared customs and were picked up by Lam, Inc. for distribution to its east coast stores. When the goods arrived the warehouse was full and they were left in an enclosed but uncovered area next to the warehouse. A heavy rain soaked the garments. When Lam, Inc. went to pick up the goods it discovered what had happened and made arrangements for the goods to be dried as best as possible. The drying process took just over a week at the end of which one-half of the garments were deemed unmerchantable and the other half were sent to the east coast stores where they arrived on December 15, 1991. Of the 10,000 pairs distributed in the east 3,000 pairs sold for \$45.00 per pair prior to December 24, 1991 and another 1,000 pairs sold for \$30.00 per pair after Christmas. 6,000 pairs were sold to a discount store for \$10.00 per pair. Lam, Inc. has been in business for many years and knows that trendy apparel requires a longer introduction period on the east coast but will generate 25% higher sales than the west coast if given enough time (3 weeks) to settle in with consumers.

Lam, Inc. has sued Cargo Haulers for negligence in allowing damage to occur to the goods. Cargo Haulers has conceded liability. Please write the opinion of the court awarding damages to Lam, Inc. based on the foregoing facts and the applicable principles of law.

On May 1, 1985 Peter Persistent obtained a judgment against Art Dodger in the Court of General Sessions for Smith County, Capitalia. Dodger has been avoiding the judgment ever since.

Dodger's son Barry owns a car dealership in Smith County. Barry wants to enter two of his antique cars in the Smith County Antique Car Show which is scheduled to begin on May 15, 1990. Barry hopes to sell the cars at the show but cannot enter them in his own name because dealers are prohibited from entering cars in this particular show. Mistakenly believing that the judgment against his dad was no longer enforceable he transfers title to a 1963 Mercedes and a 1969 Pontiac GTO, to Art and Art simultaneously executes documents in blank to transfer the cars back to Barry's dealership.

The show ended on May 19, 1990. The cars did not sell and Barry had them driven to Historic Auto Sales, Inc. in order to get them sold. Barry failed to retitle the cars in his name keeping them in the name of his father until they were sold. On June 15, 1990 the Smith County Sheriff attempted to execute a writ of attachment on the two vehicles. The sheriff could not find them at Barry's dealership, Barry's Quality Cars, or at Barry's residence. The sheriff questioned both Barry and Art and both denied knowing where the cars were. On June 16, 1990 Barry filed the pre-signed papers to retitle the cars in the name of Barry's Quality Cars.

On September 1, 1990 Barry's Quality Cars sold the 1969 Pontiac GTO to Historic Auto Sales for its fair market value of \$5,000.00. Ben Franklin, the owner of Historic then sold it to his son Benji for \$100.00. Historic still has possession of the 1963 Mercedes which is worth \$12,500.00.

On December 1, 1990 Persistent brought an action against Art Dodger, Barry Dodger, Barry's Quality Cars, Ben Franklin, Benji Franklin and Historic Auto Sales pursuant to Capitalia Revised Code '3507.12 which provides.

(A) In an action for relief arising out of a transfer that is fraudulent a creditor may obtain one of the following:

- (1) Avoidance of the transfer to the extent necessary to satisfy the claim of the creditor;
- (2) An attachment or garnishment against the asset transferred or other property of the transferee;
- (3) An injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property;
- (4) Appointment of a receiver to take charge of the asset transferred or of the other property of the transferee.
- (5) Any other relief that the circumstances may require.

Persistent has requested all appropriate relief against all appropriate parties. Please write the decision of the court granting relief to Persistent.

On December 5, 1991 the Daily Planet, a widely read newspaper in the City of Metropolis, ran a story about how the Baron Hotels, a national chain of moderately priced hotels, was checking each of its 1700 hotels for peepholes through which employees could observe hotel guests engaging in extremely private behavior. Lois and Clark Kent read the story and became worried because they planned on spending their anniversary at the Baron Hotel in Niagara Falls on January 15, 1992. They immediately consulted an attorney and commenced an action in District Court to enjoin the Baron Hotels and each of its employees from watching them while they were in their room. After a hearing, a preliminary injunction was issued on January 5, 1992 and faxed to each Baron Hotel with instructions to read it to each employee and to post it on the employee bulletin board.

The Kents arrived at the Baron Hotel in Niagara Falls as planned and were assigned room 911. Room 915 was occupied by Jim and Mary Olson. At lunchtime on January 16, 1992 the Kents met the Olson's in the elevator and decided to have lunch together in the hotel dining room. While having lunch they overheard a conversation between the waiters who were commenting on the sexual prowess of the couple in room 911 as compared to the couple in room 915. Both the Kents and the Olsons were mortified by the graphic descriptions of their private behavior and checked out of the hotel immediately.

The Kents and Olsons have come to you for legal advice. Please explain to them the kinds of relief available to them and the kind of recovery you think is likely.

This fall the Supreme Court will consider a case dealing with the constitutionality of punitive damages. The case arose from a sale of mineral rights in West Virginia. The buyer reneged on the sale claiming that the seller did not have good title to the property and sued for a declaratory judgment. The seller alleging that the lawsuit was frivolous and a bargaining ploy to negotiate a lower lease price counterclaimed for slander as allowed by West Virginia law. The jury found for the seller and awarded \$19,000.00 in compensatory damages and \$10 million in punitive damages. The buyer, a multi-national corporation, can easily afford to pay the award.

The lower court decision has been challenged on the basis that \$10,000,000.00 is too much in the way of punitive damages when compensatory damages are only \$19,000.00. The other issue is that the lower court failed to properly guide the jury's discretion to avoid excessive punitive damage awards. Please write the decision of the court on the proportionality issue and draft a jury instruction to satisfy the procedural due process problem of unfettered jury discretion.