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Examination No. _____

631 REMEDIES
Semester II, 2003-2004

UNM School of Law
Final Examination
Three Credits

Professor Robert J. Desiderio
Thursday, May 6, 2004
9:00 a.m. to 12:00 noon
Thursday, May 13, 2004
9:00 a.m. to 12:00 noon

INSTRUCTIONS

1. This examination consists of seven questions. You are to answer each question.
2. Each question will be given equal weight; allocate your time accordingly.
3. You may have with you in this examination your casebook, any materials I have distributed, and any notes and outlines that you have prepared or helped in preparing. You may not have with any other book, materials, or other information.
4. If you believe that an important fact is unclear or missing, please make the necessary assumption in your answer and proceed.

**NOTE THAT YOU HAVE 3 HOURS TO COMPLETE THE EXAMINATION.
GOOD LUCK!**

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Question 1.

Mary, a contractor, entered into a contract with the state to widen a highway. Mary began removing gravel from land owned by John. John told Mary to get off his land, but Mary refused and continued taking gravel. Mary had no other feasible source of gravel, and if she is forced to haul gravel from land not owned by John, her cost would be so great that she would not complete the highway without losing enormous sums of money. She therefore continued to take John's gravel.

Please explain to John all the remedies that he may pursue.

Question 2.

Tech Co. manufactures an unpatented computer device. Laurie retired from Tech Co. six months ago. Her son, Mario, recently graduated with an MBA from UNM. Mario purchased the computer device from a local computer store. From it, Laurie and Mario manufactured copies of the computer device. They are selling their computer device in profitable quantities at a price substantially lower than the price of Tech's computer device. Tech Co. has noticed a sharp drop in sales.

Tech Co. seeks your advice wanting to know what remedies, if any, it can seek against Laurie and Mario. Please advise Tech Co.

Question 3.

Jessica operated a Laundromat on Central Ave., across from UNM's campus. Jessica caters to college students. Tramp is a local developer who intends to build an office building next to Jessica's Laundromat. The construction will obstruct the ability of customers to enter the Laundromat and Jessica, thus, will suffer substantial financial loss.

Jessica, through her attorney, has moved for a temporary restraining order. Tramp has received notice of the request. At a hearing Judge Right hears the above facts.

Should Judge Right grant the TRO?

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Question 4.

Carter is a seller of concession foods for recreational events. In February, Carter contracted with the Albuquerque Zoo to supply the Zoo with 100,000 pounds of peanuts. The Zoo promised to pay Carter \$100,000 (\$1 a pound) for the peanuts. Carter then entered into a contract with Cashew, a Portales peanut farmer, who promised to supply Carter with 100,000 pounds of peanuts at 10¢ a pound. Cashew was to deliver the peanuts to Carter by May 1. Carter paid Cashew \$1000 upon signing of the contract and promised to pay the balance of \$9000 upon delivery of the peanuts.

Because of severe weather problems, large peanut farmers in the Southeastern United States have not been able to grow peanuts. As a consequence, peanuts nationally have become scarce, causing a sharp increase in the price. On April 15, Cashew, after receiving offers for peanuts at 90¢ a pound, wrote Carter: "I will not deliver any peanuts to you." Carter immediately explained to Cashew that he would not be able to fulfill his commitment to the Zoo. Cashew answered that they would sell Carter peanuts for 80¢ a pound. Carter refused to pay Cashew 80¢ a pound for the peanuts and sues Cashew.

- a) Is Carter entitled to specific performance?
- b) If Carter seeks damages, to what damages is he entitled?

Question 5.

Sonny owned a 1956 Thunderbird that he had restored to its original state. While driving the car, Sonny was hit by Calamity who was driving her car negligently. The Thunderbird was severely damaged and Sonny was seriously injured. The cost to refurbish the Thunderbird to its pre-damaged state is \$10,000. The value of the Thunderbird before the accident was \$15,000, and its value after is \$8000.

Sonny is 35 years old and was a physical therapist at the time of the accident, earning \$50,000 a year. He is now totally disabled, receiving \$2000 a month from an income maintenance insurance policy that he purchased

Sonny also played drums in a jazz combo. The combo performs on weekends at a local club. Sonny does not earn anything from his gigs, but enjoys playing the drums. Playing drums releases some of the stress he suffers. Prior to his accident, Sonny had been diagnosed as clinically depressed.

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Sonny has no family. His medical insurance policy is paying all of his medical expenses that have totaled \$100,000. Sonny has also received physical therapy from his colleagues free of charge. If he had to pay for the therapy, it would have cost him \$5000.

What damages may Sonny recover from Calamity?

Question 6.

Lori and Maria had been good friends for many years. After learning that Lori was going to the racetrack, Maria asked Lori to place a \$10 bet on the trifecta, a betting scheme that required a person to pick the winners of the last three races. Maria wanted Lori to bet on horse numbers 4, 5 and 6, respectively. Lori agreed to place the bet and Maria gave Lori \$10. Lori placed the \$10 in a separate compartment of her wallet.

Lori forgot to bet Maria's money; instead, she bet \$10 of her own money on horse 4, 5, and 6 in the trifecta. Those three horses won their races and Lori won \$100,000. After learning that horses 4, 5, and 6 had won, Maria asked Lori for the \$100,000. Lori refused to give Maria the \$100,000, telling Maria that she had forgotten to bet her money. Lori then returned to Maria her \$10.

Maria asks you to advise her as to her rights and remedies against Lori. We have discovered that Lori deposited the \$100,000 she won in a bank account in which she had \$1000. We also have learned that Lori has withdrawn \$25,000 to pay debts and \$25,000 with which she bought a new car. Please advise her.

Question 7.

Placido is a popular pop singer from Mexico who agreed to perform at the "Local Club". He was to sing at three performances, each of which was sold out. Each sellout would generate \$25,000 from ticket sales. Placido was to be paid \$15,000 for all three performances. Believing that it could also raise money from the sale of promotional items, the Club contracted with Novelties Inc. for tee shirts, hats and dolls that would read "Placido" on them. Club agreed to pay Novelties \$25,000 for the promotional items.

A month before Placido was to perform in Albuquerque and before any promotional items had been delivered to the club, Placido visited Albuquerque and told

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the owner of the Club that he could not sing in Albuquerque. He had accepted a contract to perform in London on the same date.

The owners of the Club ask you the following questions;

- a) Can the Club force Placido to perform at the Club?
- b) Can the Club recover any damages from Placido?

End of Examination