You must email me your answers to 3 or 4 Sections each week.

SECTION 1

1. Is it good lawyering to fail to attempt to give any notice on a TRO in order to obtain a tactical advantage?

2. Under what circumstances is it appropriate to use an injunction in an attempt to force a speedier resolution of a case?

3. Under what circumstances would you inform your client to intentionally violate a court order?

4. How does a lawyer balance the need to make money through hourly fees with the client’s right to a speedy resolution of the matter?

SECTION 2

1. What must an individual prove in order to establish an ADA claim?

2. Are there some claims that public policy should prohibit an employee from waiving as a condition of employment?

3. What do you think the essential skills or qualities are that a lawyer should possess for which no allowance can be made?
SECTION 3

1. What could Rudzewicz and McShara have done to avoid the exercise of Florida jurisdiction?

2. How does the law define “traditional notions of fair play and substantial justice?”

3. Does a disparity in bargaining power affect one’s contractual rights under the law?

4. What conduct would amount to “rascality” under G.L. c. 93A?

5. Is it ethical for Athanas’ attorneys to defend this suit knowing that their client intentionally breached the contract?

6. How would you deal with a client like Athanas?

SECTION 4

1. In a sentence or two, list each of the five principles by which you believe an individual—even an attorney—should live.

2. Under what circumstances is an Ex Parte Order appropriate?

3. What steps will you take to ensure that you do not violate Rule 11?

4. How will you use technology to make you a better lawyer?

5. What’s a class action?

6. What technology skills will you acquire or master in the next year?

SECTION 5

1. What factors does the court look at to determine if an injunction should issue?

2. Under what circumstances are you entitled to an evidentiary hearing on a request for a preliminary injunction?

3. What is a constructive trust?

4. What is a receiver?

5. What does a magistrate do in Federal Court?
6. What do you wish you understood better about Civil Procedure?

SECTION 6

1. Explain removal jurisdiction.

2. What must the Appeals Court find in order to reverse the grant or denial of an injunction?

3. You represent a party opposing injunctive relief. Please argue why you need a bond.

4. What are the four essential elements of a common law fraud action?

5. Under what circumstances would you file a Motion to Dismiss?

6. Briefly explain each of the grounds for filing a Motion to Dismiss.

SECTION 7

1. According to Rule 56 and Judson v. Essex Agriculture & Technical Institute, 418 Mass. 159 (1994), in reviewing a grant of Summary Judgment in Massachusetts, what must the Appeals Court determine?

2. What factors are considered in determining if an employee’s tortious conduct was performed within the scope of his employment?

3. Describe what conduct is actionable under G.L. 176D.

4. Under what circumstances can an insurance company settle a claim over its insured’s objections?

5. Describe what conduct violates G.L. c. 93A.

6. What are the key components that should be found in every Civil Complaint?

SECTION 8

1. On the registration form you sign each semester at MSL is a choice of law clause which states that Maine law applies to any controversy that arises. The form also has a required arbitration clause that says all disputes will be resolved in binding arbitration with Law School Dispute Resolution Services, Inc. Should these
2. Should the reason for the dispute you have with the Massachusetts School of Law affect the enforceability of the clauses described in 1 above?

3. How would you research the background of the judge you are appearing before?

4. How does a required arbitration clause in a contract affect your right to obtain injunctive relief, especially on an emergency basis.

SECTION 9

1. Were Warner Wolf’s lawyers ethically challenged?

2. Shouldn’t Vanessa Redgrave have the right to speak out under the 1st Amendment and still be allowed to perform at the B.S.O.?

3. What rights should a woman who carries another’s fertilized egg to term have to visit the child born from her womb? Does your decision change depending on whether the surrogate has been paid for her services?

4. What rights should grandparents have to visit their grandchildren over a parent’s (divorced or otherwise) objection?

5. As a matter of principle or morality, should the selling of eggs or sperm for profit be prohibited?

6. Under what circumstances would your moral or religious views on important issues affect your handling of a client’s case?

SECTION 10

1. Should wealthy parents be able to recover damages when a vasectomy, which was supposed to ensure that husband would father no more children, turns out to be ineffective and the wife gives birth to a healthy child?

2. If a father has not taken an active role in raising his children—other than paying child support—should he have a right to oppose a petition to change that child’s name which was filed by mother and her new husband?

3. What is the difference in rights and penalties between civil and criminal contempt?
4. Is it ethical to tell your client in a divorce case to wipe out the joint saving or checking account to pay you and put the other side at a disadvantage prior to filing the complaint?

SECTION 11

1. What is the measure of damages for destroyed real and personal property?

2. How would you establish the value a destroyed item which was special to you (i.e., one your grandmother may have given you), yet has little value to the public at large, remembering that proof of the amount of damages may not be founded on mere conjecture or speculation?

3. What are findings of fact and conclusions of law? When are they used?

4. How would you prove damages for pain and suffering?

SECTION 12

1. When and why should one try and obtain a Declaratory Judgment?

2. What are the legal prerequisites of obtaining a Declaratory Judgment?

3. Why shouldn’t the law assist citizen groups in cleaning up their communities from morally and/or legally offensive activity?

SECTION 13

1. What is the difference between a public and private nuisance?

2. What is a de minimis encroachment?

3. Why was Myers v. Arnold rightly decided?

4. What are compulsory and permissive counterclaims?

SECTION 14

1. Please explain the legal requirements of a resulting trust and a constructive trust?

2. Please explain fraudulent concealment, estoppel and laches.

3. Under what circumstances is it appropriate for civil courts to become involved in
“church matters?”

SECTION 15

1. What is a post judgment remedy?

2. What steps should one take to attempt to collect a judgment? What measures can be used?

3. What must you prove in order to win a RICO action?

4. What is the standard used in order to approve the grant of an attachment?
He who seeks equity must do so with equity.

Use your social security number on the blue book. Write legibly and coherently.

Your knowledge and ability to analyze the issues should be clear from the manner you express those thoughts on this test.

Write no more than six (6) handwritten pages using only one side of each paper or four (4) typed double spaced pages. I will not read anything that exceeds the page limitation.

PART 1

BAREXAMBOOTCAMP, Inc., a Connecticut corporation located on Washington Avenue in Hartford, Connecticut, produces bar review materials for law students and runs a website called BAREXAMBOOTCAMP.COM. All of BAREXAMBOOTCAMP’s employees have signed non-compete/non-disclosure agreements precluding them from using any of the proprietary information belonging to the company and from working for any company in the same business in the United States for one year after they leave BAREXAMBOOTCAMP, Inc.

For an initial fee of $1000.00 and for $10.00 per month, law graduates/students can sign up online with BAREXAMBOOTCAMP.COM to study for the bar examination over the internet and place a description of themselves on the website. The description provides their educational background and qualifications for employment in the hopes that they will find employment. The contract that students/graduates execute online requires all disputes be resolved by binding arbitration in Washington D.C..

In a short period, its proprietary and copyrighted bar review materials and software has allowed BAREXAMBOOTCAMP, Inc. to become a leader in the field of bar review materials. Unfortunately, its law placement service has not been nearly as successful and there are many dissatisfied graduates who claim it’s a scam.

Recently, Peter Malaguti, one of the founders of BAREXAMBOOTCAMP, Inc., left and started a competing company at 10 Franklin Pierce Place in Salem New Hampshire. Malaguti took customer lists, software and other proprietary material from BAREXAMBOOTCAMP when he quit. He has also been encouraging a number of employees to leave BAREXAMBOOTCAMP, Inc. and join him at BOOTCAMPU.com.Inc. Two of these employees, Sally Ramirez and Natashja Lucien, recently left and joined BOOTCAMPU.com.Inc.
Malguti, Ramirez and Lucien, a real star of the bar preparation business, reside in Lawrence, Massachusetts. Malaguti encouraged Lucien to break her contract and agreement with BAREXAMBOOTCAMP by giving her a salary of $750,000 per year, allowing her to continue to work from home and submit her bar examination questions, material and software programs through the Internet, as she had done with BAREXAMBOOTCAMP. Ramirez and Lucien deny having any contract with BAREXAMBOOTCAMP.

BAREXAMBOOTCAMP, Inc.’s revenues have recently started to decline significantly because of the loss of the employees and the poor performance of its placement business. BAREXAMBOOTCAMP, Inc. consults with you and asks you to help. They want you to drive BOOTCAMP out of business at whatever cost.

Please discuss how you would proceed and why. Discuss what you expect is likely to happen and explain the procedural steps you would expect on this matter.

PART 2

Define the following terms and then, if applicable, apply the terms to the fact pattern on the first page.

93A and 176D actions

________________________________________
________________________________________
________________________________________
________________________________________
________________________________________

WangTest

________________________________________
________________________________________
________________________________________
________________________________________
________________________________________
REMEDIES MIDTERM EXAM  
PROFESSOR COYNE  
SPRING 2007

He who seeks equity must do so with equity.

Use your social security number on the blue book. Write legibly and coherently.

Your knowledge and ability to analyze the issues should be clear from the manner you express those thoughts on this test.

Write no more than six (6) handwritten pages using only one side of each paper or four (4) typed double spaced pages. I will not read anything that exceeds the page limitation.

PART 1

BAREXAMBOOTCAMP, Inc., a Connecticut corporation located on Washington Avenue in Hartford, Connecticut, produces bar review materials for law students and runs a website called BAREXAMBOOTCAMP.COM. All of BAREXAMBOOTCAMP’s employees have signed non-compete/non-disclosure agreements precluding them from using any of the proprietary information belonging to the company and from working for any company in the same business in the United States for one year after they leave BAREXAMBOOTCAMP, Inc.

For an initial fee of $1000.00 and for $10.00 per month, law graduates/students can sign up online with BAREXAMBOOTCAMP.COM to study for the bar examination over the internet and place a description of themselves on the website. The description provides their educational background and qualifications for employment in the hopes that they will find employment. The contract that students/graduates execute online requires all disputes be resolved by binding arbitration in Washington D.C..

In a short period, its proprietary and copyrighted bar review materials and software has allowed BAREXAMBOOTCAMP, Inc. to become a leader in the field of bar review materials. Unfortunately, its law placement service has not been nearly as successful and there are many dissatisfied graduates who claim it’s a scam.

Recently, Peter Malaguti, one of the founders of BAREXAMBOOTCAMP, Inc., left and started a competing company at 10 Franklin Pierce Place in Salem New Hampshire. Malaguti took customer lists, software and other proprietary material from BAREXAMBOOTCAMP when he quit. He has also been encouraging a number of employees to leave BAREXAMBOOTCAMP, Inc. and join him at BOOTCAMPUS.com.Inc. Two of these employees, Sally Ramirez and Natashja Lucien, recently left and joined BOOTCAMPUS.com.Inc.
Malguti, Ramirez and Lucien, a real star of the bar preparation business, reside in Lawrence, Massachusetts. Malaguti encouraged Lucien to break her contract and agreement with BAREXAMBOOTCAMP by giving her a salary of $750,000 per year, allowing her to continue to work from home and submit her bar examination questions, material and software programs through the Internet, as she had done with BAREXAMBOOTCAMP. Ramirez and Lucien deny having any contract with BAREXAMBOOTCAMP.

BAREXAMBOOTCAMP, Inc.’s revenues have recently started to decline significantly because of the loss of the employees and the poor performance of its placement business. BAREXAMBOOTCAMP, Inc. consults with you and asks you to help. They want you to drive BOOTCAMP out of business at whatever cost.

Please discuss how you would proceed and why. Discuss what you expect is likely to happen and explain the procedural steps you would expect on this matter.

**PART 2**

Define the following terms and then, if applicable, apply the terms to the fact pattern on the first page.

**WangTest**
Evidentiary Hearing

Expectancy and Reliance Damages

Bond

R:\My Files\Remedies\REMEDIES MIDTERM EXAM.Sp2007.doc
SAMPLE ANSWER REMEDIES

The first issue to be examined is whether there is a cause of action which can be pursued in compliance with the requirements of Federal Rule of Procedure II. I would examine the noncompete and nondisclosure agreements to ensure they can be enforced. I would also carefully examine the facts of the case concerning the employees’ actions to determine if we can proceed with a complaint based on existing law or the good faith belief that we would overturn existing law. The case on nondisclosure seems to be very strong assuming we can prove the theft of proprietary company property. The noncompete contracts are somewhat more problematic as they must be reasonable in terms of duration and geographic limitations. The one year time frame is not completely unreasonable however the prohibition on working in the United States will result in a significant preclusion of the employees' ability to earn a living. Courts are reluctant to enforce an agreement that is not reasonable limited and this one will be difficult to enforce particularly since it is unclear that any of their skills or products would be protected as intellectual property. I would not recommend action again Lucien and Ramirez as their agreements appear too broad to be enforceable.

I would however pursue a cause of action against Mr. Malaguti. I would draft a complaint, clearly stating the facts, and requesting the proper relief of expectancy damages based on the revenues that the company would have earned but for the actions of Mr. Malaguti in breaching his contract to not use proprietary information owned by BAREXAMBOOTCAMP.COM and injunctive relief. The amount of damages would have to be exclusive of the losses suffered as a result of the placement service as it was already in financial difficulty making causation harder to prove. I would seek a
temporary restraining order to prevent BOOTCAMPU from operating and requesting the seizure of software, customer lists and other proprietary materials. The temporary restraining order is needed ex parte to prevent the defendants from destroying any evidence. The evidence gathered could then be used in the evidentiary hearing that will be required to get a preliminary injunction, since it is likely that the facts are in sharp dispute. Temporary restraining orders is only good for ten days and at that point I will have a hearing on the preliminary injunction.

To obtain the injunction, we will need to show that there is (1) no adequate remedy at law, (2) we are likely to succeed on the merits, (3) the balance of harm favors granting our request, (4) my client will suffer immediate, irreparable harm if the injunction is not granted, (5) any public policy issues from granting the injunction. On the first factor, money alone will not make my client whole. He has lost his intellectual advantage in the market as well as the loss of value to his business. Without relief, his business will likely suffer irreparable damage and perhaps go out of business. Those damages will be difficult if not impossible to quantify and therefore justify equitable relief.

Factor number two is not based on the fact that the defendants knowingly violated the contract, the nondisclosure agreement and took company material. This can be seen in the speed by which they are able to establish the competitor business and will be shown by the evidence seized. As to the balance of the harms, my client has lost revenues, expenses caused by the employees leaving and loss of the goodwill of his business. The defendants on the other hand have not are just beginning to do business and it is likely they have done so with intellectual property belonging to my client. Public policy issues
also weigh in my client’s favor. The economy cannot function smoothly and efficiently if contracts are not honored, therefore public policy weighs on the side of enforcing the contract.

Finally, my client has already suffered significant harm to his business, his employees and property. This harm can not be undone.

While the defendants will insist they will be harmed if the injunction is issued, we will be required to post a bond to indemnify them from damages, should the court later determine the injunction should not have been granted. However, if the injunction is granted after the evidentiary hearing, it is unlikely that the injunction will be later found to be granted in error.

The disgruntled customers of the placement service will probably have to arbitrate if they were aware of the arbitration clause before purchasing the service arguably even though this was an adhesion contract. There was no bargaining and the parties were in on unequal position but if the buyer was notified he nonetheless had a choice, either to enter the contract as clearly there are many choices for placement services.

I would file my action in Connecticut State Court, as it has subject matter jurisdiction and provides the home court advantage. I would use the state long arm statutes and comply with FRCP 4 to issue a summons to defendants in other states. Being sure to name all necessary parties to avoid dismissal under rule 19. Since Federal courts have concurrent jurisdiction and because all plaintiffs and defendants are from different states, there is complete diversity. If the amount in controversy exceeds $75000, then a defendant could remove any action file din state court to Federal Court, as long as none of the defendants are from the state which the Federal court sits. Venue
would be a reasonable venue as it is close to the plaintiff location, near where the cause
of action occurred and arguably not pose a hardship on most defendants.

R:\My Files\Remedies\SampleAnswer.RemediesSp2007.doc
PART 1

PASSBAR, Inc., a Rhode Island corporation located on Atwell Avenue in Providence, Rhode Island, produces bar review materials for law students and runs a website called PASSBAR.COM. All of PASSBAR’s employees have signed non-compete/non-disclosure agreements precluding them from using any of the proprietary information belonging to the company and from working for any company in the same business in New England for one year after they leave PASSBAR, Inc.

For an initial fee of $500 and for $200.00 per month, law graduates/students can sign up online with PASSBAR.COM to study for the bar examination over the internet and place a description of themselves on the website. The description provides their educational background and qualifications for employment in the hopes that they will find employment. The contract that students/graduates execute online requires all disputes be resolved by binding arbitration in Key West, Florida.

In a short period, its proprietary and copyrighted bar review materials has allowed PASSBAR, Inc. to become a leader in the field of bar review materials. Unfortunately, its
law placement service has not been nearly as successful and there are many graduates who feel cheated out of the money they paid for that service.

Recently, Joe Jujitsu, one of the founders of PASSBAR, Inc., left and started a competing company at 1 Wollaston Boulevard in Quincy, Massachusetts. Jujitsu has been encouraging a number of key employees to leave PASSBAR, Inc. and join him at PASStheBAR.com.Inc. Two of these employees, Anthony Ramirez and Douglas Dean, recently left and joined PASStheBAR.com.Inc.

Dean resides in Andover, MA. Ramirez, is a real star of the bar preparation business. Jujitsu encouraged Ramirez to break his contract and agreement with PASSBAR by giving him a salary of $750,000 per year, allowing him to continue to work from New London, Connecticut and submit his bar examination questions, material and software programs through the Internet, as he had done with PASSBAR. Ramirez denies having any contract with PASSBAR.

PASSBAR, Inc.’s revenues have recently started to decline significantly because of the loss of the employees and the poor performance of its placement business. PASSBAR, Inc. consults with you and asks you to help.

Please discuss how you would proceed and why. Discuss what you expect is likely to happen and explain the procedural steps you would expect on this matter.

PART 2

Define the following terms and then, if applicable, apply the terms to the fact pattern on the first page.

Common Law Fraud Action
Expectancy and Reliance Damages

Receiver

Myfiles/Remedies.medtermSpring2006
Common sense often makes good law.

William O. Douglas

Use your social security number on the blue book. Write legibly and coherently.

You will be graded on your knowledge, ability to analyze the issues and your treatment of the issues.

No more than six (6) pages handwritten, one side only, or four (4) typed double spaced pages for Part One, and place your answers in the space provided for Part Two. I will not read anything that exceeds the page limitation. Enjoy your summer!

QUESTION ONE

Tony Sullivan of Salem, New Hampshire was the chief software designer for PassBar.com, Inc., a Florida corporation with offices in Orlando, Florida and Andover, Massachusetts. PassBar.com's proprietary software allows for the high quality transmission of live bar review lectures over the internet. PassBar.com is an online law teaching website that requires its employees to sign Confidentiality/Nondisclosure /Noncompete Agreements, preventing their employees from disclosing proprietary company information to anyone and prohibiting these employees from working for any competing online company for three years after departing the company. PassBar.com has an insurance policy with Metropolitan Insurance, a corporation, headquartered in Boston, Massachusetts, providing for protection against the theft of company property.

Last month Sullivan informed PassBar.com, Inc. that he would no longer be working at PassBar.com and along with eight other employees would be leaving to create PasstheBar.net, a division of P.D., Inc., a Maine corporation with offices in Portland, Maine. Two weekends ago, PassBar.com discovered that its new marketing plan, software designs, customer lists, and other proprietary information was missing. The company also discovered that Sullivan had recently registered the domain name PasstheBar.net and is marketing a product similar to PassBar.com's advanced design for transmission of educational lessons over the internet that Sullivan helped design.

PassBar.com had also entered into a contract, at Sullivan’s urging, with ParBri. Inc. of New York to sell them DVD's of PassBar.com Inc.’s old lectures for
1.5 million dollars. PassBar expected to make over $2,000,000 on this agreement as consumers could purchase updates to the DVDs directly on line. Based on the agreement, PassBar.com went out and purchased $350,000 of special order DVDs that were only useable with ParBri Inc.’s proprietary software decoding system. Because of what has happened, ParBri now refuses to go through with the agreement.

The company is livid with Sullivan and the others and demands that you “drive Sullivan into the ground and bury those clowns,” before they can further ruin its business. The company feels that it has already been significantly damaged as a result of all the employees leaving with company information, as it has lost a few customers to PasstheBar.net. It demands that you immediately help rectify the situation.

PasstheBar.net claims that these employees’ contracts expired long ago, that they took nothing when they left and this is just a business dispute and PassBar.com frivolous actions cost them over $10,000 per month.

Please describe what steps you would take to remedy this problem, and how you would expect the Court to deal with this situation. Please specifically describe the procedural and substantive problems the Court should address while this matter is in litigation.

QUESTION TWO (Answer On Pages 3-5)

Bruce Letwin has found that the district’s sanitary waste facility encroaches on Bruce’s land for approximately 20 inches running for a length of 200 feet on his eastern boundary line. He demanded that the district remove the offending portion of the building but the district refuses to do so, and it has remained there for the last 18 years.

Bruce has never liked the waste facility being next door. There have been numerous arguments between him and its managers over the smell and its hours of operation.

On the other side of the waste facility is the Church of Good Voyage. Bruce goes there for spiritual awakening and counseling from Reverend Jennifer. Reverend Jennifer grew very close to Bruce, and told him that he should give $100,000 to the Church if he ever wants to become a deacon in the church. Bruce recently gave $100,000.00 to the Church, but now feels taken advantage of and wants the Church to return his money and, and he wants to sue Reverend Jennifer for discrimination as she always treated him differently from the female priests.
In the space provided briefly define each term below and describe how, if at all, it applies to the above fact pattern.

Contempt

Rascality

Findings of Fact and Conclusions of Law

Gestational Surrogacy Contracts

Equitable Defenses
Declaratory Judgment

Constructive and Resulting Trusts

De Minimis

Hierarchical Structure

Rule 68 Offer of Judgment
PART 1

A and C Media, Inc., a Massachusetts corporation located on Essex Street, Lawrence, Massachusetts, produces software for attorneys and runs a website called AttorneyandCounselor.com. All of its employees have signed non-compete/non-disclosure agreements which preclude them from using any of the proprietary information belonging to the company and from working for any company in the same business in New England for one year after they leave A and C Media, Inc. For two hundred dollars ($200.00) per month, AttorneyandCounselor.com allows attorneys to place a description of their law firm on the website, describing the educational background, clients, specialties, qualifications and rates of the members of the firm. In a short period of time, its proprietary and federally copyrighted software has allowed A and C Media, Inc. to become a leader in its field with revenues of over a million dollars per year.

Recently, Joe Cropani, one of the founders of A and C Media, Inc., left and started a competing company at 60 State Street in Boston, Massachusetts. Cropani has been encouraging a number of key employees to leave A and C Media, Inc. and join him at GreatLawyers.com.Inc. Two of these employees, Beverly Anthony and Charlie Douglas,
recently left and joined Greatlawyers.com.Inc. Douglas resides in Andover, MA.

Beverly Anthony, is a real star of the web design business who rarely leaves her home in Greenwich, Connecticut. Cropani encouraged Anthony to break her contract and agreement with A and C Media by giving her a salary of $550,000 per year, allowing her to continue to work from Greenwich, Connecticut and submit her completed work through the Internet, as she had done with A and C Media. Anthony denies having any contract with A and C Media.

A and C Media, Inc.'s revenues have recently started to decline significantly. A and C Media, Inc. consults with you and asks you to file suit to stop this damage to its business.

Federal law forbids the use of copyrighted software belonging to another for competitive advantage.

Please discuss how you would proceed and why. Please also explain the procedural steps involved in this matter.

PART 2

Define the following terms and then, if applicable, apply the terms to the fact pattern on the first page.

Findings of Fact and Conclusions of Law

Wang Test
Evidentiary Hearing

Expectancy and Reliance Damages

Injunctive Relief
QUESTION ONE

Pursuant to an extensive written agreement, Doughboy Donuts, Inc., agreed to sell the real estate and donut business at 1 Main Street in Andover, Massachusetts, to Julian Lebeck for seven hundred and fifty-thousand dollars ($750,000). Part of that agreement contained non-compete and non-disclosure provisions for Billy and Bob Devlin, of Salem, New Hampshire, the brothers who operated Doughboy Donuts, Inc. Closing was to take place on May 1, 2004. At the time he entered into the agreement, Mr. Lebeck knew that the police academy was supposed to open at 3 Main Street on January 1, 2004. At the time he entered into the agreement, Mr. Lebeck knew that the police academy was supposed to open at 3 Main Street on January 1, 2004.

Doughboy Donuts, Inc. had been struggling since its inception in 1999, but it had always operated profitably during its first four years of operations. The opening of the police academy brought Doughboy Donuts, Inc. an unexpected boom in business. During the first four months of 2004, Doughboy made a net profit of one hundred and twenty-five thousand dollars ($125,000). The Devlin brothers and Doughboy Donuts, Inc. recently informed Mr. Lebeck that they would not sell the business and real estate to him and said if they were forced to then they will simply open a new business across the street called New Doughboy Donuts.

Mr. Lebeck is very upset. He did not mind putting the time in to make the business successful and he wants what is rightfully his. He is particularly concerned that the Devlin Brothers will bleed the business dry, while the case is proceeding and cost him “hundreds of
thousands of dollars.”

Mr. Lebeck seeks your advice and asks that you move very quickly.

How would you proceed and why?

QUESTION TWO

Peter Pala owns a building which houses both his bakery, Peter's Pies, and his home above the bakery. Pete has run this business for 15 years, and it is a very profitable business. Recently his head chef, Peter Pumpkin, left to start his own bakery despite having a non-competition agreement that prohibited him from working for anyone for two years after he left Peter's Pies.

Pala also has found that the adjoining junkyard and waste facility, Sandford and Sons, Inc.'s building encroaches on Pala's land approximately 10 inches running for a length of 200 feet. He demanded that the junkyard owner remove the offending structures but the owner refuses to do so.

Pala has never liked the junkyard being next door. There have been numerous arguments between them. Three years ago Pala recovered a judgment against Sandford and Sons, Inc., after the owner's pit bull bit him. That judgment for $50,000.00 remains unpaid.

On the other side of the bakery is the Church of Good Hope. Pala goes there for spiritual awakening and counseling from Reverend Doug. Reverend Doug grew very close to Pala, and after sexually assaulting him told him that he should give $500,000 to the Church if he ever wants to find eternal salvation. Pete recently gave $500,000.00 to the Church, but now feels taken advantage of and wants the Church to return his money and pay for what Reverend Doug did.

In the space provided briefly define each term below and describe how, if at all, it applies to the above fact pattern.
Contempt

Post-Judgment Remedies

Finding of Facts and Conclusions of Law

Wang Test

Equitable Defenses

Declaratory Judgment
Constructive and Resulting Trust

Bonds

Valuation of Damages

Rule 68 Offer of Judgment

myfiles/RemediesFinal.Sp2004
I know what is legal, not what is right.
And I'll stick to what is legal . . . I'm not God.

Sir Thomas More

Use your social security number on the blue book. Write legibly and coherently.

You will be graded on your knowledge, ability to analyze the issues and your treatment of the issues.

No more than five (5) pages handwritten, one side only, three (3) typed double spaced pages. I will not read anything that exceeds the page limitation.

PART 1

Pete Peters of Kittery, Maine was the chief academic officer for PassBar.Com.Inc., a Delaware corporation with offices in Orlando, Florida and Providence, Rhode Island. PassBar.Com’s proprietary software allows for students to prepare to pass the bar examination by taking classes over the internet. All of its employees sign Confidentiality/Nondisclosure/Noncompete Agreements, preventing them from disclosing proprietary company information to anyone and prohibiting them from working for any competing online company for one year after departing the company. PassBar.Com has an insurance policy with New Bahama’s Insurance headquartered in Nassau, Bahamas, providing for protection against the theft of company property.

Last month Peters, along with eight other employees, left PassBar.Com to create Passthe Bar.Com and formed a New York corporation with offices in New York City. Two week ago, PassBar.Com discovered that its new testing software, course, customer lists, designs and other proprietary information was missing. The company also discovered that Peters had recently registered the domain name Passthebar.com and is now attempting to lure students and other employees to the new company.

The company is irate with Peters and the others and demands that you “drive them out of business anyway you can as they are killing us.” The company feels that it has already been significantly damaged, as it has lost a few customers to this new company.
Please write an essay describing what steps you would take to remedy this problem, and how you would expect the Court to deal with the procedural issues necessary to resolve this matter.

PART 2

Define the following terms and then apply the terms, if applicable, to the fact pattern on the first page.

Choice of Forum Clause

Rascality

176D

Injunctive Relief
Findings of Fact and Conclusions of Law

Myfiles/Remedies.medtermSpring2004
We have got to stop having our profession ruined by the people who can afford to take five days off and fly to San Francisco, rather than practice law.

F. Bosley Crowther

Use your social security number on the blue book. Write legibly and coherently.

You will be graded on your knowledge, ability to analyze the issues and your treatment of the issues.

No more than six (6) pages handwritten, one side only, or four (4) typed double spaced pages for Part One, and place your answers in the space provided for Part Two. I will not read anything that exceeds the page limitation.

QUESTION ONE

WebsitesRus.Com.Inc. is a Corporation formed under Massachusetts law which has no physical place of business. It is entirely internet-based, and its employees perform their jobs from offices in their homes. The employees meet and converse electronically. Twice a year all the employees meet at the Andover Wyndham for extensive training, brainstorming and the sharing of new concepts.

WebsitesRus.Com.Inc. sells turnkey websites over the Internet to lawyers, doctors and other professionals and maintains those websites for a monthly fee. It has developed software pricing and marketing strategies so that, in just three years, it has become the largest marketer of websites on the Internet. Its business plan shows that, if it continues to grow at the same rate, it will be the largest company of this sort in North America in five years. Six months ago, it received a letter from ToysRus.Com demanding that WebsitesRus.Com stop infringing on its registered trademark.

Recently, two members of WebsitesRus.Com.Inc.’s management, Steve Hyde and Tim Douglas, both of Massachusetts, left the company and took some key employees with them. They started running Website2U.Com in Salem, New Hampshire, another internet-based website business which has adopted many of the same strategies as WebsitesRus.Com’s
business. Sales have dropped significantly for WebsitesRus.Com.

The Chief Executive Officer of WebsitesRus.Com.Inc., Rosa Smith, calls you in a panic. “Do whatever it takes to shut them down!” She screamed, and urged you to take action quickly. She states that she has always hated Hyde and Douglas and feels that they are intentionally trying to hurt her business, because she previously reported some of their behavior to the police.

How would you proceed?

Please discuss how you would satisfy all procedural requirements.

**QUESTION TWO**

Development Corporation ("DC") of Plymouth, Massachusetts. DC wants to purchase a parcel of land in Plymouth County, Massachusetts from Pete, Inc. DC desires to sue Pete, because Pete agreed to sell the property to DC, but unbeknown to DC, Pete, Inc. later entered into a Purchase and Sale Agreement with America, Inc., a frequent rival and vicious competitor of DC, for the sale of the property for a million dollars. America, Inc. bought the land and began construction of condominiums on the land. A small portion of the foundations for those condominiums was mistakenly put on the neighboring pig farmer's land.

DC, nonetheless, entered into discussions with America, Inc. in an effort to purchase the property outright, while it negotiated with Pete on his breach of contract. It believed things would be satisfactorily resolved until America, Inc. announced that it found a new partner for the project, Athanas Development, Inc. ("ADI"). DC went to Superior Court and obtained an ex parte injunction prohibiting the sale of the property to the new partnership of Athanas and America, Inc. The sale nonetheless took place as scheduled when Andy Starkley, the President of America, Inc. said the hell with DC, signed the deed, and completed the sale. Starkley took the cash proceeds from the sale and went to the Bahamas.

In the space provided briefly define each term below and describe how, if at all, it applies to the above fact pattern.
Contempt

Encroachment

Finding of Facts and Conclusions of Law

Wang Test

Equitable Defenses

Declaratory Judgment
Constructive and Resulting Trust

Ecclesiastical Courts

93A

Offers of Judgment
Convention is like a shell to the chick, a protection
till he is strong enough to break it through.

Learned Hand

Use your social security number on the blue book. Write legibly and coherently.

You will be graded on your knowledge, ability to analyze the issues and your treatment of the issues.

No more than five (5) pages handwritten, one side only, three (3) typed double spaced pages. I will not read anything that exceeds the page limitation.

Peter Devlin of Salem, New Hampshire was the chief software designer for EsportsInfo.com, Inc., a Florida corporation with offices in Orlando, Florida and Andover, Massachusetts. EsportsInfo.com's proprietary software allows for the high quality transmission of live sporting events over the internet. EsportsInfo.com is an online sports website which requires its employees to sign Confidentiality/Nondisclosure/Noncompete Agreements, preventing their employees from disclosing proprietary company information to anyone and prohibiting these employees from working for any competing online company for one year after departing the company. EsportsInfo.com has an insurance policy with New York Insurance, a corporation, providing for protection against the theft of company property.

Last month Devlin informed EsportsInfo.com, Inc. that he would no longer be working at EsportsInfo.com and along with eight other employees would be leaving to create Esports.net, a division of P.D., Inc., a Maine corporation with offices in Portland, Maine. Two weekends ago, EsportsInfo.com discovered that its new marketing plan, software designs and other proprietary information was missing. The company also discovered that Devlin had recently registered the domain name Esports.net and is marketing a product similar to EsportsInfo.com's advanced design for transmission of sporting events over the internet that Devlin helped design.

The company is livid with Devlin and the others and demands that you “drive Devlin into the ground and bury those clowns,” before they can ruin its business. The company feels
that it has already been significantly damaged, as it has lost a few customers to P.D., Inc., d/b/a Esports.net and wants you to help rectify the situation.

Please describe what steps you would take to remedy this problem, and how you would expect the Court to deal with this situation.
QUESTION ONE

Your client is the Waterview Development Corporation (WDC) of Boston, Massachusetts. WDC attempted to complete the purchase of a parcel of land in Essex County, Massachusetts from the Trust Corporation, a Washington, D.C. corporation. WDC desires to sue the Trust Corporation as receiver of the assets of Homeinsurance Inc., a New York Corporation that was the previous owner of the Essex County land and had dealt extensively with WDC in attempting to develop this property. WDC even gave $500,000.00 to Homeinsurance when Homeinsurance initially purchased the property in Ipswich, Massachusetts.

In July 1998, Homeinsurance agreed to sell the property outright to WDC. Unbeknown to WDC, Homeinsurance shortly thereafter entered into a Purchase and Sale Agreement with Condos America Inc., a frequent rival and vicious competitor of WDC, for the sale of the property for 20 million dollars. Following a series of heated negotiations, in March of 1999 Homeinsurance and WDC agreed that Homeinsurance could sell the property to Condos America Inc. as long as WDC received 60% of the sales price.

In October of 1999 the Trust Corporation was appointed receiver for Homeinsurance. In December of 1999 the Trust Corporation, as receiver of Homeinsurance, offered the Essex County tract for sale in its 2000 Winter/Spring Land Catalogue. Both WDC and Condos America separately took issue with the offering, claiming that it breached the agreements reached with Homeinsurance. WDC nonetheless entered into discussions with the Trust Corporation in an effort to purchase the property outright and believed things had been satisfactorily resolved until the Trust Corporation recently announced that it would sell the property to Condos America Inc. for 20 million dollars and tender none of the proceeds to WDC.

WDC is furious at this turn of events and consults you regarding its rights. It wants you to
take immediate action. What steps would you take?

**QUESTION TWO**

Peter Pala owns a building which houses both his bakery, Peter's Pies, and his home above the bakery. Pete has run this business for 15 years, and it is a very profitable business.

Pete has found that the adjoining junkyard and waste facility, Sandford and Sons, Inc.'s building encroaches on Pete's land approximately 10 inches for a length of 200 feet.

Pete has never liked the junkyard being next door, and they have argued on numerous occasions. Three years ago Pete recovered a judgment against Sandford and Sons, Inc., as the owner's pit bull bit him in a very sensitive part of his body causing him extensive damage. That judgment for $10,000.00 remains unpaid.

On the other side of the baker is the Church of Good Voyage. Pete goes there for spiritual awakening and counseling from Reverend Doug. Reverend Doug told Pete to give everything he owns to the Church if he ever wants to get to the “top drawer,” which is a place that church members believe provides them eternal salvation. Pete recently gave all his worldly possessions to the Church, but now feels he may have been taken advantage of.

In the space provided, briefly define the following and describe how, if at all, it applies to the above fact pattern.

**Fraudulent Concealment**

**De Minimis**

**Attachment**
Rascality

Public and Private Nuisance

Declaratory Relief

Personal Services Contract

Hierarchical Structure
Preliminary Injunction
The only thing necessary for the triumph of evil is for good men to do nothing.

Emdmund Burke

No more than five (6) pages handwritten, one side only, five (5) typed double spaced pages. I will not read anything that exceeds the page limitation.

QUESTION ONE

A and C Media, Inc., a Massachusetts corporation located in Lawrence, Massachusetts, produces software for attorneys and runs a website called AttorneyandCounselor.com. For two hundred dollars ($200.00) per month, AttorneyandCounselor.com allows attorneys to place a description of their law firm on the website, describing the educational background, clients, specialties, qualifications and rates of the members of the firm. In a short period of time, A and C Media, Inc. has become a leader in its field with revenues of over 13 million dollars per year. Recently, Joe Cropani, one of the founders of A and C Media, Inc., left and started a competing company in Boston, Massachusetts. Cropani has been encouraging a number of key employees to leave A and C Media, Inc. and join him at GreatLawyers.com.Inc. Two of these employees, Beverly Anthony and Charlie Douglas, recently joined Cropani's new company and A and C Media, Inc.'s revenues have recently started to decline significantly.

One of the employees, Beverly Anthony, is a real star of the web design business who rarely leaves her home in Stanford, California. Cropani encouraged Anthony to break her contract with A and C Media by giving her a salary of $250,000 per year and by allowing her to continue to work from Stanford, California and submit her completed work through the Internet, as she had done with A and C Media. Douglas had recently been let go by A and C Media.

When Cropani announced the opening of GreatLawyers.com.Inc., all of his new employees, including Ms. Anthony and Mr. Douglas were pictured on the front page of The Boston Globe at their world headquarters in Boston.

A and C Media, Inc. has now entered suit against GreatLawyers.com.Inc., Cropani, Anthony and Douglas in Essex Superior Court seeking, among other things, injunctive relief. You have been asked to defend this matter. What steps would you take to protect your client's rights.
The only thing necessary for the triumph of evil is for good men to do nothing.

Emdmund Burke

Use your social security number on the blue book. Write legibly and coherently.

You will be graded on your knowledge, ability to analyze the issues and your treatment of the issues.

No more than five (6) pages handwritten, one side only, three (3) typed double spaced pages. I will not read anything that exceeds the page limitation.

PART I

Ima Winner of Providence, Rhode Island is a software designer for Passbar.com Inc., a New York corporation with offices in New York, New York and Boston, Massachusetts. PassBar.com is a website which prepares law students to pass the bar. It requires its senior employees to sign detailed employment agreements which contain Confidentiality/Nondisclosure/Noncompete clauses, preventing the employees from disclosing proprietary company information and prohibiting employees from working for any competing online training company for one year after departing Passbar. Passbar’s employees are also bonded and insured by Prudential Insurance of America, a Connecticut corporation, which provides for protection against the theft of company property. Prudential denied coverage on two claims Passbar submitted to Prudential in the last year allegedly because of insufficient information.

At the beginning of this month, Winner informed Passbar that he would no longer be working at Passbar and along with its chief website designer, Mike Malaguti, and head instructor, Joe Devlin, would be leaving to join Ibarreview.com, a New Jersey corporation, which calls itself the Internet's leading bar review. Passbar later discovered that its new instructional manual, online testing material and other proprietary information had been taken from the vault. The company also discovered that Winner had recently registered the domain name Passbar.net and was now using the name Passbar.net to redirect mistaken Passbar.com visitors to the Ibarreview site.

The company believes that Winner, Malaguti and Devlin have sabotaged the company
and want you to stop them “dead in their tracks”. The company states that it has already lost many new accounts for the upcoming July bar examination because of their actions and wants you to help rectify the situation.

Please describe what steps you would take to remedy this problem, and how you would expect the Court to deal with this situation.

**PART II**

In the space provided briefly explain the following.

Preliminary Injunction _____________________________________________________
________________________________________________________________________

Declaratory Relief _________________________________________________________
________________________________________________________________________

Estoppel ________________________________________________________________
________________________________________________________________________

Constructive and Resulting Trust __________________________________________
________________________________________________________________________

De minimis ______________________________________________________________
________________________________________________________________________
Public and Private Nuisance


Surrogacy Contracts


Bonds


Counterclaims


Rascality


Evidentiary Hearing


Laches
Contempt

Specificity

Findings of Fact and Conclusions of Law

Ecclesiastical Courts

Receivers

Offers of Judgment

Required Arbitration Clauses
An eminent lawyer cannot be a dishonest man.

Daniel Webster (1847)

Use your social security number on the blue book. Write legibly and coherently.

You will be graded on your knowledge, ability to analyze the issues and your treatment of the issues.

No more than five (5) pages handwritten, one side only, or four (4) typed double spaced pages for Part One and three (3) pages for Part Three. I will not read anything that exceeds the page limitation.

PART ONE (Five Pages Maximum)

A and C Software, Inc. is a Massachusetts corporation located in Lawrence, Massachusetts, produces software for attorneys and also runs a website called AttorneyandCounselor.com. For two hundred dollars ($200.00) each month, AttorneyandCounselor.com allows attorneys to place a description of their law firm on the website, describing the educational background, clients, specialties, qualifications and rates of the members of the firm. In a short period of time, A and C Software, Inc. has become a leader in its field with revenue of over 3 million dollars per year. Recently, Joe Cropani, one of the founders of A and C Software, Inc., left and started a competing company in the building next door, which is owned by Landlords, Inc., a New Hampshire corporation. Cropani has been encouraging a number of key employees to leave A and C Software, Inc. and join him in competing with his old company. Two of these employees recently left to join Cropani and A and C Software, Inc.’s revenues have recently started to decline significantly.

At the beginning of last month when A and C Software, Inc. opened after the long holiday weekend, it noticed that over 3 inches of water had collected in the basement of its building, destroying many thousands of dollars of software, and shutting down the internet servers for AttorneyandCounselor.com for three full days. An investigation subsequently revealed that the owner of the building next door, Landlords, Inc., changed the rain gutters coming from the roof, so that the water from its roof would be distributed away from its land and towards the land of A and Software, Inc.

Last weekend, after a very bad rainstorm, the basement of A and C Software, Inc. was again
flooded with nearly 7 inches of water, shutting down the internet servers and destroying “tons” of software.

A and C Software, Inc. consults you regarding its legal rights and asks that you do something about these problems immediately. What is your advice?

PART TWO

Coherently and Concisely address the following:

CONTEMPT:

ECCLESIASTICAL COURT:

CONSTRUCTIVE AND RESULTING TRUSTS:

ESTOPPEL:

BOND:
LACHES:

DECLARATORY JUDGMENT:

SPECIFIC PERFORMANCE:

NUISANCE:

RASCALITY:

PART THREE (Three Pages Maximum)

I think it is most important to recognize that when dealing with surrogacy contracts . . .
To protect those who are not able to protect themselves is a duty which every one owes to society.

Edward Macnaghten (1890)

Use your social security number on the blue book. Write legibly and coherently.

You will be graded on your knowledge, ability to analyze the issues and your treatment of the issues.

No more than five (5) pages handwritten, one side only, or four (4) typed double spaced pages for Part One and three (3) pages for Part Three. I will not read anything that exceeds the page limitation.

PART ONE (Five Pages Maximum)

SANDYSHORES.COM Inc is a Delaware Corporation that operates an Internet based advertising service for hotels, motels, restaurants and travel related services which are in any way related to the beach. For a set fee, SANDYSHORES.COM accepts an advertisement and a link to the site so that all who visit SANDYSHORES.COM will be able to immediately visit the website of the hotel restaurant or travel agency. The visitor will then be able to view prices and make reservations.

In just three years, SANDYSHORES.COM has become the largest vacation related website existing on the Internet. It boasts that it will increase traffic to a retail establishment's website by 1000 % and triple a company's revenues.

During 1997 Sonny Shore, the vice president for sales for SANDYSHORES.COM Inc, visited Donkeys' On The Rocks Inn in Barnstable, Massachusetts and solicited their business. Donkeys' On The Rocks Inn and SANDYSHORES.COM Inc then entered into a five-year contract which required Donkeys' On The Rocks Inn to pay SANDYSHORES.COM the sum of $5,000.00 per year. The contract allowed Donkeys' On The Rocks Inn to place an advertisement on the SANDYSHORES.COM's website and a link to Donkeys' website would appear at SANYSHOARES.COM.

During the first two years of the agreement, things could not have gone better for Donkeys'
On The Rocks Inn. Its occupancy rate rose dramatically and its revenues increased by over $10,000.00 per month. Unfortunately, Jay Donkeys and Sonny Shores had a falling out in the Spring of 1999. Sonny Shores claimed that Jay Donkeys cheated him out of money due from an unrelated personal transaction between them and because of that he would terminate the contract.

Sonny Shores terminated the contract the following week.

Donkeys' On The Rocks Inn consults you regarding this situation. It is terribly concerned that its removal from SANDYSHORES.COM is having a terrible effect on its revenues and summer bookings. Its revenues are now down $15,000.00 from the previous month, bookings are very poor for the upcoming summer and things look pretty bleak.

What would you do?
PART TWO

Coherently and Concisely address the following:

CONTEMPT:

DE MINIMIS:

CONSTRUCTIVE AND RESULTING TRUSTS:

POST JUDGMENT REMEDIES:

BOND

LACHES:
ARBITRATION:

SPECIFIC PERFORMANCE:

NUISANCE:

VERIFIED COMPLAINT:
PART THREE (Three Pages Maximum)

I think it is most important to recognize that Remedies . . .
Stephen Shuttoff of Salem, New Hampshire is a hotshot website designer for CyberU.com, a California corporation with offices in Santa Monica, California and Andover, Massachusetts. CyberU.com is an online educational website which requires its employees to sign Confidentiality/Nondisclosure/Noncompete Agreements, preventing its employees from disclosing proprietary company information to anyone and prohibiting employees from working for any competing educational institution for one year after departing CyberU. CyberU's employees are also bonded and insured by BigInsurance of America, a Connecticut corporation, which provides for protection against the theft of company property.

Last Friday Shuttoff informed CyberU that he would no longer be working at CyberU and along with three other employees would be leaving to join College 247.com, Inc. which calls itself the Internet's leading educational portal. Over the weekend, CyberU discovered that its new marketing plan, website design and other proprietary information was missing. The company also discovered that Shuttoff had recently registered the domain name CyberU.net. College 247.com was now using the name CyberU.net to redirect mistaken CyberU.com visitors to its site.

The company is livid with Shuttoff and the others and demands that you “cripple" Shuttoff before he can ruin its business. The company feels that it has already been significantly damaged and wants you to help rectify the situation.

Please describe what steps you would take to remedy this problem, and how you would expect the Court to deal with this situation.
QUESTION ONE

Consumer Drug Stores of Virginia (CDS) is the nation’s largest retail drugstore chain. It has a retail store at 45 Main Street in North Andover, Massachusetts in a strip mall owned by Messing Development, Inc. of Tewksbury, Massachusetts. Recently Messing Development and CDS entered into a long-term lease so that CDS could expand its store to increase its offerings to customers and increase its customer base. It received a building permit to expand the store and its operating permit allows it to have retail operations from 7:00 a.m. until 11:00 p.m.

Peter and Paula Pudder live immediately behind the strip mall at 12 Second Street in North Andover, with Peters’ elderly mother Ida. They are concerned that the proposed larger store with a drive-up window will create additional noise, trash and lighting issues. This is of special concern as the three family house they live in is occupied by Ida, who is not well and needs her rest, Peter and Paula who convinced Ida to transfer title to the home to them on the promise that would later take care of Peter’s brothers Dan, Jeff and Kirby, and also Rebecca Baker, a tenant who has started to withhold her $1,000 monthly rent because of recent activities at CDS.

Beginning in November of 2006, CDS has had truck deliveries at the rear of its store throughout the week and sometimes between 2 and 4 a.m. in the morning. Not only is there lots of noise from the truck drivers and CDS workers, but the trucks are left running in the winter creating more noise and diesel fumes that often permeate the surrounding neighborhood.

When Peter, Dan, Jeff and Kirby (who all live nearby) discussed this situation with the store operator in North Andover, Billy Budd of Salem, New Hampshire, he said it would stop. Budd claims it has now stopped and says that there is nothing else he can do. He did offer them some coupons for free sleeping pills.
In investigating this matter, Kirby, who is a licensed surveyor, discovered that Messing Development has long had a history of disputes with its neighbors and the foundation for the strip mall encroaches on the property at 12 Second Street. The encroachment runs the entire length of the property for 200 feet and the encroachment is as few as 8 inches to as much as 4 feet at its widest point. It was discovered that this has existed since the building was built in 1983 and cannot be removed except at significant cost to CDS.

Peter and Paula Pudder come into your office to discuss their situation with you. What are their rights and responsibilities? Discuss specifically the procedural issues and remedies that your legal training indicates are likely to be involved in this action.

**QUESTION TWO**

Lucent Technologies, Inc., a large Massachusetts telecommunications corporation, employs over five thousand employees at its facilities in North Andover, Massachusetts and San Diego, California. Lucent is considered by many to be one of the leaders in emerging technology and internet-related business strategies.

Lucent recently learned that ten individuals, who it believes are its employees, have set up a website on American Online, Inc., a Delaware corporation, called ‘NOTLUCENT.COM’. These individuals have in written materials, chat rooms and bulletin boards displayed information regarding company working conditions, retirement plans, management strategies and products. While a few of the employees are using their real names online, including Mark Jerry who also works for Lucent’s major competitor TATINC of Nashua, New Hampshire, others are using screen names so their actual identity is unknown. All of the individuals appear to work at the company’s North Andover plant since the proprietary information discussed pertains to products only manufactured and distributed a the North Andover plant.

Lucent consults with you regarding what they describe as inappropriate “company bashing.” They are very concerned that their image as a good employer is suffering and that their intellectual property, trademarks and contractual agreements with others are being compromised. Some resellers of their products have cancelled orders for these new products complaining that the information on NOTLUCENT.COM has seriously hurt their ability to drum up new business. Lucent believes that the information on the website helped a company create a product very similar in design, packaging and function to Lucent’s new Echo Reduction Software which enhances the quality of voice and video distributed over the Internet and it’s now losing over $5,000 a month in sales.

Management is incensed at these developments.
Declaratory Judgment

Equitable Defenses

Bond
Constructive and Resulting Trusts

Injunctive Relief
Findings of Fact and Conclusions of Law

Post Judgment Remedies
**Aim above morality. Be not simply good, be good for something.**

*Thoreau*

Use your social security number on the blue book and this examination.

Your knowledge of the law, analysis of the issues and thorough treatment of the issues are the basis for your grade. Please write or print legibly.

You may write no more than six (6) pages, one side only, or four (4) typed double spaced pages for Part One. Please place your answers in the spaces provided for on Part Two. Enjoy life.

**QUESTION ONE**

Amazin Books Inc. (ABI) is the nation’s largest online bookstore. It has a retail store at 45 Main Street in Amesbury, Massachusetts in a mall owned by MLC Development, Inc. of Salem, New Hampshire. Recently MLC Development and ABI entered into a long-term lease of over 30 years so that ABI could expand its store to increase its offerings to customers, increase its customer base and expand its shipping to internet customers. It now operates on a 24/7 basis shipping books around the world through Federal Express Inc of Tennessee. Amazin.com offers “every book you’d ever need” through its website and ships its books throughout the world.

Diane and George live immediately behind the mall in a beautiful residential neighborhood. George, a disabled war veteran, works at ABI so he simply walks through the woods to get to work. Diane has become upset at recent activities at ABI including the increased lighting that now shines on her house throughout the night and the odors from idling trucks that always invaded the neighborhood.

Diane along with Peter, Dan, Jeff and Kirby (who all live nearby) discussed this situation and formed a neighborhood watch group called Citizen Soldiers Inc. to begin conducting surveillance activities of ABI. The group elected Kirby as the treasurer and he immediately began making speeches in which he criticized ABI making numerous accusations about the company’s officers and their involvement in pornography. Their surveillance activities have uncovered various health violations but no support for Kirby’s allegations.

ABI has threatened to sue Citizen Soldiers for Kirby’s remarks and what they say are their baseless harassing activities.
ABI's detectives learned that George was Diane's partner. First, ABI took away George's ability to get up from his accounting desk and stretch for 5 minutes every hour that was necessitated by his service connected disability. Later when he complained about ABI terminating his accommodation, ABI fired George. ABI then audited George's work and discovered that George had secretly been transferring $9,999 from ABI each month to a vendor listed as the Loveshack. The Loveshack accounts were further traced and found to have been used to provide the $300,000 purchase price of Diane and George's house that is now worth over $450,000.

Diane discovered that MLC Development has long had a history of disputes with its neighbors and the foundation for the mall encroaches on the land that surrounds Dan and Jeff's home. This encroachment has existed since the mall was developed and cannot be removed except at significant cost.

Discuss the civil and equitable rights of the parties, paying particular attention to the procedure that will be used to resolve the various issues.

Question 2. Please fully define the following concepts. After doing so please explain how, if at all, the concept relates to the fact pattern in Question 1.

Restitution and Expectancy Damages

__________________________________________________________________________________________

__________________________________________________________________________________________

__________________________________________________________________________________________

__________________________________________________________________________________________

__________________________________________________________________________________________

__________________________________________________________________________________________

__________________________________________________________________________________________

__________________________________________________________________________________________

__________________________________________________________________________________________

__________________________________________________________________________________________

__________________________________________________________________________________________

__________________________________________________________________________________________

__________________________________________________________________________________________

__________________________________________________________________________________________

__________________________________________________________________________________________

__________________________________________________________________________________________

__________________________________________________________________________________________

2
93A and 176D Actions

Common Law Fraud

Attachment

Laches and Estoppel
Injunctive Relief

Findings of Fact and Conclusions of Law

De Minimus
He who seeks equity must do so with equity.

Use your social security number on the blue book. Write legibly and coherently.

Your knowledge and ability to analyze the issues should be clear from the manner you express those thoughts on this test.

Write no more than six (6) handwritten pages using only one side of each paper or four (4) typed double spaced pages. I will not read anything that exceeds the page limitation.

PART 1

FIRSTYEARSUCCESS, Inc., a Massachusetts corporation located on Washington Avenue in Plymouth, Massachusetts, produces study review materials for law students and runs a website called FIRSTYEARSUCCESS.COM. All of FIRSTYEARSUCCESS’s employees have signed non-compete/non-disclosure agreements precluding them from using any of the proprietary information belonging to the company and from working for any company in the same business in the United States for one year after they leave FIRSTYEARSUCCESS, Inc.

For an initial fee of $500.00 and for $10.00 per month, law graduates/students can sign up online with FIRSTYEARSUCCESS.COM to study for their examinations over the internet and place a description of themselves on the website to find suitable dates. The description provides their educational background and standards for dating. The contract that students execute online requires all disputes be resolved by binding arbitration in Omaha, Nebraska.

In a short period, its proprietary and copyrighted study review materials and software has allowed FIRSTYEARSUCCESS, Inc. to become a leader in the field of study review materials. Unfortunately, its dating service has not been nearly as successful and there are many dissatisfied students who claim it is a scam. Two students have even been raped by their dates who were not law students but exconvicts who enrolled in the program while in prison. The students were badly beaten and suffered significant damages including medical expenses and lost wages. FIRSTYEARSUCCESS.COM’s insurer has denied their claim for damages saying that the policy precludes claims for criminal activity.

Recently, Peter Peters, one of the founders of FIRSTYEARSUCCESS, Inc., left and started a competing company at 10 Franklin Pierce Place in Salem New Hampshire. Peters took customer lists, software and other proprietary material from
FIRSTYEARSUCCESS when he quit. He has also been encouraging a number of employees to leave FIRSTYEARSUCCESS, Inc. and join him at LawschoolU.com.Inc. Two of these employees, Sally Stone and Natasha Dean, recently left and joined LawschoolU.com.Inc.

Malguti, Stone and Dean, a real star of the study preparation business, reside in Salem New Hampshire. Peters encouraged Stone to break her contract and agreement with FIRSTYEARSUCCESS by giving her a salary of $75,000 per year, allowing her to continue to work from home and submit her study examination questions, material and software programs through the Internet, as she had done with FIRSTYEARSUCCESS. Stone and Dean deny having any written agreement with FIRSTYEARSUCCESS.

FIRSTYEARSUCCESS, Inc.'s revenues have recently started to decline significantly because of the loss of the employees and the poor performance of its dating business. FIRSTYEARSUCCESS, Inc. consults with you and asks you to help. They want you to drive LawschoolU.com.Inc out of business at whatever cost.

Please discuss how you would proceed and why. Discuss what you expect is likely to happen and explain the procedural steps you would expect on this matter.

PART 2

Define the following terms and then, if applicable, apply the terms to the fact pattern on the first page.

93A and 176D actions

WangTest
Evidentiary Hearing

Expectancy and Reliance Damages

Bond

R:"My Files\Remedies\REMEDIES MIDTERM EXAM.Sp2007.doc
To begin, I would decide which mentagous claims to bring in accordance with Federal Rule of Civil Procedure 11. According to this rule, I have to make a good faith investigation into the action and by signing the pleadings I have ensured that 1) they are based on good law, 2) based on reversing good law, and 3) not brought to waste the court's time or be frivolous.

First, I would determine whether to bring causes of action against Malaguitti, Stone and Dean for violating the contractual non-compete agreements. In order for those to be enforceable, they must be reasonable in 1) scope of business, 2) area (geographic) and 3) duration that they limit to former employees. Although they are reasonable on the part of First Year Success to limit an ex-employee's ability to act within a year in the same business, it may be overbroad and unenforceable to compel those clauses to be enforced. I therefore, would not bring causes of action against Dean and Stone for violation of non-compete or non-disclosure of proprietary information.

Whereas, however, I would bring a cause of action against Peters, who as one of the founders of First Year Success has started a new competing company called LawSchool U. To begin, I would draft a complaint in accordance with Fed.R.Civ.Pro. 8 and state clear and concise statements of fact that warrant relief for my client. In order to avoid dismissal, I would add all indispensable parties pursuant to Rule 19 so that the action does not get dismissed. Next, I would, in accordance with Fed.R.Civ.Pro. 4, serve a copy of the complaint along with the summons on all defendants through a process server.
In forming an injunction order, I would first move for a temporary restraining order, in the absence of an already established business. Furthermore, given the nature of proprietary information and employee interaction, there is a great burden on the law of proprietary information and employee interaction. Particularly, Firstyear's proprietary information and employee interaction are even more burdensome due to the law of proprietary information and employee interaction. Similarly, Firstyear's proprietary information and employee interaction are even more burdensome due to the law of proprietary information and employee interaction.

In a suit for a declaratory judgment of noninfringement, I would not make the hazard more considerable because Firstyear is losing money by losing the market to Firstyear's proprietary information and employee interaction. I am sure that my client will prevail as to enjoining the company from touching the proprietary information and employee interaction. Firstyear is likely to succeed in its declaratory judgment. Firstyear's proprietary information and employee interaction are at stake and no quantum of the necessary relief is necessary. I would not be able to enjoin an injunction, but I would not be able to do so if my client prevailed.

Nor would I be able to enjoin an injunction that I would not be able to enjoin an injunction, but I would not be able to do so if my client prevailed.

I would be unable to enjoin an injunction, but I would not be able to do so if my client prevailed.
During exparte injunction, I would also move for an exparte impound of the proprietary information because exigent circumstances exist that place the future of first year on the line.

give formal notice; however, I do have to make a sufficient attempt in moving for an injunction, I would have to support the motion with a verified complaint or affidavit. And since TRO is only last for 10 days or until evidentiary hearing I would move for a preliminary injunction. Courts are willing to preserve the status quo— or leave parties in the last contract position they were in prior to suit— through a preliminary injunction. During the preliminary injunction stage, opposing counsel and I will have to present evidence at an evidentiary hearing. This is where evidence is presented under oath, when either the credibility of witnesses is in dispute, or there are evidentiary issues in dispute. Here, the dispute would be over the proprietary information. This injunction will probably be upheld, but afterward I may move for a permanent injunction to enjoin LawSchoolU forever, or until circumstances change, from using FirstYear's proprietary information and employees from them. In moving for an injunction, I could either request a prohibitory or mandatory injunction. Here, it would be a prohibitory injunction to prohibit Law SchoolU from using my client's information. The parties would have to request the evidentiary hearing during for preliminary injunction because they are not presumed or indispensable.

When I move for an injunction, counsel for LawSchoolU may request that I give a security bond. The bond is to protect Law SchoolU in the situation that the injunction is independently given and needed for compensation. The
FEDERAL CIVIL PROCEDURE 65 stated that a bond is necessary, some jurisdiction have found that the court has such broad latitude and discretion that they can determine a bond is unnecessary.

For this case, I would bring it to Massachusetts State Court. I would do so because MA has subject matter jurisdiction over the controversy in this proprietary case. Most likely, the claim in this case will bypass $75,000 because this company, FirstYear, has had a drastic change in its revenue.

Additionally, there is complete diversity as the Plaintiff, FirstYear, has complete diversity as a MA corporation, with Peters and Laws (School), which live and are based in NH. In serving these defendants, I would check with a long arm statute to personally serve them. Personal jurisdiction has established over defendants because they all have sufficient minimum contacts with FirstYear by working in MA. Venue is established because it is a convenient place to bring suit. If the statute governing the case gave concurrent jurisdiction to both state and federal courts, the defendant could, through removal jurisdiction, remove the case to federal court since diversity exists and none of them are from MA.

The students who brought this that the website for dating is a scam could bring a claim against my client under 93A, the Consumer Protection Statute for unfair and deceptive practices. To bring a claim action, they all must have been injured by the common law or fact and be too numeroso for joinder. To be certified as a class, they must...
Adequacy of representation by named plaintiff. Once certified, all settlements have to be accepted by the court because some people may not have adequate representation. These individuals and the two that got raped may all sue. However, I would bring in the insurance company to cover our liability under the D Unfair Claims Settlement Practices Act. It creates a duty of insurance company to defend employees under insured against insurance policy. In order to do this, the acts must be done under & fulfill the Wrongful: 1) employee actions of scope of employment 2) in time and space of employment, and 3) to advance motive of employee. Since this criminal activity is that of outside individual, I would file a civil claim against the rapists and bring them into indemnity mediation comp of liability.

As to the arbitration agreements, although they were part of an adhesion contract; they are enforceable if reasonable and no signs of coercion, of duress, or fraud. Since the students could have rejected the contract, I would try to enforce the agreement. Although they have to travel, we are on the internet and readily available all over the web in us.

I would also file for 93(A) damages against Law School U for First year because LawSchoolU acted with racyarity.
QUESTION ONE

Pursuant to a written agreement, Urnew Fonestore, Inc., agreed to sell the real estate and cell phone business at 1 Main Street in Boston, Massachusetts, to Joe Peterdemetra for nine hundred and fifty-thousand dollars ($950,000). Part of that agreement contained non-compete and non-disclosure provisions for Jeff and Joe Ryan, of Providence, Rhode Island, the brothers who operated Urnew Fonestore, Inc. Closing is to take place on June 1, 2010. At the time he entered into the agreement, Mr. Peterdemetra knew that the new middle school was supposed to open at 3 Main Street in January of 2010.

Urnew Fonestore, Inc. had been struggling since its inception in 2005, but it had always operated profitably. The opening of the middle school that year brought Urnew Fonestore, Inc. an unexpected boom in business. During the first four months of 2010, Urnew made a net profit of two hundred and twenty-five thousand dollars ($225,000). The Ryan brothers on behalf of Urnew Fonestore, Inc. just informed Mr. Peterdemetra that they would not sell the business and real estate to him unless he agreed to increase the price by $1,000,000 and provide each of the Ryan brothers $50,000 in cash. They said if he tried to force them to sell, then they will simply open a new business across the street called Urnew Fonestore 2.0, Inc.

The Ryan brothers and Urnew Fonestore also said that they would not sell because
they recently discovered that the underground storage tanks belonging to the gas station next
door are located on a small portion of Fonestore’s property.

Mr. Peterdemetra is very upset. He did not mind putting the time in to make the
business successful and he wants what is rightfully his. He is particularly concerned that the
Ryan Brothers are trying to “drift and extort me,” and will bleed the business dry.

Mr. Peterdemetra seeks your advice.

How would you proceed and why?

QUESTION TWO

Nicky Beckimegg owns a building that houses his bakery, Nick’s Donuts, and his
home above the bakery. Nick has run this business for 15 years, and it is a very profitable
business. Recently his head chef, Jeff Jones, left to start his own bakery despite having a
non-competition agreement that prohibited him from working for anyone for two years after
he left Nick’s Donuts.

Beckimegg also has found that the adjoining junkyard and waste facility, Sanford and
Son’s building encroaches on Beckimegg’s land approximately 10 inches running for a
length of 200 feet. He demanded that the junkyard owner remove the offending structures
but the owner refuses to do so.

Beckimegg has never liked the junkyard being next door. There have been numerous
arguments between them. Three years ago, Beckimegg recovered a judgment against
Sanford and Sons, Inc., after the owner’s pit bull bit him. That judgment for $500,000.00
remains unpaid.

On the other side of the bakery is the Church of Good Hope. Beckimegg goes there
for spiritual awakening and counseling from Reverend Doug. Reverend Doug grew very
close to Beckimegg, and after sexually assaulting him told him that he should give $500,000
to the Church if he ever wants to find eternal salvation. Pete recently gave $500,000.00 to
the Church, but now feels taken advantage of and wants the Church to return his money and
pay for what Reverend Doug did.

In the space provided briefly define each term below and describe how, if at all, it
applies to the above fact pattern.
1. Injunctive Relief

2. Post-Judgment Remedies

3. Finding of Facts and Conclusions of Law
4. Public & Private Nuisance

5. Equitable Defenses

6. Declaratory Judgment
7. Constructive and Resulting Trust

8. Evidentiary Hearing

9. Valuation of Damages
10. Ecclesiastical Courts