

**REMEDIES MIDTERM EXAM
PROFESSOR COYNE
SPRING 2008**

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' 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

To begin, I would decide which meritorious 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 actions 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 courts time or be frivolous.

First, I would determine whether to bring causes of action against Malaguti, 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 (geograph) and 3) Duration that they limit to former employees. Although they are reasonable on the part of First Year Juices to limit an ex-employees ability to act within a year in the same business, it may be overbroad and unenforceable to compel these 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.

However, I would bring a cause of action against Peters, who as one of the founders of First Year Juices has started a new competing company called Law School 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 sheriff or

a notice pleading system. I would be careful and make sure that I plead all damages both equitable and monetary so that, if the case were to proceed, I would not be precluded to do so by either res judicata (claim preclusion) or collateral estoppel (issue preclusion).

I would bring an injunction against Peters and Lawchoolu.com because this necessitates an equitable remedy. In order to get an injunction I must prove that: 1) my client has no adequate remedy at law, 2) likelihood of success on the merits, 3) immediate, irreparable harm, 4) public policy issues are at stake and the balance of the harms lean towards granting an injunction. Firstyear success has no adequate remedy at law because money damages will not make them whole as the amount of damages by starting this competitive company cannot be reasonably calculated, but revenues have recently declined. Likely that my client will prevail as to enjoining the company since, with more discovery, it is likely that Lawchoolu took off running as a result of Firstyear's proprietary information. There is immediate irreparable harm because Firstyear is losing revenues from its study services daily. Additionally, public policy is against stealing of proprietary information and using it for deceptive gain. Similarly, Firstyear bears a severely greater burden for loss of proprietary information and employee since they are an already established business.

In getting an injunction, I would first move for a temporary restraining order ex parte. This is the earliest stage to get an injunction and I do not have to give notice

During ex parte injunction, I would also move for an ex parte 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 affidavits. Since TRO is only last for 10 days or until an evidentiary hearing, I would move for a preliminary injunction. Courts are willing to preserve the status quo - or leave parties in the last contacted 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 ~~sharp~~ ^{SHARP} dispute. Here, the dispute would be over the proprietary information. This injunction will probably be upheld, but afterwards I may move for a permanent injunction to enjoin Landscholl forever, or until circumstances change, from using First year's proprietary information and ^{ex-}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 Landscholl from using my clients 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 Landscholl may request that I give a security bond. The bond is to protect Landscholl in the situation that the injunction is independently given and needed for compensation. The

Fed. Civ. Pro 65 states that a bond is necessary, some jurisdictions 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 claims in this case will bypass \$75,000 because this company, FirstYear, has had a drastic crash in its revenues.

Additionally, there is complete diversity as the Plaintiff, FirstYear ^(MA), has complete diversity as a MA corporation, with Peter and Law School U, 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~~ 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. Grp

The students who ~~wrongly~~ say that the website for dating is a scam could bring a class action suit ~~for~~ against my client under 93A, the Consumer Protection Statute for unfair and deceptive practices. To bring a class action, they all must have been injured by the common law or fact and be too numerous for ~~order~~. 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.

Three individuals and the two that got raped may all sue. However, I would bring in the insurance company to cover our liability under 17E D Unfair Claims Settlement Practices Act. It created 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 Wang Test: 1) employees 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~~ ^{joint} individuals, I would file a ~~cross~~ ^{joinder} claim against the rapists and bring them into indemnity ~~myself~~ ^{of} company of liability.

As to the arbitration agreements, although they were part of an admission contract, they are enforceable if reasonable and no signs of coercion, or 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 Lanschool U for First year because Lanschool U acted with raciality.