Cell phones are not permitted on your person. Cell phones are to be powered off and left in your car or with your personal items at the front of the room or you will face disciplinary charges.

REMEDIES FINAL EXAM
PROFESSOR COYNE
SPRING 2013

Ethics and equity and principles of justice
do not change with the calendar.

David Herbert Lawrence

Use your ID number on the blue book and this examination. 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 seven (7) pages handwritten, one side only or four (4) typed double spaced pages.

PART 1

Ed Goodkid of Boston, Massachusetts was the Executive Officer and Vice President for NEMarijuanadispensary.com (NEMD), a Maine corporation with offices in Boston, Providence and Concord, New Hampshire. NEMD provides proprietary information, supplies, medical assistance, genetically engineered seeds and management to the exploding medical marijuana industry in New England. It does this through its websites, NEMarijuanadispensary.com and NEMarijuanadispensaries.com and through its highly—and expensively-trained—specialists most of whom have advanced degrees in science, law and business.

NEMD has a manufacturing and growing facility in rural Andover, Massachusetts near the Merrimack River and the Tewksbury border called “Sunshine Sands.” All of NEMD’s employees sign Confidentiality/Nondisclosure/Noncompete Agreements, preventing them from disclosing proprietary company information to anyone and prohibiting them from working for any competing medicinal marijuana business in any capacity or sharing any of the confidential information they received from the company for one year after departing the company.

Last month Goodkid, along with three other “executive herbalists”, Racheloa Brown, Titi Tiller and Gary Patrick, who were all working at NEMD’s growing and manufacturing facility in Andover, Massachusetts, left NEMD to create WeedMD247.com (WeedMD).
They formed a New York corporation of the same name and began operations in a building adjacent to Sunshine Sands in Andover. Two weeks ago, NEMD discovered that its latest customer lists, new product catalog, proprietary fall marketing plan, customer preference spreadsheets, seeds, atomizers and other improved marijuana delivery devices were missing from the secure area the company maintained in Andover. The company also discovered that Goodkid along with her financial partner, Tim Josephs, recently registered the domain name NEMarijuanadispensari.com which redirects visitors to WeedMD247.com and WeedRx.org, its sister site.

NEMD has an insurance policy with Live Free or Die Insurance Inc. headquartered in Concord, New Hampshire, through its office in Hartford, Connecticut. The policy provides for protection against the theft of company property.

NEMD filed a claim valued at over $500,000 for the missing property with Live Free or Die Insurance. Live Free or Die denied coverage for any of the losses and filed suit in Federal District Court in Connecticut requesting a Declaratory Judgment affirming its position that since Connecticut law does not provide for the use of medicinal marijuana, insurance cannot cover such illegal activity.

NEMD is also irate with Goodkid and the others and demands that you go to court and "burn that witch and those fields to the ground." The company feels that it has already been significantly damaged, as it has lost 4 of the largest dispensaries in New England to Weed MD and revenues are in serious decline.

In securing the boundary of Sunshine Sands 20 acre property from the local high school kids who would frequently party in the marijuana fields, NEMD discovered that the foundation for WeedMD’s building encroaches on NEMD’s property by a few inches for the full length of the 300-foot building. It also discovered that the only means of access to WeedMD’s building is through NEMD’s land.

After WeedMD began its operations adjacent to Sunshine Sands, area neighbors started to complain about the strong odor of marijuana emitting from the adjacent marijuana farms. They complained about the odor at both harvest time and as the product is "field tested" by burning it outdoors in 50 gallon drums.

Please write an essay describing what steps you would take to remedy these problems, and how you would expect the Court to deal with the procedural issues involved in resolving these matters.
PART 2

Please fully define the following concepts. After fully defining the concept, apply the concept, if applicable, to the fact pattern in Part 1. If not applicable to fact pattern, state that in your response.

1. Injunctive Relief

2. Wang Test

3. De Minimus
4. Expectancy and Reliance Damages

5. Constructive Trust and Resulting Trust

6. Ecclesiastical Courts

7. Equitable Defenses
8. 93A and 176D

9. Post Judgment Remedies

10. Bond
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REMEDIES FINAL EXAM
PROFESSOR COYNE
SPRING 2012

Ethics and equity and principles of justice
do not change with the calendar.

David Herbert Lawrence

Use your ID 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, three (3) typed double spaced pages. I will not read anything that exceeds the page limitation.

PART 1

Fred Stephs of Andover, Massachusetts was the Chief Operating Officer for BootcampU.com, a Delaware corporation with offices in Boston and Los Angeles. BootcampU’s proprietary software allows for students to prepare to take classes over the internet in order to obtain a bachelor degree. All of its professors sign Confidentiality/Nondisclosure/Noncompete Agreements, preventing them from disclosing proprietary company information to anyone and prohibiting them from working for any competing educational institution for one year after departing the company. BootcampU has an insurance policy with Connecticut Insurance headquartered in Groton, Connecticut, providing for protection against the misappropriation of company property.

Last month Stephs, along with three other professors, Gina Elina, Gibson Scott and Amber Rivers, all of Boston, MA, left BootcampU to create College4U.com and formed a New York corporation of the same name in an office building adjacent to the Boston office of BootcampU. Two weeks ago, BootcampU discovered that its new course software, course catalog, customer lists, designs and other proprietary information were missing. The company also discovered that Stephs had recently registered the domain name BootcampU.com which redirects visitors to College4U.com.

Connecticut Insurance has denied coverage for any of the losses and filed suit in Federal Court in Connecticut requesting a Declaratory Judgment affirming its position.
The company is irate with Stephs 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 customers to this new company and revenues have started to decline.

In investigating the loss of company property, Stephs also discovered that the foundation for College4U.com’s building encroaches on BootcampU.com’s property by a few inches the full length of the 300-foot building and the only means of access to College4U.com’s building is through BootcampU.com’s property.

Please write an essay describing what steps you would take to remedy these problems, and how you would expect the Court to deal with the procedural issues involved resolving these matters.

PART 2

Please fully define the following terms. After fully defining the term then apply the term, if applicable, to the fact pattern in Part 1.

Injunctive Relief

Wang Test
Evidentiary Hearing


Expectancy and Reliance Damages


Constructive Trust and Resulting Trust


Hierarchical Structure


Fraudulent Concealment, Laches and Estoppel


Cell phones are not permitted on your person. Cell phones are to be powered off and left in your car or with your personal items at the front of the room or you will face disciplinary charges.

REMEDIES FINAL EXAM
PROFESSOR COYNE
SUMMER 2012

Ethics and equity and principles of justice do not change with the calendar.

David Herbert Lawrence

Use your ID 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, three (3) typed double spaced pages. I will not read anything that exceeds the page limitation.

PART 1

Jake Josephs of Andover, Massachusetts was the Chief Information Officer for BootcampU.edu, a Delaware corporation with offices in Boston, Los Angeles and London. BootcampU’s proprietary software allows for a student to take classes over the internet, submit assignments and obtain a bachelor degree. 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 educational institution that does business in the same area for one year after departing the company. BootcampU has an insurance policy with New London Insurance headquartered in New London, Connecticut, providing for protection against the misappropriation of company property.

Last month Josephs, along with three other professors, Rachel Dennis, Craig Edwin and Kate Devons, who were working in BootcampU’s South Boston office, left BootcampU to create College4U.com and formed a New York corporation of the same name in an office building adjacent to the South Boston office of BootcampU. Two weeks ago, BootcampU discovered that its new course software, course catalog, customer lists, course designs and other proprietary information were missing. The company also discovered that Josephs had recently registered the domain name BootcampU.com which redirects visitors to College4U.com.

New London Insurance has denied coverage for any of the losses and filed suit in
Federal District Court in Connecticut requesting a Declaratory Judgment affirming its position.

The company is irate with Josephs 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 customers to this new company and revenues have started to decline.

In investigating the loss of company property, BootcampU also discovered that the foundation for College4U.com’s building encroaches on BootcampU.edu’s property by a few inches for the full length of the 300-foot building and the only means of access to College4U.com’s building is through BootcampU.edu’s land.

Please write an essay describing what steps you would take to remedy these problems, and how you would expect the Court to deal with the procedural issues involved resolving these matters.

PART 2

Please fully define the following terms. After fully defining the term then apply the term, if applicable, to the fact pattern in Part 1.

1. Injunctive Relief

2. Wang Test
3. Evidentiary Hearing

4. Expectancy and Reliance Damages

5. Constructive Trust and Resulting Trust

6. Hierarchical Structure
7. Fraudulent Concealment, Laches and Estoppel

8. 93A and 176D

9. Offer of Judgment

10. Findings of Fact and Conclusions of Law
INSTRUCTOR:

Professor Michael Coyne
978.681.0800/ coyne@mslaw.edu
Webpage: MSLAW.EDU/COYNE.HTM

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
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?
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 “riprile 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 hit 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
REMEDIES
SPRING 2008 - FINAL
Professor Coyne

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 247 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
93A and 176D Actions

Common Law Fraud

Attachment

Laches and Estoppel
Contempt

Constructive and Resulting Trusts
Injunctive Relief

Findings of Fact and Conclusions of Law

De Minimus
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.

Passthe Bar.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.
Declaratory Judgment


Equitable Defenses


Bond


Constructive and Resulting Trusts

Injunctive Relief
Findings of Fact and Conclusions of Law

Post Judgment Remedies
**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 Lewksbury, 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.
REMEDIES
SPRING 2004 - FINAL
Professor Coyne

Go confidently in the direction of your
dreams. Live the life you have imagined.
Thoreau

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

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.

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
REMEDIES
SPRING 2003 - FINAL
Professor Coyne

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
REMEDIES FINAL EXAM
PROFESSOR COYNE
SPRING 2002

Law never made men a whit more just.

Henry David Thoreau

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, four (4) typed double spaced pages.
I will not read anything that exceeds the page limitation.

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
REMEDIES FINAL EXAM  
PROFESSOR COYNE  
FINAL SPRING 2001

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
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 SANYSHORES.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 to 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 ...