

**Final Exam – Remedies Fall Semester 2019  
December 11, 2019, at 9 a.m.**

**Instructions:**

**The total time permitted for the exam is 3 hours. An extra 30 minutes will be allowed to allow you to read carefully and take notes. Do not begin writing your answers during the reading time.**

The exam is open book exam. The exam comprises two questions. Both are of equal value. You should then allocate equal time to both. **Question 2 comprises parts A and B.** Answer both parts. Both parts are of equal value. You may refer to your materials, i.e., **your** books, notes and outlines. You may not refer to commercial outlines, other outlines not generated by you, your hard drive, or the internet. **You will have to take the exam “Blocked”. You are bound by the Honor Code.** Remember to read the question carefully and answer only the question posed. Most points are allocated for analysis, so organize carefully to show this analysis.

For those using exam books: if more than one exam booklet has been used to answer the question, be sure your examination number appears on each booklet indicating the total number of booklets utilized by the individual number of each book. (E.g., #1 of 2, #2 of 2.) The only identification permitted to appear on the blue book is the examination number which has been assigned. Please do not indicate anything else on the blue books that will identify you.

Before you begin working on the exam, check that you have **Question 1 and 2, pages 1-4.**

The Law School has requested that the following statement be included on all exams:

“I acknowledge that in this, as in all other Law School activities, I am bound by the Emory Law School Professional Code.”

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Please sign with your **exam number, not your name.**

**HAND IN ALL YOUR PAPERS.  
GOOD LUCK!**

## QUESTION 1

Drs Alice Aldyce (Alice) and Batima Bozankova (Batima) are employed by Enterprise University Medical School (EU). Alice is a general surgeon while B is a medical scientist in the field infectious diseases. They have married. Both have signed contracts with EU undertaking to keep research and allied data confidential and to disclose any joint research conducted with foreign persons or entities to US government oversight agencies.

B has recently completed a book “Ebola Stalks the World” in which she reveals details of cases and governmental incompetence in combating Ebola. To the extent that American citizens’ cases are aired they breach privacy and confidentiality requirements under US legislation. B had collaborated with a number of Australian researchers in Africa that were not disclosed at the time. Random House for the rights to publish has advanced her \$2M deeming the book to be a potential blockbuster. The contract covers movie rights that Fox studios have bought for \$5M contingent on the retention of Russell Crowe and Cate Blanchett as lead actors and world-wide distribution. B has assigned the royalty rights to A. The royalties are payable at the rate of 1% of net profits.

A, in addition to duties at EU, runs a business of buying and selling real estate. She intends to grow vastly her business once the royalties start to flow. She finds a good opportunity in the Old Fourth Ward of Atlanta. Julio and Maria Gonzales own a home that Julio is wanting to sell. Julio tricks Maria into signing promising to buy a superior house in the neighborhood. A pays a deposit of \$30,000 on the \$300,000 house. She intends to resell the house after some cosmetic repairs and renovations for \$400,000. Julio leaves his wife and three children and the country after cleaning out all their joint accounts. The house is already mortgaged to Some Trust for \$200,000 to which he adds another \$100,000 in an equity line of credit by forging Maria’s signature. Maria is left in dire straits since she has few avenues to obtain gainful employment. However, the neighborhood is sympathetic to her plight and Eduardo a successful entrepreneur offers to buy the house for \$305,000 and lease it back to Maria at a sustainable rent so that she will be able to remain in the area and the children may continue to attend their respective schools. Maria tells A she and Julio are no longer willing to sell, returning the \$30,000 deposit.

A has bought a warehouse from Warren Warren (W) with \$1.5M of the royalty money with the remainder coming from a \$500,000 loan from Some Trust Bank. The \$1.5M was directly transferred to W by Random House. Prior to the sale, W retained Valery Valuer to value the property. She values the property at \$2.2M using comparative rents in the area. She does not inspect the property nor does she have the warehouse

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inspected for soundness. W showed A the valuation. She said: “great, let’s do it as they say in Nike land”. After the purchase, warehouse renters sue A for a breach in the lease that requires premises to comply with standards that include a roof that is free from structural defects. The renters had used the space without complaint for 5 years during which time the roof was leaking. A offers to repair the roof but renters, through their attorney, contend that this does not place them back in their “rightful position.” To avoid the headaches of complaining tenants, A puts the warehouse onto the market. Her highest offer is \$900,00, the property market for warehouses in the area having dropped markedly in the year that has passed since the purchase.

A instructed Random House to send the remainder \$500,000 and future royalty payments on the book to A and B’s joint account held at Some Trust Bank. A and B used the joint account for general receipts and payments. Deposits were from several sources, namely, salaries, investment income, and royalties. A and B discharged the mortgage of \$700,000 on their Buckhead home held by Doctors Credit Union. They bought an historic home in Ostuni Apulia in Italy for \$200,000. At the end of these transactions they had a balance of \$25,000 in their joint account with Some Trust Bank.

A and B had long planned to have a biological child. To effect this, they sought a surrogacy arrangement whereby through the agency of a broker a surrogate could be hired to carry to term an implanted embryo developed from A’s egg and B’s brother’s sperm and thence to adopt the child. Through broker Bruce, Sandra Surrogate (S) was selected. She entered a contract with A and B. The contract required S to refrain from drugs and alcohol during the pregnancy and to eat a prescribed healthy diet. S fails to comply, endangering the fetus.

1. A and B seek your advice on their liability and recourse in the above circumstances. They express concern about possible actions that may be initiated by EU and the federal government. Random House has received a demand to remit revenue derived from sales of the book to EU relying on B’s breach of contract.
2. If A and B were fired by EU they could not afford to pay creditors as their debts become due. What steps would a trustee in bankruptcy take? What are the implications for A and B and their creditors both secured and unsecured? What priorities would the creditors enjoy? (You are not expected to have a knowledge of the law of bankruptcy beyond knowing that the trustee in bankruptcy assumes the powers in law to administer the debtor bankrupt’s estate for the benefit of the creditors pursuing actions in law and equity and defending claims that could diminish the estate.)

**QUESTION 2**

**A.**

Archie contracts with Babylon Construction for the construction of two townhomes in a fast-developing area of the city of Newington. The contract stipulated that when certain milestones in the construction were reached Archie would pay Babylon stipulated amounts set forth in the contract. Archie demanded certain variations in the construction as progress was made. Babylon refused to make changes unless Archie pay money beyond the adjustment allowed in the contract. Archie insisted that such changes were contemplated in the contract and he should not pay. Archie repudiated the contract and Babylon accepted that repudiation. At the time of the repudiation and its acceptance, Babylon had completed foundations, major plumbing, retaining walls, and some preliminary roofing. Archie had paid Babylon \$500,000 for the stages completed. Babylon had done work beyond that falling into the stages under the contract that Archie agreed he was responsible for under the terms of the contract. That amounted to \$100,000. Extra work had been completed by Babylon at the time of the repudiation and acceptance, for example, driveways and landscaping, for which the contract did not call for payment at the time of repudiation. That had not accrued as payable under the contract at the time of repudiation.

Babylon says it had expended \$500,000 in materials and labor within that last category. The totality of the payments if the contract had been completed was set at \$800,000 with an escalator of 10%.

Advise Babylon of what it may claim in the circumstances.

**B.**

Stanislaw Sadurski (S) an inventor and industrialist entered a contract on July 1, 2019, with Elon Musk for the design and construction of an electric self-driving large truck to be used for haulage of freight on America's interstate highways. The contract stipulates that S deliver to Musk a functioning prototype tested on the road by the time of the Detroit Motor Show in 2024. When this condition is satisfied S will be entitled to a full reimbursement of all documented development expenses, a bonus of \$10M and a 10% stake in the newly formed Tesla Truck division of the company. S invests over \$15M over three years in the project.

Just as the truck is ready for road testing the President of the United States issues an executive order banning the licensing of electric self-driving trucks from America's interstate system. The President states as a reason that in light of the major economic recession gripping the nation and the attendant high unemployment rate such "job killing" technologies are to be banned.

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Musk and other auto manufacturers ask for a declaration of right and a preliminary injunction in the Federal District Court, Northern District of California, seeking to declare that the order is invalid as in breach of federal legislation regulating federal highway use and the due process clause of the 14<sup>th</sup> Amendment. The court accepts that the plaintiffs (the movants) are likely to prevail on the merits sufficient to grant a preliminary injunction preventing the implementation of the executive order. Claiming that the injunction cannot be enforced against him in his exercise of powers in national security the President ignores the injunction. He says in a tweet that “a liberal judge in California can’t destroy our economy”. He is instructing all federal officials to refuse to issue licenses for the operation of electric driverless trucks and to withhold present and future highway construction funds from states that permit the trucks to operate.

S is insisting payment for all his investment if he cannot test the truck and present it at the Detroit Motor Show.

Advise Musk in these circumstances.