

**Final Exam – Remedies Spring Semester 2014
April 24, 2014, 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. You may refer to your materials, i.e., **your** books, notes and outlines. You may not refer to commercial outlines, other outlines, your hard drive, or the internet. **You may access the electronic version of the Remedies casebook posted on Blackboard under “Course Documents”. You will have to take the exam “unblocked”. 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 1-2.**

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.”

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

HAND IN ALL YOUR PAPERS.

GOOD LUCK!

QUESTION 1

1. Emory University has decided to enter the ranks of Division 1 NCAA. It joins the SEC. The season of 2015/2016 is its first year. Wanting to make a splash, Emory recruits the recently retired Alabama University football coach Gene Fallings. Fallings signed a five-year contract, with a right of renewal if the team wins half its games in each season. The recruitment of Fallings brings great fan support and large donors have promised to fund a new stadium. Student applications have increased by a third and already the University has moved up in the rankings. Emory has been able to increase tuition and still improve the objective quality of its student body.

Fallings, attending a conference of football coaches is approached by the administration of Vanderbilt University. Vanderbilt makes Fallings a very attractive offer. His base salary with added performance bonuses at Emory University is \$ 1M per annum with a 10% increase on signing a further 5-year contract. Vanderbilt is offering Fallings a salary of \$1.7M per annum with added performance bonuses.

The President of Emory hears of Vanderbilt's attempt to recruit Fallings. He comes to you for urgent advice in the circumstance. What causes of action and what remedies are available to Emory?

What do you look for under the contract for services between Fallings and Emory? If you were advising Emory University when the contract was being negotiated what terms would you have recommended that would advantage Emory in the case of breach.

2. Emory University as part of the negotiations agreed to buy Falling's factory pig farm in Alabama. The farm is a very large operation that produces high revenues. Recently retirees who have moved to a development "The Golf Trail" have been complaining, as has the developer Buster Bucks, has more land he was hoping to develop. The effluent discharge is large in volume and stored in open dams. Flies and an overpowering stench accompany life in "The Golf Trail". Advise.

QUESTION 2

Albert has received a newly minted MBA from Emory. He is keen to put his business training to good and lucrative use. As a boy he had visited and loved the environs of the Okefenokee Swamp in southern Georgia—one of the State’s “Seven Natural Wonders”. He sees potential in creating a high-level “Eco lodge” in the swamp. Through friend he met Bernie who owned large acreage in the swamp. Together over a number of months they hatch a plan to develop an “Eco-lodge” on the land. Under their joint venture Albert agreed to buy a half interest in the land for \$500,000 payable over two years in which it is contemplated that the lodge will be built and the preliminary work done in advertising it as a fabulous retreat. The lodge is estimated to cost \$5,000,000 to build and the partners agree to each pay half.

They approach Lion Bank in Atlanta who agrees to finance the development to the extent of \$3,000,000. This will be secured over the land and the buildings. Separately Albert borrows \$200,000, which he intends to combine with \$300,000 of his own money in order to acquire the half interest in the land.

Lion Bank and Albert search the title and determine that it is vested in Bernie. Lion Bank also required Albert to retain a valuer/appraiser to ensure the value of the land. Valerie was employed but after talking to Bernie decided not to visit the site and do due diligence. She supplied a valuation of \$1,000,000. She would, on a visit have discovered that the property had buried on it old rusting and leaking logging equipment that would require a large expenditure to make good for the purposes of a Lodge. Documents are drawn but prior to their execution Bernie transferred title to his wife, Delores. Albert began to pay Bernie by installment for the purchase. Contractor was retained to build the lodge. He began immediately. He had specially designed solar panels fabricated. He purchased and brought to the property rare and valuable tropical timber to be used in paneling. He had found it at a favorable price on the market. The timber was used by Bernie to construct a pontoon boat for his hunting of alligators.

Over the first six months Albert paid Bernie \$300,000, half of which was his own money and the rest he drew from Lion Bank. Bernie requested \$100,000 under the loan agreement in order to pay contractor and to retain advertising agencies to start promoting the Lodge. He forges receipts to present to the bank. He places the money in his account with Sun Trust where he had a balance of \$50,000 from his illegal alligator skin sales. With the money in hand he discharges a \$200,000 mortgage on his Atlanta condo that he gifts to Delores. In Las Vegas he loses \$100,000 at the crap tables. He also bought a Bentley for son Percival for \$100,000. This was a shrewd investment; unprecedented demand from China has doubled value of Bentleys.

Contractor had demanded payment but received none. Contractor had installed extensive footing for the lodge at a cost to him of \$40,000. He had built half of the footings on Woodward’s land. Bernie had given Contractor an old survey. Woodward has a hunting lodge on the land and he visits once a year in the fall for fishing and hunting. He did not know of the plans to build the lodge or that footings had been laid.

Bernie after his Vegas venture keeps moving west. He cannot be found.
Advise the parties of their remedies.