

**Final Exam –Remedies Spring Semester 2018
May 3, 2018, 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 1-3.**

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

Aliyah, Brandon, Carlos, and Delores had recently graduated together from Grey University Medical School. They were due to take up residencies but before doing so they resolved to take a trip they had dreamt about throughout their medical school days. They determined to visit Patagonia. Aliyah had seen an advertisement for Pat's Travel Service that boasted an expertise in adventure travel to Patagonia. The trip they decided on with Juan, Pat's employee, featured an attractive combination of adventure yet luxury. Juan referred to it as glamping; it was dubbed the "Charles Darwin Suite". The travel was for first class fares to and from Patagonia and internal travel to the many spectacular places that travel there had to offer. Each of the friends bought the "Charles Darwin" package.

The flights were provided by Southern Cross Air (SCA). Aliyah and Brandon boarded the flight in Atlanta. Pat's had misbooked Carlos and Delores and they were not allocated seats. They were rescheduled for a flight the next day. Aliyah and Brandon were high above the Andes enjoying the first-class treatment when the airplane began to plummet in a terrifying spiral. In a latter reconstruction of the events, pieced together through the retrieved black boxes, the captain had left the cockpit leaving the copilot alone in the cockpit. The copilot who had been treated for depression locked the door, took the controls, overrode the autopilot, and steered the plane into a death spiral. Over the frenzied screams of the passengers, the pilot could be heard banging and shouting on the cockpit door. All on board were killed when the plane crashed into a mountainside. ASC admits liability for its negligence in failing to follow directives put in place after the Germanwings crash in the Alps in 2015.

Aliyah had a husband and two children. The husband had performed house tasks and childcare throughout the time that Aliyah was in medical school. They had agreed that once Aliyah had finished her residency that she would support the husband through law school. The children had just commenced primary school at a local Montessori School.

Brandon was not married. He supported his elderly parents and his sister who had special needs because of severe autism. They are left without support except for modest social security and government social services. Brandon had a life insurance policy that paid \$50,000 on his death.

Carlos and Delores, unaware of the tragic events, caught the flight the next day. They were assigned coach seats and subjected to flight of over 48 hours landing and changing flights in Miami, Mexico City, Lima, and finally in Santiago, from where they were pushed onto a crowded bus for a 20-hour trip to Patagonia. They arrived in a remote

village of Villa O'Higgins and were housed in rough cement block lodgings without bathrooms and running water. They were fed intermittently and poorly. They caught a bus out but were then detained at the close by Argentinian border for 12 hours until travel documents could be sorted out. Sick and emotionally distraught their dream vacation had become a nightmare. They eventually arrived back in Atlanta buying first class air tickets to fly out of Buenos Aires, via Miami to Atlanta. Each ticket cost \$9,000. They called Pat's. They received a fulsome apology and an offer to refund the money they had paid for the "Charles Darwin" package. Pat's attorney has pointed out that a term in the contract restricts damages recovery to the price of package and stipulates that "the traveler" cannot obtain consequential damages.

To make matters worse, Carlos discovers, in reviewing the video footage recorded on his home Nest cameras, that Eric the dog sitter employed by Wag-a-lot had abused his beloved beagle Bazza. Carlos has registered Bazza as a certified companion animal and takes him wherever he goes. (Except to Patagonia!) After the abuse, Bazza loses his zest for life, frets and dies. Carlos is bereft. Not long before departing on the ill-fated trip Carlos had entered a contract with Paragon Movies to offer Bazza's services for a series of planned movies. The terms of the contract stipulated that if the movies that featured Bazza netted a profit of \$1M each Carlos would receive \$50,000 for each movie. The contract prevented Bazza from appearing in movies promoted and produced by others.

Exhausted and confused Delores left her valuable medical equipment and a laptop computer in the Miami airport on her return trip. The airport authority, whose employee found the items, requires a fee for storage and postage. Delores in order to make some money to defray the costs of the trip writes to patients who had attended a clinic in which she had been a student intern, advising them on ways in which they could enhance their health profiles through tailored diet and exercise regimens. She bills each of the patients a fee of \$100 for the advice. She has expended much time and effort in generating the advice and can show it would be beneficial if adopted. On her return Delores is told the news of Aliyah and Brandon's deaths. She also discovers that she is pregnant having had sexual relations with Brandon shortly before their departure for Patagonia. She had taken what she thought was a contraceptive but because of an oversight by the Grey University pharmacy had been ingesting a mild sedative that had no conceptive effect. She becomes increasingly depressed, feeling that life holds no meaning and purpose, is irritable, and bitter about life. She finds it impossible to take up her residence program in ophthalmology at Johns Hopkins. Delores incurs hospital and medical expenses amounting to \$10,000 that are covered by an insurance policy she carried as part of her engagement with Grey University.

Advise the aggrieved parties of their remedies in these circumstances.

QUESTION 2

You have been retained by Academic Inc. (Academic) to advise the company on two problems:

- A. Academic has developed a new artificial intelligence (AI) software program that promises to revolutionize online instruction. It provides a virtual reality classroom where students and teachers can seamlessly interact. The implementation of the system will require teams of highly trained engineers and salespersons. Academic has registered a patent relating to the software and system but much is tied up in knowhow that has been garnered over more than a decade of development and testing. Academic operates in a highly competitive market. Management wants advice on how it can prevent this confidential knowhow from being leaked to competitors by, for example, their inveigling way Academic's top engineers and salespersons. Management is concerned in addition that other means may also be employed by for example competitors secretly paying Academic's employees for information. Suggest an outline for contracts of employment that may be effective in achieving Academic's ends. What provisions may enhance the availability of effective remedies?
- B. In the provision of educational services, a reputation for the highest standards of ethical conduct is paramount. Academic in particular receives 25% of its funding from federal educational agencies. You are told by the CEO of Academic that she has uncovered reliable information that some senior management have engaged in sexual relationships with other employees and with persons in universities and other educational institutions with whom Academic has contracted for provision of services. The CEO has information that certain of the persons have complained about the nature of the relationships and asks you to devise a way to avoid destructive litigation with its attendant scandalous publicity. She tells you she is willing to make generous financial arrangements to "settle" claims provided that the matters can remain confidential. Give the CEO a realistic assessment of the efficacy of legal stratagems and remedies that may be deployed in achieving the CEO's ends. Explain the legal, equitable, and public policy matters that bear upon your advice.