

**Question 1**  
(One Hour)

Ms. Darling is an 80 year old widow who lives on a small pension and rents a cottage in Anywhere, USA. Her cottage has a fenced-in backyard. The back fence is the property line between her home and an Irish Pub. The Pub has been in the neighborhood for twenty years and became increasingly busy and raucous since a law school opened in town two years ago.

Ms. Darling has been a strong vocal critic of the Pub over the past two years. She has complained about the noise and drunken patrons to the police and Pub owners on numerous occasions to no avail. So, in the past three months, Ms. Darling has taken matters into her own hands. She frequently stands in her yard and yells at customers coming and going that the “food sucks”, that they water down their drinks, and that the Pub is a “hot-bed” of prostitution. She has video-taped drunken patrons leaving the Pub from her backyard while berating them. She harasses the staff accusing them of ruining the neighborhood and serving the disgusting food.

Ms. Darling also started going to her neighbors with a petition asking for signatures to have the Pub shut-down by the local authorities. In addition to her complaints about the noise and prostitution activities she claims is occurring at the Pub, she tells the neighbors that the local health inspector has been to the property and found numerous violations (which was untrue). She has collected 100 signatures.

The Pub noticed a decrease in sales over the three month period that Ms. Darling conducted this campaign. In addition, the atmosphere hasn't been as cheerful. Fearing Ms. Darling will continue to ruin their business, the Pub owners went to court to obtain a temporary restraining order (TRO) and filed a complaint alleging that Ms. Darling is unlawfully interfering with the operation of their business and defaming them. The Pub sought a permanent injunction.

The owners notified Ms. Darling of the TRO court date and she attended the hearing. Affidavits were submitted. The court issued a TRO ordering Ms. Darling to desist from yelling at customers and staff. The court ordered her to lodge all of her complaints with the owners in writing. The court ordered Ms. Darling to stop telling people that the “food sucks”, that the Pub is a “hot-bed of prostitution” and that the health department issued violations to the Pub. No expiration date was noted. The court set a trial date two months later. After three weeks passed, Ms. Darling resumed her campaign. She continued to tell her neighbors about the health department violations while circulating her petition and to yell at the customers that the “food sucks” and the Pub is a “hot-bed of prostitution”.

At the trial, the above facts were presented to the court through witness testimony and documentary evidence. Please discuss the status of the TRO at the time of trial, all of the remedies each party seeks, and how the court may resolve them.

**Question 2**  
(One Hour)

Chopper Inc. manufactures helicopters. Wiley Co. is the only manufacturer of clutches for helicopters. All aircraft manufacturers in the United States, including Chopper Inc., must obtain a “type certificate” from the Federal Aviation Administration (FAA). Every aircraft made pursuant to the certificate must be produced exactly in accordance with that certificate. Any proposed changes must first be submitted to and approved by the FAA. The components of the clutch must be ground to precise tolerances, measured in thousandths of an inch, to avoid distortions that lead to cracking and failure. Pursuant to the type certificate issued to Chopper Inc. by the FAA for their aircraft, the parts of the clutches were required to be ground at a particular level of hardness to assure their metallurgical integrity. The *required* level of hardness was “50/55 Rockwell” (50/55).

Over a 5 year period, Chopper Inc. purchased 3,707 clutches from Wiley Co.. Each was ground to the required 50/55 level of hardness. There were only three incidents of cracking or failure of these clutches, a rate of 0.03 percent. In January 2013, Wiley Co. changed its grinding process to a higher, “61/63 Rockwell” (61/63) level of hardness. Wiley Co. did not notify Chopper Inc. or the FAA of this change. After such change was made in the grinding process, Wiley Co. nonetheless continued to provide written certificates to Chopper Inc. with each delivery of clutches that the clutches had been manufactured in conformance with Chopper Inc.’s written specifications (which specifications prohibited unapproved changes in Wiley Co.’s manufacturing process). Six months later, Wiley Co. resumed grinding the clutches at the lower 50/55 hardness.

Between August and November 30, 2013, Chopper Inc. sent several letters to Wiley Co. reporting that 11 clutch assemblies with cracked clutches had been returned to Chopper Inc. from its operator customers. On November 30, during a conference call between Chopper Inc. and Wiley Co. officials, Wiley Co. disclosed, for the first time, that it had used the 61/63 hardness level in its manufacturing process for a six month period: from January 2013 – June 2013.

Wiley Co. refused to provide the serial numbers for the clutches that they ground to the higher hardness level. Chopper Inc. spent substantial man-power to eventually trace these clutches to the clutches that had been sold to Chopper Inc. during the period that Wiley Co. was grinding the clutches to the higher 61/63 level of hardness.

The clutches that had been ground at the 61/63 level of hardness and sold to Chopper Inc. experienced a failure rate of 9.86 percent. Substantial evidence was presented at trial demonstrating that the higher failure rate of Wiley Co.’s clutches manufactured was due to the higher hardness level to which they had been ground. Fortunately, these clutch failures did not result in any helicopter accident and there were no incidents of injury or property damage that

were caused by any clutch defect or failure, nor did any of the defective clutches cause any damage to other parts of the helicopters in which they had been installed.

A former clutch inspector for Wiley Co. testified that the company management decided to change the hardness because they could grind it faster and make more clutches in less time. He was ordered to continue to certify the clutches at the lower 50/55 level. Management changed back to the required 50/55 level after it had received complaints from another helicopter manufacturer.

Chopper Inc. was required by the FAA to recall and replace all of the faulty clutch assemblies (i.e., those manufactured with Wiley Co.'s clutches ground to the higher hardness level of 61/63 rather than the 50/55 level required by the Chopper Inc. specifications).

After Chopper Inc. was finally able to identify the 900 clutch assemblies that had to be replaced, it submitted the necessary orders to Wiley Co., together with a request that the issue as to which party would bear the cost of such replacement parts be left for later determination. Wiley Co., however, disputed any liability, and refused to ship any new clutches except on a COD or other assured payment basis.

This led to a total claimed expense to Chopper Inc. (1) \$1M in replacement parts, and (2) \$500K for the employee time spent investigating the cause of the malfunctioning parts and the identification and replacement of parts on helicopters that had already been sold to customers. In addition the stress of knowing faulty clutches were installed in helicopters caused the CEO to suffer extreme stress. The CEO was worried that a helicopter would crash and he could be held liable. He was also concerned that the FAA would impose disciplinary action against Chopper Inc. for the non-conforming clutches. A medical doctor determined that the CEO suffered from anxiety and an ulcer due to the stress. The doctor treated the CEO with medications and a special diet.

Having no alternative, Chopper Inc. went forward, incurred the costs described above, purchased the new clutches, and effected the necessary replacements. It then filed a law suit making several allegations in tort and contract. A trial was held and the above facts were presented through witness testimony and documentary evidence. The jury found in Chopper Inc.'s favor.

What are the damage/remedy issues raised by the facts above?