

Empire College School of Law
Professor Tinney
Remedies – Fall 2009 Mid-term
Tuesday, December 15, 2009

QUESTION 1 – 1 HOUR

Sen Yer, a 92 year old man with an eighth grade education, needs to sell his only asset, a 100 acre ranch, to get money to live on. He tells a realtor he wants \$100,000, saying \$1,000 an acre is about the right price, which is true. He contracts in writing to sell his property to Sharp. Sharp has good information that the ranch has potential for a wind machine farm, which could make it worth a lot more money. Yer also owns a two acre parcel next door with his shack on it, worth \$75,000. Yer believes they are separate parcels, but he is unaware that years ago the parcels had been merged into one and are now one parcel. The written contract contains an agreement for the ranch, which contains both parcels. Sharp contracts to purchase the ranch, which he believes to contain both parcels, and he believes it's a very attractive price. Yer believes that he is selling only the land next door to him, not containing his home. On the day set for close of escrow and change of possession, Sharp, having deposited his money, believes he is entitled to possession and immediately installs a trial wind machine on the 100 acre parcel, at a cost of \$50,000, and if the trial is successful, it could make the ranch much more valuable. However, unknown to him, escrow hasn't closed. Before the close of escrow Yer finds out that the home piece was included and that the ranch has potential for a wind farm and refuses to complete the sale.

What are the equitable rights and remedies of the parties?

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QUESTION 2 – 1 HOUR

Goo Fee is the successor trustee of his uncle's trust. The uncle left a million dollars in trust to be distributed among some nephews and cousins, and if they be deceased, to their issue by right of representation. There are four, including Goo Fee, who gets \$100,000. Goo Fee is given discretion to sprinkle the remaining distribution among the other relatives in amounts he sees fit. By mistake, he distributes \$100,000 each to Dee and Dum, two of the uncle's stepchildren, believing they are entitled to the inheritance. Dee correctly believes he is not entitled to the money but can use it, so he takes it and commingles it with \$250,000 of his own and starts a business producing children's dolls. This prospers, and one year later he sells half the business to Tee, who knows nothing about the inconsistency, for \$500,000 and invests that money in a stock fund. Some of the stocks go sharply up and some go down, and the total fund is now worth about the same.

Dum honestly believes she is entitled to the money and uses most of it to care for her sick, dying mother, because she didn't have funds of her own, and the money saves her from severe financial problems. She invests the rest, \$25,000 into Palin Books, Inc. and it is now worth \$50,000.

Huey, Dewey and Louie, the correct beneficiaries of the trust, learn of Fee's mistake. Fee gave all of his own personal money, some of which he inherited from the same uncle, \$100,000, to the Save the Sand Fleas Organization, and Fee dies broke.

What are the equitable rights and remedies of the parties?