

### Question One

Plaintiffs Ty and Ota Prius (P) owned a farm containing coal deposits, and in November 2005, leased the premises to the defendant Definitely Green Energy Coal and Mining Company (D) for a period of five years for coal mining purposes. A strip-mining operation was contemplated in which the coal would be taken from pits on the surface of the ground, instead of from underground mine shafts. In addition to the usual covenants found in a coal mining lease, defendant specifically agreed to perform certain restorative and remedial work at the end of the lease period. Among the details of the work to be done would be the moving of thousands of cubic yards of dirt, at a cost estimated by expert witnesses of about \$29,000.

All covenants and agreements in the lease contract had been fully carried out by both parties, except the remedial work mentioned above; defendant concedes that this work had not been done. Plaintiffs bring suit in the state of California seeking all appropriate damages.

Plaintiffs will introduce expert testimony as to the amount and nature of the work to be done, and its estimated cost. Defendant will introduce expert testimony as to the diminution in value of plaintiff's farm resulting from the failure of defendant to render performance as agreed in the contract—that is, the difference between the present value of the farm and what its value would have been if defendant had done what it agreed to do.

At the conclusion of the trial, it is expected the court will instruct the jury that the amount of damages is for jury determination. On the measure of damages, the court will instruct the jury that it might consider the cost of performance of the work defendant agreed to do, together with all of the evidence offered on behalf of either party.

The testimony will be uncontroverted that if the work called for under the contract is performed; the property value of plaintiffs' farm would increase only about \$300.

What are the damages/remedies issues raised by the facts above? Discuss.

### **Question Two**

The County of Fergie, State of Confusion, has a long and infamous history of official and unofficial discrimination against Norwegian Americans. The incumbent justice of the peace in Fergie died while in office necessitating a special election. It is alleged by a Norwegian American special-interest group, "Vikings for Justice" that the special election had been marred by ethnic intimidation and egregious ethnic discrimination at the polling places. The "Vikings for Justice" further alleged that the County officials had done nothing to prevent a hate group known as "Scandinavians Never!" from intimidating Norwegian American voters and keeping them from the polls. Testimony during a request for a preliminary injunction shows that because there are more non-Norwegian than Norwegian voters and because Norwegians and non-Norwegians vote for different candidates in the election, election results would not have changed even if there had been no intimidation or harassment. A federal district court determines that the county violated the 14th and 15th amendment rights of Norwegian American voters in the county.

Should Norwegian American voters be entitled to an injunction ordering the holding of a new election? What other relief, equitable or legal, if any, should they be entitled?

Assume the same facts as above except that instead of private intimidation, the allegation is that the State of Confusion has passed a statute that requires a government issued identification card be shown to vote. Norwegian Americans claim that the identification card denies their access to the polls. What relief, equitable or legal, if any should they be entitled?

### Question Three

The Harvest Fair always takes place on the first weekend of October in Sonoma County in the State of California. It is preceded by the “**World of Wine Festival**” which includes a hot air balloon launch, grape stomping, and wine tasting and judging on a grand scale. Private individuals also hold their own parties throughout the county. Some of the parties are events designed to raise money for charitable endeavors. Harvest Moon is the most popular party night with events attended by celebrities from throughout the United States.

For many years, a private group has held the **World of Wine Celebrity Soiree** at a private residence in the McDonald Avenue neighborhood in Santa Rosa. The soiree routinely attracts the rich and famous. The party always has a theme and is a lavish affair. Tickets for the soiree cost \$500 each and proceeds go to a local charity.

Doc Feline lives next door to the soiree location and is not happy about the annual event. On many occasions Doc has called the police complaining about noise from the soiree. Doc has filed suit claiming that the soiree interrupts the “peace and quiet and enjoyment” of the neighborhood. He claims in his suit that the soiree creates an “earsplitting and deafening noise.” In addition, it attracts paparazzi and onlookers hoping to get a glimpse or photograph of the celebrities and famous folks at the soiree. The suit also complains that the party travels across the backyard of the next door residence where a band routinely plays and ultimately spills over to his yard and sandbox. Doc’s suit claims that onlookers and partygoers routinely trample and litter his yard.

The organizers of the soiree would answer that, particularly on Harvest Moon, Sonoma County is replete with individuals hosting parties and enjoying themselves. As a result, the organizers contend that Doc should be more accommodating to their event. In the view of the organizers, the case is essentially a dispute between neighbors and is not a “federal case”.

It is now April 1 and Harvest Moon is only six months away. Doc has filed his legal action in State Court and plans to seek a preliminary injunction against the soiree.

Assume that you are the judge assigned to hear the case. Is this case appropriate for one granting preliminary injunctive relief? Does Doc meet the requirements for temporary relief? Discuss your answer.

Empire College School of Law  
Professor Hardcastle  
Remedies – Fall 2014 Midterm  
Tuesday, December 11, 2014

Student ID# \_\_\_\_\_

Assume that you are the judge assigned to hear this case. Doc has made an ex parte request for a TRO. Is this an appropriate case for granting ex parte relief? What argument could be made by Doc in favor of ex parte relief? How would you rule? Discuss your answer.

As the judge in the case, assume that you have decided to grant an injunction against the World of Wines Celebrity Soiree. To whom should that injunction apply? Would you extend the injunction to anyone other than the organizers? How should the order be framed? Should you enter an order precluding the organizers from holding the soiree at all or would you issue a more limited order? Would you require Doc to post a bond? If so, how large a bond would you require and why? Discuss your answer.

Assume that the judge has granted an injunction against the World of Wines Celebrity Soiree and that you are now the plaintiff's attorney. How would you go about providing legally binding notice to the parties? Would you provide notice to anyone else? Discuss your answer.