SAMPLE ANSWER TO QUESTION NO. 1:

Equity will enjoin a trespass and a nuisance; it seems that West's plant is both as to Rose.

West was there first, but in the majority of states "coming to the nuisance" is not a defense, so West has no defense to an action by Rose because of this. In a few states it is a defense, and in these states West can keep operating without liability.

Rose has filed an action in the State of Flux, and she has obtained a preliminary injunction. If West disobeys it, they are liable to be held in contempt, with punishments of fines, sequestration of property, and possible jail for its officers and directors. The problem is that injunctive orders have no validity outside the jurisdiction that issued them, so Rose can't take her order to Woe and obtain a contempt citation there, nor would a Flux contempt citation or order be honored outside of Flux. Further, West seems to have no assets or presence in Flux, so they cannot be punished there.

One who knowingly assists a party to disobey an injunctive order is also guilty of contempt. Therefore Sharp, though not an employee of West, is acting as an agent and assisting them to violate the injunction, so he could be found in contempt. However, this will put little or no pressure on West to enforce compliance with the order.

Rose can sue for damages done to her already and if the nuisance will continue, future damages.

Rose should probably take her action to Woe and sue West there for trespass and nuisance as well as damages. However, the County of Woe has rezoned the property. If the new zoning is broad enough to allow to them continue without abatement, this is generally within the police power of a local jurisdiction, so unless vested rights have adhered to Rose, she would have no recourse. If, however, the zoning is not so broad, the law might allow the use to continue, but it might make West liable for damages. Or the court may rule that the use may continue, but at the lower use previously practiced, or with smoke abatement or some other abatement.

One who unreasonably delays bringing an equitable action to the detriment of the other party may be guilty of laches for the unreasonable delay and denied equitable relief. Here Rose waited two years to bring her action, and it was eight months after West doubled their plant capacity. This is a long delay, but if the delay did not harm West laches will not apply. If Rose knew they were going to double their capacity and did nothing, laches may bar her from equitable relief on the increased use, but not legal relief. Even if she didn't know, waiting one and one third years before West expanded their plant may bar Rose from enjoining the increased use. Since Rose seems to favor West's type of operation, perhaps the most practical injunctive relief she could hope for

is limited injunctive relief such as operating with smoke inhibitors. She probably will not be able to obtain an injunction when the wind blows from the West, as this would destroy the plant's profitability.

Since Rose is not a citizen or property owner in Woe, she probably cannot successfully claim that the rezoning there was so severe it caused a constructive condemnation of her property and sue for the full value. 5

If Rose's preliminary injunction in Woe is somehow made to stand and West is able to get it overturned later, and if it is decided that the injunction should not have issued and they are really harmed thereby, they are entitled to damages they suffered because of the injunction. However, in most jurisdictions they would be limited to $25,000, the amount of the bond. 5

West could and probably should file a belated answer in Flux and seek to overturn the preliminary injunction based on the hardship to it and the rezoning in Woe, and they might be successful. They should probably not simply let the injunctive order sit without dealing with it. 10

10 points at discretion of instructor.

SAMPLE ANSWER TO QUESTION NO. 2:

When there is a mutual mistake in a substantial term in a contract, there may be no meeting of the minds, and the contract may be rescinded at the request of either party. A unilateral mistake would generally not result in rescission, if the other party did not share in the mistake and is not guilty of fraud, misrepresentation, concealment, nondisclosure or sharp practice. Even a unilateral misstate might be grounds for rescission if the mistaken party is not negligent, acts promptly, and the parties can be restored to their original positions. Modernly, some jurisdictions are more inclined to allow rescission for a unilateral mistake if enforcement of the contract would cause undue hardship to the party making the mistake. Here the mistake is entirely Ark's, as he was at least negligent, and the Es are not guilty of any wrongdoing. Even though Ark acts promptly and the parties can be restored to their original positions, rescission is not justified. Ark will not really suffer a hardship because of the contract. Rather, he will not receive as great a return on his property. He will probably be unsuccessful in getting seeking rescission.

Ark may seek to have the contract reformed to state that the other lot is the one being sold. When by clear and convincing evidence it can be shown that the parties reached an oral agreement but an error occurred reducing it to writing, the contract can be reformed to show the true agreement of the parties. This was not the case here, as Ark simply made an error(if he is truthful about the wrong lot, which is somewhat doubtful). Specific performance of a contract will be granted when the remedy at law is inadequate. A buyer of real property may always obtain specific performance, as land is unique. The contract also provides for building a home. A court will not specifically enforce a personal service contract, because of the problems of involuntary servitude and supervising performance. But building contracts can be completed by agents and subordinates, so specific performance of this contract may be granted the Es.

Also, whether to grant specific performance sometimes depends on whether one party is insolvent and cannot respond in damages. In some states this is a factor by itself, by in most it is a factor that when coupled with other factors, can call for specific performance. Here though Ark is having financial difficulties, it does not seem he is insolvent and unable to respond in damages, so this doctrine wouldn't apply.

The main problem here for the Es is that Ark must also design the home, and his performance is unique. Theoretically, he could perform through subordinates, but this might be difficult to accomplish, and the Es may not even want a subordinate to design the home. If a court decides that this is a personal service contract, the whole contract would seem to fail, because without a design, there would be nothing to build. The Es would be left to their remedy at law, which would seem to be $375,000, plus any

amounts they have expended. Or, they may obtain damages and have another architect design the home, and still ask the court to have Ark convey the land and perhaps build the structure. If the court however decides that Ark could design the home through subordinates and that this is not a personal service contract, the Es may obtain specific performance.

Another problem is that the Es breached the contract by not obtaining their financing on time. A party in substantial breach may generally not enforce the contract, and if a party fails to perform a condition precedent, he will not be able to enforce the contract at all, either in law or equity. In equity, time is not of the essence unless specifically stated in the contract, and the facts are silent here. Even if it is so stated, this seems to be a minor breach, and it is doubtful that a court would grant no relief for being twenty days late, unless Ark could show the delay had unduly prejudiced him. If a court were strictly to follow the conditions of the contract and rule that the Es breached it or failed to complete a condition precedent, or that they failed to comply with a time of the essence clause, the court might grant them no relief. However, the most probable result is that this would be a minor breach, and in such a situation the Es would be allowed to enforce the contract, and Ark would most likely limited to recovering damages for increased costs caused by the delay, if any.

What of the liquidated damages clause? A liquidated damages clause can be enforced if the damages are difficult to ascertain, and the liquidated sum is a reasonable estimate of the actual damage. Otherwise, it would be unenforceable as a penalty. The $30,000 seems to bear no relation to any estimate of real damages, and it seems to be excessive. Therefore, this clause will probably be stricken, and Ark cannot keep the $30,000 for the Es breach, whether the Es can obtain relief or not.

Courts will sometimes refuse to grant specific performance if the consideration is so inadequate that it "shocks the conscience of the court." Here there is a great disparity between the $600,000 price and the apparent $975,000 value of the property with the home, so this might be a defense to Ark. In some states this is enough to deny specific performance, but in most it must be coupled with some other factor to refuse specific performance, such as fraud, sharp practice, extreme hardship, etc. Here the Es are guilty of no wrongdoing, and this is an arm's length transaction between parties of equal bargaining, so the court will probably not refuse to grant specific performance. Further, though Ark needs money, the contract would not work a severe hardship on him. However, even if the court does refuse to grant specific performance on this grounds, the Es may still have their remedy at law, so this defense would be of little help to Ark.

If the Es contract is enforceable, Cher cannot obtain specific performance, because she has no contract. If the Es are worried about Cher, they could record a "lis pendens" against the property and prevent title passing to her.

10 points at discretion of instructor.