

Hallinan
Remedies
Spring 1997

Question 1

Last summer, Patrick purchased several caseloads of Beanie Babies from a wholesaler, totalling 5,000 Beanie Babies in all. (For those who just arrived here from another planet, Beanie Babies are small stuffed animals that are very popular among the younger set and some adults. Their usual retail price is about five dollars each. Each year, the manufacturer adds new animals to the product line, and at the same time discontinues manufacturing a number of the existing models. The huge popularity of the critters came as a surprise to the manufacturer and to retailers and there has been, as a result, a recurring and significant inability to meet consumer demand for them. This has led in turn to the development of a second-hand market in which Beanie Babies are frequently sold at large multiples of their retail price -- as much as \$50 or \$100 each.)

At the time of Patrick's purchase, Beanie Babies had not yet become the fad-of-the-year. He paid \$10,000 for the caseload (\$2 per stuffed animal) and anticipated reselling them at the standard retail price of \$5 each. Before he had done so, however, the increasing popularity of the things began to become apparent.

In late September, Patrick entered into a deal with Bill pursuant to which Bill would try to sell 2,000 of Patrick's Beanie Babies. Under the deal Bill would sell each animal for at least \$10 and would get \$1 per sale plus one-quarter of the amount by which the sales price exceeded \$10. Patrick gave Bill possession of 2,000 Beanie Babies to sell as Patrick's agent.

During October and November, demand for Beanie Babies continued to increase. In October, Bill sold half of the animals in his possession to Charlie for \$10 each. Bill sent \$9,000 of the money he received to Patrick and kept \$1,000 as his commission. He deposited that amount

in his personal checking account. Prior to the deposit, the account had a balance of \$2,000, which Bill had received as wages from his day job.

In mid-November, Bill told Patrick that he had sold the remaining half of the animals in his possession to Max for \$10 each. Bill sent \$9,000 to Patrick (the sales price less Bill's commission). In fact, the \$9,000 came from Bill himself. Bill and Max had a deal pursuant to which Bill gave the Beanie Babies to Max and Max immediately resold them to Tim for \$30 each. Max and Bill then split the money from Tim by reimbursing Bill the \$9,000 he had sent Patrick plus his \$1,000 commission and then splitting the balance evenly between them. (Thus, Bill got \$20,000 and Max got \$10,000.) Max used his share to buy more Beanie Babies from Mary, as described below. Bill deposited his share in his personal checking account, bringing the balance \$23,000.

Throughout these transactions, Max knew the terms of the contract between Bill and Patrick. Tim did not know of the contract. He did, however, immediately sell the Beanie Babies to another purchaser (Pete) for \$40 each.

In the meantime, in October Patrick was approached by Mary who falsely claimed to be representing a charitable organization, the nonexistent Society for Preservation of Suburban Culture (SPSC). Mary asked Patrick to sell 1,000 Beanie Babies to the SPSC at cost so that the SPSC could raffle them off in a fund-raising drive. Patrick, a big believer in suburban culture, agreed and gave 1,000 of the animals to Mary in return for \$2,000. Mary held them for a month and then sold them for \$20 each to Max. Max paid for the purchase with his \$20,000 cut from the earlier sale to Tim. Max did not know how or where Mary had acquired the Beanie Babies, but he knew that Mary rarely involved herself in activities that were legally and ethically sound. On that basis Max believed that there was probably something fishy about the acquisition. Had Max asked, of course, Mary would have lied to him about the source of the Beanie Babies.

In December, the demand for Beanie Babies reached extraordinary

levels. At that time, Patrick agreed to sell his remaining 2,000 Beanie Babies directly to Charlie for \$20 each. Before Patrick could make delivery, however, Mary broke into the storeroom where they were kept and stole them. In order to fulfill his contract with Charlie, Patrick bought 2,000 Beanie Babies from another supplier at \$40 each and delivered them to Charlie.

Mary sold the stolen Beanie Babies to Max for \$50 each. Max put these acquisitions in storage with the 1,000 that he had earlier purchased from Mary. It is impossible to know which specific animals came from the stolen shipment and which came from Max's earlier purchase. In mid-December Max sold 1,000 to Claire for \$60 each. A week later he sold another 1,000 to Willie for \$70 each, and a week after that he sold the last 1,000 to Rose for \$100 each. Max used part of the money received from these sales to buy a bungalow as a gift for his mother (\$125,000) and to pay off his student loans from First Eighth Bank (\$25,000). He used the remainder (\$80,000) to open a savings account.

In January, with the holiday buying period over, the market for Beanie Babies declined somewhat and the usual going price outside retail channels was in the neighborhood of \$20 to \$30 each. In March, the price declined further as manufacturing caught up with demand. By now, the second-hand price is about the same as ordinary retail (\$5 each), although some of the discontinued models are still selling at as much as \$100 each.

Patrick has recently learned all of the forgoing facts. Mary has disappeared, leaving neither a trace nor any assets. Assume that Bill's deal with Max was a breach of his contract with Patrick and a breach of his fiduciary duties. Assume further that Patrick has sued Max, Bill, and Tim. To what relief, if any, is he entitled against each of these defendants? Why?

Question 2

Last year, Ann and her five-year old daughter Kate were involved in

an automobile accident. Specifically, the car in which they were riding was struck by a truck driven by Jack and owned by MegaCorp. Jack was acting in the course of his employment for MegaCorp at the time and he negligently failed to yield the right of way to Ann's car.

Ann's car was a 1988 full-size Buick station wagon with 90,000 miles on its odometer. At the time of the accident, the car's mileage and condition were about average for a vehicle of its age. For about a week prior to the accident, Ann had been advertising it for sale for \$2,000. There had been inquiries but no offers. Various used-car price guides list the value of the car at \$1,500 to \$2,500 "wholesale" and \$3,000 to \$4,000 retail. (The guides identify "wholesale" as the amount a dealer would pay for an average car of that description, and they identify "retail" as what a dealer would ask for an average car of that description.)

At the time of the accident, Ann was bringing home from her grandparents' house a 200-year old rocking chair that had been in the family for generations. The chair was a museumquality piece of furniture. It had been appraised for insurance purposes at \$2,000. An antique dealer had once offered \$3,000 for the chair, but the grandparents had turned him down. Ann intended to keep the chair and to pass it on to her own children or grandchildren.

When the MegaCorp truck hit Ann's car, it put a deep fold in the driver's door and knocked the chair from the roof rack to the ground. The chair was destroyed. The dent in the door does not prevent the door from being opened or closed or locked, but it's still a pretty obvious dent and it probably reduces the value of the car by \$100 or \$200. It would cost about \$1,000 to repair the damage.

More serious than the losses to the chair and car, however, is the fact that the impact of the collision threw Ann sideways and forward in the car, breaking both her arms and causing various soft-tissue injuries. Kate was even more seriously injured, and she was hospitalized and subsequently bed-ridden due to her injuries for almost two months. As a result, she was not able to begin school until late in

the school year. Due to the delay, and on the school's recommendation, her parents held her out for the full year and started her in kindergarten a year behind other students her age.

To date, Ann has paid \$5,000 for her own medical care and \$15,000 for Kate's. The character of Kate's injuries is such that she will need to be examined annually for residual effects of the accident. In twenty-five percent of cases involving injuries like Kate's, there are further complications during adolescence. If the complications develop, Kate will require additional surgery and other care costing as much as \$25,000.

Ann will not need further medical care. She is self-employed as an economics consultant to shopping center developers. Her income has always varied wildly from month-to-month, and over the past three years she has made \$60,000 to \$90,000 per year in pre-tax income net of business expenses. Due to the accident and her injuries she was unable to use her computer for two months following the collision and she put a lot of her consulting work on hold. In the end, her billings for those two months earned only \$1,000. In the following three months, however, she worked longer hours to catch up and billed enough to make \$30,000 during that time. Her earnings for the whole year came to \$72,000.

Ann and Kate have sued MegaCorp for damages. Putting aside consideration of compensation for pain and suffering, to what damages is each entitled? Why?

Question 3

George lives next door to Elaine. George is a skilled barber and masseur. Through word-of-mouth, he has built a base of people who come to him either for haircuts or massages or both. He makes a substantial second income from this sideline. There are, however, at least two problems with George's business. First, he does not have the barber's license that is required by state law of anyone who cuts hair for a fee. (No license is required to be a masseur. It is a first-degree

misdemeanor to cut hair for a fee without a license. The penalty is a fine of up to \$1,000 or imprisonment for up to six months. In addition, the state licensing board is authorized by statute to impose civil penalties against unlicensed barbers. The board is not authorized to enjoin unlicensed barbering or to seek judicial orders enjoining the practice.) Second, George provides haircuts and massages in his home, and the neighborhood is zoned residential. The relevant zoning regulations prohibit operation of a business in a residential district if the business is regular visited by its customers.

From Elaine's perspective, there are additional problems with George's business. There is very little on-street parking available on the block. As a result, George's customers have been known to park their cars creatively: blocking Elaine's driveway, in Elaine's driveway, on Elaine's lawn, among others. When Elaine wants to go somewhere, she is frequently required to go next door and request one or more of George's customers to move his or her vehicle(s) so she can get out. In addition, the customers tend to be a boisterous lot. Often, while they are waiting their turn, they will sit on George's front porch, smoking, drinking soda or beer, and talking loudly. Cigarettes butts and empty bottles and cans are frequently tossed from the porch and over the hedge into Elaine's yard. Because George works at night, the noise from George's porch sometimes goes on until two o'clock in the morning, keeping Elaine awake when she would rather be asleep.

Earlier this month, Elaine sued George to enjoin the operation of his businesses. In response to her motion for a preliminary injunction, the court entered a decree forbidding George to conduct the business of barbering or massage on the premises. Initially, George complied with the order. Shortly thereafter, however, George obtained a variance from the local zoning authority permitting the operation of a business at his house with visits by customers between 8 a.m. and 10 p.m. Without notice to anyone, George again began cutting hair and giving massages in his house, although he refrained from serving anyone after 10 p.m.

Elaine immediately filed a motion to have George held in contempt.

After hearing the motion, and George's cross-motion to modify the preliminary injunction, the court entered an order holding George in contempt. The order directed George to pay \$500 to the county and \$500 to Elaine, the latter "to compensate plaintiff for her discomfort suffered as a consequence of defendant's violation of this Court's order." The court did modify the injunction, however, so that it still prohibited George from doing any barbering on the premises at anytime but forbade him from providing massages only between the hours of 8 p.m. and 10 a.m. (In an oral statement during the hearing, the judge said, "I don't care what the zoning board will tolerate, I say 10 p.m. is too late to be running a business in a residential neighborhood.")

The court also ordered George to assure that visitors to his premises remain inside the house while waiting to be served. He further ordered George to provide ashtrays and wastebaskets on his front porch and directed him to make weekly inspections of the part of Elaine's yard adjacent to his property, removing any cigarette butts or other litter he found. The injunction also ordered George to post a notice on his front porch to the effect

that "by court order, no customers are permitted to remain on this porch while waiting." George has done so.

The volume of people coming to George's house has not declined since the modified injunction was issued, although it is unusual for anyone to be there after 10 p.m. Several weeks after the modified order, one customer (Jerry) did park himself on the porch with a cigarette and a can of beer while waiting. Seeing him, Elaine came over and pointed out the warning sign. Jerry ground out his cigarette on the sign, and told Elaine that she was a noxious busybody. He remained on the porch, smoking and drinking for the next half-hour until his turn came.

Elaine filed a second motion for contempt, this one directed against George and Jerry. Following a hearing, the court held both of them in contempt and ordered them to pay \$500 each to the county and \$500

each to Elaine as "compensation for her discomfort."

Jerry and George have appealed the contempt citations and George has appealed the grant of the preliminary injunction. Assuming that review of these orders is within the appellate jurisdiction of the court of appeals, how should that court rule? Why?

END OF EXAMINATION