

QUESTION ONE – 1 hour

West Ink, a corporation, has operated a charcoal plant in the State of Woe for many years. It is zoned light clean industrial, which allows industrial operations if they don't damage neighboring properties. There are few neighbors in the area to be bothered. When the wind is from the west smoke from the plant blows on to the neighboring property in the State of Flux. Rose purchases and begins to operate a nursery in Flux and makes her home just east of the charcoal plant. When the wind is wrong, which is about 40% of the time, the smoke damages her plants and causes bad odors, making her home and property very unpleasant. Rose protests the smoke and odors, but West does not respond and then doubles the capacity of their plant, greatly increasing the smoke and odor. Eight months later, after a total of two years of putting up with the smoke and odor, Rose, seeing her business suffer and her property values plummet, sues West in Flux and seeks a preliminary injunction against operating the plant when the wind blows from the west. The only connection West has with Flux is a sales outlet in the state operated by an independent sales contractor (not an employee) named Sharp. West trusts Sharp to see that the complaint is answered, but Sharp forgets and does not appear. Rose obtains a preliminary injunction against West operating when the wind blows from the west. Rose is ordered to post a bond of \$25,000. Initially she does not, and then she does. Sharp tells West, "She hasn't posted a bond, you don't have to do anything." If the injunction continues, it will make West's business unprofitable. The local County in Woe changes the zoning to light smelly industrial which will allow heavier use if it will not "unduly damage" neighboring properties.

What are the equitable rights and remedies of the parties?

QUESTION TWO – 1 Hour

Fun E and her husband, Sil E enter into a written contract with Ark, a noted but eccentric architect and contractor to design, build and sell them a home in the woods made entirely of native bamboo. Ark has won many awards for design and building of futuristic homes, and the Es want this for their dream house after looking at the lot and seeing a sketch by Ark of what the home will look like. The price is \$600,000 with \$30,000 down as a deposit. There is a liquidated damages clause that if buyers do not complete the contract they will forfeit their deposit. They were to get their financing within 45 days, but when the time came they notified Ark that they had not been able to get the financing but could get it in twenty more days. The financing is on the way, but at this point Ark repudiates the contract. He claims that the Es have breached their contract, and he may have been swayed by two other offers for the same property at \$975,000 for a similar structure. One of the offers is from Cher, and he tells her, “I think I can get out of this deal with the Es, and if so, I will sell to you.”

Further, Ark claims that the written contract with the Es is a mistake, because he intended to sell them the neighboring lot, worth approximately half the one in their contract. The Es say that this was the lot they were shown and they will accept no substitutes. Ark wants badly to contract with Cher, because he has made a number of bad investments, and he is heavily in debt and desperate for money.

What are the equitable rights and remedies of the parties?