

**Midterm Examination
Remedies
Professor Morton Cohen
Fall 2008**

1. You have 90 minutes to complete this exam.
2. This is a closed book exam.
3. This exam consists of one part and accounts for 50% of your course grade.

This exam consists of one (1) essay question. Please write your response in the blue books provided. Please write clearly. Write on every other line and every other page to permit instructor comments.

4. Write your exam number on your exam envelope. Put your correct class section and student exam # at the top of this page, each page of questions, and each blue book. **Do not** use your name, student ID number or Social Security Number on any exam materials.
5. At the conclusion of the exam, return all test materials, including blue books, scratch paper, and this exam packet to the envelope and submit it to the proctor. **DO NOT** seal the envelope. Students who do not return all exam materials at the end of the exam may not be graded.

GOOD LUCK!

Part I: Essay Question
Recommended Time: 90 minutes

Plaintiff was injured when defendant's pickup truck ran a red light and collided with plaintiff's pickup truck as plaintiff was making a U-turn on Folsom Boulevard in Sacramento. Defendant, it turned out, was quite inebriated at the time. Soon after the accident, plaintiff complained of low back pain with radiation to his spine and hips. Plaintiff attempted to return to his job as a manager for SBC Advanced Solutions, Inc. (SBC), but could not perform his duties without experiencing severe pain.

One year after the accident, plaintiff returned to work part-time with the aid of pain injections, but this was unsuccessful, and his doctor declared him unable to return to work at his former occupation.

Two MRI scans, taken about 15 months apart, revealed that plaintiff had suffered a degenerative disk disruption or tear, with accompanying nerve damage. When the pain did not significantly subside, plaintiff underwent spinal fusion surgery whereby the damaged disk tissue at the L5–S1 spinal segment was removed and replaced with bone material.

Plaintiff's medical expenses were covered by an insurance plan, and wages were covered by a disability plan, both of which resulted from premiums paid in part by the Plaintiff, and in part by plaintiff's employer.

Plaintiff filed a personal injury complaint against defendant. In the complaint, plaintiff sought damages for lost past wages, past and future medical expenses, future income and pain and suffering. Plaintiff also sought a separate award for loss of the ordinary pleasures of life given the pain. Lastly, Plaintiff also sought punitive damages.

Defendant argued that Plaintiff should have gone to work as a clerk rather than a manager as that would reduce the past and future wage loss. Also, defendant argued that the jury should have heard evidence that plaintiff had received compensation for medical and wage losses already. Additionally, Defendant claimed that absent intent to harm there should be no award of punitive damages.

Plaintiff presented evidence that his past economic loss, including lost wages, since the date of the accident totaled \$232,363. He also presented the testimony of a rehabilitation counselor, who reviewed medical bills totaling \$216,000 and testified that the amounts billed were reasonable for the services rendered.

The court submitted to the jury a special verdict form prepared by plaintiff's counsel and approved by counsel for defendant. The jury returned a verdict that found defendant 100 percent at fault for causing the accident. The damages portion of the special verdict, as completed by the jury, is reproduced below:

Question No. 3:**What are Plaintiff['s] compensatory damages?**

a. Past economic loss, including lost earnings/medical expenses:	\$ 260,000
b. Future economic loss, including lost earnings/medical expenses:	\$ 11,500
c. Past non-economic loss:	\$ 50,000
d. Future non-economic loss:	\$ -0-
TOTAL:	\$ 321,500

Question No. 4:**What, if any, are Plaintiff's punitive damages?**

\$5,000,000

Both parties sought post-trial motion relief, the defendant seeking to reduce the verdict and the plaintiff seeking to add to it based upon there being no independent award for loss of the ordinary pleasures of life. The trial court denied both motions, and entered a judgment of \$5,321,500. Defendant appealed.

The case is now before the appellate courts, where you work as a law clerk. The court has asked you for a succinct memo, setting forth what you see as the issues, stating the law, and the outcome, in as short a statement as you see fit.

END OF EXAM