

Monterey College of Law

REMEDIES

Spring 2024

Prof. A. Mora

Instructions:

Answer three (3) questions in this examination.

Total Time Allotted: Three (3) hours.

Your answer should demonstrate your ability to analyze the facts in the question, to tell the difference between material facts and immaterial facts, and to discern the points of law and facts upon which the case turns. Your answer should show that you know and understand the pertinent principles and theories of law, their qualifications and limitations, and their relationships to each other. Your answer should evidence your ability to apply the law to the given facts and to reason in a logical, lawyer-like manner from the premises you adopt to a sound conclusion. Do not merely show that you remember legal principles; instead, try to demonstrate your proficiency in using and applying them. If your answer contains only a statement of your conclusions, you will receive little credit. State fully the reasons that support your conclusions and discuss all points thoroughly. Your answer should be complete, but you should not volunteer information or discuss legal doctrines that are not pertinent to the solution of the problem.

Question 1

In 2016, Bonnie and Clyde orally agreed to jointly purchase a small storefront space in City for \$80,000. Bonnie contributed \$40,000 of her own money. Clyde contributed \$40,000 he embezzled from his employer, Tom. Bonnie and Clyde agreed to put the property in Clyde's name alone because Bonnie had creditors seeking to enforce debts against her. They further agreed Clyde would occupy the property, which he planned to use as a rock shop and gallery. They also agreed that, if and when Clyde vacated the property, Clyde would sell it and give Bonnie one half of the net proceeds. Clyde then occupied the property.

In 2017, Tom discovered Clyde's embezzlement and fired him.

In 2024, Clyde sold the property, obtaining \$300,000 in net proceeds. Clyde offered to repay Bonnie her \$40,000 contribution, but Bonnie demanded half of the net proceeds from the sale or \$150,000.

Bonnie and Tom each sued Clyde for conversion. Tom's claims are not timed barred by statute.

At trial, the court found Clyde liable to both Bonnie and Tom for conversion.

1. What remedy or remedies can Bonnie reasonably obtain against Clyde for conversion, what defenses (if any) can Clyde reasonably raise, and who is likely to prevail? Discuss.
2. What remedy or remedies can Tom reasonably obtain against Clyde for conversion, what defenses (if any) can Clyde reasonably raise, and who is likely to prevail? Discuss.

***DO NOT ANALYZE PURCHASE MONEY RESULTING TRUST IN THIS QUESTION.**

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Question 2

Ron Retailer owns all pieces but the “Yoda” of a chess set carved by Art, a famous artist who carved 10 “Star Wars” chess sets. Today, no one owns a complete Art “Star Wars” chess set.

Four existing Art “Yodas” are owned by collectors. The last one sold in 1986 for \$175,000. The current owners refuse to sell their “Yodas” to anyone.

If Ron could exhibit a complete Art “Star Wars” chess set, he would draw people worldwide who would buy memorabilia with pictures of the full “Star Wars” chess set and other products. It is impossible to know exactly how much Ron would make, but a complete Art “Star Wars” chess set could be worth in excess of \$1 million.

Last week, Sam Seller brought Ron an Art “Yoda” he found in his basement and asked if it was worth anything. Ron asked what Sam wanted for the “Yoda”. Sam asked if \$450 would be fair. Ron replied that \$450 would be fair and offered to write a check immediately. Ron and Sam entered into a valid contract. Sam agreed to deliver the “Yoda” the next day.

The next day, Sam called Ron and said, “I learned that you defraud people out of valuable collectibles all the time and that the “Yoda” is worth thousands of dollars. I am selling my ‘Yoda’ to another collector.”

Ron sued Sam for specific performance for breach of contract, and sought a temporary restraining order and preliminary injunction.

What is the likelihood Ron will obtain:

1. A temporary restraining order? Discuss.
2. A preliminary injunction? Discuss.
3. Specific performance? Discuss.

Be sure to discuss Sam’s position as to each issue as well.

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Question Three

Singh is the owner/operator of a “big rig” truck and trailer. It is not uncommon for Singh to drive loads across country six days a week. On average he earns \$75.00 per hour – but will charge a premium of \$125.00 per hour for loads that require special licenses and certificates such as flammable liquids. Recently, Singh entered into negotiations to purchase two additional rigs that he would own and contract with other drivers for a flat fee per load and an additional 5% of the driver’s total contract price.

Last week, while hauling a load of artichokes from Castroville to Florida, Singh was struck by Jones at a Flying Heart truck stop. Jones did not see Singh in time to avoid the collision because he was distracted by signage at the truck stop. This is the third collision involving drivers claiming the signage distracted them while operating their vehicles. Flying Heart refuses to remove the signage because they are paid by the beer company to maintain the signage.

The collision damaged both the truck and trailer. Singh also sustained injuries that make it difficult for him to sit for more than one hour without severe pain. It takes physical therapy sessions three times a week to address his injuries. Singh skips most of the therapy sessions and drives a truck he rents to make ends meet. He no longer drives six days a week due to the pain from the injuries and the costs to rent the truck. He can no longer haul the loads requiring his special licenses. As a result, he has stopped trying to purchase the additional trucks.

Singh sues Jones and Flying Heart as a result of the collision. A jury finds both Jones and Flying Heart liable to Singh for the damages caused by the collision. In the second phase of the trial, Singh seeks to monetize these damages. What damages should the jury award as to both defendants? Are there damages available against one defendant that would be unavailable against the other defendant? Discuss the defenses Jones and Flying Heart may assert.

ANSWER OUTLINE

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Q1 Issue Outline

Bonnie v. Clyde

Damages—When a D is found liable for conversion of the P's property, the P is entitled to damages for the FMV of the property at the time and place of conversion. Bonnie had half interest. Bonnie should receive FMV of the storefront at the time of sale.

Defenses

SOF—the parties orally agreed. (defense fails)

Equitable remedies available only if legal remedy inadequate.

Constructive Trust: *Imposed on improperly acquired property to which defendant has **title**. Defendant serves as "trustee" and must return the property to the plaintiff. Plaintiff receives any increase in property value.*

Constructive Trust

Must show:

- (1) Inadequate legal remedy because D is insolvent or property is unique
- (2) Tracing of the property from its original form to its current form is allowed. Can obtain a constructive trust over the new form of property.
 - The wrongfully withheld property must be solely traceable to current form and not mingled w/ other property to be subject to a constructive trust because title of the property will be given to P.
- (3) *Bona fide purchasers* prevail over P. Constructive Trust will not be ordered where BFP holds legal title. – **acknowledge that there is no BFP here.**
- (4) P prevails over unsecured creditors.

Equitable Lien—a lien imposed on D's property to secure payment of a debt owed to P.

Must show:

- (1) No adequate legal remedy
- (2) D misappropriated P's property creating a debt or obligation to pay;
- (3) P's property can be traced to property held by D; and
- (5) Retention of the property would result in unjust enrichment;
- (6) *Bona fide purchasers* prevail over P.
- (7) P prevails over unsecured creditors.

Equitable Lien compared with Constructive Trust

If P's property is not used to acquire title, only an equitable lien is available. The equitable lien can be enforced only up to the amount of P's claim; the enhanced value of the property cannot be recovered. However, a P may seek a deficiency judgment after imposition of an equitable lien; an action for a deficiency judgment is not allowed after imposition of a constructive trust.

Clyde's Defenses

Unclean Hands – frank not harmed by Mary's illegal conduct.

Tom v. Clyde

Damages – FMV at the time that it was converted.

Restitutionary Damages

Punitive Damages

Constructive Trust

Equitable Lien

Clyde's Defenses

Laches

Q2 Issue Outline

1. Temporary restraining order.

(1) Inadequate legal remedy – Where damages or restitution are inadequate to remedy a tort, P may be able to get an injunction.

Temporary Restraining Order—issued pending hearing for temporary injunction; Need to show there will be immediate harm w/o TRO.

Bonus: Proceeding can be ex-parte, no notice required, and TRO is limited to 10 days. However, if there is opportunity to give D notice and a chance to appear and contest, a good-faith effort must be made to do so.

(2) Irreparable injury—establish that there will be irreparable injury to P while waiting for a full trial on the merits if injunction is not granted now.

- Must discuss facts in a **time frame context**. You must show that you will incur irreparable injury while waiting for a full trial on the merits – and that's why you need relief now.

(3) 'Balancing of Hardships' Test – irreparable injury is weighed against any hardship D will suffer if a temporary injunction is granted. Where D created the hardship, even if substantial, balance likely to weigh in P's favor.

(4) Likelihood of success on the merits— establish that the P is likely to succeed on the merits.

- P should be required to post a bond to reimburse D if the injunction injures him and P loses.

2. Preliminary injunction

- (1) Irreparable Harm. (*supra*)
- (2) Balance of Hardships. (*supra*)
- (3) Likelihood of Prevailing on the Merits. (*supra*)
- (4) Inadequate legal remedy. (*supra*)
- (5) Notice.
- (6) Bond
- (7) Defenses must not be available.
 - Unclean hands
 - Laches
 - misrepresentation

3. Specific performance.

(P wants k performed)—mandatory decree or injunction that orders the D to perform on the k as promised.

(1) Contract must be valid—*terms* must be sufficiently *certain and definite* that the court is able to order with specificity which action the D must take.

(2) Contract conditions imposed on P are satisfied. P must've performed, be ready and able to, or excused.

(3) Inadequate legal remedies—damages can be inadequate when:

- money damages are too *speculative* and *difficult to calculate* with certainty;
- money damages *inadequate* to compensate for potential loss (health, safety);
- *insolvent* D;
- *multiple suits are necessary*; or
- *property is unique*: personal property usually is not unique (and money damages adequate) unless it is rare/one-of-a-kind/special personal significance/circumstances make chattel unique.

(4) Mutuality of remedy—requires each party to the contract to be willing and able to perform their obligations. Here, this element will be satisfied because Ron has the \$450 to pay for the chess piece, and Sam still has the chess piece in his possession.

(5) Feasibility of enforcement—problem usually arises only in personal services k, land sale k (where a party of the land is out of state), and construction k. – **no need to analyze here but credit if raise and drop.**

(6) Defenses

- 1) Unclean hands (*supra*)
- 2) Laches (*supra*)
- 3) Mistake
- 4) Misrepresentation

Q3 Outline of Answer

As to Both Defendants:

- I. General and Special Damages
 - a. Physical Injuries
 - b. Property Damage
 - c. Lost income
 - d. Costs to Mitigate

- II. Future Damages
 - a. Lost/reduced income
 - b. Lost opportunity
 - i. Increased rates for special licenses
 - ii. Opportunity for the New Trucks

- III. Punitive Damages as to Flying Heart

- IV. Defenses
 - a. Certainty
 - b. Discounting
 - c. Failure to Mitigate
 - d. Intent (as to Flying Heart and Punitive Damages)

1)

Bonnie v. Clyde

Bonnie can seek multiple remedies against Clyde. These include:

1. Damages--Compensatory, Punitive, or Restitutionary
2. Constructive Trust
3. Equitable Lien
4. Quasi-Contract

Legal Remedies

Damages are monetary and are considered legal remedies. Bonnie will seek several types against Clyde.

Compensatory Damages

The purpose of compensatory damages is to return the plaintiff who has suffered harm back to the position they would be in prior to the harm occurring. Here, in asserting compensatory damages, Bonnie would focus on the harm that she suffered--specifically, the money that she is entitled to. Here, Clyde had already offered Bonnie \$40,000, the amount of money that she had contributed to the sale of the property 8 years prior. To award compensatory damages, the court will look at the following factors:

1. The damages must be certain (not speculative)
 2. The harm must have been foreseeable
-

3. The plaintiff must have been the "but for" cause of the harm, also known as actual causation
4. The plaintiff must have made an attempt to mitigate the damages, thus showing that they are unavoidable

Here, Bonnie can meet these requirements. The \$40,000 in loss that she suffered is known, and she can argue that her property right (to 50% of the storefront space) is also established. The plaintiff was the direct and actual cause of the harm of conversion, as already ruled by the court. Lastly, Bonnie made an attempt to mitigate the damages by demanding half of the net proceeds, or \$150,000. Whether her claim on this point is sufficient will depend on Clyde's defenses, as well as on another type of damages that Bonnie will pursue, Restitutionary.

Restitutionary Damages

Restitutionary damages are a legal restitutionary remedy that focuses on the unjust enrichment of the defendant. Whereas compensatory damages are based on the harm suffered by the plaintiff, restitutionary damages focus on the benefit gained by the defense. It would be unjust, Bonnie will argue, to allow Clyde to keep money that he has acquired through the conversion. Here, the restitutionary damages would be defined by the benefit amount, which is the half of net proceeds to which Bonnie was entitled.

When faced with both compensatory and restitutionary damages, the court will hear arguments for both but will award only one--the one that is higher. Here, the compensatory damages may be limited by the fact that Clyde occupied the property during those eight years, planned to use the property as a business, and kept it sufficiently maintained that it accrued value. Clyde will argue that any compensatory damages be limited only to the \$40,000 that Bonnie originally contributed.

Punitive Damages

Courts award punitive damages to punish the plaintiff's wrongful behavior, and to deter such behavior. Punitive damages will only be awarded if there are also Compensatory, Nominal, or Restitutionary Damages. Courts are reluctant to award punitive damages that are excessively high relative to the other damages awarded, and although no bright line rule exists, punitive damages will generally be limited to "single digits," meaning less than 10 times greater. One possibility for Bonnie's recovery would be to request compensatory damages for the \$40,000, and punitive damages of \$110,000 to punish Clyde's conversion and to deter him from such behavior in the future.

However, a far more compelling case exists for Bonnie to seek the legal restitutionary remedy of restitution (damages), based on Clyde's unjust enrichment--a benefit that he acquired through the conversion. Bonnie could still seek punitive damages, on the theory that Clyde's behavior was so egregious that it is not enough to just collect on the restitutionary damages, but that to make sure he is deterred in the future, to add punitive damages on top of the restitutionary damages.

Nominal Damages

Courts will sometimes award nominal damages when there has been no injury suffered by the plaintiff, but the courts have determined that some wrongdoing did take place. In that situation, a nominal amount, such as \$1, will be awarded. Here, this type of damages would not be sought by Bonnie because she can clearly show injury. If a court was unconvinced of Bonnie's injury, they could still award nominal damages on their own accord. This would only be done if they did not award compensatory or restitutionary damages.

The Property

Clyde sold the property, so one might assume that he has all of the cash from the sale. However, this is not clear in the information provided. It is possible that Clyde had other debts that he has paid, or that he has purchased a new property. It is also not entirely clear that the storefront space was sold to a bona fide purchaser, however absent any information to the contrary, for the purpose of this analysis we will assume that the purchaser was bona fide. A bona fide purchaser is a third party who purchases property without notice as to any encumbrances or controversies. This is important because of the next types of remedies that Bonnie could consider--the Constructive Trust and Equitable Lien.

Constructive Trust

If the buyer is a bona fide purchaser (BFP), a constructive trust would not be available. A constructive trust (CT) is an equitable remedy in which the court rules that the defendant, who had title to the property, was holding it "in trust" for the plaintiff, and now must return that property. If any part of the funds used in purchasing a property were comingled, then Bonnie could use tracing to separate out which portion was contributed by her, and which portion by Clyde.

As an equitable remedy, a CT is only available if there is no adequate legal remedy. This could be the case if Clyde was insolvent, and also because real property is unique. Other ways that a legal remedy may be inadequate include the damages are speculative (not the case here), or that a multiplicity of lawsuits would be required. However, because Bonnie wants the money, and not the property itself, she would most likely not be too inclined to seek this remedy.

Assuming the buyer in Clyde's 2024 sale was a BFP, CT would not be available in any case.

Equitable Lien

An equitable lien (EL) is an equitable remedy in which the court orders the sale of property, and then divides the proceeds between the claimants, debtors, and defendant (if there is anything left over). Typically, the courts will consider EL alongside CT. Because CT returns the property to the plaintiff, it is preferable when the value of the property has accrued, or gone up. Because EL still holds the defendant liable for any amount of the damages they owe that exceeds the sale price. Also, CT is not available in this situation because of Tom.

However, here if the buyer in the 2024 sale was a BFP, as with CT, EL is not available-- on the original property. If Clyde has purchased other property using the proceeds of that sale, then an EL could be ordered against that new property.

For an equitable lien, there must also be a showing of tracing. Here, Bonnie's contribution is easily traced. As the court has also ruled in Tom's favor, the embezzled funds could also be traced (more on this below).

Quasi-Contract

In a quasi-contract the court treats either an agreement that is not a valid contract, or the providing of certain services that would normally be compensated, but in circumstances that prevented a contract from being formed prior to the service. Here, the court will consider quasi-contract if, in his defenses, Clyde is able to prove that the agreement between he and Bonnie about selling the house was not a valid contract.

As a restitutionary remedy, quasi-contract focuses on the benefit received by the defendant. Here, that benefit is the money. Bonnie will seek quasi-contract if the court holds that she cannot avail herself of specific performance. This will depend on Clyde's defense.

Specific Performance

Specific performance is an equitable remedy that is available in contracts when one party has performed and the other party has not. The non-performing party can be compelled by the court to comply with the contract. For specific performance there must be no adequate legal remedy (*supra*), which here could be made unavailable by the unique nature of real property. Clyde has performed on all aspects of their agreement except the last one--to give Bonnie one half of the net proceeds. Although this would come with the same net result of Clyde giving Bonnie \$150,000, there is a significant difference between this and the damages discussed above.

The remedies for damages are all focused on either harm done to Bonnie or unjust enrichment done to Clyde. Bonnie may want to argue that it isn't so much a matter of a harm done, as that she wants the contract to be enforced. Unfortunately, this argument is defeated because she brought her claim as a tort claim, not a contracts claim. Therefore, she would not be able to seek this remedy unless there was a related contract claim.

Clyde's Defenses against Bonnie

Statute of Frauds

If Bonnie has a related contract claim, or presses for remedies on a contract theory, Clyde will argue that their agreement was not valid because of the Statute of Frauds. The Statute of Frauds requires that there be a writing signed by the party against whom enforcement is sought, and their agreements were oral. Real property contracts always require a writing or they can be voided with a defense of Statute of Frauds. This defense does Clyde no good on the tort for which he is already found liable, conversion.

Unclean Hands

A much stronger defense that Clyde will raise is unclean hands. Equity favors those who come with clean hands. When a plaintiff was also guilty of some wrongdoing, or was in on some malfeasance, even if they did not cause any of the harm, and were themselves harmed, their damages or other remedies may be limited.

Here, Clyde will argue that the entire purpose of putting the property in his name, thus giving him full title, was because Bonnie had creditors that she was trying to avoid. He will argue that this is a dishonest motive, and that it indicates that she had unclean hands when coming to that agreement. He would contrast this to his plans to run a rock shop and gallery, which are reasonable motives to occupy a small storefront space.

Here, the courts will consider a balancing of the equities between the two parties.

Tom v. Clyde

Tom will raise the same three types of damages remedies--compensatory, restitutionary, and punitive. He will also seek an equitable lien if Clyde is insolvent.

Compensatory Damages

As supra, these damages focus on the harm to the plaintiff. As with Bonnie, Tom is able to show that the damages are certain. The consequences of embezzlement (pecuniary loss on the part of the victim) would be well known to a professional in Clyde's position of being able to embezzle \$40,000. And the court will have established actual causation when it found Clyde liable for conversion.

Restitutionary Damages

As supra, these damages focus on the benefit for unjust enrichment to the defendant. Here, Tom will use tracing to establish that if Clyde had not embezzled, he would not

have been able to purchase the property in the first place. The property was acquired through the illegal activity. Therefore, Tom will argue, any net proceeds that Clyde would be entitled to would be part of his unjust enrichment. In this case, that would be \$150,000.

Punitive Damages

Punitive damages may be awarded by the court to punish Clyde and deter him from embezzling again. Since embezzlement is a serious crime, there is a good chance that if the court awards either compensatory or restitutionary damages, they will add on some punitive damages.

CT and EL

Tom will not want to seek a CT, he has no interest in the real property. Also, his remedies would need to come from a sale. If Clyde still has the personal property from his sale, the court will require the damages be paid from those proceeds. If, however, Clyde has purchased new property, then the court would consider an EL, and using tracing from both Bonnie and Tom, order a sale of that new property and then divide the proceeds according to its determination of award amounts to each plaintiff.

Equitable Conversion

Under the theory of equitable conversion, the future rights to real property and personal property change hands during a property sale. Here, it is not specified at what stage the property sale was. However, considering that we do know Clyde sold the property, and we assume it was to a BFP, even if he still possesses the real property, it could not be reached by the court for a CT or EL remedy.

Clyde's Defenses against Tom

Clyde will argue the defense of laches against Tom. Laches is an equitable defense that may be raised when the plaintiff has unreasonably delayed in bringing their lawsuit, and that delay caused prejudice against the defendant. Here, Clyde will argue, he has been spending time investing in his rock shop and gallery business, he has been working on his real estate portfolio, and he has been moving on. *nice!*

Because Tom's claims are not barred by a statute of limitations, laches could apply if Clyde can show that he was harmed or prejudiced in his trial by Tom's delay.

Tom will counter that it was a reasonable time to prepare a case. Clyde will then point out that Tom only sued him after the property sale. This would seem to suggest that the reason Tom did not sue before is because he did not think Clyde would have any money to recover from.

The court will likely recognize that although there was some delay, and it seems very likely that delay was related to Tom's ability to recover, that the delay nonetheless did not harm Clyde.

Result Bonnie v. Clyde

The court will consider Bonnie for either \$40,000 in compensatory or \$150,000 in restitutionary damages. Courts typically award the higher of the two. However, if the court finds that Bonnie's less-than-honest motives in having Clyde occupy and take title to the house means that his enrichment was less unjust, they may decide on the lower compensatory damages, plus punitive damages to punish Clyde.

Result Tom v. Clyde

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If Clyde's defense of laches fails, the court will award Tom \$150,000 in restitutionary damages. They will also likely award punitive damages, because the tort of embezzlement is so egregious.

2)

Temporary Restraining Order

A temporary restraining order (TRO) is an equitable action brought by a plaintiff (P) when P has a property or personal interest that is subject to a harm unless someone (a defendant) is stopped from acting in a particular way. TRO's can be granted without notice being given to a defendant (D), so long as P shows a legal remedy is inadequate and P will suffer immediate and irreparable harm before a full hearing with D present can be granted. However, TROs are only meant to maintain the status quo until that hearing can be had, and as such are time limited based on the jurisdiction; they are typically not granted for longer than 14 days. And while notice is not required, if it is feasible to give notice P must make a good faith effort to give notice to D. Finally, the court must balance the interests of both parties and a P must show they are likely to succeed on the merits of the case.

Inadequate legal remedy

For an equitable remedy to be granted, a legal remedy must be inadequate. In the case of a sale of goods, the legal remedy would be the fair market value of the item sought, or the cost required to get a replacement item, also known as a cover contract. One way a legal remedy can be inadequate is when a unique item is being sought. Here, Ron is seeking a "Yoda" chess piece that is a part of a "Star Wars" chess set carved by a famous artist named Art. Only 10 of these sets were ever carved. No one person owns a complete Star Wars chess set. Only 4 of these Yodas are owned by collectors, and one hasn't been sold since 1986, when it sold for \$175,000. All four current owners of these Yodas refuse to sell the Yodas to anyone. Furthermore, if R were to obtain the Yoda Sam (S) agreed to sell R then R would be the only person with a full Star Wars chess set, which would give R the ability to monetize the chess set in the form of selling memorabilia and allowing

tourists to take pictures with the Star Wars chess set. The value of this is hard to quantify with specificity, but could be worth more than \$1 million.

Because of the uniqueness of the Yoda and the fact that it is impossible to know how much R could make off of the complete Star Wars chess set, R will argue that simply compensating R the fair market value of the Yoda is insufficient, and R could not get a replacement Yoda if he wanted to because none of the other 4 owners will sell their Yodas. Therefore, a court would agree with R that legal remedies would be insufficient.

Immediate and Irreparable Harm

The harm a P will suffer must be immediate and irreparable for a TRO to be granted. Immediate in the case of a TRO means the harm will occur before a full hearing can be held. Here, S informed R that he was selling the Yoda to another collector. Because the item is so unique and valuable, it is very likely that S could find a buyer relatively quickly. Therefore, a court would find the harm posed by S would be likely to occur before a full hearing can be held.

The harm must also be irreparable. As discussed above, the unique nature of the Yoda and fact that no other owner is interested in selling the Yoda means there will be no way to repair the harm R will suffer if S sells to another collector. As such, the harm would be both immediate and irreparable.

Balancing of the interests

Here, R will argue that he could simply pay fair market value to S for the Yoda, and therefore S would not be harmed at all by the granting of the TRO. S will argue that putting the Yoda on the open market would likely allow him to collect more money. R will counter this by saying S could simply list the Yoda and gauge interest in the piece, and that would give a full estimation of what the fair market value currently is for a Yoda. R

could then just pay that amount. Assuming R would be willing to reform the contract to pay fair market value for the Yoda, a court would likely find the balance of interests work in R's favor, as S's only interest is profiting off of the piece, and R could supply that profit just as easily as a different buyer.

Success on the merits

Finally, a P must show they are likely to succeed on the merits. Here, because S would likely not be present, the court would just be looking at P's initial complaint. Because P's claims in his complaint that an oral contract between he and S existed would be accepted as fact, a court would find R likely to succeed on the merits and grant the TRO.

Preliminary Injunction (PI)

A PI is also an equitable action brought by a P seeking to protect a property or personal interest that is subject to harm unless a D is stopped from performing a specific act. Unlike a TRO, a PI will only be granted after a D receives notice and an opportunity to be heard. While a TRO maintains the status quo until this PI hearing can be held, a PI seeks to maintain the status quo until litigation is complete. A P must again legal remedies are insufficient, they must show immediate and irreparable harm that will occur if the PI is not granted, the court again performs a balancing test of the interests of the P and D, and the P must show they are likely to succeed on the merits. Unlike a TRO, a PI lasts until litigation is complete, so a P may be forced to post a bond in the amount of harm D will suffer by granting the PI.

Notice and opportunity to be heard

The facts do not say anything about whether notice was given. Because the action would not be able to proceed without notice, we will assume R has given notice to S.

Legal remedies insufficient

See above for rule. Analysis is the same as in the TRO section.

Immediate and Irreparable Harm

See above for rule. The analysis for irreparable harm is exactly the same as in the TRO section, and the court would again agree with R. For immediate harm the analysis is slightly different as the harm need only occur before litigation can be completed. This is actually a lower bar than a TRO, as D has more time to act. In this case, this would only increase the time frame S would have to sell the Yoda, which makes it easier for S to sell and therefore even *more* likely for harm to occur. Therefore, the court would agree with R that the harm would be immediate and irreparable.

Balancing of the interests

See above for rule. The analysis is the same as in the TRO section, and a court would once again side with R.

Likelihood of success on the merits

See above for rule. Here, S would be present and therefore be able to present a defense. S could raise valid defenses that will be discussed in the specific performance section. However, because those defenses would not be proven at a PI hearing and R's case is otherwise strong, the court would likely simply be order R to post a bond in the amount of the fair market value (FMV) of the Yoda and grant the PI.

Specific Performance

Ultimately R would ask for specific performance (SP). SP is when a P asks the court demand D perform a specific act that D was typically supposed to do pursuant to a valid

contract. For SP to be granted, there must be insufficient legal remedies, their must be a valid and enforceable contract, the terms and parties must be very certain, both parties must be ready willing, and able to perform, the court must perform a balancing test, and it must be feasible for the court to supervise.

Inadequate legal remedy

See above for rule. The analysis is the same as in the TRO section.

Balancing of the interests

See above for rule. The analysis is the same as in the TRO section.

Mutual preparedness

Mutual preparedness means both sides are ready, willing, and able to perform. Here, S is able to perform as he has the Yoda, and R is ready, willing, and able to perform as he wants to purchase the Yoda from S. Therefore, a court would find both sides to be mutually prepared to perform.

Feasible for court to supervise

Here, the court would only need to ensure that R gives S money, while S give the Yoda to R. Because this would be a very straightforward transaction, the court would find this to be feasible to supervise.

Party and terms certain and definite

Here, parties are clearly R and S, and the terms are R will give S money in exchange for the Yoda. While R agreed to pay \$450 for the Yoda, it is possible the court may order R

to pay FMV. However, because FMV would be relatively easy to determine, a court would find the terms certain and definite.

Valid Contract

Finally, for SP to be granted there must be a valid and enforceable contract. For a contract to be formed a person must make an offer, the other party must accept the offer while it is still open, and consideration must be exchanged. Consideration is the mutually bargain for exchange of contemporaneous legal detriment. Legal detriment is anything of value. This means the exchange of consideration must involve each party exchanging something of value.

Here, R offered to buy the Yoda from S for \$450, to which S agreed, forming a valid contract as stated in the facts.

Contract defense - Unilateral mistake

A defense to contract formation is a unilateral mistake. A unilateral mistake is when one person makes a mistake as to the value of something in a transaction and the other party both knows of this mistake and takes advantage of this mistake to the other party's detriment. Here, while S suggested the price of \$450, R knew full well as a collector of these Star Wars chess pieces that the value was *far* higher, considering the last piece sold for \$175k 37 years ago. Therefore, S made a mistake regarding the value of the Yoda, and by accepting this far lower price suggested by S, R knowingly took advantage of S's mistake. Therefore, S would be able to successfully use the defense of unilateral mistake.

Reformation/Rescission

When a unilateral mistake is made a person can ask for reformation (the contract to be reformed to be fair) or rescission (the contract to be invalidated). Here, S could ask for either.

Outcome

R's ask for SP would only be granted if S agreed to allow the sales contract to be reformed to sell the Yoda for the FMV. Alternatively, S could simply be granted rescission, in which case R's request for SP would simply fail.

3)

Singh (S) v. Jones (J)

Compensatory Damages

Compensatory damages are granted to put the plaintiff they would have been in, had the defendant not caused them harm. They require actual damages, Foreseeability of harm and calculable damage.

nice! Here, But for J's negligent driving, S would not have been harmed, which satisfies the causation element for compensatory damages listed below.

Pain and Suffering ✓

Pain and Suffering does not have a specific calculation, but is typically determined by a multitude of factors like level on consciousness, degree of pain and length of disability. ✓

Here, S is suffering, he is fully conscious and able to do things, like sit and drive a truck, but they can only be done with severe pain, because this is substantially decreasing his quality of life- he is able to drive the truck while in pain, but he had bills he must pay and no facts state he is able to do anything else, implying that he uses all the energy in the day to drive the truck at the expense of all other areas in his life.

Thus, pain and suffering should be granted.

Medical Bills ✓

Are awarded for any present or future foreseeability medical costs related to the the injury that the defendant caused.

Here, S suffered injuries that are continuing to pain him, and thus he should be granted the whole of his hospital stay in the beginning, but also his PT into the future. S, (in an attempt to mitigate the damages done to him by this lost wages, is skipping most of his PT in order to drive his rented truck. this means that he is unlikely to heal correctly and will incur additionally medical expenses.) While J will argue that he should not have to pay for the choices that S is making that are damaging his health, S will argue that he is only making these decisions out of necessity because of the damage caused to both him and his truck. *mitigation* *nice*

Thus it is likely medical expenses will be granted. ✓

Lost Opportunity ✓

Are calculated by determining the value of the position the plaintiff would have been in but for the defendants actions, however the future damages arising from a new business are deemed undeterminable, as there is no evidence to base the degree of profit upon. ✓

Here, S was on the brink of buying two more trucks and contracting out drivers to expand his business, which he is now unable to do, as he is simply trying to make ends meet. He will argue that he should be compensated for the lost business opportunity and any potential profits. (However, J will argue that a newly formed business has incalculable future profits, as the trucks could have been poor quality, or the drivers poor employees, creating losses rather than profit.) *A defense certainly?* ✓

Because the damage of the lost opportunity is too speculative, it will likely not be granted. ✓

Lost Wages ✓

Are awarded to a plaintiff whose harm is prevented them from working. The plaintiff has a duty to mitigate these damages, but can be awarded for the reduction in wages if they are unable to work the way they had before.

Here, S has received a substantial loss in wages, while he is still able to drive a truck (though not without pain) he is no longer able to drive six days a week like he used to, he can no longer drive special loads that increased his income, and where previously he owned his truck, he now rents, which adds a new cost to his work. All of this is S's attempt to mitigate the damages of his injury, and thus is still able to collect on lost wages. The court will likely grant him the value of the reduction of his wages to present value.

Destruction of Property

Where the Defendants action causes the destruction of the plaintiffs property, they can be charged with the responsibility to repair or replace the property. The cost to repair is the amount of money it would take to get the property back to full market value. If the damages is too severe, or the cost to repair is significantly higher than the cost to replace, the defendant be be required to replace the item to the same item or a full market value equivalent.

Here, the car accident had caused enough damage to S's owned truck that in order to drive (and make money) he must rent a truck. The facts do not state the degree of the damage done to the truck, but big rig trucks are fairly common, and it would be easy to calculate the fair market value of such a vehicle. The determination of the repairs can easily be calculated by a proper mechanic, and thus its is easy to determine the cost to repair and replace. J may pay the lower of these two amounts, provided they both apply (as in the truck is not irreparable.)

Loss of Use / Lost Opportunity

In connection with the destruction of the truck is the loss of use. The loss of use is calculated by determining the fair rental cost of the same or similar property, and any profits that may have been generated in that time.

Here, S is renting a replacement, if that replacement truck is the same as the one he owned, then the fair rental value of that truck can be used. However, S is no longer able to drive special loads the require certain certifications. This could be due to his injuries prohibiting him from taking proper care of those loads, but those certifications could easily be applied not to S's person, but to S's truck, meaning that his rental truck is not of the same quality as the one that was destroyed, and J will have to make up the difference.

The determination on any potential profits generated based on loss of use can be made by using the formula for lost wages, since S's wages were generated based on his driving of the truck.

Thus the court is likely to grant loss of use.

Singh (S) v. Flying Heart (F)

Compensatory Damages

Compensatory damages are granted to put the plaintiff they would have been in, had the defendant not caused them harm. They require actual damages, Foreseeability of harm and calculable damage.

For F, causation is based on the leaving up of the signage that distracted J, while normally, this might not imply any causation, F knew that the signage was distracting and had caused accidents before, which makes them the proximal cause of the accident.

Pain and Suffering -Rule and Analysis Supra

Medical Bills -Rule and Analysis Supra

Lost Opportunity -Rule and Analysis Supra

Lost Wages -Rule and Analysis Supra

Destruction of Property -Rule and Analysis Supra

Punitive Damages ←

Punitive Damages are granted where the behavior of the defendant was Willful, Wanton ← or Malicious. Instead of compensating the plaintiff, they are granted to punish the defendant's actions. Punitive damages are typically only granted in single digit multipliers of the already granted damages, and if they are too high, they can be determined to be a ← violation of the due process clause.

Here, while J was negligence by being a distracted driver, his actions were mere negligence. F with their heightened knowledge of the dangers of their signage, Acted willfully and wantonly with disregard for the safety of the drivers on the road. Because of this, F should be charged with punitive damages, not only to punish them for the harm done to S, but also to prevent further harm from being done because of the signage. While F might try to argue that they did not intend to cause traffic accidents, this is a weak argument, as they already knew for a fact that the signage was causing crashes, and refused to remove it. defense ←

They might also argue that the punitive damages are excessive and that they are a violation of their Due Process rights, but this depends entirely on the amount granted, which has not yet been determined.

Thus the court is likely to grant punitive damages on behalf of F's Willful and Wanton behavior.

Collections

While S can sue both J and F for all the above mentioned damages, he may only collect those damages from one party (though that party may be free to open up a secondary lawsuit to get compensation from the other defendant) Because of this, because J is merely a driver, while F is a larger corporation, And because F must pay punitive damages while J does not, I would advise that S focus his collections on F, who will not only be more likely to actually pay, but also is liable for more damages.

END OF EXAM