

Monterey College of Law
FINAL EXAMINATION
REMEDIES
Professors Patterson & Martin
SPRING 2023

General Instructions:

Answer Three (3) Essay Questions.

Total Time Allotted: Three (3) Hours

Recommended Allocation of Time: Equal Time per Question

Question 1

Billie and Joel (BJ) enter into a signed written contract with CatsGalore (Cats), a cat breeder, to purchase a cute, rare Manx kitten named Felix for \$600. Felix had unique coloring and personality. A few days before BJ could pick up Felix from Cats, they were told by Slim, the owner of Cats, that he received another offer of \$1000 for Felix. Slim also told them that he intended to accept the other offer because he thought he undersold Felix to them as the “market price” was obviously \$1000.

BJ rush to your office and seek your advice as to what potential remedies are available to them to stop the sale to other party and enforce the sale of Felix to them or what damages they are entitled to if they sue Cats.

Remedies
Spring 2023
Prof. Martin & Patterson

Question 2

Professor Jim Barton, a world renowned expert on Tort Law, just finished a rough draft of a Tort Law flow chart and outline that promises to be the best available.

Two law students, Cheatham and Howe, learn that Barton has the rough draft secreted in his office desk. While Barton is on vacation Cheatham and Howe sneak into his office and take the rough draft and sell copies online for \$100 each. They are surprised by the wonderful response and sell 1,000 copies of the outline/chart and net \$100,000.

They deposit \$50,000 into a bank account with 5% interest and take the other \$50,000 and invest it in a racehorse with another wealthy friend of theirs who also invests \$50,000 in the racehorse (50% each). The friend is unaware of the source of the Cheatham and Howe's funds. The racehorse wins the first race it is entered into for \$250,000 prize money (the horse was a long shot).

Barton returns from vacation and discovers the theft of the rough draft by Cheatham and Howe. He requests that you write a memo describing in detail all of his potential remedies and the reasoning supporting your advice.

Question 3

DONNA owns Tropical Fruit Co., a Mexican produce company that grows and ships fresh mangoes to the American states of Arizona and Texas. DONNA plans to expand her export market by sending mangoes to California and, in early-2023, she sends a shipment of 3,000 mangoes to Monterey, CA, where she owns a home. She plans to send similar shipments every month.

At the time DONNA sends mangoes to California, she advertises in California with the slogan: "Mexican mangoes are delicious -- better than the Hawaiian kind."

PETER owns Hawaiian Fruit Co., an American company based in California that imports fresh mangoes to California from Hawaii. PETER learns about DONNA's recent business in California and is not pleased with the competition.

PETER learns that some Mexican farmers use Malzoid, an insecticide that may cause cancer in humans. Malzoid is prohibited by Criminal Law in California but it is not certain that DONNA's mangoes are contaminated with Malzoid.

PETER sues DONNA in Unfair Competition, stating that DONNA's mangoes contain "Malzoid poison" and that California consumers must be protected. PETER also invents an argument that DONNA's company exploits underage Mexican workers but there is no such evidence.

PETER applies for an injunction that states DONNA cannot bring criminally-prohibited Mexican mangoes into California because of Malzoid, because of underage worker exploitation, and because DONNA's above-referenced advertisement is unfair.

Discuss: Is PETER entitled to an Injunction?

1. Discuss injunctive relief only. No points will be awarded for discussions of the substantive law of Unfair Competition.
2. It is not necessary to discuss the differences between a TRO and a Preliminary Injunction.

Monterey College of Law
FINAL EXAMINATION – ANSWER OUTLINE
REMEDIES
Professors Patterson & Martin
SPRING 2023

Question 1

Equitable Remedies

- 1) *Injunction to prevent sale to another (inadequate legal Remedies, Feasible Parties
Id'd, Irreparable injury. Balancing)*
- 2) *Specific Performance of K (Balancing, Breach of K, Certain and Definite Terms,
Inadequate Legal Remedies, feasible, Mutuality of Ability to Perform)*

Legal Remedy

*Sue for Damages – Sale of Goods, seller breach
Buyer gets a) cover K – difference plus incidentals
Or b) difference in mkt price and K*

Question 2

Tort Remedies – Trespass – Damages

- *Conversion – Damages – value of draft -speculative?*
- *Injunction to prevent future trespass*

Election – Waive Tort

Restitutionary Remedies – Damages. Value of benefit + ill gotten gains

c/A – Replevin

Tracing – constructive trust

- *equitable lien*

Answer Question 3

REMEDIES --FINAL EXAM-- SPRING, 2023

Is PETER entitled to Injunctive relief?

1. Is the controversy "Ripe"?
 - A. The facts are that DONNA already has ongoing business within the states of Arizona and Texas, and she intends to expand her business to California. The objection to DONNA doing business in California is that the product may be harmful to consumers (carcinogenic) and/or anti-social (exploitative of underage workers) and/or that her advertising is unfair (better than an American product).
 - B. Although unproven and uncertain, PETER has articulated serious allegations and there could be a real danger of injury to consumers and the American product industry. A complaint has been filed and litigation has begun. The circumstances have moved beyond mere apprehension and DONNA's mangoes have actually been shipped to California.
 - C. It is concluded that the controversy is "Ripe".
2. Is Law Inadequate and will there be an Irreparable Injury if the Injunction is not granted?
 - A. Any money damages for PETER would be inadequate because of the potential of a multiplicity of suits -- DONNA plans to ship monthly so there is ongoing harm and PETER would be forced to sue every month.
 - B. Money damages would also be speculative and difficult to assess.
 - C. If DONNA imports mangoes that contain Malzoid, there would be irreparable consumer injury, as well as injury to American business because of consumer boycotts.
 - D. It is concluded that damages at law would be inadequate.
3. Would the Injunction be feasible to enforce?
 - A. While DONNA's mangoes are grown in Mexico, they enter the United States and become part of American commerce. In addition, DONNA is a homeowner in Monterey, CA, and California courts would have personal jurisdiction over her due to her presumed residency.
 - B. Equity could enforce its order with Contempt and, should DONNA disobey, either detain her or seize her property.
4. Does PETER's proposed Injunction protect a property right?
 - A. PETER has stated arguments that involve consumer protection and worker exploitation. While those are social concerns, neither deals with a property right held by PETER. On the other hand, his objection to DONNA's advertisements may involve a property right.

- B. The traditional rule that Equity only protects property rights has been relaxed and the court may protect the rights that PETER has described.*
5. *Would DONNA's advertisement be seen as speech and immune from being forbidden?*
A. DONNA's advertisements seem to be commercial speech but they still may be protected under First Amendment rights and that part of the proposed injunction may be denied.
6. *Regarding a balancing of hardships, who would prevail?*
A. PETER would argue that DONNA already has markets in Arizona and Texas and that stopping her business in California would not be ruinous for her. Not stopping her could cause damage to the produce industry and cause physical harms to California consumers.
B. DONNA would argue that she would suffer a loss of potential business. C. On balance, it is submitted that PETER has better balancing arguments.
7. *Would the defense of unclean hands prohibit PETER from obtaining the injunction?*
A. It is said that a party seeking equitable relief must not be guilty of any "unfair dealing" with respect to the transaction sued upon. The facts state that there is only speculation that DONNA's mangoes contain Malzoid. The facts also state that PETER invents the information that DONNA uses exploited underage workers. Because PETER is not entirely truthful with the court, he may have engaged in unfair dealing in this very lawsuit. The injunction may be denied on that basis.
8. *Can an injunction be issued to prohibit a crime?*
A. The facts state that Malzoid is criminally prohibited in California. Given that criminal prohibition, no injunction would be issued because it would deprive DONNA of the procedural safeguards of the criminal law, including jury trial.

1)

Whether BJ is entitled to Damages for Cats breaching the contract sale of Felix the Manx.

Purpose of K Remedies

The purpose of contract remedies is to give the non-breaching party the benefit of the bargain, to the extent that the court can, subject to being foreseeable, unavoidable, and certain.

General Damages/Compensatory Damages:

(1) **Expectancy Damages:** generally flow from the breach of the contract. Could include loss profits, good will, plus any incidental damages. Gives the non-breaching party the benefit of the bargain and puts them in the place as if the contract was performed.

(2) **Reliance Damages** (the alternative to expectancy damages): returns the parties to the status quo, as if the contract never existed.

Foreseeable

The damages must be foreseeable from the breach of the contract.

Here, Slim could foresee that BJ would suffer damages by breaching the contract to sell to another 3rd party for a higher profit margin.

Unavoidable

The plaintiff has the duty to mitigate their damage. The plaintiff must take reasonable measures (if possible) to mitigate any losses.

Here, there is no indication of BJ doing anything to question whether they mitigated their losses. They actually sought legal advice promptly and seek to prevent the sale of the Manx.

The court would hold that the circumstances weren't necessary to avoid further damage.

Certain

Damages must be calculated with reasonable certainty; it doesn't have to be exact.

Here, this is a major issue because not only is the item unique, and rare, it is also difficult to calculate the damages. The amount BJ contracted for compared to the FMV, and the amount that the 3rd parties are willing to purchase the Manx for all emphasize the rarity and inability to determine the amount of damages.

Final Conclusion

Since there is a huge discrepancy in the amount of money damages, and since Felix is a rare, unique, one of a kind personality type of Manx, money damages are inadequate, and equitable remedies of either an injunction or specific performance is more proper.

Measure of Damages - Sale of goods
 Diff K price + cover K
 or FMV price

Whether the Equitable Remedy of Specific Performance of the Contract is appropriate to stop the sale of Felix the Manx.

Specific Performance: (1) Balancing of the Interests; (2) K Valid Enforceable Contract Breach; (3) Certain and Definite Terms (4) Inadequate Legal Remedy (5) Feasible (6) Mutuality.

SP is not allowed to enforce personal services contracts (but usually a negative injunction is proper in this instance).

(1) Balancing of the Interests.

The court must balance the interest and the hardships of the parties to determine if specific performance is proper.

Here, BJ will claim that it's in their best interest for the court to enforce the contract and enjoin Cats by forcing the sale of Felix the Manx. BJ will claim that they have a significant hardship of due to the inability of being able to acquired a similar cat as Felix elsewhere. CatsGalore will claim that it is not in the best interest to force the sale because they have another buyer that is willing to pay almost 50% more than what BJ wanted to buy Felix for.

The court will hold that the interest tip in favor of BJ due to the hardship of being able to obtain another cat.

(2) K Valid Enforceable Contract Breach

In order for a court to enforce specific performance (SP) there must have been a valid enforceable contract, that was breached.

A contract consists of an offer that is open for acceptance, supported by adequate consideration, and is not revoked or terminated.

Here, BJ will claim that they signed a written contract with Cats, and paid \$600 in consideration. The offer was not revoked until after Slim received a higher offer from a different buyer. But, Slim had already entered into a valid enforceable contract prior to the window of revocation closing. Then after notifying BJ of the anticipatory breach, Slim wants to sell the cats to a 3rd party.

The court would hold that CatGalore/Slim breach a valid enforceable contract.

(3) Certain and Definite Terms

There must be certain and definite terms in the contract, such as parties, time, and price.

Here, the facts indicate that there was a written agreement. The parties were BJ and CatsGalore/Slim, for the sale of a rare Manx "Felix" for \$600. Felix has unique colors/markings and personality compared to other Manx.

The court would hold there was certain and definite terms in the contract.

4) Inadequate Legal Remedy

Here, BJ could claim there is no adequate legal remedy because Felix is a "cute, rare Manx, with unique coloring and personality". BJ would claim that there is no amount of

money damages that could replace Felix because he is a rare cat, with rare physical characteristics and qualities. BJ will claim that it isn't certain that they would ever be able to find another rare Manx with the same patterns or personalities. BJ could also claim there is sentimental value since they already bonded with the cat and picked out which cat they specifically wanted. BJ could claim they have now formed a sentimental attachment to Felix, and no amount of money could replace him. Lastly, BJ will claim that a monetary value is difficult to calculate or ascertain because they initially purchased the cat for \$600, but then Slim (the owner of CatsGalore) said that fair market value (FMV) was "obviously \$1000". This is conflicting pricing for the same cat, which further shows the rarity causing the value to be difficult to determine.

Here the court would determine there is an inadequate legal remedy.

(5) Feasible

To grant an injunction, it must be feasible for the court to monitor and enforce. The court cannot enforce personal services.

Here, the court could easily monitor whether CatsGalore sells Felix the Manx to BJ. Also, the court could also enforce the order of the sale and it's not a contract for personal services.

The court would hold monitoring is feasible.

(6) Mutuality.

Both sides of the contract must be willing, ready, and able to perform for the court to enforce specific performance.

Here, BJ wants to stop the sale of Felix the Manx, and will presumably pay the \$600 back (if it wasn't refunded). Also, CatsGalore still has Felix to sell.

The court would hold that both sides are ready, willing, and able to perform the contract if specific performance is ordered.

Final Conclusion:

The court will award specific performance and force the sale of Felix the Manx to BJ.

Whether an injunction proper to stop the sale of Felix the Manx to another party.

Whether B has an Injunctive Remedies Available.

TRO: granted and no hearing required.

Preliminary Injunction: granted after evidentiary hearing.

Permanent Injunction: granted after a full trial.

Injunctions require: (1) Inadequate Legal Remedy; (2) Feasible; (3) Parties ID; (4) Irreparable Harm/Injury; (5) Balancing of the Hardships/Interests.

(1) Inadequate Legal Remedy;

Here, BJ could claim there is no adequate legal remedy because Felix is a "cute, rare Manx, with unique coloring and personality". BJ would claim that there is no amount of money damages that could replace Felix because he is a rare cat, with rare physical characteristics and qualities. BJ will claim that it isn't certain that they would ever be able to find another rare Manx with the same patterns or personalities. BJ could also claim there is sentimental value since they already bonded with the cat and picked out which cat they specifically wanted. BJ could claim they have now formed a sentimental attachment to Felix, and no amount of money could replace him. Lastly, BJ will claim that a monetary value is difficult to calculate or ascertain because they initially purchased the cat for \$600, but then Slim (the owner of CatsGalore) said that fair market value (FMV) was "obviously \$1000". This is conflicting pricing for the same cat, which further shows the rarity causing the value to be difficult to determine.

The court would hold that there is an inadequate legal remedy.

(2) Feasible;

An injunction must be feasible for the court to enforce and monitor. To grant an injunction, it must be feasible for the court to monitor and enforce. The court cannot enforce personal services.

Here, the court could easily monitor whether Slim has sold the cat to BJ. Additionally, The court could enforce a negative injunction to prevent the sale of Felix the Manx to anyone else.

The court would hold that an injunction is feasible to monitor and enforce.

(3) Parties ID

The parties must be identified for an injunction to be enforced.

Here, the contract actually expressly identifies BJ as the buyers and CatsGalore as the sellers.

The court would hold that the contract sufficiently identifies that parties.

(4) Irreparable Harm/Injury

In order to be granted an injunction there must be imminent harm or injury. This means that the harm or injury cannot be speculative or anticipatory.

Here, BJ would suffer irreparable injury and harm because there is no other way to get the specific rare cat that they contracted to buy.

The court would hold there was an irreparable injury if an injunction is not granted since BJ will not be able to obtain the unique item elsewhere.

(5) Balancing of the Hardships/Interests

The court must balance the interest and the hardships of the parties to determine if specific performance is proper.

Here, BJ will claim that it's in their best interest for the court to enforce the contract and enjoin Cats by forcing the sale of Felix the Manx. BJ will claim that they have a significant hardship of due to the inability of being able to acquired a similar cat as Felix elsewhere. CatsGalore will claim that it is not in the best interest to force the sale because

they have another buyer that is willing to pay almost 50% more than what BJ wanted to buy Felix for.

The court will hold that the interest tip in favor of BJ due to the hardship of being able to obtain another cat.

Final Conclusion

A court would hold that a negative injunction to prevent the sale of Felix the Manx is proper.

2)

Per your request, the following is a memo outlining your potential remedies and the associated reasoning.

Please let me know if you have any further questions.

Conversion

Conversion is the intentional interference with the possession and ownership of P's chattel to such a degree that it may require the defendant (D) to pay for it.

Here, Cheatham (C) and Howe (H) broke into Barton's (B) office and stole the rough draft of the tort law flow chart and outline that was in his office. They took the flow chart, made copies and started selling them for \$100 each.

Thus, C and H committed the tort of conversion. ✓

Defenses

C and H may try to argue consent however there are no facts to suggest that B gave them consent.

Compensatory Damages

The purpose of compensatory damages is to put the Plaintiff (P) back in the position he/she would have been in before the tort (make the P whole). Damages must be foreseeable, unavoidable, certain and actual causation must be established. Types of damages include: general (non monetary), special (monetary), nominal, punitive.

General Damages

Actual Causation

Actual causation is established with the "but for" test.

Here, had C and H not stolen B's flow chart he would not have suffered a loss of being without it.

Foreseeable

Damages must be foreseeable in that they were proximately caused by the tort.

It was foreseeable that if B's flow chart and outline was stolen he would be left without it and would suffer harm.

Unavoidable

The P must take reasonable measure to mitigate damages.

B was unable to mitigate his damages because the flow chart was stolen.

Certain

Damages must be certain not speculative.

The measure of damages for personal property that is stolen is the fair market value at the time and place of the taking.

Here, it is unclear what the fair market value of the flow chart would be. Although, B sold it online for \$100 each, it not certain what the actual fair market value is. Thus, it would likely be speculative.

Thus, B would not likely be able to recover special damages.

Nominal Damages

Nominal Damages are awarded when the P's right have been violated but there are no damages.

B would be entitled to nominal damages since damages are difficult to ascertain yet his rights have clearly been violated.

Thus, B would be able to retain nominal damages.

Punitive

Punitive damages are awarded to deter and punish. The P must establish that the conduct was willful, wonton, malicious. The punitive damages must attach to either compensatory or nominal damages and must be reasonable (not to exceed 10x compensatory/nominal).

C and H broke into B's B's office when he was away on vacation, clearly willful and wonton conduct.

Thus, B would be entitled to punitive damages (however they would be slight they would amount to only a small multiple of the nominal damages).

Even though B may not be able to recover much in the way of damages, he may have a great opportunity in seeking restitutionary remedies.

Restitutionary Remedies (RR)

The purpose of RR is to prevent unjust enrichment. The measure of damages is the benefit to the D not the loss to the P. The P may recover either compensatory damages

or RR not both. Types of RR includes replevin, ejectment, constructive trust and equitable lien.

Restitutionary Damages (RD)

RD are measured by the benefit to the D not the loss to the P.

Here, C and H sold copies of B's outline and flow chart for \$100 each resulting in a \$100k benefit (unjust enrichment). Thus, B is entitled to RD of \$100k (see additional discussion below as CT and EL are enforcement measures that may be awarded in recovering restitutionary damages).

Thus, B is entitled to RD. ✓

Replevin ✓

Replevin is an action which allows the P to recover specific personal property. The P must establish that the (1) P is the rightful possessor and there is an unlawful withholding from D.

Here, B would be entitled to recover the original flow chart and outline plus ALL additional copies in that C and H may have made and not yet sold. B would be able to show that he is the rightful owner and that C and H are unlawfully withholding it because they stole it.

Thus, B would be able to replevy his flow chart and outline.

Constructive Trust (CT) & Equitable Lien (EL)

A CT is where the court order the D to hold property in trust to convey it to the P.

Generally, CT is not appropriate when property has been commingled. The P is entitled to

the appreciable value of the property. The following elements must be established (1) P is the rightful possessor of the property, (2) P can trace the property from P's property to whatever form it take, (3) inadequate legal remedy and (4) it would amount to unjust enrichment for the D to retain the property.

An EL is similar to a CT but instead of the D holding the property in trust, the court orders that the P retain a security interest in D's property. The court can then force the sale of the property from which P will be paid. Moreover, if there is a shortfall between what P is owed and the amount distributed, then the court may order a deficiency judgment. The same elements as CT must be established.

CT - Bank Account ✓

Here the facts state that C and H deposited \$50k of the \$100k, they earned selling the flow chart and copies online, into a bank account earning 5% interest. P was the rightful owner of the flow chart and outline that C and H stole. B would likely be able to trace (likely through electronic means), copies of the sale of his flow chart and outline online, resulting in \$100k. Then B would be able to show that the \$50k was deposited in a bank account. Moreover, B would be able to establish that there is an inadequate legal remedy as discussed above (nominal compensatory damages). And, it would amount to unjust enrichment because the the money was made by selling B's property. Finally, B would be able to retain any appreciated value of the \$50k in the bank account (ie. it is earning 5% interest)

Thus, B will be able to obtain a CT over the \$50k in the bank account.

CL - Race horse

Here, the facts state that C and H took the remaining \$50k and invested it in a racehorse that is also 50% owned by their wealthy friend. Thus, the \$50k has been commingled with other funds. As a result B would not be able to obtain a CT over the horse but rather a

security interest. B would be able to trace the funds (likely electronically from the sale of his outline to the investment in the horse). It would be inequitable for C and H to be able to retain the property after obtaining it through money made from stolen goods. The court can then order the sale of the horse. Even though the wealthy friend is completely unaware that the \$50k that C and H invested in the horse was from monies ill gotten, the court may still order the sale of the horse such that B will be paid what he is owed plus any appreciation on the 50% portion and the wealthy friend will be paid the other half of the proceeds.

Note: the wealthy friend was a bona fide purchase because he purchase for value (the horse) without knowing that the other have of the funds used to purchase the horse were from stolen property.

Thus, B will be able to obtain an EL over the \$50k invested in the horse. ✓

CT - \$250 Prize Money

Moreover, the racehorse won \$250k in a race. B would be able to trace the funds from the sales of his outline to the investment in the horse and ultimately the horse's winnings (again likely electronically. It would be unjust for C and H to retain those funds (as mentioned above). The wealthy friend who knew nothing about the ill gotten gains wealthy friend is entitled to the half the funds from the \$250k and B would be entitled to the other half. B would be able to obtain a CT over \$125k. Note however, that if the \$250k funds were commingled in an account not yet distributed between the parties then a CL on that account would be the best remedy. If the money has been distributed to C and H but not put into an account, B would be entitled to RD in the amount of \$125k without the added security of obtaining a CT or CL.

Thus, B would likely be able to secure a CT over half of the horse's winning (\$125) ✓

Defenses

There do not appear to be any applicable defenses.

Conclusion

Accordingly, the most ideal remedy for B would be to seek RR where he could replevy the flow chart and outline (plus all copies) and recover \$50k in a CT over the bank account (plus appreciation), \$50k in an EL over the horse and if applicable (see argument above) \$125k via an CT over the \$125 winnings.

3)

Peter v Donna

Injunction

There are several types of injunction: structural, prophylactic, prohibitory and mandatory. A mandatory injunction is a court order ordering a party to do something while a prohibitory injunction is a court order ordering a party not to do something. The court will ~~balance~~ the following factors in determining whether to order an injunction:

EXPECT AND EXAMINE

Ripeness

The issue must be ripe for review.

In this case litigation has begun, Peter (P) has sued Donna. P alleged to have been harmed by Donna. The case is ripe for review.

Irreparable Harm (IH) & Inadequate Legal Remedy (ILR)

IH and ILR overlap in the sense that if the legal remedy is inadequate then it will cause irreparable harm. Inadequate legal remedy are when the item/property is unique, risk of multiplicity of suits, damages inadequate, etc.).

Here, P will argue that the harm is ongoing and damages are inadequate. Peter alleges that Donna is selling mangoes containing Malzoid poison and California consumers must be protected and exploiting underage workers. The harm would be irreparable without an injunction because money damages will not suffice and the harms are all ongoing. ← ☆
Moreover, he will argue that his business is being harmed from her advertising campaign thus it must be stopped. Finally, here the fact that Donna allegedly hires underage

children is also an ongoing harm whereby legal remedies are inadequate and will result in irreparable harm.

Feasible

The injunction must be feasible for the court to order. Mandatory injunction are not favored by courts because courts must oversee/monitor performance. However a prohibitory injunction is preferred because the court can use its inherent contempt power to enforce the injunction. Moreover, the court must have jurisdiction over the parties (in personam).

★ Here, the courts would be able to issue an injunction because they all involve prohibitory injunctions (preventing D from hiring underage children, selling mango's in CA and advertising the slogan). The court could simply issue a contempt order if the injunction is not complied with. However, there is a problem with regard to jurisdiction. Although ✓ → Donna owns a home in Monterey, CA and distributes mango's in CA and other parts of the US (Texas and Arizona) the company is based in Mexico. Thus any injunction attempting to stop her from using underage workers would be impossible. However, because she does business in the US, she could be enjoined from selling into certain states and can also be enjoined from advertising.

Property Right

Historically courts required a property right however modernly the courts have expanded into other rights.

Here, Peter has a property right in his business as does Donna in her business. Thus, this factor is met.

Balancing

OF HARDSHIPS/EQUITIES

The court balancing the harm the P will suffer without an injunction against the burden to the defendant (D) having to comply. Additionally the court will take into consideration the burden/benefit to the public.

Here, P will argue that without an injunction the CA consumers purchasing D's mango will continue to be poisoned (thus the public harm is significant), underage children working for her will continue to be harmed and P's business will suffer if P continues her advertising campaign. On the other hand, it would be a significant burden to D if she were forced to discontinue distribution her mango's to CA and if she could not advertise as she pleases. Thus, there are alleged burdens on both sides but most importantly, there is no evidence that Donna is in fact using Malzoid poison in her mango, nor is there any evidence that she hires underage workers (after all P made this part up).

→ GOOD. WOULD THIS BE AN ISSUE AT A TRO? AT A HEARING ON A PRELIM?

On balance the factors do not weigh of P in seeking an injunction. Moreover there are several defense that will likely defeat any attempt to secure an injunction(s).

Defenses

Unclean Hands



The defense of unclean hands may be available to a D if the P acted unfairly specific the cause of action.

Here, Donna will have a strong argument that Peter has unclean hands because he invented an argument that she exploits underage Mexican workers knowing full well that she does not.

Crime/Criminal Prosecution

Equity will not enjoin a crime or a criminal prosecution.

Here P is alleging that D is selling mangoes with malzoid poison. Courts will not enjoin a crime because it is important to leave it up to the authorities to investigate crimes.

(Note: However, there is an exception for public nuisances cases where by the criminal prosecution is inadequate, the courts may step in. P may argue that her mango's are a public nuisance. Generally the attorney general gets involved in bringing public nuisance actions. Pete may be able to bring a public nuisance action if he incurred a unique injury different than the public - however that does not appear to be the case here (P has not suffered a unique injury). Moreover, there is no evidence that the public is in fact being harmed nor any evidence that this alleged crime will not be properly investigated.

First Amendment - Free Speech

Equity will not enjoin speech.

Here, it would be unlikely that the court would impose an injunction against Donna for stating that "Mexican mangoes are delicious - better than the Hawaiian kind".

First, her speech is protected by the First Amendment - commercial speech. Even if it was defamatory (a form of unprotected speech), courts will still refrain from enjoining speech (in some instances it may be warranted to modify an injunction if important rights are at issue (ie. Onassis) but that is not the case here).

Conclusion

Thus, is is unlikely P will prevail in obtaining an injunction against D to prevent her from advertising or selling mango's in CA.