

**San Luis Obispo College of Law & Hybrid JD Program**

**Remedies**

**Final Examination**

**Spring 2025**

**Prof. Carrie Winters and Prof. Stephen Wagner**

General Instructions:

Answer Three (3) Essay Questions.

Total Time Allotted: Three (3) Hours.

SLOCL and Hybrid  
Remedies  
Final Exam  
Spring 2025  
Professors Carrie Winters and Stephen Wagner

Question 1:

Perry owns five copper knives, which are the only known surviving tools of the ancient Sicanian people, who were indigenous to the Mediterranean island of Sicily. Although each of the knives were found in different locations in Western Sicily, experts had dated each of them at approximately 5000 years old.

Dolly is a scholar specializing in Mediterranean copper age culture and is a collector of ancient artifacts. She owns a golden Aztec serpent sculpture, which is approximately 1800 years old.

Perry and Dolly entered into a valid contract in which Perry would trade two copper knives of his choosing for Dolly's golden Aztec sculpture. Since they lived in different parts of California, they agreed to go to their respective post offices on the same day and mail them to each other at the same time.

In preparation for the exchange, Perry laid all five of his copper knives on his workbench. While trying to figure out which two he would send, his eight year old son wanted to show his father how strong his new magnet was. Perry knows that copper is magnetic, and so long as an item possesses any amount of copper, a magnet will stick to it. The son ran his magnet over the knives and watched in awe as 4 of the 5 stuck to it. Perry saw what happened, shooed his son out of the room, verified that one of the knives did not stick to the magnet, and put that one and another one that did stick to the magnet in the box labeled for Dolly. When Perry wasn't looking, his son placed a note in the box that said "my magnet didn't stick to one of my dad's five knives!"

On the date and time set for shipping the items, Perry and Dolly went to their respective post offices. Dolly accidentally mislabeled Perry's address and although she sent the package at the same time and date that Perry sent his package to her, she was surprised when her postal carrier delivered Perry's package to her and also returned the package that Dolly tried to send to Perry.

Dolly opened the package from Perry and admired her two copper knives. She read the note Perry's son left in the box and ran a magnet over the two knives. Dolly was shocked to discover that the magnet only stuck to one knife.

Dolly immediately called Perry and informed him that he only sent one copper knife and the other one was not copper. Perry responded by explaining that both knives were found in Sicily and were dated to Sicanian times, and thus, he did give her what she bargained for. Dolly responded by saying, "well as luck would have it, the Aztec serpent sculpture I sent to you was returned to me. So I am not going to send it to you since you cheated me out of a knife! Besides, I have another person interested in the Aztec serpent sculpture and will sell it to that person!"

As he filed his lawsuit against Dolly, Perry also filed for a preliminary injunction. Will he be successful?

In the substantive lawsuit, what remedies will Perry seek?

What defense(s) will Dolly raise?

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Question 2:

Donald is heavily intoxicated after drinking 5 stiff drinks at his favorite bar. He decides to drive home from the bar after finishing his final drink. Donald fails to see a stoplight and rear ends Paula, who is lawfully stopped at the light. The impact of the collision pushes Paula's car into the intersection just as a semi truck lawfully crosses into the intersection. The driver of the semi cannot avoid the collision and smashes into Paula's car, crushing it. First responders arrive an hour later and extricate Paula from the vehicle as she screams in pain due to her leg being pinned in the wreckage. Paula is transported to the hospital, where she alternates between a coma state and incredible pain for the next week. After seven days in the hospital, Paula dies from the injuries she sustained in the wreck.

Prior to the collision, Paula was making \$200,000 as an engineer and was the sole provider to her husband and three year old daughter. Her medical insurance, home insurance, life insurance, and auto insurance paid a substantial sum to cover the cost to replace Paula's vehicle, her lost wages for the next year, and medical expenses. Donald's insurance paid for Paula's funeral expenses.

Donald was imprisoned for vehicular manslaughter while intoxicated.

Paula's husband and son sue Donald. The jurisdiction has wrongful death and survival statutes.

What remedies can they seek and can Donald successfully avoid any of them?

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Question 3:

The board of directors of Pinkerton, Inc. enters into a contract with David for David to become the new Chief Executive Officer of the organization. During negotiations, David agrees to work for Pinkerton, Inc. for \$3.2 million/year plus health insurance and a lifetime pension based on his highest year salary so long as he stayed the 5 years that the contract called for. David leaves his role of Chief Financial Officer of Horizon, Inc. In his role at Horizon, David was making \$2.5 million per year and by leaving prior to the end of the year, was forfeiting a lifetime pension in the amount of his highest year's salary. Pinkerton knew this during the negotiations.

The negotiations included a liquidated damages clause of \$100 million should Pinkerton let David go without cause during the contract. At age 35, it was likely that David had a useful work life of 30 more years. Another provision of the contract stated that if David chose to stop working for Pinkerton, he could not work for any other company similar to Pinkerton's for the following 10 years.

During his first week on the job, at David's direction, Pinkerton contracts with EngCorp. Pinkerton manufactures computer power switches, and EngCorp agrees to use Pinkerton's switches exclusively. During negotiations, EngCorps tells David that delivery of the switches in one month is critical because it is the starting point for the manufacturing of their computers and that if the switches come in late, EngCorp will lose approximately \$5 million in revenue for the year, due to tight deadlines from its end users. David says that it will be no problem to supply them and they finalize the deal.

David then learns that Pinkerton's switch making machine is being repaired, and they won't be able to supply EngCorp with the switches in time. At the time David made the deal, the switch making machine was working properly.

As a result, Pinkerton missed EngCorp's deadline. Pinkerton's Board of Directors fired David, even though it was without cause. He promptly went back to Horizon, Inc. and was hired as its CEO.

What remedies can David seek from Pinkerton, Inc.?

What remedies can EngCorp seek from Pinkerton, inc.?

Will Pinkerton succeed on its suit to enforce the non compete clause?

David requests a jury trial. Will that be granted for all causes of action?

In a heated moment during trial, the lawyer for Pinkerton, Inc. calls the trial judge a "stupid son of a bitch." The court clerk hears it, but not the judge. However, the clerk promptly tells the judge what the lawyer said. Can the judge summarily hold the lawyer in contempt?

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## Question 1 – Answer Outline

### Perry's request for preliminary injunction:

- The likelihood that the moving party will succeed on the merits
  - Perry does have a claim, subject to the defense which seems to be viable.
  - Not seeking a final determination of success on the merits, but just that there is a chance
- The extent to which the moving party will suffer irreparable harm without injunctive relief
  - If Dolly sells the Aztec sculpture before the judge can make a ruling on the claim, it will cause irreparable harm to Perry because the item is unique.
- The extent to which the nonmoving party will suffer irreparable harm
  - She is at risk of losing a copper knife.
- Public interest
  - Public has a strong interest in seeing that contract and property rights are respected.

### P v. D:

1. Damages - Suit for breach of contract – monetary damages.
  - a. The ordinary remedy for breach of contract is the cost of the item.
  - b. Here, Perry will argue that monetary damages are inadequate because the contract involves a rare item – an 1800 year old Aztec sculpture.
  - c. It would be considered unique and monetary damages will be inadequate
2. Specific Performance
  - a. Specific performance is a contract remedy in which a court orders a party to fulfill their obligation as closely as possible as to what was promised in the contract.  
Would order Dolly to give the Aztec sculpture to Perry
  - b. To receive an order of specific performance, a party must prove
    - i. A valid and enforceable contract exists
      - a. Fact pattern says that a valid contract exists
    - ii. He is ready, willing, and able to perform his obligations under the contract.
      - a. He had the knives and sent her two as agreed.
    - iii. Must show that the other party could perform but has failed to do so.
      - a. She had the Aztec sculpture, and was in contact with him and could have sent it to him.
    - iv. There is no other adequate remedy at law
      - a. Unique or rare chattels will be considered so unique that monetary remedies will be considered inadequate.
      - b. The Aztec sculpture is a unique item and is old. Due to that factor, there is no adequate remedy at law.
3. Conclusion – entitled to specific performance, unless a defense exists

### D's defenses:

1. Unclean hands
  - a. The party who is seeking a judgment cannot have the help of the court if he has done anything unethical in relation to the subject of the lawsuit

- b. Dolly will argue that she bargained for two copper Sicanian knives and that Perry sent one knife that was not copper. She will further argue that Perry had 5 knives to choose from, and he could have given her an actual knife. She will also point out the note his son left in the box, and use that as proof that Perry could have fulfilled his obligation
  - c. Perry will argue that the point was that she received two 5000 year old Sicanian knives. He will point out that the non copper knife was found in a way that indicates it was Sicanian and is still as old as the others.
2. Conclusion: could go either way, depending on the judge, but IMO, Dolly has a better argument. She bargained for copper knives, not just Sicanian knives. And although it seems like the non copper knife is also 5000 years old and Sicanian, she specifically wanted copper knives and Perry knew that.

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Question 2 Answer Outline:

- Wrongful death
  - Allows decedent's relatives to sue for injuries suffered by them as a result of the decedent's death
  - Lost wages that Paula would have brought in as the sole breadwinner
  - Loss of consortium
  - Emotional distress
  
- Survival
  - Allow decedent's estate to sue for predeath injuries suffered by the decedent
  - Only damages the decedent would have been able to recover had she lived would be recoverable.
  - May include pre death lost wages
  - Medical expenses
  - Funeral expenses
  - Pain and suffering
  - Loss of enjoyment of life
  - Cost of vehicle
  
- Punitive damages
  - Based on Donald's egregious behavior or was it egregious.
  - Heavily intoxicated – decided to drive home
  - Convicted of vehicular manslaughter while intoxicated
  
- Collateral source rule
  - Donald cannot seek to offset all of the payments made by Paula's insurance, but any recovery for funeral costs by the family can offset the amount his insurance paid

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Question 3 Answer outline:

David v. Pinkerton

- Liquidated damages
  - A clause that provides a reasonable estimate of the loss is liquidated damages. A clause that provides an unreasonably large recovery is a penalty and penalty clauses are void because they violate public policy.
  - Possibly okay – gave up a lucrative job with a lifetime pension.
  - Still has 30 years left to work
  - Pinkerton is sophisticated and these are sophisticated parties.

EngCorp v. Pinkerton

- Consequential damages
  - In contracts, they do not flow directly from the breach and are recoverable only upon a showing that they 1) were not too speculative and 2) foreseeable at the time the contract was made.
    - EngCorp was clear they needed the switches in time or else their production would go down.

Pinkerton v David – non compete

- May or may not be allowed
- Equity – restraining order

David's request for jury trial on all causes of action

- Yes to Liquidated damages (legal)
- No to non compete issue (equitable)

Contempt by lawyer

- Criminal
- Direct or Indirect
  - If direct, can be summarily found in contempt
  - If indirect, afforded due process considerations.
- In front of clerk, so considered direct.

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V. Perry

1)

Perry's Preliminary Injunction

A preliminary injunction is a court order issued compelling a party to do or not do something. The purpose of a preliminary injunction is to preserve the status quo during the pendency of the litigation. In order for a preliminary injunction to issue, the party seeking the relief must prove 1) that they will suffer irreparable harm if the injunction does not issue, 2) the likelihood of the success of their claims on the merits, and 3) the public interest would not be disserved. The court may also equitably balance the hardships of the party.

*Irreparable Harm*

Assuming that Perry is seeking a preliminary injunction that would require Dolly to return the knives he shipped, Perry would claim that he has been irreparably harmed because he performed his end of their valid contract by shipping the two knives (even though one was not made of copper) and did not receive the golden Aztec sculpture in return, depriving him of both his own property and the benefits of the contract. Further, he would likely also assert that the knives are the only surviving tools of the ancient Sicanian people (making them rare and valuable) and as a result a preliminary injunction is the only way to prevent him from suffering this irreparable harm. On the other hand, Dolly would assert that Perry owns three other similar knives, and the potentially temporary loss of two of them does not constitute or rise to the level of irreparable harm.

Based on the facts as presented, Perry would likely not be irreparably harmed by the potentially temporary loss of two of his knives.

*Likelihood of Success on the Merits*

Here, Perry would claim that his claims would likely succeed on their merits because Dolly's failure to ship the statue constitutes a clear breach of their contract. Perry would also argue that he substantially performed his contractual obligations by shipping two knives and there was no reason for Dolly not to hold up her end of their bargain. In response, Dolly would assert that the fact the package did not arrive initially was an honest and correctable mistake (she unintentionally mislabelled the address) and the only reason she did not re-ship the statue was because Perry breached his end of their bargain by not shipping two copper knives as they agreed upon, which she discovered through seeing his son's note about the magnet.

Based on the above facts, there are likely too many issues of disputed material facts left open for Perry to successfully prove that his claims would likely succeed on the merits for the purposes of obtaining preliminary injunction.

*The Public Interest Would not be Disserved*

There are no facts to support the assertion that the public interest would be disserved if the court granted Perry's request for a preliminary injunction.

*Balancing of the Hardships*

Here, Perry would likely claim he has been harmed more than Dolly because she got to keep the sculpture and received the knives, and he received nothing of benefit in return. Dolly would argue that she has been harmed more because she did not receive what she had been promised because one of the knives was not copper. The fact that Dolly did receive the knives could weigh in Perry's favor, however more facts would be needed to prove that he was harmed to such an extent that the equitable scale tips in his favor.

In light of the foregoing analysis, Perry would likely not be successful in obtaining a preliminary injunction.

*The Substantive Lawsuit**Contract Claim*

Here, the facts state that Perry and Dolly entered into a valid contract.

*Specific Performance*

Specific performance is an equitable remedy that requires the breaching party to carry out their contractual obligations. Specific performance applies where 1) there is a valid contract, 2) legal remedies are inadequate, and 3) there was a mutuality of obligation. Specific performance is generally not awarded when the contract at issue involves personal services.

Here, there is no dispute that there was a valid contract. Perry would likely claim that legal remedies would be inadequate due to the rare nature of property involved and its potential value (the knives are the only surviving tools, and there are likely not too many 1800 year old golden Aztec sculptures in the antiquities trading market). He would also argue that there was mutuality of obligation under their contract because it was a trade of property that required each of them to mail a package from the post office (their obligations were mutual and practically identical). Dolly would likely argue in response that because Perry did not hold up his end of their bargain, she was not obligated to ship the statue and fulfill her mutual obligation.

This is Perry's strongest argument for a remedy, and the most likely to be awarded by the court in this instance based on the facts as presented. If granted, Dolly would be compelled by the court to ship Perry the sculpture, leaving the contract fulfilled.

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Here Dolly would argue that Perry did not act in good faith because he knew (or should have known) that one of the knives he shipped was not copper. She would likely also assert that his contention that he fulfilled his obligation by shipping two knives and they did not need to be copper pursuant to their agreement was specious and made in bad faith.

This would be Dolly's strongest defense because Perry knowingly shipped her a knife that was not copper, and he knew that she would be expecting two copper knives per their contract.

*Other Potential Defenses*

Other potential defenses could include laches or equitable estoppel if additional facts come to light to support their assertion.

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2)

NICE LAYOUT

### Wrongful Death and Survival Actions

Generally, family members such as spouses and children are permitted to bring wrongful death and survival actions. Statutes also sometimes dictate who specifically may bring these actions.

Assuming that Paula's husband and son are not barred from bringing a claim by an applicable statute, they would be entitled to the remedies below.

#### *Loss of Consortium*

Loss of consortium is a remedy by which a family member (usually a spouse) is compensated for the loss of their deceased family member's companionship, influence, pleasure, and partnership. Damages for loss of consortium are usually awarded by a jury.

Here Paula's husband would likely be successful in claim for loss of consortium because he lost his wife and the mother of his three year old child, leaving him to navigate parenthood and the rest of his life without her. Although loss of consortium is usually reserved for close intimate relationships such as a husband and wife, Paula's son may also have a successful claim for loss of consortium due to her age. Arguably, a three year old needs their mother, and will continue to for the rest of their life. As such, losing a parent at such a young age constitutes a substantial loss that may rise to the level of compensation for loss of consortium.

Based on the facts as presented, Paula's husband and child would likely be successful in claims for loss of consortium.

#### *General Damages*

In wrongful death and survival actions, general damages generally include (and are limited to) the decedents medical expenses, funeral expenses, lost wages, and any other services they provided to the family. General damages are usually awarded by a jury.

Here, Paula was making \$200k as an engineer before her death, and was the sole provider for her husband and child. As such, Paula's husband and child would be entitled to reimbursement by Donald of her medical expenses, funeral expenses, lost wages, and any other services she provided to the family. As a wife and mother, other services Paula provided to the family could include things such as household labor, but that would likely not apply in this case, since she was the sole breadwinner of the family which means that her husband likely stayed at home with their child while she worked.

#### *Punitive Damages*

3)

## CONTRACT REMEDIES

Contract remedies are designed to put the nonbreaching party in as good a position as they would have been if the contract were performed. Punitive damages are not available in contract law unless the breach rises to the level of an independent tort.

Here, David

### 1. What remedies can David seek from Pinkerton?

#### LIQUIDATED DAMAGES

Liquidated damages are damages contracted into a clause in the contract itself. Liquidated damages are used by parties with the damages would be difficult to calculate because the subject matter is unique or specialized or generally likely to be difficult for a court to come up with. Liquidated damages clauses will control so long as the damages are reasonable and not punitive.

Here, the liquidated damages clause is a \$100 million dollar pay out to David if he is terminated without cause. This might seem unreasonable on its face, but in light of the facts, this is a reasonable clause. David is a CEO, there are not a lot of CEO jobs open. He is already 35, and in the prime of his career. D's salary at Pinkerton was \$3.2 million plus lifetime health care and a pension set at his highest salary, which presumably will be much more than the \$3.2m he's currently making if he stays on for 5 years. Additionally, David left another CEO job with great benefits package to take this position. Pinkerton obviously really wanted to poach D because they offered him a million more per year in a salary than he was making. D is a CEO in high demand.

The liquidated damages clause is a reasonable compensation for a CEO of this caliber with the benefits and pension.

### 2. What remedies can EngCorp seek from Pinkerton?

#### COMPENSATORY/EXPECTATION DAMAGES

Standard contract damages are expectation damages. These are calculated by the difference between the contract price and the cost to cover (if covered) or the market value at the time Plaintiff learns of the breach plus any incidental damages (costs incidental to the nonperformance of the contract) and consequential damages that are

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foreseeable at the time of contracting such as lost profits, minus any cost saving by not having to perform the contract.

### CONSEQUENTIAL DAMAGES

Consequential damages must be foreseeable.

Here, Pinkerton (P) contracted with EngCorp (E) to be the exclusive provider of these computer switches. The agreement calls for E to use P's switches exclusively. The exclusivity was known at the time of contract because it is part of the agreement. Further during negotiations, E told Pinkerton CEO that delivery of the switches in one month is critical to the computer production and the switches are needed for the computer production. If the switches are late, the computers cannot be produced and E will lose \$5m. Because this was said during negotiations, Pinkerton was aware of the foreseeable lost profits and will be liable for the lost profits. It does not matter that David said it would be no problem to make the switches on time but didn't know the switch making machine was actually broken. The fact remains the CEO of Pinkerton was aware of the potential liability and the company P will be liable.

E can also seek any costs to cover the contract if E chose to cover. Any incidental costs related to shipping different power switches or finding an alternative supplier will also be included because these are a direct costs associated with the nonperformance of the contract.

### 3. Will Pinkerton succeed on its suit to enforce the noncompete clause?

Covenant not to Compete

A noncompete clause is a promise not to compete with another party for a specific amount of time and in a specific geographic area. They are typically used in employment contracts or business contracts to protect business interests such as a person practicing specialized or unique trade, customer/client lists, and are enforced through specific performance. They are generally only valid if the covenant not to compete is for a reasonably specified amount of time and geographic area.

Pinkerton will have a difficult time enforcing the noncompete. The terms are too broad prohibiting D from working at "any other company similar to Pinkerton" in effect this will mean that D will never work in his industry for 10 years--which is basically the remaining prime work years--because he is already age 35. Also, he was fired by the board, he did not voluntarily separate. The noncompete language states it is valid if D "chose to stop working for Pinkerton" which D did not. He was forced out by the board and fired.

### 4. When is a jury trial granted?

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A jury trial is granted in all serious criminal prosecutions (typically 6 months or more imprisonment) and civil matters involving \$20 or more. In cases involving both legal and equitable claims, the judge will hear the equitable claims and the jury will hear the legal claims. If the defendant has a counterclaim that is over \$20, that part of the case will be tried by a jury.

### **5. Can the lawyer be held in contempt?**

YES. This attorney will be held in contempt.

Contempt is used to enforce equitable remedies. Contempt can be direct or indirect, criminal or civil. Contempt is an offense against the dignity of the court.

Direct/indirect

Direct contempt happens in the presence of the court using the court's own eyes and ears. This does not require a jury trial and due process protections are not required. The judge does not have to witness the contempt himself, a court officer (bailiff or attorneys or court staff) may suffice. Indirect contempt occurs outside the presence of the court and requires testimony of a third party thus due process protections apply such as notice and opportunity to be heard.

Here, the attorney used profanity in open court and called the judge names "a stupid son of a bitch." This is an offense against the dignity of the court because it interferes with the court's ability to administer justice in a respectful and calm manner. This is direct contempt because the name calling of the judge was heard in open court by the court officer--a clerk. The judge does not have to personally hear, a court clerk will suffice.

Criminal/civil

Criminal contempt is a crime in the ordinary sense. It is designed to punish. It requires full due process protections such as representation, a jury, notice and opportunity to be heard. Proof is beyond a reasonable doubt. Civil contempt is designed to coerce compliance with the court's orders. A person may avoid civil contempt by compliance with the court's orders. Proof in civil contempt proceedings is preponderance. A jury trial is not required. Notice and opportunity to be heard are required.

Here, the attorney will be held in civil contempt and likely fined sanctions in order to ensure future cooperations with orderly and respectful court proceedings. So long as the fines are reasonable, it will still be civil contempt. The attorney may also be briefly jailed and it will still be civil, so long as the jail time is a reasonable amount, such as maybe for the day.

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Yes, the attorney can be held in direct contempt. It will likely be civil contempt with fines or brief jail time, perhaps a day.

END OF EXAM



per  
ATTORNEY