

Monterey College of Law - Hybrid

REMEDIES – Section 1

Final Examination

Spring 2024

Professors Patterson & Martin

General Instructions:

Answer Three (3) Essay Questions.

Total Time Allotted: Three (3) Hours

Recommended Allocation of Time: Equal Time per Question

Question 1

Prof. James Martinelli taught Torts at a local law school and recently signed a new one-year contract of employment. Two months into the school year, Martinelli's new book, "Prince of Torts", got published and he received accolades and acclaim as a brilliant mind on the subject. Shortly thereafter, Martinelli got an offer from a "Big Name" Law School to leave the local law school and teach at their law school for five times the salary and benefits of his current contract.

Martinelli contacted Dean Winship at the local law school and demanded that his salary be increased to match the offer he received from "Big Name", citing the increased prestige, notoriety and donations that he would bring to the local law school. Dean Winship refused and told Martinelli that he expected him to honor the contract but Martinelli stopped teaching and began talks with Big Name to begin teaching at their school.

Winship contacted Professor Patterman, an experienced teacher of many subjects, to see what it would take to get Patterman to take over Martinelli's Torts class, and learned it would take double the amount of Martinelli's contract.

Dean Winship contacts you to advise him as to his potential legal and equitable remedies against Martinelli.

Specifically, advise as to:

- 1) Contract Damages
- 2) Specific Performance
- 3) Injunctive Relief.

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Question 2

Sly Trainer and Slim Jockey worked at Rich Owner's horse ranch training and riding 30 thoroughbred horses, including "King Henry", a two-year old, up and coming race horse. Sly and Slim normally worked at the ranch Monday-Friday 9AM to 5PM. Sly and Slim learned of a horse race with a \$1,000,000.00 prize to take place in the adjoining State of Euphoria, the "Euphoria Derby". They devised a plan to take King Henry and enter him in the race under the name of "Prince Charles" without the knowledge or consent of Rich Owner. They snuck back onto the ranch on Friday night, March 1 and abducted King Henry and transported him to Euphoria for the race Sunday, March 3 and entered the race as Prince Charles. Prince Charles won the race and the 1million dollar prize. Sly took his half of the proceeds and purchased a house for \$750,000 using \$250,000 of his "partner" Sally's own money. Sly and Sally kept Prince Charles in a horse stall behind the house. Slim deposited his \$500,000 into a mutual fund account, which has increased by 10% in a short time.

In addition, photos and sweatshirts with Prince Charles' face were quickly produced by Sly and Slim and are selling briskly to innocent buyers. So far, they have sold 800 of the 1000 photos and 750 of the 1000 sweatshirts they produced at a profit of \$16,000 for the photos and \$30,000 for sweatshirts.

Rich Owner discovered that King Henry had been taken and that Sly and Slim were responsible. Advise Rich of all of his Tort and Restitutionary remedies.

QUESTION 3

Paul and Doug are both owners of horse racing stables and each of them claims ownership of a racehorse named Secretariat, a horse with extraordinary talent despite a lingering minor injury. There is a lawsuit in May that results in a final decision declaring Paul to be the sole owner.

Immediately after the May lawsuit, Doug makes threats to take possession of Secretariat despite the decision that Paul is the sole owner. After receiving notice of Doug's threats, Paul seeks and receives a court order that enjoins Doug from interfering with Paul's possession of Secretariat. Doug was present when the court granted a permanent injunction, and a copy of that injunction was personally served on Doug.

In July, Doug goes to Paul's stable with a trailer and takes Secretariat in violation of the court order. During the next week, Doug enters the horse in two races and the horse wins both, thus claiming 1st place purses that total \$200,000.

Immediately after the July taking of Secretariat by Doug, Paul begins a second lawsuit against Doug, alleging Trespass to Personalty and Conversion. Additionally, Paul fully intends to utilize Replevin to recover his horse.

DISCUSS:

1. After Paul had notice of Doug's threats, what was necessary for Paul to declare to the court in his application for an Injunction?

Note: (As a permanent injunction was granted, you do not need to discuss the Interlocutory Injunctions)

2. If Paul is successful in the second lawsuit, discuss how useful a remedy of Damages would be.
3. Because Paul will likely inform the court of Doug's taking of Secretariat from Paul's stable in violation of the Injunction, what additional remedy could be available?

ANSWER OUTLINE
Remedies-SEC 1 HYB
Final Exam
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Prof. J. Martin & R. Patterson

Question 1 (Patterson)

- 1) Damages – Purpose
Subject to foreseeable, unavoidable and certain
b) Employment contract – Employee breach
Measure – Difference in hiring replacement
+ No payment to Martinelli after breach (repudiation)
- 2) Specific Performance –
Balancing of interests
K-contract breach
C – very certain terms
I – Inadequate Legal Remedy
F -feasible. Here NOT because no way to supervise + can't force indentured servitude
M- mutuality of Ability (Ready, Willing + Able to Perform) by Claimant.
- 3) Injunction – Negative Injunction to Prevent Martinelli from Working Elsewhere
Inadequate Legal Remedies
Feasible
Parties ID'd
Irreparable injury if not granted
Balancing of interests

Question 2 (Patterson)

- Remedies Torts (1) Trespass
(2) Conversion
Damages
Injunction to prevent future Trespass
- Waive Tort Damages Remedy and Sue in Assumpsit for
Restitutionary Remedies – Damages- Benefit to defs.
- (1) Replevin – King Henry horse and any photos + sweatshirts
 - (2) Equitable Lien on Sly/Sally house for
Sly portion + proportionate share of any increase in value
 - (3) Constructive Trust on Slim Mutual Fund Investment including any profit.
 - (4) (a) Constructive Trust on any \$ profits for sales of photos and sweatshirts.
(b) Injunction to prevent further sales of photos and sweatshirts.
(c) Constructive Trust or Replevin of photos and sweatshirts, except can't on those already sold to BFP.

REMEDIES FINAL EXAM -- SPRING, 2024
QUESTION 3 -- MODEL ANSWER

1. For PAUL to obtain an injunction that restrains DOUG, he would need to declare:

A. Inadequacy at Law

PAUL would state that mere money received from DOUG would be insufficient because Secretariat (hereafter "horse") is a unique animal with "extraordinary talent" and no cash amount could purchase a replacement, or fully repair any harm done.

PAUL might also state that legal damages could not be set with certainty because, due to a "lingering minor injury", the horse may or may not be capable of earning further sums of money, or even competing in the future.

B. Irreparable Harm

PAUL would state that the horse suffers from a "lingering minor injury" that could become serious, even fatal, if DOUG were to interfere with PAUL's possession and care of the animal. PAUL would also state that loss of possession of the horse would, in itself, be an irreparable harm which would interfere with the horse's training and medication.

C. Balancing the Equities

PAUL would state that enjoining DOUG from further possession of the horse would not cause harm or hardship to DOUG, as he presumably has other horses in his stables and would not be deprived of his livelihood. PAUL might also state that enjoining DOUG from further possession of the horse would not deny DOUG any fundamental right, such as speech or association.

D. Public Interests

PAUL would state that the court's integrity associated with the May decision would be kept. PAUL might also state that community interests would not be harmed or deprived by protecting PAUL's interest in the horse as the controversy is private and does not concern any public interest.

E. Notice & Security

PAUL could also inform the court that DOUG had notice as he was present at the hearing. Additionally, PAUL would ask to be relieved of any bond as he is not requesting an Interlocutory Injunction.

2. PAUL's second (July) lawsuit against DOUG could seek money damages but that remedy alone would likely be insufficient because:

- A. PAUL's primary motive is to recover possession of the horse. No amount of money can replace its possession, as discussed previously above in "Inadequacy at Law".
- B. Any damage to the horse while in DOUG's possession would be impossible to ascertain with accuracy. The traditional methods (Value Before minus Value After the Trespass/Conversion) or (Cost of Repair plus Loss of Use) would work with an item like an automobile that could be diagnosed and repaired with high certainty. Those methods, however, would not work with a horse that has speculative income and difficult healthcare issues, unique to that animal. Therefore, money damages would not be a complete remedy due to concerns of Certainty.

3. PAUL's additional remedy after DOUG has violated the Injunction would be to seek a Contempt Decree.

- A. PAUL would seek a Civil Contempt order as he would seek to recover money damages, in addition to return of the horse through Replevin. PAUL would allege DOUG's violation of an existing order.
- B. PAUL's contempt action could be solely compensatory in nature so DOUG would likely not be entitled to criminal protections that would include a jury trial or a criminal burden of proof.
- C. If PAUL also requested a coercive order, he may seek to reinstate possession (similar to Replevin) so as to compel future compliance with the existing order. Also, if DOUG is allowed or ordered to "purge", he may be required to return the horse to PAUL, thus accomplishing what Replevin seeks.

* * * * *

1)

When Defendant, Professor James Martinelli, breached his one-year employment contract, what legal and equitable remedies are available to Plaintiff, Dean Winship?

Cause of Action: Breach of Contract

In order to determine the available remedies, we must first look to the underlying cause of action. Here, there is a breach of employment contract. As such, remedies available to P are those under contract.

I. Legal Damages

Legal damages are monetary in nature. The purpose of legal damages is to give plaintiff the benefit of their bargain had the contract been performed, subject to the damages being foreseeable, unavoidable, and certain. Legal damages available for breach of contract include either expectancy damages + consequential damages + incidental damages OR reliance damages.

Expectancy damages are considered general damages, with the measure of damages the benefit to be received under the terms of the contract. Consequential damages are considered special damages and are available when plaintiff sustains a foreseeable and there is special knowledge to defendant. Incidental damages are awarded to compensate for costs due to breach of contract.

Alternatively, if expectation damages are unavailable or unable to be ascertained, plaintiff may seek reliance damages which are awarded to provide plaintiff with damages for losses sustained in reliance on the contract.

Here, P may seek expectation damages which would be the amount of monies paid to D for the employment contract of one-year. - Minus 2 months that he taught.

Limitations on Legal Damages

Legal damages recoverable by plaintiff are limited to those that are foreseeable, unavoidable, and certain.

Foreseeable

The damages sustained by P as a result of the breach of contract must be foreseeable.

Unavoidable

Damages sustained by P must also be unavoidable as P has a duty to mitigate its damages/losses. Here, after D breached the employment contract, P had a duty to mitigate its losses as a result of the breach. P did so in this case by obtaining a cover contract to take over the class D was contracted to teach. P has attempted to obtain a cover contract with Patterman in order to obtain a replacement professor for torts.

Certain

Damages must be calculated with reasonable certainty. Here, the employment contract specifies the salary to be paid to D. As such, damages are able to be calculated with certainty herein.

Measure of Damages

The measure of damages herein would be the amount paid to D for the remainder of the employment contract since he stopped teaching. Additionally, P may seek damages for the cover contract in employing Patterman to take over the torts class. It is noted that

Patterman would cost double the amount of Martinelli's contract. As such, P may seek the difference in contract price in employing Patterman or an alternate professor.

II. Equitable Remedies - Interlocutory Injunctions

Equitable remedies for contract include reformation, rescission, and injunctive relief. Injunctive relief for contracts includes temporary restraining order (TRO), preliminary injunction, and specific performance.

Interlocutory Injunctions

If P decides to bring suit, he may seek to obtain interlocutory injunction to preserve the status quo until a trial on the merits occurs. Injunctions may be either mandatory (where court orders D to act) or negative (where court orders D to refrain from acting). P may ✓ seek a negative injunction to prevent D from signing another contract for employment with "Big Name" while the suit is pending.

Interlocutory injunctions include TRO and preliminary injunctions. The purpose of interlocutory injunctions is to preserve the status quo while the claim is being litigated. Interlocutory injunctions are limited in duration. TRO may be sought to prevent **immediate** irreparable harm until a hearing can be held for a preliminary injunction. TRO may last up to 14 days, although there may be an additional 14 days upon a showing of good cause or consent by the opposing party. In contrast, a preliminary injunction may last until final adjudication on the merits.

In order to obtain injunctive relief, there must be: (1) inadequate legal remedy, (2) feasible in enforcement by the court, (3) parties identified, (4) irreparable harm, (5) balancing of hardships in favor of the moving party.

Inadequate Legal Remedy

The legal remedy must be inadequate to obtain injunctive relief. Specifically in contracts, money will not give P the benefit of their bargain. Here, P may argue that money will not give him the benefit of the bargain as he wanted D specifically to teach at the law school. P may assert that D was recently published and received accolades and was an acclaimed brilliant mind on the subject of torts.

Feasibility of Enforcement

In order to obtain injunctive relief, the injunction must be feasible in enforcement by the court. A court will not issue an injunction when it requires excessive supervision on behalf of the court. P may assert here that if injunctive relief is granted, ongoing supervision by the court is not necessary. If the court grants injunction, this will preserve the status quo to prevent D from signing a further contract for employment with the competing law school "Big Name".

Parties Identified

In order to obtain injunctive relief, the parties must be properly identified. Plaintiff, Winship, is seeking to prevent Defendant, Martinelli, from engaging in further employment discussions with the competing law school.

Irreparable Harm

P must demonstrate that if the injunction is not granted, it will suffer irreparable harm. Here, P may argue that if the injunction is not granted, D may sign a new employment contract, thus preventing his performance with the current contract with law school. As noted above, a TRO requires a showing of immediate irreparable harm. D stopped teaching at local law school and began talks with Big Name to begin teaching. P may argue here that the threat of harm is immediate due to these recent actions by D.

Balancing of Hardships

Additionally, P must demonstrate that he will suffer the greater hardship than D if the injunction is not granted. P may argue that he will suffer irreparable harm as he specifically hired Martinelli for his credentials and brilliance on the topic of torts. P will also incur greater expenses in seeking an alternate professor, such as Patterman, causing additional loss. In opposition, D may argue that preventing him from seeking higher paying employment with "Big Name" law school.

Equitable Defenses

If plaintiff pursues equitable relief in the form of injunctions and specific performance, this may be limited by the equitable defenses of laches, unclean hands, equitable estoppel, and unconscionability.

Laches is applicable when P delays filing suit resulting in prejudice to Defendant in its defense of the suit. Unclean hands is applicable when P engaged in fraud or misrepresentation in the underlying cause of action. Equitable estoppel is applicable when D detrimentally relied on a misrepresentation by P. Unconscionability is applicable when the terms of the contract are grossly one-sided, oppressive, or reflect unequal bargaining power.

None of these defenses appear to be applicable to the equitable relief sought by P herein.

Conclusion

Given the above, it is likely that P may obtain interlocutory relief in the form of a TRO and/or preliminary injunction to prevent D from obtaining an alternate contract for employment.

III. Equitable Relief - Specific Performance

Specific performance is a type of permanent injunction where the court orders Defendant to perform under the contract. In order to obtain specific performance, P must demonstrate: (1) balancing of hardships in favor of moving party; (2) breach of valid contract; (3) certain and definite terms; (4) inadequate legal remedy; (5) feasible in enforcement; and (6) mutuality.

✓ However, specific performance will not be granted by the court to enforce employment contracts as the 13th amendment prevents against involuntary servitude. This would be the case herein as the underlying cause of action is a breach of employment contract. As such, the court will not grant specific performance.

2)

What remedies are available to Plaintiff, Rich Owner, as a result of the actions of Defendants, Sly and Slim, when they trespassed on his ranch and converted his racehorse King Henry?

Cause of Action: Tort

In order to determine the available remedies, we must first look to the underlying cause of action. Here, there is a trespass and conversion. As such, remedies available to P are those under tort.

I. Legal Remedies

In tort, the purpose of legal damages is to place the injured party in the position they would have been in had the tort never occurred.

Generally, legal remedies for tort are compensatory damages which are to compensate P for injury or harm sustained as a result of D's actions. Compensatory damages are considered general damages and flow from the tort. There are also special damages available in tort which require special knowledge so that the harm is foreseeable to D at the time the tort was committed. The measure of compensatory damages is to compensate P for the harm and losses sustained. The measure of damages also depends on if there is personal injury or injury to personal property.

Here, there is no indication of personal injury to P. Rather, the harm/injury to P is to his personal property. D in this matter sneaked onto his ranch and abducted his horse, King Henry. P may seek damages for the loss of his horse, King Henry. Personal property damages are measured by the fair market value. If FMV is not ascertainable, then the actual value to P is used.

Here, P may seek compensatory damages for FMV for his horse, King Henry.

Limitations on Legal Damages

Legal damages recoverable by plaintiff are limited to those that are foreseeable, unavoidable, and certain.

Foreseeable

The injury sustained by P as a result of the tort must be foreseeable. Here, the loss of a chattel due to D's actions and injury was foreseeable to D at the time of the tort. D worked at P's ranch training thoroughbred horses and knew King Henry to be an up and coming racehorse. as such, foreseeability will be easily established herein.

Unavoidable

Damages sustained by P must also be unavoidable as P has a duty to mitigate its damages/losses. Here, due to the abduction of his horse, P may mitigate his losses by purchasing a new racehorse. Any replacement cost may offset the damages received by P herein.

Certain

Damages must be calculated with reasonable certainty. Here, as noted above, personal property damages are measured by FMV (or actual value if FMV is not ascertainable). As long as P is able to demonstrate FMV with reasonable certainty, there should not be any limitation in this regard.

II. Restitutionary Remedies

Alternative to legal remedies are restitutionary remedies. P may not obtain restitution and legal damages. If defendant has been unjustly enriched, P may seek restitutionary relief to disgorge D of the unjust enrichment. P may waive the tort and sue in assumpsit.

Restitutionary remedies include: restitutionary damages, ejectment, equitable lien, replevin, and constructive trust.

Restitutionary remedies are limited by: (1) bona fide purchaser who has no knowledge of wrongdoing; (2) voluntary/donative intent on behalf of P; and (3) tracing requirement.

Restitutionary Damages

Restitutionary damages may be sought as an alternative to legal damages where defendant has been unjustly enriched. The measure of restitutionary damages is the benefit obtained by D. Here, P may assert that the defendants were unjustly enriched in the amount of \$1,000,000.00 in prize winnings after their trespass and conversion of King Henry. This is likely a better measure of damages for P rather than the FMV of the racehorse. However, there are limitations discussed further below.

Replevin

Replevin is a legal restitutionary remedy where defendant is unjustly enriched by possession of personal property belonging to P. Replevin may be sought to return the personal property to P. Here, it is noted that defendants remain in possession of King Henry. As such, P may request replevin for the return of his converted racehorse.

Equitable Lien/Constructive Trust

A constructive trust is a restitutionary remedy where defendant has unjust enrichment in title of property. If only a portion is attributable to unjust enrichment, or funds are commingled, P may instead pursue an equitable lien.

Another relevant restitutionary relief herein would be for the use of the race winnings. Sly used \$500,000.00 of the race winnings to purchase a house with his partner, Sally. Sally contributed \$250,000.00 to the purchase of the house. As other funds were used to purchase from a seemingly unknowing third party, P will not be able to receive a constructive trust on for the house. However, P may seek to impose an equitable lien to recover the funds used to purchase the house. The equitable lien will be limited by the tracing requirement. P must be able to trace the race winnings to its final form in the house to recover.

Additionally, Slim deposited his half of the winnings (\$500,000.00) in a mutual fund account that has increased by 10%. P may argue that he should be entitled to a constructive trust on the mutual fund account if Slim has title and funds are not commingled. If there is commingling, P may instead pursue an equitable lien. P must also be able to trace the winnings to the mutual fund account.

III. Equitable Remedies

Equitable remedies for tort include injunctive relief in the form of: (1) temporary restraining order (TRO), (2) preliminary injunction, and (3) permanent injunction.

Interlocutory Injunctions

If P decides to bring suit, he may seek to obtain interlocutory injunction to preserve the status quo until a trial on the merits occurs. Injunctions may be either mandatory (where court orders D to act) or negative (where court orders D to refrain from acting). P may seek a mandatory injunction to return the photos and sweatshirts that D produced for

sale. It is indicated that D has 200 photos remaining and 250 sweatshirts remaining that have not been sold.

Interlocutory injunctions include TRO and preliminary injunctions. The purpose of interlocutory injunctions is to preserve the status quo while the claim is being litigated. Interlocutory injunctions are limited in duration. TRO may be sought to prevent **immediate** irreparable harm until a hearing can be held for a preliminary injunction. TRO may last up to 14 days, although there may be an additional 14 days upon a showing of good cause or consent by the opposing party. In contrast, a preliminary injunction may last until final adjudication on the merits.

In order to obtain injunctive relief, there must be: (1) inadequate legal remedy, (2) feasible in enforcement by the court, (3) parties identified, (4) irreparable harm, (5) balancing of hardships in favor of the moving party.

Inadequate Legal Remedy

The legal remedy must be inadequate to obtain injunctive relief. Specifically, money will not make P whole. Here, P may argue that money will not cure his loss completely as D remains in possession of products with his racehorse on them and continues to profit. As such, compensatory damages will not suffice.

Feasibility of Enforcement

In order to obtain injunctive relief, the injunction must be feasible in enforcement by the court. A court will not issue an injunction when it requires excessive supervision on behalf of the court. P may assert here that if injunctive relief is granted, ongoing supervision by the court is not necessary. If the court grants injunction, this will preserve the status quo to prevent D from engaging in further sales and profits from the photos and sweatshirts it has been marketing after winning the race.

Parties Identified

In order to obtain injunctive relief, the parties must be properly identified. Plaintiff, Rich Owner, is seeking to prevent Defendants, Sly and Slim, from engaging in further sales and profits. The parties to an injunction are easily identifiable herein.

Irreparable Harm

P must demonstrate that if the injunction is not granted, it will suffer irreparable harm. As noted above, a TRO requires a showing of immediate irreparable harm. P may assert here that if a TRO is not granted it will suffer immediate harm as D is still in possession of the photos and sweatshirts, leaving them able to continue benefiting from unjust enrichment. As such, it is likely that P will be able to demonstrate the irreparable harm for both TRO and preliminary injunction.

Balancing of Hardships

Additionally, P must demonstrate that he will suffer the greater hardship than D if the injunction is not granted. P may argue that he will suffer irreparable harm as D wrongfully took possession of his chattel and has profited. P's future profits in the market are now at a disadvantage due to the actions of D. If an injunction is not granted, P will continue to lose its opportunity to market. In opposition, D's hardship is loss of future sales of the items. However, the court is not likely to side with D due to unjust enrichment as discussed above.

Equitable Defenses

If plaintiff pursues equitable relief in the form of injunctions and specific performance, this may be limited by the equitable defenses of laches, unclean hands, equitable estoppel, and unconscionability.

Laches is applicable when P delays filing suit resulting in prejudice to Defendant in its defense of the suit. Unclean hands is applicable when P engaged in fraud or misrepresentation in the underlying cause of action. Equitable estoppel is applicable when D detrimentally relied on a misrepresentation by P. Unconscionability is applicable when the terms of the contract are grossly one-sided, oppressive, or reflect unequal bargaining power.

None of these defenses appear to be applicable to the equitable relief sought by P herein.

IV. CONCLUSION

Given the above, it is likely that P may obtain interlocutory relief in the form of a TRO and/or preliminary injunction to prevent D from possessing the remaining photos and shirts as well as further sales. It is likely that the court will grant a permanent mandatory injunction for return of the possession of the photos and sweatshirts as well as a permanent negative injunction preventing further sale and profits therefrom. P may also wish to obtain a negative injunction preventing the defendants from coming back onto his ranch to prevent future trespass.

P may also elect between legal damages and restitutionary damages. Here, there is unjust enrichment by D making restitution available. Restitutionary damages would also yield a greater award for P. As such, P should pursue restitutionary damages.

Lastly, P should request replevin for return of his race horse as defendant's continued possession would result in unjust enrichment. P should also seek a constructive trust for the mutual fund account and an equitable lien on the house of Sly as discussed above.

3)

Tort

The facts tell us that there is a potential tort case over a horse named Secretariat (S) for trespass to personality and conversion between Paul (P) and Doug (D). Therefore, the basis of the claim can be determined to be in tort.

What was necessary for Paul to declare to the court in his application for an injunction?

Injunctive Relief:

Injunctive relief comes about when a person goes to the court and asks them to have a person either stop doing something (negative) or do something (affirmative). There are various informs of injunctions depending on the immediate need and nature of the relief sought. In this case the facts tell us that P was granted a permanent injunction, meaning the court made a final decision on the merits of the case. In order for the court to have ordered this injunction they must have considered if the legal remedy at law is inadequate, if the injunction is feasible, if the parties had been properly identified, there was some showing of irreparable harm, and a balancing of the equities. The traditional test to determine if the injunction will be granted would require the court to see if the moving party will be successful on the merits of the case, the harm that the moving party will sustain, consider the harm the non moving party will sustain and the effect on the community.

Inadequate legal remedy

The court will consider if legal remedies will suffice, meaning will the problem be fixed with money. In this instance the court was asked for the injunction in an effort to

establish an ownership interest, which could have been remedied with legal damages but being it was a horse there could have been certainty issues as to the horses value and an argument of uniqueness. P may have elected to waive any monetary compensation and chosen to side with an equitable solution in order to avoid the topic of value given certainty issues; it may have been easier to establish title versus a fair market value- who knows what the minor injury was for performance sake or the breeding prospects looked like.

Feasible

The court will consider if they are able to actually perform the injunction or if would be to burdensome. In this case the court would not have to supervise the parties after the injunction was settled, as it was simply to establish title over S. Therefore the court would have considered the injunction an easy remedy as it would not have to oversee the parties after the fact-or so they presumed.

Parties have been Identified

The court will look to ensure the appropriate parties have been identified in order for the injunction to have the proper effect. In this case the parties were identified as P & D.

Irreparable Harm

The court will look to see if the injunction is not granted the level of harm that the moving party will experience, if this injunction is not granted will there be remedy available. In this case the court would have looked at the harm that could have been caused if the injunction regarding S ownership was not established. D could have permanently deprived P of the benefit of this ownership of S and that could be the cause of irreparable harm; money would not solve an disinterest in property that could be argued is unique.

Balancing of Equities

The court will consider both the moving and non moving, party in the effect of the injunction and balance the harms between them. The parties clearly needed the ownership interest issue to be resolved in order to move on with their horse racing business. Each probably had financial interests in the horse and different plans for S to profit. However, the permanent injunction may appear to be an invasive way to get what you want but it is a clear delineation of ownership of S and would stop any unlawful interference by D with Ps interests.

How useful a remedy of damages would be if Pauls successful in his second law suit?

Tort

In this case the facts tell us that Sly and Slim abducted King Henry with the intent to permanently deprive his owner of him, which would indicate the tort of conversion. They also sold merchandise with the horses likeness on the it with out the knowledge or consent of the owner, which would indicate the tort of appropriation of likeness.

Remedies

Remedies are awarded by the court in an attempt to put a party back in a position they would have been before the wrong occurred. Remedies come in the form of legal, meaning money, and equity, meaning action. Typically you see them in the form of damages, restitution or injunction. When the tort of conversion occurs the plaintiff is usually entitled to the chattels fair market value plus interest. This is subject to causation, foreseeability, unavoidable and certainty issues.

Causal

Were the torts the cause of Ps damages; but for the tort would P have sustained any damages. In this case the facts tell us that D just simply did not want to give up his dream of owning S as he took him. If D had not taken S and interfered with Ps ownership, P would not have sustained any damages. Therefore D is the cause of Ps damages.

Foreseeable

Where the damages from the tort foreseeable as the proximate cause of Ps damages? The damages that P incurred from Ds conversion of S, can be said to be the proximate cause of Ps damages, in that D could have easily foreseen his actions as causing harm to P. Therefore the injuries P incurred are foreseeable.

Unavoidable

Did P take steps to mitigate or avoid additional damages. P went right back to the legal route to sue D over tort damages. The facts do not indicate if P took any steps to reclaim S from D. However, we could assume that P is not able to physically enter Ds farm and must pursue legal options. P has already tried to get D to understand that he owns the horse and has the legal title to S-but D didnt get the hint. Therefore, P has taken the necessary steps to mitigate any damages given the situation D put him in.

Certainty

The damages were reasonably related with sufficient definiteness to the tort. The only reason that P is pursuing a remedy is to reclaim his chattel. If it was not for the interference of D with Ps ownership of S, there would be no issues. However, there could be an issue of certainty regarding the horses FMV, as it is speculative at best to try to ascertain how long the horse could have raced, breeding in the future or any loss of use by P. P will have a hard time overcoming certainty issues given the speculative nature of

the horses value unless he has clear proof of an established value; an insurance certificate or proof of past earnings. Certainty will for sure be an issue for P.

Legal Remedies

Legal damages are money damages that are awarded the non breaching party in an effort to compensate them from their losses. They take many different forms.

General Damages

General damages arise and occur naturally from tort, they are not easily assigned a dollar value and usually consist of intangible things such as pain and suffering. In this instance P may want to pursue the claim of general damages such as pain and suffering given all of the mental anguish that D has clearly put P through in the form of intentional infliction of emotional distress, however this may be hard to prove.

Punitive Damages

Punitive damages are awarded by the court when the offending party's actions are so egregious as a means to punish and deter the behavior in the future. Generally punitive damages are not allowed in breach of contract cases. Punitive damages must bear a reasonable relationship to the other damage awards.

Nominal Damages

Nominal damages are those that the court awards in an effort to show that one party was right in their claim but did not necessarily incur any damages. This will not help P.

Compensatory Damages

Compensatory damages are those that compensate for actual injury or economic loss. In a torts case they must oblige by the economic loss rule which disallows for recovery for purely economic losses; there must be an actual harm. In this case P has experienced an actual harm, his horse is gone and is being held wrongly by D. P is more than likely is experiencing financial losses from this deprivation in terms of loss of use. However, being this is a horse and involves racing-its is very speculative! Therefore unless P has some definitive proof of his economic losses he may want to pursue a different remedy.

What additional remedy would benefit Paul after he informs the court of Doug's taking?

Equity

CONTEMPT
2

Equity is a way for the court to take action and award the non breaching party in a manner that is not money related. Given the certainty issues P may be up against, he may want to elect an equitable remedy.

Restitution

Restitution walks the line of both legal and equity remedies. Restitution is a way for the court to allow the benefit of the bargain to be given to the non tort feaser, in an effort to disgorge them of the unjust enrichment they have taken. Restitution in a legal manner through replevin, ejectment, reclamation or quasi contract; depending on the situation so long as they can show that there was a right to property and that it was wrongfully withheld. In respect to a equitable restitutionary remedy the court can enact an constructive trust and or an equitable lien depending on the situation and subject to tracing and bonafide purchasers.

Replevin

Replevin allows for a deprived party to get their personal property back from a party who is wrongfully withholding it. P could show he has a right to S, his personal property, and that D has unjustly enriched himself by withholding S from P. Therefore P could pursue the restitutory remedy of replevin to regain possession of S. P would have to overcome any defenses that D threw at him to be successful in his replevin claim-latches, dont let too much time pass before asserting his claim; unclean hands, dont do anything to aid in the wrong that is also wrong; estoppel or unconscionability.

Constructive Trust

A constructive trust is way a party to disgorge the wrongfully benefiting party of the money they have obtained while in possession of the chattel. The court can enact a legal trust, in which the defendant acts as the trustee. Again P will have to show ownership over S and that D wrongfully withheld his property. In this case P would want to claim the \$200,000 that S won while in Ds possession. Subject to any commingling, bona fide purchasers or tracing issues it would be relatively easy for the court to do.

Equitable Lien

An equitable lien is a means for a party who has been deprived of the benefit of the bargain to regain their money. It works well if there is commingling of funds or other parties involved. In this case P may not have to worry about an equitable lien unless D has mixed the funds from S race winnings. In which case he would establish an equitable lien, by showing his ownership interest, his deprivation, trace the money that S won through the various sources, and subject to any bona fide purchasers should be able to recoupe S winnings.