

San Luis Obispo College of Law

Remedies

Final Examination

Spring 2024

Prof. C. Winters

General Instructions:

Answer Three (3) Essay Questions.

Total Time Allotted: Three (3) Hours.

SLO

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Question 1

For 40 years, Mary has owned and lived in a house on 400 acres of land used as a vineyard. The vineyard produces cabernet sauvignon grapes. For many years, Mary would grow, harvest, and sell the grapes to a local winemaker, but this year she decided to retire. Since Mary did not want her property to fall into ruin, she contacted Derrick, her best friend's grandson, and told him that if he would take over the management of the vineyard for the rest of Mary's life, she would give him the entire property and house upon her death. Mary had one living relative, a niece named Paula, but they had not seen each other since Paula was three years old and they did not have a relationship. However, when Paula was born, Mary handwrote and signed a congratulatory card to Paula's mother. The card said that Mary would always take care of Paula and would make sure she received Mary's property when she died. Paula received that card when her mother died several years ago.

Derrick and Mary wrote out and signed the terms of their agreement, in which Derrick would manage the vineyard by continuing to grow the grapes, harvest them, and sell them to the winemaker. Mary would pay for all costs associated with the management of the vineyard and house, and Derrick would keep any profits after deducting the costs to manage the vineyard and house. Derrick also agreed to be Mary's handyman and would fix any issues that came up on the entire property. Finally, he and Mary agreed that upon Mary's death, Derrick could sell 200 acres of the vineyard so that he would have the money to manage the remaining 200 acres of vineyard and pay for upkeep on the house. Mary drafted and executed a valid will that stated that Derrick would receive the entire property. She also noted in her will that she was doing this because she did not have a relationship with her only living relative, Paula. Derrick performed his end of the agreement and Mary hers.

Mary died a year later, and the only property she owned was the vineyard and house. Derrick continued to live at the house while Mary's estate was in probate. Paula was named as the executor of Mary's will. Paula contested Mary's will insofar as it named Derrick as the beneficiary of Mary's property, taking the position that the property should go to because her aunt had promised to take care of her. She had the handwritten and signed card as proof of that promise. In an effort to delay the proceedings, Paula informed the court that she would be able to provide evidence that her aunt's will, which gave the property to Derrick, was a forgery, but needed a few months to prepare the case. Paula had no such evidence. The court set the trial on the issue of settling the estate for 8 months later.

While waiting for the trial to begin, Derrick did not have the money to pay to continue to manage the entire vineyard or upkeep of the house. He decided to sell 200 acres as he and Mary agreed so he could continue to maintain the rest of the property. He found a buyer who agreed to

front Derrick the money in exchange for title to the 200 acres once the court case resolved. The buyer and Derrick agreed that the buyer could start to transform the 200 acres into low income housing immediately upon Derrick receiving the money.

1. Paula requests a preliminary injunction to prevent Derrick from selling the 200 acres before the trial is heard. Will she be successful? What defenses, if any, can Derrick raise?
2. Derrick counter sues, requesting specific performance of delivery of the title to the property. Will he be successful?

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QUESTION 2

Peter imports and roasts coffee beans. His coffee comes from Ethiopia, which produces some of the most flavorful coffee beans in the world. He has a contract to sell 50 pounds of freshly imported and roasted coffee beans to Jessica every week. Jessica owns the coffee shop, "Amped Up", and her coffee drinks are known to be some of the best in the state of California. She credits the superior coffee beans that Peter imports and roasts for her success.

Peter's method for providing such high-quality beans is simple: he imports only as much raw coffee beans each month that will be needed for that month, and roasts only as many beans as will be needed for the week. Both methods ensure the coffee tastes the best. Unroasted coffee beans that are more than a month old then to sour, while roasted coffee beans that are not used within a week of roasting tend to taste bitter.

Peter uses a machine, the Diavolo 2000, to roast his coffee beans. It is the only coffee bean roaster on the market that can sense the freshness and variations in the chemical makeup of the coffee beans and adjusts the roasting time and temperature to provide roasted beans that taste similar from batch to batch. The Diavolo 2000 is made by Donatello, Inc.

The Diavolo 2000 requires annual, routine maintenance that Donatello agreed to provide. The maintenance takes 5 days to complete, and Donatello agrees to do the annual maintenance starting the day after that week's coffee beans are roasted so that the machine can be back in operation a day or two before the following week's coffee needs to be roasted. Donatello knows that Peter's coffee is some of the best coffee in the market, mostly due to his methodical roasting schedule.

As scheduled, Donatello begins maintenance the day after Peter roasts Jessica's coffee beans for the week. Two days later, Donatello informs Peter that they had messed up by not ordering in advance a necessary part for the Diavolo 2000. – a heating element. Donatello cannot reuse the existing heating element because it is designed for use for a single maintenance interval, and once removed from the machine it is no longer operable. They removed the heating element as their first step. Donatello tells Peter that it will be an additional week until the element is replaced, thus, Peter will be unable to roast the following week's beans with his Diavolo 2000. To make matters worse, it also happened to be the end of the month, so it was the final week to use the unroasted beans before they soured. Peter threw those beans out. Had he roasted them, he would have made \$2000 in profits from selling them to Jessica. This accounts for the proportional share of a week's worth of unroasted beans imported into California, as well as his overhead to use the Diavolo 2000 plus his labor costs.

Peter contacted Jessica and told her that he would be unable to provide that week's beans.

Jessica purchased a week's worth of beans from JavaHouse. JavaHouse charges Jessica \$500 more than Peter charges, and also charges her a \$50 delivery charge. JavaHouse's beans are

noticeably inferior to Peter's, and not as many people buy coffee from Jessica that week and she loses \$3000 that she normally would have made that week. Fortunately, the Diavolo 2000 is fixed by the following week, and Peter resumes his roasting schedule and gets back on track with providing roasted beans to Jessica, and her business resumes, as normal. Peter only missed that one week of roasting, and threw out one week's worth of Ethiopian beans.

What, if anything, can Jessica sue Peter for?

What, if anything, can Peter sue Donatello for?

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Question 3

Donald becomes intoxicated at a party to the point where his blood alcohol level is high enough to make it absolutely illegal for him to drive a motor vehicle. Despite his drunken condition, he decides to show off his new Lamborghini and convinces his friend Pamela to go for a drive with him.

Pamela sits in the car and Donald presses the accelerator, reaching 60 miles per hour in 2.5 seconds. He immediately loses control of the vehicle and crashes the car into a legally parked van, owned by Owen.

Pamela suffers a broken femur, three broken ribs, a lacerated spleen, and a concussion.

Owen's van is damaged, and it will cost more than the van is worth to repair. Owen's dog, a chihuahua named Reggie, was inside the van and died instantly. Owen purchased Reggie from Woods Humane Society for \$150 three months prior. Reggie was also Owen's emotional support dog, and Owen was devastated by the loss of his beloved dog.

Pamela is rushed to the hospital and undergoes surgery. She remains in a coma for 10 days. She is released after a month in the hospital. She continues to suffer from residual pain in her leg and has memory issues due to the concussion. Her doctor anticipates she will always have moderate pain in her leg and will probably suffer from memory issues for the rest of her life. She is unable to work for the next year, and when she does return, she can only work half of the time she did before, due to the headaches she now suffers from as a result of the accident. Fortunately, Pamela had health insurance, which covered her ambulance ride, surgery, and all other hospital bills and totaled \$475,000.

Donald is arrested for driving under the influence causing injury and pleads not guilty at his arraignment. His attorney successfully argues that Donald should be released from custody while his court case resolves, but the judge personally orders that Donald shall not drink while on such release. Donald agrees that he will use a hand-held blood alcohol testing device three times per day, and if any alcohol is detected, it will be reported to the judge.

Donald is released from custody and three days later drinks an alcoholic beverage. Later that day, he provides a sample in the machine, and he registers a 0.03% blood alcohol level. The judge is advised that Donald has tested positive for alcohol.

Pamela sues Donald. What can she recover?

Owen sues Donald. What can he recover?

What consequences can Owen suffer for violating the judge's order to refrain from drinking alcohol?

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REMEDIES - ANSWER OUTLINE

SPRING 2024

PROF. C. WINTERS

QUESTION ONE RESPONSE OUTLINE:

Preliminary injunction:

1. Paula will need to show that a preliminary injunction is necessary to maintain the status quo pending trial.
 - a. She will demonstrate that the 200 acres is part of the whole property at issue, and keeping it as-is is necessary because if she is successful, undoing the sale will be difficult.
2. Paula will need to show that she is likely to be successful on the merits at trial
 - a. Paula will present the card her mother received when she was born, in which her aunt promised to always take care of her and give her the property after Mary dies.
 - b. She will also allege that the will that Mary wrote that benefits Derrick was a forgery and she will be able to prove the forgery, and that once she proves the forgery, it will only bolster her claim that her aunt's card written when she was born, shows her aunt's intent to take care of her and giving her the property (it's a holographic will, by the way.)
3. Paula will need to show that she will suffer an irreparable injury if preliminary injunction is not granted.
 - a. Paula will show that the buyer of the 200 acres plans on immediately turning the vineyard into low-income housing. If done, the vineyards will be destroyed.
4. The court must weigh out the extent to which Derrick will suffer irreparable harm if the injunction is issues.
 - a. Derrick will let the court know that he knew he would not be able to operate the full property without selling 200 acres. That the plan was always that he would use the money from selling the 200 acres to continue the other 200 acres of vineyard and maintain the house. If the injunction issues, he will not be able to maintain the 200 acres and house.
5. The public interest would not be disserved by a preventive injunction.
 - a. The public interest has a strong interest in seeing that contracts are fulfilled. So on that level, it wouldn't be disserved, even though Paula might have lied.

Unclean hands:

1. Applies when party seeking relief has behaved inequitably with respect to the rights being asserted in the case.
 - a. Paula is trying to get the court to delay Derrick being able to exercise his rights by claiming that the will is a forgery. Derrick will claim that Paula claimed that Mary's will is a forgery for the sole purpose of preventing him from being able to maintain the land that he rightfully will receive.
2. Does not need to be fraudulent or illegal, but must be serious.
 - a. It is serious and is also possibly a fraudulent claim.
3. The question is whether it offends the court.
 - a. The court will be offended once it learns that Paula lied about the will being a forgery.
4. The unclean hands must be related to the claim. The fact that the person is a general bad actor is not enough

- a. Paula claimed that the will was a forgery because she was trying to delay Derrick from being able to continue on with maintain the property

DERRICK'S CLAIM FOR SPECIFIC PERFORMANCE OF DELIVERY OF THE TITLE

For Derrick to prevail on a claim for specific performance, he must show that

1. *A valid contract exists*
 - a. *Mary wrote him into her will by saying that he would receive the entire property upon her death so long as he maintains the property during his life.*
2. *He is willing, ready, and able to perform*
 - a. *He has been at the ready and has been performing and is continuing to perform by getting the 200 acres ready for sale*
3. *The balancing of the equities tips in favor of the party seeking performance.*
 - a. *The courts want contracts to be performed, and all things equal, Derrick performed his end of the contract even if it was only for a year before she died.*

QUESTION 2 RESPONSE OUTLINE:

Jessica v. Peter

Contract existed

Cost to cover

1. *As a buyer, Jessica can choose to cover and recover the cost to cover minus the contract price, which is \$500 in this case.*
2. *Or if she had not covered, she could have sued for the market price at the time she learned of the breach and the contract price.*

Incidental damages (\$50 delivery fee)

1. *It cost her \$50 to have the replacement coffee sent to her.*

Possible consequential damages (lost profits of \$3000)

1. *Will sue for lost profits, but might be too tenuous – Peter and Jessica never seemed to have profits and losses of profits as part of their contract.*

Peter v. Donatello

Consequential damages:

1. *Donatello and Peter at inception of contract, knew that he would be without ability to roast during maintenance. Donatello knew the heating element part would need to be replaced, but did not order it in advance, even though it would be needed.*
2. *Donatello knew Peter roasted once per week, and that is why the maintenance is scheduled at that time.*
3. *So \$2000 in consequential damages, maybe more to pass on through to Jessica, but probably not.*

QUESTION 3 RESPONSE OUTLINE

1. *Personal injury –*
 - a. *loss of earnings and earning capacity*

- i. Out of work for a year
 - ii. When she returns, she is making significantly less money as she is working $\frac{1}{2}$ time.
 - iii. So she gets the lost earnings for the year, and moving forward, gets a recovery for the $\frac{1}{2}$ of the salary she is missing out on.
- b. medical expenses
 - i. All hospital and ambulance bills comes to \$475,000
 - ii. Collateral source rule
 - 1. Plaintiff's insurance paid, but still defendant has to pay.
- c. Pain and suffering.
 - i. How to award? Per diem?
- d. If future loss, reduce to present value

2. On purpose – punitive possible?

- 1. If defendant's conduct is so willful, malicious
 - a. That will be a bone of contention. He was willfully driving while intoxicated, but whether it was willful will be an issue. Points for discussion
 - b.

OWEN v. Donald

1. Damage to the van

- a. If destroyed, can recover the value of the destroyed chattel at the time and place of the destruction. FMV
- b. Possible loss of use if destroyed
- c. (if reparable, then diminution in value vs. cost of repair)
- d. This case, the cost to repair the van exceeds the value of the cost. So probably the FMV at the time of destruction. But a discussion of the two will be great.

Destruction of Reggie

- 1. FMV of dog. So \$150
- 2. No sentimental value as court looks at this dog as chattel, even though this is an emotional support dog. Dog only with Owen for three months.

Judge vs Donald

1. Contempt???

- a. Criminal?
- b. Indirect or direct?
 - i. Not in presence of the judge. So indirect
- c. Ordered not to drink.
- d. Did drink
- e. Outside of the presence of the judge, so right to counsel and jury on issue of whether he is in contempt.

1)

Answer 1.

Paula v. Derick

Preliminary injunctions/ Preventive Injunction

Injunction: An injunction is an equitable remedy that will prevent someone from doing something or cause them to do something under a court order. In order to get an injunction five factors are analyzed : There must be irreparable harm to the plaintiff, legal remedies must be inadequate, The court must balance the hardships of each side, the court must look at the practicality of enforcement and the public interest in enforcement.

1. **Irreparable Harm:** Here, Paula (P) the niece is trying to get a Injunction to stop the Property/ vineyard being sold and divided by D . P will argue that the irreparable harm would be the loss of of the beautiful 400 acers being divided in half to be turned in to low income housing immediately upon D selling the land that he was granted in a valid will. D will argue that the property is not hers and that there is no harm for her to suffer for the land is not hers because, the property was deeded in a valid will and it was stated that he would receive the property after the death of Mary.
 2. **Inadequacy of legal remedies:** Here P is will argue that monetary relief will not stop the destruction of the Property. The only way the property could be saved is if an injunction would be granted. This would be a valid argument for the land would be turned in to something that would destroy the natural views.
 3. **Balancing the hardships:** The hardships on both sides have to be weighed. P will argue that the land should be hers and if the court does not validate the letter that her Mom gave her telling her that she would receive the property when Mary died
-

the hardship would be her not receiving the property. However D will argue that the Mary and D had an agreement that he would be the handy man and take care of the property and that he would receive it after Mary passes away. D will argue that if the court does not validate the will the property would go to P.

4. **Practicality of enforcement:** The court will want to enforce a injunction to resolve this issue so that we can resolve the issue in court. The Practicality of enforcing a injunction would be getting a straight forward answer, on who owns the vineyard.
5. **public Interest:** The Public Interest in this case is to make sure that sales or deeds be fully performed so that we can have accurate records on who is on title or who should be a beneficiary of the estate vineyard.

Issue: Would P be successful in her request to get a Preliminary Injunction?

Rule: Preliminary injunction: A preliminary injunction may be used to stop some one from doing something while a case is pending. This requires a likelihood of a ongoing irreparable harm while waiting for trial

Analysis: 1. Likelihood of success of the merits Here, P would be allowed to get an injunction to stop the sale of the land as stated above because, P would have suffered a irreparable harm and that there was a inadequacy of legal remedies available. It would also be in the best of the Public interest on the practicality of enforcing the Preliminary injunction for P to stop D from selling half of the acres of the vineyard.

2. Ongoing irreparable harm: Here the Ongoing Irreparable harm is still in play because, D wants to sell half of the Vineyard to a buyer who wants to turn the property to be turned in to low income housing. Therefore, There is still an ongoing irreparable harm and a dispute on who owns the property.

Conclusion: A court would grant a preliminary injunction for P to stop D from selling half of the vineyard for there is a likelihood of the success of the merits and that there is irreparable harm .

Issue: What defenses can Derick Raise?

Rules:

Unclean Hands: Happens when a person is acting in bad faith and applies when a party seeking relief had behaved inequitably with respect to the rights being asserted.

Here D will argue that P is acting in bad faith because, she is informing the court that the valid will was a forgery and that Paula had no such evidence. Therefore as a defense from D he will state that Lying to a court and misstating facts could leave some one with unclean hands. P will argue that she needed more time to prepare to argue and that she was just stretching the truth. Therefore, D will be able to prove that P acted in bad faith to the court and can use the doctrine of unclean hands as a possible defense.

Laches: Laches is an equitable defense. When a person has delayed bringing a claim, a plaintiff may assert the case could be invalid due to the delay of the case being brought to court to here the merits of a case.

Here D would argue that P has delayed this case for 8 months because she lied to the court. This may not be the strongest argument for D but it could possibly work if a court would find that P delayed this case for so long as it would be invalid to have the case brought in to court and that it should be dismissed.

Therefore, this could be another possible defense for D to assert.

Promissory Estoppel: Promissory Estoppel is when a person indeterminately relies on the promise of another and that they have fulfilled their end of the deal.

Here, D will argue that he relied on the promise of Mary to give him the property once she died and left a valid will in her name. This could be a defence to show that he reasonably relied on Mary's valid will.

Therefore, this could be another defense for D.

Conclusion: This may be some of the defences that D can make

Issue: Will Derick be successful in asserting specific performance?

Specific Performance: Specific Performance is the performance of a contractual duty, as ordered in cases where damages would not be an adequate remedy to obtain it, a plaintiff must show 1. A valid contract exists 2. Claimant is willing, ready and able to perform his/her end of the bargain 3. The balancing of equities tips in favor of the party seeking Performance.

Here, Derick will be able to be successful in a specific performance on the delivery of the title! Here, there was a contractual duty for D to take care of the Vineyard and that he would be the handy man. So the first element would be satisfied for specific performance. Here the claimant was willing to perform his end of the deal by taking care of the Property. For the last element the balancing of equities tips in favor of D for seeking performance because the deed was made with adequate consideration made in the valid will. If the will is valid it would be on record that Mary's last wish was for the property to be given to D for the handy man skills that he would provide.

Conclusion: D will be successful and claim Specific performance for the delivery of the title to the property to the court to show that he was the true beneficiary of the Will in dispute.

END OF EXAM

2)

Equitable claims are tried by a judge, while legal claims are tried by a jury. If a case involves both, legal issues will be tried first and the remaining equitable issues will be tried second.

GENERAL CONTRACT DAMAGES.

The general measure for contract damages is that the non breaching, injured party should be placed in as good of a pecuniary position as they would have been if the K were fulfilled and no breach had occurred, along with any expenses that flow naturally from the breach (minus any savings from not having to perform.)

(1) JESSICA V. PETER: UCC

UCC: Here, the parties transaction is governed by the Uniform Commercial Code. Article 2 of the UCC governs sales of goods. Coffee beans are goods that are bought by J and sold by P.

\$ damages J may claim from P IN TOTAL= \$3550

K and BREACH

Peter ("P") is the seller, who has a valid contract to sell roasted coffee beans to Jessica ("J") the buyer, every week.

BREACH is any action that deviates from the contract specifications. P breach is when he informs J that he "would be unable to provide that week's beans." P deviates from their agreement to sell beans every week.

J's CONSEQUENTIAL DAMAGES

Consequential damages are money damages that may be awarded if the damages caused by the breach were reasonably certain, causally connected to the breach, and FORESEEABLE at the time/place of contract formation. The parties contemplated, and the breaching party knew what was at stake. If the damages were those that were included and causally certain in the contract formation, LOST PROFITS may be available.

P knows that J relies on his beans for the majority, if not all, of her business. J buys a large quantity (50 pounds) of P's product. P is aware of the importance of his product on J's business reputation and standards (which influence her income), because J "credits" P's "superior beans" for her success and how "Her coffee drinks are known to be some of the best in CA." J uses specialty beans from Ethiopia, and because they are some of the "most flavorful coffee beans in the world," the parties are aware that J is buying a unique and difficult to reproduce product.

J's LOST PROFITS: \$3000

An injured party may claim lost profits if they can show that they suffered a loss in earnings directly caused by the breach, in amounts able to be calculated with certainty.

J has lost profits of \$3000 that she may claim from P. They are reasonably certain and attributable to P's breach because when P "resumes" purveying the beans to J, "her business resumes as normal."

BUYER'S K REMEDIES FOR SELLER'S BREACH: COST TO COVER

J COVERS AND CAN SUE P FOR \$550 *(\$500 cover and recover difference) + (\$50 of incidental + consequential damages), -- (any expense saved by P's breach.)

A buyer injured by sellers breach of K has two main options for money damages.

1. COVER and RECOVER. The amount demanded by the nonbreaching injured buyer is the difference between the new/substitute good price (FMV at the time of breach) minus the original goods K price.
2. NO COVER. The nonbreaching injured buyer may choose to not cover, and instead sue for the difference between the FMV at the time and place buyer learned of the breach, minus the original K price.

FMV

Fair market value is the highest price a well-informed, willing buyer would pay.

J chooses to cover for the week's shipment that P breached on. She find an alternate purveyor and "purchased a week's worth of beans from JavaHouse." However, the JavaHouse beans are \$500 more than P's. Additionally, she has to pay a \$50 delivery fee. No facts show she saved any money from P's breach.

J's INCIDENTAL DAMAGES: \$50

Incidental damages are money damages for the nonbreaching party's expenses incurred as a direct result of the breach, that were not made in contemplation of the K.

J can claim incidental damages, the additional expenses she made in reliance on P fulfilling their K, of the \$50 delivery charge JavaHouse costs her.

2. PETER V. DONATELLO, INC.: SERVICE CONTRACT, COMMON LAW

SERVICE CONTRACT: Here, the parties are engaging in a contract for a service (machine repair) by D for P's benefit. They are not contracting for a sale of goods. Therefore, UCC will NOT apply.

K and BREACH

DONATELLO, INC ("D") is the service provider, who has a valid contract to annually service the one of a kind, proprietary Diavolo 2000 machine that P uses. D is the breaching party.

BREACH is any action that deviates from the contract specifications. D breaches is when D informs P that they "messed up by not ordering in advance a necessary part for the Diavolo 2000." D will take longer than agreed upon to service P's Diavolo. D deviates from their agreement for the "5 day" long service annually, which they agreed upon.

P's CONSEQUENTIAL DAMAGES

Consequential damages are money damages that may be awarded if the damages caused by the breach were reasonably certain, causally connected to the breach, and FORESEEABLE at the time/place of contract formation. The parties contemplated, and the breaching party knew what was at stake.

If the damages were those of a kind that were included and causally certain in the contract formation, LOST PROFITS may be available.

D had actual knowledge that P relied on D's service, during the time leading up to the performance of their contract to service. It is the only roaster that P uses for his business. P cannot go out and replace the Diavolo with another roaster. His roaster is the only one

of its kind, the "only roaster that can sense the freshness and variations in the chemical makeup" and "adjusts the roasting" batch by batch to give a consistent product. P's whole business is importing and roasting superior quality coffee beans. Further, "D KNOWS that P's coffee is some of the best in the market, mostly due to his methodical roasting schedule" with D's proprietary roasting machine. D knows P's roasting schedule must take into account the beans expiration date at the end of the month. Time is of the essence, D will lose money the longer P takes.

P's LOST PROFITS: \$2000

An injured party may claim lost profits if they can show that they suffered a loss in earnings directly caused by the breach, in amounts able to be calculated with certainty.

P establishes lost profits with certainty because "had he roasted [that week's beans] he would've made \$2000 profit from selling them to J."

P's RELIANCE DAMAGES

Reliance damages are those that are incurred directly stemming from breach, made in contemplation of the K being fulfilled. P suffered a series of losses because he relied on D servicing his machine as per their "5 day" maintenance time that D promises.

P suffers reliance damages of the cost of the soured beans he threw out, the single use heating element, the time he has to wait for the new parts.

P's INCIDENTAL DAMAGES: Overhead and labor

Incidental damages are money damages for the nonbreaching party's expenses incurred as a direct result of the breach, that were not made in contemplation of the K.

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P incurs incidental damages, in the form of additional expenses he made in reliance on Donatello fulfilling their K, the Overhead and labor costs are from the Diavolo 2000.

END OF EXAM

3)

1. What can Pamela recover from suing Donald?

Personal Injury

In a personal injury case, a claimant can recover from defendant damages for loss of earnings, medical expenses and pain and suffering due to the negligence of the defendant. The claimant may also seek punitive damages if the defendant acted willfully malicious.

Here, Donald had a blood alcohol level making it illegal to drive a motor vehicle, he negligently and willfully decided to drive his lamborghini at a high velocity with passenger Pamela in the car. Due to Donald's driving under the influence, he lost control of the vehicle and crashed into a legally parked vehicle. As a result of the crash, Pamela was personally injured.

Loss of Earnings

A claimant may recover loss of earnings if they were personally injured in a motor vehicle accident by a negligent defendant.

Here, Pamela was a passenger in Donald's car, she was injured and due to her injuries was unable to work for the next year and when she returns will only be able to return half of the time she did before, due to the headaches she now suffers from as a result of the accident. She will have to calculate the time she missed from work due to the accident and the time she will miss in the future due to the injuries in the accident. Once this is calculated, she can request defendant pay for those loss of earnings.

Medical Expenses

A claimant may recover for medical expenses incurred due to a personal injury accident. They may recover the full amount of bills, even if they were eventually reduced.

Here, Pamela suffered a broken femur, three broken ribs, a lacerated spleen and a concussion. Her injuries resulted in \$475,000 in medical bills which included the hospital bill, the ambulance bill and her surgery. Even though her health insurance covered this bill, she is still entitled to the full \$475,000 amount, because her insurance company may assert a lien through subrogation because these injuries were caused by the negligence of Donald and he should be responsible for the medical expenses incurred. Even if her health insurance does not assert a lien, she is still entitled to the full \$475,000 in medical bills.

Pain and Suffering

While loss of earnings and medical expenses are more objective, because they can be calculated through bills and paystubs, pain and suffering is more subjective because it deals with the pain and suffering that the claimant endured and will endure in the future, it is a little more difficult to calculate.

Here, Pamela continues to suffer from residual pain in her leg and has memory issues due to the concussion. Her doctor anticipates she will always have moderate pain in her leg and will probably suffer from memory issues for the rest of her life. This is going to deter her quality of life, because of this she is owed compensatory damages from Donald because due to this negligence, Pamela's quality of life has gone down and according to her doctors will continue to go down. Calculations that can be done are expectancy of life and money she will need to spend in order to live a comfortable life.

Punitive Damages

Punitive damages are damages that can be paid to a claimant if the defendant acted willfully malicious.

Here, Donald knowingly intoxicated, willfully decided to drive a motor vehicle at a high velocity causing injury and property damage. Pamela, suffered injuries due to this accident, she lost wages and her quality of life was deterred. She will be able to collect punitive damages.

Present Value Reduction

Once the damages are calculated for Pamela, the present value reduction must be conducted. She will need to earn what she would earn in the future and because inflation rate cancels interest rates, she will make less then than now.

Pamela will be able to collect damages for loss of earnings, medical expenses, pain and suffering and punitive damages.

2. Will Own be able to recover from suing Donald?

Property Damage Loss

Property damage will be evaluated depending if it was destroyed or if it is repairable. If it is destroyed, then claimant will recover the fair market value of the vehicle and may recover loss of use (rental coverage, etc.). If the personal property is repairable then it will be calculated by the diminution of the value minus the repairable value.

Here, Owen has two pieces of property that he lost due to Donald's negligence, his van and his dog Reggie.

Owen's Van

Owen's van is damaged and the cost to repair it is more than the value of the vehicle. This means, it will be deemed a total loss of the vehicle. Owen will be paid the fair market value of his van. An appraiser will write an estimate of the vehicle's value based off the miles, the year and similar vehicles on the market and calculate an amount to pay to Owen. Owen's insurance can pay for this and then request the amount back from Donald through subrogation.

Owen's Dog Reggie

Owen's dog Reggie was inside the vehicle when the accident occurred, he died due to the accident. Owen loved his dog Reggie because it was his emotional support dog, he was devastated from the loss and Owen had sentimental value towards Reggie. Claimant Owen will be able to recover the \$150 he paid to the Woods Humane Society for Reggie, but no more than that. Donald is responsible for paying the fair market value of Owen's property, which is \$150.00.

Sentimental Value

In certain instances, claimants may be paid for items of sentimental value and higher amount than the item is worth, for example an heirloom, but dogs do not apply. Dogs are considered regular personal property and claimants will only be paid what their dog is worth. Here, Owen will only be paid \$150.00 because that is the value of Reggie, even if Owen has a sentimental attachment to him.

Owen will be paid by Donald the fair market value of his van and the amount he paid for his dog Reggie.

3. What consequences can Donald suffer for violating the judge's order to refrain from drinking?

Contempt

In civil and criminal cases contempt can be blurred, but usually in civil cases contempt is ordered from one party to another while in criminal cases it is ordered by a judge or a prosecutor. The punishment can be jail time, a fine or other punishments depending on the jurisdiction.

Here, the judge will order that Donald be held in contempt because he disobeyed the judge's strict order of not consuming alcohol.

Indirect v. direct.

Indirect contempt is when a person is defying the judge or the courts orders outside of the court house, for example disobeying a court ordered demand. Direct contempt is disrespecting the court or judge while in the court room, for example cussing at the judge or being loud and disrupt full and disrespectful.

Here, Donald was ordered by the judge to not drink while on release. Three days later he drank an alcoholic beverage and the machine that regulates his alcohol levels registered the alcohol at a level 0.03% blood alcohol level. The judge was told about Donald's positive reading. Donald defied the judge's strict orders outside of the court house while on release, making this an indirect contempt.

The judge will hold Donald in contempt for defying his strict orders indirectly outside of the court house. The consequences will depend on the judge, but they may be jail time, a fine or anything the judge deems appropriate.

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END OF EXAM