

SAN LUIS OBISPO COLLEGE OF LAW

REMEDIES
Final Examination
Spring 2020

Professor C. WINTERS

INSTRUCTIONS:

There are three (3) questions in this examination. You will be given four (4) hours to complete the examination.

Question 1

Dan owns the 1959 Cadillac ambulance that was featured in the 1984 film "Ghostbusters." He keeps the car in a temperature and humidity controlled garage, and does not drive it. It costs \$5000 per year to keep the garage functioning, which is becoming a burden for Dan. Priscilla has a collection of movie props that she plans to display in a private museum located in a detached garage at the edge of her residence. An avid "Ghostbusters" fan, Priscilla thinks the ambulance would be a great prop to drive around town in and attract movie aficionados to her museum. She leaves Dan a message, asking him if he would sell her the ambulance.

Dan calls Priscilla back, and tells her that while he loves the car, he would not mind it going to a good home. He further expresses that he would rather sell it to her than to some young guy who will just hot rod it around town. Priscilla just giggled in response, and did not tell him her plans. They orally agree on the price of \$10,000, and Priscilla immediately transferred that amount to Dan's bank. They then made plans to meet the next afternoon to transfer the paperwork

The next morning, Dan saw an ad in the paper for Priscilla's new museum. It said that to celebrate the museum, Priscilla will offer rides to children in the "Ghostbusters" ambulance.

Furious, Dan meets up with Priscilla. He hands her a check he wrote and signed for \$10,000, which has "refund for 1959 'Ghostbusters' Cadillac" written on the memo line.

Priscilla did not take the check, and instead said, "you owe me the car!" Priscilla left without the car, and then waited 12 months before initiating a lawsuit seeking specific performance. Meanwhile, Dan

kept the ambulance in the temperature and humidity-controlled garage.

Can Priscilla obtain specific performance of Dan's agreement to sell Priscilla the Ghostbuster's Cadillac? What are Dan's defenses? Discuss.

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Question 2

Penny sells Porsche sports cars for a living. David and Penny enter into a valid agreement whereby David will wash and wax Penny's 2020 Porsche 911 by hand for \$250. Later that day, as Penny dropped the car off with David, she remarked, "my new client Caleb is coming by tomorrow, and when he sees how beautiful you made my car, he will probably buy 5 cars from me!" Penny's profit for each car she sells is \$10,000, regardless of the sales price. David just smiled, took the keys from Penny, and told her that he would get to her car first thing after lunch.

At lunchtime, a city-owned water main broke, which caused all businesses on David's street to not have any water. The city immediately notified each business that the water would not be restored until the next day.

David figured he could wash and wax Penny's car first thing in the morning, so he went home for the day. The next morning the water main was still being repaired. David drove Penny's car to the local gas station, and paid \$10 to drive her car through the automatic car wash. The brush from the car wash left visible scratches on the driver and passenger doors. It also did not clean the car as well as David would have. The automatic car wash sprayed the car with liquid wax, which David tried to buff out, but it still left visible water spots on the paint and dirt around the windshield.

Penny picked her car up a while later, and was shocked at its condition. She refused to pay David, and drove her car to Sam. Sam learned of the water main break from Penny when she drove up, and he agreed to hand wash and wax the car on the spot for \$550. Sam normally charged \$300 for a hand wash and wax. He was unable to fix the scratches.

Later, Penny picked up her client, Caleb. He noticed the scratches on the door, and told Penny, "No thanks...I'm going to go talk to the Alfa Romeo dealer instead." Caleb bought 6 Alfa Romeo Spiders.

What legal damages could Penny seek? David?

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Question 3

The airline, VolAir, purchased a passenger jet from Myolee, a leading producer of airplanes.

Myolee did not disclose a design flaw to VolAir in which the rear brakes could unexpectedly lock up during takeoff or landing. Myolee also knew that pilots could be easily trained to successfully maneuver the plane in the event of a brake lockup, but they did not offer that training to VolAir.

To celebrate VolAir's first flight from Atascadero to Honolulu, the Atascadero High School marching band lined the runway and played peppy songs while the airplane began to take off.

While accelerating for takeoff, the airplane's brakes locked up, and it began to skid. The pilots, who did not know of the flaw nor how to correct it, steered the airplane toward the tuba players. Paul, a tuba player, jumped out of the way, but the tuba that had been passed down in his family for five generations was crushed. Paul sold the crushed tuba as scrap for \$25, and purchased a new tuba for \$1000.

Still skidding, the airplane then went down an embankment and crashed into a grain silo owned by Oscar. The silo was damaged, and the debris from the collision broke Oscar's elbow and hip. The silo was inoperable for three months, but Oscar's insurance paid for the loss of the grain and paid to repair the silo. Oscar was unable to work for six months while he recovered.

At a regularly scheduled court hearing for one of the many lawsuits facing VolAir and Myolee, the court ordered Myolee to turn over the information on the design defect to VolAir. As the attorney for Myolee was walking out of the door of the courthouse, he loudly remarked that the judge was a complete moron and her court ran like a circus. The judge's off duty bailiff heard the remark and told the judge. The judge summarily found the attorney in contempt and threw him in jail for 10 days.

Was the judge correct when she summarily found the attorney in contempt?

For the purposes of the next two questions, assume the fault of VolAir and Myolee has been established.

What legal damages, if any, is Paul entitled to?

What legal damages, if any, is Oscar entitled to?

Question 1

START ANSWER OUTLINE:

Specific Performance:

5 elements:

- 1) Contract between the parties
 - a. Agree to buy and sell the Cadillac. Mutual assent.
 - b. Consideration: 10,000
- 2) Plaintiff has already performed or is ready to perform
 - a. Priscilla paid the money
- 3) Inadequacy of legal remedy
 - a. It's a unique good.
 - b. Maybe there are many 1959 cadillacs, but this is the one that was used in a blockbuster movie.
- 4) Feasibility of enforcement
 - a. A court could completely oversee the transfer of the Cadillac from Dan to Priscilla. Would be an easy transaction to manage.
- 5) Defenses
 - a. Laches?
 - i. The passing of time? Did P's inaction cause D to act to his detriment?
 - ii. She waited a year?
 - iii. He ended up spending an extra \$5000 on storing the vehicle.
 - b. Statute of Frauds
 - i. Signed writing – the check cures a lack of writing at the time of contract.
 - c. Mistake: BONUS POINTS
 - i. When both parties in a contract are mistaken about facts relating to the agreement, the contract may be avoided by the adversely affected party if the mistake concerns a basic assumption on which the contract is made, the mistake has a material effect on the agreed upon exchange, and the party seeking avoidance did not assume the risk of the mistake.
 - d. Misrepresentation? BONUS POINTS
 - i. False assertion of fact.

- ii. But a party is not required to tell the other party everything she knows, but if the nondisclosure of the material fact is fraudulent, the contract is voidable.
- e. Estoppel?
 - i. Is Priscilla estopped? Probably not. Probably not an issue at all, but might be touched upon.
- f. Unclean hands?
 - i. P must come in with clean hands, and the cleanliness must be related to the suit.
 - ii. Could be the defense a student will write, instead of mistake or misrepresentation.

Q2

START OF ANSWER OUTLINE

1. Breach of contract?
 - a. David agreed to hand wash and hand wax the car.
 - b. He did wash it, but not by hand.
 - c. He did wax it but not by hand...he buffed it though.
2. Expectation damages
 - a. Are damages recoverable from a breach of contract by the non breaching party.
 - b. It protects the injured party's interest in realizing the value of the expectancy that was created by the promise of the other party.
 - c. Compensation is calculated by the amount necessary to place the injured plaintiff in as good a position financially as that party would have occupied if the defendant had rendered the remaining performance.
 - d. The expectation measure is a measure of damages that allows a plaintiff to buy a substitute performance
 - i. The expectancy was \$250.00
 1. P was expecting a \$250 hand car wash and wax.
 2. She got an automated wash and wax.
 - ii. The car wash damaged her car.
 - iii. The wax left water spots and dirt.
 - iv. He did wash it, but not hand wash.
 - e. She did cover, but paid \$300 more.
3. Reliance damages
 - a. If court says, "no" to expectation, then reliance.
 - b. In reliance on his promise, she did not seek to find a similarly priced car wash.

- c. David did not let her know about the water main break, if he had, she might have gone to Sam that same day and purchased a car wash for only \$50 more.
 - d. But because Penny relied on David's promise to wash and wax the car, she was not able to take advantage of Sam's normal price of \$300, and instead had to pay \$550.
 - e. That was \$300 more than the \$250 price.
 - f. Had she gone to Sam the day before, she would have paid \$50 more.
 - g. David would argue that Sam raised his price due to Penny telling Sam about the water main break.
4. Consequential Damages
- a. Is Penny entitled to the \$50,000 that she stood to make from the sales of the Porsches?
 - b. Hadley v. Baxendale: a breaching party is liable for all losses that the contracting parties should have foreseen, but not liable for any losses that the breaching party could not have foreseen on the information available to him.
 - c. At the time of contract, Penny told David that the beauty of the car would make Caleb buy 5 cars from him.
 - d. Caleb looked at the damage that the car wash caused, and bought none from her. But he did buy Alfa Romeos.
 - e. BUUUUUT, the contract was entered into and THEN the comment was made.
 - f. So probably no consequential damages.

Q3 -START OF ANSWER OUTLINE:

Contempt:

Summary contempt v. Contempt with due process considerations.

Happened in the courthouse, in front of court staff, so maybe no due process considerations.

But, bailiff was off duty, and attorney was almost outside of the courthouse, not just the courtroom.

Could have a right to a lawyer, jury trial, etc.

Paul v. VolAir and Myolee

Destruction of chattel: tuba.

Fair market value of the tuba.

Hard to establish? It is an old tuba, and had sentimental value.

No recovery for sentimental value.

Less the scrap price.

Possible punitive damages?
Possibly against Myolee, but not VolAir. As

Oscar v. VolAir and Myolee
Damage to real property, the silo.
Cost to repair or is it diminution in value?
Collateral source rule?
Oscar's insurance paid for it, so no offset.

Personal injury damages
Damage to Oscar's elbow and hip
Lost wages, pain and suffering.

Possible punitive damages against Myolee, not VolAir.

1)

Applicable Law:

Common law governs contracts for services and real property. UCC Article Two governs contracts for the sale of goods. This is contract for the sale of the Ghostbusters Cadillac. Thus, UCC applies

Specific Performance [SP]:

SP is an equitable remedy available for contracts. A court will compel the person to perform if the elements are met. SP can be awarded if: (1) the contract is valid; (2) contract terms are certain and definite; (3) Conditions are satisfied; (4) a remedy at law is inadequate; (5) feasibility of enforcement and (6) there are no defenses.

[1] The Contract is Valid

Valid contracts require an offer, valid acceptance, consideration, and certain + definite terms. Here, a valid contract was formed between Dan and Priscilla when Dan agreed to sell Priscilla the ambulance "to a good home," for \$10k.

Statute of Frauds: [SOF]

SOF requires contracts for the sale of goods of \$500 or more to be put in writing. Here, the contract between Dan and Priscilla as only oral. SOF was not satisfied. Dan will use SOF as a defense to enforce the contact.

Exceptions to SOF:

Full performance: Here, Priscilla would argue that she fully performed by dumping \$10k into Dan's bank account. However, courts have found that payment alone does not satisfy full performance, and that there must be delivery of the goods. Here, Dan kept the ambulance and it was not delivered. Thus, the court will likely find that Priscilla's full payment was not sufficient to waive the writing requirement under SOF.

Estoppel:

Occurs when a party detrimentally relies on another party's promise. Here, Priscilla will argue that she relied on Dan's promise to sell the ambulance and it was detrimental because she is trying to start her own garage museum and planned to use the ambulance as a prop to lure people to her museum. She will argue this is a budding career in movie prop collecting. Plus she placed ads in the newspaper advertising rides and telling the world of her new business. Her reputation and reliability could be damaged. Thus, the court may consider estoppel.

[2] Contract terms are certain and definite

UCC requires that contracts specify the quantity and price. Here, this term is satisfied because Dan and Priscilla agreed on one Ghostbusters ambulance for \$10k

[3] Conditions are satisfied

A condition is an event, where the occurrence or non-occurrence must occur, if it occurs at all in order for performance to be complete. Here, Priscilla will say she satisfied all of the conditions because she paid Dan for the ambulance. This is evident because Dan even hands her back a check stating "refund for 1959 Ghostbuster Cadillac". Thus, the court will likely find the conditions were satisfied.

[4] Remedy at law is inadequate:

Expectancy damages compensate for the benefit of the bargain. These are not appropriate here. Expectancy damages are not available for unique goods like land, family heirlooms, or Ghostbuster ambulances. This is why SP is available. The ambulance is unique because it was featured in a popular 1984 movie. It is a one-of-a-kind. Thus, remedy at law is inadequate.

Courts also consider when damages are **speculative**. Legal damages require a party to prove foreseeability, certainty, causation, and unavailability. Priscilla just a budding museum owner and she would have a hard time trying to prove certainty of damages. She really has no business relationships or customers yet. Her damages would be speculative. Further making a remedy at law inadequate.

[5] Feasibility of enforcement:

Courts do not want to babysit contracts and historically honor the freedom in contract making. Here, the contract would be easy and simple to enforce. The court will make Dan deliver the ambulance to

Priscilla and for Priscilla to confirm the 10k goes to Dan's bank account again. The contract would not need continued oversight. So, there is feasibility of enforcement.

[6] There are no defenses

Here, Dan has a few defenses.

Unclean Hands - Occurs when Def claims P is guilty of shady conduct. Plaintiffs must come into equity with clean hands. Must be related to the action in the suit. Courts use this defense to promote public policy of fairness in litigation. Here, Dan will argue that Priscilla came into this with unclean hands because she did not tell Dan her plans to display the ambulance in her new garage museum. She even giggled during the conversation where the oral contract was formed. Dan will argue that Priscilla made him believe she was a nice young lady who would enjoy the ride. And Priscilla knew her lady charm would work because Dan said he did not want to sell it to some young guy who will just hot rod it around town.

Doctrine of Laches: Unreasonable delay by plaintiff to bring the claim. Courts look at the effect of the delay. The time period must not exceed the statute of limitations. Laches start to run as soon as the plaintiff has knowledge that her rights were infringed. Here, Dan will argue that Priscilla waited too long before bringing suit. She waited 12 months before initiating the suit for SP. And Dan kept the ambulance in a tip-top condition during that time in a temperature controlled garage. Doing this cost him \$5,000--Half the price of the contract! So, the delay had an effect. Priscilla's inaction caused encouraged Dan to continue maintaining the ambulance's amazing condition.

Priscilla was hot and excited over this ambulance and her new garage museum. She even put an advertisement in the paper offering rides to children. A budding business owner would not wait 12 months to bring suit for such a unique item. The court will likely find that the doctrine of laches applied and Priscilla sat on her rights too long.

Misrepresentation: Any false assertion, or intentional concealment of material information. Here, Dan made a statement desiring the ambulance to go to a good home and not to some young guy. He will argue that Priscilla misrepresented herself. He did not know he was selling to someone who had a budding garage museum and planned to make money off the ambulance. He only learned this from the newspaper ad advertising the new museum. Priscilla will argue that Dan never asked what she planned to do with the ambulance and she made no false assertions. She will argue they made the oral contract without discussing how the ambulance would be used. So, no material

information was at issue or concealed. The contract will likely not be void on grounds of misrepresentation.

Conclusion: The court should encourage the parties to re-negotiate a deal where the Ghostbusters ambulance is sold to Priscilla for \$15k to make Dan whole for storing it in his garage and not selling to a young guy to hot rod around in. If the judge in the courtroom is a 1980s movie buff, he will likely rule that the ambulance needs a good home like the movie prop garage museum.

END OF EXAM

2)

*Accidentally used David/Dan interchangeably.

Penny's Legal Remedies

Contract

The facts show that David and Penny entered into a *valid agreement* whereby David will wash and wax Penny's 2020 Porsche 911 by hand for \$250.

Breach

Here, Penny will argue that David breached their contract by having her car washed and waxed by a \$10 automatic car wash rather than by hand, causing visible scratches and water/dirt spots. Penny will likely be successful because the terms of the contract explicitly state that Dan was to wash and wax the car *by hand*. Therefore, Penny will be able to pursue legal remedies.

Legal Remedies

Legal remedies allow the non-breaching party to recover monetary damages to compensate for a loss. They are the preferred remedy by the courts. The following legal damages are available in contract cases: expectation (compensatory), reliance, restitutionary, consequential, incidental, nominal, and liquidated. Punitive damages are generally not awarded in contract cases.

Expectation Damages

Expectation damages, or compensatory damages, are the standard measure of contract damages that aim to provide a monetary substitute for the promised but undelivered service. In order to receive expectation damages, the following elements must be met: (1) causation, (2) certainty, (3) foreseeability, and (4) unavailability.

Causation

The breach must be the direct cause of the non-breaching party's injury. Here, the facts show that David's actions of taking Penny's Porsche to a \$10 automated car directly caused the Porsche to be scratched (brush from the car wash scratched the driver and passenger doors) and left with

water/dirt spots (car wash sprayed the car with liquid wax). Therefore, Dan's breach is the cause of Penny's injury.

Certainty

Expectation damages must be certain so as to allow for an accurate determination of the amount of damages. Compensation is calculated by the amount necessary to place the injured plaintiff in as good a position financially as that party would have occupied if the defendant had rendered the remaining performance. Here, the compensation will be calculated as the amount necessary to hand wash and wax Penny's Porsche as well as the cost to remove any scratches. If for some reason this amount is too speculative to calculate, Penny can pursue reliance damages instead.

Foreseeability

The damages must be foreseeable to a reasonable person at the time of contract formation. Here, the damages (scratches and water spots) are likely to be deemed foreseeable in that the whole reason Penny was paying Dan \$250 dollars instead of paying an automated car wash \$10 was because she trusted Dan's handiwork to result in no water spots or scratches and did not trust an automated car was to produce the same result. Therefore, the damages are likely to be held foreseeable to a reasonable person at the time of contract formation.

Unavoidability

The non-breaching party has a duty to mitigate damages. Here, there are no facts to indicate Penny failed to mitigate the damages. In fact, Penny immediately drove her car to Sam in order to get her car back in pristine condition. Therefore, Penny likely satisfies the unavoidability element.

Conclusion

Penny will likely be successful in her pursuit for expectation damages from Dan.

Reliance Damages

Reliance damages can be used as an *alternative* to seeking expectation damages, for instance if the expectation damages are too speculative. Reliance damages are the damages the plaintiff suffered based on their reasonable reliance on the contract.

Here, if the expectation damages (cost to hand wash/wax Penny's Porsche and remove any scratches) is too speculative, Penny can pursue reliance damages instead. These would be measured as the extra \$250 dollars she had to pay Sam to hand wash and wax her car on such short notice. However, it is likely that the expectation damages are not too speculative to calculate.

Consequential Damages

Consequential Damages are special damages that reflect losses over and above standard expectation damages. Such damages may only be recovered if, at the time the contract was made, a reasonable person would have foreseen the damages as a probable result of the breach. The breaching party must have known or had reason to know of the special circumstances that gave rise to the damages.

Here, Penny will argue that Dan owes her \$60,000 because his breach (the scratches and water spots) resulted in Penny's client, Caleb, deciding to speak to the Alfa Romeo dealer instead, who he then purchased 6 cars from. Penny's profits for each car sold is \$10,000, therefore she will argue that she is entitled to that 6 times for the 6 cars that Caleb bought from someone else. Penny will also argue that she told Dan of the special circumstances when she remarked, "my new client Caleb is coming by tomorrow, and when he sees how beautiful you made my car, he will probably buy 5 cars from me!" However, the point of contention will turn on whether a reasonable person would have foreseen Caleb going and buying 6 cars from another dealer as a probable result of failing to hand wash and wax Penny's Porsche.

Penny will argue that Dan knew Penny sold sports cars for a living, she told Dan that Caleb was coming tomorrow, and she explicitly told him that his work would entice Caleb to buy cars from her. In response, Dan will argue that he took her comments as a jest and that he thought someone buying 5 cars because of his hand washing/waxing was clearly an exaggeration. He will also point out that his only response to her comment was a smile, not an affirmative response indicating that he understood the gravity of what she was telling him. It is likely that the statement "he will *probably* buy 5 cars from me" will not amount to putting Dan on sufficient notice of special circumstances to the contract. Therefore, Penny will likely not be able to recover consequential damages.

David's Legal Remedies

Contract

The facts show that David and Penny entered into a *valid agreement* whereby David will wash and wax Penny's 2020 Porsche 911 by hand for \$250.

Breach

Here, David will argue that he did not breach the agreement because he had a valid defense: impossibility. Dan will argue that it was impossible for him to complete what was requested of him because the city-owned water main broke, resulting in all the businesses on Dan's street (including Dan's) to be without water for an extended period of time. This time extended past the time his service was due. Due to this, Dan attempted to mitigate the damages and get Penny's Porsche washed and waxed at the local gas station. If Dan's defense is granted, he may be entitled to legal damages from Penny due to the breach resulting from her lack of payment.

Legal Remedies

Legal remedies allow the non-breaching party to recover monetary damages to compensate for a loss. They are the preferred remedy by the courts. The following legal damages are available in contract cases: expectation (compensatory), reliance, restitutionary, consequential, incidental, nominal, and liquidated. Punitive damages are generally not awarded in contract cases.

Restitutionary Damages

Restitutionary damages strip a breaching party of the gains they made by breaching the contract. The benefit made by the breaching party may exceed the detriment of the non-breaching party. The aim of restitutionary damages is to prevent unjust enrichment. Here, Penny gained an additional \$250 by refusing to pay Dan for "his" work. Therefore, Dan may be entitled to recover that \$250 from Penny.

If Dan's defense is deemed valid and Penny is held in breach of contract (unlikely), Dan will be able to recover \$250 in restitutionary damages.

END OF EXAM

3)

Was contempt correct? Probably not.

Contempt is how courts enforce equitable order like injunctions and Specific Performance. The goal is to vindicate the integrity of the offended court. Contempt can be criminal or civil. Contempt can be direct or indirect. Criminal contempt is brought by the govt to punish bad behavior and is proved by beyond a reasonable doubt. Constitutional safeguards may apply. Direct contempt occurs under the court's own eyeball while indirect contempt occurs outside the presence of the court.

Contempt elements: There must be: (1) misbehavior of a person; (2) in or near the presence of the court; (3) that obstructs the administration of justice; (4) committed with criminal intent.

Here, the court ordered Myolee to turn over the information on the design defect to VolAir. He loudly called the judge a moron who ran her court like a circus. He said this inside the court and in the presence of a judge. Facts suggest the judge did not hear because he was informed by an off duty bailiff, who while on duty is an officer of the court. He was not on duty at the time. The judge should've had a contempt hearing and listened to further evidence before throwing him in jail. Calling someone a name is misbehaving, however no facts suggest his act obstructed the administration of justice especially since nothing in the proceeding came to a halt. The judge did not even stop to address it when it occurred in his very courtroom. The judge listened to a witness who was not an officer of the court at the time of the incident. However, the courts have held that judges can take witness statements from people who are not sworn court officers. It can be from any witness that in or around the court at the time of the incident. So, the baliff's observations are likely admissible. Myolee will argue that while his comment may have constituted misbehavior, it did not obstruct the administration of justice. Facts do not say that he refused to hand over papers and interrupt the legal process. There are not enough facts to weigh the criminal intent element. However, it is likely he said it with intent because he was angry about having to turn over information about the design defect which triggered his likely intentional outcry. He will also argue that he was not in the presence of the court since the judge did not hear the comment, but he will likely not prevail on that point.

LEGAL DAMAGES:

Legal damages in torts are classified as compensatory (general & Special). They must be causal, foreseeable, certain and unavoidable. Punitive damages are available in tort if there is willful, wanton or malicious conduct by the defendant.

PAUL's LEGAL DAMAGES: [Tuba player]

Harm came to Paul via a tort. His personal property (tuba) was harmed. The harm was **caused** by design defect in the plane.

Chattel is tangible personal property. A tuba is a tangible music instrument that belonged to Paul. When a chattel is destroyed, the damages are measured by the value of the chattel at the time of destruction, minus recovery, plus interest. There is no loss of use unless the chattel is not easily replaceable.

Here, there is an impossible to replace tuba that was passed down in his family for generations and was destroyed. A new tuba cost Paul \$1,000. The value of the chattel at the time of destruction was worth \$1,000. This damage is **certain**. Paul received \$25 dollars in scrap. His damages are \$975. Paul will argue for loss of use and not being able to participate in the marching band. These damages are speculative as we do not know how much Paul plays in the band and if the school has loaner tubas for him to borrow.

The issue is whether it was foreseeable for Paul's Tuba to be destroyed as a result of a brakes malfunctioning on the runway. Destroyed tubas are not a natural loss that arises from a plane crash. However, people standing on the a runway is a risky endeavor and it is likely that anything other than an airplane could get injured on a tarmac. The court will likely find the damages were foreseeable.

Paul will argue that the item is not replaceable and so special to his family. In cases like this, the court has sometimes allowed the plaintiff to give a personal value to the item because there is no fair market value for a family heirloom on the marketplace. The court will likely permit a personal value estimate on top of the \$975.00. Because Paul may argue that he will never be able to play a song as peppy again with his new tuba.

Paul will also argue for **punitive damages** to punish the behavior of the design company that messed up the airplane. The seriousness of the harm was a lot as Paul could have been killed had he not jumped out of the way. Myolee is a leading producer of airplanes and should have known harm would result from the design flaw they failed to disclose. This is reprehensible. The court will

likely award punitive damages to deter Myolee from continuing this unethical behavior, **willful and malicious act** of not disclosing design flaws.

OSCAR's DAMAGES:

Oscar's harm arises from a tort. He must prove: causal, foreseeability, certainty and unavailability.

Causation- caused by a plane hitting his silo

Certain- The silo has an exact cost to repair. Plus his hip and elbow were injured.

Foreseeable- It's foreseeable that a plane with no brakes would skid down an embankment and damage a nearby structure. It is also foreseeable that a person would be near the structure and damaged by the debris.

Unavoidable- Oscar could not avoid the damage. There was no way to mitigate a plane coming at a silo or his physical body.

Injury to chattel: Oscar's grain silo was damaged. Damages are measured by diminution in value, or cost of repair which is limited to market value and loss of use. No facts suggest the cost of repair or value of silos. But if Oscar can show this, he will prevail on these damages.

Trespass to land: However, a grain silo is not a tangible piece of personal property so Trespass to land is a better tort. This is intentional invasion of land by another w/o permission. The plane did not have permission to come onto Oscar's land. The land/ silo was damaged and the measure is the cost of repair or removal. If the underlying land under the silo was damaged, the damages are measured by the diminution in value of the real property. Oscar can also seek what it would cost to rent the silo out. This author does not know anything about silo construction.

Special damages: Oscar's lost wages for six months. Oscar can prove that this injury is special to his situation, obviously not necessarily something that happens in all plane crashes. But for the crash, he would not have been injured and missing work. Certainty of his lost wages can be proven through pay check stubs in courtroom.

Personal injury to Oscar's elbow and hip: The normal remedy for personal injuries are compensatory damages. These can be general or special in nature. General damages are non-economic losses that flow from the tort. They include pain and suffering, disfigurement, emotional distress, mental anguish, and loss of quality of life. He will ask for lost profit from not being able to

work for six months while recovered = economic loss. Oscar should ask for past and future medical expenses to be covered.

Here, Oscar will also argue for pain and suffering and mental anguish damages because he was injured and not able to work. Facts state Oscar's insurance paid for the loss of grain and paid the repair for the silo. **Collateral source rule** states that damages will not be reduced just because a third party already paid the injured plaintiff. Oscar will still be able to recover lost profits and the silo repair regardless of what the insurance paid.

Punitive damages: These damages are only available in tort and the purpose is to punish and deter egregious behavior. Here, Myolee should be punished for not disclosing the design defect and personally injuring Oscar to the point where he could not work for six months. This was willful and malicious behavior on the part of Myolee. Myolee has a lot of wealth and have been likely profiting off their terrible misconduct. Punitive damages are not a separate claim, and Oscar must get compensatory damages first.

END OF EXAM