

SLOCL - Remedies Spring 2022
Final Exam
Prof. C. Winters

Question 1

Damian Diavolo (Diavolo) agreed to sell a 1952 Vespa motor scooter to Enrico Piaggio (Piaggio). This particular motor scooter is the same as the one featured in the movie *Roman Holiday*. In the movie, actors Audrey Hepburn and Gregory Peck ride it through the streets of Rome. After the movie was released in 1953, the Vespa became symbolic of youthful freedom and many models of that same Vespa were sold. A valid contract was signed by both Diavolo and Piaggio, with the agreed selling price of \$150,000, and with terms that Piaggio would pick the scooter up from Diavolo in six months.

Two months later, a second Vespa used in the production of *Roman Holiday* was purportedly discovered. Piaggio immediately called Diavolo, and said "you know, since there is a second *Roman Holiday* Vespa, the one you are selling is half as valuable. "Will you take \$75,000 instead?" Diavolo said no and hung up.

At the six month mark, Piaggio went to Diavolo with the check for \$150,000. As he approached, he saw Piaggio loading the Vespa into a crate. Diavolo saw Piaggio and said, "After our phone call four months ago, I figured you didn't want the Vespa anymore, so I am not selling it to anyone."

Piaggio went home. Two years later, it was determined that the second Vespa was not used in the movie. This caused the price of Diavolo's Vespa to increase to \$300,000. Piaggio sued Diavolo for specific performance.

At the court hearing, Judge Strand indicated she would be on vacation and continued the case for two months. She issued a preliminary injunction, requiring Diavolo to keep the Vespa pending the outcome of the hearing. Frustrated, Diavolo went home and immediately sold the Vespa to Oscar, a movie enthusiast. The statute of limitations for filing a breach of contract claim is three years.

Will Piaggio's suit for specific performance be successful?

What defense(s) can Diavolo raise?

Will Diavolo be held in contempt? Discuss.

Will Piaggio's Specific Performance suit be successful?

Question 2

Paula has owned and operated Atascadero's most successful vanilla ice cream manufacturer for ten years, netting \$325,000 in profits every year. She attributes her success to using a Castigiani Ice Cream maker and to the milk she buys from Donnie's dairy farm. On every carton of ice cream produced, a machine stamps the words "Made 100% from Donnie's Dairy Milk, Using an Authentic Castigiani Ice Cream Maker". For the entirety of her business, Paula and Donnie have had a contract in which she purchases all of the milk produced by 100 of Donnie's cows every year. In addition, Paula agrees not to use milk produced by any other dairy. Part of their agreement indicates that if Paula uses milk from any other dairy, she will pay Donnie \$50,000 in liquidated damages.

The weather was abnormally hot this year, and the demand for vanilla ice cream increased significantly. To meet the increased demand, Paula asked Donnie if he could supply her with 30% more milk. He indicated he would allocate the milk from 30 extra of his cows to Paula to meet her increased demand. In anticipation of the increased production, Paula traded in her Castigiani ice cream maker for a larger one from the same manufacturer, and paid the \$15,000 difference in cash. She explained to Donnie that the new ice cream maker would need to be operated at least 5 times a month and that if it wasn't run for more than 3 weeks in a row, it would require a form of maintenance that costs \$20,000. He whistled and said "wow."

After making their agreement, the demand for milk increased, too. Simona, a local cheese maker, contacted Donnie and asked him if she could buy the milk from all of his cows. She promised to pay him double what Paula was paying. He immediately breached his contract with Paula and sold all of his milk to Simona.

Paula attempted to cover, but was only able to purchase milk from 50 cows from an inferior dairy. Due to the decrease in milk, her machine sat for two months and needed to be serviced. In addition, she had to buy a new stamping machine that just says "Made Using a Castigiani Ice Cream Maker". Her consumers noticed the difference in taste and stopped purchasing her ice cream. Her profits for that year decreased to \$100,000.

What damages can Paula seek from Donnie?

Can Donnie recover liquidated damages?

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Question 3

Peter received his grandmother's platinum and diamond wedding ring as part of the settling of her estate. He put it in the back corner of the closet in his spare room, in a box marked "old photos." He put other boxes on top of it and promptly forgot about it.

David, an old friend from high school, visited Peter for three weeks during June of 2021 and stayed by himself in the spare room. Peter did not know it, but David had recently been released from prison for committing a string of residential burglaries and had many convictions for petty and grand theft. During his stay, David found the ring and took it.

After three weeks, Peter and David got into an argument. David stormed out of the house and hopped into his car. After starting it, Peter ran over to David and asked him to come back in so they could talk about it. David went to turn the key off, but knocked the shifter into drive, causing the car to lurch forward and pinning Peter between the car and the house. Horrified and in a panic, David reversed the transmission and pushed the accelerator, causing the car to drive backwards and into a fire hydrant. The fire hydrant broke off, spewing water into Peter's house and causing significant, yet reparable structural damage.

Peter was taken to a hospital, where he received surgery for a broken pelvis. Peter was in the hospital and out of work for 6 weeks while he recovered, and had significant emotional distress from the incident. The hospital donated the cost of the surgery and 80% of the hospital stay to Peter. The other 20% was paid for by Peter's insurance.

David sold the ring in July 2021 at the market value of \$10,000.

In October 2021, Peter noticed the ring was missing from the box. In December 2021, the cost of platinum and diamonds increased, and he anticipated his ring would have been worth \$15,000.

He initiated a lawsuit against David for various torts.

What can Peter pursue for remedies against David? Please discuss defenses, if applicable.

ANSWERS

Question 1

Specific Performance – order Diavolo to perform his end of the contract and deliver/sell the Vespa to Piaggio as agreed in the contract.

Generally, specific performance is an equitable contract remedy in which the court orders a party to actually perform its promises as closely as possible, because monetary damages are inadequate to fix the harm.

1. Damages at law are inadequate.
 - a. This is a 1952 Vespa that was used by two well known actors in a well known movie and the popularity of the movie caused the Vespa movement to take off.
 - b. While it does have a price – initially \$150,000 then possibly \$75,000 and then \$300,000, the status of this motorscooter being the motorscooter that became the symbol of youthful freedom, the place in history could make it so that damages are inadequate. However, the student could find that since there is a price tag, damages are adequate.
2. Likelihood of future performance by the party seeking the contract's enforcement.
 - a. Piaggio is ready, willing, and able to purchase it. He has the agreed upon price in his hand.
3. Ability of the breaching party to render performance
 - a. Diavolo has the Vespa in his possession and at the time of the suit for specific performance, still had the Vespa in his possession.
4. Balance the interests of the interests and relative hardships of the parties
 - a. Seems that the interests of the parties were to perform the contract as agreed. It is a motor scooter and until Diavolo changed his mind about buying it, he would have sold it. Likewise, Piaggio is ready to purchase it and there does not seem to be any hardships that will be incurred by either party.
 - b. The student might argue that when Piaggio learned of the purported second Vespa and tried to renegotiate the sales price to \$75,000, it somehow caused doubt in Diavolo's mind that Piaggio would perform. However, when Piaggio showed up, as agreed, with the agreed upon sales price in his hand, it shows that at the earlier time, Piaggio was merely trying to get a new agreement in place. But he never said he wasn't going to not perform.
 - c.
5. Ease of enforcement or supervision of the decree

- a. It would be one transaction in which the scooter would be sold/paperwork/money exchanged.

Generally Not ordered for personal service as the need for loyalty exists

1. Not an issue here, but if the student writes this statement and recognizes it, it will help demonstrate that the student understands the material.

CONCLUSION RE: SPECIFIC PERFORMANCE IS THAT IT SHOULD BE GRANTED (IF DAMAGES ARE INADEQUATE.)

Defenses by the party against whom the order is sought.

1. Laches – Piaggio waited too long to start the claim because by the time he filed suit, the \$150,000 Vespa was now worth \$300,000.
 - a. Unreasonable delay in making the claim
 - i. Did Piaggio unreasonably delay the start of the claim?
 - ii. He waited two years and until the price increased in order to file suit.
 - b. Look to the effect of the delay.
 - i. The Vespa price increased once it was discovered that the purported second Vespa was not used in the movie.
 - ii. Diavolo had no interest in selling the Vespa to someone else before and during the time of the suit and only sold it once Piaggio filed suit. Diavolo, therefore, was not subject to somewhat of a vindictive move by Piaggio – had Diavolo immediately sold the scooter to someone else, and then Diavolo spent the money, a subsequent suit would have affected Diavolo more because he would not have been able to perform or maybe even pay the damages if the court then ordered monetary payment.
 - iii. But, the effect of the delay is that the value of the Vespa increased by 100% - from \$150,000 to \$300,000.
 - c. The period may be shorter, but not longer, than the comparable statute of limitations for that action.
 - i. Three years is the SOL and so this suit was brought two years after the breach. It could be found that laches existed.
 - d. Laches begins to run as soon as the plaintiff has knowledge that his/her rights have been infringed.
 - i. Started when Piaggio went to Diavolo and Diavolo refused to perform.
 - e. Broad discretion by court to invoke this.

CONCLUSION RE: LACHES – probably not a valid defense as Diavolo still had the scooter at the time of the suit and the delay does not seem unreasonable.

2. Unclean hands – no facts seem to indicate this, but if the student recognizes this as a possibility, that would be great.
 - a. The person seeking performance has engaged in misconduct directly related to the complaint may preclude enforcement or issuance of the order.
 - b. The behavior must be related to the case at hand.

- c. Broad discretion by court to decide whether to invoke this or not.

RESTITUTION

3. Disgorge the benefit from the defendant.
4. Strips from the defendant a benefit the defendant received, and the benefit the defendant/breacher received might be greater than the detriment the non breaching party suffered.
5. Could be that Piaggio receives the \$150,000 (\$300,000 minus the sales price of \$150,000) from Diavolo, which is the benefit he received from selling to Oscar after being frustrated with the court process. This would put Piaggio in a position to potentially buy the Vespa from Oscar at the current market price.

CONTEMPT – will Diavolo be held in contempt for selling the Vespa in violation of the Court's order to keep it?

1. Criminal or civil? Brief discussion on the difference before concluding that it is criminal contempt.
2. Criminal is brought by a prosecutor/government agency to vindicate society's in the obedience of a lawful order.
 - a. Punishes people for past disobediences.
 1. Diavolo sold the Vespa, so it is a past disobedience of a court order.
 - b. Defendant has to be able to comply with the order, but fails to obey it.
 1. Diavolo had the Vespa and was ordered not to sell it. He failed to obey it when he went home and in frustration, sold the Vespa to Oscar.
3. Civil Contempt
 - a. Primary function is to benefit the plaintiff who received the original equitable order.
4. Is it Direct or Indirect criminal contempt?
 - a. If direct contempt (in the presence of the judge), the defendant has no right to the full panoply of due process/trial rights
 - b. If indirect contempt – outside the presence of the judge/judge's staff
 1. Right to full constitutional safeguards.
 2. Indirect as the non-compliance did not happen in the court's presence. Thus ability for due process considerations – attorney, trial, etc.
 - c. While Diavolo was present when the judge made the order not to sell the Vespa, Diavolo went home and sold it. It was outside the presence of the court. So Diavolo gets the full constitutional safeguards (jury trial, right to counsel, due process, etc.)
 - d. Despite that, it was a lawful order that he violated and will probably be held in contempt.

Answer Question 2

Paula's damages from Donnie:

Reliance damages: Purchasing a new machine.

Consequential damages – the breaking of the new ice cream. \$20,000
Making a new stamp for the carton.

Loss of goodwill damages? Hmmm.

Liquidated damages? Maybe will have to discuss.

1. Expectation damages - \$325,000 in profits due to Donnie breaching the contract.
 - a. The “standard measure” of contract damages.
 - b. This is what the plaintiff will try to seek.
 - c. Provide a monetary substitute for the promised but undelivered performance.
 - d. 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.
 - e. The promised, but undelivered performance is the \$325,000 in profits.
 - f. Expectation damages could be \$325,000 in lost profit. Might be mitigated by \$100,000 due to the fact that she did make \$100,000 in profits once she switched milk. If she can show the increase in demand, she might be able to recover an additional 30%, since she was going to increase her production by that amount. But that might be too speculative, but she can try. The weather was abnormally hot that year, and the demand for vanilla ice cream increased, as it did for milk.
 - g. So the monetary substitute will be what she would have received - \$325,000 possibly minus the \$100,000, plus possibly an extra 30% due to the increased demand, if she can show it.
2. Reliance damages – Purchasing a new machine and as an alternative to expectation damages
 - a. Can be used as an alternative to seeking expectation damages.
 - b. Plaintiff might seek this remedy if expectancy are too speculative to measure because the plaintiff cannot show with reasonable certainty the profits she would have made if the defendant performed the contract.
 - i. Expectancy is not speculative. But if expectancy damages cannot be proven, this might be the route she would go.
 - c. The damages the plaintiff suffered based on her reasonable reliance on the contract.
 - i. She suffered damages in the form of trading in a perfectly good ice cream maker for one that could produce more volume of ice cream. She paid \$15,000 out of pocket in anticipation of the increased demand.
 - ii. The increased demand did happen, but when Donnie breached his end of the contract, she couldn't perform her end.
3. Incidental damages
 - a. Damages incurred in a collateral sense by a non-breaching party.

- b. Paula had to change her stamp that she put on every single carton of ice cream and had to buy the new stamp. This was due to Donnie's breach. She had to have a new stamp that omitted the fact that she was using milk from Donnie's cows.
4. Consequential damages – buying the new machine and having to service it
- a. They may be recovered only if, at the time the contract was made, a reasonable person would have foreseen the damages as a probable result of a breach.
 - i. The contract for additional milk production was made with Donnie becoming aware of the special needs of the new machine – that it has to be run often, or suffer a \$20,000 maintenance cost.
 - b. The breaching party must have known or had reason to know of the special circumstances that gave rise to the damages.
 - i. Must have been foreseeable to the breaching party.
 - ii. He knew that she needed extra milk to increase the volume, though he might counter that she could have covered by using other milk.
 - c. But, in the end, Donnie knew that Paula bought the new machine in anticipation of buying extra milk pursuant to their contract and he knew that if it sat idly by, the machine would need costly maintenance. But he didn't know that it would be difficult for Paula to cover, due to the increase in the demand for milk, and the fact that she reduced her output a lot.
5. Liquidated damages – Can Donnie recover his \$50,000?
- a. Parties stipulate to the amount of damages that will be paid in case of breach.
 - b. Must be a reasonable amount in view of the actual or anticipated harm caused by the breach.
 - c. Enforceable if:
 - i. Damages for contractual breach must have been difficult to estimate or ascertain at the time the contract was formed
 - 1. Could have been difficult to estimate or ascertain at the time, as milk is a commodity that could be sold to other people if Paula breached and failed to buy.
 - ii. The amount agreed on must have been a reasonable forecast of compensatory damages in the case of the breach.
 - 1. Until Donnie breached, Paula bought all of his milk and made \$325,000 in damages. Seems like it could be a reasonable forecast of Donnie's compensatory damages in the event she breached.
 - d. But will the court enforce it even though Donnie engaged in unfair dealing – he breached his contract with Paula and instead of selling her the milk from his 130 cows, he sold it to Simona instead. Paula had to cover in order to try to keep her business afloat. The students must discuss that.

Answer Question 3

1. Conversion – the ring
 - a. Conversion is the intentional act of taking property that belongs to another and putting it to personal use. It is a tort
 - i. When David found the ring in a box in the back corner of the spare room, he intentionally took the property that belonged to Peter.
 - b. The measure of damages is the market value at the time of the conversion, plus interest and expenditures in pursuit of recovering the converted property.
 - c. Or could be the highest market value between the date on which the plaintiff learns of the conversion and the expiration of a reasonable time after.
 - i. The market value at the time of the conversion was about \$10,000, but Peter might receive \$15,000, which is the highest market value between learning of the conversion and a reasonable time after.
 - ii. The question is whether December 2021 is within a reasonable time after Peter learned of the conversion.
 - d. Punitive damages may be recovered if the defendant acted with malicious conduct.
 - i. Punishment damages and could be imposed against David due to his malicious intent in taking the ring.
2. Property Damage – the house due to hitting the fire hydrant
 - a. Permanent damage - difference in FMV of the land before and after the injury
 - b. Temporary damage
 - i. Reasonable cost of repairing the property, which may include the value of the use thereof during the period covered by the suit.
 - ii. Or it may be the diminution in value of the property, together with such special damages to crops, improvements, etc.
 - c. Do an analysis of permanent and temporary. This will be found to be temporary, as the damage is repairable. So then the discussion will need to be a general discussion of reasonable cost of repairing the property, including the value of the use, and the diminution in the value of the property.
 - d. Since there are no specific facts as to the cost to repair vs. diminution, this should only be a general discussion of the differences.
3. Personal injury damages – being pinned between the car and house
 - a. Usual remedy is compensatory damages
 - b. Economic losses are called special damages
 - c. Plaintiff can recover all economic losses proximately caused:
 - i. past and future medical expenses
 1. was a cost associated with the initial hospitalization, would need to touch on ongoing medical expenses.
 - ii. Past and future loss of earnings and earning capacity
 1. Out of work for 6 weeks.

- iii. Future losses are discounted to present value
 - d. Non-economic losses are called general damages
 - i. Pain and suffering
 - ii. Emotional distress
 - 1. Loss of enjoyment of life, etc.
 - iii. Recognize that these exist, but no facts to indicate either
 - e. Punitives
 - i. No indication driving the car was malicious, but should be discussed. This is because it is potentially (though maybe not very likely) a battery/intentional tort.
- 4. Collateral source rule – the donated hospital stay and the insurance payment
 - a. Compensation or other benefits which an injured party receives from a source unaffiliated or independent from the responsible party are not deducted from the defendant's liability.
 - b. So the donated hospital stay and insurance payments are still recoverable from David. He does not get to say that since the fees were already paid, he doesn't have to pay them.
 - c. May lead to double compensation.

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1)

Will Piaggio's suit for specific performance be successful?

Specific Performance-

Specific Performance is an equitable contract remedy in which the court orders someone to perform their promise as close as possible because monetary damages are inadequate to fix the harm. The courts will typically weigh the following factors before ordering specific performance 1. Legal damages are inadequate 2. Ability of the parties to perform 3. Balancing of hardships/ importance of the Benefit 4. Ease of Enforcement for the government.

1. Legal Damages are inadequate-

The court will typically rule legal monetary damages are inadequate when the goods being tendered are unique. This often occurs in land sales or sale for collectors items and apparel. Here, we have a sale of a 1952 Vespa Scooter to Enrico Piaggio (P). The scooter was used in the Movie "Roman Holiday", which was released in 1953. P will argue this makes it the type of item that is unique enough to require specific performance. The scooter is over 50 years old and many of the models are probably off the road by now. This particular scooter is a part of movie history and being such a collectors item, instantly makes it unique. Damian Diavolo (D) will argue that this movie spiked the popularity of this particular model and the good is not unique and if you searched you could find many of the same model available. However, the courts will likely rule that this model being used in the movie makes it an item that can not be replaced by money. It is possibly the only, or max a few worldwide that were used on the set of the movie.

Therefore, the courts will likely factor that legal damages are inadequate when making a decision on specific performance.

2. Ability of the parties to perform

P has to show he was ready, willing and able to perform in order to be granted specific performance. That means he had the funds immediately available for payment and was willing to hand over the check to D. This comes into question when he balks at the price and tries to renegotiate. The court could look at his offer of 75,000 and claim that he was not willing to pay the 150,000 that was originally agreed upon by the parties. P should of made it clear he was willing to pay the 150,000, ending the conversation without an agreement of terms makes it look like P was repudiating on the deal. However, most courts will hold that the offer was already accepted and absent clear repudiation the agreement is binding. This is murky communication but P then shows up at the house with 150,000 dollar check in hand. The court will most likely rule that P was ready, willing and able to perform.

D's performance has to be possible. The court cannot order you to hand over goods you no longer have. D is required to keep the Vespa pending the outcome of the trial. However, D sells the Vespa before the court can make a ruling. D no longer has the good and is no longer able to perform the courts order if they do rule specific performance. D's performance unless they undue the sale of the Vespa to Oscar would be impossible.

3. Balancing of the Hardships/Importance of the Benefits-

This prong takes into account the importance of the benefits of the bargain and the hardship that would befall the parties if they were forced to perform. The bike is sold to a third party, so there is really no benefit interest left. However, if the deal went as planned and the Vespa was sold to P. P interest benefit gained would be the Vespa. D's hardship

would be the selling of the Vespa. D would have to show that selling the Vespa caused him inequitable hardship. This could be expense in the sale, unforeseen change in the market or recently befallen financial hardships. We don't have enough facts but these are the elements the courts would consider in moving forward with specific performance.

4. Ease of Government Enforcement-

This prong takes into account the resources the government would have to put into enforcing the specific performance order. Typically, transactions are easy for the government to enforce because it just requires the transfer of the money and the property and the transaction is over. The courts typically will not order specific performance for multiple transactions and especially won't order it for personal service contracts. Personal Service contracts would require monitoring over a long time, loyalty is required and are typically found as a violation because you are being forced to do something against your will (involuntary servitude). The court in this case would just have to enforce the one transaction, which it typically would allow.

In conclusion, this is the type of good the courts would typically order specific performance to remedy. However, D no longer has the good in his possession and therefore specific performance is impossible. P's Specific Performance lawsuit is likely to fail.

What defenses can D Raise?

Latches- LACHES (NOT " BUT NOT ADMISSIBLE - JUST FYI GRADING

Latches are an unreasonable delay in bringing the claim, in which the delay prejudices the defendant. Latches begin as soon as the person is aware of their rights under the claim and the time period can be shorter than, but not longer than the statute of frauds. Courts have broad discretion in the application of latches.

P brought D a check for 150,000 dollars and D decided not to sell P the Vespa. P's knowledge of his claim happen at the moment D rejected his check. P waited two years and waited for the moment the Vespa doubled in value in order to bring his claim forward. The court may look at this as prejudicing D. D would know be taking half of what his Vespa is truly worth on the open market. P will argue that D suffers no prejudice as he still will recoup the 150K as they originally agreed upon and that P is well within the 3 year statute of frauds for the breach of contract. The courts discretion is broad, but the very soul of latches is to prevent transactions like this. The court wants those with a right to come forwards and assert the right, not sit back and wait for a better opportunity.

The court has discretion, but most likely will apply Latches as defense in this matter.

Unclean Hands-

He who comes into the court of equity must come with clean hands. The clean hand doctrine is when the party seeking performance has engaged in misconduct directly related with the complaint.

Here, D would have to show P's misconduct and that his hands were not clean in the transaction. D could point to the fact that P waited two years for the value to increase, but this complaint is covered supra under latches. D may point to trying to renegotiate the deal, when they already had an agreement. It's a thin argument. P did not commit any fraudulent, misleading or deceptive practices. The r negotiation could of communicated more clearly, but would not be considered misconduct.

D likely could not raise unclean hands as a defense.

Are either party entitled to restitution?

Restitution-

Restitution is the disgorgement of an unearned benefit obtained by the breaching party. This occurs when the party who breaches is still receiving a benefit that's more than the expectation damages paid to the non breaching party. It designed to prevent unjust enrichment.

Here, it really depends on how the court rules on who breached the contract. If P repudiated when he tried to renegotiate, then there will be no need for restitution. However, if D breached the contract when he sold the Vespa to Oscar then P may be able to seek restitution. D most likely sold the Vespa for a profit, market value of the Vespa was around 300K. He may be disgorged of the profits because he is benefiting from his breach of contract with P. We don't get hard numbers on the sale, but the courts will disgorge him of the profits made.

P likely has a claim for restitution.

Can D be held in Contempt for violating the preliminary injunction?

Civil Contempt-

Civil Contempt primary purpose is to assert the right of the party who was awarded the equitable order.

Here, enforcing contempt on an preliminary injunction would not fall under the privity of civil contempt. The order was not an equitable one its a court order intended to be lawfully followed. The rights being asserted is of the court, and is not trying to enforce the rights of the party who received an equitable order.

D will not be held in civil contempt

Criminal Contempt-

Criminal contempt is brought by a prosecutor or government and seeks to enforce the right of the people in obedience of a lawful order. Criminal Contempt punishes for past behaviors. The D must have be able to comply and didn't. Criminal Contempt can be direct or indirect. Direct contempt occurs in front of the judge or officers of the court and has no right to procedural due process. Indirect contempt occurs outside of the courtroom and has the full right to due process.

Here, D's actions occurred outside of the courtroom and therefore will be considered indirect contempt and if charged would have a right to due process. D's action occur in defiance of a lawful court order the preliminary injunction. The preliminary injunction was put in place to stop the sale of the Vespa in lieu of the court making a call on the breach of contract. D was able to follow the order but got mad and chose to sell the bike. D violated the lawful court order.

D could be held in criminal contempt.

END OF EXAM

EXCELLENT JOB -
* YOU ORGANIZED YOUR
ESSAY PERFECTLY & USING
THE IRAC METHOD -
YOU GOT STRAIGHT TO
THE POINT + ANALYZED
ALL FACTS + BOTH SIDES

2)

Here, we have a contract between Paula (P) and Donnie (D), Donnie breaches this contract when he sells of all his milk to Simona. In a breach of contract the damages must be reasonable foreseeable, reasonably certain and are only allowed to the extent they were not reasonable avoidable.

✓ Expectation Damages-

Expectation damages are the standard measure of contract damages and are what the P will seek. They provide a monetary substitute for the promised but undelivered performance. Courts will calculate the damages in an attempt to place the non breaching party is as good of a position financially as if performance had been delivered.

Expectation damages are the benefit of the bargain and flow directly from the K. Here, P gets all her dairy product from D. She renegotiates and gets 30 percent more milk from D. Her expectation is her expected profits off the milk minus the cost of buying the milk. The facts do not say but her expectation damages is the margin between the transaction and then again subtracted by her cover cost. If she sold the old milk for a 3 cent profit, and the new milk for a 1 cent profit her expectation damages would be 2 cents, multiplied by the number of units sold. However, its unclear in the fact pattern what the actual numbers are. The 325,000 dollars of profit is her total profit of selling ice cream and not directly related to selling just the milk. We would need more facts to come up with P's expectation damages but i'm sure she has a variety of statements that could prove the difference. She has been in a successful business for ten years, and could point to past sales to show what she expected from the bargain. If the expectation damages are to speculative the courts will not award them. The damages must be reasonably certain and she has a duty to mitigate by covering, which she did with the substitute milk.

NICE
BE CAREFUL
- TRY NOT
TO USE
"I" STATEMENTS

Most likely she can prove expectation damages but it is unclear from the facts.

✓ Reliance Damages-

Reliance damages are sought instead of Expectation damages. They are sought when expectation damages are too speculative. Reliance damages are damages incurred from reasonable reliance on the breaching parties promise.

NIU
Reliance damages are intended to put the non breaching party in the same position as if the contract had not occurred. Here, P in reliance on D's promise to provide more milk, goes out and buys a new ice cream machine. P spends 15,000 dollars and trades in her old ice cream machine, both of these assets could be valuated and return to P in reliance damages. P's reliance is reasonable as she assumed she needed a bigger ice cream machine to functionally use the increased supply of Milk she was receiving. D's breach of this promise left P in a worse position financially than when the contract began. She can recover the difference.

Here, If P cannot prove her expectation damages she can seek 15,000 Dollars and the value of her old ice cream machine in reliance damages.

Incidental Damages-

Incidental Damages are damage collaterally incurred because of the breach.

Extensive
Here, due to D's breach, P has to make some changes in her business. She has to contact another dairy. This is a collateral cost of the breach and P can recover all expenses incurred in going out of her way for the new dairy. (gas, transport, fees, salaried employees). She also has to remove the Donnie's Dairy stamp from her labels. P can recover the cost of the new stamp maker and the cost of the effort in took to obtain the

new stamp maker. P can recover whatever other incidental damages she incurred collaterally because of the breach.

P is entitled to incidental damages.

Consequential Damages-

Consequential Damages are special damages above and beyond normal expectation damages. Consequential damages must be reasonably foreseeable by the contracting party at the time the contract was formed. The breaching party knew or should of known that these damages would result if they breached the contract.

Here, the courts typically apply a "be chatty" rule, where if you want the other party to be aware of consequential damages you should talk about it and put them on alert. P does that by letting D know her new large ice cream machine had to be run 5 times a month or would require a 20,000 dollar service. D acknowledges this with a whistle and a "wow". P has satisfied her requirement of putting D on notice of the potential consequential damages that could occur if the breach occurs. D could argue that he didn't have direct knowledge that if his milk didn't arrive that she wouldn't be able to run the machines. D could also argue that P had a duty to mitigate and run the machine with other milk, so the machine wouldn't require such a lengthy expensive service. I'm not an expert on the ^{Don't} logistics of ice cream machines but if it was unreasonable for P to run the machine ^{use summary} without the required amount of Milk her recovery of the damages could be valid. D works in the dairy industry and would have knowledge of the constraints and how difficult it would be to supply such a large amount of milk in a short amount of time. P attempts to cover but can only find a dairy and purchase milk from 50 cows. It was reasonably foreseeable that not dropping off the large amounts of milk would result in the machine not being used, and P put D on notice that the machine not being used would require an expensive service.

Therefore, the damages were a reasonably foreseeable consequence of D's breach.

Loss of Goodwill-

Loss of Goodwill is the loss of reputation in the community due to the breach of contract.

Here, P's profits take a nosedive when she switches milk suppliers. She will claim she has lost the goodwill of the community because of D breaching their contract and not supplying the milk. However, the loss of profits is due to the ice cream not tasting good, not a reputational blow from the breach of contract. P has hurt her own reputation by putting out an inferior product. She can't blame D for her loss in client base when she replaced with him with a poor milk supplier. P should have found a better milk supplier or not put out a product at all if she was worried about loss of goodwill in the industry. It is far too speculative to hold D accountable for the product produced by P after they had stopped doing business. P can hold him liable for the damages incurred from the contract, but the loss of goodwill does not stem directly from the contract. So, the loss of profits of 100,000 dollars are not likely recoverable from a loss of goodwill standpoint.

P can likely not recover for loss of goodwill damages.

Can Donnie recover liquidated damages?

Liquidated Damages-

Liquidated Damages are a clause in the contract that stipulates the amount of damages if a breach occurs. The liquidated damage clause is only valid if at the time of the contract 1. The amount of damages stipulated was a reasonable amount 2. The damages must have been difficult to ascertain or calculate at the time of contract.

Here, Donnie breached the contract first. So the liquidated damages clause would be invalid. However, if he did not breach the contract first the courts will look and see if the amount awarded in the liquidated damages clause was reasonable and if damages were difficult to calculate when the contract was formed. We don't get a large look into D's financial statements but P buys a lot of milk from D so the 50,000 dollars may in fact be a reasonable number. However, this liquidate damages clause is functioning more as a punishment clause which would make it invalid. Punishing P with a 50K breach of contract is more punishing her for using someone elses milk and not calculating what the actual damages could be. The damages would also not be hard to calculate when the contract was formed. They are two large businesses and both have extensive financial statements. Calculating what the damages should be simple math.

The liquidated damages clause is likley invalid.

END OF EXAM

Solid Answer +
well organized

→ TRY NOT TO USE "I" STATEMENTS
+ KEEP YOUR RESPONSES
IMPERSONAL

YOU WON'T BE DINGED FOR
THAT, BUT YOU CERTAINLY

DON'T WANT TO DO THAT
ON THE BAR

3)

What remedies for the converted property can P pursue?

Conversion-

Conversion is the intentional taking of another property and putting that property to personal use. It is a tort

Here, Peter (P) received his grandmothers ring as part of her estate. Therefore the ring was P's. David (D), took this ring and put it to personal use by selling the ring for his own profit.

Therefore, D is liable for conversion damage to P.

Conversion Damages-

Courts typically allow two types of recovery for the tort of conversion. The first will be the fair market value at the time of conversion plus any interest and expenditures used in pursuit of recovering the converted property.

Here, David converts the ring when he puts it to personal use and sells it in July of 2021 for 10,000 dollars. Therefore, David's remedies would be the 10,000 dollars plus any interest and expenditures he used looking for or tracking down the ring.

The second rule courts use when allocating a remedy for conversion is allowing for the highest market value of the property between the discovery of the conversion and the expiration of a reasonable amount of time afterwards.

Peter notices in October of 2021 that the ring is missing. The ring is now worth 15,000 dollars. Peter also has the option of taking the value at the time he discovers or a

reasonable amount of time afterwards. If the court applies this rule P could be awarded 15,000 dollars in damages or any increase that occurs within a reasonable time period.

Here, P can collect conversion damages, depending on what rule the court applies.

Punitive Damages-

Punitive damages can be rewarded in conversion damages when there was malicious conduct involved. This includes ill will, insult or an attempt to embarrass.

Here, there is a personal relationship between P and D. P would have to show that D was stealing this ring for some other reason than the value of the ring. P will have to show that the conduct is malicious towards him personally and was intended to hurt him emotionally or embarrass him publicly. It's P grandmothers ring so there is an emotional component to P's ownership of the ring. However, the facts do not lay out how this effects the conduct of D. No facts indicate D acted with Malicious Conduct.

P likely cannot recover punitive damages.

What property damage remedies can P pursue?

Property Damage-

Property Damage is damage to personal or real property through the negligence or intentional act of another. Property damage is typically broken into two categories, Temporary and Permanent.

Here, D drives into the fire hydrant and the fire hydrant water damages the house. Therefore D is the proximate cause of the property damage and may be liable to P for the resulting damages.

Permanent Damages-

Permanent damages are when the injury is fixed and the damages will not dissipate by time or repair. Damages for permanent damages in the diminution of value before and after the cause of action.

Here, the damages are most likely not permanent as the facts state "significant, yet repairable". Permanent damages are usually when the property is ruined somehow and no time or repair can fix the damages that occurred. If the courts do declare the damages permanent, P can recover the fair market value of the property before the damage minus the fair market value of the property after the damage. His remedy is the difference in the two figures.

It is unlikely P has a permanent damage remedy.

Temporary Damages-

Temporary Damages is typically when the injury is remedial and the effects will dissipate over time. Temporary Damages remedies will be the cost of repair plus potential loss of use or the diminution in value of the land plus special damages to crops, improvements etc.

Here, we don't get many facts on the extent of the damage of the home, simply that its "significant, but repairable". Typically as long as the cost of repair is reasonable the courts will order the cost of repair and make the plaintiff whole. If the cost of repair is unreasonable they lean towards the diminution in value. The courts are going to do what is equitable and fair for both parties. They are not going to make the D pay an unreasonable fee to repair, and they are not going to leave the plaintiff without an adequate form of recovery.

P has a remedy under temporary property damages.

Can P recover for personal injury damages?

Personal Injury is damage to the body of another due to ^{TOE TIO} tortious conduct of another. Typically for personal injury the typical remedy is compensatory damages. Compensatory damages break into two categories. General and Special Damages.

General damages is loss accrued for emotional distress, pain and suffering and loss of quality of life. Basically the courts will try and compensate for the mental and physical anguish caused from the action.

Here, P may be able to bring some general damages. However, his injury is not super severe, he's only in the hospital for 6 weeks but the facts do say "he has severe emotional distress". The courts will calculate these damages and pay P for his physical and mental anguish that occurred.

Here, P may be able to recover a limited amount of general damages.

Special Damages are the economic loss incurred from the injury. They constitute loss of future medical expense and loss of future wages. The courts calculate what the injury will cost in the future and discount these damages to a current rate. Most courts use a reasonable rate of return and work the compound interest in reverse. Some courts will factor in inflation in their calculation also.

Here, P misses work for 6 weeks and is hospitalized. If P is going to have future medical expenses and loss of some sort of future wages he can bring suit against D to recover these damages. The courts will calculate the future amount and discount it to a current day figure.

P has a remedy in special damages against D.

Collateral Source Rule-

Payments or benefits to the plaintiff made from a party unaffiliated with the defendant will not relieve the defendant's liability.

Here, D may try and say that P is being unjustly enriched by collecting from the donated stay at the hospital and the money from the insurance and still getting damages from D. However, the donation and the insurance money do not alleviate D of his liability. D must pay P all the damages he owes. He is personally liable and the insurance company and donation do not change that. We want insurance to do its job efficiently and then if needed the insurance can try and collect from the final judgement if it feels like it is owed money.

The insurance and donated hospital room do not constitute unjust enrichment or alleviate D of his liability.

Special Damages are the loss of future wages and the cost of future medical expenses.

END OF EXAM

EXCELLENT!