

San Luis Obispo College of Law

Remedies

Final Examination

Spring 2023

Prof. C. Winters

General Instructions:

Answer Three (3) Essay Questions.

Total Time Allotted: Three (3) Hours.

QUESTION 1

Pauline lives in a cottage in rural San Luis Obispo County. Her cottage is on the southwest corner of her 20 square acre parcel of land. Directly to the east of her is David, Pauline's next door neighbor. David also has a 20 square acre parcel of land, and lives in his cottage that is located in the middle of his property. The property north of them belongs to the United States Bureau of Land Management (BLM), and is not privately owned. BLM allows anyone to hike and swimming on that property, and has a parking area that is on its northwest corner and is therefore nowhere near Pauline and David's property.

The north west boundary of Pauline's property is a BLM lakeshore. Pauline can access the lake by taking one of the many hiking paths located on her property. David's property does not abut the lake, but he can access it by walking diagonally onto Pauline's northeast corner and then following the Pauline's property line to the lakeshore. Pauline knows that David sometimes uses that path to access the lake, but is okay with him using it because it is infrequent and he does not disturb the land at all.

In 2019, Pauline noticed that the path that David sometimes takes was a bit wider than it had been before. Thinking nothing of it, she continued walking. In 2020, Pauline again walked to that portion of her property, but this time noticed that the pathway now was wide enough for a car to drive on and while still dirt, was graded. She followed it east and south, and saw that it led to and continued onto David's property. Pauline saw that there was heavy equipment, an asphalt truck, and other indicators that David was planning on paving this pathway.

Livid, Pauline confronted David and told him not to pave the pathway through her property. David explained that it was on the far north boundary of her property, and she would never notice it since her house is on the opposite corner. He then told her that he was going to let people drive from his property, on the road, to the lake.

For the next year, Pauline would occasionally make it a point to watch as construction workers drove the heavy equipment from David's property and onto hers. She would then watch the workers level the roadway, pour asphalt, and otherwise turn the dirt road into a paved road.

Finally, at the beginning of 2021, Pauline filed a suit in Superior Court, requesting an injunction that would cause David to return the road to the pathway it was back in 2018. Assume the statute of limitations for this type of action is 5 years.

Carrie Jane Winters
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At one of the many court hearings scheduled for the case, the judge indicated that the trial on the matter would not happen until the following year. Thinking no one could hear him, David stated, "where did this judge get his gavel? From the inside of a Cracker Jack box? What joke this stupid judge is."

Unfortunately for David, the bailiff, court reporter, court clerk, the attorneys, and Pauline heard every word he said. The judge did not hear David say anything, but his bailiff told him during a break.

Assume David has made no claim that the pathway is an easement.

Will Pauline be successful in getting an injunction?

What defenses, if any, will David raise?

What actions, if any, may the judge take against David?

QUESTION 2

Don is a custom builder of a human propulsion device called a “BackJet” that is worn by a person and allows the person to fly in the air for 3 hours at a time and at a maximum height of 500 feet. Unlike manufacturers of other such devices, the “BackJet” uses an exhaust system that curves outward and directs all heat produced from the device away from the user. This allows for the user to wear any ordinary shoe instead of the 200 pound heat resistant shoes that all other manufacturers require. These types of devices are fairly common among race enthusiasts.

Don agrees to build Peter a BackJet for \$100,000. As Peter tenders a \$35,000 down payment to Don, he tells him that he will be using the BackJet in an annual jetpack race that will start on August 2, 2023. Racers use their own flying mobility devices to go from San Luis Obispo to San Francisco. The first person to land in Golden Gate Park wins \$500,000. There are no other prizes. Don smiles and tells Peter that since he won’t have to wear the heavy heat resistant shoes that cause slowness, he should be a contender for winning. Don gives Peter a friendly pat on the back and tells Peter that the BackJet will be ready to be picked up on June 15.

Peter immediately hires a personal trainer for \$10,000 to help get him into physical shape for the race.

On June 15, Don calls Peter and tells him that he had been in jail since they last met and was just released since the district attorney realized they had the wrong person. As a result, Peter’s BackJet would not be ready until after the race.

Panicked, Peter immediately contacted EZ-Fly, Don’s competitor, and purchased their jetpack for \$110,000. EZ-Fly also sold Peter a pair of heat resistant shoes for \$5000.

In reaction, Peter’s personal trainer put Peter on a regimen of running with 50 pound weights on his shoes, in an effort to build his leg muscles since he would now be wearing 200 pound shoes.

On August 2, the 20 racers lined up on the corner of Broad and Marsh in San Luis Obispo. Much to Peter’s surprise, another racer, Barbara, showed up wearing a BackJet. Barbara and Peter are the same size and weight. Peter talked to Barbara, and she confirmed that she had her jetpack was the one that would have been Peter’s.

The race started and Barbara immediately go to the front of the group. Peter was in the middle of the pack, and it was clear that his 200 pound shoes were holding back his performance.

Two and a half hours later, Peter landed in Golden Gate Park, and was not surprised to learn that Barbara had won. Barbara gave Don \$250,000 of her \$500,000 prize.

Peter sues Don for breach of contract for failure to tender a BackJet on time.

What, if anything, does Peter recover?

QUESTION 3

David lives on a narrow, curvy road, and despite his neighbors trying to get him to slow down, he likes to race his brand-new Dodge Challenger on that road at about 75 miles per hour. Patrick also lives on the same road, but drives his 1908 Ford Model T at much lower speeds. Patrick's Model T has been in his family since it rolled off the assembly room floor – Patrick's grandfather was a good friend of Henry Ford, the creator of the Model T, and Ford had given that car to Patrick's grandfather as a gift.

At dusk, David was driving 70 miles per hour on the road. As he passed the sign that posted the speed limit of 30 miles per hour, he failed to notice Patrick was ahead of him, driving his Model T in the same direction. David was unable to adequately brake in time, and he rear-ended Patrick at a speed of 40 miles per hour. The collision caused Patrick's Model T to be pushed off the roadway and he smashed into another neighbor, Betsy's, barn. Betsy, a local dairy farmer, was inside the barn at the time, received a broken arm when Patrick's car pinned her to the wall of her barn. Her barn sustained structural damage, and was later torn down due to the damage. Since her barn had to be destroyed, she was forced to sell her cows to another farmer.

Luckily, Patrick only received a broken left leg and some major bruising to his chest area. His Model T, however, was not so lucky. A combination of being hit from behind plus hitting the barn caused his car to become crunched. It was not salvageable.

David walked away unscathed.

Patrick went to the hospital and he received a cast for his leg and pain medicine for the bruising. His automobile insurance paid the bill, but he was off of work for 4 months, causing him to lose his job and causing his bank to foreclose on his house.

Betsy went to her father's house. Her father is a local doctor, and he put her arm in a splint and told her to take ibuprofen every 4 hours.

Both Patrick and Betsy sued David in tort. Assuming David was 100% at fault for the collision:

1. What can Patrick seek and recover?
2. What can Betsy seek and recover?

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Question 1 outline answer

1. Injunction
 - a. Will Pauline succeed in getting an injunction against David, and make him take the road out?
 - b. An injunction is an equitable remedy and is traditionally available when
 - i. There is an inadequacy of the remedy at law
 1. This involves lane, which traditionally holds that damages are inadequate.
 - ii. An irreparable harm exists
 1. A road was built on her land. It went from a pathway to a paved road.
 - iii. The relative hardships are examined and balanced
 1. More harm to keep the road, which was once a pathway?
 2. More harm to David to have him take it out?
 - iv. The public interest is taken into account.
 1. Interest in wanting to keep land owned by someone in the full control of that person.
2. Defenses?
 - a. Laches
 - i. Laches is an equitable defense. A defendant who invokes the doctrine is asserting that the claimant has delayed in asserting its rights, and, because of this delay, is no longer entitled to bring an equitable claim.
 - ii. Pauline watched the pathway change from a hiking path to a graded road/path to a full on asphalt road in the course of 2 or three years. She knew what David was doing and yet watched it happen.
 - iii. SOL is probably irrelevant, as there is no requirement that the SOL has to run. Instead, the judge will look at the behavior and see if the delay was reasonable.
3. Contempt
 - a. Direct v. Indirect
 - i. Contempt is a remedy that a judge can use when a person is in defiance of a court order or if the person shows disrespect to the court.
 - ii. Direct contempt occurs in the presence of the court, while indirect contempt occurs outside of the presence of the court.
 - iii. In direct contempt situations, the judge can summarily sentence a person.
 - iv. In indirect contempt situations, the judge has to afford the defendant due process.

b. Direct:

- i. In the presence of the court. Does not matter that judge did not hear it. Court staff is an extension of the court and can have it.
- ii. This is direct
- iii. Judge can summarily throw David in jail for his disrespect

Question 2 answer outline

Expectation damages: Seller breached \$100,000 for jetpack.
Covers for \$110,000. Might get \$110,000 or \$10,000. Inferior product?

\$35000 as tender?

Reliance damages: personal trainer – spent money in an effort to get up to snuff

Reliance damages: shoes that are \$5000

Consequential damages: \$500,000 for not being a contender?

Restitution: Barbara for \$500,000. She won because she used the BackJet. Don for \$250,000 for disgorging him from a wrong.

General measure of damages for breach of contract is that the injured party is entitled 1) to recovery of all damages that accrue naturally from the breach, and 2) to be put into as good a pecuniary position as he would have had if the contract had been performed.

The general rule of damages is that the injured party has a right to damages based on his expectation interest as measured by

- a) The loss in the value to him of the other party's performance caused by its failure or deficiency, plus
- b) Any other loss, including incidental or consequential loss, caused by the breach, less
- c) Any cost or other loss that he has avoided by not having to perform.

Outline answer Question 3

Patrick:

Personal property – if destroyed, owner is entitled to value of property immediately before its destruction, less any value the destroyed property has as scrap. If damaged and reparable, owner entitled to recovery repair of property provided they are economically feasible.

Model T – possibly unique and sentimental. Completely destroyed. Value immediately before and after the destruction.

Hospital: collateral source rule. But no matter that his insurance pays for it.

Loss of work: wage? Possibly

What about losing his house due to losing job due to accident?

Punitive damages? Was driving maliciously, despite people telling him not to. Dusk, ignored warning.

Betsy:

Real property: cost to repair or diminution in value. Barn destroyed.

Cows: had to be sold...conversion?

Punitive damages – see above

Collateral source rule – dad a dr. no out of pocket expense. But reasonable value.

WHAT ABOUT QUANTUM MERUIT?

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1)

Equitable claims are tried by a judge while legal claims are tried by a jury. If a claim includes both legal and equitable claims, the jury will try the legal claims first and then the court will try the remaining equitable issues.

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.

Irreparable harm

Pauline's land will likely never be the same, so she will argue that there is irreparable harm. David will argue that this road is only occupying a small portion of Pauline's land, so there is no irreparable harm to her property as a whole, and he may have actually increased the value of this property by adding a paved road to the lake. However, even if the road is removed, it would be almost impossible to fully restore it to a small nature trail. The widening and paving of the road likely killed many native plants and destroyed wildlife habitats. If trees were cut down it would take years for new trees to grow big enough to provide the same habitat for birds, insects and other wildlife. Even if no trees were cut down, the paving process could have destroyed ground squirrel holes, snake habitats, and insect habitats. It would take years for the property to be restored to a narrow nature trail to provide the same privacy and enjoyment of going on a hike in nature that Pauline used to experience.

Plus, the
Habitat
Property

Inadequacy of legal remedies

Pauline will argue that no amount of money will return her property's natural beauty and that an injunction is the only way to fix this situation. She will argue that she liked the small nature trail to the lake and a paved road will take away her privacy and the enjoyment of a nature hike to the lake. David may argue that legal remedies would be adequate, he could pay for the change in property value or buy that piece of the property from Pauline to compensate her for his decision to build a road on her property. Pauline will argue that money damages wouldn't be adequate though since this is not about property value, but about the enjoyment of her rural property. She likely doesn't want people driving on her property, and having a paved road with people driving to the lake will decrease her enjoyment of her property and make it less private. She could also argue that allowing people to drive across her property could open her up to liability. What if there was a crash on this road? What if someone drove out to the lake and drowned or got injured by wildlife? Money damages for the damage to real property would not compensate her for this potential liability that she is not willingly taking on. In order to avoid this she may have to have everyone who drives across her property on this road to sign a release of liability waiver. This would require Pauline to print out these documents and make everyone driving on the road sign them. This would be a difficult thing to implement logistically. She may have to have a gate or a person at the beginning of the road telling all users they must sign a release of liability form. This could become expensive and burdensome to Pauline, and a release of liability form isn't even a guarantee that she wouldn't be held liable. There could be some crazy situation and a creative lawyer that would hold her liable for something that happened on her property anyway.

Land = hike
Pressure
Inadequate

Inadequate
Irrelevant
Don't go
Test case
out of
Bounds

Balancing hardships

David will argue that the hardship of removing the paving materials would be a huge burden on him, while providing little benefit to Pauline. Pauline will argue that David

undertook putting the road in, so he has the equipment and ability to take it out. She will argue that David ruined natural habitats that she and local wildlife used to enjoy, so removing the road will be the first step in restoring natural habitats and her peace and quiet on her property. As the world becomes more populated by people there are less natural habitats left, so ensuring that her land remains natural could be very important to Pauline and the local wildlife that doesn't understand where the BLM land ends and where private property begins.

Practicality of enforcement

David will argue that enforcing this injunction would be impractical and costly to the court. Pauline will argue that it will be relatively easy to monitor whether David is removing the road or not. It will not require a court official to visit the site often, and once the removal of the road is completed, the court will not have to be involved in the matter any further. This will not be an ongoing issue that the courts will have to enforce since Pauline is only asking for the removal of the road, she is not asking to keep David from using the original pathway.

Public interest

Pauline will argue that there is a public interest in making sure other people know that their property rights will be protected from their neighbor randomly building a road across their land. She will also argue that there is a public interest in making sure local wildlife is not harmed unnecessarily. David will argue that he actually increased the value of Pauline's land by building this road, and there is no public interest in ensuring that your property doesn't increase in value due to your neighbor's hard work.

Overall, the factors for a permanent injunction weigh in Pauline's favor. She is suffering irreparable harm, money damages would be inadequate, the hardships are about even, the

injunction would be easy to enforce and there is a public interest in protecting property rights and natural habitats. However, David may have some successful defenses.

Preliminary injunction

A preliminary injunction may be issued to stop someone from doing something while a case is pending. This requires a likelihood of success on the merits of the case and a likelihood of ongoing irreparable harm while waiting for trial.

Likelihood of success on the merits

Pauline may argue that since the trial would not happen for another year, she should have a preliminary injunction in the meantime. She will argue that the five factors analyzed above point to a successful case for an injunction, so she has a likelihood of success on the merits. David will argue that she does not have a likelihood of success on the merits due to his successful defenses (below), so he should not have to start removing the road until the trial actually determines that he has to.

Ongoing irreparable harm

Pauline will argue that the longer the road is located on her property, the more time there is for her to incur liability for the people using the road and the more destruction is happening to the natural habitat. Increased traffic on the road will scare away wildlife, deer could be hit on the road, mountain lion habitat could become limited by the road and they could be pushed closer to Pauline's house, creating a safety concern for her and any pets she may have. David will argue that the road is already built, so there is no ongoing harm if the road just continues to exist while the parties are waiting for trial.

The court may decide to issue a preliminary injunction preventing outsiders from driving on the road, or some other compromise, while the parties wait for trial. There is not such

a strong likelihood of success on the merits that would warrant a preliminary injunction requiring removal of the road, but the harm of the road usage could be a major concern. Some sort of compromise where no outside parties are allowed to use the road while the trial is pending may be the best course of action.

David's Defenses

Laches

Laches is an equitable defense. This is when the plaintiff unreasonably delays bringing their claim. This is not the same as the statute of limitations, and is usually a shorter time period than statute of limitations, but the delay causes prejudice to the defendant and may bring more benefits to the plaintiff due to the delay in bringing the claim. The court will look at when the plaintiff learned of the possibility of bringing a claim and compare it to when the claim was actually brought, the benefit that the plaintiff received due to the delay, and the additional harm to the defendant.

Here, Pauline will argue that the statute of limitations is five years. She brought her claim within one year of finding out that she may have a cause of action so there is not an unreasonable delay. David will argue that Pauline watched him build the road for a year, waited until it was completed and then filed suit. This delay caused prejudice to him because he spent the time and money to finish the road. If Pauline had brought suit when she first noticed his intentions to pave the road in 2020, David would not have spent nearly as much time and money on the project at that point and it would have been easier to restore the small trail before the paving had taken place. David will argue that since Pauline waited to bring suit until the road was done, it will also be way more expensive for him to comply with a potential injunction requiring removal of the road. Pauline will argue that she received no benefit from the delay, so laches will not be a successful defense.

Overall, David's laches defense will be strong. Pauline knew that he was building the road, watched the progress, and waited until it was done to file suit. This delay was unreasonable and caused prejudice to David because he spent more money on finishing the road and will need to spend more money on removing it than he would have if Pauline had filed suit when she first noticed his intentions to pave the road in 2020.

Equitable Estoppel

Equitable estoppel is the defense that the defendant reasonably relied on the plaintiff's actions or words to their detriment.

David will argue that Pauline told him not to pave the road, but then she didn't say anything else about it for a whole year. She watched the progress but didn't tell him to stop again and didn't file suit until it was completed. David will say that he relied on Pauline's inaction in making his decision to continue construction of the road. He may think that she was just angry that one day but then changed her mind and was fine with the road so she let him continue building it. He may have relied on this lack of action from Pauline and may have thought that she wanted the road built to increase her property value and to make access to the lake easier for her as well. Paula will argue that her only communication to David about the road was that she did NOT want him to build it. She never changed her mind or gave any affirmative indication that she wanted him to continue the road. She will argue that he should have relied on the words she did say to decide how to proceed with his actions.

Estoppel will not be quite as strong of a defense for David. Pauline never said she was okay with the road or that she wanted him to continue.

Contempt

Contempt is the punishment for violating a court order. Direct contempt occurs when someone defies a court order in the presence of the court. Indirect contempt occurs when someone defies a court order somewhere other than in the presence of the court. Indirect contempt comes with procedural safeguards such as a hearing on the merits, direct contempt does not give rise to procedural safeguards and the judge can choose how to punish the offender on the spot.

Direct contempt

The court may want to hold David in contempt for his statements about the judge in court. David will argue that the judge did not hear him, but the court reporter did so there will be a record of his statements. David will argue that he didn't violate a court order, the injunction had not been imposed and he had not violated any other court order against him. The judge may still hold him in contempt for disrespecting him in court. Since this action happened in the presence of the court, David will not be entitled to procedural safeguards and the judge will be able to fine him without providing a hearing on the merits.

NO
LIFED

END OF EXAM

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2)

Contract

Contracts require an offer, acceptance, and consideration. Here, we have all three. Don agreed to build a BackJet device so there was an offer and acceptance, and Peter paid a \$35,000 down payment with the agreement of a total price of \$100,000. The statute of frauds states that a sale of goods over \$500 requires there to be a contract in writing. Here there are no facts to indicate that there was a contract in writing. Even if there was not, Peter will be able to claim estoppel because he relied to his detriment on the existence of this contract.

Expectation damages

Expectation damages are used to put the nonbreaching party in the same position they would have been in if the contract had been performed. This is to ensure that the nonbreaching party gets the benefit of their bargain. If the nonbreaching party covers by acquiring substitute performance of the contract, they can recover any difference in price that they had to pay for the new item or performance.

Here, Peter and Don had a contract for a BackJet device to be delivered to Peter by June 15th for \$100,000. Don breached this contract by not providing the BackJet. As a result, Peter lost his \$35,000 down payment to Don (no facts indicate that Don returned the down payment). Peter also had to buy a substitute device from EZ-Fly for \$110,000, which is \$10,000 more than he was originally planning to spend on the device. In order to operate the EZ-Fly device he also needed heat resistant shoes which cost \$5,000. Since the shoes were necessary for Peter to cover, they are an increase in the amount he was originally planning to spend on the contract and will be included in the increased cost to cover. Don will argue that heat resistant shoes were not part of the contract between

You get it 😊

himself and Peter so they should not be included as expectation damages. However, Don is the only person making flying devices that don't require these shoes, so Don should know that if Peter was going to cover he would be required to purchase these shoes from a competitor company.

Peter will likely be able to recover his \$35,000 down payment, and the \$15,000 extra that he spent on an EZ-Fly device and shoes, for a total of **\$50,000 of expectation damages**.

Reliance damages

Reliance damages can be recovered as an alternative to expectation damages or in addition to expectation damages. The measure of reliance damages is the amount that the nonbreaching party spent in reasonable reliance on the contract being performed.

Peter thought that he had a real chance at winning this race since he was purchasing a BackJet, so he hired a personal trainer to help him prepare. He paid \$10,000 for the personal trainer's services in reliance on his contract with Don. He was getting in shape solely for this race because he thought he had a real chance at winning with the BackJet device that he was supposed to purchase from Don. Don will argue that getting in shape is never a bad idea, so Peter will benefit from the personal training even if he doesn't have the BackJet to use in the race. Don will argue that the personal trainer later helped Peter prepare for the race using the EZ-Fly, so the personal trainer expenses were not just in reliance on the contract for the BackJet, but were also used in relation to the purchase of an EZ-Fly device. Peter will counter that he only thought he had a chance to win the race if he used a BackJet, so he was originally only entering the race since he was promised to have this technology. He will argue that he would not have entered the race or paid for personal training unless he thought he was going to be able to purchase a BackJet device from Don.

Since the \$10,000 was spent in reliance on the contract with Don, Peter will be able to recover **\$10,000 in reliance damages.**

Consequential damages

Consequential damages are often lost profits. These are damages that the nonbreaching party suffered as a result of the breach of contract. These damages must have been foreseeable to the breaching party at the time the contract was made for the nonbreaching party to be able to recover them.

Don knew Peter was purchasing a BackJet specifically to enter this race on August 2nd. Peter told Don about the race and what the prize money amount was. Don knew and communicated to Peter that he was a contender for winning the race with the use of a BackJet device. Peter will claim that this means he should get consequential damages in the amount of the \$500,000 prize money that he would have won if he had been able to use a BackJet device for the race since Peter winning the race and receiving the prize money was foreseeable to Don. Don will claim that this is way too speculative. There is no guarantee that Peter would have won the race if he had been using a BackJet rather than an EZ-Fly device and shoes. Peter will counter that Barbara won the race using a BackJet, the one that Peter was supposed to buy, and that they were the same size and weight so the device would have performed the same for him and he would have won instead if he had received the BackJet instead of Barbara. Don will argue that a jetpack race also requires skill, and Barbara could have had more skill in maneuvering herself and avoiding obstacles with the BackJet. Peter could have forgotten to fill up the fuel of the device before the race and could have ran out of fuel and been forced to make an emergency landing in Gilroy. Don could also argue that there is an element of luck involved. Even if Peter was the only competitor with a BackJet he could have gotten caught in a strong wind current that another racer avoided, he could have been attacked by an angry raptor while in the air, the wake turbulence from an airplane flying above

could have pushed Peter off course or slowed him down. If any of these things had happened Peter could have been passed by other racers with slower devices but better luck or more skill in avoiding these issues. Peter will argue that Don was so sure that someone wearing a BackJet device would win that he made a deal with Barbara that he would receive half of the prize money. Without actually knowing the details of Don and Barbara's contract, it does seem as though getting half of the prize money would be a large part of Don's compensation for the BackJet. Maybe Barbara also paid the \$100,000 for the device, but either way, Don was so confident in his device winning the race that he breached a contract with Peter and risked litigation in order to get half of the prize money. He would not have done this if he thought the person using the BackJet would not win. Don could argue that Barbara was a professional racer and he had more faith in her winning, while this seemed to be Peter's first race.

Consequential damages will be a tougher one to argue, but since Peter winning the race was foreseeable to Don and the device that Peter was supposed to buy DID win the race, Peter will **likely be able to recover consequential damages in the amount of the prize money, \$500,000**

Restitution

Restitution is not used to compensate the nonbreaching party for what they lost, but is used to disgorge a benefit from the breaching party. This type of damages is used when the breaching party received a windfall for breaching the contract and restitution takes away any profits that the breaching party had received.

Don receiving half of Barbara's prize money makes it clear why he breached the contract with Peter. It was a bit of a gamble for Don, but he was clearly confident that someone using a BackJet device would win this race, and he must have gotten a better offer from Barbara for the device. Peter will argue that Don should have to pay back the \$250,000

that he received as a result of Barbara winning the race as restitution so that he does not enjoy a benefit for breaching the contract with Peter. Don will argue that his contract with Barbara was completely separate from his contract with Peter, so his earnings from that contract should not be affected. Peter will argue that since Don breached their contract and gave Barbara the BackJet that Peter was supposed to receive, Don should not receive a benefit for the breach and should have to pay restitution.

Don will **likely have to pay \$250,000 in restitution** for the unfair benefit that he received due to breaching his contract with Peter.

Overall, Don will likely owe \$50,000 for expectation damages, \$10,000 in reliance damages, potentially \$500,000 in consequential damages and \$250,000 in restitution for a grand total of \$810,000. Ouch.

END OF EXAM

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3)

Patrick

Personal injuries

Monetary damages

In a situation where someone is injured and the defendant is found to be at fault, the plaintiff will be able to recover all expenses related to the injury including medical bills, lost wages and other monetary damages that result from the incident. Any future damages will be discounted to present value.

Patrick will argue that David should cover his medical bills, lost wages and the costs associated with the bank foreclosing on his house and Patrick needing to find a new place to live. All of these expenses resulted from Patrick's injury caused by David rear ending him, so Patrick will be able to recover these expenses from David. Patrick has past lost wages for four months, but if he continues to not be able to work or is forced to accept a lower paying job as a result of his injury, he will be able to recover for future lost wages as well. This amount will be discounted to present value using average interest rates that David could expect to receive if he invested the money for the amount of time that it is meant to cover his lost wages.

General damages

A plaintiff in a personal injury case can also recover for emotional distress, loss of enjoyment of life, and their partner can recover for loss of consortium.

There are no facts to indicate emotional distress, loss of enjoyment of life, or loss of consortium, but if Patrick becomes depressed as a result of losing his grandfather's

beloved car, his job and his home, he would be able to recover for this distress that the car accident has caused in his life.

Collateral source rule

Even if the plaintiff recovers part or all of the cost of the injury from some other source unrelated to the defendant, they can still recover from the defendant and the defendant will not be able to use the recovery from the other source as a defense.

David will argue that he should not have to pay for Patrick's medical expenses since Patrick's car insurance paid his medical bills. However, the collateral source rule will prevent David from bringing up evidence that Patrick's insurance already paid the medical bills. Patrick will still be able to recover for the medical expenses, although his insurance may require him to pay them back for the medical bills if Patrick recovers this amount from David as well.

Destroyed personal property

When personal property is destroyed, the plaintiff can recover the value of the property at the time of destruction. The plaintiff usually can't recover for loss of use unless the personal property was difficult to replace.

David will argue that Patrick's car was old and not worth much money, so he should only have to pay the value of the car at the time of the accident. Patrick will argue that the car was not only an old car, it was an irreplaceable family heirloom. His grandfather had received it as a gift from the famous Henry Ford and it had been in Patrick's family ever since. A car like this is unique and impossible to adequately replace, so Patrick will argue that he should recover the value of the car plus damages for loss of use.

Punitive damages

When the defendant has displayed malicious intent in their actions, the court can consider punitive damages. The award of punitive damages is at the discretion of the court and is usually three times the amount of monetary damages. The court will consider many factors, including; (1) seriousness of the harm, (2) nature and reprehensibility of the defendant's actions, (3) duration of the actions, (4) defendant's net worth, (5) profitability of the harm, (6) relationship between actual damages and punitive damages requested, (7) deterrent effect of the punitive damages.

David will argue that he did not destroy Patrick's car on purpose, so there was no malicious intent. Patrick will argue that David was acting with reckless disregard for safety by driving his car 70 mph in a 30 mph zone. David knew his neighbors wanted him to slow down and he knew that Patrick drove much slower on that road, but he kept speeding anyway. David will argue that just speeding does not rise to the level of malicious intent required for punitive damages. However, Patrick will argue that (1) very serious harm resulted to himself and Betsy, (2) David was going over double the speed limit which is obviously dangerous, especially on a narrow, curvy road with other cars going much slower, (3) David kept speeding even when asked to stop, and (7) a large punitive damages award would deter David and other speeders from going too fast on narrow, curvy roads. Factors 4 and 6 are not really addressed in the fact pattern, so it is difficult to determine which direction those factors would weigh the analysis. David will argue that (5) he was not profiting from speeding, and that he was not intending to cause any harm.

The court will have discretion to award punitive damages if they see fit. David's action's don't quite seem to rise to the level of malicious intent required for awarding punitive damages, so Patrick will likely not receive punitive damages. Patrick will be able to recover for his medical bills, lost wages, lost home, and the destruction of his car, probably with a loss of use recovery included.

Betsy

Personal injuries

Monetary damages

In a situation where someone is injured and the defendant is found to be at fault, the plaintiff will be able to recover all expenses related to the injury including medical bills, lost wages and other monetary damages that result from the incident. Any future damages will be discounted to present value.

Betsy was injured when David pushed Patrick's car into her barn and pinned her against the wall. Her medical costs were low due to her father being a doctor, but she could recover for the cost of his services and the ibuprofen she was told to take. Since she had to sell her cows she likely also lost income. She should be able to quantify the amount she expected to earn from the cows and recover these future earnings from David. All future earnings will be discounted to present value.

General damages

A plaintiff in a personal injury case can also recover for emotional distress, loss of enjoyment of life, and their partner can recover for loss of consortium.

There are no facts to indicate emotional distress, but dairy cows are often personable and affectionate animals. (Beef cows are NOT) Since Betsy is a small local farmer she likely had a loving relationship with her dairy cows since she probably did the milking, feeding, and cleaning for them every day. The loss of her cows could cause emotional distress or a loss of enjoyment of her life, which she would be able to claim and recover from David.

Collateral source rule

Even if the plaintiff recovers part or all of the cost of the injury from some other source unrelated to the defendant, they can still recover from the defendant and the defendant will not be able to use the recovery from the other source as a defense.

David may argue that Betsy didn't have any medical bills since she went to her father who is a doctor. Betsy will argue that her father essentially covered her medical bills by providing the care for free. Betsy's father could create a bill for his services, and the fact that he provided those services for free will not be able to be discussed under the collateral source rule.

Real property damages

If real property is damaged, the plaintiff will be able to recover the diminution in value of the real property. If a building is damaged, the plaintiff will be able to recover the cost to repair it. If a building is destroyed, the plaintiff will be able to recover the value of the building when it was destroyed.

Betsy will argue that she should receive both the value of the destroyed barn and the diminution in value of her property. The barn was torn down because of the structural damage caused by the accident, so since it was not repairable, she should receive the value of it at the time it was destroyed. She will also argue that her property has decreased in value as a result of this accident. Before the accident it was a thriving local dairy farm, but without a barn she is no longer able to carry on business as a dairy farmer. This will likely decrease the value of the property by even more than the value of the old barn that was destroyed since the property is not set up to do business as it once was. A property set up to have a thriving business is worth more than bare land, so Betsy's property itself has been damaged, even if David argues that she should only receive the value of the barn.

Punitive damages

When the defendant has displayed malicious intent in their actions, the court can consider punitive damages. The award of punitive damages is at the discretion of the court. The court will consider many factors, including; seriousness of the harm, nature and reprehensibility of the defendant's actions, duration of the actions, defendant's net worth, profitability of the harm, relationship between actual damages and punitive damages requested, deterrent effect.

Once again, (see discussion above) David's conduct may not rise to the level of malice required for punitive damages. He was not trying to destroy Betsy's dairy farm and that result was less foreseeable as a result of David's recklessness than a car accident.

Overall, Betsy will be able to seek and likely recover medical expenses, (even though her father provided medical care), lost wages due to selling her cows and not being able to operate a dairy farm, the value of her destroyed barn and the diminution in value of her property since it can no longer be used as a dairy farm.

END OF EXAM