

Kern County College of Law

REMEDIES

Professor C. Bennett

Spring 2023

Instructions:

There are three (3) questions in the examination.

You will be given three (3) hours to complete the examination.

Question 1

Scott owned two adjoining improved tracts of land, Parcels 1 and 2, near Lake Arrowhead in Southern California. Parcel 1 was lakefront. Parcel 2 bordered Parcel 1, but it was not lakefront; it was adjacent to an access road. Betty admired Parcel 1, its five California Black Oaks that were easily over 100 years old, and its beautiful lakefront location. Scott agreed to sell Parcel 1 to Betty.

On February 1, Scott and Betty executed a contract for sale of Parcel 1 for \$2.5 million. The contract specified that the five Black Oak trees were included in the conveyance. The contract also included an easement across Parcel 2 for Betty to access Parcel 1 from the access road. The access road was called Meadow Bay Road, but Scott and Betty both believed it was called Bayshore Road, which was the name of a connecting road nearby. The contract referred to the easement as “extending across Parcel 2 to Bayshore Road.” That easement both made no sense and would not have been any use to Betty. The property was to be conveyed on April 1.

On February 25, Tim approached Scott and offered him \$3 million for Parcel 1. Scott told Betty he intended to sell to Tim. Betty insisted that Scott honor the contract, but Scott told Betty that the conveyance to Tim would proceed, and “besides, our contract cannot be enforced because Parcel 2 is not adjacent to Bayshore Road so the easement is invalid.”

Betty later learned that Scott intended to cut down the five 100-year-old oaks so Parcel 2 would have a better view.

1. What equitable remedies can Betty reasonably seek to obtain Parcel 1?
2. What legal remedies can Betty reasonably seek if she cannot obtain Parcel 1?

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Question 2

Patricia hired Damon, a real estate broker, to help her find a house to buy.

Damon contacted Patricia and told her he had found the perfect house for her. It was in a beautiful neighborhood with great schools for Patricia's kids. Patricia asked what Damon knew about the house. Damon replied, "It is beautiful. Chelsea has owned it for several years and keeps it in pristine condition. You'll love it."

Damon then showed Patricia the house, and Patricia noticed animal droppings of some kind on the deck in the backyard. Patricia asked Chelsea about the droppings and Chelsea replied, "Oh, those are just bird droppings. We had a large flock of birds fly over yesterday. That's never happened before. I've never had any problems with birds or any other pests."

Patricia offered \$500,000 for the house and Chelsea accepted the offer.

After closing, Patricia spent \$10,000 in moving expenses, \$25,000 to remodel the kitchen, and \$15,000 to remodel the master bathroom and closet.

A few weeks later, Patricia noticed that there were bats living in the attic, which urinated and defecated on the back deck. Patricia also discovered that Chelsea was Damon's cousin; Chelsea had only owned the house for about a year and had been desperate to sell it because of the bats. Damon was well aware of the bats. Indeed, Chelsea agreed to split the proceeds of the sale with Damon if he could convince Patricia to buy.

Chelsea and Damon split the proceeds of the sale and Damon invested his \$250,000 in Ebay stock that is now worth \$750,000.

Patricia successfully sues Damon and Chelsea in both tort and contract.

1. What remedies may Patricia obtain against Chelsea?
2. What remedies may Patricia obtain against Damon?

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Question 3

Paul was playing basketball on his driveway court with his son, Skip (17 years old). Lizzie, Paul's wife and Skip's mother, was upstairs in the house, in a room overlooking the driveway and basketball court. Skip was a superstar athlete—he had been recruited to the NBA immediately after high school graduation. Skip had committed to the Golden State Warriors, with a starting salary of \$995,000.

David drove his car around the corner, jumped the curb, and struck Paul and Skip. In subsequent investigation, the police determined that David was traveling over 65 miles per hour on the residential street and had been texting while driving.

As Paul and Lizzie watched in horror, Skip was thrown in the air, landed on the car, then rolled off at Paul's feet. Skip's right arm was nearly severed; the injury was gruesome. David's car struck a glancing blow to Paul, knocking him off his feet and breaking his leg.

The ER physician ordered x-rays for Paul and for Skip. After viewing the x-rays, the ER physician called an orthopedic surgeon to set Paul's leg. One of the nurses cleaned up Paul's abrasions. The ER physician called yet another orthopedic surgeon to take care of Skip. An internationally renowned orthopedist rushed to the hospital to attempt reattachment of Skip's arm.

During Skip's surgery, the OR nurse improperly operated a complex tourniquet machine necessary for the reattachment surgery. The tourniquet was used to isolate the veins in the leg and allow the surgeon to harvest veins to use in reconstruction of the arm. The improper operation of the equipment caused injury to Skip's leg. As soon as the surgeon became aware of the problem with the leg, he called a second surgeon to address the leg, but the injury was severe. Skip suffered for two days before succumbing to the injuries.

Paul is a garage mechanic who makes minimum wage. He was off work for three months due to his broken leg.

Paul and Lizzie successfully sue both David and the hospital in tort.

1. What remedies will Paul and Lizzie obtain against David?
2. What remedies will Paul and Lizzie obtain against the hospital?

Outline for Question 1

- I. Equitable Remedies?
 - A. *When do they apply?*
 - B. *Reformation*
 - 1. Error in K, mutual mistake or scrivener's error
 - 2. K does not reflect actual agreement of parties
 - C. *TRO*
 - 1. What – granted in equity to preserve the status quo until hearing
 - 2. When – emergency situations
 - 3. Elements
 - a) Irrep. Harm
 - b) Balance the hardships
 - c) Likely to prevail on the merits
 - 4. Can be ex parte but good faith effort, or strong showing why not
 - 5. Short duration, 10 to 14 days depending on jx
 - 6. Inadequate damages may be required
 - 7. Likely to prevail on the merits: valid K, defenses aren't considered in TRO
 - D. *PI*
 - 1. Preserve status quo, like TRO
 - 2. Elements, same as TRO
 - 3. Bond required
 - 4. Notice required
 - 5. Defenses matter, so which defenses apply?
 - E. *Specific Performance*
 - 1. Anticipatory repudiation
 - 2. Only for Unique goods and certain real estate transactions
 - 3. Elements: valid K with clear def terms, inadequate legal remedy, feas enforcement, mutuality of perf, and no defenses.
 - 4. Valid K? assent and consideration, defenses, reformation?
 - 5. Inadequate dams
 - 6. Defenses
- II. Legal Remedies
 - A. *Expectation damages*
 - 1. What is the value of the land?
 - 2. Consequential damages
 - 3. Foreseeable
 - 4. Purpose of K
 - B. *Reliance/Restitution*
 - 1. Out of pocket
 - 2. Compare to expectation damages
 - 3. Any defenses?
 - C.

Question 2 Outline

I. P v. C

A. *Legal – K & Tort*

1. Compensatory damages
 - a) Expectation
 - b) Foreseeable consequential dams
 - c) Incidental costs
2. Restitution
 - a) Unjust enrichment
 - b) Full K price
 - c) Remodeling?
3. Punitive damages
 - a) Not awardable in K
 - b) malice, oppression, or fraud
 - c) punitive damages limitations?

B. *Equitable*

1. Rescission
 - a) Material misrep
 - b) Defenses
2. Constructive Trust
 - a) Traceable
 - b) Enhanced value
3. Equitable Lien
 - a) Lost \$
 - b) Security interest?

II. P v. D

A. *Legal – K & Tort*

1. Compensatory damages
 - a) Foreseeable consequential dams
 - b) Incidental costs
2. Restitution
 - a) Unjust enrichment
 - b) Full K price
 - c) Remodeling?
3. Punitive damages
 - a) Not awardable in K
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B. *Equitable*

1. Constructive Trust
 - c) Traceable
 - d) Enhanced value
2. Equitable Lien
 - c) Lost \$
 - d) Security interest?

Question 3 Outline

III. P and L v. C

A. *Special Damages*

1. Loss of Income (P)
2. Loss of Future Income (P)?
3. Medical expenses (P)
4. Future Medical Expenses (P)?
5. Emotional Distress (P & L)
6. Other out of pocket expenses (P & L)

B. *General Damages*

1. Pain and Suffering etc. (P & L)

C. *Wrongful Death (P & L)*

1. Loss of a child
2. Potential future support?

D. *Punitive damages*

1. malice, oppression, or fraud
2. punitive damages limitations?

IV. P and L v. Hospital

A. *Special Damages*

1. Loss of Income (P)
2. Loss of Future Income (P)?
3. Medical expenses (P)
4. Future Medical Expenses (P)?
5. Emotional Distress (P & L)
6. Other out of pocket expenses (P & L)

B. *General Damages*

1. Pain and Suffering etc. (P & L)
2. MICRA limitations

C. *Wrongful Death (P & L)*

1. Loss of a child
2. Potential future support?

D. *Punitive damages*

1. malice, oppression, or fraud
2. punitive damages limitations?

E. *Joint and several liability limitations*

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Equitable Remedies for Parcel 1.

Equitable remedies in contract are intended to provide the parties with the benefit of the bargain.

Valid Contract

Here the facts indicate that Scott and Betty executed a contract. The facts are silent as to what executed means but presuming the contract was in writing, had definite and certain terms and was signed by the party it was being enforced against (Scott) it would be valid. The contract is for the sale of Parcel 1, for \$2.5 million. The contract expressly included the five Black Oak trees and with an easement over the access road which the parties mistakenly believed to be called Bayshore when in fact it was called Meadow Bay. This mistake as will be discussed below is immaterial and the contract is valid.

Anticipatory Breach

Where a party to a contract anticipatorily breaches the contract the contract the not breaching party can demand performance and then pursue any remedy available at law.

On February 25 Scott anticipatorily breached the contract. Betty has to put Scott on notice which she did when she insisted that Scott honor the contract. Betty can then proceed to seek specific performance of the contract.

Specific Performance

Specific performance occurs when the court forces the parties to perform the contract. Specific performance is appropriate where the contract is for land, the property is unique or in "other appropriate circumstances." Here the contract is for the sale of property. The requirements for specific performance are: Valid Contract, Feasibility of enforcement, no valid defenses

As discussed supra the contract was validly executed. Scott will argue the the easement being incorrectly labeled means the contract is not valid, but see the discussion of Reformation below.

Feasibility - Both parties and the property are all located in California so the court has complete jurisdiction making feasibility a non-issue

*Better
w/issue?*

Reformation

Where there is a valid contract, grounds for reformation, and no valid defenses, the court can reform the contract to reflect the meeting of the minds of the parties. Grounds for reformation includes mutual mistake, which occurred here.

Here Scott and Betty had an executed contract which they both believed the easement was valid, but had merely mixed up the road names. The parties made a mutual mistake as to what the name of the access road was. There was a access road available over which Betty could easily have an easement the court only needs to reform the name of the road for the easement to be valid. This is not a material defect in the contract and the mistaken name of the road does not indicate that there was not a meeting of the minds as to the material terms of the contract.

Injunction

Injunctive relief can be sought where irreparable injury would result from delay or waiting until the issue is decided on its merits or the legal remedies are inadequate.

Temporary Restraining Order (TRO)

Sale?

TRO is a 14 day injunction, typically to prohibit a party from doing something. A TRO can be received Ex parte when notice has failed, not practical, or not possible To receive a TRO the moving party must show that irreparable harm, Balance of hardships of weighs in favor of granting, and likelihood of success on the merits without regard to defenses.

Irreparable harm - Here the trees are 100 years old and once cut the damage would irreversible.

Balancing the hardships - Here there is little prejudice to Scott in waiting compared to the damage caused by cutting the trees.

Likelihood of success - Here the contract states on its face that the five Black Oak trees are included in the sale. Since there are no defense considered. it appears highly likely Betty will win on the merits.

The TRO will be granted and can be renewed/extended by the court if need to until a preliminary hearing can be held

Preliminary injunction

A Preliminary Injunction is similar to a TRO but the duration can be for much longer than 14 days (until the case is decided on the merits) but it requires the moving party to post a bond and the party being moved against to have notice and an opportunity to be heard. The court considers the same factors as in a TRO but unlike a TRO the court will consider defense in a preliminary injunction hearing.

Irreparable harm - Here the trees are 100 years old and once cut the damage would be irreversible.

Balancing the hardships - Here there is little prejudice to Scott in waiting compared to the damage caused by cutting the trees.

Likelihood of success - Here the contract states on its face that the five Black Oak trees are included in the sale. Scott does not have any available defenses.

The court will grant a preliminary injunction.

Permanent Injunction

Permanent injunctions are similar to TRO and Preliminary injunctions but can last indefinitely. The moving party must show that inadequate legal remedies, balance of hardships weighs in favor of granting, property interest, no available defenses.

The court will likely grant specific performance and a permanent injunction would no longer be needed unless it was a prophylactic injunction to prevent Scott from trespassing onto Betty's property to cut the trees down.

Legal Remedies if she cannot obtain Parcel 1.

If Betty cannot obtain parcel 1, Betty can seek legal compensatory remedies for reliance, expectation, liquidated, incidental, and consequential damages.

To receive these damages, she would have to show causation, foreseeability at the time of contract formation, certainty, and unavailability.

Here, the damages would have been caused by Scott's breach of contract in failing to perform the agreed-on contract. It is certainly foreseeable at the time of formation of a real estate contract that certain costs, expenses would be incurred by the purchasing party if the selling party were to fail to

honor the contract. The fact pattern does not indicate any specific damages but typical costs which could be found to a reliable degree of certainty would include inspections, travel, attorneys fees, ?

Reliance damages - Reliance damages include damages Betty incurred in reliance on the contract.

Expectation damages - Are they measured by the benefit of the bargain. Here that would be \$500,000 as measured by the difference in price Betty was going to pay per her \$2.5 million dollar contract and the \$3.0 million value Scott received after breaching the contract.

Liquidated damages - LD are agreed upon damages and will be valid if actual damages would be difficult to determine, there is a reasonable attempt to estimate damages, and they LD are not punitive. There is not LD clause here.

Incidental damages would include inspection costs, attorneys fees for the real estate contract. These damages are not specified by the facts but should be ascertainable if they were incurred.

Consequential - Consequential damages occur naturally as a result of the breaching parties actions.

There are no Punitive damages available in Contract.

Attorney fees

Under the American Rule, the parties to a lawsuit each pay their own attorney costs and fees unless there is a valid exception. Valid exceptions include by contract, by statute, or for bad faith/frivolous lawsuits.

There are no facts given here to suggest that attorney fees are available by contract or by statute, but Betty could argue bad faith because Scott breached the contract merely to make more money.

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1. Patricia v. Chelsea

Tort Remedies

Damages in tort are designed to make the plaintiff whole, as if the injury to them had never happened.

Fraud/Misrepresentation

For there to be fraud there must be: (i) a fraud or misrepresentation about a material fact; (ii) intent that the listener rely on that fraud or misrepresentation; (iii) actual or justifiable reliance by the plaintiff; (iv) and damages.

Here, Chelsea misrepresented to Patricia about what was causing the animal droppings on the deck, saying it was a flock of birds, when she knew it was an infestation of bats. This is a material fact, as Patricia would not have bought the house if she knew there was a bat infestation. She intended that Patricia would rely on her fraud in order to sell the house, as the facts state she was desperate to sell the house after learning of the bat infestation. Patricia justifiably relied on the misrepresentation, as she would have no reason not to believe what Chelsea was saying. Chelsea might argue that the volume of droppings would not lead someone to justifiably believe that only one flock of birds had defecated there only one time. But Patricia shouldn't be expected to know that.

Compensatory Damages

Designed to put the plaintiff back to where they were if the injury had never happened. Two types of compensatory damages: Special damages or pecuniary damages which must be specifically pled, such as lost wages, medical bills etc. and General Damages, or non-pecuniary damages, such as pain and suffering, which do not have to be certain, but they cannot shock the conscience. There must be (i) Foreseeability; (ii) causation; (iii) unavailability; (iv) Certainty.

Patricia is out of a lot of her money because of what Chelsea did. This is foreseeable. The fraud was the cause of her injury, it was unavoidable since she relied on her real estate agent to not lie to her, which he had a duty to do, and the damages are certain since there is money attached to everything she did.

Punitive damages

Chelsea owned the house
Damon was the agent

Designed to punish the defendant for reckless or intentional harmful conduct. Also intended to deter others from doing similar. Rule of thumb is that there must be a single digit multiplier ratio of compensatory to punitive damages, unless notice is given to the defendant prior.

Here, Chelsea acted intentionally to mislead and defraud Patricia. Public policy would very much prefer that all sales of houses are done in a way that doesn't intentionally mislead the buyers, as people would stop buying houses. Chelsea is liable for punitive damages, that would probably be no greater than \$5 million (price of the home x 10).

Nominal damages

Granted if there was no actual injury, to justify the plaintiffs rights.

Here there was an actual injury so Patricia won't go for nominal damages.

Contract Damages

Expectation Damages

Designed to place the plaintiff in the position they would have been in had the contract been performed. Requires: (i) foreseeability; (ii) causation; (iii) unavailability; (iv) certainty.

It was foreseeable that Patricia would have damages due to the fraud perpetrated on her. This fraud was the cause of her damages. Perhaps it will be argued that she could have avoided it all if she had done a full inspection of the home, but she relied on her real estate agent, Damon, who had a duty to disclose the defects in the house to her, to not lie to her. It was unavoidable. Certainty, the damages are all able to be ascertained certainly as there is real money either spent or intended to be spent already.

Consequential Damages

Foreseeable damages at time of formation, not part of the expectation, but generally related to the contract.

Any costs that Patricia incurred as a result of the fraud will be consequential, such as having to find alternative housing, or storage for her things. It was foreseeable at the time of formation that if Patricia could not live in the house due to the infestation she would incur these costs.

Reliance damages

Actual damages. Based on money that the plaintiff spent in reasonable reliance on the contract. Plaintiff has a duty to mitigate.

Here, Patricia spent money on moving, remodeling the kitchen and the master bathroom and closet. She had a reasonable reliance that the contract was true and that there was no defect with the house. She will be entitled to reliance damages in the amount that she spent.

Rescission

Rule Supra.

Here, Patricia might ask to cancel the contract, but she could get more damages if she pursues other remedies.

Attorney's Fees/Costs

The American rule does not presumptively award attorney's fees to the prevailing party, in contrast with the British rule. Attorney's fees are only awarded through certain exceptions, such as if they are contracted, or through statute or law. Costs can be awarded however. Attorney's fees are calculated through the "lodestar rule" which is the reasonable amount of hours worked multiplied by the reasonable rate. Attorney's fees are the services done by the attorney for the client. Costs are disbursements made by the attorney, such as for filing or court fees, on behalf of the client.

No facts state that there was a contract provision regarding attorney's fees for Patricia. Statute perhaps would dictate that attorney's fees can be awarded in cases such as this. She would be entitled to costs.

Patricia would be entitled to the amount she paid for the house, the

2. Patricia v. Damon

Fraud/Misrepresentation

For there to be fraud there must be: (i) a fraud or misrepresentation about a material fact; (ii) intent that the listener rely on that fraud or misrepresentation; (iii) actual or justifiable reliance by the plaintiff; (iv) and damages.

Here, Damon misrepresented what he said about the house to Patricia. There was a material fact, that Chelsea had owned the house for years, kept it in pristine condition, and that Patricia would

love the house. Chelsea had owned the house for one year, did not keep it in pristine condition due to the damage done by the bats living in the attic, and Patricia would most definitely not love the house since it was infested with bats. Damon stated these things, intending that Patricia would rely on them, and Patricia did rely on them, justifiably, since her real estate broker has a duty to disclose issues such as the bats. There was damage done as well, since Patricia spent money on preparing to move in, and actually buying the house, seeing as it was probably worth less than she paid.

Damon has committed fraud.

Compensatory damages

Designed to put the plaintiff back to where they were if the injury had never happened. Two types of compensatory damages: Special damages or pecuniary damages which must be specifically pled, such as lost wages, medical bills etc. and General Damages, or non-pecuniary damages, such as pain and suffering, which do not have to be certain, but they cannot shock the conscience. There must be (i) Foreseeability; (ii) causation; (iii) unavailability; (iv) Certainty.

Here, it was foreseeable that Patricia would be injured by the fraud Damon perpetrated on her, at the time that he lied. His fraud directly led to Patricia spending the money she did on the home. It was the cause of her injury, unavoidable as discussed supra, and the damages are certain.

Punitive damages

Rule supra

Here Damon intentionally lied to Patricia to get her to buy the home. He will be liable for punitive damages.

Restitution

Restitution damages are designed to prevent unjust enrichment by the defendant. Betty must choose either compensatory or restitution damages, she cannot get both.

Equitable Lien

Defendant has improperly acquired title to plaintiff's property, or has used improperly used plaintiff's property to increase the value of defendant's property. Most often used when the value of plaintiff's property has decreased in value. The plaintiff will ask for an equitable lien, the court will force the sale of the property, and the proceeds will go to the plaintiff. If the value of their property is less than

it was when the defendant improperly acquired title, the plaintiff can ask for a deficiency judgment to get the difference in value back.

Here, Damon improperly acquired title to the money that Patricia spent on the house. He got \$250,000 from his share of the sale, and invested it in stock. That stock increased to \$750,000, which unjustly enriched Damon. If Patricia asks for an equitable lien, the court will grant it, forcing Damon to sell his stock and give the money to Patricia. Since it increased in value, she will not have to seek a deficiency judgment.

Constructive Trust

Defendant has improperly acquired title to plaintiff's property, and has gained a benefit from doing so. The plaintiff can ask for a constructive trust from the court, who will place the property in question in a trust, making the defendant the trustee. the Defendant then must convey the property back to the plaintiff. This is most often used when the property in question has appreciated in value. Plaintiff becomes a secured creditor. Cannot prevail over bonafide purchasers for value.

Here, the analysis is similar to equitable lien, but instead the court would make Damon the trustee of the trust the stock was placed in and give that over to Patricia, so she would have the stock. She could then do what she wanted with it.

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Paul and Lizzie v. David

(1) Tort- Legal Remedies

Tort legal remedies are designed to compensate the plaintiff for injuries suffered by the defendant. Damages may include compensatory (general and special), nominal damages, punitive damages, attorneys fees, and restitution (if possible). General damages are non-economic and are not easily calculable (e.g., pain and suffering, loss of consortium). Special damages are economic and are calculable (e.g., lost wages, hospital bills)

(a) Compensatory Damages

Compensatory Damages are damages that are meant to compensate the injured plaintiff for their injuries. There are two types of compensatory damages: (1) general and (2) special. Compensatory damages must be certain, actual, and foreseeable.

Here, the facts show that David injured both Paul and Skip when he was traveling 65 miles per hour on a residential street while texting and driving. The facts further show that Paul and Lizzie successfully sued David in tort. As such Paul and Lizzie will be able to recover general and special damages.

(i) Pain and Suffering

Pain and suffering is considered general damages (non-economic) and will be awarded to plaintiffs that show physical harm and mental anguish due to the defendant's conduct.

Here, the facts show that Paul was playing basketball on his driveway court with Skip when he was injured by David. Paul suffered a broken leg and had to be taken to the hospital. Paul will be able to show pain and suffering due to both the physical harm that he suffered -- by his leg being hit by David, as well as mental anguish because he saw Skip being thrown into the air, landing on the car, then rolling off at Paul's feet.

Lizzie

(ii) Loss of Consortium

Loss of consortium claims are also considered general damages (non-economic) arise when plaintiffs lose the ability of intimate relationships due to defendant's actions.

Here, the facts show that Paul was off work for three months due to his broken leg and Skip suffered for two days before succumbing to his injuries. Since Paul was off of work for three months he lost the ability to enjoy his relationship with his wife. Further, both Paul and Lizzie lost their son due to David's actions. As parents, Paul and Lizzie will be able to claim loss of consortium for the loss of their son.

(iii) Special Damages - Survival Action

Survival actions allow the families of decedents to claim economic damages attributed to the decedent had the decedent survived. Survival actions are only allowed if the decedent was alive for a short time period before passing.

The facts show that Skip suffered for two days before succumbing to his injuries. Paul and Lizzie will be able to claim a survival action for Skip because he was alive for two days before passing. They would be able to recover economic damages such as hospital fees and lost wages since Skip committed to the Golden State Warriors with a starting salary of \$995,000. David will argue that he did not cause Skip to succumb to his injuries and that the hospital is liable since the OR Nurse improperly operated on him which led to problem's with Skip's legs. However, the facts show that the court has ruled for Paul and Lizzie in tort claims against both David and the hospital. David will still be liable for the hospital's negligence because it stemmed from his negligence of driving while texting.

(iv) Special Damages - Paul's Lost Wages

Special damages are economic damages and are calculable.

The facts show that Paul made minimum wage and was off work for three months due to his broken leg. As such, Paul will be able to claim lost wages under special damages.

(b) Nominal Damages

Nominal damages are small damages that vindicate plaintiff's rights.

Here, the facts show that Paul was injured by David and also lost his son, Skip, due to David's negligence. The court may not award nominal damages to Paul and Lizzie because they will be able to claim damages listed above that vindicate their rights more adequately.

(c) Punitive Damages

Punitive damages are proven by clear and convincing evidence and are awarded when defendant is guilty of malice, oppression, or fraud.

David was texting on his phone and driving 65 miles per hour in a residential area. The facts further state that Paul and Lizzie successfully sued David in tort. As such, punitive damages will not be available to Paul and Lizzie unless they can show malice on the part of David and his actions of running over Skip and injuring Paul. Malice is shown however when a person is intentionally reckless and the court may deem that David's action of texting while driving 65 miles per hour were intentionally reckless and wanton.

The court may award punitive damages to Paul and Lizzie if they are able to show malice conduct by David.

Paul and Lizzie v. Hospital

Joint and Several Liability

Joint and several liability is used when defendants are found guilty and are liable to plaintiff's injuries.

The hospital will claim that David is the one responsible for most injuries, but that they may be responsible for the death of Skip. As such they will be joint and severally liable for Paul and Lizzie's injuries and will have to sever some liability from David.

(1) Medical Injury Compensation Reform Act (MICRA)

MICRA is a limitation on damages that relate to medical injuries/death. The limitation is set at \$350,000 for injuries and \$500,000 for death.

Here, the facts show that the hospital was negligent in operating on Skip, which may have led to his death. Because they will be held jointly liable for plaintiff's injuries they will need to sever liability from David's liabilities. However, there will be a cap due to MICRA.

END OF EXAM