

**San Luis Obispo College of Law & Hybrid JD Program**

**Remedies**

**Final Examination**

**Spring 2025**

**Prof. Carrie Winters and Prof. Stephen Wagner**

General Instructions:

Answer Three (3) Essay Questions.

Total Time Allotted: Three (3) Hours.

SLOCL and Hybrid  
Remedies  
Final Exam  
Spring 2025  
Professors Carrie Winters and Stephen Wagner

Question 1:

Perry owns five copper knives, which are the only known surviving tools of the ancient Sicanian people, who were indigenous to the Mediterranean island of Sicily. Although each of the knives were found in different locations in Western Sicily, experts had dated each of them at approximately 5000 years old.

Dolly is a scholar specializing in Mediterranean copper age culture and is a collector of ancient artifacts. She owns a golden Aztec serpent sculpture, which is approximately 1800 years old.

Perry and Dolly entered into a valid contract in which Perry would trade two copper knives of his choosing for Dolly's golden Aztec sculpture. Since they lived in different parts of California, they agreed to go to their respective post offices on the same day and mail them to each other at the same time.

In preparation for the exchange, Perry laid all five of his copper knives on his workbench. While trying to figure out which two he would send, his eight year old son wanted to show his father how strong his new magnet was. Perry knows that copper is magnetic, and so long as an item possesses any amount of copper, a magnet will stick to it. The son ran his magnet over the knives and watched in awe as 4 of the 5 stuck to it. Perry saw what happened, shooed his son out of the room, verified that one of the knives did not stick to the magnet, and put that one and another one that did stick to the magnet in the box labeled for Dolly. When Perry wasn't looking, his son placed a note in the box that said "my magnet didn't stick to one of my dad's five knives!"

On the date and time set for shipping the items, Perry and Dolly went to their respective post offices. Dolly accidentally mislabeled Perry's address and although she sent the package at the same time and date that Perry sent his package to her, she was surprised when her postal carrier delivered Perry's package to her and also returned the package that Dolly tried to send to Perry.

Dolly opened the package from Perry and admired her two copper knives. She read the note Perry's son left in the box and ran a magnet over the two knives. Dolly was shocked to discover that the magnet only stuck to one knife.

Dolly immediately called Perry and informed him that he only sent one copper knife and the other one was not copper. Perry responded by explaining that both knives were found in Sicily and were dated to Sicanian times, and thus, he did give her what she bargained for. Dolly responded by saying, "well as luck would have it, the Aztec serpent sculpture I sent to you was returned to me. So I am not going to send it to you since you cheated me out of a knife! Besides, I have another person interested in the Aztec serpent sculpture and will sell it to that person!"

As he filed his lawsuit against Dolly, Perry also filed for a preliminary injunction. Will he be successful?

In the substantive lawsuit, what remedies will Perry seek?

What defense(s) will Dolly raise?

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Question 2:

Donald is heavily intoxicated after drinking 5 stiff drinks at his favorite bar. He decides to drive home from the bar after finishing his final drink. Donald fails to see a stoplight and rear ends Paula, who is lawfully stopped at the light. The impact of the collision pushes Paula's car into the intersection just as a semi truck lawfully crosses into the intersection. The driver of the semi cannot avoid the collision and smashes into Paula's car, crushing it. First responders arrive an hour later and extricate Paula from the vehicle as she screams in pain due to her leg being pinned in the wreckage. Paula is transported to the hospital, where she alternates between a coma state and incredible pain for the next week. After seven days in the hospital, Paula dies from the injuries she sustained in the wreck.

Prior to the collision, Paula was making \$200,000 as an engineer and was the sole provider to her husband and three year old daughter. Her medical insurance, home insurance, life insurance, and auto insurance paid a substantial sum to cover the cost to replace Paula's vehicle, her lost wages for the next year, and medical expenses. Donald's insurance paid for Paula's funeral expenses.

Donald was imprisoned for vehicular manslaughter while intoxicated.

Paula's husband and son sue Donald. The jurisdiction has wrongful death and survival statutes.

What remedies can they seek and can Donald successfully avoid any of them?

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Question 3:

The board of directors of Pinkerton, Inc. enters into a contract with David for David to become the new Chief Executive Officer of the organization. During negotiations, David agrees to work for Pinkerton, Inc. for \$3.2 million/year plus health insurance and a lifetime pension based on his highest year salary so long as he stayed the 5 years that the contract called for. David leaves his role of Chief Financial Officer of Horizon, Inc. In his role at Horizon, David was making \$2.5 million per year and by leaving prior to the end of the year, was forfeiting a lifetime pension in the amount of his highest year's salary. Pinkerton knew this during the negotiations.

The negotiations included a liquidated damages clause of \$100 million should Pinkerton let David go without cause during the contract. At age 35, it was likely that David had a useful work life of 30 more years. Another provision of the contract stated that if David chose to stop working for Pinkerton, he could not work for any other company similar to Pinkerton's for the following 10 years.

During his first week on the job, at David's direction, Pinkerton contracts with EngCorp. Pinkerton manufactures computer power switches, and EngCorp agrees to use Pinkerton's switches exclusively. During negotiations, EngCorps tells David that delivery of the switches in one month is critical because it is the starting point for the manufacturing of their computers and that if the switches come in late, EngCorp will lose approximately \$5 million in revenue for the year, due to tight deadlines from its end users. David says that it will be no problem to supply them and they finalize the deal.

David then learns that Pinkerton's switch making machine is being repaired, and they won't be able to supply EngCorp with the switches in time. At the time David made the deal, the switch making machine was working properly.

As a result, Pinkerton missed EngCorp's deadline. Pinkerton's Board of Directors fired David, even though it was without cause. He promptly went back to Horizon, Inc. and was hired as its CEO.

What remedies can David seek from Pinkerton, Inc.?

What remedies can EngCorp seek from Pinkerton, inc.?

Will Pinkerton succeed on its suit to enforce the non compete clause?

David requests a jury trial. Will that be granted for all causes of action?

In a heated moment during trial, the lawyer for Pinkerton, Inc. calls the trial judge a "stupid son of a bitch." The court clerk hears it, but not the judge. However, the clerk promptly tells the judge what the lawyer said. Can the judge summarily hold the lawyer in contempt?

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Question 1 – Answer Outline

Perry's request for preliminary injunction:

- The likelihood that the moving party will succeed on the merits
  - Perry does have a claim, subject to the defense which seems to be viable.
  - Not seeking a final determination of success on the merits, but just that there is a chance
- The extent to which the moving party will suffer irreparable harm without injunctive relief
  - If Dolly sells the Aztec sculpture before the judge can make a ruling on the claim, it will cause irreparable harm to Perry because the item is unique.
- The extent to which the nonmoving party will suffer irreparable harm
  - She is at risk of losing a copper knife.
- Public interest
  - Public has a strong interest in seeing that contract and property rights are respected.

P v. D:

1. Damages - Suit for breach of contract – monetary damages.
  - a. The ordinary remedy for breach of contract is the cost of the item.
  - b. Here, Perry will argue that monetary damages are inadequate because the contract involves a rare item – an 1800 year old Aztec sculpture.
  - c. It would be considered unique and monetary damages will be inadequate
2. Specific Performance
  - a. Specific performance is a contract remedy in which a court orders a party to fulfill their obligation as closely as possible as to what was promised in the contract.  
Would order Dolly to give the Aztec sculpture to Perry
  - b. To receive an order of specific performance, a party must prove
    - i. A valid and enforceable contract exists
      - a. Fact pattern says that a valid contract exists
    - ii. He is ready, willing, and able to perform his obligations under the contract.
      - a. He had the knives and sent her two as agreed.
    - iii. Must show that the other party could perform but has failed to do so.
      - a. She had the Aztec sculpture, and was in contact with him and could have sent it to him.
    - iv. There is no other adequate remedy at law
      - a. Unique or rare chattels will be considered so unique that monetary remedies will be considered inadequate.
      - b. The Aztec sculpture is a unique item and is old. Due to that factor, there is no adequate remedy at law.
3. Conclusion – entitled to specific performance, unless a defense exists

D's defenses:

1. Unclean hands
  - a. The party who is seeking a judgment cannot have the help of the court if he has done anything unethical in relation to the subject of the lawsuit

- b. Dolly will argue that she bargained for two copper Sicanian knives and that Perry sent one knife that was not copper. She will further argue that Perry had 5 knives to choose from, and he could have given her an actual knife. She will also point out the note his son left in the box, and use that as proof that Perry could have fulfilled his obligation
  - c. Perry will argue that the point was that she received two 5000 year old Sicanian knives. He will point out that the non copper knife was found in a way that indicates it was Sicanian and is still as old as the others.
2. Conclusion: could go either way, depending on the judge, but IMO, Dolly has a better argument. She bargained for copper knives, not just Sicanian knives. And although it seems like the non copper knife is also 5000 years old and Sicanian, she specifically wanted copper knives and Perry knew that.

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Question 2 Answer Outline:

- Wrongful death
  - Allows decedent's relatives to sue for injuries suffered by them as a result of the decedent's death
  - Lost wages that Paula would have brought in as the sole breadwinner
  - Loss of consortium
  - Emotional distress
  
- Survival
  - Allow decedent's estate to sue for predeath injuries suffered by the decedent
  - Only damages the decedent would have been able to recover had she lived would be recoverable.
  - May include pre death lost wages
  - Medical expenses
  - Funeral expenses
  - Pain and suffering
  - Loss of enjoyment of life
  - Cost of vehicle
  
- Punitive damages
  - Based on Donald's egregious behavior or was it egregious.
  - Heavily intoxicated – decided to drive home
  - Convicted of vehicular manslaughter while intoxicated
  
- Collateral source rule
  - Donald cannot seek to offset all of the payments made by Paula's insurance, but any recovery for funeral costs by the family can offset the amount his insurance paid

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Question 3 Answer outline:

David v. Pinkerton

- Liquidated damages
  - A clause that provides a reasonable estimate of the loss is liquidated damages. A clause that provides an unreasonably large recovery is a penalty and penalty clauses are void because they violate public policy.
  - Possibly okay – gave up a lucrative job with a lifetime pension.
  - Still has 30 years left to work
  - Pinkerton is sophisticated and these are sophisticated parties.

EngCorp v. Pinkerton

- Consequential damages
  - In contracts, they do not flow directly from the breach and are recoverable only upon a showing that they 1) were not too speculative and 2) foreseeable at the time the contract was made.
    - EngCorp was clear they needed the switches in time or else their production would go down.

Pinkerton v David – non compete

- May or may not be allowed
- Equity – restraining order

David's request for jury trial on all causes of action

- Yes to Liquidated damages (legal)
- No to non compete issue (equitable)

Contempt by lawyer

- Criminal
- Direct or Indirect
  - If direct, can be summarily found in contempt
  - If indirect, afforded due process considerations.
- In front of clerk, so considered direct.

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1)

Breach of Contract

The facts stated that Perry and Dolly entered into a valid contract in which Perry would trade two ancient, Sicaninan, copper knives of his choosing for DOLLY's Golden Aztec sculpture. When a valid contract is not fully performed there has been a breach. The law protects the non-breaching party through damages.

Here, Perry will file a breach of contract lawsuit where he will seek to have the contract fully performed.

Damages for Breach of Contract

Perry can seek several types of damages in a breach of contract claim. He can seek general damages, special, damages, liquidated damages, and reliance damages.

General damages

General damages in a contract claim are those that the law assumes flow naturally from the claim and are awarded to protect the plaintiff's benefit of the bargain.

Here, Perry lost two ancient Sicadian knives that are incredibly difficult to value because they are so rare and unique. He also lost the potential of acquiring an ancient Aztec Sculpture which is also incredibly rare and unique.

Therefore, it would be difficult for a court to quantify the general damages owed to Perry and this form of damages would be inadequate.

Special Damages

Special damages in a contract claim are damages that were foreseeable to the parties at the time the contract was forming. To receive these types of damages a plaintiff must take steps to mitigate their losses and the damages must be proven with reasonable certainty.

Here, it would not be foreseeable that Perry would not receive the package with the Aztec Sculpture in exchange for his package with the knives because he and Dolly agreed they would make the exchange on the same day. Also, any amount that Perry would claim as damages for the knives and/or the Aztec sculpture would be highly speculative because they are so unique and rare. There would not be a reasonably certain way to prove the value of the items that were lost.

Therefore, the court could not award specialty damages in this scenario.

Liquidated Damages

N/A

Liquidated damages are damages that were written into a contract at the the time of formation. Both parties would have to agree to these damages and they should not be unconscionable.

Here, there was no mention of liquidated damages being written into the contract.

These types of damages would not be awarded by the court.

Reliance Damages

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When the expectation damages are inadequate a plaintiff can ask the court for reliance damages. These are damages that can help the plaintiff recover the loss he had from relying on the contract before he found out about the defendants breach.

Here, Perry might say that he reasonably relied on Dolly's agreement and sent his knives and therefore he wants to recover the cost of the knives. However this knives are so unique that it would be hard to evaluate a fair market value for them.

This remedy would be inadequate.

Replevin

Replevin is sought when the defendant has the plaintiff's property and does not want to return it. If a plaintiff can prove that the property belongs to them and the defendant has the property in their care and control the court can order the sheriff to seize the property and return it to the rightful owner after notice and a hearing.

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Here, Perry can seek this remedy to get his knives back if the court does not grant his other actions.

Equitable Remedies

When legal remedies are inadequate, a plaintiff can seek equitable remedies to help plaintiff's recover in equity.

Here, Perry may wish to seek specific performance.

Specific Performance

order

Specific performance occurs when the court issues a mandatory injunction so that the breaching party can perform their end of the bargain. In order for the court to award specific performance, the following elements must be met:

- There must be a valid contract
- Inadequacy of legal remedy
- Feasible enforceability
- Mutuality
- Conditions
- Defenses

Here, the facts state that there was a valid contract between Folly and Perry. The first element of specific performance is met. Based on the analysis, a court will likely find that there is no adequate legal remedy so the courts will look to equitable remedies, like specific performance. The second element of specific performance is met. For the third element, the court must have a feasible way to enforce the specific performance. In this case, the court would have jurisdiction over both Dolly and Perry and they could order Dolly to send her sculpture to Perry. The third element would be met. The next element, mutuality, means that both parties should be able to perform their part of the contract. Perry agreed to give Dolly two ancient copper knives and he only sent her one. The court will not order Dolly to comply with the contract if Perry does not want to comply as well so he would be forced to send her another copper knife. The conditions element states that the plaintiff has completed all the conditions in their contract. Similarly to the analysis of the third element, Perry has failed to complete his end of the bargain because he did not send Dolly two copper knives. Lastly, specific performance will not be awarded if there is an applicable defense.

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Defenses

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There are several defenses to specific performance including: the statute of frauds, mistake, unclean hands and laches.

Here, Dolly would likely seek the defenses of unclean hands and fraud.

Unclean Hands

policy?

The unclean hands defense states that a plaintiff's wrongful act can bar their recovery if there is a sufficient nexus to the transaction at hand.

Here, Dolly will claim that Perry has unclean hands because he knew the knife was not made of copper and he sent it to her anyway. This can be evidenced by the note that Perry's son wrote.

knowledge

This is a strong argument for Dolly that would likely bar Perry from gaining a mandatory injunction from the court.

Fraud

Fraud is the misrepresentation of a known material fact to get the plaintiff to rely to his detriment.

Here, Dolly will argue that Perry committed fraud because he told her that the knives were made of copper. When Dolly agreed to send her Aztec sculpture, she relied on Perry's words to her detriment. Also, Perry was well aware that the knife was not copper which was a material fact of the contract.

Therefore, a court would likely agree with Dolly that Perry made a fraudulent representation regarding a material fact to get her to agree to sign for the contract.

Preliminary Injunction

*This would be sought prior to the merits*

A preliminary injunction is an equitable remedy that preserves the status quo and requires the defendant to have notice and opportunity to be heard. The elements to get a preliminary injunction are:

- likelihood to succeed on the merits
- the plaintiff will suffer irreparable harm if not for the injunction
- balancing of the hardships between the plaintiff and the defendant
- public interest
- Post a bond

Here, Perry would seek a preliminary injunction to get Dolly not to sale the Aztec Sculpture. Perry will claim that he will suffer irreparable harm because the value of the Aztec Sculpture is not easily quantifiable because it is rare and unique. The merits here are that of a breach of contract claim. At the preliminary injunction stage there is not a full civil trial meaning that the plaintiff does not have to prove his claim by a preponderance of the evidence standard. Perry will likely not admit to the court that he lied to Dolly about the knife not being copper. Perry would hope that the court will balance the interest in his favor and stop Dolly from selling the Aztec Sculpture because it would be a huge loss to Perry. Perry would also argue that it is in the court's interest to protect the public from breaching parties.

However, Dolly would have to have notice and the opportunity to be heard at this hearing meaning that she would likely be present and she would make the court aware of the fraud that Perry has committed.

On balance, the court may side with Perry because the items are so rare and unique that Dolly can wait until the trial to sale the Sculpture as long as Perry posts the bond for the fair market value of the sculpture to avoid a loss to Dolly.

2)

Negligence

Negligence is a tortious claim wherein the breaching party causes harm to the plaintiff. The elements for a successful negligence claim are the following:

• Duty

- The general standard of care that everyone in society has for one another is that of a reasonably prudent person under the same or similar circumstances.
- Here, the facts do not indicate that there was any special type of relationship between Paula and Donald so Donald did not owe Paula anything more than the standard of care described above.
- A court will find that Donald owed a duty to Paula and all the other people on the road when he chose to drive a motor vehicle.

• Breach

- A person breaches their when they fail to meet the standard of care. In this case, the standard is that of a reasonably prudent person under the same or similar circumstances.
- Here, Paula's counsel will argue that Donald breach his duty of care for the general public by driving while being intoxicated. It is well known that operating a motor vehicle while being intoxicated is dangerous to human life and should be avoided at all costs.
- A court will find that Donald breach his duty by choosing to drive after drinking 5 alcoholic beverages.

• Causation

- In order to prove a negligence claim there must be a causal link between the Defendant's breach and the Plaintiff's harm. The Causation must be actual and proximate.
- Actual
  - To meet the actual causation element the Plaintiff must prove that but for the Defendant's bad act, they would not have suffered an injury.
  - Here, Paula was rear ended by Donald because he was driving impaired while being under the influence of alcohol. When Donald rear-ended Paula, her car went into an intersection where a semi truck could not avoid hitting her. But for Donald's actions, Paula's vehicle would not have been hit by the semi-truck.
  - A court would find Donald is the actual cause of Paula's accident.
- Proximate



At common law, this type of action was barred because it died with the victim. However, at modern law, the estate of the decedent can recover for loss which occurred from the time of the injury to the time of death. Families may recover:

- Compensatory damages in the form of general damages (i.e. emotional distress and pain and suffering) and special damages (i.e. damages that are special to the individual). Damages can be recoverable if:
  - they are certain, not speculative;
  - they are a foreseeable result of the harm;
  - the defendant is the but for cause of the harm; AND
  - the Plaintiff must have done their part to mitigate damages.
- Punitive damages are damages that are used to deter people from committing bad acts after they act with malicious intent or a recklessness.

Here, a court will likely award compensatory damages because of the emotional distress that Paula suffered while she was conscious and pinned in her vehicle. A court will also award pain and suffering damages for Paula while she suffered for a week in the hospital prior to her death. A court will also award special damages which include Paula's lost wages for the week, medical expenses, and funeral costs as they can all be linked to Donald's bad acts. In this situation, there is nothing that Paula could have done to mitigate her damages.

A court will likely also award punitive damages that are not unconscionable given the circumstances.

### Wrongful Death

A wrongful death action is brought by the survivors of a decedent. The elements for this cause of action are the following:

- Death of a person;
- Death caused by the wrongful act of another;
  - duty, breach, causation (actual and proximate) as described above;
- Pecuniary injury suffered by the decedent's family.

The remedies for this claim are in place to help ease the suffering of the family and their pecuniary losses. The family can recover compensatory damages, special damages, and punitive damages as described above as well as future lost wages. Paula's family depended on her income because she was the sole provider for the family. The family can also seek loss of consortium remedies because they will have lost any viable relationship with Paula as a wife and as a mother due to her death

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Here, a wrongful death claim will likely stand. Paula unfortunately passed away in the accident because of Donald's choice to drink and drive and her family lost Paula and her income which is a substantial and irreparable loss for the family.

Donald will argue that third parties have already made Paula and her family whole because they already paid to replace Paula's lost vehicle, her lost future wages, her medical expenses, and her funeral expenses.

On balance, a court will find that Donald must pay the family even if 3rd party contributors have attempted to make the family whole.

**END OF EXAM**

3)

**David v. Pinkerton**

Cause of Action:

✓ Breach of Contract for Wrongful Termination. A **contract** is a promise or promises between two individuals, the breach of which provides a remedy, or the court in some way offers relief. Contracts require an offer, acceptance, and consideration.

✓ Here, Pinkerton *offered* to employ David as CEO, in exchange for 3.2 million dollars per year, health insurance, and a lifetime pension based on his highest year salary so long as he remained with the company for five years (*consideration*). David *accepted*, and left his job as Horizon Ink, where he was paid 2.5 million as their CEO.

David has entered into a valid contract for services.

Breach: The agreement contained a liquidated damages clause wherein Pinkerton would pay David 100 million dollars if he was let go without cause. Because David was let go without cause,

David's Remedies

**Legal Remedies** are money damages aimed to compensate the plaintiff for the damage arising from the breach. Legal remedies are the preferred method of relief by courts.

**Expectation Damages.** Expectation damages are aimed to compensate the plaintiff for moneys he would expect as a result of a valid contract. Here, David left his job at Horizon to be paid 0.7 million dollars more per year. David may seek 0.7 million dollars per year for his work life expectancy of 30 years (\$21 million dollars). David may also present evidence of any potential raises that may be forthcoming over the years, and account for inflation in his request for damages of this kind. David's pension at both corporations were calculated by his highest year's salary, and David may also seek recovery for the anticipated increased pension if Pinkerton Breached.

**Liquidated Damages:** A liquidated damages clause is one that defines the amount of recovery a contractual party is entitled to upon the occurrence of a specific event (usually breach of contract). A court will uphold a liquidated damages clause if the amount of damages would be hard to calculate, and if the clause was not aimed to punish, but instead to justly and fairly compensate a contractual party. Here, the parties agreed that \$100 million would sufficiently compensate David should Pinkerton let him go without cause. As a result, expectation damages will be unavaialble and the court will likely award only the liquidated damages the parties agreed to.

Handwritten note: would be a major point here

Conclusion: David is entitled to 100 million dollars in liquidated damages.

**EngCorp v. Pinkerton**

**Cause of Action:** Breach of Contract (see rule statement above).

Here, EngCorp and Pinkerton agree (offer/acceptance) that Engcorp will purchase Pinkerton's switches for money (consideration). A valid contract is entered.

✓ **Breach:** EngCorp expressed to Pinkerton that time was of the essence, and if the switches were delivered after one month, that EngCorp would incur 5 million dollars worth of damages. Because timeliness was a material concern of EngCorp, Pinkerton is in breach of the contract when the switches do not arrive in time.

EngCorp's Remedies:

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**Consequential Damages:** Consequential damages are damages that the Plaintiff reasonably encounters as a consequence of defendant's breach of contract. The Courts will look to reasonably notice to Defendant that these kinds of damages are forthcoming if Defendant breaches their end of the bargain. Because Engcorp put yes Pinkerton on notice of their end user deadlines, and the loss they would incur, and by expressing the materiality of the timing up front to Pinkerton, a court will likely find that EngCorp is entitled to consequential damages.

**Pinkerton v. David**

Handwritten note: Good but here

Included in the employment contract is a non-compete clause, wherein David agreed that *if David choose to stop working for Pinkerton*, that he would not work for any other company similar to Pinkerton's for ten years. Although some non compete clauses are enforceable, the trier of fact must determine if the scope and length of time is reasonable under the totality of circumstances. Here, assuming that Horizon is a competitor, the court would consider the spatial distance between Horizon and Pinkerton (likely by its customer base) against the time (10 years). IThat said, if Pinkerton sought to bring an action for specific performance to copmel David to his agreement to not compete, it is likely that the Court would dismiss that cause of action because David did not choose to stop working for Pinkerton. David was fired.

Conclusion. No remedy is available to Pinkerton for David's return to Horizon.

JURY TRIAL?: Generally speaking, Judges hear matters of equitable relief, and juries hear matters of legal damages. Because David's recovery is limited to liquidated damages, and because the court is unlikely to hear the request for specific performance (an equitable remedy), David is entitled to a jury trial, and will likely be granted his request, if his request is procedurally sound and timely.

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CONTEMPT. Contempt occurs when an individual violates a court order. Contempt may occur in civil or criminal court. Here, a contractual issue will be heard in civil court. Direct contempt occurs in court, (e.g., when an attorney continues to ignore orders of the court, e.g. that a line of questioning is overruled). Indirect contempt ✓ occurs when someone violates a court order outside of court (e.g., a judge orders a party to comply with a discovery order within a certain time, and that time passes without compliance). Indirect contempt requires notice and an opportunity to be heard on the violation. Here, whether the contempt is direct or indirect is a point of contention because the judge did not hear what the attorney said. If the Judge heard, and ordered the attorney to refrain from using harsh language, contempt of court may follow for violation. That said, it is unlikely that an order of contempt will be upheld if the attorney does not have notice that the contempt is forthcoming if he continues in his course of conduct.

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Contempt Conclusion: Contempt is not appropriate under the circumstances.

**END OF EXAM**