

MCL – Hybrid JD Program

Remedies – Sec. 2

Final Exam

Spring 2025

Prof. Foster

Final Exam Instructions

Read the following instructions prior to the exam. Do not turn the page or read the test prior to the exam beginning.

1. You get 3 hours for the exam once you start.
2. The exam is an individual exam. You may not discuss the exam with anyone else during the exam.
3. This is a closed book exam. You may not use any materials on the exam.
4. The exam is 3 questions. Each question is intended to be a 60-minute question and each is 100 points.
5. Manage your time, and GOOD LUCK!!!

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Question 1:

Julietta's parents taught her at a young age that investing money in real estate as soon as possible could create passive income. The income would then provide flexibility with work. She followed her parent's advice and bought rental houses right out of college. All the rental homes were in Franklin City where she lived.

The rental houses made some money, but in her 30s, she wanted to convert her houses into vacation rentals. She wanted to both make money and be able to travel around the country to different places while working her remote job. She sold all her rental homes and purchased five vacation homes in 5 different cities across the United States. She managed all of the properties with computer booking software and local housekeeping services. She traveled to each home once a month to check on it. The first five years of this process, she profited approximately \$100,000 a year per home.

After 5 years, Julietta started a family and wanted to travel slightly less. She planned to keep the homes and use a management company for the logistics. She contracted with Vacation Homes Management Company (VHMC) to list her homes on their website, setup all cleaning, collect the fees, review online feedback, and pay her the profits. VHMC would retain 10% of all booking fees after paying for all expenses. Julietta estimated her profits would decrease due to paying the company and not finding the best deal for cleaners, but she expected to make at least \$75,000 per year per home.

VMHC took over managing Julietta's properties five years ago. They contracted with individual cleaners in all 5 cities. VMHC contracted with Cleaners R' Us (CRU) that had franchises in 3 of the cities. VMHC contracted with two independent businesses in the other 2 cities. The cleaners would go into the home after a stay to complete 6 services:

- Vacuum whole home;
- Disinfect/clean all surfaces;
- Wash all dishes;
- Change all linens even if unused;
- Restock supplies for next guest; and
- Stage the home for arrival

All the cleaners charged a flat fee for the services along with the cost of restocking the supplies. During the 5 years of VMHC's management, CRU charged VMHC \$150,000 for the services on their 3 residences. The other two companies each charged \$40,000 for similar services. During

that time, CRU’s employees did not complete the 6 services over 75% of the time. They would routinely not change linens if they looked undisturbed, vacuum only areas that looked dirty, and forget to restock basic cleaning items. All 3 residences received consistent negative reviews online. The negative reviews started almost immediately after VMHC took over the properties. VMHC called CRU on a few occasions. CRU always assured VMHC that all 6 tasks were being completed. With that assurance, VMHC continued their contract.

During that same period, the properties in the other 2 cities flourished. The online reviews recommended the homes nearly every time. The two properties with the better cleaning companies earned \$80,000 per year in profit each. The 3 properties cleaned by CRU only earned \$30,000 per year each.

Julietta finally got fed up with VMHC and fired them for poor management. She demanded they send her all the files from the time VMHC managed the property. Julietta scoured the documents to try to understand why profits were so low. In addition to finding all the negative reviews, she noticed every invoice from CRU included restocking charges for items like coffee, paper towels, and napkins. However, the reviews online repeatedly said the homes never had those items. Julietta believes VMHC paid CRU for items that were never purchased.

Enraged, Julietta filed the petition below. Review the petition and discuss whether Julietta can obtain the damages she seeks. Assume for the remedy analysis that she is likely to win the causes of action.

**IN THE DISTRICT COURT OF FRANKLIN
STATE OF FRANKLIN**

Julietta Rome,)	
Plaintiff,)	
)	
v.)	Case No. FD – 2025-1000
)	
Vacation Homes Management Co.,)	
Defendant.)	

PETITION

Plaintiff, Julietta Rome presents and alleges the following causes of action against Defendant, Vacation Homes Management Co.:

1. Julietta Rome is currently, and at all times relevant to this complaint, a resident of Franklin.
2. The parties agreed to the contract in Franklin and consented to jurisdiction in Franklin.
3. Vacation Homes Management Co. is a resident of Columbia but consented to Franklin jurisdiction.

CAUSE OF ACTION #1 – BREACH OF CONTRACT

4. Plaintiff sought services from Defendant for vacation homes.
5. Defendant presented a contract to plaintiff detailing services that would be provided, including listing her homes on their website, setting up all cleaning, collecting fees, reviewing online feedback, and paying her the profits.
6. Defendant hired Cleaners R' Us to service the homes in 3 cities.
7. Cleaners R' Us repeatedly failed to clean the homes.
8. Defendant did not inquire into Cleaners R' Us' performance and continually paid Cleaners R' Us' invoices.
9. Defendant paid invoices for products that were never purchased.
10. Defendant did not comply with agreement due to Cleaners R' Us' failure to perform.

CAUSE OF ACTION #2 – NEGLIGENT SUPERVISION

Plaintiff incorporates all facts from previous paragraphs and further alleges:

11. Defendant owed a duty to check online reviews to ensure properties earned maximum profit.
12. Defendant did not review the online feedback or check Cleaners R' Us' work performance.

13. Defendant should have seen a pattern of egregious conduct by Cleaners R' Us with a small amount of supervision.

14. The lack of supervision caused Plaintiff to pay fraudulent bills and lose business due to online reviews.

Due to the foregoing causes of action, plaintiff requests the court to render judgment against Defendant for at least \$500,000 in lost profits and invalid billing. Plaintiff further requests at least \$10,000,000 in punitive damages.

Respectfully Submitted,

/signed Odell Jackson

Odell Jackson, FBA #1000

Jackson Law Firm, PLLC

1000 Main St.

Franklin City, Fr 10001

ATTORNEY FOR PLAINTIFF

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Question 2:

Roger is a drone enthusiast. He goes to the park most days and flies his drone just over the tree line. He captures beautiful images that have previously won amateur photography awards.

A month ago, Roger discovered a small company that claimed to make the world's best drone. The company stated the drone could not be beat in any category. They sold the drone for \$1,000. They claimed it could stay stable and fly in the wind. The camera was top of the line with 4K video quality, and maneuvering would be easy using a specially designed app that could be downloaded on a phone. The only drone on the market that could meet those specifications cost \$5,000. Roger saved his money for the drone and purchased it the next month.

The first time Roger took the drone to the park, it worked reasonably well. The drone reached the height advertised, took great videos, and worked seamlessly with the app on Roger's phone. The next day, Roger again took the drone to the park and captured great video. The drone seemed to work as advertised.

Roger began experiencing problems the month after he purchased the drone. During one session, the camera wouldn't record anything. The following day was the first windy day in Roger's city. When he went to the park, his drone behaved wildly in the wind. It was completely uncontrollable. The app on Roger's phone also disconnected a few times during his session. The problems persisted for the entire next week. Roger contacted the company about the problems, and they sent him a new drone. The new drone arrived a week later. Similar to the first drone, it worked for a couple weeks, then everything went haywire with non-stop problems.

Roger contacted the company again about the second drone's problems. They sent him another drone. A similar set of events happened with this drone. His last attempt at flying it had similar erratic flight as the other drones, and this time, the drone flew directly at Roger. It hit him in the face causing massive cuts and a broken nose. Roger is furious and now wants to sue the company.

In Roger's suit, he is seeking the following remedies:

-An injunction preventing the company from selling all drones until the company can prove 90% of them will not malfunction;

-Medical bills for the cuts and broken nose; and

-Compensatory damages of \$5,000, the cost of the alternate drone.

Subpart A:

Discuss all issues associated with Roger's requested remedies.

Subpart B:

Assume for this subpart the drone's instructions included the following clause:

"The drone is a new invention with state-of-the-art technology. As such, some calibration will be needed. Company and purchaser agree that damages are limited to \$2,000."

Does this clause impact your analysis from Subpart A?

Subpart C:

Discuss whether Roger could obtain attorney's fees if he prevails in litigation against the company.

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Question 3:

Jimmy setup an initial prospective client intake session with your firm. He arrived and told your Supervising Attorney the following story:

“I am horrified about my most recent experience in a retail store. I went to our local SuperMart for grocery shopping. I proceeded the same way I always go through SuperMart. I grab a basket and walk down every aisle to make sure I don’t forget something my family needs. I was in the SuperMart for about 30 minutes when the manager approached me. He asked me to come to his office. I politely declined by telling him I needed to get through the store as efficiently as possible to get back home. He yelled that I better follow him or he would call the police. I had no idea what was happening, so I froze for a second. A SuperMart security guard came up from behind me, grabbed my arm, and forced me to go to the manager’s office. The manager questioned me about a few small items he thought I put into my coat. I emptied all of my pockets to show I didn’t possess the items, and he let me leave. I am now nervous to go into any major grocery store.”

Supervising Attorney told Jimmy the firm will research his case and get back to him soon. Supervising Attorney then directed you to gather both facts and law to analyze Jimmy’s situation. During your research, you discover the following information through a few sources:

- SuperMart has 250 different grocery stores.
- SuperMart lost over 1 million dollars in revenue due to theft last year.
- SuperMart provides bonuses to regional managers for decreases in theft.
- SuperMart employs 10 regional managers.
- Each regional manager sets in-store policies for their stores.
- 4 regional managers highly encourage aggressive tactics, including physical force, to stop theft.
- 6 regional managers prohibit any physical contact to stop theft.
- Theft attempts happen nearly daily in each SuperMart.

Based on the information and the law within the jurisdiction, the firm decides to take Jimmy’s case. Here is the email Supervising Attorney sent to Jimmy:

To: Jimmy Johnas
From: Yolanda Ingram
Re: SuperMart False Imprisonment
Dear Jimmy,

I am sorry you continue to deal with anxiety when grocery shopping. Our firm gathered facts about SuperMart and researched the law regarding false imprisonment in our state. Based on that research, we do want to represent you in an action against SuperMart.

I want to be transparent in our representation. We cannot guarantee success in the case. The situation involves a few legal nuances that may harm your action. In our state, grocery stores are allowed to stop someone they believe is shoplifting to investigate the situation. They must conduct the investigation in a reasonable manner. Cases are split on whether forcing someone into a small office constitutes a reasonable investigation. We will conduct more discovery into SuperMart's practices, but your case is not an easy case to win.

Please read the attached client agreement. Sign it and send it back to us if you would like our representation.

Sincerely,

Yolanda Ingram
Partner
Ingram Law Firm

Jimmy emailed the following response to Supervising Attorney's email:

To: Yolanda Ingram
From: Jimmy Johnas
Re: Re: SuperMart False Imprisonment

Yolanda,

I definitely want your representation. I signed the agreement and attached it.

I can't believe this is possible in our state. Grocery stores should not be able to yank someone into an office and humiliate them. I want you to ask the court to stop this practice immediately. SuperMart should not be able to act this way towards anyone. I don't want them touching anyone or pulling anyone into an office again. I want you to try to stop all SuperMarts from doing this, not just the one I visited. Companies are crooked, and I bet they all do the same thing. Can we get this right now?

Thanks for the help.

Sincerely,

Jimmy Johnas

After receiving Jimmy's email, Supervising Attorney asks you to draft a memo analyzing whether a court would immediately prevent all SuperMarts from conducting similar activities.

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Question 1:

Issue #1 – Whether she can obtain lost profits and money for invalid billing/invoicing

Rule – Compensatory Damage rule – as nearly as possible to a position prior to harm

Sub-issue – as nearly as possible

Rule – Must be precise. Not remote or speculative. Hatahley standard would be near perfect.

Bigelow standard would be reasonable certainty especially if defendant caused uncertainty

Apply – Houses made larger profits in previous years. Compare the previous 100k per year to the now 40k. Also, other properties with better reviews had 80k now. Hatahley standard would require precision, so may not satisfy. Bigelow would allow using comparable numbers especially since the company's negligence created the uncertainty on profits

Sub-issue – position prior to harm

Rule – harm resulted from the action of defendant. None of our special situations apply to this.

Apply – negligent practices are the reason profits are low.

Issue #2 – Whether she can obtain punitive damages

Rule – 2 step analysis – can she obtain and then how much

Step 1 – Can she obtain punitive damages

Sub-issue 1 - Standard

Rule – obtain if the state allows and the conduct is willful, wanton, grossly negligent, etc.

Apply – Lack of oversight, knowledge of reviews and doing nothing, etc.

Sub-issue 2 – Contracts

Rule – No punitive damages in contract unless independent tort

Apply – The duty to clean, manage, etc. came from contract so maybe no punitives. However, there is a negligent supervision tort. Argue why that is independent tort (similar to Brinks truck case).

Step 2 – If can obtain, how much?

Rule – Must comply with constitutional limits of due process. 3 factors: degree of reprehensibility, ratio, and civil and criminal penalties

Factor 1 – Degree of reprehensibility

Rule – most important factor. Can look to out of state conduct and conduct for other actors, but cannot punish for that.

Apply – Should have checked invoices. Should have checked reviews. Should have conducted spot checks after seeing reviews. Difference in profit should have encourage investigation.

Factor 2 – Ratio

Rule – Single-digit

Apply – If 500k compensatory, then 5 million limit. 10 million is above that.

Factor 3 – civil and criminal penalties

Rule – look to other law to see the importance of deterring the conduct.

Apply – Fraud is criminal, but this probably doesn't reach that level. Nothing in facts for this analysis.

Question 2 Outline:

Subpart A:

Remedy #1 – Injunction

Rule – obtaining requires 3 elements, imminent threat, inadequate remedy at law, and balancing hardships

Element #1 – Imminent threat

Rule – must not be remote or speculative. Must be close to happening or a near certainty.

Apply – The drone doesn't work and hasn't worked each time they sent it. There is a breach of contract.

Element #2 – Inadequate remedy at law

Rule – money damages will not suffice. Needs to be unique if a good.

Apply – Money damages would solve the problem either through refund or cover. Also, preventing sales doesn't actually serve Roger. Other people could get money and the harm of malfunctioning drones isn't so unique to stop sales.

Element #3 – Balance hardships

Rule – Balance benefit to plaintiff vs. harm to defendant.

Apply – Plaintiff doesn't receive anything from them not selling. Just vindicative. Defendant loses significant profit and must absorb R&D costs to get to 90% compliance

Remedy #2 – Medical Bills

Rule – Compensatory damage rule – as nearly as possible and rightful position.

Apply – medical bills are precise and the harm doesn't occur without the haywire drone

Remedy #3 - \$5,000 drone

Rule – Compensatory damages – as nearly as possible and rightful position. Further add that for buyers get as warranted vs. as delivered.

Apply – warranted as best on the market with numerous capabilities. Couldn't do any of those things consistently. Next best on market was \$5,000. Counter argument is the advertisement was puffery and nothing could do those things. Should only get refund.

Subpart B:

Issue – Liquidated damages clause

Rule – must not be unconscionable, then must be hard to anticipate damage at formation and a reasonable amount in light of actual damages

Apply – Could discuss personal injury limitations are unconscionable if medical bills are over \$2,000. Big discussion is whether state-of-the-art technology makes it hard to anticipate the harm to someone since it is new and whether 2k is reasonable in light of the potential 5k damages.

Subpart C:

Issue – Attorney's fees

Rule – No unless there is a fee shifting statute.

Apply – No statute in the question, so cannot get attorney's fees.

Question 3 Outline

Issue – Can Jimmy get a preliminary injunction against all SuperMarts

Step 1 – Can Jimmy obtain the preliminary injunction

Rule – 4 elements – likelihood of success, imminent threat of irreparable injury, balance hardships, and analyze public policy.

Element #1 – Likelihood of Success

Rule – must be more than a possibility. Must be likely to win to avoid improper injunction.

Apply – Email says the law is vague on who would win. Can do an investigation, but cannot use unreasonable manner. Could argue likely to win physical force is unreasonable, but email says nothing is guarantee.

Element #2 – Imminent Threat of irreparable injury

Part 1 rule – Imminent threat. Cannot be remote or speculative

Apply – Thefts and investigations happen every day. 4 regional managers encourage aggression. However, Jimmy is not likely to be harmed again. He said he wasn't going back. While theft happens daily, doesn't mean it is a high percentage of customers.

Part 2 rule – irreparable harm – no adequate remedy at law

Apply – The adequate remedy would be a false imprisonment claim. However, the other argument would be loss of reputation from the public event, which is not compensable. Should get to control our own image in public.

Element #3 – Balance the Hardships

Rule – weigh the benefit to the plaintiff against the harm caused by following the injunction.

Apply – Plaintiffs would no longer be humiliated or potentially get injured from physical activity. Also, defendants can investigate without physical acts with reasonable success. Defendants will argue need aggression to stop the large losses.

Element #4 – Public Policy

Rule – Weigh the impact of the injunction on public policy.

Apply – policy would favor not injuring people for minor theft offenses similar to not being able to use more force than necessary for recapture of chattel. However, public policy could favor decreasing theft to keep prices down for everyone.

Last piece of analysis – Type of test

Rule – Majority is this is elemental. Minority is a sliding scale.

Apply – elemental probably loses. Sliding scale may have a chance.

Issue #2 – Bond

Rule – Preliminary injunctions require a bond in case it was wrongfully granted.

Apply – Just need to inform Jimmy of the bond.

Issue #3 – Scope – If Jimmy can obtain it, is the proposal too broad

Rule – Scope of the injunction is limited to scope of the violation. Generally, company-wide injunctions are invalid unless company policy.

Apply – Trying to stop all SuperMarts from this activity. Only 4 regional managers use aggressive tactics and no complaints on the other 3 managers. The stores under 6 of the managers definitely shouldn't have it. 3 without complaints most likely shouldn't, but we could tell Jimmy that one person in control of a handful of stores could get the injunction for those stores.

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1)

Review the petition and discuss whether Julietta can obtain the damages she seeks:

Compensatory damages-breach of contract, expectancy damages

The issue is whether Julietta has been harmed by VCMC's failure to perform their contract to manage her vacation homes and how best to make her whole.

Compensatory damages in the event of a contract are meant to restore a plaintiff to as nearly as possible the position they would have been had the contract the entered into been performed successfully.

Here, Julietta entered into a contract with VCMC to manage her three homes which she herself had been managing personally so that she could spend more time with her family. She is familiar with the workload of employing cleaners and advertising online. Prior to outsourcing to VCMC, she was averaging \$100k per year per home, so expected to earn a similar amount less their fee of 10%. However, this did not occur because VCMC was negligent in its hiring of the cleaning company that it paid an exorbitant amount for at \$150k and had horrible reviews. The annual profits were only \$40k. The profits from the other home managed by other company was \$80k, the number Julietta expected. While it is difficult to prove the damages Julietta has incurred here to the "as nearly as possible" standard of the *Hataley* case, where it was required that each animal be accounted for at an absolute number and each harm be measured absolutely, because of the fraud and negligence of VCMC and the comparable well performing standard in the other company plus Julietta's own past performance, we can use the reasonably certain standard the court allowed in the *Bigalow* case, where it was known that profits fell short at a movie theatre, but not exactly by how much because they weren't allowed to operate so had to use comparable numbers from other properties, and estimate it to be \$40k per year for the

Good Rule

Good Facts

explain Rules from these cases

five years that VCMC years managed the properties negligently and only brought in \$40,000 instead of \$80,000 (the amount the other competent manager brought in).

Therefore, Julietta's compensatory damages are \$200,000 (\$40,000 x 5).

As warranted, as delivered:

The issue is whether VCMC owes Julietta a refund for CRU's cleaning fees.

A vendor has a duty to deliver the product as promised or pay/refund the difference.

Here, CRU promised to do six services at each turn and neglected to do so, as evidenced by the negative review. They charged \$150,000 over five years. The other company used a similar cleaning company who did perform all of those tasks and charged \$40,000.

Because CRU's service was essentially worth nothing, it can be argued that VCMC should refund the entire \$150,000. However, because they are restoring their lost profits, instead they should refund the difference in cost to make it as warranted as delivered of \$110,000.

Therefore, VCMV owes Julietta \$110,000.

Consequential damages:

The issue is whether Julia can collect consequential damages for lost future profits because of the bad reviews and also the extra time and energy she will now need to spend to repair her reputation by traveling and managing the properties.

Consequential damages may be allowed if foreseeable harm has occurred as a result of the breach of contract.

Sometimes contracts exclude consequential damages and different jurisdictions deal with those clauses differently. (View #1) would require the company make a good effort at

Not in the question.

repairing and replacing the drone before overriding the clause. View two would require that both parties intended for the clause to not exist.

Here, Julietta managed her properties for a long time on her own and did very well. She contacted the management companies so that she could spend more time with her family. It should be well understood that a failure on their part would cause her to need to resume her duties. That is very foreseeable. In *Penzoil vs Texaco*, the industry standard was enough to set the intention of the MMU and allow for the consequential damages of the oil value as it was a known fact that was the ultimate goal even though it was not specifically stated. Here Julietta did the work herself until she couldn't because of family obligations. If VCMC is now failing, and has been for some time, she will need to jump in to fix it. This will be costly. There is no mention of a restriction to consequential damages in the contract.

Good
use of
case

Therefore, Julia should be able to collect consequential damages for her time to restore the properties and resume management.

Duty to Mitigate:

The issue is whether Julietta had a duty to mitigate and monitor the online review herself to see that the performance was not going well the in the five years that VCMC was managing the properties.

A purchaser has a duty to mitigate and reduce the damages and must make a good faith attempt at eliminating or easing the harm to the defendant.

Here, Julietta should have noticed that the profits were low and checked the reviews to see that the cleaners were not performing. Why did it take five years for her to catch on to this? She could have acted sooner and reduced the damages so may not be able to collect as much as she is asking for. Her reputation should not be as bad as it is if she had been on top of it.

Therefore, Julietta is not without fault because she did not mind her business well and stay on top of her managers.

Punitive damages

The issue is whether Julietta is due punitive damages for the negligence inflicted on her by VCMC.

Punitive damages are generally not allowed in a breach of contracts case so we need to apply a tort here and both negligence and fraud apply but first we have to see if punitive damages are allowed.

Is there a local jurisdictional rule? Is the conduct willful, wonton, and outrageous? The elements that must be met for punitive damages are as follows:

1. Reprehensible conduct.
2. Ratio of damages
3. Criminal or civil violations.

This is for how much

The conduct of VCMC was incredibly reprehensible because they negligently hired a cleaning company that did terrible work, received bad reviews, and continued to utilize their services at multiple sites. This demonstrates knowledge of the conduct and a failure to act in good faith on behalf of their client. They had committed to providing six services for the cleaning, for which they were paying top dollar. The review repeatedly complained about these services not being met, yet VCMC continued to utilize the cleaning service. The reprehensibility factor of just hiring the cleaning service is bad, but the continued knowing use while paying top dollar and receiving bad reviews and low occupancy is extreme negligence.

The ratio is undefined so we use the standard as set by the courts that it should be a single digit ratio with the compensatory damages. Given the degree of negligence it should be

high and set at 9:1, or $\$310,000 \times 9 = \$2,790,000$, because VCMC needs to be deterred and Julietta may be dealing with the backlash of this bad reputation on her properties for a long time so will need time and money to restore her reputation.

Fraud is a criminal act that can be charged.

Therefore, VCMC may be fined punitive damages of \$2,790,000 for punitive damages at a 9:1 ratio, which is the highest that can be charged in single digits.

In conclusion:

Julietta's claims are valid but her petition damages are too high because \$500,000 is more than she can prove (unless her consequential damages add up to that) she lost in profits to claim as compensatory damages and even if she did lose that much, \$10,000,000 in punitive damages is over the single digit ratio she is able to claim.

Therefore, Julietta will prevail and collect compensatory damages, consequential damages, and punitive damages, but not as high as what she included in her petition. Also Julietta failed to mitigate, so may be found partially at fault.

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2)

Good Rule

Injunction: In order to get a permanent injunction there must be imminent threat of harm which is not remote or speculative. Further, there must be no adequate remedy at law where monetary damages will not suffice. Lastly, the court will balance of hardships between P and D.

Here, the P will argue that a company wide injunction is necessary because there is an imminent threat of harm that he will receive another defective drone since the last 3 drones he received have all had similar defects which proves that it is a manufacturing or design defect since it happens to all drones not just at random. The D will argue the halfway house case where there was no imminent threat of harm because it was speculative of future events occurring and fear which is not imminent threat of harm. D will argue that there is no imminent threat of harm because they will send him a replacement and that it's speculative that it will be defective. P will argue that there is a imminent threat because each drone acts the same defective pattern so it is not speculative that there is an issue.

P will argue that there is no adequate remedy at law because the other drones are much more expensive and he wanted this drone which stated it would perform the certain tasks. Thus, there should be injunction because all the drones are defective so he will continue to receive the defective drone. He will relate this to campbell soup case where even though there was comparable carrots, the cambell soup company got an injunction to get those carrots due to them being unique. P will argue this is unique drone because it is lower cost and supposed to have all the purposes he wanted. D will argue this is not a unique product because there are other drones with similar functions that cost 5k.

- Say D
pay him.

D will argue Van Wagner case which talks about the disproportionate burden on the breaching party where the court didn't allow P to keep their billboard sign ad lease because there was monetary damages even though it was in a unique place. Further in that

Good arg.
case there was comparable substitutes which gave monetary damages and the burden on D would've been disproportionate. Here, is the same because they will have to shut down the company until 90% of the drone work properly. This is a huge burden because they need to make drones and sell them to make money and pay their employees and ensure they have jobs. If they shut down it will have a massive loss of profits. P will have the lesser burden because they will only have the burden of not using the drone because it is defective. They could instead get a drone that is comparable.

If no company scope not issue.

Scope: The scope of an injunction is limited to the violation. So, a nationwide or company wide injunction can only be obtained if there is a company wide policy or issue.

Here, P will argue this is like Good year case which shows that there can only be a companywide injunction if there is proof that there is a company wide issue not just one store or few places that have the issue. Here, the scope is not too broad and should be a companywide injunction because they have all the drones defective not just some from certain areas. However, the part of requiring 90% completion will not likely hold because this is a high burden on D because this is a high likelihood of success that may not be able to be reached when they are producing this high a mass of drones.

Thus, the court will likely not issue an injunction because there is an adequate monetary remedy of the difference between the comparable drone 5k and the drone received 1k. Further, there is a disproportionate burden on D.

Compensatory damages: this type of damages wants to put the injured party to its rightful position as nearly as possible before the injury occurred. In Hatalay case it states that the courts must determine the value of damages individually and come to a value. The damages cannot be speculative, it must be near certainty. Bigelow case states that if the Defendant has prevented an accurate estimate of the damages due to manipulating the market, they can recover just and reasonable damages based on relevant data and comparables.

Injunctions and compensatory damages: P's cannot receive an injunction and compensatory damages for the same harm.

D will argue that P can't receive the compensatory harm because they are wanting an injunction. P will argue that these are separate harms because the loss of the good is a separate harm and sending the good now doesn't help with lost use of the item. D will argue this is the same harm because it is the only harm of having a defective drone. *Good distinct or broken nose*

The court will likely hold that there is no injunction with compensatory damages because it is the same harm. *— probably sep harms.*

lesser of two rule: states that a P's property that has been injured can receive the lesser of the diminution in value of the property's FMV or the replacement costs. *This is a buyer's Prop issue.*

Special property exception: is the exception to the lesser of two rule which states that the P can get replacement costs if they can prove the property is specific use for which it is designed for and is used in that way, there must be no FMV for the property, and the improvement must be appropriate and feasible and reasonably expected to be replaced. If it is special then replacement costs must be reasonable.

Here, the D will argue that the replacement cost which is 1,000 is necessary because this is the price of the drone that he paid for. P will argue that it should be the difference between the item received and the item expected which is the difference between the 5k from similar drones that do what is required and the 1k which is what was received. The D will argue that this is special property because it is a unique drone that has these special features and specifically used to do these features and fly with the app, record and withstand wind. However, P will argue that it is not unique because there are tons of comparable drones that do the same thing and there is a FMV for the drone which is 5k which is the comparable drones price.

Add this Rule
Good Facts.

Thus, the court will hold that the damages is the difference between the FMV of drone promised (5k) and the drone delivered (1k).

Consequential damages: these are all damages that are natural and proximate cause of the breach. And are foreseeable at the time of contracting. Because of the breach other things happened which causes harm.

Here, the P wants consequential damages of the medical bills. P will argue that these are foreseeable because if the drone doesn't fly correctly then it is reasonable that they would hit someone including themselves and cause injury or damage. This is foreseeable at the time of purchase because a defective drone could easily get out of control and cause harm. Due to this breach of defective drone flying crazy and not being able to maneuver it or see with the app, it caused the injuries to P when it flew into his face.

Thus, consequential damages can be awarded. However, below is the limits.

Liquidated damages clause: when damages are difficult to estimate at the time of contracting then parties can agree to a reasonably predicted damages sum that will be the exclusive remedy in a breach. It can't be against public policy so it cannot be made to penalize the D.

Here, D tried to limit consequential damages by stating on the package there is a liquidated damages clause of 2k. The P will argue that this is a speculative damages number that has no basis and that it was easy to estimate damages at the time of contracting for any defaults because there are comparable drones that costs 5k so this is the amount it should be. D will argue damages are speculative because they do not know what type of damage it can cause and the drone was only 1k so 2 k is reasonable. Further, the damages cannot penalize the D so, 2,000 dollars for a drone worth 1k is reasonable.

The court will likely hold this is reasonable and not penalizing D so they will hold it is allowed.

Mitigation: injured parties have a duty to take reasonable efforts to mitigate damages. If they do not then damages can be lowered. The breaching party has the burden to prove that the losses were available.

This helps liquidated arg for D. Here, the D will argue that there was a duty for P to mitigate the damage because he knew that he was supposed to calibrate the drone as said in the instructions and by not doing so that is why the drone went haywire. P will argue it was not due to not using the instructions it was due to defective drone. D will argue that he should wear protective gear since he knew from the 1st and 2nd drone that they went haywire. P will argue this is not reasonable because it is expected to fly correctly.

Thus, court will likely hold that there was no duty on P's behalf.

clause not the 2 questions.

Limits on Consequential damages: Parties can limit consequential damages as long as they are not unconscionable. If the clause is not unconscionable, it can still be kicked out if the item fails and replacement fails. There are two types of jurisdictions:

Jurisdiction 1: Will kick out if it fails its essential purpose after failed attempts to fix it

Jurisdiction 2: will kick out only if there was intent and reasonable commercial expectations for having consequential damages. This is a harder standard.

D tried to limit consequential damages by stating on the package there is a liquidated damages clause of 2k. This is allowed however, it will be kicked out depending on the jurisdiction due to the good failing and the replacements failing. Here, the drone was replaced 2 times and each time had the same issues of working for about a month then not working by not maneuvering correctly, app disconnecting and going out of control. Under jurisdiction 1 the liquidated damages clause will be kicked out if it fails its essential purpose. Here, it has because its purpose is to fly correctly, connect to the app and not cause harm. Thus, under jurisdiction 1 there will be no liquidated damages clause. Under jurisdiction 2, it will be much harder to kick out the clause. The P will argue that there is an intent and expectation to have compensatory damages because they have replaced the drone many times and it still doesn't work and the whole purpose of buying a drone would be to have it fly. So they would have intent to give damages because it would cause harm. D will argue there was no intent because that is why they limited the damages amount in the first place to 2k.

Thus, the court will hold no liquidation cl in jurisd 1 but will hold there is limitation in jurisdiction 2.

Attorney fees: The general rule is that parties pay for their own attorney fees. Unless expectatiobns apply or there is a statute that allows for attorney fees to be shifted to the prevailing party. Attorney fees are calculatd by the number of hours spent litigating multiplied by the reasoable rate per hour or percentage of total settlement.

The P will likley not get attorney fees unless there is a statute that allows it.

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MEMO

To: Supervising Attorney

Overview

Here, Jimmy has reached out to our firm to assist her with a false imprisonment claim, where she was shopping at a grocery store and was approached by a manager who accused Jimmy of stealing. Jimmy claims he was falsely imprisoned for questioning and would like the court to issue a nationwide injunction to prevent all 250 SuperMart stores from being able to yank people into an office and humiliate them while accusing them of stealing.

Injunctive Relief

In order to obtain an injunction there must be (1) Imminent threat, (2) Irreparable harm with no adequate remedy of law, (3) balancing of the hardships. The scope of the injunction is limited to the scope of the violation.

Under the first element, in order to obtain an injunctive relief, there must be an imminent threat. Under the Halfway-House case, a speculative threat or fear of a threat is not considered imminent. In Halfway house, the community was fearful that an upcoming project for a halfway house would drive down the value of the neighborhood, however the house was not yet erected, and there was no evidence of property value going down, as the assumption that the halfway house would create crime and danger was not concrete. The court ruled this was too speculative and not imminent. Here, Jimmy has entered a store and was falsely imprisoned. The store did not make any policy that would prevent this from happening again. Jimmy could enter the store and again be brought in and accused of theft and falsely imprisoned. Although this is legal and lawful activity,

He wants it
near 30
prelim
result.

So whether likely.

lawful activity that leads to unlawful consequences can still be prohibited. It is lawful for a shopkeeper to investigate for theft, however the policies of four of the stores to use physical force and aggression would lead to false imprisonment, which is an illegal consequence. Because Jimmy could walk into the store and be falsely imprisoned again, the threat is imminent.

When analyzing the second step of irreparable harm with no adequate remedy of law, this element is only satisfied if monetary damages would not remedy the plaintiff. Here, Jimmy did not have damages that money can remedy. He was not physically harmed and experienced no monetary loss, however he was embarrassed and horrified by the experience. Jimmy will argue that monetary damages will not prevent this from happening again to him in the future. The SuperMart can try to argue that this caused emotional distress, which can be remedied with monetary damages, however the court will likely rule that monetary damages are not sufficient to prevent the action from occurring again.

Lastly, the third element of balancing the hardships can be explained in the Vanwagner case, where a billboard was in the way of a development project that could not be completed without the removal of the billboard. The court looked at the hardships the plaintiff would endure of moving the billboard, and the hardship the building project would endure of not being able to complete construction and decided the burden was too high on the building project. Here, if a court were to issue injunctive relief, the court could issue an injunction that prevents the policies that encourage aggressive tactics, including physical force to stop theft. While SuperMart has over \$1m in lost revenue from theft, this still would not be too big of a burden to require the mart to stop these practices. There are feasible alternatives like using contactless methods to investigate, install more security cameras, and purchasing insurance. These will not burden the SuperMart unreasonably as it is a big corporation and these are practices that are customary in corporations. Other corporations and even other stores in the corporation

FI usually gets money damages.

Discuss benefit to Jimmy.

are able to conduct theft investigations without aggressive tactics. Changing a store policy and sending out notices to employees is not a substantial burden on SuperMart.

When analyzing the scope of an injunction, that is limited to the scope of the violation, and therefore if an injunction was to be issued it would be limited to only what is necessary to prevent these actions from occurring again. It is too big of a scope to not allow the SuperMart to conduct any investigations at all of potential and suspected theft, as it is a shopkeepers right. Therefore, the scope of the injunction would be limited to only not allowing and encouraging aggressive tactics including physical force to stop theft.

Because the threat is imminent, money damages are not adequate, and the burden on SuperMart would not be too high, injunctive relief will likely be awarded.

Nationwide Injunctions

This is sc-p issue.

In order to obtain a nationwide injunction there must be a policy or central power that commits these nationwide actions. In the case of Goodyear Tire, a plaintiff brought suit against the company for age discrimination and sought a nationwide injunction for all Goodyear Tire companies to stop this practice, however, because the plaintiff could not prove that these discriminatory practices were part of the policy of all branches of Goodyear, but only occurred at that one location, the court did not uphold the nationwide injunction. Nationwide injunctions are typically frowned upon by courts and not often issued. Here, SuperMart has 250 different grocery stores, where it is policy to provide bonuses to regional managers for decreases in theft. There are 10 different regional managers and each regional manager sets the in-store policies for their stores. Of the ten regional managers, four promote and encourage aggressive tactics for theft, while 6 of them prohibit physical conduct to stop theft. Here, the only companywide policy is that bonuses are provided to regional managers for decreases in theft. That in itself is not a policy that directly leads to the false imprisonment Jimmy experienced. The ten regional

managers are each in charge of making their own theft policies for the stores in their region. The only nationwide policy here is to provide bonuses for decreases in theft. The policies of physical force are regional, not national. Because there is not one regional policy of using physical force that applies to all 250 SuperMart stores, the court will not award a nationwide injunction.

Conclusion:

Jimmy will not be allowed a nationwide injunction on all SuperMart locations. The injunction will be limited to the stores who encourage aggressive tactics including physical force to stop theft.

END OF EXAM

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