

Kern County College of Law

REMEDIES

Spring 2024

Judge D. Zulfa

Instructions:

Answer three (3) questions in this examination.

Total Time Allotted: Three (3) hours.

Your answer should demonstrate your ability to analyze the facts in the question, to tell the difference between material facts and immaterial facts, and to discern the points of law and facts upon which the case turns. Your answer should show that you know and understand the pertinent principles and theories of law, their qualifications and limitations, and their relationships to each other. Your answer should evidence your ability to apply the law to the given facts and to reason in a logical, lawyer-like manner from the premises you adopt to a sound conclusion. Do not merely show that you remember legal principles; instead, try to demonstrate your proficiency in using and applying them. If your answer contains only a statement of your conclusions, you will receive little credit. State fully the reasons that support your conclusions and discuss all points thoroughly. Your answer should be complete, but you should not volunteer information or discuss legal doctrines that are not pertinent to the solution of the problem.

Question 1

In 2016, Bonnie and Clyde orally agreed to jointly purchase a small storefront space in City for \$80,000. Bonnie contributed \$40,000 of her own money. Clyde contributed \$40,000 he embezzled from his employer, Tom. Bonnie and Clyde agreed to put the property in Clyde's name alone because Bonnie had creditors seeking to enforce debts against her. They further agreed Clyde would occupy the property, which he planned to use as a rock shop and gallery. They also agreed that, if and when Clyde vacated the property, Clyde would sell it and give Bonnie one half of the net proceeds. Clyde then occupied the property.

In 2017, Tom discovered Clyde's embezzlement and fired him.

In 2024, Clyde sold the property, obtaining \$300,000 in net proceeds. Clyde offered to repay Bonnie her \$40,000 contribution, but Bonnie demanded half of the net proceeds from the sale or \$150,000.

Bonnie and Tom each sued Clyde for conversion. Tom's claims are not timed barred by statute.

At trial, the court found Clyde liable to both Bonnie and Tom for conversion.

1. What remedy or remedies can Bonnie reasonably obtain against Clyde for conversion, what defenses (if any) can Clyde reasonably raise, and who is likely to prevail? Discuss.
2. What remedy or remedies can Tom reasonably obtain against Clyde for conversion, what defenses (if any) can Clyde reasonably raise, and who is likely to prevail? Discuss.

***DO NOT ANALYZE PURCHASE MONEY RESULTING TRUST IN THIS QUESTION.**

Question 2

Ron Retailer owns all pieces but the “Yoda” of a chess set carved by Art, a famous artist who carved 10 “Star Wars” chess sets. Today, no one owns a complete Art “Star Wars” chess set.

Four existing Art “Yodas” are owned by collectors. The last one sold in 1986 for \$175,000. The current owners refuse to sell their “Yodas” to anyone.

If Ron could exhibit a complete Art “Star Wars” chess set, he would draw people worldwide who would buy memorabilia with pictures of the full “Star Wars” chess set and other products. It is impossible to know exactly how much Ron would make, but a complete Art “Star Wars” chess set could be worth in excess of \$1 million.

Last week, Sam Seller brought Ron an Art “Yoda” he found in his basement and asked if it was worth anything. Ron asked what Sam wanted for the “Yoda”. Sam asked if \$450 would be fair. Ron replied that \$450 would be fair and offered to write a check immediately. Ron and Sam entered into a valid contract. Sam agreed to deliver the “Yoda” the next day.

The next day, Sam called Ron and said, “I learned that you defraud people out of valuable collectibles all the time and that the “Yoda” is worth thousands of dollars. I am selling my ‘Yoda’ to another collector.”

Ron sued Sam for specific performance for breach of contract, and sought a temporary restraining order and preliminary injunction.

What is the likelihood Ron will obtain:

1. A temporary restraining order? Discuss.
2. A preliminary injunction? Discuss.
3. Specific performance? Discuss.

Be sure to discuss Sam’s position as to each issue as well.

Question Three

Singh is the owner/operator of a “big rig” truck and trailer. It is not uncommon for Singh to drive loads across country six days a week. On average he earns \$75.00 per hour – but will charge a premium of \$125.00 per hour for loads that require special licenses and certificates such as flammable liquids. Recently, Singh entered into negotiations to purchase two additional rigs that he would own and contract with other drivers for a flat fee per load and an additional 5% of the driver’s total contract price.

Last week, while hauling a load of artichokes from Castroville to Florida, Singh was struck by Jones at a Flying Heart truck stop. Jones did not see Singh in time to avoid the collision because he was distracted by signage at the truck stop. This is the third collision involving drivers claiming the signage distracted them while operating their vehicles. Flying Heart refuses to remove the signage because they are paid by the beer company to maintain the signage.

The collision damaged both the truck and trailer. Singh also sustained injuries that make it difficult for him to sit for more than one hour without severe pain. It takes physical therapy sessions three times a week to address his injuries. Singh skips most of the therapy sessions and drives a truck he rents to make ends meet. He no longer drives six days a week due to the pain from the injuries and the costs to rent the truck. He can no longer haul the loads requiring his special licenses. As a result, he has stopped trying to purchase the additional trucks.

Singh sues Jones and Flying Heart as a result of the collision. A jury finds both Jones and Flying Heart liable to Singh for the damages caused by the collision. In the second phase of the trial, Singh seeks to monetize these damages. What damages should the jury award as to both defendants? Are there damages available against one defendant that would be unavailable against the other defendant? Discuss the defenses Jones and Flying Heart may assert.

ANSWER OUTLINE

KCCL
REMEDIES
Spring 2024
Professor D. Zulfa

Q1 Issue Outline

Bonnie v. Clyde

Damages—When a D is found liable for conversion of the P's property, the P is entitled to damages for the FMV of the property at the time and place of conversion. Bonnie had half interest. Bonnie should receive FMV of the storefront at the time of sale.

Defenses

SOF—the parties orally agreed. (defense fails)

Equitable remedies available only if legal remedy inadequate.

Constructive Trust: *Imposed on improperly acquired property to which defendant has **title**. Defendant serves as "trustee" and must return the property to the plaintiff. Plaintiff receives any increase in property value.*

Constructive Trust

Must show:

- (1) Inadequate legal remedy because D is insolvent or property is unique
- (2) Tracing of the property from its original form to its current form is allowed. Can obtain a constructive trust over the new form of property.
 - The wrongfully withheld property must be solely traceable to current form and not mingled w/ other property to be subject to a constructive trust because title of the property will be given to P.
- (3) *Bona fide purchasers* prevail over P. Constructive Trust will not be ordered where BFP holds legal title. – **acknowledge that there is no BFP here.**
- (4) P prevails over unsecured creditors.

Equitable Lien—a lien imposed on D's property to secure payment of a debt owed to P.

Must show:

- (1) No adequate legal remedy
- (2) D misappropriated P's property creating a debt or obligation to pay;
- (3) P's property can be traced to property held by D; and
- (5) Retention of the property would result in unjust enrichment;
- (6) *Bona fide purchasers* prevail over P.
- (7) P prevails over unsecured creditors.

Equitable Lien compared with Constructive Trust

If P's property is not used to acquire title, only an equitable lien is available. The equitable lien can be enforced only up to the amount of P's claim; the enhanced value of the property cannot be recovered. However, a P may seek a deficiency judgment after imposition of an equitable lien; an action for a deficiency judgment is not allowed after imposition of a constructive trust.

Clyde's Defenses

Unclean Hands – frank not harmed by Mary's illegal conduct.

Tom v. Clyde

Damages – FMV at the time that it was converted.

Restitutionary Damages

Punitive Damages

Constructive Trust

Equitable Lien

Clyde's Defenses

Laches

Q2 Issue Outline

1. Temporary restraining order.

(1) Inadequate legal remedy – Where damages or restitution are inadequate to remedy a tort, P may be able to get an injunction.

Temporary Restraining Order—issued pending hearing for temporary injunction; Need to show there will be immediate harm w/o TRO.

Bonus: Proceeding can be ex-parte, no notice required, and TRO is limited to 10 days. However, if there is opportunity to give D notice and a chance to appear and contest, a good-faith effort must be made to do so.

(2) Irreparable injury—establish that there will be irreparable injury to P while waiting for a full trial on the merits if injunction is not granted now.

- Must discuss facts in a **time frame context**. You must show that you will incur irreparable injury while waiting for a full trial on the merits – and that's why you need relief now.

(3) 'Balancing of Hardships' Test – irreparable injury is weighed against any hardship D will suffer if a temporary injunction is granted. Where D created the hardship, even if substantial, balance likely to weigh in P's favor.

(4) Likelihood of success on the merits— establish that the P is likely to succeed on the merits.

- P should be required to post a bond to reimburse D if the injunction injures him and P loses.

2. Preliminary injunction

- (1) Irreparable Harm. (*supra*)
- (2) Balance of Hardships. (*supra*)
- (3) Likelihood of Prevailing on the Merits. (*supra*)
- (4) Inadequate legal remedy. (*supra*)
- (5) Notice.
- (6) Bond
- (7) Defenses must not be available.
 - Unclean hands
 - Laches
 - misrepresentation

3. Specific performance.

(P wants k performed)—mandatory decree or injunction that orders the D to perform on the k as promised.

(1) Contract must be valid—*terms* must be sufficiently certain and definite that the court is able to order with specificity which action the D must take.

(2) Contract conditions imposed on P are satisfied. P must've performed, be ready and able to, or excused.

(3) Inadequate legal remedies—damages can be inadequate when:

- money damages are too *speculative* and *difficult to calculate* with certainty;
- money damages *inadequate* to compensate for potential loss (health, safety);
- *insolvent* D;
- *multiple suits are necessary*; or
- *property is unique*: personal property usually is not unique (and money damages adequate) unless it is rare/one-of-a-kind/special personal significance/circumstances make chattel unique.

(4) Mutuality of remedy—requires each party to the contract to be willing and able to perform their obligations. Here, this element will be satisfied because Ron has the \$450 to pay for the chess piece, and Sam still has the chess piece in his possession.

(5) Feasibility of enforcement—problem usually arises only in personal services k, land sale k (where a party of the land is out of state), and construction k. — **no need to analyze here but credit if raise and drop.**

(6) Defenses

- 1) Unclean hands (*supra*)
- 2) Laches (*supra*)
- 3) Mistake
- 4) Misrepresentation

As to Both Defendants:

- I. General and Special Damages
 - a. Physical Injuries
 - b. Property Damage
 - c. Lost income
 - d. Costs to Mitigate
- II. Future Damages
 - a. Lost/reduced income
 - b. Lost opportunity
 - i. Increased rates for special licenses
 - ii. Opportunity for the New Trucks
- III. Punitive Damages as to Flying Heart
- IV. Defenses
 - a. Certainty
 - b. Discounting
 - c. Failure to Mitigate
 - d. Intent (as to Flying Heart and Punitive Damages)

1)

Bonnie v. Clyde

Tort Legal Damages: Damages meant to compensate the Plaintiff (P) for their injury. There are three types of legal damages: compensatory, nominal, and punitive.

Bonnie can seek compensatory damages against Clyde due to the damages being Forseeable, Unavoidable, Certain, and having Causation. Clyde's conversion of Bonnie's money and the damages associated were forseeable to Clyde at the time the tort occurred. Clyde can argue that he offered to give Bonnie her initial \$40,000 back, but that is not all the money she is entitled to. Clyde's conversion was unavoidable to Bonnie because she had no indication that Clyde would commit conversion. The damages that Bonnie is seeking is certain (\$150,000) and not speculative at all. Lastly, causation exists because if it had not been for Clyde's conversion, Bonnie would not have been injured. Bonnie's case meet the elements to seek compensatory damages.

Nominal damages are only awarded if there is no injury, to teach the defendant (D) a lesson. This does not apply because Bonnie suffered an injury.

Punitive damages can be awarded to punish a defendant and force a deterrence if the defendants actions are more than negligent. Here, Clyde acted more than negligent, he acted with malice when he decided to commit conversion against Bonnie. The damages must be proportionate to the injury. The court may award Bonnie punitive damages on top of her compensatory damages.

The court is more than likely to award Bonnie compensatory damages and may award her punitive damages as well.

Tort Restitutionary Damages: Damages are awarded when the defendant has become unjustly enriched based on the plaintiffs benefit conferred to the defendant. Plaintiff's may be awarded restitution, ejectment, or replevin under restitutionary damages.

Bonnie can receive restitution damages from Clyde due to him being unjustly enriched to the amount of \$300,000 off of her \$40,000 benefit she conferred to him. Restitution is typically calculated based on the benefit the defendant received by the plaintiff that suffered the injury. However, Bonnie cannot be entitled to compensatory and restitution damages, she will be awarded the highest damage.

Ejectment does not apply to Bonnie, because that typically involves real property where Bonnie's case involves personal property (money).

Replevin damages may be awarded when the defendant has possession of the plaintiff's chattel. The plaintiff must have possessory rights to the chattel and the defendant must be withholding it. Here, Clyde has possession of Bonnie's money that she rightfully has possessory rights over and she can assert her possessory right to get it back.

The court will award Bonnie the highest amount between the compensatory damages and restitution damages since she is likely to be entitled to either or.

Equitable Damages: Damages may be awarded to plaintiffs when the defendant has improperly acquired the plaintiff's property.

Does not apply to Bonnie's case because Clyde did not improperly acquire her initial \$40,000, she gave it to him based on an oral agreement for the business.

Injunctive Relief: The court may order a person to do something or refrain from doing something. There are 3 types of injunctive reliefs: temporary restraining order, preliminary injunction, and permanent injunction.

Bonnie's case does not require injunctive relief because there are adequate legal remedies that she can be awarded to take care of her injury.

Defenses:

Clyde can argue that he offered to return Bonnie's initial investment of the \$40,000 and that is all she is entitled to. However Bonnie will argue that based on the oral agreement they jointly put up \$40,000 with the idea that Clyde would run the business and when he sold it they would split the money in half.

Contract (K) Legal Remedies: P can be awarded damages to compensate the P for their injury. Goal is to put the P in the position they would have been in had the K been performed. There are four types of legal remedies: compensatory, punitive, nominal, and liquidated damages.

For Bonnie to be awarded compensatory damages the breach must have been Forseeable at the time the k was formed, the damages are certain, P attempted to mitigate, and there was causation. Here, Clyde's breach was forseeable to him because he maybe had an idea that when he finally sold he would not want to share half the net proceeds with Bonnie since he will be the one running the shop day to day. The damages are certain because Bonnie is asking for \$150,000, which is not a speculative amount, it is half of the net proceeds. Causation exists because if it had not been for Clyde's breach of splitting the net proceeds with Bonnie she would not be injured. Bonnie had a duty to mitigate her damages, which is difficult in this situation because there was not much she could have done to mitigate being that Clyde operated the day to day at the store and then when he sold he was supposed to give her half of the proceeds and did not.

Nominal damages does not apply because Bonnie suffered an injury.

Punitive Damages may apply here because not only did Clyde breach the oral agreement, he committed conversion. Punitive damages may be awarded to punish his wrongdoings.

Liquidated Damages: does not apply here because there was no liquidated damages clause in their oral agreement. If there was and the clause was valid, Bonnie would only be entitled to recover the amount stated in the clause.

K Restitutionary Remedies: A P may be awarded restitution if they conferred a benefit to the defendant then the k was breached leaving the D unjustly enriched.

Here, Bonnie and Clyde had an oral agreement with clear and definite terms of what was required to start the K and how the K would end. Bonnie performed her condition of the K by giving her \$40,000 to purchase the storefront for Clyde to run the business. Bonnie may be entitled to restitution because after her benefit was conferred in 2016, in 2024 Clyde sold the property and received \$300,000, making Clyde become unjustly enriched. The court wants people to play fair and handle business appropriately, not get peoples money and do not hold up their end of the bargain. Which is what Clyde did when he withheld Bonnie's \$150,000.

Quantum Meruit: applies when the P has performed for the D. The P only performed with the agreement to compensation and the D was aware of that compensation. The D received the benefit from P's performance and became unjustly enriched. Here, Bonnie as the P performed her terms of the oral agreement when she gave Clyde her \$40,000. Clyde as the D knew that he was supposed to split the net proceeds at the sale with Bonnie, that is what he agreed to. Since Bonnie performed, Clyde

was entitled to as well and he did not. The court will use this to ensure the P received the benefit they bargained for and the D does not remain unjustly enriched. The court will more than likely award Bonnie restitution.

The court can only award Bonnie compensatory damages or restitutionary damages. They will award the highest amount.

K Equitable Remedies: Damages may be awarded to plaintiffs after a breach to fix the K and ensure performance. Equitable remedies include: Specific performance, rescission, and reformation.

Here, Bonnie cannot go after Specific Performance even though Clyde performing is Feasible, there was a valid k, there are no defenses Clyde can claim, Bonnie satisfied her terms of the K, but there is an adequate legal remedy such as compensatory or restitution damages that she can be awarded.

Rescission allows the K to be voided and rescinded as if it never occurred. That can occur if there is a defense to the K formation, which Clyde will argue there is.

Reformation allows the K to be rewritten to show the true intent of the parties.

The court will more than likely not award Bonnie Equitable remedies.

Defenses:

Clyde will argue that he had unclean hands coming into the agreement and that no valid k exists due to him withholding the truth about where his \$40,000 came from. Bonnie will argue that Clyde having the unclean hands is even more reason to award her because she did nothing wrong. Bonnie can also assert she had no idea where Clyde got the \$40,000 from and the facts do not indicate that she should have known that he embezzled it from his employer at the time. Clyde may argue there is no legal contract because it was not written down, but the court can still enforce an oral K. Also the equitable remedies such as restitution will still allow for Bonnie to receive remedies because of her benefit the unjust enrichment of Clyde. Clyde does not have any valid defenses to the formation of the contract because fraud, misrepresentation, no meeting of the minds, nor lack of consideration was present when the parties orally agreed to the clear and definite terms of the k.

Tom v. Clyde

Tort Legal Damages: Damages meant to compensate the P for their injury. There are three types of legal damages: compensatory, nominal, and punitive.

Tom can seek compensatory damages against Clyde due to the damages being Forseeable, Unavoidable, Certain, and having Causation. Clyde's conversion of Tom's money and the damages associated were forseeable to Clyde at the time the tort occurred. Clyde has no valid defense to his embezzlement of tom's money. Clyde's conversion was unavoidable to Tom because he had no indication that Clyde would commit conversion. The damages that Tom is seeking is certain (\$40,000) and not speculative at all. Lastly, causation exists because if it had not been for Clyde's conversion, Tom would not have been injured. Tom's case meet the elements to seek compensatory damages.

Nominal damages are only awarded if there is no injury, to teach the defendant (D) a lesson. This does not apply because Tom suffered an injury.

Punitive damages can be awarded to punish a defendant and enforce a deterrence if the defendants actions are more than negligent. Here, Clyde acted more than negligent, he acted with malice when he decided to commit conversion against Tom. The damages must be proportionate to the injury. The court may award Tom punitive damages on top of his compensatory damages due to his egregious acts of embezzelling from his employer.

The court is more than likely to award Tom compensatory damages and may award him punitive damages as well.

Tort Restitutionary Damages: Damages are awarded when the defendant has become unjustly enriched based on the plaintiffs benefit conferred to the defendant. Plaintiff's may be awarded restitution, ejectment, or replevin under restitutionary damages.

Tom can receive restitution damages from Clyde due to him being unjustly enriched to the amount of \$300,000 off of his stolen \$40,000. Restitution is typically calculated based on the benefit the

defendant received by the plaintiff that suffered the injury. However, Tom cannot be entitled to compensatory and restitution damages, he will be awarded the highest damage.

Ejectment does not apply to Tom, because that typically involves real property where Tom's case involves personal property (money).

Replevin damages may be awarded when the defendant has possession of the plaintiff's chattel. The plaintiff must have possessory rights to the chattel and the defendant must be withholding it. Here, Clyde has possession of Tom's money that he rightfully has possessory rights over and he can assert his possessory right to get it back.

The court will award Tom the highest amount between the compensatory damages and restitution damages since he is likely to be entitled to either or.

Equitable Damages: Damages may be awarded to plaintiffs when the defendant has improperly acquired the plaintiff property. There are two types: Constructive trust and equitable lien.

Here, Tom can get constructive trust damages due to Clyde improperly acquiring his \$40,000 through embezzlement and Clyde profiting off of it. The \$40,000 increased to \$300,000. The court will assign Clyde as the trustee of the money and he will be required to return it to Tom. Tom may not be entitled to equitable lien due to the fact that he already sold the business and profited \$300,000. However, if Clyde had not already sold his business the court would have forced a sale and Tom would be entitled to money from the sale.

The court is more than likely going to reward Tom equitable damages.

Injunctive Relief: The court may order a person to do something or refrain from doing something. There are 3 types of injunctive reliefs: temporary restraining order, preliminary injunction, and permanent injunction.

Tom's case does not require injunctive relief because there is adequate legal remedies that he can be awarded to take care of his injury.

2)

1) Ron obtaining a Temporary Restraining Order

In order for Ron to file for a Temporary Restraining order he would only need to prove that 1) He has suffered injury/harm by Sam's actions and 2) He is likely to succeed on the merits come trial. A Temporary Restraining Order can be granted in an ex-parte manner with only the harmed party's awareness and the defending party's notice. Ron may be able to assert harm or injury has occurred because without the Yoda piece that was offered in their original agreement, he can not host his complete art "Star Wars" chess set that would draw people worldwide and potentially make him up to \$1,000,000.00. Ron will argue that he had an expectation of having the Yoda the day after they signed their contract and so he is entitled to expectation and reliance damages. The monetary consequence alone makes it appear that Ron is suffering a significant harm/injury. The second requirement would be much more difficult for Ron to prove. Ron would need to prove a likelihood of success on the merits, at the full injunction hearing. Any statement that Ron would make in a deposition, at this stage, could subject him to perjury. Ron would have to omit the part of the facts where he undersold Sam in the purchase of the Yoda, by a very significant amount of money. Making their original agreement ridden with duress and fraudulent activity. Ron would have to omit the mistake and misrepresentation of what he told Sam. Because Ron is unlikely to succeed on the merits come trial, Ron will not get the TRO granted. If by chance the court granted it, in its very early staged nature, it would only be in place for 10-14 days until the preliminary injunction hearing.

Ron will likely be unsuccessful in obtaining the TRO.

Sam's position

Sam would argue that he will in fact succeed on the merits because Ron fraudulently coerced him into an agreement to sell the Yoda for \$450.00, knowing that the Yoda was worth much more than that to any collector and especially him. Ron also used duress as a form of coercion to make the contract fast and to not allow Sam to do his due diligence. Sam will argue that Ron has unclean hands and entered into the agreement with Sam, solely to take financial advantage of him. Sam will argue that Ron misrepresented the value of the Yoda in order to benefit himself and what he can sell the set for in the future. Sam can show the most recent sale of a full set was \$175,000.00, and due to Ron being an expert and collector in this field, he was aware of the Yoda's true value. Ron did what he could to take advantage and present himself as a bona fide purchaser when in fact, he was a fraud. Due to the fraudulent nature of the agreement, the misrepresentation, the duress, Sam will

argue that there was no valid contract. The contract was invalid so therefore there is nothing for the court to order him to do or not do.

2) Ron obtaining a Preliminary Injunction

If Ron is granted the Temporary Restraining Order (TRO), he would be granted a hearing for a Preliminary Injunction. The requirements for the preliminary injunction hearing are very similar to those of the TRO but allows for a more in depth look at the issues. The Preliminary injunction would be Ron's attempt to have the court stop Sam from being able to sell the Yoda to any of the other buyers/collectors that are interested. If Ron was able to achieve the preliminary injunction, this would cause Sam to wait for the court to make a ruling before he could do anything with his Yoda collectible. Differing from the TRO, at the preliminary injunction hearing, both parties are present and able to present both sides of the issues and the court will consider any harm that the injunction may cause and the effect on the public. If Ron is able to establish that there has been a valid breach because there was a valid contract, the court may insert themselves on an extended preliminary basis to ensure that improper handling doesn't continue and the Yoda remains unsold until the court can make a ruling.

Ron will likely be unsuccessful in obtaining a Preliminary Injunctive Order.

Sam's position

Sam would argue that he will succeed on the merits because Ron fraudulently coerced him into an agreement to sell the Yoda for \$450.00, knowing that the Yoda was worth much more than that to any collector and especially him. Sam will argue that Ron used duress as a form of coercion to make the contract fast and to not allow Sam to do his due diligence. Sam will argue that Ron has unclean hands and entered into the agreement with Sam, solely to take financial advantage of him. Sam will argue that Ron misrepresented the value of the Yoda in order to benefit himself and his future income. Due to the fraudulent nature of the agreement, the misrepresentation, the duress, Sam will argue that there was no valid contract. The contract was invalid so therefore there is nothing for the court to order him to do or not do.

3) Ron suing Sam for Specific Performance

Equitable Restitution/Remedies: Specific Performance

Ron can attempt to sue Sam for Specific Performance, asking the court to enforce their contract and make Sam perform his part of the agreement. Specific Performance would allow the court to enforce the contract that Ron and Sam devised, and Sam cancelled the following day. Specific Performance requires a 1) a valid contract 2) inadequate legal remedies 3) that Plaintiff fulfilled their portion of the agreement and 4) defenses. Due to Sam's position that the contract is invalid due to Ron's misrepresentation, fraud and using duress to coerce Sam- the court would not grant Ron his request to require Sam to perform because the contract was formed with illegal activity attached to it. If somehow, the court was in a position of recognizing the contract as valid, given all the facts surrounding the case, then the court could require Sam to give Ron the Yoda for the agreed upon price of \$450.00. If the court didn't recognize that the original contract was valid for any of the aforementioned reasons, Ron could try and get the court to consider a Reformation of the contract. Ron would try to do this as a last ditch effort in securing himself as the buyer of the Yoda and allow the court to be involved in the reformation of their original contract. Recision wouldn't be an appropriate action to bring because recision rescinds the contract as though it never existed and then Sam would be entitled to move on and sell the Yoda to whomever he chooses. Ron would much rather assert a claim for specific performance, then reformation.

Sam's position

Sam will argue that there is no contract to require him to specifically perform for. Sam will argue that Ron was deceptive in their discussions, tried to coerce him into the agreement so that he couldn't think better of it, and misrepresented the value of the Yoda. The entire agreement was predicated on Ron's lies and misrepresentations. There would be no contract to even fight over if it weren't for Ron's fraudulent business practices. Sam's position is that Ron had unclean hands and he can't be required to perform in a contract that was null and void from the very start.

Ron will be unsuccessful in obtaining a TRO, a preliminary injunction, and establishing a specific performance award against Sam. Ron will not be able to enforce his contract with Sam because it was fraudulent and therefore invalid.

3)

Singh vs. Jones

General Damages - Property Damage

A person whose property has been destroyed is entitled to general damages.

Here, Singh's Truck and Trailer were damaged in the traffic accident, the court will determine the value by determining the Fair Market Value of the truck and trailer minus the difference for the Damages. The jury should award specific damages for the truck and trailer.

Personal Injury

Singh was injured in an accident and can seek the following damages at law.

General Damages - Compensatory Damages

Compensatory Damages put a person back in a position as if the tort had not occurred.

Medical Bills

Singh should be awarded costs for medical bills which will include the cost of the physical therapy. Even though Singh does not attend all of his appointments, he is entitled to medical costs.

Lost Wages

The jury should award Singh lost wages because he can no longer drive for six days a week due to the injuries he sustained from the negligence. Singh was making a substantial amount of money that caused him to enter into negotiations for more trucks. The injuries he sustained caused him to reduce days worked and not transport loads that require a special permit.

Future Lost Wages

Singh should get future lost wages because Singh will not be able to make the same amount he did as when he was healthy. Singh was in negotiations to buy two additional trucks which would produce more income, but cannot do it because he cannot afford it due to the injury.

Expectancy Damages

Singh should be awarded expectation damages due to the fact his business was growing and was expecting a profit from his business. With the addition of two trucks and two drivers there was an expectancy of more income. Expectancy damages require that damages be concrete and there can be no speculation. Here, Singh does not know how much his expectancy damages would be.

Reliance Damages

Reliance Damages can be used when expectation damages are uncertain like in this case. Reliance damages will put Singh back to where he was before this accident occurred.

Consequential Damages

Damages to put plaintiff back as if Tort had not happened. Here, Singh is entitled to consequential damages because he

Special Damages

Pain and Suffering

Singh should be awarded pain and suffering because he was injured in the traffic accident and suffers while he drives his truck. The pain and suffering has reduced the amount of money made and driving hours.

Incidental Damages

Incidental Damages provide for any costs associated with the traffic accident. Here, Singh likely had fuel costs to attend therapy sessions along with other costs. the jury should award these costs.

Defenses

Mitigation of Injury

A person has duty to mitigate his injury Jones will assert that Singh made his injuries worse by not attending all of his physical therapy appointments, and because of that Singh is unable to work like he used to. Jones will argue that even though he crashed into Singh, the physical therapy would have helped Singh get back to work pain free.

Singh vs. Flying Heart

Negligence

Flying Heart has not removed a beer sign that obstructs the view of other drivers. There has been other traffic accidents before due to the sign, and due to negligence, Flying Heart can be found negligent.

General Damages - Property Damage

A person whose property has been destroyed is entitled to general damages.

Here, Singh's Truck and Trailer were damaged in the traffic accident, the court will determine the value by determining the Fair Market Value of the truck and trailer minus the difference for the Damages. The jury should award specific damages for the truck and trailer due to Flying Heart's Negligence.

General Damages - Compensatory Damages

Compensatory Damages put a person back in a position as if the tort had not occurred.

Medical Bills

Singh should be awarded costs for medical bills which will include the cost of the physical therapy. Eventhough Singh does not attend all of his appointments, he is entitled to medical costs.

Lost Wages

The jury should award Singh lost wages because can longer drive for six days a week due to the injuries he sustained from Jones. Singh was making a substantial amount of money that caused him to enter into negotiations for more trucks. The injuries he sustained caused him to reduce days worked and not transport loads that require a special permit.

Future Lost Wages

Singh should get future lost wages because Singh will not be able to make the same amount he did as when he was healthy. Singh was in negotiations to buy two additional trucks which would produce more income, but cannot do it because he cannot afford it due to the injury.

Expectency Damages

Singh should be awarded expectation damages due to the fact his business was growing and was expecting a profit from his business. With the addition of two trucks and two drivers there was an expectancy of more income. Expectancy damages require that damages be concrete and there can be no speculation. Here, Singh does not know how much his expectancy damages would be.

Reliance Damages

Reliance Damages can be used when expectation damages are uncertain like in this case. Reliance damages will put Singh back to where he was before this accident occurred.

Consequential Damages

Damages to put plaintiff back as if Tort had not happened. Here, Singh is entitled to consequential damages because he

Special Damages

Pain and Suffering

Singh should be awarded pain and suffering because he was injured in the traffic accident and suffers while he drives his truck. The pain and suffering has reduced the amount of money made and driving hours.

Incidental Damages

Incidental Damages provide for any costs associated with the traffic accident. Here, Singh likely had fuel costs to attend therapy sessions along with other costs. the jury should award these costs.

Defenses

Mitigation of Injury

A person has duty to mitigate his injury Jones will assert that Singh made his injuries worse by not attending all of his physical therapy appointments, and because of that Singh is unable to work like he used to. Jones will argue that even though he crashed into Singh, the physical therapy

Punitive Damages

Here, Flying Heart has not moved their sign and knows about the prior accidents. This should malice and Singh should get Punitive damages due to their negligence.

Sorry Ran out of time

END OF EXAM
