

Monterey College of Law

REMEDIES

Spring 2025

Prof. C. Nannini

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.

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Essay Question 1

Chris is a recent graduate of the Pacific Automotive Academy, a prestigious school for classic and exotic car specialists. Chris works as a consultant for wealthy car collectors seeking rare and high-profile vehicles.

Chris' first commission for the Carmel Corvette Museum ("Museum") was to find any one of the three original Corvette "Stingray Fury" cars featured in the cult action film "High Octane: Fury Route." Museum agreed to pay as much as \$600,000 for one of the Corvettes, and to pay Chris \$120,000 upon acquisition. The cars are rare and held by private collectors, and none had been on the market in recent years.

Chris tracks down Sam, a private collector who owns the three Corvettes. During a visit to Sam's property, Sam shows Chris the cars and confirms their authenticity. After some negotiations, in which Sam expressed offhandedly how proud he was that he only sold to private collectors, Sam orally agreed to sell one of the Corvettes to Chris for \$400,000. Chris agreed that, as soon as he could make the selection, he would transfer the purchase money into Sam's bank account.

Chris immediately called the curator at Museum, who told him to select the car that made the first appearance in the movie, and the curator immediately caused Museum's bank to wire-transfer \$400,000 into Sam's account to cover the purchase.

The next day, when Chris went to tell Sam which Corvette he had selected and to pick it up, Sam declined to go through with the sale. Sam accused Chris of deceit, saying it was only when he learned that the money for the purchase had come from Museum that he realized that the car would no longer be held privately. Sam tendered to Chris a certified check, which he had signed and drawn from his bank account, refunding the \$400,000. In the notation line of the check, Sam had written, "Refund on first of Stingray Fury cars."

Chris refused to accept the check and insisted on getting the Corvette. He explained that he had not disclosed his principal's identity because he was bound by confidentiality and that, unless he could deliver the car to Museum, his budding career as a car acquisition agent was over. Sam told Chris, "That's too bad. Our contract wasn't in writing, so you can't force me to sell the car. Besides, you deceived me about why you wanted to buy it."

Can Chris obtain specific performance of Sam's agreement to sell Chris the car? Discuss.

Essay Question 2

David and Peter own neighboring parcels of land in a residential community in California. David's property lies behind Peter's and is not accessible from the main road except by using a paved driveway that crosses the side of Peter's land. The driveway is subject to a recorded non-exclusive easement in favor of David, making David the dominant tenement holder and Peter the servient tenement holder.

Forty years ago, Peter planted a row of Italian Cypress trees on both sides of the driveway, entirely within his own property. The trees were intended to enhance privacy, reduce dust, and create an aesthetic barrier between his yard and the shared driveway. Over the years, the trees grew tall and dense.

During the three years David has lived on the property, Peter had allowed David to prune the cypress trees on occasion to prevent them from encroaching onto the paved portion of the easement. David claims Peter had "no problem" with previous tree work and thought Peter would not object this time either.

In addition, David has spent time and money maintaining the gravel surface of the driveway, periodically replacing worn or displaced gravel to preserve a smooth and usable surface. He believed this entitled him to make reasonable improvements for safety and access.

Recently, David claimed the trees were "clogging the line of sight" and made using the driveway "dangerous and annoying." Without notice, David hired a landscaping crew, entered Peter's property, and cut down all 100 trees—50 on each side of the driveway. Peter arrived home to find the felled trees stacked in a pile. David told Peter, "Your trees were an eyesore, and I had the right to clear them."

Additionally, David had removed an old wooden fence running along the left side of the driveway. The fence bordered a neighboring property and only extended about halfway from the main road to David's home. Peter had erected the fence decades ago as a decorative boundary.

Peter was devastated. He had invested in the trees as part of the original landscaping design for his property, and the mature cypress trees were unique in their shape and age. Peter had no intention of selling his property but stated that the trees were an essential part of his family's enjoyment of their home. He had recently declined a \$2 million offer from a prospective buyer.

Peter immediately demanded that David replace the trees and restore the privacy barrier. David refused, stating that Peter "can always plant new ones."

Peter now seeks legal advice and wants to pursue all possible remedies.

Discuss Peter's remedies and David's defenses.

(Note: do not discuss specific California statutes such as Trespass to Timber or Damage to Timber.)

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Essay Question 3

Jessica is an art curator and collector specializing in Native American pottery. She had a long-standing romantic and business relationship with Thomas, a prominent collector who shared her passion and often collaborated with her on acquisitions. They never married but lived together for over a decade in a home they jointly renovated.

Three years ago, Thomas told Jessica that he wanted to “officially recognize her” for her years of work and partnership and said he would buy a historic black-on-black Pueblo pottery collection in her name. This distinctive style of Puebloan pottery features matte black designs painted on a polished, jet-black surface. The pottery looks very exquisite, and it is a highly sought-after style of pottery. Jessica found a seller and negotiated the price—\$1.2 million—for 60 pieces. Thomas agreed to fund the purchase and said, “This collection belongs to you now.” He wired the money directly to the seller, who then delivered the pottery to their shared home.

The pieces were registered in Thomas’s name for “expediency,” and because Jessica’s credit history made escrow complicated. However, Jessica catalogued and curated the entire collection, arranged for its display in national museums, and maintained detailed provenance records in her name. The couple told friends and colleagues that the collection “belonged to Jessica.” For years, she managed the collection as its owner and even refused offers to purchase individual pieces, stating they were not for sale.

After the couple separated last month, Thomas changed the locks and sent Jessica a letter stating that she was “a guest in his home,” that she “had no legal interest in the pottery,” and that he would soon be selling the collection to a private museum in New Mexico for \$3 million.

Jessica is devastated. She immediately demands return of the collection, or that it be held in trust until ownership can be resolved. Thomas refuses.

Jessica now seeks legal advice to recover the pottery or secure its value. Discuss.

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Question 1 Solution

1. Obtaining Specific Performance

Can Chris obtain specific performance of Sam's agreement to sell Chris the Corvette?

Determining Which Law Governs

Contracts for the sale of goods are governed by Article 2 of the UCC. Goods are all things moveable at the time they are identified to the contract. This contract is for the sale of a Corvette. A Corvette is a moveable good, and thus, this contract is governed by the UCC.

Specific Performance

When a court orders specific performance, it is commanding a contracting party to perform that which he promised to perform under his contract with another. As a result, the injured party gets the benefit of actual performance, rather than just its equivalent in money damages. This remedy is available only if: 1) there is a contract between the parties with definite and certain terms; 2) the plaintiff has already performed or is ready and able to perform; 3) the legal remedy is inadequate; 4) the court can feasibly enforce the order; and 5) the defendant has no defenses.

Mutual Assent

A contract is a legally enforceable agreement generally based on mutual manifestations of assent and supported by consideration. While a contract often consists of an offer and acceptance, there can be the requisite manifestation of mutual assent even though neither an offer nor acceptance can be identified. The facts state that Sam agreed to sell to Chris any one of three Corvettes that Chris selected for \$400,000. The facts also state that Chris agreed that as soon as he made a selection, he would transfer \$400,000 into Sam's account. These facts show that there was mutual assent even though the precise offer and acceptance cannot be identified. Moreover, the terms, including the quantity term (one) are certain and definite. Although the particular Corvette was not identified, allowing a person to specify an item within a reasonable range of choices (here, three) is sufficiently definite to result in a contract.

Consideration

Consideration is a bargained-for exchange involving legal value. A contract requires consideration on both sides. Here, Sam agreed to provide the Corvette selected in exchange for \$400,000 from Chris; thus, there is consideration on both sides of the agreement. Because there is an agreement based on mutual assent and supported by consideration, there is a contract.

Chris's Performance

To receive specific performance, the plaintiff must: have fulfilled all of his conditions under the contract (i.e., already performed); be ready, willing, and able to perform; or be excused from performing. Here, Chris' only duty under the contract was to deposit \$400,000 into Sam's account. The \$400,000 was wired to Sam's account the day the agreement was reached. Thus, Chris has fully performed.

Inadequacy of Legal Remedy

Generally, a court will order specific performance only if the legal remedy (money damages) is inadequate. The legal remedy is usually considered inadequate when the goods are rare or unique, i.e., the plaintiff would not be able to buy replacement goods with a monetary recovery. Here, the property involved is one of the "Stingray Fury" Corvettes. Therefore, it would be impossible to buy another one exactly like it. Even similar Corvettes are rare and have not been on the market in recent years. Therefore, Chris should have no trouble demonstrating that the legal remedy is inadequate.

Feasibility of Enforcement

There should be no problem with the court's ability to enforce an order for specific performance here. In a sale of goods contract, a common feasibility problem is indefinite contract terms. As discussed above, that is not a problem here. Chris has selected the Corvette that made the first appearance in the movie and has paid the agreed-upon price. The court merely must order Sam to transfer title to the Corvette.

2. Sam's Defenses

Statute of Frauds

To be enforceable, a contract for the sale of goods priced at \$500 or more must be evidenced by some writing, signed by the party to be charged, that indicates that a contract has been made and specifying a quantity term. It need not be a formal written contract. In fact, a receipt, a letter, or even a check with a memo can constitute a sufficient writing. Here, Sam is the party sought to be bound to the contract. The refund check with notation that it was a refund on the first of Stingray Fury cars, which was

signed by Sam, likely will be deemed a sufficient writing to satisfy the Statute of frauds. It indicates that there was an agreement concerning the sale of one particular Corvette, for which he is attempting to issue a refund. Therefore, Sam is unlikely to succeed with this defense.

Mistake

When both parties entering into a contract were mistaken about existing facts relating to the agreement, the contract may be avoided by the adversely affected party if the mistake concerns a basic assumption on which the contract is made, the mistake has a material effect on the agreed-upon exchange, and the party seeking avoidance did not assume the risk of the mistake. Here, Sam was arguably mistaken about Chris' status, but Chris was not mistaken about anything. Thus, there was no mutual mistake.

If only one party was mistaken about facts relating to the agreement, the contract is voidable by the mistaken party only if the mistake had a material effect on the exchange, the mistaken party did not bear the risk of the mistake, and the non-mistaken party knew or had reason to know of the mistake.

Here, Chris knew of the mistake as to his identity as an agent of Museum because Sam mentioned that he only sold to private collectors. However, the mistake did not have a material effect on the agreed-upon exchange. Sam agreed to sell the Corvette at the price he wished to get for it. The Corvette appears to be worth that amount. The mistake did not make the exchange more advantageous to one party and less advantageous to the other party. Chris may argue that the mistake is one of a collateral, not material, fact. Chris will also argue that Sam bore the risk that Chris was acting on behalf of another party. Sam never even inquired. Finally, relief based on unilateral mistake is usually granted only in cases of computational errors. That was not the case here.

Misrepresentation

Misrepresentation, a false assertion of fact, is a valid defense to specific performance if the party justifiably relied on the misrepresentation. However, nondisclosure without concealment is usually not misrepresentation. A party is not required to tell the other party everything he knows, but if the nondisclosure is material or fraudulent, the contract is voidable for misrepresentation. Here, Chris merely failed to disclose that he was acting on behalf of Museum. He did not attempt to conceal that fact from Sam. Thus, to succeed, Sam would have to prove that the nondisclosure was material or fraudulent. Because the nondisclosure had nothing to do with the Corvette itself or its value, it is unlikely to be considered material. In addition, nothing in the facts suggests that Chris was intentionally misleading Sam, so the nondisclosure is not fraudulent.

Moreover, special rules have evolved concerning the concealment of a principal's identity. If an agent fraudulently conceals the identity of the principal, the contract is not

specifically enforceable, and the third party may rescind the contract. However, this rule applies only when the agent has made an affirmative misrepresentation. Here, Chris made no such misrepresentation. He merely failed to disclose that he was acting on Museum's behalf.

Breach of Duty of Good Faith

Article 2 requires all parties to a sale of goods contract to act in good faith, which means acting honestly and observing reasonable commercial standards of fair dealing. Again, since the nature of Chris's status is unlikely to be considered material in terms of the bargain, Chris's nondisclosure would not be a breach of the duty of good faith and fair dealing.

Unclean Hands

Because specific performance is an action in equity, equitable defenses apply. Unclean hands are a defense that arises when the plaintiff is guilty of some misconduct in regard to the same transaction that is the basis of their action against the defendant. Sam will argue that Chris's failure to disclose that he was acting on behalf of Museum amounted to misconduct. The same arguments with respect to misrepresentation apply. Chris did not have a duty to disclose that he was acting as an agent for Museum, he did not set out to mislead Sam, he never made any untrue statements about his status, and he seems to have been unaware of Sam's reluctance to sell to museums until they began negotiating. Therefore, it seems unlikely that a court would find that Chris came to the court with unclean hands.

In conclusion, Chris should be able to obtain specific performance of the contract, and the court should order Sam to transfer the Corvette to Chris.

REMEDIES

Question 2 Solution

1. Peter's Potential Remedies

Trespass

Under common law, trespass is an intentional physical invasion of another's real property without permission or legal right. Even a partial entry, or exceeding the scope of a lawful easement, constitutes a trespass.

Here, David holds a non-exclusive easement over the driveway, which gives him a right to reasonable access to his property but does not permit alteration or destruction of the servient tenement's landscape. The cypress trees were planted entirely on Peter's

property and did not obstruct David's passage. David also removed a fence on Peter's land without consent. Although David had permission in prior years to prune encroaching branches, he exceeded this scope by cutting down 100 mature trees and dismantling a permanent structure.

Therefore, David trespassed by physically invading Peter's land and removing property beyond his easement rights.

Conversion

Conversion is the wrongful exercise of dominion and control over the personal property of another. Once trees are severed from the ground, they become personal property.

Here, David caused the trees to be cut and stacked in piles, intending to discard or destroy them. Although David may claim ownership due to improvements on an easement, these trees were not part of the easement's functional operation. Their value and placement show that they remained Peter's property even after removal.

Thus, David committed conversion by asserting control over Peter's personal property.

Destruction of Property / Fence Removal

Unauthorized dismantling of a fixture or improvement on another's land can support a separate claim for property damage or nuisance.

In this case, David removed an ornamental fence that Peter installed as a boundary between his land and a neighboring property. The fence did not interfere with the easement and was outside David's legal rights.

Therefore, Peter may seek damages for the wrongful removal of the fence.

Compensatory Damages

Under common law, compensatory damages are awarded to restore the plaintiff to the position they would have occupied absent the harm. For real property destruction, courts may award either (1) diminution in market value or (2) the cost of restoration, whichever better serves justice.

Here, the trees had aesthetic, environmental, and privacy value. Peter had declined a \$2 million offer and stated the trees were integral to his family's enjoyment of their home. Because the trees are not easily replaced and had unique characteristics due to their age and placement, Peter may recover restoration damages. Replanting mature trees may be expensive but justified due to the willful nature of the harm.

Additionally, Peter may claim incidental damages, such as expenses incurred in mitigating the harm or redesigning the landscape.

Therefore, Peter is likely entitled to restoration damages.

Emotional Distress Damages

Generally, emotional distress is not recoverable in property damage cases unless the harm occurred to a residence and involved willful or malicious conduct.

Here, the property was Peter's home. The destruction was willful and invasive, and courts have allowed recovery for mental suffering in similar circumstances where a plaintiff's home was targeted.

Thus, Peter may be entitled to emotional distress damages.

Nominal Damages

Nominal damages may be awarded when a legal right is violated, even if the plaintiff suffers no measurable harm.

Even if courts deem Peter's financial harm minimal, he may recover nominal damages to vindicate his property rights.

Punitive Damages

Punitive damages may be awarded where the defendant acted with malice, oppression, or fraud.

David acted intentionally and without warning. His statement—"Your trees were an eyesore"—demonstrates a personal motive, not a functional necessity. Further, his conduct ignored the limited scope of his easement and prior custom.

Therefore, punitive damages may be awarded to deter future misconduct.

Restitution

Restitution is an equitable remedy that restores to the plaintiff the value of benefits wrongfully obtained by the defendant.

Here, David removed and took control of the felled trees. If they retain any value as timber or mulch, Peter may seek restitution based on unjust enrichment. Alternatively, he may bring an action for replevin if the trees remain identifiable and have not been disposed of.

Thus, restitutionary recovery may supplement compensatory damages.

Permanent Injunction

A permanent injunction is appropriate where legal remedies are inadequate and future harm is likely. The court will evaluate:

- Inadequacy of legal remedy
- Feasibility of enforcement
- Protectable interest
- Irreparable harm
- Balance of hardships

Here, Peter's right to exclusive use of his land (subject to the easement) is protectable. Legal damages may not deter further encroachment, and David's past conduct suggests he may repeat the trespass. The court can feasibly prohibit David from entering the servient property beyond the easement's path or removing structures.

Therefore, a narrowly tailored permanent injunction is likely appropriate.

Mandatory Injunction (Tree Replacement)

Courts are cautious in granting mandatory injunctions requiring affirmative acts. Such relief may issue where:

- The harm was willful
- Legal damages are inadequate
- The order is specific and enforceable

Here, ordering replanting of 100 mature trees may be difficult to supervise and costly. However, given David's willful conduct, Peter could argue that such extraordinary relief is justified.

Thus, a court may consider a mandatory injunction but is more likely to award restoration damages.

Declaratory Relief

Declaratory judgment is available to clarify legal rights and obligations where an actual controversy exists.

Here, the dispute centers on the scope of David's easement. Peter may seek a declaration that David's rights do not include removing trees, fences, or altering features not obstructing access.

Thus, declaratory relief may prevent future conflict.

2. David's Potential Defenses

Consent / Course Of Conduct

Where the plaintiff consents to the conduct, there is no actionable trespass or tort. Past tolerance may establish a limited implied license.

David had pruned the trees in prior years with Peter's consent. However, those actions were limited and specific. Wholesale destruction far exceeds prior conduct.

Thus, prior consent to pruning does not justify tree removal.

Scope Of Easement

An easement grants the holder limited rights to use another's land for a specific purpose. A dominant tenement holder may make necessary repairs and engage in maintenance but may not unilaterally expand or alter the servient estate.

Here, David replaced gravel—well within easement rights. However, felling trees and removing fences located outside the driveway's paved boundaries exceed reasonable maintenance.

Therefore, David exceeded the easement's scope.

Unclean Hands

A party seeking equitable relief must come with clean hands. If the plaintiff engaged in bad-faith conduct, the court may deny relief.

David may argue Peter created a nuisance by planting trees too close to the driveway. But there's no indication the trees impeded access. Unless Peter deliberately interfered with the easement's use, this defense fails.

Thus, unclean hands is unlikely to bar equitable remedies.

Laches

Laches bars equitable relief where the plaintiff unreasonably delayed in asserting rights, and the delay prejudiced the defendant.

Here, Peter acted immediately upon discovering the harm. There is no delay.

Therefore, laches is not a viable defense.

Mitigation

A plaintiff must take reasonable steps to mitigate damages. Failure to do so may reduce recoverable amounts.

Peter promptly confronted David and sought legal recourse. There is no indication of failure to mitigate.

Thus, mitigation should not reduce Peter's damages.

Conclusion:

Peter has strong claims for trespass, conversion, and destruction of property. He is likely entitled to compensatory and possibly punitive damages, and may also seek restitution or replevin. Injunctive and declaratory relief are both likely appropriate, while a mandatory injunction to restore the trees is less certain. David's defenses are unlikely to defeat liability or equitable relief.

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0/1

1) Can Chris obtain specific performance?

Identify the underlying Cause of Action

0/5 Governing Law - UCC v. Common Law.
In the present case, we are dealing with a breach of contract.

Valid Enforceable Contract

In order to determine the rights of the parties, we must first determine whether a valid, enforceable contract has been formed. A valid and enforceable contract consists of an offer, acceptance of the offer, and is supported by adequate consideration.

+4/4
+5/5

Sam and Chris entered into an oral agreement, wherein Sam agreed to sell one of the Corvettes to Chris for \$400,000. Chris was in accordance with Sam's offer to sell one of his prized Corvettes. Chris agreed to purchase the vehicle as soon as he was able to make his selection and then would follow that with a transfer of the purchase money into Sam's bank account. There exists a valid offer, the sale of the Corvette, an acceptance, and adequate ^{consideration}, the exchange of the vehicle for \$400,000.

In the present facts, we have a valid, enforceable contract.

Breach of Contract

A contract is breached when a material term is not fulfilled as the parties agreed upon. Here, Sam breached the agreement he entered into with Chris when he failed to deliver possession of the Corvette after having received payment from Chris, \$400,000.

Legal Remedies

A legal remedy is monetary compensation that aims to compensate an injured party for their loss. In order for an injured party to recover a legal remedy, they must establish that the harm caused to them was foreseeable, unavoidable, and certain, which stemmed from the wrongdoing, or in this case, the breach of contract.

Chris will argue that he will not be made whole by monetary damages alone. Enforcement of the contract's terms will make him whole, as the item he seeks to recover, is not easily replaceable and money cannot make up for the failed or deficient performance.

+3/3

+4/4

Legal remedies are inadequate relief in this case. Chris will seek to recover an equitable remedy, specific performance.

Equitable Relief

A party may obtain an equitable remedy, such as specific performance, when monetary damages are inadequate to make an injured party whole. In determining whether an equitable remedy is appropriate, the court will apply the IFPIB framework. Which is discussed as follows:

IFPIB

+1/1 **Inadequate legal remedy:** In order for an equitable remedy to be granted, money damages alone is inadequate compensation to make an injured party whole for their loss. The relief to be sought must be in equity.

Analyze as you proceed

Feasibility: The court will grant an equitable remedy provided that enforcement of the relief is not detrimental to the court. If the court does not need to needlessly supervise enforcement of the equitable remedy, then it may not be an appropriate remedy for the court to grant.

+6/6 **Parties:** In order for an equitable remedy to be granted, the identity of all the parties needs to be known, that way it can be determined who the enforcement is directed to and who will be the party benefitting from the court's order.

Irreparable harm: An equitable remedy will be granted if the party seeking equitable relief will suffer an irreparable harm in the event the court decides to not grant a remedy in equity.

Balance the hardship: Lastly, the court will analyze whether enforcement of an equitable remedy will unnecessarily burden the defendant and unjustly benefit the moving party.

If the IFPIB framework is satisfied, the court will grant an equitable remedy. Chris, in particular, is seeking specific performance of the contract's terms that he entered into with Sam for the purchase of the rare, one of a kind Corvette for \$400,000.

Specific Performance

+1/1 Specific performance is an equitable remedy which compels a party to fulfill a contractual obligation when money damages alone are inadequate compensation. Specific Performance is typically applied in cases where the subject matter of the case, of the contract, is either unique or not easily replaceable. In

particular, this may include property such as land, real property, or pieces of specific property that is rare, one of a kind, or holds incredible sentimental value.

Chris' objective is to be made whole. The court will have established that the award of any monetary damages will be inadequate to make Chris whole. Chris will only be made whole by the performance of the agreed upon purchase of the Corvette.

To grant specific performance, the court will apply an analytical framework: BKCIFM

BKCIFM

Balance of the Hardship: The court will issue an order compelling specific performance if there is a balancing of interests. If ordering specific performance would unduly affect one party and unjustifiably benefit the claimant, then the court will not enforce specific performance of the contract.

Chris will argue that the court's order for specific performance would not unduly burden either party or put them in any lesser position. If the contract's terms are enforced, Sam is paid for the fair market value of the Corvette, as he originally agreed upon, and the Museum, and Chris, will obtain the benefits that they reasonably expected to have received in the event of a successful sale. Chris would be adequately compensated by the Museum for his role in the acquisition of the vehicle, and the Museum will have a new vehicle to proudly display. Enforcement of the contract's terms would not unfairly benefit one party over the other, or burden the other.

Sam is likely to argue that performance of this contract would affect him because of his great pride in only selling to private collectors, however, this is not a factor that would move the needle for the court. Regardless of whether Sam agreed to sell to a private collector or to the museum, he would still be receiving the fair market value for the vehicle.

Material Breach of Contract

Sam's failure to deliver the Corvette to Chris after the parties had agreed to the sale and payment had been issued, was a material breach of the agreement. Chris' remedy here is enforcement of the contract.

Certain and Definite Terms

In order for a contract to be valid, there needs to be an adequate offer which contains terms that are certain and definite: parties, subject matter, time for performance, and price. All of four are present in

the current offer that the parties agreed to. Chris agreed to purchase the Corvette from Sam, a rare one a kind not on the open market Corvette, after Chris has made his selection of the vehicle payment would be issued, thus completing the offer and acceptance aspects of the contract between Chris and Same.

Most importantly, in determining whether specific performance is an adequate remedy for Chris, the subject matter of the contract must be unique, or not easily replaceable. If the subject matter of a contract is unique or not easily replaceable, as Sam's Corvettes are, then money damages are insufficient to make the non-breaching party, Chris, whole. We must rely on the facts provided to determine whether the subject matter of the transaction constitutes as unique or one of kind. We are told that Corvette that Chris purchased for the museum is one of three vehicles featured in a cult action film, "High Octane: Fury Route." The vehicles in Sam's possession are rare and held by private collectors and had not been on the market in recent years. These facts help illustrate the unique and not easily replaceable nature of the subject matter of this agreement. Chris, and the museum, do not want money, they want the feature film Corvette to display to car collectors who are interested in rare and high-profile vehicles.

Irreparable Harm

Another element that the court must establish prior to issuing an order for specific performance is to determine whether Chris, the party seeking specific performance on the contract, would suffer an irreparable harm if not granted equitable relief.

Chris will argue that he will suffer irreparable harm if the terms of the contract are not fulfilled by the court's order for specific performance because he would not receive the \$120,000 compensation from the museum for acquiring the sought after vehicle, and his budding career as a car acquisition agent would be irreparably affected. By not securing the vehicle the museum hired him to acquire, Chris will not receive payment for his work and his reputation as a consultant for wealthy car collectors will be adversely affected because Chris may not receive further opportunities as a car acquisition agent if he is unable to secure vehicles his employers seek.

Feasibility

An order for specific performance needs to be feasible for the court to enforce. The court neither has the time nor the resources to be unnecessarily supervising completion of a contract's terms. Here, it is highly likely that the court will determine that compelling Sam to deliver possession of the vehicle, after

receiving payment, as agreed to, will be feasible since all that is remaining to do is delivery of the vehicle to Chris or the museum. Sam has already received payment, so the court does not need to supervise the museum or Chris' completion of their end of the bargain.

+4/4 ———— Performance by Chris
Mutuality in the Claimant's ability to Perform

The claimant, in this case Chris, needs to be willing and able to perform his end of the contract. The party seeking specific performance must have performed on the contract, fulfilling their obligations, or is ready and able to perform upon the court's order of specific performance on the other party.

Chris has already tendered payment to Sam. Chris' end of the contract has been fulfilled, he clearly satisfies the requirement for the claimant to be willing and able to perform on the contract.

Court Order of Specific Performance

+1/1
In the event that the court determines that specific performance is an appropriate remedy, because there has been a breach of a valid enforceable contract, of which, the terms of the contract make it so that money damages would be inadequate compensation to the injured party, then Chris should obtain an order compelling specific performance on the contract. The court will have determined that, in the event Sam is able to forego his contractual obligations, Chris would suffer irreparable harm in the form of loss of compensation and loss of business opportunities in his career as a car acquisition agent. The balancing of the hardships would reveal that neither Sam nor Chris would be unduly burdened by full performance. Sam will receive the fair market value price for the vehicle, as if he would have originally sold it to a private collector, and Chris and the museum would have received their sought after compensation, business success, and vehicle for displaying to wealth car enthusiasts, respectively.

~~XXXX~~
Sam's Argument

Rescission

A contract will be void, thus eliminating the duty to continue contractual obligations, if the terms of the contract contain error brought on by fraud, deceit, or mistake.

Sam will seek to rescind the contract because Chris failed to disclose to him that he was purchasing for a museum and not for a private collector. If Sam is able to succeed on this claim, then the contract's terms will be void and the sale will not be enforced. However, the court will likely conclude

+2/7
Misrepresentation - Rule?
Analysis?

that the omission of the identity of the purchaser did not have a material alteration to the outcome of the agreed upon terms of the contract. Sam still sold the vehicle at the same price he would have sold it to a private collector.

+1/1

Conclusion

It is likely that Chris will be able to obtain specific performance on the contract because money damages would be inadequate compensation to make the injured party, the museum and Chris whole, because the nature of the subject matter of the contract is not easily replaceable and money alone cannot compensate for failed performance. Additionally, the court is likely to easily enforce the fulfillment of the sale since the only remaining requirement to full completion of the contract is delivery of the vehicle. Lastly, the court will find that, in the event Chris is unable to obtain specific performance, he will suffer irreparable harm, financially and in his career. The court will likely issue equitable relief in the form of specific performance.

0/7 statute of Frauds

+0/7 mistake

-3 breach of duty of Good Faith

-6 unclear hands.

89

Well organized, competent response.
You spotted key issues. You could improve
by following your rule statements w/ analysis
and deeper your analysis w/ facts from
hypothesis

2) (9)

INTENTIONAL TORTS

4/5

CONVERSION

Conversion is the unlawful exercise or taking of possession of another's chattel, without consent, and with the intention to deprive the owner of its use. The value of the chattel is calculated as the fair market value at the time of conversion.

David is likely to argue that he did not commit conversion because Peter has allowed David to prune the cypress trees on occasion to prevent them from encroaching onto the paved portion of the easement. David claims Peter had "no problem" with the previous tree work

start Peter's argument first - Follow from rule
Peter is likely to argue that David intentionally and unlawfully took possession of Peter's chattel, the 100 cypress trees and wooden fence. Further, that David deprived Peter from enjoyment and use of the cypress trees and the fence when he destroyed them and that he only allowed David to trim them, not erect them completely. *dominant and interfere*

Conclusion: The court is likely to find that David committed the intentional tort of conversion.

TRESSPASS TO LAND

5/5

Trespass to land is the unlawful and intentional invasion onto another's land, without the consent of the owner of the property.

David is likely to deny trespass on Peter's land because there was a recorded non-exclusive easement that listed David as the dominant tenement holder and Peter as the servient; thus, allowing David to freely go onto the paved driveway as he pleases. *but off road?*

Peter is likely to argue that the easement only allows for ingress and egress out of necessity for David to access his property, but that the easement in no way allows for David to veer off of the paved road or trespass onto the surrounding soil, greenery, or the area that the old wooden fence was placed on the side of Peter's driveway.

Conclusion: The court is likely to find that David trespassed onto his land when he veered off

4/5 the easement and strayed from the explicit use for ingress and egress.
Fence removal / destruction of property
LEGAL REMEDIES
- Developer - Fence removal

Legal remedies provide monetary damages to an injured party. Legal remedies include compensatory damages, with the goal to compensate the injured party, placing them to the position they would be in had the D's tortious act not been committed, but not to overly compensate. Compensatory damages in torts include general damages and special damages. Nominal damages are for instances where the plaintiff suffered no actual injury, they are usually \$1 or some other token amount. Punitive damages are for punishment of malicious and intentional reckless conduct, they are not ordered in k and negligence cases. There is a duty to mitigate all legal remedies and there must be an attempt to not incur any more excessive damages. Additionally, all legal remedies must be foreseeable, unavoidable, and certain (not merely speculative).

COMPENSATORY DAMAGES - GENERAL AND SPECIAL

SPECIAL DAMAGES

7/8. → *Brief diminished v. restorated*
Special damages can be calculated with certainty by looking to receipts, medical bills and other evidence like loss of wages.

Peter may argue that he is owed special damages to compensate him for the cost that he put into growing and maintaining the cypress tress as well as for putting up the wooden fence. Peter may also argue that he is owed compensation for any out of pocket expenses he may have incurred as a result of needing to seek some form of counseling for emotional distress.

Conclusion: If Peter is able to provide receipts and medical bills that can accurately account for expenses then the court may find that he is entitled to special damages.

GENERAL DAMAGES

General damages are non-economic damages that are indirectly caused by D's tortious act. General damages are not tangible and include injuries such as emotional distress and pain and suffering. Future damages do not need to be proven, only shown that they are likely. Special damages are economic damages that are directly caused by D's tortious act.

5/7 *Emotional Distress -*
Peter may argue that he has suffered emotional distress from the removal of the 100 cypress trees every time he looks out onto his property. Peter included the trees into the original landscaping design

for his property and the trees were an essential party of his family's enjoyment of their home. The tress provided not only privacy and reduced dust that may be disruptive to him and his family, but Peter also recently declined a \$2 million dollar offer to sell his home. There is no dispute that these unique shaped and mature trees were so sentimental to Peter that the erection of them would be a devastating loss and cause him pain and suffering.

Add showing w/malicious behavior and corrobora

David may argue that Peter could always just grow new trees and that simply erecting trees and an old wooden fence could not possibly cause someone emotional distress. *to trees*

Conclusion: The court is likely to find that after analyzing the money, labor and time that Peter invested into growing the cypress trees they would cause him emotional distress and he is entitled general damages; however, the old wooden fence was only for decoration and is not likely to cause the same emotional distress because it did not serve Peter the same.

OTHER LEGAL REMEDIES

NOMINAL

3/7

Nominal damages are for instances where the plaintiff suffered no actual injury, they are usually \$1 or some other token amount. Nominal damages are commonly used for trespass to land because while no real injury was sustained by P, there was still an intentional act committed.

And Right to property

Peter may argue that there was a trespass onto his land when the cypress trees and wooden fence were erected.

Conclusion: The court is likely to grant nominal damages for the trespass.

PUNITIVE

Punitive damages are for punishment of malicious and intentional reckless conduct, they are not ordered in k and negligence cases. Punitive damages may be twice to three times the amount of the value of the injury.

7/7

Peter may argue that he is pained regarding the erected 100 cypress trees every time he looks out onto his property. Peter included the trees into the original landscaping design for his property and the trees were an essential party of his family's enjoyment of their home. The trees provided not only privacy and reduced dust that may be disruptive to him and his family, but Peter also recently declined a \$2 million dollar offer to sell his home. There is no dispute that these unique shaped and mature

trees were so sentimental to Peter that the erection of them would be a devastating loss and cause him pain and suffering and this sentimental value must have been known by all of his neighbors, especially David who would see how carefully Peter cares for the trees. Therefore, any damage to the trees by David must have been done with malice and intentional recklessness.

David may argue that Peter could always just grow new trees and put up another old wooden fence and that his actions were not with malice or reckless, they were in fact to prevent the trees from encroaching onto the paved road to make it more accessible for both he and Peter.

CONCLUSION: The court may find that David's actions were not negligence, but rather intentional and he acted with such malice and reckless regard when erecting the cypress trees, that a number would be hard to place, but punitive damages are due to deter this sort of behavior.

EQUITTABLE REMEDIES

0

DECLARATORY Relief Expand discussion

Equitable remedies are granted by a court in equity when legal remedies are not adequate. Equitable remedies include restitution with the goal to prevent unjust enrichment. Restitution includes constructive trust which allows for recovery of property via a trustee, an equitable lien which forces the sale of property to return P's improperly used funds by D, replevin which is the return of personal property, and ejectment the force of someone to vacate real property. Other equitable remedies include injunctions (temporary restraining orders, preliminary restraining orders, and permanent restraining orders). All equitable remedies must be analyzed by determining whether legal remedies are inadequate, feasibility, if parties are identifiable, any irreparable injury, and a balance of the interests.

4/7

What about Fencing & wood pile?

Conclusion: The court is likely to find that replevin is not an equitable remedy that could be afforded to Peter because the cypress trees and fence have been destroyed.

8/13

Expand discussion of Fencing / Permanent

5/8

DAVID'S DEFENSES

mandatory

ESTOPPEL

7/7

estop. / course of conduct

Estoppel is a defense that states a party relied upon a promise made by another, to their detriment, and by doing so they were prejudiced by the revocation of the promise.

David may argue that he relied upon the promise of the easement to access his property and that by

Peter allowing the Cypress trees to encroach on the road, it hindered his ability to access his property.

Conclusion: The court is likely to find that estoppel is not a valid defense for David.

7/4 scope of easement *Winter v. Altrano*
UNCLEAN HANDS

Unclean hands is a defense that states that the Plaintiff acted in bad faith in reference to the same transaction and in doing so they also injured the Defendant.

7/4 David may argue that Peter acted in bad faith when he allowed the trees to encroach on the road and therefore acted in bad faith injuring David.

Conclusion: The court is likely to find that unclean hands is not a valid defense for David.

Conclusion: The court is likely to find that Peter may recover remedies under special damages, general damages, punitive damages and nominal damages. David is likely to have no defenses.

Laches.
mitigation

(91)

strong organized response.
You treatment of key legal
issues, particularly trespass,
Compensatory damages
and defense was methodical
well argued
could have provide more depth
to residual damage and
defenses.

90

0/1
1) Can Jessica recover the pottery collection or its value from Thomas

Question Three (Tort) (Contract)

Equitable Remedies: Equitable remedies are appropriate when the legal remedies (money damages) are inadequate to address the harm done to the plaintiff, the equitable relief sought is feasible for the court to oversee and enforce, the identities of the parties are clear and bound by the relief requested, the plaintiff will suffer irreparable harm as a result of the defendant's tortious conduct, and the court sufficiently balances the interests among the parties and with regard to public policy.

Here, Jessica will likely seek equitable relief in the form of replevin, injunctions, and declaratory relief stating that the Pottery collection (Collection) is in fact hers.

Jessica will argue that legal remedies (money) are inadequate due to rare and highly sought after nature of the collection. She will also argue she can reasonably oversee and enforce the return of the collection to her rightful possession. She will also argue the parties are solely her and Thomas. She will argue

that she has suffered irreparable harm both in the loss of a rare and highly sought after collection and the damage to her reputation given that the couple held out the collection as Jessica's to their friends and colleagues. Lastly, the Court will assess whether such relief would place ~~and~~ an undue burden on Thomas that outweighs the benefit conferred upon Jessica.

6/8 ^{conversion}
Replevin: Replevin is a form of legal restitution that requires the return of personal property to its rightful owner when there has been a wrongful with holding by another. *use facts regard Thomas' ~~ownership~~ / control over pottery*

Jessica may seek the return of the collection to her possession if she can show by Thomas words and conduct that she is the lawful owner of the collection.

Temporary Restraining Order (TRO): A TRO is a form of short term emergency relief to maintain the status quo issued before can hold a hearing for a preliminary injunction.

Given that Thomas has expressed his intent to "soon" sell the collection, Jessica

may seek a TRO to bar Thomas from selling the collection before the matter can be litigated. Jessica would have to establish that if the TRO is not granted she would suffer irreparable harm (the loss of the collection) and that she likely to succeed on the merits of the underlying claim.

11/15
~~Preliminary~~ Preliminary Injunction (PI): PIs are a form of equitable relief that are issued before a trial to maintain the status quo. *Analysis of Inadvisability, feasibility, irreparable harm from above*

For similar reasons to the TRO, Jessica may also seek a PI ordering Thomas to return possession of the collection until the matter can be fully resolved. Jessica must show she is likely to succeed on the merits of her claim.

Permanent Injunction (Perm. I): Perm. I's are a form of equitable relief issued after a trial ordering a party to do (mandatory) or not do (prohibitory) something.

Jessica may seek a Perm. I ordering Thomas to return the collection to her rightful ownership.

7/8

Constructive Trust: A constructive trust is a form of equitable relief that requires a party wrongfully in possession of another's property to hold the property in trust for the benefit of the injured party.

Jessica may seek a constructive trust if she can trace the property back to her lawful owner's ownership. This may be difficult given Thomas purchased the collection with his money. The goal is to prevent unjust enrichment.

8/8

Promissory Estoppel: Jessica may seek relief under contract theory if she can show that she reasonably, foreseeably and detrimentally relied on Thomas' promise to purchase the collection for her.

Thomas will argue that his offer to purchase the collection for Jessica was illusory promise or a gift and not supported by adequate consideration.

0/8

Constructive trust: (See above) The aim of a constructive trust in this matter is to prevent Thomas from becoming unjustly enriched by selling the collection for more than twice what it was purchased for.

5/11

GIFT THEORY - rule? Expand w/ Facts of intent & reliance

11/11 Specific Performance: If Jessica succeeds in invoking promissory estoppel as a defense to contract formation (see above) she may seek equitable relief in the form of specific performance.

Specific performance requires that the court ~~balance~~ balance the hardships to ensure that the benefit conferred upon the plaintiff is disproportionate to burden placed upon the defendant. It also requires the court to determine whether there was a material breach of the contract. Thomas will argue that the collection constituted a gift and no contract existed due to lack of adequate consideration (see above).

Specific performance also requires irreparable harm. Jessica will argue that the damage to her reputation as a curator and the loss of a valuable and rare collection constitute irreparable harm. To succeed in requesting specific performance Jessica must also show the court can feasibly oversee and enforce such performance.

This element is clearly met as Thomas need only return the collection to Jessica's

lawful possession. lastly the Court must find that the parties are mutually capable of compliance under the agreement.

Here mutuality may be difficult to show as Jessica has no obligation to perform under such an agreement.

8/8

^{mutuality - No contr.}
The court will likely find that the agreement lacks consideration and rule in favor of Thomas under a Contract theory.

Jessica will likely succeed under a tort theory for conversion of property that was already in her lawful possession.

2/7 Expend w/ rule for Injust Enrichment.

0/8 statute of Frauds

0/7 Unclean Hands - bar equitable relief when Plaintiff engaged in misconduct
- None present by Jessica.

0/8 Laches.

Mutuality/No contract