

MONTEREY COLLEGE OF LAW

**REMEDIES**

Final Examination

Spring 2018

Professors R. Patterson & C. Borges

INSTRUCTIONS:

There are three (3) questions in this examination.

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

### Question 1

Deanna owned a repair shop for farm equipment called Agriculture Mechanics. This repair shop is on two acres of land with a 10-foot-tall chain link fence around the border. Deanna stored farm equipment on the land while it was awaiting repair or waiting to be picked up by the owner after repair. Over the past two years, equipment has been taken from Agriculture Mechanics multiple times during non-business hours. However, Deanna has not hired security officers or made any changes to prevent further thefts.

Caesar took his tractor to Agriculture Mechanics to be repaired. Deanna received the tractor and parked it on the lot while it awaited repair.

Tom, another customer of Deanna, knew of the security weaknesses of Agriculture Mechanics and took Caesar's tractor from the lot. Tom repaired the tractor himself and used it for his own personal business and earned \$20,000. Tom placed \$15,000 of those earnings in a savings account along with \$30,000 he had earned legitimately. Tom then purchased Blackacre for \$40,000.

When Caesar returned for his tractor, Deanna informed him that it had been stolen. On his way home, Caesar recognized his tractor on Blackacre being used by Tom. When Caesar spoke to Tom, he admitted that he took the tractor from Agriculture Mechanics.

What are Caesar's rights and to what relief, if any, is he entitled to from Deanna?

What are Caesar's rights and to what relief, if any, is he entitled to from Tom?

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### Question 2

Susan, a restaurateur, maintains a garden and operates a “farm-to-table” restaurant in a small town. Over the past five years, Susan’s garden met all of the produce needs for her restaurant.

Joan operated an event planning business that needed to relocate due to a change in zoning. Joan purchased land adjacent to Susan’s and built a two-story building and began operating her business that employed 30% of the small town’s workforce. Although unknown to Joan at the time, the building encroached on Susan’s land by about six inches.

Once the building was erected, Susan’s vegetables in her garden were unable to flourish without the sunlight which is now blocked by Joan’s building. As a result, Susan’s costs for vegetables produce have risen and Susan now has to purchase produce from suppliers. In addition, Susan’s reputation has suffered and clients interested in “farm-to-table” meals have begun going to other restaurants. The long-term effect on Susan’s business is incalculable.

Removal and relocation of Joan’s business would be costly and would require Joan to move her business so far away that she would no longer be able to employ people from the small town.

What remedies are available to Susan against Joan, and on what theories of liability are they based?

Question 3

Art and Barbara, an engaged couple together for 13 years, separated. They owned a cat "Felix" together. Felix was as a purebred "Manx" cat, which they had bought two years ago for \$1,000. When they separated in June 2017, they had an oral agreement giving Barbara ownership and custody of Felix and which allowed Art to take the cat for visits, if he promptly returned Felix after each visit. When Barbara asked Art to memorialize their agreement in writing, he told her that "she could trust him" and "he would only visit with the cat and not keep the cat from her."

In October 2017, Barbara left Felix with Art while she went out of town on business for five days. When she returned on October 30, 2017, she was shocked to find Art had vacated the house he was renting and taken Felix with him. In November 2017, Art relocated to a nearby town and entered Felix to compete in the "Purrfect Cat Show." Felix won 1<sup>st</sup> prize of \$20,000. Art used the \$20,000 as a down payment on a new house he purchased in the town. In February 2018 Barbara finally located Art and Felix, but Art refused to return Felix or even speak with Barbara.

Barbara consults you to advise her as to all of her potential actions and remedies and whether she has to choose between them. You need not discuss any issues involving the Statute of Frauds as it does not apply.

**Outline: Question 1**

**Against Deanna**

Remedy for negligence

Bailment

**Against Tom**

Conversion

Damages or Replevin

Constructive Trust

Equitable Lien

**Outline Question 2**

Issues:

Encroachment

Injunction

Damages

Restitution

**Outline Question 3:**

Contract

    Specific Performance

    Balancing

    Breach of K

    Very certain and definite terms

    Inadequate legal remedy

    Feasible

    Mutuality-claimant ready, willing and able to perform

Damages-value of cat

Tort-conversion value of cat

Restitutionary

    Replevin

    Tracing-Disgorge ill gotten gains

    Equitable lien on house

Election of Remedies

    If inconsistent, claimant will choose

Conclusion-Best Remedies-Replevin + Equitable lien on house

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## Question 1

### **Cesar v. Deanna**

#### **Negligence**

Here, Deanna was negligent her handling of Cesar's tractor. She had a duty to keep his equipment safe while in her care. She breached that duty by failing to hire security to protect the tractor when she knew of the theft problems. That breach was the cause of the loss of the tractor. C suffered the loss of his tractor. He will thus sue Deanna for negligence.

#### **Remedies**

Remedies in tort cases are of the following kind: (1) compensatory, (2) replevin, (3) ejectment (all legal), (4) constructive trust (5) equitable lien (6) injunctive relief (all equitable). The purpose of remedies in a tort case are to make the aggrieved party whole by placing them in the position they were in prior to the tort. C must look at all legal remedies first, and if they are not adequate, he can then look to equitable remedies.

Compensatory:

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Compensatory damages are money. They must be foreseeable, unavoidable, causal, and certain. They can be general (common to all p's), special (requiring special knowledge and being specially pled), nominal (vindicating a legal right without actual damages) and punitive (for willful, wanton, and malicious conduct. Here, C could sue for the value of the loss use of his tractor, and the amount he needed to rent a replacement. He would argue that the loss of his tractor was foreseeable because D knew that she did not have a secure property. He would argue that the replacement cause was unavoidable because he did not have a way to mitigate the entire loss of his tractor. He would argue that the damages were certain and not unduly speculative because he could show the amount he paid for a rental tractor and show evidence of any lost profit he may have suffered. He would argue that they were causal because but for the negligence, he would not have suffered the loss. In the event that C wanted the tractor back, however, he would say that these damages were not adequate because the tractor was unique and he had a special attachment to it.

He could also request punitive damages because D's conduct was knowingly reckless. He would argue that she knew that the security was a problem and that she should thus be punished. These punitive damages would be limited to 10 times the amount of actual damages awarded. The court would likely grant them.

Replevin and Ejectment:

Replevin and ejectment are essentially the same remedy with the distinction that replevin applies to chattels and ejectment to real property. They are used to get possession back of a particular good when there is a right to possess and a wrongful withholding. That is the case with C's tractor, however D does not have the tractor and C does not know where it is. For this reason he could not succeed in an action for replevin. And as real property is

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not at issue, neither can he succeed for ejectment. For this reason, these are inadequate. C will now move into the realm of equitable remedies as the legal remedies are not adequate if he wants his tractor back.

### Constructive Trust and Equitable Liens:

Constructive Trust and Equitable Liens are similar— the first applies when the property at issue is entirely the fruit of the P's property, the second when it is only a portion of the P's property. For both of these remedies P must show that there is an inadequate legal remedy (already discussed) they must trace their lost item to the resulting property, and they must be aware of BFP's. Here, neither of these remedies are available against D because D did not take the tractor. She did not take it, sell it, and then buy something else with C's money. For this reason, these remedies are not sufficient.

### Injunctions:

Injunctions can be mandatory (do a certain thing) or negative (don't do a certain thing). There are pre-trial injunctions (TRO's and preliminary injunctions) and there are post-trial injunctions which are permanent. TRO's are ex parte and last for 14 days. Preliminary injunctions last through trial, and require an evidentiary hearing and the posting of a bond. To succeed the P must show that there is a risk of irreparable injury and likelihood of success on the merits. For a permanent injunction the court will look to the following: inadequate legal remedy, feasible enforcement by the court, irreparable injury, balancing of the hardships, and no defenses. Here, there is no such need for this remedy. D is not doing anything with C's tractor which would require an injunction because she does not have it, and does not know where it is.



Conclusion for C v. D:

Here, C would only be able to collect monetary damages from D. None of the other remedies fit because they are not available for the reasons described. He would ask for damages resulting from the loss of its use, pain and suffering, and punitive damages.

**Cesar v. Tom**

### **Trespass to Chattels and Conversion**

Here, T took property that did not belong to him without C's permission and used it for his own benefit. C could sue for the torts of trespass to chattel's and conversion.

### **Remedies**

See general rule statement above.

Compensatory: (see rule above)

Here, C could ask for compensatory damages from T, just as he could from D. He could argue that the loss of use value and the cost for a rental were foreseeable when T took the tractor, that they were unavoidable because the tractor was missing, that they were causal

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because but for the tort they would not have arrived, and that they were certain based on his receipts for rental expenses and lost use. He would also ask for punitive damages since T's acts were knowingly reckless and malicious.

Replevin and Ejectment: (see rule above)

Here, C could seek replevin of the tractor. This would get him his tractor back because he would be able to prove the right to possession and that it was wrongfully withheld. However, because there had been extra profit as a result of the taking, C would say that replevin is not adequate as he would not get the ill gotten gains with that remedy. For these reasons, he would seek equitable remedies.

Injunctions: (see rule above)

Here, C would ask for a pre-trial injunction ordering the return of the tractor until the case was fully disposed of. He would argue that if he did not receive it back he would suffer injury because he could not use the tractor for his work and he would have to pay more for rentals. He would argue that there was a likelihood of success on the merits because T admitted to taking the tractor without permission.

Constructive Trust and Equitable Liens: (see rule above)

What C would really want is an equitable lien. He would not be able to get a constructive trust on Blackacre because it was not purchased entirely with his money. He would only be able to trace part of his money into blackacre and for that reason could secure an

equitable lien. This would give him rights to the value of the land that was a result of his own funds. He would also argue that the 5k that was left in the bank should be returned to him as it was easily traced to that account from the use of his tractor.

Conclusion for C v. T:

C would ask for the tractor back. He would ask for damages that compensated him for the loss of the use of the tractor, reasonable rental fees, and pain and suffering. He would ask for punitive damages. He would then ask for an equitable lien on blackacre, as well as the 5k in the bank account whereby he would disgorge T of his ill gotten gains.

### **Issues with Windfalls**

Tort remedies are not to be used to give the plaintiff a windfall— it is not meant to enrich but to compensate. For this reason, C would not be able to collect loss of use and rental damages from both D and C. He would, however, be able to collect punitive damages from both of them. If C only had one choice, his best bet would lay in pursuing a claim against T.

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Susan (S) v. Joan (J)

## INJUNCTION

A court order that is negative/prohibitive (telling someone not to do something) or mandatory (telling someone to do something). An injunction is an **EQUITABLE** remedy. A court is most likely to order prohibitive injunction because they are easier to enforce.

### PERMANENT INJUNCTION:

#### Irreparable Harm

S will argue that without an injunction requiring J to rebuild or relocate, she will continue to suffer irreparable harm to her garden, as has been demonstrated by the immediate drop in production and her need to purchase other vegetables. Furthermore, her reputation continues to decline, as she is no longer as "farm to tablish" as she would be if she were not buying more vegetables from suppliers.

#### Inadequate Legal Remedy

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S will argue that she has no adequate legal remedy since the long-term effect on her business is "incalculable" and therefore uncertain and impossible to ascertain.

### Feasible

S must show that the order is feasible for the court to enforce.

S's best argument under this factor is that the encroachment is CONTINUOUS without removal, and that the even if a wall of the building could be moved back by six inches, that would not necessarily allow a flood of sunlight onto the garden, and there would be a multiplicity of suits, every growing season, maybe even every time she has to buy produce from someone else. While a mandatory injunction is typically disfavored for the difficulty in overseeing it, S can argue that once the building has been taken down or rebuilt, that it the court will not have to supervise any longer, and it is therefore more like a negative injunction.

### Balancing

Harm to Plaintiff if no injunction versus harm to Defendant and Public if there is an injunction.

Here, the court would look to the harm to Defendant which would result if she had to demolish the building she had built, a huge cost and waste, and the cost involved in moving the business to another location. Also, the court looks to the effect on the public. Since this is a small town, which typically have employ ability problems, and 30% of the town would suddenly be unemployed if J has to move, there is a serious harm to the public. ON the other hand, the harm to S is that she will likely be driven out of business or will dwindle and eek out living, and suffer damage to her reputation - in fact, she may have to stop calling herself "farm to table" - however, it is likely that her business is small since the produce she needed for her restaurant was supplied from a "garden"

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places the plaintiff in the same position he would have been but for the breach. C must show that D caused the damage, that the damage was foreseeable, was unavoidable, and were certain. looks to past loss.

Causation:

But for the nuisance, there would have been no injury.

Here, S can show but for the building the sunlight would come in.

Foreseeable (proximate cause)

The damage must have been foreseeable to a reasonable person, and have a nexus between "but for" cause the interference.

Here, it will be a bit tricky for S. J may not have known that she was interfering with S's use by blocking the sunlight. There is a different amount needed for growing vegetables than for seeing by, etc. Furthermore, she may not have known about S's business.

Unavoidable

A plaintiff has a duty to mitigate damages

Here, S did buy vegetables from suppliers, but she could have purchased them from other small farms, so that her reputation would have continued to be that of a "farm (just not her farm) to table restaurateur; she could have leased a small amount of land on another property to grow her produce.

Certain

Here, the FUTURE damages are "incalculable" but the past damages, the difference between the cost of growing her vegetables and the cost of purchasing them now, at market value, and certain.

#### TRESPASS by Encroachment

Defendant enters land without permission - here by a permanent building six inches -

Since J did not knowingly enroach, the court is most likely to award S the value of the land specifically for the Encroachment.

#### OVERALL CONCLUSION

J would likely pay for past damages for the encroachment ( the value of the land encroached on), and would likely pay damages for S's losses from the nuisance; the court may also order J to pay a sufficient amount for S to relocate her garden, or possibly a mandatory injunction to pay for a greenhouse on S's land to give her the equivalent amount of "growing power."

**END OF EXAM**



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### Question 3

#### Barbara v. Art

#### Breach of Contract

Here, B and A had an oral contract regarding the possession of Felix the cat. Even though the contract was never reduced to writing, it was still the mutual exchange of legal detriment and was thus an enforceable contract. Thus B can sue A for contract breach.

#### Remedies

Remedies in contract cases can be legal and equitable. They include the following: money damages, replevin and ejectment, (all legal) constructive trusts and equitable liens, rescission, reformation, and specific performance (all equitable). In order to get to any equitable remedies, B must show that the legal remedies are not adequate.

#### Money Damages:

Money damages in a breach of contract are meant to give the aggrieved party the benefit of their bargain. This includes the benefits prevented by the breach (expectation damages)

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and the losses sustained in furtherance of the contract (reliance damages.) Also available are damages that are the result of having to deal with the breach. (Incidental and consequential.) Nominal damages are available, but punitive are not. All damages must be foreseeable at the time of the contract, unavoidable, certain, and causal. Here, B could ask for damages: she could ask for the 1,000. dollars that the cat cost. She would argue that this was foreseeable since A knew the value of the cat. She would argue that this was unavoidable as there was not anything about the price she could change. She would argue that they were certain as they had purchased the cat together and A knew how much it cost. She would argue that it was causal— that but for his breach she would not have lost the value of the cat. However, a better route would be for B to actually get the cat back. This would require another cause of action.

#### Replevin and Ejectment:

Replevin and ejectment are essentially the same remedy with the distinction that replevin applies to chattels and ejectment to real property. They are used to get possession back of a particular good when there is a right to possess and a wrongful withholding. Here, B could bring an action for replevin. She would argue that the cat was chattel, that she had a contractual right to possess it, and that A's withholding was wrongful. Ejectment would not apply as the cat is not real property. However, in an action for replevin, A could post a bond under Federal Rule 65 that would permit him to hold onto the cat until the issue was adjudicated. This would make the remedy inadequate. B would now be able to move into the realm of equitable remedies.

#### Constructive trusts and equitable liens:

Constructive Trust and Equitable Liens are similar—the first applies when the property at issue is entirely the fruit of the P's property, the second when it is only a portion of the P's property. For both of these remedies P must show that there is an inadequate legal remedy (already discussed) they must trace their lost item to the resulting property, and they must be aware of BFP's. Here, A took something that belonged to B—the cat. He then entered the cat into the show and won 20k, with which he bought property. B could trace the entire value of the land to the cat, and thus establish grounds for a constructive trust. She would argue that A took the cat wrongfully, then made ill gotten gains with the cat, then purchased land with those ill gotten gains. She would argue that the entirety of the land should be conveyed to her in a constructive trust.

#### Pre-Trial Injunctions:

Injunctions can be mandatory (do a certain thing) or negative (don't do a certain thing). There are pre-trial injunctions (tro's and preliminary injunctions) and there are post-trial injunctions which are permanent. Tro's are ex parte and last for 14 days. Preliminary injunctions last through trial, and require an evidentiary hearing and the posting of a bond. Here, B could ask for a pre-trial mandatory injunction ordering the return of the cat. She would argue that there was a risk of irreparable harm because the cat's affections for her would diminish over time, and that there was a likelihood of success on the merits since she was in the right on the contract.

#### Rescission and Reformation:

Rescission and reformation are equitable remedies whereby a court can dispose of a contract altogether, or re-write a contract to match the parties intent. Here, there would

be no reason for B to request rescission since she is seeking to enforce the contract. As to reformation, she could request that the oral contract be reduced to writing by the court. However, this would be beyond the scope of reformation.

### Specific Performance:

Specific performance is when the court orders the defendant to abide by the contract into which they have entered. This is something that usually involves unique or rare items. The following is considered by the court in ordering specific performance: (1) is there an inadequate legal remedy (2) is enforcement feasible (3) are there definite and certain terms of the contract (4) is there a mutual ability to perform by both parties (5) what is the balance of the hardships (6) are there any defenses.

1. Inadequate legal remedy: Here, B would argue that all legal remedies were inadequate as addressed above. Mainly she would argue that the cat is a unique item and that money cannot compensate for it, and that replevin leaves an avenue for A to retain the cat with a bond.
2. Feasibility of Enforcement: Here, B would argue that enforcement would not be difficult for the court as it would not need to do any ongoing policing of the situation. She would argue that the court could simply give an order and ensure enforcement through its contempt powers. She would argue that the burden would be on her to bring it to the court's attention if A was not complying.
3. Definite and Certain terms: Here, B would argue that, although not written, the terms of the contract were definite and certain. She would argue that all she had to happen was that he could have visits, and he would return the cat. She would point out that these are certainly clear and simple to follow.

4. Mutual ability to perform: Here, B would argue that there are no issues with the mutual ability to perform. She would argue that she was ready and able to keep her end of the bargain if he was ordered to keep his.

5. Balance of Hardships: Here, B would argue that the detriment to her if the court did not order specific performance outweighs the detriment to A if they did. She would argue that she would be emotionally crushed if she did not receive the cat back and that it would make the rest of her life a veil of tears and sorrow. She would argue that the burden on A would not be much—he would still see the cat, and would only need to give it back when he was done with it.

6. Defenses: Here, there could be a potential issue with defenses. Although there are not any equitable defenses (laches or unclean hands) A might be able to raise a contract defense. He could say that the contract was without consideration on B's behalf because she wasn't actually giving anything up in the contract—there was not legal detriment to her. He could also argue that it was unconscionable because he was an emotional ice cream eating wreck at the time he entered into the contract based on the separation.

Conclusion for specific performance:

The court will likely find that, on balance, specific performance is appropriate since the cat is unique and all the other factors are met.

Quasi Contract:

Even if the court went for A's arguments about the invalidity of the contract, B could still bring an action for Quasi-K. Quasi-K is when there is not actually a valid contract, but at least one of the parties proceeded as if there were. When this is so, the court will

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recognize a contract for all purposes which will permit the performing party to seek remedies as a result of a breach. In the end, there is no way around the contract for A.

Issues with Forced Elections:

Some remedies are inconsistent with one another, or mutually exclusive. As a result, B cannot simply take every possible remedy to herself, but must choose between the lot. Here, B cannot seek a remedy that returns the cat, and seek the value of the cat. As she likely will want the cat, she will need to forego those money damages. B cannot get the 20k prize and the property purchased with that money. She must choose between the 2. Since there are no BFP's in the picture, it would likely be better for her to choose the constructive trust and get the land. This would also give her the benefit of any appreciation in the value of the land since it would be ill gotten gains for A to keep it.

Conclusion for B v. A

In the end, B should seek specific performance and get the cat back. She should then seek the constructive trust.

**END OF EXAM**