

Q1-90

1)

===== Start of Answer #1 (2074 words) =====

Remedies are awarded as a result of judicial (judge or jury) determination of a party's rights under the substantive law. Historically legal remedies were available only if the cause of action would fit in one of the recognized writs in English courts. Over time, courts of equity began to fill the gap for plaintiffs who were entitled to some relief but whose case did not fit one of the standard writs. Out of this history comes the notion that equitable remedies are only available if there is not an adequate legal remedy. While law and equity have since merged in the U.S., the general concept still remains.

With few exceptions, the general rule for both legal and equitable claims is that the goal is to return the plaintiff to the rightful position (Hatahley, Winston). How this is construed depends on the area of substantive law in which the claim arises.

1. SQBC's claims arise in contract. Because this is a sale of goods, it will be governed by the UCC. The contract is a requirements contract, requiring Sig's to sell all of its output to SQBC.

Specific performance

The UCC provides for the remedy of specific performance if the goods were unique, are scarce or money damages would be difficult to measure. It is an equitable remedy, available only if there is no adequate legal remedy. Here, SQBC will argue that the particular type of prunes they use, the Regulator, is unique due to its well known ability to blend quickly with yeast. Because of the poor weather and resulting small crop, it will also argue that there is a scarcity of goods in the marketplace. Sig's will argue that a prune is a prune is a prune, and that damages are not difficult to measure in this case.

In Campbell's (carrot case), the court found that the particular type of carrot that was used was an important factor due to the consistency of product that the plaintiff sought.

It said that its customers expected a certain color and taste when they opened a can of soup, and that it was important to the company's sales to provide that consistency. Here, SQBC will argue along the same lines. Customers of Pruno have come to expect a particular 'result' from Pruno's, and the company's long term sales would suffer if they did not provide a consistent product. ✓

Given these arguments, it appears likely that specific performance would be available to SQBC. However, Sig's has contracted to sell its entire crop to ASHA. Fruit does not have a long shelf life, and once harvested it needs to be processed fairly quickly. In a few weeks, specific performance would no longer be available, as the fruit would either be sold to ASHA or would begin to rot while litigation pending. ✓

Prunos
never
die!

Specific performance also requires that the contract is valid, and the terms of the contract are certain. Sig's will argue that the terms were not certain because of the verbal representation by the SQBC representative that the exclusionary clause would not be enforced. This would implicate the parol evidence rule, but if Sig's claims fraudulent misrepresentation, the parol evidence rule will not block the evidence of that conversation. Even so, it was clear that Sig's had agreed to provide SQBC's requirements, so at least the 40 tons called for by SQBC would be certain terms. This does not appear to be a useful defense.

Reformation requires either a mutual mistake as to the writing wherein the terms are agreed but the writing does not reflect that understanding, or in the event of fraud. Sig's will argue that the understanding between them and the SQBC rep were that they could sell any unneeded product without SQBC's permission. Under Hand, the court may reform the contract to reflect the parties' understanding if it is equitable to do so. As to the 40 tons called for, Sig's will still be called upon to perform, but they will have a defense to the sale of the excess to ASHA.

In order to obtain specific performance, the plaintiff must be ready, willing and able to perform their side of the bargain. In some cases, the court will require that the plaintiff

deposit the funds with the court prior to ordering specific performance, or require simultaneous performance. That seems appropriate here.

It must also be feasible for the court to enforce an order for specific performance. Here, it does not appear that there are significant impediments to meeting this requirement, as it will be a case of a one time delivery, there will be no complex, drawn out monitoring for the court, and it does not involve personal service or other reasons not to compel specific performance.

Injunctive relief

SQBC will want to pursue equitable relief as well, in an effort to block the sale of the prunes to ASHA. Their options are to pursue an injunction or a declaratory judgment.

Injunctions may be preliminary, that is, prior to a full adjudication; and permanent, which is entered after a full hearing on the merits. Courts are disinclined to issue permanent injunctions unless necessary. Here, because SQBC desires to stop the sale of the prunes to ASHA, they will seek a preliminary injunction until the adjudication of the merits of specific performance can be completed.

A preliminary injunction requires that there be imminent irreparable threat of harm to the plaintiff and that there is a likelihood of success on the merits (some courts say a strong likelihood). The court will then balance the risk of harm to the defendant if the injunction is granted against the risk of harm to the plaintiff if it is not granted. There must also not be impairment of a public interest in granting the injunction. SQBC will argue that they will suffer irreparable harm if the injunction is not granted to enjoin the sale of the prunes to ASHA as they have already attempted to cover the loss of the prunes, and have been unable to do so. As a result, if they do not get these prunes, they will have to choose between producing an inferior product that may have the impact of short term and long term loss of customer loyalty and sales, or not producing the product at all and foregoing all sales for this season. The potential harm to SQBC appears to be significant, while the harm to Sig's is simply the loss of the additional

profit. Balancing the hardships will weigh in favor of SQBC. An injunction will maintain status quo while the matter is litigated. It is enforceable with civil contempt in this case.

Sig's should request that the court require a bond from SQBC, in the approximate amount of their potential lost profits, so that in the event that the injunction was issued in error (after a full hearing and adjudication), Sig's will have recovery of their loss. Absent the bond, or if it is too low, they may not be able to recover the lost profits. Alternatively, if no bond is issued, it may be presumed that SQBC has agreed to risk the full amount of the lost profits, so SQBC is likely to agree to a bond as well. The two parties will certainly argue over the amount, and the judge will have to decide what amount is the best estimate of Sig's loss in the event that the injunction should not have issued.

Declaratory judgment

A declaratory judgment conclusively determines the rights of the parties. However, it does only that, and SQBC would have to bring further action to enforce such a decree. It is not a realistic option for SQBC in this case.

2. Under the UCC, a buyer's remedies for seller non-delivery may include expectancy, consequential, incidental or reliance damages.

Expectancy damages

In this context, the rightful position is generally that position that the plaintiff would have occupied if the contract had been performed. It is a form of compensatory relief, in that it substitutes the payment of money damages for the performance that was promised. Expectancy damages are those which flow naturally from the breach. Here, the contract called for a price of \$100/ton. For the Regulator prunes that SQBC was able to procure at \$200/ton, the expectancy damages are the difference between the cover price (\$200/ton) and the contract price (\$100/ton). For the portion of the contract for which it was not able to effect cover, the damages will be the difference between market price and the contract price.

Consequential damages

Consequential damages are those that were reasonable contemplated by the parties at the time of contracting as damages that would result from the breach (Hadley v Baxendale). They would be special circumstances of the plaintiff that the defendant had reason to know of. Possible consequential damages would include lost profits for SQBC. At the time of contract, neither party knew that the season would be poor due to bad weather. However, if Sig's was aware that this particular type of prune was important to SQBC, it is possible that consequential damages will lie. It is a well known opinion that the Regulator is the best prune for this use due to its ability to blend quickly with yeast, so SQBC will have an argument for consequentials.

Incidental damages

Incidental damages are those that arise from the breach, such as the cost of storage, expenses incurred in effecting cover, etc. Here SQBC will have had some expenses in attempting to find other Regulator prunes, such as employee/labor for phone calls, shipping expenses, etc.

Reliance damages

Reliance damages are an alternative when expectancy damages do not adequately compensate. Rather than putting the plaintiff in the position they would have been after performance, they seek to put the plaintiff back where they were prior to contract. Any costs incurred in reliance on the contract would be recoverable. This does not appear to provide SQBC with adequate remedy, as they are seeking prunes of a particular type, not to have their production costs covered.

Duty to mitigate/cover

Sig's may argue that SQBC's duty to cover would require them to purchase comparable prunes in the market place, and that the Regulator is not so different than other prune types. They will argue that because SQBC elected to seek out only Regulator prunes, they did not meet that duty, and therefore any recovery is cut off for the portion not covered. They may also argue that the cost at \$200/ton was not commercially

reasonable, depending on the market rate for other types of prunes. SQBC will reiterate that these prunes are unique and necessary to produce the product for which they are known, and that their duty to attempt cover was met.

Efficient breach

Efficient breach is the concept that expectancy damages compensate for the social costs of breach. In the event of contractual limitations on damages, this theory assumes that the contract price has factored those limitations in. Hence, if the breaching party can obtain a better price that not only covers the non-breaching party's damages, but provides an adequate additional profit, it creates a more efficient market to allow for breach (Posner). Those opposed to efficient breach argue that parties to a contract contemplate performance, not damages, and that a property right is created at the time of contract. They would also argue that there is a moral obligation to perform on one's contract. In a situation such as this, where there is a scarcity of product in the market, efficient breach breaks down, as the plaintiff is not able to cover. It can also be argued that the type of prune contracted for is a unique item, and efficient breach really only works in a market with adequate supply and in reference to fungible product. Given SQBC's inability to cover, this would not be an efficient breach.

Reasonable certainty

Damages must be proven with reasonable certainty. Expectancy damages are readily measured here. While Sig's may argue that consequential damages cannot be adequately measured, under (movie theater case), once damages are shown to exist and the defendant is the cause, uncertainty will be resolved against the wrongdoer. Damages will not be too speculative if SQBC can show its lost profits based on prior seasons profitability.

However, Hadley v Baxendale limits consequentials to those that were reasonably foreseeable at the time of contract, so it depends on whether the court finds that the lost profits were reasonably contemplated.

===== **End of Answer #1**=====

2)

Q2-90

===== **Start of Answer #2 (1293 words)**=====

Standing

As a threshold matter, the standing of the party to bring the suit must be determined. Under Bivens, the Court held that a statutory or constitutional right implied a private right of action. This was part of the conception of the power of a court of equity to do justice on a broadened basis, once it had jurisdiction to address a wrong. In Cort v. Ash, the Court devised a 4 part test, the most important prong of which was the creation of a right that benefited the class of persons to which the plaintiff belonged. However, in Touche, the Court said that the second prong was dispositive-that of whether Congress had intended to create a private cause of action when enacting the applicable statute. In Sandoval, the Court went further, and said that the statute must itself expressly grant the right to private citizens to bring an action to enforce the statute, or it did not exist. However, Sandoval grandfathered those rights of action that had already been found to exist. The civil rights under consideration here are included in those grandfathered. As a result, the plaintiff does have standing to bring the action.

Governmental immunity from suit

The 11th Amendment bars suits by citizens against a state, interpreted by Hans to include one's own state. However, the Young fiction interprets the 11th Amendment as not including prospective relief in this ban. Given that no compensatory damages are sought here, the 11th Amendment does not bar this suit.

Injunctive relief

Injunctive relief is equitable in nature. It is only available if there is no adequate legal remedy available to the plaintiff, and its scope should be tailored to the violation it seeks to enjoin or the conduct it seeks to compel. The issue must also be ripe, meaning that

harm must either have already issued, or be imminent, and the threat of harm must be personal to the plaintiff.

It may be preventive in nature or reparative, seeking to repair the effect of past harms and preventing their perpetration in the future. Most injunctions have some aspects of both in them. Often a preventive measure will include some prophylactic relief as well, enjoining lawful conduct that has wrongful consequences in order to bring the plaintiff to the rightful position.

Structural injunctions are so called because they are intended to correct harm that has resulted from an institutional or system wide violation, and they generally involve extended and invasive judicial involvement in an administrative or state function. This can raise issues of either separation of powers or federalism. At times it is questionable whether parties are truly adverse, a necessity for the case or controversy requirement.

The facts of this case bear a great deal of similarity to VMI. The rightful position for females who desire to obtain training as a chef is to make their educational opportunities and benefits comparable to those of men in the state. When the court of appeals affirmed the adequacy of the separate program for women, it failed to adequately consider the rightful position goal. Under VMI, an alternative that does not bring the plaintiff to the position that they would have occupied absent the harm is not a complete remedy. Here, the Betty Crocker School of Domestic Bliss for Women does not operate on an adversative model of instruction. Neither does it include a severe lack of privacy. When a man can say that he has graduated from Gordon Ramsay's program, it has a certain panache; it carries with it a reputation that commands instant respect, and arguably translates into more employment opportunities and perhaps better pay. The women who attend the Betty Crocker school do not obtain the same benefits and therefore are not placed in the rightful position.

The dissent argues that a severe lack of privacy and adversative model of instruction is

just one educational option, not shown to be superior to a model of cooperation and shared feelings. However, there is a historical and demonstrated reputation that derives from the Ramsay model, and it is up to the women to decide if that model is what they desire. They are entitled to an equivalent opportunity. In *Brown v. Board of Education*, 'separate but equal' was laid to rest. There is no need to resurrect its sorry bones now.

The party seeking injunctive relief must show that they will suffer irreparable harm; that there is no adequate legal remedy; the court must balance the equities and the grant of the injunction must not go against public interest. Here, the women who seek the Ramsay approach to a chef education will be irreparably harmed if they are not allowed to obtain an equal education to that of male trainees. Money damages will in no way vindicate their right to equal opportunities regardless of gender, and so a legal remedy would fail absolutely. In overruling the court of appeals, we find that the burden on the women who would therefore not be able to obtain a state supported education equivalent to men in the state is significantly greater than the burden on the state in providing one.

We recognize that the reversal and remand of the court of appeal's decision will have an impact on the state's treasury. While an injunction's scope is limited by the scope of a violation, the Court's jurisdiction reaches to the state's purse when the violation is sufficiently broad to require it (*Jenkins*).

Jurisdiction

In looking at the Court's jurisdiction to issue an order, it is important to understand the concepts of rightful position and a roving commission to do good. Under *Bailey*, the court held that it had a roving commission to do good and could go beyond the bounds of the specific wrong.

Swann endorsed this approach as well, but in the *Milliken* cases the court began to step back from such an expansive view, and by the time *Jenkins II* and *III* were decided,

it had fully withdrawn to the position that the court had the power only to return the plaintiff to the rightful position-that which they would have occupied absent the wrong-and no more. The nature and scope of the remedy were to be determined by the nature and scope of the violation. In Casey, the Court held that a system-wide remedy was excessive when the violation was isolated. On the other hand, in VMI (Virginia), the Court defined the outer limits on the other side of the issue, determining that a school for females as a substitute for the opportunity to attend the Virginia Military Academy did not bring the plaintiffs to the rightful position. The womens' school did not offer the same type of curriculum, nor the benefits of the networking and the prestige that attended those who graduated from VMI.

The dissent will argue that this decision brings a return to the 'roving commission to do good' of the Brown II and Swann era. Not so, as the injunction issued on remand is to be narrowly tailored to address the harm.

Modifying injunctions

While under Swift it was difficult to obtain judicial review of an injunction once issued, the more recent cases, Rufo, Frew and finally Horne, bring us to the point where it would be an abuse of discretion not to modify or vacate an injunction once the objective has been met. As such, the state of Euphoria has full opportunity to return to court to seek such action at the appropriate time.

The plaintiff has met the requirements for grant of a reparative injunction. Such order shall be limited to the scope necessary to address the violation.

The judgment of the court of appeals is reversed and the case is remanded for adjudication in conformity with this opinion.

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===== End of Answer #2 =====

3)

Q3-85

=====**Start of Answer #3 (1480 words)**=====

Remedies are awarded as a result of judicial (judge or jury) determination of a party's rights under the substantive law. Historically legal remedies were available only if the cause of action would fit in one of the recognized writs in English courts. Over time, courts of equity began to fill the gap for plaintiffs who were entitled to some relief but whose case did not fit one of the standard writs. Out of this history comes the notion that equitable remedies are only available if there is not an adequate legal remedy. While law and equity have since merged in the U.S., the general concept still remains.

With few exceptions, the general rule for both legal and equitable claims is that the goal is to return the plaintiff to the rightful position (Hatahley, Winston). How this is construed depends on the area of substantive law in which the claim arises.

This action arises in tort, and therefore gives rise to general and special damages. The rightful position in tort is the position that the plaintiff occupied prior to the injury. It is not possible to actually return them to that position (no physical harm, Goldilocks still alive and well), so damages are compensatory in nature, that is, they substitute money damages for the loss caused by the tortious conduct.

Polly will need to show that Dave owed her a duty, which he breached, and which was the legal and proximate cause of the injury to her. Given that this is a remedies question, those will be presumed herein.

General damages

General damages are those that flow naturally from the injury, such as pain and suffering or loss of society. Polly will be able to obtain general damages both for her pain and suffering to date, and for future pain and suffering. The past damages will not be adjusted to present value, but future damages will be.

Polly may also seek loss of society for the loss of her beloved Goldilocks. In most

jurisdictions, loss of society would be limited to spouse, children and perhaps other close family members, and would not include the loss of a pet. While Polly sees Goldilocks as her child, the defendant will argue that courts do not usually allow for damages beyond the actual value of a pet. If, however, Goldilocks served some purpose, such as a service dog, the loss of those services would be compensable.

Damages such as pain and suffering are difficult to measure, but the courts will generally allow the jury latitude in making that determination. Most jurisdictions allow the plaintiff's counsel to introduce the concept of a per diem amount in their closing argument. While this is not evidence (and the defendant may be entitled to an instruction to that effect to the jury), it introduces the concept of a per day award for pain and suffering, which tends to be a more manageable calculation for a jury than a nebulous number pulled out of nothing. No jurisdictions allow a 'golden rule' suggestion.

Judicial review of the award may result in remittitur, with the judge giving the plaintiff the choice of accepting a reduced amount or a new trial. This raises implications as to the right to a jury trial, but generally withstands challenge on appeal.

It is likely that Polly will never marry, have children or experience other hedonic pleasures, and this will probably result in a greater damage award.

Polly will likely obtain sizeable general damages, as she is a paraplegic for the rest of her life.

Special damages

Special damages are those that are secondary in nature. While a result of the harm, they are not directly resulting from it. These include medical costs, loss-of-income/earning capacity and the like.

Polly had previously made \$45M/year working for PG&E, and was on track to receive a

promotion to management within 5 years. In calculating her lost earnings, her future earning capacity, likely merit increases and expected years to work are used. Here, it may be reasonable to assume some amount of merit increases over the next five years, then resetting the base to \$75M/year and allowing for merit increases thereafter until age 62, when she was expected to retire.

Past medical expenses must be proven but that can be readily done and Polly will collect in full on those. Polly will seek future medical damages (see below for discussion of present value adjustment), for which she will use expert testimony. She will argue that medical costs are increasing, that she will require care for the rest of her life. The defendant will put on experts who say that medical costs are flat, and will not likely increase. The jury will need to determine the final amount of the award.

Polly's past special damages will be determined by the jury and will not be adjusted for present value. Her future specials will be adjusted as discussed below.

Duty to mitigate

Polly has a duty to mitigate the damage to her. For instance, the refusal to seek medical treatment after a physical injury is usually a failure to mitigate the damage from the injury and will cut off the damages owed by the defendant.

Here, Polly has lost at least some of her earning capacity. She has taken a position as an assembler at a local computer company. Polly will argue that this is the best she was able to obtain given her new physical limitations, her special health needs and lack of special skills. The defendant will argue that she has failed to fully mitigate, that she should have sought a more comparable position, perhaps with management opportunities. This too the jury will decide.

Offsetting benefits

The collateral source rule is a common law rule that says that the defendant cannot introduce evidence of payment by others of a plaintiff's expenses, such as insurance.

This keeps the wrongdoer from benefiting from the well-insured plaintiff. This has since been modified by statute in most states. Here, Polly has medical insurance that has covered her medical costs. While it is not likely that Dave will be able to introduce this at trial, the insurance company will seek subrogation. They will in effect seek to stand in the shoes of Polly and recoup what they have paid from the award to Polly. This prevents unjust enrichment or double payment to the plaintiff.

Present value

Future damages are adjusted to account for the fact that they are a lump sum paid now for damages (costs) that have not yet accrued. This converts the payment to a lower current dollar figure, with the idea that the plaintiff can then invest the funds in a way that will provide some return that then equates this reduced current payment to the total award, over time. The plaintiff, on the other hand, argues that inflation must be taken into account. Medical costs are likely to increase, as are costs of living.

Once the total future damages are calculated, the adjustment to present value is done in one of three ways. The total offset method assumes that the rate of interest that the plaintiff can earn on a safe investment (such as US Treasury securities) is equivalent to the rate of inflation and therefore no adjustment is made at all.

The real interest rate (discount rate) is reduced from the presumed market rate of interest to account for inflation.

The market rate approach assigns a market rate of interest and is used when an adjustment for inflation was factored in to future wages and medical cost awards

Defendants (or their insurance company) may ask for a structured settlement, which calls for the defendant to purchase an annuity to ensure future payment, and the payments are then made over time. This does not require a present value adjustment, and allows the defendant to reduce their upfront out of pocket cost.

THIS IS NOT
A TRIM ROLING

Taxes

The defendant is entitled to an instruction to the jury that the portion of the award attributed to lost wages is not subject to income taxes, and therefore the jury should take that into consideration when determining the amount of the award.

interest

Prejudgment interest is paid when the amount of damages are ascertainable, in order to bring the plaintiff to the rightful position. It is cut off by a good faith offer to settle by the defendant. This applies mostly to property damages, and it is not likely that Polly will be entitled to prejudgment interest.

Reasonable certainty

Damages must be proven with reasonable certainty. Additionally, once damages are shown to exist and the defendant is the cause, uncertainty will be resolved against the wrongdoer.

Right to jury trial

The 7th amendment entitles Polly to a trial by jury because the issue was addressable at courts of law at the time the 7th Amendment was enacted, and because the remedies sought are legal in nature (Guotreaux).

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===== End of Answer #3 =====

END OF EXAM

ANOTHER EXAMPLE

MODEL ANSWERS

Q1 & Q3

1)

===== Start of Answer #1 (1427 words) =====

Q1-90

Question 1

1. What remedies are available to SQBC to enforce the terms of the contract?

The fundamental purpose of remedies is to restore an injured party, as nearly as possible, to the position they would have been in but for the wrongful conduct of the other party. This is known as the 'Rightful Position'. In determining what damages are available to a plaintiff, we need to determine what that rightful position is.

This is a case involving a contract and the sale of goods, therefore would fall under the UCC. Normally, in a breach of contract case, the measure of damages is the plaintiff's expectancy. The non-breaching party's rightful position is having the contract performed - or in lieu of that, being in the position they would have been in if the contract had been performed. For SQBC, they need the specific prunes in order to produce and sell their product. Normally, they would be required to attempt to mitigate their losses and 'cover' for the goods that were not delivered.

Cover is a good faith attempt to purchase substitute goods within a reasonable time and at a reasonable price. If possible, the buyer can recover the difference between the contract price and the market price paid for the cover. This compensates the difference and is the core of the compensatory damages. They could further recover any incidental costs that were accrued in achieving the cover. Here, when SQBC attempted to cover, they purchased prunes at 200 a ton vs the contract (K) price of 100 per ton. Their damages would be 100 a ton.

The problem arises though that there are not enough prunes to meet SQBC's need for 40 tons. This will mean that they cannot produce and sell their product. They then can look to recover the consequential damages of this shortfall. In this case, they would present evidence as to the profit (revenues less costs) on the product that they were unable to produce and sell. The burden would be on them to show, likely by using data from past years and harvest, what the profits would be. These consequential damages along with the compensatory damages from the cover would be a monetary way to try to get SQBC back to their rightful position.

In some cases however, this is not a good substitute for having the contract performed. Here cover is not available for the entire volume required. This can happen if there is a shortage or if the product is

unique in some way. Here, both of these situations exist. further, SQBC has a good case for further consequential damages based on harm to their reputation from not being able to deliver. these types of consequential damages can be hard to prove, and the courts, traditionally adverse to consequential damages may not allow them.

Therefore, SQBC can ask for specific performance on the contract (rather than substitutionary damages). they would look to have a court enjoin Sig's from selling their crop to anyone else and require them to deliver the required amount of prunes to them. An injunction is an order from the court to a party requiring some action (or to stop some action). If the damage to the plaintiff ~~would be irreparable~~ and damages would not make them whole, then a court can do this. Similar to the Campbells case regarding Chantenay carrots, only performance on the contract, which is possible by sig, would truly put SQBC in its rightful position.

SQBC might ask for a temporary restraining order (TRO) which is a short term injunction designed to immediately halt activity in order to avoid further harm. If the harm is irreparable, immediate, and the balance of the equities sides for the plaintiff, it can be issued if the court feels that the plaintiff is likely to win the case for a temp or permanent injunction on the merits. There are few findings due to the urgency of the situation. This may be called for here.

A temporary injunction takes longer, but is quicker than a permanent one. It would force Sigs, under penalty of contempt, to comply and deliver the prunes per the contract and at the K price.

SQBC may also ask for punitive damages. Normally not allowed in K cases, they can be where there is an independent tort. Here they will argue that there was a bad faith breach, and try to prove that Sigs never intended to perform. If they can establish this, they may be able to get punitive damages. they may also have a claim for tortious interference against ASHA.

What defenses might Sig's Reasonably assert?

Sig's is attempting an efficient breach. they likely feel that due to the run up in prices on these prunes, they can breach the contract, receive the higher price, pay the damages to SQBC and still come out ahead. There is an argument that this is a good thing for society as a whole as it maximizes the utility of the prunes to the person that values them the most. Everyone is better off - the ultimate buyer get the goods at a price they are happy with, Sigs gets more profit, and SQBC is no worse off. However, with the intangible rights that may not be the case - certainly SBC would not agree.

Sigs, could also say that because SQBC attempted to put in a clause that limited rights that they objected to, and then fraudulently induced them to sign anyway saying they do not enforce, that the contract is void for fraud. Given that sigs is the party breaching, this is unlikely.

If there was a liquidated damages clause in the contract, this might guide us more, but there is no mention of one. This would, in advance, detail damages awarded for a breach. This gives certainty around a K that involves goods that fluctuate in price and are enforced if not unconscionable or adverse to public policy.

Sigs likely will argue that SQBC can cover on the market with other prunes. Normally that would be ok, but SQBC will make the case, probably successfully, that the product is unique, and that any other type of prune would lead to an inferior product which would damage their reputation (the same argument Campbell made about Chantenay carrots). As long as SQBC can show with reasonable proof that this is true, and that there is no substitute, their case for specific performance on the K is greatly enhanced.

Product?

If SQBC elects to forego enforcement and elects for damages, what defenses might Sigs reasonably assert?

If SQBC sues on the contract, Sigs will argue that the contract should not be enforced due to the fraud and misrepresentation by SQBC regarding the clause prohibiting the sale of excess prunes without permission. Given this they will repudiate the K as void. There would not be damages, since they were able to effectively cover at a higher price.

Given that there are no damages, they likely would not be able to sue in tort for an independent tort as well and seek punitive damages against SQBC.

Sigs biggest argument will be the efficient breach. They will assert that SQBC can cover and that they will pay all the damages required.

What damages is SQBC likely to recover?

If they sue under the K, they will be able to get the difference on the 10 tons of prunes at the cover price of 200 a ton (difference of 100). They will also seek the profit that they lost on the other 30 tons of product.

that they were not able to produce and sell. they are likely to get both of these as compensatory damages - their expectancy and reliance damages.

Further, if there is any damage to their reputation that they could quantify and prove they could sue for that, these might not have the reasonable certainty required in order to win. If they were to lose a contract or have other consequential damages that were unavoidable, they might be able to sue for the value of those. Normally, per Swiss Bank and Hadley v Baxendale, only if the circumstances are known to both parties that a breach would cause additional consequential damages would those be allowed. However, given that they are known for this product with the prisons, they may be able to show (and will attempt) that Sig's knew or reasonable should have known that failure to perform would put their contract with the prisons in jeopardy (or any other K that was affected.)

Q3-85

===== Start of Answer #3 (1789 words) =====

Compensatory damages are a substitutionary remedy meant to compensate with money for harm that has occurred. In tort, you can ask for general damages, non economic damages that flow directly from the harm (Pain and Suffering) as well as special damages, economic damages that result from the harm and are specific to the situation and the injured party.

If there has been gross negligence or a wanton and willful indifference to the rights of others, a plaintiff can request punitive damages. Punitive damages are meant to punish past conduct and deter future conduct.

General Damages

Polly can request general damages for pain and suffering due to her being made a paraplegic. these damages are awarded by a jury and then reviewed for reasonableness by the court (and the appeals ct if necessary). The issue is how much? This is often argued in different ways. A per diem argument can be made - an amount per day for the expected rest of her life. Of another unit of time can be used (year, month.) there are no real guidelines for a jury, which can result in widely varying awards. Upon review, a judge will look to the reasonableness of the award, the circumstances involved, and may also consider the amount of special damages that exist as well. One argument that cannot be made is to ask the jury what they would want to be paid for the same sort of loss. This is called the 'golden rule' and is not allowed as an argument.

Special Damages

Special damages are all of the economic damages that result from the injury. Using evidence and computations, they are quantified based on the situation. how and what can be recovered varies from state to state based on each states statutes.

Current Medical Bills

Polly could recover the 200,000 in current medical bills. This could be shown by the paid invoices from the hospital. Depending on the state statute, it is likely these would be based on what was actually paid - not what was billed. Also, the state statute would cover the collateral source rule (discussed later).

Future medical bills

Polly can also recover the cost of her future medical bills. Compensatory damages are paid in a lump sum on the award of the judgment, therefore future expenses need to be adjusted for the affects of inflation, taxes, and their present value. (discussed later).

Loss of Income

polly will quantify her loss of income from now through the end of her expected career. Using experts and actuarial tables, it will be determined how long she will likely work. Her future income will need to be adjusted though, in order to truly compensate her for what she lost (and put her in her rightful position). Future earnings will need to take in to account normal increases in salary over time (from longevity, as a class in general, and to keep up with inflation), her merits increases that she will likely receive, and possible any benefits that she would receive in the future. In determining this, she will have to prove, as specifically as possible, what those would be. the evidence of her education, the report from her work on her level of achievement, and the salary made by manager would all be relevant and considered. Once this is determined, it will be aggregated through the end of her likely career and totaled. It will then be discounted back to a present value amount.

this income will be offset by income that she does earn. As she has gotten another job, the earnings (and their growth) would be figured in the same way and discounted back. this would then reduce the loss of income award.

All of the future expenses and income need to be discounted back to their present value. This is because of the impact of inflation. A dollar now is not worth a dollar i the future. Similarly, as expenses accrue in the future, we need to determine how much we need to award now as a lump sum , so that it can grow to the future amount (whether it does or not is a different discussion). This allows for the case to be settled and everyone to move on. If we used a 'pay as you go' system, the court would be forced to continue to oversee the matter until the plaintiff passed away. Further, the tortfeasor may go bankrupt and then the plaintiff is left with nothing. so we discount the future stream to a present value.

the biggest issue is what interest rate to use to discount back. Over a long period of time, a small different in rate can have a massive impact. This will result in a battle of the experts, with each side pushing for a higher or lower rate depending on whether they are paying or receiving. One determined, all of the future amount need to be discounted to their present value.

Collateral Source Rule

The collateral source rule states that money paid to the injured party by a 3rd party (a collateral source such as an insurance company) hold not be used to offset the damage award from the defendant. This is the traditional rule, and the rationale is that the tortfeasor should not be let off the hook for the damage that he caused. Simply because a citizen was responsible and could afford insurance is no reason to reduce the damages owed to them. Also, it was the injured who paid for those benefits, and therefore they deserve them a payment (whether considered a payment or return of premium).

This rule has come under file with the 'Tort Reform' debate. In short, tort reform is a movement to lower the awards for damages, special, general, and punitive damages. the fear is that juries are swayed by emotion, have no basis for how to award damages, and will likely end up as a 'runaway' jury verdict. the data suggests that this may not actually be happening, but depending on how you interpret it, the cost of insurance for many professionals has increased as a result of the fear of this liability. There is also a case stating that this amount to a windfall for the injured and is really a double payment (despite a rule of a single award for a n injury). As a result, many states have codified that the collateral source rule will not be used. Instead they require that payments from collateral sources be used to reduce the awards given, this easing the burden on professionals and their insurance companies. Some states like NY give a credit for premiums paid for the past 2 yrs.

Subrogation

Insurance companies have also dealt with this. In many cases insurance companies have a subrogation clause that states if a covered person receives a damages award for the injury that they paid for, they are to be reimbursed, if these exist, there is no double reward, and the defendant does not get off the hook. however, they are not universal. Depending on the laws and the clauses in the insurance contracts, the expenses paid (200K for medical) already and future payments that are covered by a collateral source, may be used to reduce the compensatory damages award.

Punitive Damages

A final area that Polly may claim for are punitive damages. Punitive damages are meant to punish past, and deter future, wrongful conduct. they are also high profile in the tort reform debate, as they can be very large. If Polly can show that Dave was grossly negligent or willfully wanton and showed indifference for the rights of others, he may be liable for these as well. Punitive damages, like general damages, are up to the jury and then are reviewed by the court for reasonableness. they are often capped by statute or limited in some other way.

In general they have been found to be constitutional, but each award of one may need review to make sure it does not run afoul of the constitution. Mainly the issues are around notice (of the liability that one can have for conduct - notion of fairness), excessive fines, and due process. The court will look to the reprehensibility of the conduct, the ration of the award to possible value of damage that cold be caused, and whether other criminal or civil penalties exist to help it determine whether the award is constitutional. Issue of jury trial may also come up but this has not been seen as a problem.

The court will also review the award, often looking for wards that 'shock the conscience' ore obviously out

of line with the damages caused (same for general pain and suffering damages). The court will look to see if they are in line with other awards for similar circumstances. Often the ration of punitive to compensatory damages is looked at. Data suggests that the average is less than 1:1, and the courts have stated more than once that single digit multipliers are the most likely to be upheld (on reasonableness and constitutional grounds). That said, outlier cases have been found to be ok. When the conduct is highly reprehensible but results in low monetary damage, a higher ratio is likely appropriate. Also, in order to deter, it is important to understand the financial situation of the tortfeasor (a large corp or an individual on a fixed income). Deterrence only works if it is material.

The facts in this case raise all of these issues. It seems likely that the compensatory damages will be recoverable, and the process of figuring out those figures will be debated. the punitive damages are less likely, but may be proven.

Can Polly receive damages for Goldilocks?

While it seems like polly hold have a 'wrongful death' case for the death of Goldilocks, a dog is seen as personal property and would be treated in a similar fashion for damages. As such, when property is taken, the replacement value of that property would be the measure of damages. this principle dates back to the hatalay case where the govt took horses from their owners.

As in that case, here, the replacement value is likely next to nothing, unless goldilocks was a special dog with a large value. Regardless, whatever the value in the market was would be used. Polly could like claim some sentimental value, and if that is really the only value to goldilocks, she may be able to receive it. There are no facts stating that goldilocks contributed financially to Polly in any way, therefore, there would be no damages for lost productivity.

The goal is Polly rightful position, the positon she would be in but for the wrongful conduct of Dave.

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===== End of Answer #3 =====

END OF EXAM