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Q1 = 90

How ABOUT
DUE PROCESS
FOR BOTH.
U.S.
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=====**Start of Answer #1 (1979 words)**=====

The goal of remedies is that of the rightful position. Under the corrective justice model, this stands for the concept of fairness to the plaintiff. The classical economic theory says that the rightful position is the goal so that the defendant pays full damages for any harm done.

Can Bea sue Sally before May 15?

Bea will say that Sally has anticipatorily repudiated the contract by her letter of May 5. Sally's letter is such that it would put a reasonable person on notice that there was no intent to perform, and by accepting another offer her conduct also indicates an intent to breach. Therefore Bea does not have to wait until the date of tender to sue.

Legal remedies available to Bea for breach include suing for expectancy damages, which are those which would put her in the position she would have occupied if the contract had been performed. In this case, that would probably be \$500,000, given that the broker Sally used was able to obtain that price on the open market. She might also pursue consequential damages or incidental damages, discussed below.

She may prefer the equitable remedy of specific performance, discussed below.

Alternatively, Bea may sue in restitution. She will argue that Sally's breach was opportunistic, and that it was intentional misconduct. If she is successful, she would be able to obtain disgorgement of Sally's profit-arguably the full \$500,000. Under disgorgement, the plaintiff needs to prove only the revenues from the misconduct, and then the defendant will have to prove any costs, variable or otherwise.

Sally will raise the defense of unconscionability to the contract, and will seek rescission.

See below for more on this.

Bea will argue that Sally's breach is opportunistic, and that she should be entitled to restitution as a result of Sally's conscious wrongdoing. Sally will argue that her breach was efficient.

Efficient breach is the concept that where a plaintiff can be made whole by money damages (such as perhaps a reliance measure here), that there is greater efficiency in the market when a breaching party stands to gain from breaching after paying all costs of breach. Opposing this is the concept that a party contracts for performance, not for damages, that there is a moral obligation in contract, and here, that the good contracted for is unique, therefore scarce, and the plaintiff cannot be made whole with money damages.

Opportunistic breach is that in which the breach is deliberate, and profitable to the breaching party, and for which the non-breaching party has no adequate legal remedy. Bea will argue that she has no adequate legal remedy due to the uniqueness of the car.

The court will balance the equities and in this Bea will come up short. Sally may even argue that there was no meeting of the minds-and therefore rescission is appropriate. Or she may argue that there was a unilateral mistake on her part, another basis for rescission.

What provisional remedies might be available to Bea?

Bea will want to stop the delivery of the car to Saudi Arabia, as it would then be beyond the jurisdiction of the court. While she could still sue for money damages, the option of actually obtaining the car would be lost. Equitable options Bea will consider are discussed below. Equitable remedies originated in the Chancellor's power to decide matters brought before the king in England. These matters were brought when the complainant was not able to obtain a remedy in the court of law. Out of this history

came the rule that in order to obtain an equitable remedy, there had to be no adequate legal remedy. Legal remedies might be inadequate if the defendant is insolvent (split of authority on this), if the damages are too speculative, if the choice of remedy matters to the plaintiff, as in the instant case, if the goods are unique-as this car arguably is, if the issue is going to require a multiplicity of suits to obtain relief, or if the action is to vindicate a right. Here, Bea can show that the choice of remedy matters very much, and that the 1967 Shelby Pony GT in mint condition is indeed unique.

Irreparable harm is closely related to the concept of inadequate legal remedy. Laycock says that irreparable harm is applicable to interim, preliminary relief and that inadequate legal remedy is applicable in the final adjudication of a matter.

TRO
Temporary restraining order: A TRO is very short term in nature, only 10/14 days, and does not involve any findings by the court. With no record to work from, this decision is also not reviewable. It would serve the purpose of stopping the imminent shipment of the car to allow her time to obtain a preliminary injunction.

A preliminary injunction requires that there be risk of imminent irreparable harm, which Bea can demonstrate by the pending shipment outside the US. It also requires that the court find that there is a likelihood of success on the merits. Some courts require a high likelihood-that may be a challenge for Bea to show here due to the significant difference in the purchase price and the value (see below). The court will balance the risk of harm to the plaintiff if the injunction does not issue against the risk of harm to the defendant if it does-Bea will be likely to succeed on this point, unless Sally can show that she stands to lose the sale to the Saudi Prince if she does not deliver timely. Lastly, the court will look at whether issuing the injunction will impair any public interest.

Third parties can be impacted by an injunction, so an argument that the Prince will be impaired will not be sufficient to rule for Sally on this matter. Those who are parties, agents of the parties and those acting in concert are bound, so the broker will be bound by the injunction as well as Sally. However, actual notice is also required. (Rule 65d2)

Contempt is the means of enforcing an injunction, which may not be effective once the car is gone.

The court may issue an injunction to allow for the full hearing on the merits, in order to provide Bea her right to a jury trial (if the remedy sought is legal), and because the risk of harm to her is very great once the car leaves the country. It should require her to provide a bond as a protection for the defendant, in the event that the final determination is for the defendant. The amount of the bond will be an issue here, given the large disparity between the cost to the plaintiff of performance, and the value of the car.

Declaratory relief is not applicable here. Bea will not be served by a ruling that the car does indeed belong to her if it is in Saudi Arabia.

Bea should also ask for some sort of freeze order to hold the asset in place while the hearing on the merits proceeds. This is available if there is a likelihood of success on the merits and if the defendant has acted in such a way that it appears the disputed property may be lost to the jurisdiction of the court, as here.

Can Bea get title and the car by specific performance or replevin?

Specific performance requires that there be an inadequate remedy at law, that the plaintiff be ready, willing and able to perform their side of the bargain, that the contract be valid, with terms certain, and that the court's enforcement of the order be feasible. Given that Bea wants a specific car that is unique, and her choice of remedy matters here, she lacks an adequate remedy at law. She is also apparently ready, willing and able to deliver her \$8,000.

What will be more challenging is the question of the contract itself. Sally will argue that it was unconscionable, and will seek rescission of the contract. In considering whether

a contract is unconscionable, the court will look at both procedural (how the contract was negotiated and formed) and substantive (the fairness of the terms) components and will balance them.

Procedural elements include the age, literacy and sophistication of the party seeking rescission. Here, Sally is a widow. The facts don't say, but given the age of the car, Sally may be elderly. The court will also consider whether there are hidden or unduly complex terms, the circumstances surrounding contract formation and the bargaining tactics used. Bea did not dupe Sally, and she was under no obligation to tell her what the car was really worth. However, she did certainly take advantage of the naivete and ignorance of Sally.

Substantively, the court will look first to see if the contract is a contract of adhesion: is it a preprinted form, take it or leave it terms, with no real chance to negotiate. Then it would consider whether there were harsh or unfair one-sided terms. Because this was not a contract of adhesion, it does not appear that the court will get to the terms themselves. If it does, it will look at the subject matter of the contract, the relative bargaining power of the parties, the economic compulsion on the adhering party and consider any public interests at stake.

Should the court find that rescission is appropriate, it will be as if the contract had never been made, with the car belonging to Sally, and Bea keeping her \$8,000.

Replevin is available when the plaintiff has a right to possession of goods (not realty) and the defendant is wrongfully withholding them. It allows the plaintiff to have the sheriff repossess the goods. Replevin is only available if Bea can show she rightfully should have possession of the car.

In the time preceding the hearing, Bea will want to post a bond and ask for delivery of the car prior to the hearing, however, Sally can post a redelivery bond and retain possession of the car pending the determination by the court on the merits.

Specific performance is an equitable remedy, much like an injunction in that it coerces the defendant to take some action. Replevin, on the other hand, originated in a legal writ. It would involve the sheriff taking possession-levying on the car physically.

Contract remedies for Bea

Legal remedies are compensatory in nature, that is they are a substitute for the plaintiff's actual loss. If Bea seeks legal remedies for breach, she will first need to show expectancy damages. These are the damages that flow directly from the breach. In this case, breach means she will not have the car. The debate will be over whether that entitles her to \$8,000 or \$500,000.

Consequential damages are those that do not flow directly from breach, but result from the specific circumstances of the plaintiff, which the defendant knew of at the time of contract, and that were foreseeable in the event of breach. Bea did not tell Sally of her plans, did not tell her she was entering a show and paying a fee for it, and Sally did not know of the website, let alone any expected revenues. Bea cannot get consequential damages.

Incidental damages are expenses that are the result of the breach, such as storage of goods, transportation costs and the like. It does not appear Bea has incidental damages.

Reliance damages may allow Bea to recover the \$10,000 entry fee, if it was reasonable that she acted in reliance on the contract. However, it will be difficult to show that Sally had any idea that Bea was entering a high end car show in reliance on this contract, since she thought it was a junker.

Bea will have no means of recovering the lost profits from the website and magazine as they were not foreseeable (Palsgraf), and realistically probably not proximately caused

by Sally's breach.

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

2)

Q2 = 90

===== Start of Answer #2 (907 words) =====

1. Remedy for Uncle Johnny (UJ) to force GUy to disgorge profits from the book.

G will be unjustly enriched if he is allowed to keep the profits from the book. Certainly, UJ deserves some or all of the profits that G received based on UJ's recipes. UJ can

ask for the profits of the book be disgorged by having a constructive trust placed over the book and all proceeds. This is similar to the former CIA operatives book that he sold in breach of his contract. Here there is no contract, but an accounting of profits would still stand. G would not be allowed to benefit - and the benefit he received based on his deception of UJ would set the basis for the profits that he would have

to disgorge. Restitution is the remedy for unjust enrichment.

If UJ learned about the situation prior to publishing, he could request the court issue a TRO or a preliminary injunction, forbidding G from selling the books until the situation was resolved on the merits. Both of these would depend on irreparable harm and damages not being sufficient. Here however, it seems that damages would be sufficient for UJ. Unless he can show some harm from the recipes being revealed - then the harm is only his loss of the revenue. He can sue for damages after the fact.

The court might find a quasi contract. Even though there is no true contract, the court may impose one on G in order to avoid him being unjustly enriched. He is a conscious wrongdoer, (this is not a case of a mistaken improvement or an encroachment), so likely he will be required to disgorge all of the profits he earns. He may be able to offset with his own costs, but the facts do not discuss any related to the book.

2. No written K between GIN and G - Can GIN recover lost profits?

A quasi-contract may be found between GIN and G. However, there are few facts to show how GIN was hurt. Unless G agreed to perform on a regular basis, or gave them assurances that he would be available, it is unlikely they can prevail.

GIN will have to show that G was unjustly enriched by the leave from their studios, and that because of the quasi K, G should have to disgorge some of that profit to them. Quasi K can be used when no contract exists but the court will look for restitution of benefit on defendant. If G shows that he didn't realize that GIN felt he was under contract to them, then likely he will prevail. GIN can attempt to show that it invested money, possibly paid G and relied on him being involved in the production. As such, they lost profits of 1 million. While doing all of this G was making money (20 million) on their time. They could look to claim 1 million of the 20 million through reliance under contract or through unjust enrichment in restitution. G should not have been able to make the movie but for the time he took away from GIN, therefore, he should not benefit from his wrongdoing. As their damages will be speculative and hard to prove, GIN will instead sue under restitution based on G's benefit.

3. Joe Obama (JO) seeks restitution. How much of the \$20 million should he receive.

This is similar to the Letty Lynton movie case. JO would seek an Accounting of profits and force Guy(G) to disgorge as much of the profits as he could get to him. Because G's conduct was tortious, he is a knowing wrongdoer, and the court would seek to take away any benefits that unjustly enrich him. Therefore, an accounting of profits in Restitution is the preferred remedy. The key would be to determine

