

### **Question 1**

This question is loosely based on Campbell Soup Co. v. Wentz, found at page 391 of the casebook.

1. **Validity of the Contract:** This a requirements contract for the sale of goods over \$500. The UCC applies and the writing requirement is satisfied.  
Sig will argue that there was no consideration for its promise to supply SQBC's requirements because SQBC could reject the prunes for any reason, even if they conformed to the contract. Sig would argue SQBC's promise is illusory. This is probably not a good argument because SQBC still has an obligation to try in good faith to be satisfied with the shipment. Although the terms are harsh, there is consideration here.
2. **Contract terms:** Sig would argue that the contract terms should reflect the oral agreement from SQBC's representative that the prohibition on sales to third parties would not be enforced. SQBC would raise the parol evidence rule which states that where the parties have reduced their agreement to a final written form, evidence of prior or contemporaneous agreements varying the contract are inadmissible. Here the supposed promise by SQBC that a part of the contract would not be enforced clearly varies the agreement, so this evidence would not be admitted. The terms of the writing will be applied.  
Sig's might argue that the parol evidence rule does not ban evidence that the agreement was induced by fraud. Sig would argue that SQBC committed fraud by knowingly misrepresenting SQBC's practices regarding enforcement of the clause forbidding sales to third parties.
3. **Grower's breach: Anticipatory breach:** When Sig informed SQBC on June 14 that it would not perform; this was a breach of the contract. SQBC could either sue for damages immediately or choose to treat the contract as still in force.  
**Frustration of Purpose:** Sig would argue, unsuccessfully, that its duty to perform was excused by frustration of purpose because of the unexpected rise in prune prices. This is not a valid argument because a change in market price is generally a foreseeable risk allocated by the parties under the terms of the contract.  
SQBC remedies if they choose to enforce the contract
  1. **Specific Performance:** Specific Performance is an equitable remedy which will be allowed only if money damages are inadequate, typically because the goods are unique, if the terms of the contract are clear and definite and if no equitable defenses apply.  
Here, SQBC will argue that money damages are inadequate because the Regulator prunes are very distinctive and that using inferior prunes would cause irreparable

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harm to SQBC's high reputation. The facts also state SQBC is unable to get Regulators elsewhere, and this indicates that money damages would be inadequate because there is no opportunity to cover. The written terms of the contract terms are also clear and definite, so the court would likely grant specific performance if no defenses apply.

2. SQBC would also seek a preliminary injunction to stop Sig from selling the prunes to ASHA. The purpose of the preliminary injunction is to maintain the status quo between the parties pending outcome of the merits of the suit. SQBC must show irreparable harm, likelihood of success on the merits, and that a balancing of interests favors SQBC.

Here, SQBC appears to have a valid claim on the merits or the breach of contract. Moreover, SQBC would suffer irreparable harm if Sig were to sell the prunes elsewhere because these are the only prunes SQBC uses and they are not available elsewhere. The balancing of interests is a close case here. A court of equity might be influenced by the very harsh terms of the contract and look to the hardship suffered by Sig in being unable to sell his prunes elsewhere. On the other hand the hardship to SQBC would be very great because there are no other prunes available and use of inferior prunes would damage SQBC's trade reputation. Moreover, if the court grants specific performance, clearly the sale of the entire prune crop to ASHA must be halted or performance of the contract will no longer be possible.

Sig's Defenses: Specific Performance and Preliminary Injunction are both equitable remedies. Thus Sig would raise several equitable defenses.

Unclean Hands (bonus if mentioned, no loss of points if not): Sig would assert that SQBC acted wrongfully in relation to the very contract which SQBC seeks to enforce because SQBC's representative made misrepresentation to Sig during contract negotiations. Also, the generally harsh term of the contract indicate possible overreaching by SQBC. This argument probably will not prevail because there is nothing wrong with hard bargaining. There appears to be on outright wrongdoing here, hence, the defense of unclean hands does not apply.

Estoppel: Sig will argue that he relied to his detriment on SQBC's oral promise that SIG would be allowed to sell his excess prunes elsewhere. The reliance was Sig's act of entering into the contract. This is probably a good argument, so SQBC would be estopped from preventing Sig from selling excess prunes to ASHA. Thus, if this defense applies, Sig will still have to sell 40 tons to SQBC but may sell the excess to another buyer.

Unconscionability: Sig would argue that the terms of the contract are unconscionable-The writing was SQBC's standard form contract. The terms

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themselves are oppressive by preventing Sig from selling elsewhere and SQBC is the single largest buyer of Regulator prunes so there may be a great difference in bargaining power. This is probably a convincing argument, given all these factors. SQBC's Legal Damages: As the aggrieved buyer, SQBC may seek either the difference between the contract and the market price at the time he learned of the breach, or he may make a reasonable "cover" of substitute good and sue for the difference between the cover price and the contract price plus incidental and consequential damages.

Here, SQBC can partially cover on the spot market per ton. The difference in price is ten tons times \$100, so \$1,000. SQBC is entitled to damages for the remaining 30 tons which it is entitled to under the contract. The damages there would be the difference in market price and contract price at the time of the breach. SQBC will argue that the market price is \$250, since that is what ASHA was willing to pay. Sig would argue that the cover price is only \$200 per ton because that is the price on the spot market.

SQBC would also seek incidental and consequential damages such as damages to its reputation and customer goodwill because it was forced to use inferior prunes. Any possible delay might also result in consequential damages to SQBC.

SQBC's Defenses: Unforeseeability: Contract damages will only be awarded if they were foreseeable at the time the parties entered into the contract (*Hadley v. Baxendale*). Here the money damages are clearly foreseeable but Sigs would argue that damage to reputation was not foreseeable, and thus should not be awarded. However, damage to trade reputation is probably foreseeable here because both parties appear to be aware of the uniquely excellent qualities of the Regulator prunes.

Failure to mitigate: Sig will also argue that SQBC cannot collect damage it failed to mitigate. Here SQBC could have mitigated its damages by buying inferior prunes and this would at least allow SQBC to continue production of Pruno. This argument is probably not convincing because SQBC has no obligation to cover with inferior prunes.

SQBC can probably recover money damages for Sig's breach.

## **Question #2**

This question is loosely based on *United States v. Virginia*, page 336 of the case book.

A remedial decree must closely fit the constitutional violation; it must be shaped to place persons unconstitutionally denied an opportunity or advantage in the position they would have occupied in the absence of discrimination. (*Milliken II*) In other words: rightful position. Should courts decide public law litigation that restructures government institutions and aim their remedies at the rightful position standard. Some will argue the court should exercise broad equitable power to improve institutions and society. Rightful position might give plaintiffs and incomplete remedy, one that, because of the limited power of the courts to enact social change and fully prevent the future bad effects of past harm, the plaintiffs less than the rightful position or under remediation. If we go beyond the rightful position and the court gives remedies beyond the wrong committed by the defendants, the court has over remediated. This is as much a political decision as it is legal.

Issues: Could cure discrimination by admitting women to the Culinary Institute. Other possible solutions were privatization, which might cure but not certain remedy. Rightful position discussion began in the 1970's in *Lewis* and has evolved over time.

Who pays for the remedy? Can the court impose raised taxes in structural injunction cases? See *Jenkins II*.

Defendant State could also simply close the institution if it chose not to follow court's order.

Separation of powers should be discussed. As Professor Laycock asks: Isn't there potential for abuse when one life-tenured judge tries to run an entire prison system, housing authority or school district?

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**Question #3**

Liability issues: Liability appears to be clear against Dave.

Damage Issues:

General Damages: Pain and Suffering, Emotional Distress.

Arguments: Per Diem, No Golden Rule

Special Damages: Medical bills of \$200,000.00, covered by insurance so issues of collateral source/subrogation arise. Will be looking at rightful position: where would plaintiff be but for the injury.

Loss of income: Earning \$45,000 at time of accident with potential to move to management earning \$75,000 until retirement at age 62 (32 years after accident). Jury will have to calculate present value in battle over future cost and wage increases. Generally, it is better for defendants when the expert predicts that medical care and inflation and wage inflation will be low, and the general rate of return on investments will be high-plaintiffs will want the opposite assumptions.

Loss of Goldilocks: For this property, fair market value of the dog. Not entitled to emotional distress damages for property damage, absent some special relationship which does not exist under these facts.

Taxes: Instruction that part of damages attributed to lost wages is not subject to taxes may be requested.

Punitive Damages: Do the facts raise the issue? Scope and extent of punitive damages.

Prejudgment interest: May be allowed if damages are sufficiently certain.