

Blue Book

NAME _____

SUBJECT *Remedies*

INSTRUCTOR *Tinney*

EXAM SEAT NO. _____

SECTION _____

DATE *4/10/12*

GRADE *C+*

10^{7/8} x 8^{1/4}

50 - 16 PAGE

Jurisdiction

A ^{state} court has jurisdiction over persons properly served and before the court. The state court also has jurisdiction over the land within its state border. However, a state court does not have jurisdiction to partition a portion of land outside of its borders.

Judy would want to partition the ^{total} land and ^{they own together} be able to take her larger percentage interest in the property. She would only be able to complete the partition by first having Punch properly served and then asking the court in Flux to partition the property. As mentioned, the court would not have jurisdiction to do this. It would only be able to partition the property located in Flux once it has proper jurisdiction over Punch.

Judy would ^{also} have to go to Woe, serve Punch properly & then petition the court there to have the Woe land partitioned.

If Punch wanted to partition the home they own together ~~in Flux~~ he would have to properly serve Judy within the state of Woe and then the Woe court could partition the portion of land within Woe's borders. He too would have to do the same thing in Flux. Even if one of the

state courts ordered the entire partition the other state could not enforce it.

Because there is no meeting of the minds, Judy will never allow Punch to see a cent, selling the property is out of the question in Judy's mind. Therefore, the proper remedy for her and Punch as well, is to partition the property they owned together in Flux. Each going to the other state to achieve the entire partition.

Partition won't work with the other property under contract because it has not closed yet. However it is a breach of contract by Judy.

When: There is a breach of contract there is an expectancy interest which is to put the aggrieved party ~~to~~ in the position they would have been had the contract been completed.

~~It is the natural and direct etc~~

It is the damages resulting from a natural and direct result of the breach. This is measured when concerning land as the difference in market value and contract price at the time of the breach.

A plaintiff may also recover incidental and

consequential damages if they were reasonably foreseeable and within contemplation of the parties when the contract was entered into.

In this case the market price is \$500,000 + the contract price of \$50,000. Punch would be ~~entitled~~ entitled to ~~\$200,000 as his 1/2~~ \$450,000 because he had an undivided 1/2 interest. Punch also had consequential damages of having to get an apartment. However, in the making of the contract it was not foreseeable or contemplated by at least Judy that he would have a secret girlfriend. On the other hand, Punch would argue that a breach by Judy for the contract of the home they were going to live in together would result in his having to get an apartment somewhere. ~~That is a~~
In any event, Punch has a duty to ^{try to} mitigate his damages and failure to do so will result in a loss of consequential damages. It might depend on how lavish the apartment is.

Judy will want to have the contract rescinded. The court will allow a rescission for a mutual mistake, where there was never a meeting of the minds, or a unilateral mistake if there was fraud or sharp practice and the ~~other~~ party was not negligent, can restore consideration without harm to

the other party. In this case there was no mutual mistake. There was fraud, ~~but it did not concern the land~~. Punch was going to receive a $\frac{1}{2}$ undivided piece of property worth \$500,000 for \$50,000 knowing full well he was not going to stay with Judy. If Judy can restore his \$50,000 the courts may allow the rescission based on fraud. & sharp practice.

Punch is not going to want this. He may try for specific performance. Specific performance may be granted when the remedy at law is inadequate. Land is unique so the remedy at law is not always adequate. Punch could ask for specific performance along with the consequential damages suffered in the same suit.

Once again the court may rescind based on the fraud or sharp practice.

The court may also deny specific performance when consideration is so inadequate it shocks the conscience of the court. That would seem the case here. He would be getting $\frac{1}{2}$ title to a \$500,000 property for \$50k.

Also, one who is guilty of inequitable conduct

within the same transaction matter his is seeking relief he will be barred by the clean hands doctrine. In this case Puneh is asking the ct. for specific relief in a transaction he was fraudulent in himself. This ~~would~~ will be true if the ct. found that he was guilty of fraud & misrepresentation in the original contract.

Attorney's Fees

The American Rule is that each party is responsible for their own attorney's fees. The exceptions are the Private Attorney General Theory, By Statute or in Contract.

Here we have a contract stipulating that attorney's fees would be paid by the prevailing party.

Because the action pertains to a partition action the ct may have each party be responsible for their own attorney's fees.

One last note, if the court of equity grants specific performance over the land it is a valid conveyance. It must be recognized in the other state but Flux ct. doesn't have to ~~follow it~~ enforce it.

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50 - 16 PAGE

Wrongful Death

When an individual dies due to the tortious conduct of another, a wrongful death suit may be brought. This is a creature of statute and varies state by state. Generally, the heirs at law may bring the suit. In this case it would be his wife Oog.

The plaintiff may recover for all pecuniary losses as a result of the wrongful death such as funeral expenses and medical bills.

A spouse may also recover for the loss of future income the other spouse would have provided, if she can show they would have remained together.

In this case, although they were still legally married Oog was living with a significant other. Oog would have to prove that they would have stayed married and their relationship recover. This would be hard to prove because Oog was living with another guy.

Blubber and Harpoon would be able to recover for their father's loss of support until their majority.

This could be extended if there was some kind of proof that additional support would have been forthcoming such as providing for college education. However, these facts don't state as such would be forthcoming so the pecuniary loss would be limited to their age of majority.

To determine the loss of income figure you would look to how long the person would be working in that field and project his salary out for that period. This amount must be increased to reflect fringe benefits, vacation pay, retirement benefits and social security and decreased for expenses saved such as travel expenses and uniforms. This lump sum must be discounted to present value at a discount rate for safe and liquid investments. This is because a person would be investing the lump sum. This figure then needs to be adjusted upward for inflation. You look to historical data or expert testimony.

In this case Ode was 35 so he would probably work to 65 so we would use 30 years of salary and in addition to the other benefits you would increase this amount by, there is evidence here that Ode was an tract for promotions so we would take that into consideration in our calculations as well.

This lump sum discounted value adjusted for inflation would be Ode's loss of income from Ode if she can prove her marriage would last.

For Blubber and Starpoon depending on their ages it would only be calculated for the years until their 18, instead of the rest of the working years.

The old rule is the recovery was restricted to pecuniary losses. Now, you are able to recover for loss of comfort, society and protection as well

There is no recovery for grief and sorrow or mental anguish in a wrongful death suit but this is basically encompassed in the loss of comfort, society and protection of a loved one. ~~Therefore, even then~~

In this case Oog & the boys could recover for loss of comfort, society and protection. But ^{they} would ~~not~~ ^{not} recover for the psychiatric bills.

You cannot get pain and suffering in a wrongful death suit. You would have to bring that under a survival suit. Here, Oak lived for three days so there could be a survival action.

Generally, punitive damages are not awarded in a wrongful death suit. Again, this is a creature of statute so it depends on the state.

Pre-judgment Interest is allowed in some states for personal injury and wrongful death suits. This is interest on a liquidated sum calculated at the state legal rate. Most states use simple interest, some use compound. It is calculated from time of injury to date of judgment. In some states this is 6

months after injury or death.

The above actions would be against Wyatt individually for shooting Oak.

Oog would also have a suit against The City of Pam. Although he was serving without pay he was authorized by the city and given a police uniform to wear. This would be a civil rights action and therefore if Oog is successful on a significant part of her lawsuit against the city she could also have her attorney's fees paid.

Punitive Damages are generally not imposed on an employer for the wrongful acts of its employees.

The exception to this is where the employer authorized the act, ratified the act or was ~~re~~ reckless in hiring the employee.

In this case he was a volunteer employee the fact that he wasn't being paid is irrelevant in the fact that the city gave him full authority and even a gun. However, there is no indicators that any of the three criteria to impose punitive damages existed in this case.

Pre-Termination Notice

Due Process requires a person be given notice and a hearing before termination. There is no right to a jury trial or to confront the witness but they must be given notice & a hearing. In this case the City of Pain failed to do so, violating Wyatt's Due Process Rights and therefore Wyatt has an action against the City of Pain, & he would be entitled to damages incurred as a result such as loss of pay.

Remedies - Tinney - Final 2012

80

3)

With the negligent construction of the drainage culvert the City has produced a nuisance which threatens the health, safety and welfare of the homes of Peter, Paul, & Mary.

Tort action:

If Peter can show that the drainage culvert construction was negligent - that the city had a duty, they breached the duty, and the damages to Peter's property were the actual and proximate cause of the breach, he will prevail in a tort action against City. He will contend that proper engineering studies were not undertaken and thus the rushing water is damaging his home. If Peter is successful he will receive damages amounting to his already spent costs and he can pray either to have the situation permanently corrected or for funds to do so privately.

Nuisance action:

The actions of City have threatened to completely undermine Peter's home; which prevents him from his peaceful enjoyment. The actions also infringe upon the homes of Paul and Mary. These actions of City have interfered with the health, welfare, and safety of more than just Peter as such he will argue that this is a public nuisance rather than a private nuisance. If he convinces the court that this is a public nuisance, he could pray for attorney's fees under the private attorney general theory. This theory allows that a plaintiff suing for the public good should be reimbursed for the costs of taking on the action. Otherwise he will be responsible for all attorney's fees (American rule).

Under the nuisance action Peter will request reimbursement of funds

spent to mitigate the damage as well as corrective action to alleviate further damage in the future.

Injunctive Relief:

Peter may consider injunctive relief. The facts indicate that his temporary fix solves the problem for several months, thus there seems to be no immanent emergency. Since there is no immanent emergency, a temporary restraining order (TRO) is not necessary in this situation. Further since the desired result is a permanent diversion structure, a preliminary injunction will not be adequate in this situation.

A permanent injunction seeks a mandatory or prohibitive decree for a permanent solution to an issue. The plaintiff must show (1) no adequate remedy at law, (2) feasible enforcement by the court, (3)

Peter has at his disposal a tort action and a nuisance action as such, injunctive relief is not appropriate.

If however injunctive relief is sought it would be mandatory and the court may not be amenable. However the required action would be easily enforceable by the court as the order does not require an individual to perform work, but to have City correct a problem that it has caused.

Discrimination/Civil Rights:

We are not told of the ethnicity of Paul & Mary; this however appears to be a tort/nuisance issue rather than a discrimination issue. Peter could attempt to file a civil rights action however the court may find is frivolous.

Action Against Paul & Mary:

Peter may have an action against Paul and Mary in a quasi-contract theory as they have received value for the materials and work Peter did in averting water damage to their properties as well as increased the property values by at least \$150 K. As stated, they are not willing to pay for this Peter may file to place a constructive lien on the properties in order to be compensated in a certain dollar amount.

Damages:

If Peter is successful, he will be entitled to the costs to mitigate the water damages: the funds already spent (\$50 K) plus the diminution in value of the home due to potential water damage as the diversion at this point is temporary. If in fact, the property become uninhabitable due to the water damage, City will be responsible for taking of the land and compensate Peter for the full FMV of the uninhabitable property.

If this action is prolonged, Peter may seek pre-judgment interest in order to be made whole. The amount of \$50 K tied up in litigation could be making money for him; the issue of pre-judgment interest is at the discretion of the court.

The Suit:

Peter will be able to file under the various theories; however he will need to choose one theory once the suite proceeds to trial.

END OF EXAM