

**TRINITY LAW SCHOOL**

**CONTRACTS 1, LA521**

Midterm Exam, Fall 2024 Online Class

Professor Kaselonis

Paul (P) owns an adventure company. He sometimes sells outdoor equipment to his customers. P is the largest tour company in the area doing about 75% of the sales. P's competitor, Let's Go, represents the other 35%.

P is thrilled that the annual "Hike Till You Drop", a 50-mile relay race will be held in P's area this June. The hike currently has 500 participants registered. Normally, (without this special event), P sells about 100 jackets during his tour season. However, this year, for safety "Hike Till You Drop" requires participants to have gear equipped with built-in LED lights. P believes his sales will at least double the usual 100 jackets sold.

Dig It, Inc. (D) is a manufacturer of outdoor clothing. P regularly buys rain jackets from D. In February, P asked D to manufacture 200 jackets with built-in LED lights before June 1st. D agrees to provide the custom jackets for \$20 each with free shipping. D regularly supplies jackets to P for \$10 each. P sells the jackets for \$60 each. P plans to keep the same price for the custom jackets.

In May, P ran an ad on a hiker's blog for \$50 saying "Get your required equipment here in June." On June 1st P did not have the jackets and customers were already wanting to buy them. P called D several times. D finally replied, "Let's Go offered me \$40 each if I sold to them instead. I still have the jackets, but plan on sending them to your competitor."

No other manufacturer could supply the jackets in time. With no other option, P purchased 200 jackets without LEDs, but had to pay \$25 each since they were a rushed order. 60 customers came in wanting the LED jackets. They were very put out and said they wouldn't be shopping there again. P only sold 150 jackets this season.

1. What is the appropriate measure of damages for D's breach?
2. Does P have a cause of action against his competitor?

Discuss the above fully in IRAC form. Do not discuss contract formation issues.

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### ESSAY RUBRIC

DAMAGES & SPECIFIC PERFORMANCE & TORTIOUS INTERFERENCE: Issues: governing law UCC sale of goods, merchants and non-merchants, compensatory damages, expectation damages including incidental and consequential damages, restitutionary interest, reliance interest, specific performance, tortious interference

1. What is the appropriate measure of damages for D's beach?
2. Does P have a cause of action against his competitor?

#### **Summary (Note: this is a summary of the issues and NOT an example of a full essay answer.)**

Here, since this is a contract for the sale of tangible goods, the UCC will apply. However, since both parties are not merchants, they will not be held to the higher merchant standard.

Although P would benefit most from **expectation damages**, the court will most likely find those **too speculative**. To succeed on an expectation claim, P would have to show damages to the extent certain. Unfortunately, P's damages are not certain and too speculative. Students should apply the facts (i.e., the annual sales, percentage of sales, custom order, etc.) to the rule and discuss thoroughly.

In **reliance** on the contract, P spent \$50 in advertising, which he could claim under reliance damages or incidental damages if expectation damages are being sought.

Also, if P has made any installment payments of downpayment on the contract – he would also be entitled to receive those funds back under both reliance or restitution.

Per the facts given, it does not appear that D received any benefit beyond the contract price to warrant **restitution damages**. However, if D were to sell to P's competitor – then P could demand restitution for the amount in excess that D received (here that would be an extra \$20 per jacket x 200 jackets = \$4,000).

Regarding **specific performance**, this remedy is granted only where monetary is inadequate. Specific Performance is rarely granted and usually only in Land/real estate, or when the goods are unique or difficult to replace (limited) "other proper circumstances". If P wants the custom jackets, he could ask for specific performance. The jackets were a special order that is unavailable elsewhere, so under the UCC they are eligible to be the subject of a specific performance order. If P has not paid, he will need to pay for the goods if the court grants specific performance.

P can file a **tortious interference** claim against his competitor. To prove tortious interference with a contract, the plaintiff must establish the following elements: 1) the plaintiff had a valid and enforceable contract with a third party; 2) the defendant knew about the contract, 3) the defendant intentionally interfered with the contract; 4) the interference was improper; 5) the defendant's conduct led to a breach of the contract; and 6) the plaintiff suffered damages as a result.

The following chart provides an outline of the answer in ICRAC.

<p><b>1. What is the appropriate measure of damages for D's beach?</b> Each of the following should be separately addressed following IRAC or ICRAC</p> <ol style="list-style-type: none"><li><b>1. What law applies to this contract?</b> (UCC as it relates to non-merchants)</li><li><b>2. What is the appropriate measure of damages for D's beach?</b> This is the “heart” of the question. Each of the following damages should be thoroughly addressed separately following IRAC or ICRAC<ol style="list-style-type: none"><li>Expectation damages, including consequential and incidental</li><li>Reliance damages</li><li>Restitution damages</li><li>Specific Performance</li></ol></li></ol>	
<p>Conclusion: (10 pts)</p> <p><b>UCC applies</b> since this is a contract for the sale of movable tangible goods. However, both parties are not merchants, so they are not held to the higher merchant standard.</p> <p><b>The types of Compensatory damages would be:</b></p> <p><b>Expectation damages:</b> Probably too speculative beyond the 50 less than expected jackets sold combined with the 60 customers who specifically came in and wanted to purchase. Beyond that amount, the profits for the remaining jackets would most likely be <b>too speculative</b>.</p> <p><b>Incidental and Consequential damages</b> = \$50 advertisement + extra cost for the regular substitute jackets (3,000)</p> <p>Students should mention “Cover” (see rule below)</p> <p><b>Restitution damages</b> = This depends on whether D actually sells to the competitor for double to contract price. If D does not sell, there is no amount to recover under restitution. However, if he does sell that would be 2x the contract price (\$4,000).</p> <p><b>Reliance damages:</b> In reliance, P paid \$50 for advertising.</p>	

Rule(s): (25 pts)

Each of the following rules should be stated under the appropriate issue section.

**Applicable Law:**

Common law governs contracts for real property and service contracts. The UCC governs all contracts for the sale of tangible moveable goods. Under the UCC, a higher standard is applied if both parties are merchants.

**Compensatory Damages:**

**Expectation damages** (Restatement of Contracts, 2d. §347)

A remedy that seeks to put the injured party in the position had the K been performed. Expectancy interest provides the normal upper limit of contract damages. “Benefit of the Bargain”

$$\begin{aligned} &(\text{Loss in Value}) + (\text{Other Losses/incidental \& consequential}) - (\text{Cost} \\ &\quad \text{Avoided}) - (\text{Loss Avoided}) \\ &\quad = \text{damage} \end{aligned}$$

Once the above amount has been calculated, then consider the limitations:

- 1) Remoteness or foreseeability of harm
- 2) Certainty of harm
- 3) Avoidability of harm

**Rule regarding “Cover”**

Difference Between Contract Price and Cost of Replacement Goods:

Cover is the usual measure of damages for a buyer. Typically, if a buyer is not sent the goods contracted for, he will go out into the marketplace to buy replacement goods. If the buyer chooses the cover measure (i.e., difference between contract price and cost of buying replacement goods), the buyer must make a reasonable contract for substitute goods in good faith and without unreasonable delay. [UCC §2-712] (Barbri, Contracts pg. 134)

If the plaintiff’s expectation damages are **too speculative** to measure (e.g., the plaintiff cannot show with sufficient certainty the profits they would have made if the defendant had performed the contract), the plaintiff may elect to recover those damages they have suffered based on their **reasonable reliance** on the contract.

**Reliance Damages** (Restatement of Contracts, 2d. § 349)

A remedy that seeks to put the injured party in a position as if the K had **never** been made.

<p>The injured party can choose to request reliance damages instead of expectation damages, but such damages will be mitigated by any losses the plaintiff would have sustained if the contract had been performed.</p> <p><b>Restitution damages</b></p> <p>A remedy that seeks to give back the benefit given – restore the benefit/equity may take precedence over technicalities.</p> <p>Restitution is based on preventing unjust enrichment when one has conferred a benefit on another without gratuitous intent. Restitution can provide a remedy not only when a contract exists and has been breached, but also when a contract is unenforceable, and in some cases when no contractual relationship exists at all between the parties.</p> <p>When a contract is unenforceable or no contract between the parties exists, an action to recover restitutionary damages often is referred to as an action for an <b>implied in law contract, an action in quasi-contract, or an action for quantum meruit.</b></p> <p><b>Specific Performance</b></p> <p>While monetary damages are the remedy in Law; Specific performance is the remedy in Equity; Equitable relief is discretionary</p> <p>Specific Performance is granted only where monetary is inadequate Specific Performance is rarely granted and usually only in:</p> <ul style="list-style-type: none"> <li>Land/real estate = unique = specific performance</li> <li>Goods = unique or goods difficult to replace (limited) “other proper circumstances”</li> <li>Services = disfavored, usually only injunction</li> </ul>	
<p>Analysis (25 pts)</p> <p>Were the facts thoroughly discussed and applied to the rule stated?</p> <p><b>Damages:</b></p> <p>The purpose of contract damages is to give compensation for the breach—i.e., to put the nonbreaching party in the position they would have been in had the promise been performed so far as money can do this.</p> <p><b>Expectation damages:</b> a thorough discussion and analysis should be provided by the student. <b>“The benefit of the bargain.”</b></p>	

<p>Here, P covers for the breach by spending \$3,000 more (\$25 per jacket rather than the normal \$10) for jackets without the LEDs.</p> <p>The doctrine of Cover can be specifically mentioned here. However, P probably won't be able to get lost profits since they are too uncertain.</p> <p>P may argue for the lost profits on the 50 less jackets that he anticipated selling and P may use the 60 customers who actually came in to support his claim. However, this is still too speculative since we do not know if the 50 jackets were not sold due to the lack of LEDs.</p> <p>P's expectancy interests are probably too speculative beyond the possible 60 customers who specifically came in to purchase the jackets.</p> <p><b>Reliance interests</b></p> <p>This will depend on whether P has made any initial payments in reliance of the contract. If he has, he would be entitled to the repayment in that amount.</p> <p>P also spent \$50 for an advertisement in reliance on the contract for the special LED jackets.</p> <p><b>Restitution</b></p> <p>Is based on preventing unjust enrichment when one has conferred a benefit on another without gratuitous intent. Generally, the measure of restitution is the value of the benefit conferred.</p> <p>If D actually sells the jackets to P's competitor, then P could seek the excess benefit that D received. (here that would be an extra \$20 per jacket x 200 jackets = \$4,000).</p> <p>If P already paid, he could elect to get his money back, but not if he might choose to pursue specific performance.</p> <p><b>Specific performance</b></p> <p>If P wants the custom jackets, he could ask for specific performance. The jackets were a special order that is unavailable elsewhere, so under the UCC they are eligible to be the subject of a specific performance order.</p> <p>If P has not paid, he will need to pay for the goods if the court grants specific performance.</p>	
Formatting IRAC (10 pts)	

<b>2. Does P have a cause of action against his competitor?</b>	
<p>Conclusion: (4 pts)</p> <p>Yes. P can sue his competitor for tortious interference of contract.</p>	
<p>Rule: (10 pts)</p> <p>Tortious interference with a contract occurs when a defendant intentionally causes a breach of contract between a plaintiff and a third party, resulting in damages to the plaintiff.</p> <p>To prove tortious interference with a contract, the plaintiff must establish the following elements:</p> <ul style="list-style-type: none"> <li>• The plaintiff had a valid and enforceable contract with a third party</li> <li>• The defendant knew about the contract</li> <li>• The defendant intentionally interfered with the contract</li> <li>• The interference was improper</li> <li>• The defendant's conduct led to a breach of the contract</li> <li>• The plaintiff suffered damages as a result</li> </ul>	
<p>Analysis (10 pts)</p> <p>Were the facts thoroughly discussed and applied to the rule stated?</p> <p>Analysis of the tortious interference:</p> <p>Each element below should be addressed and the facts applied to them.</p> <ul style="list-style-type: none"> <li>• The plaintiff had a valid and enforceable contract with a third party</li> <li>• The defendant knew about the contract</li> <li>• The defendant intentionally interfered with the contract</li> <li>• The interference was improper</li> <li>• The defendant's conduct led to a breach of the contract</li> <li>• The plaintiff suffered damages as a result</li> </ul>	
Formatting IRAC (6 pts)	
	Total: