

REMEDIES
Final Examination
Spring 2002
Instructor: Craig Smith

Time Allotted - Three Hours

An answer should demonstrate your ability to analyze the facts presented by the question, to select the material from the immaterial facts, and to discern the points upon which the case turns. It should show your knowledge and understanding of the pertinent principles and theories of law, their relationship to each other, and their qualifications and limitations. It should evidence your ability to apply the law to the facts given, and to reason logically in a lawyer-like manner to a sound conclusion from the premises adopted. Try to demonstrate your proficiency in using and applying legal principles rather than a mere memory of them.

An answer containing only a statement of your conclusions will receive little credit. State fully the reasons that support them. All points should be thoroughly discussed. Although your answer should be complete, you should not volunteer information or discuss legal doctrines that are not necessary or pertinent to the solution of the problem.

Unless a question expressly asks for California law, it should be answered according to legal theories and principles of general application.

QUESTION 1

The "Little 500" is a bicycle race that is annually sponsored by the Associated Students of Indiana University. (ASIU). Bicyclists race around the track at the University Stadium in a format similar to the Indianapolis 500 car race. There is no prize money for winning the race. Competitors are racing solely for pride and "bragging rights." In order to keep "ringers" out of the race. (A "ringer" is anyone who would have so much previous cycling racing experience so as to have an unfair advantage) race rules prohibit anyone who has ever held a United States Cycling Federation (USCF) Class I license from participating in the race. Race rules provide that in the event of disputes regarding eligibility to ride in the race, the matter will be submitted to binding arbitration.

Moe has been recruited as one of four riders on a team competing in the 2002 race. One month before the race a competing team complains to ASIU that Moe has previously held a USCF Class I license. The matter is submitted to binding arbitration, and the arbitration panel rules that Moe is eligible to ride.

Three days before the race ASIU receives additional information indicating that Moe is ineligible to ride. They go to court and ask a judge to issue an order preventing Moe from competing in the race. Without holding a hearing, the judge issues an order commanding Moe not to compete. When Moe learns of the order he consults an attorney and the attorney immediately appeals the judge's order. How should the appellate court rule? Discuss fully.

QUESTION 2

Curly bought a season ticket for Los Angeles Kings Hockey games played at the Staples Center. At the time of the purchase, Curly signed an invoice stating that upon receipt, "risk of loss or theft of said tickets shall pass to Curly and that the Staples Center shall not be obligated to admit subscriber to events unless tickets delivered hereunder are presented at such time."

Curly lost his tickets, and the Staples Center agreed to sell him a second ticket allowing Curly to sit in his normal seat. The agreement required Curly to refund the second payment if Curly found his lost tickets. The agreement required Curly to vacate the seat if someone possessing Curly's original ticket tried to claim the seat.

After receiving the second ticket, Curly attends the next scheduled Kings game at the Staples Center. Curly is sitting in his seat when an usher orders him to move. It seems that Larry has shown up with Curly's original ticket which he brought outside the Staples Center from a scalper, Moe, just before game time.

Discuss fully, Curly's right to get the price of his lost tickets from the Staples Center, Larry and Moe.

QUESTION 3

Coppi was a professional bicycle racer. Because of his short height, 4'9", he required a custom made bike in order to get a proper fit. For the upcoming bike racing season, Coppi decided to buy a new bike. He went to Merlin, a maker of handcrafted bicycles. Merlin sized Coppi for a custom made bike. Because the bike was to be unusually small, Merlin had to place a special order with his bicycle tube supplier, Columbus, to get steel tubes of a correct size to build a proper bicycle frame. Columbus told Merlin it would be at least four weeks before the tubes would be available.

The price of the bike was to be \$2,500. Coppi signed a written agreement promising to pay the purchase price. When the tubes arrived four weeks later, Merlin immediately began welding them into a bicycle frame. Two weeks later Coppi injured himself on a training ride. The injuries were serious and ended his career as a bicycle racer. He immediately notified Merlin that he did not want the bicycle. At that point, the bike was less than a week from being completed. Merlin went ahead and finished the bike. He prominently displayed the bike in the front window of his shop hoping it would catch the eye of a potential buyer. Because of its extremely small size, no one was interested in buying it. Coppi refused to pay the balance of the purchase price and in fact, had even asked to have his deposit returned.

A. Merlin eventually files suit against Coppi seeking the balance of the purchase price. How should the court decide the case of Merlin v. Coppi? Discuss fully.

B. Same facts as above except, assume that Coppi is never injured and is ready willing and able to pay for the bike. Just before the bike is to be delivered Merlin is offered and accepts \$5000 from a bike collector to sell the bike to him. Coppi immediately files suit. Merlin has the \$5000 but has not yet delivered the bike. The first race of the bike season is less than one week away. Discuss fully, any and all remedies Coppi may have against Merlin for this breach of contract to sell the bike.

REMEDIES
Final Examination
Spring 2002
Instructor: Craig Smith

MODEL ANSWER

QUESTION 1

Moe appears to be on the receiving end of a temporary restraining order, a type of injunctive relief. Injunctive relief is equitable in nature. Entitlement to such relief means that the plaintiff must show that remedies at law are inadequate and that the denial of injunctive relief will result in irreparable harm.

Legal remedies, as opposed to equitable ones, are substitutionary in nature. They attempt to quantify the plaintiff's loss in terms of money and award that amount to compensate for the harm or damage caused by the defendant. In the case at hand, monetary damage that might result from Moe being allowed to compete in the race, would be difficult to quantify. There is no prize money for competing in the race, so in the event Moe were to win the race, if he was allowed to compete, no one would suffer a monetary loss nor would Moe enjoy a monetary gain. Hence, legal damages would therefore be inadequate as a remedy.

In determining whether irreparable harm would result if injunctive relief were denied, the court would compare the harm to be suffered by the plaintiff to the hardship on the defendant. Plaintiff will most likely argue that it is not fair to require him to compete against another racer who is not eligible. But how this is "harmful" is hard to imagine. It is not as though Moe is alleged to be under qualified and therefore poses a safety hazard if allowed to compete. Rather the claim is that he is too skilled. This does not qualify as irreparable harm. From Moe's point of view if he is eligible to race, as the arbitration panel found, he should be allowed to compete. This may be his only opportunity to race. Most courts would probably say that plaintiff has not met its burden of showing the hardship he will suffer outweighs the prejudice to the defendant.

In the appellate court, the court's issuance of an "order" preventing Moe from competing would be scrutinized using the above test. The order has all the trappings of a temporary restraining order (TRO). TRO's are issued to maintain the status quo, before the court considers the merits of the case. The "status quo" has been defined as the last peaceable position of the parties before the dispute erupted. Here, the status quo would be that Moe is

eligible to race. That was the ruling both before and after the case went to arbitration. Secondly, a TRO can only issue after notice to the opposing party. There is no indication that Moe got any notice. Due process requires notice and an opportunity to be heard. There are exceptions to giving notice where there is a showing that the party to be restrained may destroy the subject matter of the lawsuit or abscond from the jurisdiction of the court if she gets wind of the fact that a TRO is being considered, but there are no facts in this case to demonstrate that those exceptions might apply here.

Also, a bond must also be required before a TRO can issue. The purpose of the bond is to make sure that defendant is compensated for any harm that results from the issuance of the TRO if it is later determined that the TRO should not have been issued. The amount of the bond sets the upper limit on damages the defendant can recover for wrongful issuance of the TRO. Here, there are no facts to indicate that a bond was required to be posted. This may persuade the appellate court to reverse the order granting the TRO.

Lastly, there is doubt as to whether the judge should have ever intervened to decide what is essentially a dispute over "eligibility" to participate in the activities of a private organization. Ordinarily, courts do not involve themselves in deciding questions of membership of private clubs, organizations or societies. These are not governmental affairs. Unless the private organization membership affects the ability of the individual who is being excluded to earn a livelihood, courts don't get involved. This is not a situation of a physician who is being excluded from a local medical society with a concomitant affect on her ability to secure hospital privileges. Rather it is a dispute over participation in a race with none of the ramifications that might be present in the situation of the physician. For these reasons the trial court should not have gotten involved and therefore should be reversed.

QUESTION 2

It appears that either the Staples Center, Larry or Moe (or all three) have been unjustly enriched. **Unjust enrichment** occurs when someone has received a benefit under circumstances where it would be unjust or unfair to permit them to retain it. If unjust enrichment is demonstrated, then the remedy to correct it may be either **restitution**, a **constructive trust**, or an **equitable lien**.

In this case, Curly lost his tickets and was obligated to pay for a replacement. After he pays for the replacement, his lost ticket shows up in the hands of Larry. The Staples Center has now been compensated or paid twice for the same seat. The person who has made the two payments to Staples is Curly. Why should Staples be allowed to retain a second payment for the same seat? The fact that Curly may have been negligent in losing the ticket is no defense to the claim of unjust enrichment. Curly should be entitled to the return of the benefit (the second payment) he has conferred upon Staples. The return of that benefit is called **restitution**.

Moe, the scalper, appears to have gained possession of the tickets under suspect circumstances. The natural inference is that he either found or stole the tickets. If he stole them, permitting him to retain the tickets or the proceeds from their resale is patently unjust. If he found them, he had means of learning the identity of the true owner and should have made an effort to return them. So similarly, permitting him to retain the tickets or their proceeds would be unjust. This is a situation where the law would say that Moe holds the tickets as **constructive trustee** on Curly's behalf. Equitable title to the tickets belongs to Curly. A court would order Moe, as constructive trustee, to return the tickets to Curly. Of course, Moe has sold, or scalped, the tickets to Larry. However, a constructive trust can follow the asset being attached to the hands of a subsequent possessor. Larry would have to return the tickets to Moe under a theory of constructive trust unless he can show that he is a **bona fide purchaser (BFP) for value**. A BFP, will cut off a constructive trust. However, to qualify as a BFP, Larry would have to show that he purchased the tickets in good faith, and not under circumstances under which he would have notice that they were stolen or obtained under suspicious circumstances. This would be a close call because people buy tickets from scalpers all the time, so this very well may cut off Curly's rights to receive the tickets from Larry. However, if he can overcome the BFP defense he could receive either the tickets from Larry or the proceeds of the sale from Moe. If Moe sold them for more than face value, Curly could get any increase in price or profit that Moe received.

Under a constructive trust the measure of recovery is the gain of the defendant, not the loss of the plaintiff, and Moe would hold any appreciation of the asset or profit as trustee for Curly as well. A constructive trust is an effective remedy for an asset that has appreciated because it entitles the constructive trustor to any increase in value of the asset.

If on the other hand, Moe sold the tickets for less than face value, a more appropriate remedy might be an **equitable lien**. Once again, Curly would have to overcome the BFP defense. If he is able to do so, then he effect has a security interest in the tickets and his monetary loss could be satisfied by forcing a sale of the tickets, and then be compensated out of the proceeds of the sale.

QUESTION 3

A. Breach by buyer. This is a sale of goods. Therefore it is governed by the provisions of Article 2 of the UCC. The measure of damages when the buyer breaches is the **difference between the contract price and the market price** of the goods. The UCC requires the seller to resell the goods on the open market. The resale price normally determines the market price. If the seller resells in good faith for less than the price the goods were under contract for, he can recover that amount together with any incidental or consequential damages. Examples of incidental damages might be increased storage, shipping or interest cost. Examples of consequential damages would be loss of profits. If the goods are unsuitable for resale in the normal course of the seller's business, or if efforts to resell the goods are unavailing, the seller may bring an **"action for the price."** This is in effect a forced sale in that it forces the buyer to pay for the goods at the contract price. Usually this is only available when the goods are unusual or are peculiarly suited only for the buyer. Here, the bicycle that was specially made was of an unusually small size and the seller's effort to "unload" the goods was unsuccessful. Hence, this would be an appropriate situation for an action for the price.

B. Seller's breach. When the seller breaches and the buyer "covers" by making a substitute purchase the buyer's remedy is the **difference between the contract price and the cost of the cover**, together with any incidental or consequential damages. If the buyer does not cover, the measure of damages is the **difference between the contract price and the market price when the buyer learned of the breach**. If the buyer fails to cover, he is not entitled to recover incidental or consequential damages.

If the goods are unique (or in other appropriate circumstances) the buyer may be entitled to **specific performance**. Other proper circumstances may include an inability to cover. Here the bike is unusual and one of a kind. The buyer may have trouble finding a suitable substitute on the open market.