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1. Steve v. Barbara

Contract Formation

UCC governs sale of goods and services and land sale contracts are governed under common law. A contract is formed when there is mutual assent between two contracting parties to form a contract and there is an offer, acceptance and consideration.

Here, Barbara offered to buy Steve's property for \$500,000 consideration and Steve accepted the offer with his own material terms which Barbara thereby accepted. Thus, there was a negotiated contract between Steve and Barbara.

Unilateral Mistake

When two parties are entering into a contract and contract terms are materially altered when the parties are signing the contract to the terms agreed upon, whereas one person knows of the material alteration and yet does not inform the other party, the contract is said to be a unilateral mistake between the two contracting parties. Here, Steve had communicated that he wished to sell his property provided he retained mineral rights and had access to the land. Barbara had accepted the terms and relayed that she will have her attorney prepare the necessary papers. When Steve asked before signing if the agreement had the terms he had requested, Barbara assured him that it did. It was later when Steve decided to visit the property did he know his conditions were omitted. Thus, there was a unilateral mistake to the contract which altered material terms.

Misrepresentation/Fraud

When a person wantonly takes away someone's tangible or intangible possession with an intent to defraud them of their possession, the person has likely committed fraud or misrepresentation. Here, Barbara, in order to take away land from Steve, wantonly represented that she had added the terms per Steve's condition and immediately after the sale refused to let Steve and his geologist on the property. Moreover, she erected barricades to prevent their access. Barbara never had the intention to let Steve retain the mineral rights. She wanted the land and the rights all to herself for the lesser price she paid Steve.

Reformation

When there is a unilateral mistake, upon non-breaching party's motion, the court can amend the contract such that the contract read on the terms material to both party's agreement. Here, since there was unilateral mistake, Steve can motion the court for equitable remedy under reformation, which will amend the contract between Steve and Barbara such that the mineral

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rights are added to the contract as originally negotiated.

PER (Parole Evidence Rule)

Barbara may argue that PER bars any recovery based on mineral rights as the contract was completely integration and the mineral rights were discussed before the signature. However, that will not stand as the PER does not bar prior discussed terms which materially alter the contract specially due to fraud.

Specific Performance

Specific Performance is usually awarded for land sales and unique things which cannot be monetised. The court looks at whether the elements for the specific performance are met. There should a contract, parties should be able to perform or have substantially performed under the contract. It should be feasible for the court to apply the remedy, there is mutuality, money damages are inadequate and there are no legal defences.

Here, Barbara and Steve already formed a contract and Barbara thereby took possession of the land, where she refrained Steve to enter the premise for his mineral rights. Since its a land, the court can order Barbara, to return the land to Steve as is thus, feasible for the court to apply remedy, Steve cannot buy his mineral rights, specially when there was fraud on the other party's part. Lastly, Barbara may argue regarding defences such as unclean hands or laches. However, there is no indication Steve has delayed or will be delayed in bringing this suit agsint her, nor had he misrepresented his position towards her while negotiating the contract. Thus, specific performance is also a remedy.

2. Acme v. Barbara

Punitive damages

Punitive damages are usually awarded for tort crimes, however, when a person commits acts that rise to the level of tort, punitive damages can be awarded. Here, Barbara embezzled money from ACME which was tortious in nature and thus, ACME can be awarded punitive damages, which are legal damages.

TRO

A TRO can be awarded by the court if there is irreparable harm. Here, ACME can show that Barbara is using her funds she embezzled from ACME to different sources. Thus, in order for them to retrieve those funds, she needs to be stopped and her account needs to be frozen so she cannot use her money.

Preliminary injunction

Permanent Injunction

3. Acme's equitable recovery from Barbara's checking account

\$250,000 of the funds that she embezzled from ACME which can be traced to Steve's

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property plus \$20,000 which she also embezzled from ACME.

Question #2 Final Word Count = 793

**END OF EXAM**