

5)

1. What damages can Perry recovery?

Contract - Services

A contract requires mutual consent and consideration. A contract for services is controlled by common law, whereas contract for goods is controlled by U.C.C.

P and D entered into a contract, for D to sell baseballs signed by members of championship baseball teams, the Jaguars, and the Sluggers. There was mutual consent as the contract was executed, and consideration, appears to be a commission to D for the baseballs, or possibly, D as P's niece has made a *gratuitous promise*, which would be no consideration.

The common law controls, as D is providing a service either for commission or gratuitous promise.

Fiduciary Relationship - Agency

Where an agency exists, the agent must act on behalf of the principal, and must act with due care and loyalty.

Since D is acting as a middleman in selling her uncle's baseballs, she is acting as an agent for P. This gives D the authority to sell on behalf of P for the purpose of earning P money. The agent must not *self deal* under the duty of loyalty, and must *exercise reasonable care, skill*, under duty of care.

Therefore, D has a duty to exercise her authority under agency principals.

Conditions - Implied Good Faith

Implied in every contract is a duty to operate in good faith and fair dealing.

Breach

When D committed fraud against P in the sale and exchange for both baseballs, D breached duty of good faith and fair dealing.

General Damages

General damages in contract or expectation damages are the benefit of the bargain.

The benefit of the bargain for the sale of both baseballs would have been made on a good faith communication from D as the agent. Thus, D may recover these damages under breach of contract, or \$8,000 for the Sluggers ball, and \$5,000 for the Jaguars ball.

Consequential Damages - Hadley v. Baxendale

Consequential damages are those that are *unique* to the plaintiff. Under Hadley v. Baxendale, the damages must have been foreseeable at the time of contract, reasonably certain to occur,

and not too remote.

There are no facts stating that P and D had foreseeable losses. Therefore, special damages are not recoverable.

a. Jaguars Baseball

Tort - Fraudulent (Deceit)

Fraud is the *intentional* false misrepresentation of a *material fact* that made *knowingly*, which *induces reliance by a party*, resulting in damages.

Here, D told P that the Jaguars baseball was a counterfeit worth only \$20, which was actually worth \$5,000. D was aware of P's ignorance, and so "volitional act" of misrepresenting the baseball's value was not only intentional but made knowingly, inducing P to sell the baseball. D may argue that P was aware that the baseballs were signed by members of championship teams, however, P knew nothing about value of baseballs.

Therefore, P may seek damages under fraud by deceit.

General Damages

General damages in tort are those that *naturally flow from the tort*, they are compensatory in form of money, and designed to put the plaintiff in their rightful position.

The baseball was sold to D for \$20. Since the actual market value is \$5,000, D would owe P \$4,980, as this would put P in his rightful position.

Therefore, general damages are not recoverable.

Special Damages

Special Damages are those that *do not flow naturally from the tort*. They are unique and must be specifically pleaded, as they must be foreseeable, reasonable certain, and not too remote.

Here, the circumstances do not provide for special damages, as D is still in possession of the baseball, and P had not foreseeable lost profits.

Therefore, special damages are not recoverable.

Nominal Damages

Nominal damages determine that a party's rights have been violated, not monetary.

Here, the fraud of tort was committed, by D.

Therefore, nominal damages are not recoverable.

Punitive Damages

Punitive damages are designed to punish the defendant for egregious conduct, acting with intent, malice, or gross negligence.

Here, D acted intentionally, when taking advantage of P's ignorance, while engaged in a fiduciary relationship, committing fraud.

Therefore, punitive damages are recoverable.

b. Slugger Baseball

Tort - Fraud (Concealment)

The tort of fraud by concealment is similar to the tort of fraud by deceit. It requires the same elements; *intent, false statement, made knowingly, induces reliance, causes damages*. It is distinguished in that the party is concealing a material fact.

Here, D told S he could sell the slugger baseball for \$1,000, when in fact Denise sold it for \$10,000. D told S that the baseball was 10x less valuable than it actually was, and then profited \$9,000. When D told P that the baseball sold for \$2,000, D *concealed* the truth of the value, which was an intentional, false statement, made knowingly, with the intent to induce P's reliance, causing P to suffer damages.

Therefore, P may sue for fraud.

General Damages

Defined Supra.

The expectation P would have gained is the value of the baseball based on the bargain with Bob. Thus, the true profit, P should have gained would have been \$8,000, minus the cost for services by D.

Therefore, general damages are not recoverable.

Special Damages

Special Damages are those that *do not flow naturally from the tort*. They are unique and must be specifically pleaded, as they must be foreseeable, reasonable certain, and not too remote.

Here, the circumstances do not provide for special damages, as at the time of contract there was no expectation that was foreseeable, reasonably certain, and too remote. The parties stipulated the baseball was about \$1,000 - \$2,000 in value. P had no foreseeable lost profits.

Therefore, special damages are not recoverable.

Nominal Damages

Defined.

D committed fraud against P based on D's intentional misrepresentations.

Therefore, nominal damages are not recoverable.

Punitive Damages

Defined Supra.

D committed fraud against P based on D's intentional misrepresentations, and concealment of the true value of the baseball, as a fiduciary.

Therefore, punitive damages are recoverable.

2. What equitable remedy or remedies can Perry obtain?

Choice of Remedies

Where a party has the option to sue in tort or restitution, they must choose one.

Here, the following restitution remedies are available to P, however, P may not also sue in tort.

a. Jaguars Baseball

Restitution Replevin - Legal

Replevin is a legal remedy that allows a party to obtain personal property wrongfully obtained by another to prevent *unjust enrichment*.

Here, D committed fraud against P for the jaguars baseball, resulting in *unjust enrichment* of value of \$4,8000. To prevent unjust enrichment, P may seek replevin which would return the property back to P.

Injunction - Equitable

An injunction is an equitable remedy where a party is court ordered to do or not do something, where there is an inadequate legal remedy, and the party shows that irreparable harm will result if the injunction is not issued.

Though, the jaguars baseball may be *unique*, it has a \$5,000 value, and therefore, damages is an adequate legal remedy.

b. Sluggers Baseball

Assumpsit - Quasi - Contract

Where a party has entered into a contract which resulting in unjust gains at the expense of the plaintiff, the plaintiff may sue for assumpsit.

Therefore, this remedy is also available.

Restitution - Constructive Trust - Voy Car

Constructive trust is a fictitious trust over another's property to prevent unjust enrichment. The plaintiff must identify the res, and trace the res. A constructive trust gives the plaintiff beneficiary rights to the property, and transfers the property from the defendant to the plaintiff.

Here, D used the \$8,000 to purchase the Voy car. The money used to purchase the car was a result of fraud, and unjust benefit to D. If P can trace the \$8,000 to the car, and identify the funds were used to purchase the car, P can issue a constructive trust over the voy.

Therefore, this remedy is also available.

Priority Over All Other Creditors

Constructive trusts give priority to the plaintiff over all other creditors.

Tracing - \$12,000 Increase in Value

The appreciation in value of a vehicle will go to the constructive trustee, where the defendant acted in bad faith.

Here, P would receive the increase in value.

Therefore, this remedy is also available.

Restitution - Equitable Lien - Voy Car

An equitable lien is a fictitious lien against property, acquired by unjust benefit from the defendant. The plaintiff seeks a lien over the property, and has priority over unsecured creditors.

Here, P may seek equitable lien against the Voy, as an alternative to constructive trust.

Therefore, this remedy is also available.

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