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1. Perry's (P) Damages Recovery

***Valid Contract***

Under common law, in order to have a valid contract there must be mutual assent, a valid offer, acceptance and consideration.

Here, as mentioned in the facts P and Denise (D) entered into two valid contracts for the sale of the two baseballs.

***Contract defense - Fraud***

A contract can be voidable due to fraud/ misrepresentation by the fraudulent party. Fraud is a defense to a contract.

Here, as the facts state P had a fraud claim against D, since she defrauded him by misrepresenting the value of the baseballs to P.

***Expectation damages - baseballs***

If a contract is void, a party may recover all of the expectation damages (in the form of fair market value of the items in dispute) if the contract was duly performed and without the fraudulent misrepresentation.

Here, due to the fraud committed by P may recover expectation damages from D in the amount of the fair market value of both baseballs. The value of the Jaguar's baseball is \$5000 and the value of the Sluggers baseball is \$10,000 (out of which P already has \$2,000 so he can recover the remainder \$8,000.)

2. Equitable Remedies/ legal remedies Perry can recover

***Legal remedies:***

**Expectation damages**

Please see rule and analysis above.

Here, P is entitled to the expectation damages of \$5000 + \$8000 which is \$13,000 in total.

**Rescission of contracts**

A contract may be rescinded if there a fraud was committed and the non-fraudulent party may request for the contract to be completely abrogated so they do not have any duty of perform

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their end of the contract.

Here, due to D's fraud the contract can be rescinded and there will be no duties owed to D on behalf of P.

Therefore, P may successfully argue that due to D's fraud the contract should be rescinded (completely destroyed) and to relive P from any duties she owes to D which includes receiving the \$20 back that he paid D to sell the baseballs .

### **Restitution - Undue enrichment**

Restitutionary damages are awarded to the non breaching party of a contract for any undue enrichment the contract has provided to the breaching party as a result of the contract.

Here, D used the money she received from selling the Sluggers baseball to Bob to purchase a Voy car (with the remainder \$8,000). Since the car is now worth \$20,000 she has been unduly enriched approximately \$28,000.

Therefore, P may receive restitutionary damages of \$28,000 from D.

### ***Equitable remedies:***

#### **Replevin - Jaguars baseball**

Replevin is an equitable contracts remedy where the non breaching party can recover to the property they sold to the fraudulent party.

Here, since D still has possession of the Jaguars ball, P can seek to have the ball returned to him.

Therefore, P can recover possession of the Jaguar ball under the theory of replevin.

#### **Equitable Lien - Voy Car**

An equitable lien is created when a breaching party used another's funds fraudulently to purchase another piece of property. In this case the court will require that the funds used to purchase this property be traced back to the purchase of the new property. The moving party must show this dichotomy/ relationship. If shown, the court will require that an equitable lien of the purchased property, which means that the moving party can receive the funds from the sale of the fraudulently purchased property.

Here, since the Voy car was purchased using the funds from the fraudulent sale of the Sluggers baseball. P can show that these funds (\$8000) were directly used/ can be traced back to D's purchase of the car.

Th ne court will require D to sell the car and award the funds from the sale to P as part of the equitable lien. This will likely be \$20,000 which is the fair market value of the

car.

### **Specific Performance**

Specific performance is not available for service contracts even if it is for the contract of the sale of unique goods.

Here, the contracts between P and D was as service contract --for D to use her judgement as a memorabilia expert to sell the baseballs which are arguably unique items.

Therefore, even though the baseballs are arguably unique, P may not recover specific performance here.

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**END OF EXAM**