

PEARCE MICRO REVIEW
Remedies

- I. Damages
 - A. Torts
 - 1. Compensatory
 - 2. Punitive
 - B. Contracts
 - 1. Compensatory (Expectancy)
 - 2. Consequential (Must be foreseeable at the time the contract is made.)

- II. Restitution
 - A. Money: quasi contract analysis prevents unjust enrichment
 - B. Replevin: pretrial remedy to recover specific personal property
 - C. Ejectment: recovery of specific real property, designed to remove trespassers

- III. Equity
 - A. Torts: Temporary and Permanent Injunctions
 - 1. Inadequate legal remedy
 - 2. Property interest (defined very broadly today)
 - 3. Feasibility
 - 4. Balance of hardships
 - 5. Defenses: laches, unclean hands, 1st A freedom of speech
 - B. Contracts: Specific Performance
 - 1. Inadequate legal remedy
 - 2. Definite and certain contract

3. Feasibility
 4. Mutuality
 5. Defenses: laches, unclean hands, unconscionability, personal servitude
- C. Equitable Restitution
1. Constructive Trust: requires a party to turn over property s/he has both possession of and title to.
 2. Equitable lien: Like a constructive trust, but the party can obtain other property in the hands of the wrongdoer. Tracing bank accounts or assets.
- IV. Special Contracts Remedies
- A. Rescission: Cancel a contract
1. Mistake, misrepresentation are the most common reasons for rescission.
 2. Sale to a BFP is the most common defense.
- B. Reformation: Revise a contract to reflect the true intent of the parties
1. Scrivener's error is the most common reason for reformation
 2. Sale to BFP is a defense, parol evidence rule is not a defense.
- V. Fiduciary Liability
- A. Fiduciary relationships can exist by contract. Corporate insiders are often fiduciaries to the company and to investors. Trustees are fiduciaries to the beneficiaries and to the trust.
- B. Fiduciary Duties
1. Duty of Loyalty
 2. Duty of Care
 - a. Prudent investor rule
 - b. Business judgment rule
 - c. Duty to diversify

Remedies Hypothetical #1

Fidelity Development Company (Fidelity) recently opened a large fifteen-story office building. Since it opened, brick masonry on the building has developed cracks, and some bricks have fallen to the sidewalk below. The defective masonry poses a danger to pedestrians. The cause of the cracks was negligence by brick masons in preparing the mortar. The rest of the building is structurally sound, although it is very unsightly.

Fidelity had contracted with Bildco to build the multimillion-dollar building. Bildco was the general contractor which, using due care in its selection process, contracted with Mason, an independent entity, to do the masonry work. The preparation of the mortar and the laying of the bricks was done by Mason's employees, who were using Mason's equipment. Mason also employed a head mason who told the other employees what to do. Bildco had a project supervisor who was constantly on the site and who monitored the masonry work. When Bildco's supervisor made suggestions concerning such things as bricklaying procedures to Mason's head mason, those suggestions were routinely followed.

It will cost \$300,000 to repair the masonry so that the bricks will not fall and another \$200,000 to remedy the unsightliness.

On what theory or theories, if any, may Fidelity sue Bildco and Mason and what damages should it recover from each? Discuss.

I. Fidelity v. Bildco

A. Contract Theory

1. There are no formation problems.
2. Bildco breached the contract.
3. Damages
 - a. \$300,000 to repair the masonry
 - b. \$200,000 to remedy the unsightliness

B. Tort Theory: Negligence

1. Duty
 - a. Mason was an "independent entity."
 - b. Bildco's supervisor "made suggestions."
2. Breach
3. Causation
4. Damages
5. Defenses

C. Conclusion

II. Fidelity v. Mason

A. Tort Theory: Negligence

B. Contract Theory: Third Party Beneficiary

1. Liability
2. Damages
3. Conclusion

Remedies Hypothetical #2

Proff agreed to deliver a lecture at State College on January 10, 1985, for which he was to receive a \$10,000 fee. On December 31, 1984, he went to Flyright Travel Co. to ask about flights to State College. He told a Flyright employee that he had to be at State College by 3:00 pm. When told that Midwest Flight #1, which left at noon, would get him to State College by 1:30 pm, Proff purchased a reserved seat, non-refundable super discount ticket on that flight. The ticket, prepared by the Flyright employee, bore both the flight number and departure time stated by the Flyright employee.

Proff arrived at the airport at 11:30 am on January 10th, ample time to check in and pass through security at that airport, but discovered that Flight #1 had departed at 11:25 am in conformity with a new schedule that had been sent on December 1, 1984, to all travel agents authorized to sell Midwest tickets. Flyright had received the new schedule on December 5th but had not entered the change in the computer data used by its employees. Because no alternative transportation was available, Proff could not deliver his lecture. In response to a State College demand, he returned a \$5,000 advance he had received from the school.

On January 5, 1987, Proff filed an action against Flyright to recover damages. He alleged in his complaint that the damages were incurred because Flyright's negligence made it impossible for him to deliver his lecture and he therefore lost the lecture fee and the cost of the ticket. He also sought punitive damages.

Flyright seeks dismissal of Proff's complaint, by a procedurally proper motion, claiming:

1. The two-year statute of limitations for tort actions bars the suit.
2. The complaint fails to state a cause of action in tort.
3. The complaint fails to state a cause of action on any other legal theory.
4. Even if the complaint states a cause of action, the damages sought cannot be recovered by any theory suggested by the facts alleged.

How should the court rule on each of the grounds used in support of the motion to dismiss? Discuss.

- I. Does the Two-year Statute of Limitations Bar the Suit?
 - A. When does the statute begin to run?
 - 1. Date of purchase?
 - 2. Date of injury?

- II. Does Proff's Complaint State a Cause of Action in Tort?
 - A. Negligent misrepresentation
 - 1. Material misrepresentation of past or present fact
 - 2. Vicarious liability: respondeat superior
 - 3. Negligence
 - a. Duty: ordinary care
 - b. Breach
 - c. Causation
 - d. Damages: ticket price and lost lecture fee
 - 4. Justifiable reliance
 - 5. Defenses: Contributory or Comparative Fault
 - B. Intentional misrepresentation (fraud) is necessary to justify punitive damages, but is not present here.
 - C. Conclusion

- III. Other Legal Theory: Breach of Contract.
 - A. Formation
 - B. Performance
 - C. Conclusion

- IV. Damages
 - A. Tort damages
 - 1. Compensatory
 - 2. Punitive
 - B. Contract damages
 - 1. Compensatory
 - 2. Punitive
 - C. Conclusion

Remedies Hypothetical #3

Sam owned Blackacre and Whiteacre, two unimproved vacant tracts of land. The county assessor's records listed each tract as containing 10 acres. Without having seen either tract, but having checked the assessor's records, Bob telephoned Sam and said, "I offer to buy Blackacre and Whiteacre for \$20,000, \$10,000 now and \$10,000 in one year." Sam responded, "O.K., I'll have the papers ready tomorrow." The following day Bob paid Sam \$10,000, and the parties signed a land sale contract prepared by Sam's lawyer. The contract described the property as "Blackacre, containing 20 acres, more or less," and did not mention Whiteacre. The contract was otherwise consistent with oral communications between Bob and Sam.

The contract did not contain language making time of the essence.

During the next 12 months the following events occurred:

- A. Bob sold his interest in the contract to Cal for \$10,000. Cal notified Sam of his purchase.
- B. The announcement of a proposed freeway increased land values in the area from \$1,000 per acre to \$3,000 per acre.
- C. Bob, Sam, and Cal each learned that while Blackacre contained 10 acres, Whiteacre contained only 7 acres.

On the date the final payment was due, Cal tendered \$7,000 to Sam and demanded deeds to Blackacre and Whiteacre. Sam rejected the tender and two days later notified Cal that the purchaser's interest in the contract was "terminated because of non-payment."

Land values in the area are continuing to increase rapidly.

What rights and remedies, if any, does Cal have? Discuss.

- I. Cal's Rights: Based on a Contract Theory of Liability
 - A. Formation of Contract Between Sam and Bob
 1. No problems with offer, acceptance, consideration
 2. Writing: effect of error by Sam's lawyer regarding description of the property
 - B. Validity of Bob's Assignment to Cal:
 1. Bob's interest is assignable.
 2. Sam received notice.
 - C. Performance
 1. Three-fold increase in land values does not discharge Sam's contract duties.
 2. Cal's incomplete \$7,000 tender may discharge Sam's duties.
 - a. Was this tender a material breach?
 - b. Can Cal seek an abatement of the purchase price?
 - D. Conclusion
- II. Cal's Remedies
 - A. Reformation to include Whiteacre
 - B. Damages: market value minus contract price
 - C. Restitution to Cal of the \$10,000 Sam got from Bob
 - D. Specific performance
 1. Inadequate legal remedy: land is unique
 2. Definite and certain contract
 3. Feasibility
 4. Mutuality
 5. Defenses
 - E. Conclusion

Remedies Hypothetical #4

A woman who identified herself as Smith brought an auto into Carson's Auto Repair Shop (CARS) for repairs. CARS completed the repairs for \$5000, which is a fair price for the work done and the parts and materials supplied. The day the repair work was completed, police informed CARS that the auto had been stolen by Smith and that Brown was the owner. Police took possession of the auto and returned it to Brown. CARS has not been paid and Smith has disappeared.

Brown did not have insurance on the auto. A week after recovering the auto, Brown sold it and transferred title to Jones for \$8000, the fair market value of the auto in its repaired condition. Brown deposited the \$8000 in his bank account, bringing the balance in the account to \$22,000. a week after making the deposit, Brown withdrew \$20,000 and lost all of it gambling. One day later, Brown won \$1000 in the state lottery and deposited that amount into his bank account. no other changes in the account have taken place.

What remedies, if any, does CARS have:

1. Against Brown? Discuss.
2. Against Jones? Discuss.

- I. CARS v. Brown
 - A. Damages
 1. Brown never had a contract with CARS.
 2. Brown did not commit any tort against CARS.
 3. Conclusion
 - B. Restitution: Brown has been unjustly enriched by CARS.
 1. Constructive Trust
 - a. Commingling
 - b. Lowest Intermediate Balance
 - c. Replenishment
 2. Equitable Lien
 - C. Replevin
 - D. Injunctive Relief
 - E. Conclusion
- II. CARS v. Jones
 - A. Jones is a bona fide purchaser for value.
 - B. Conclusion

Remedies Hypothetical #5

Debbie purchased an ocean front vacation house located on Lot #1. Shortly thereafter Peter purchased the ocean front house located on adjoining Lot #2. The houses and lots are comparable in size, value and age.

After his purchase, Peter hired a surveyor to lay out the boundaries of Lot #2. The surveyor reported that a portion of the porch of Debbie's house is on Peter's property. In particular, her 10-foot wide porch extends laterally 7 feet onto Peter's property. The encroachment was made by the original developer 25 years before Debbie and Peter purchased their properties.

Six months after learning of the encroachment, Peter commenced an action to compel Debbie to remove the porch from his property.

1. How should the trial court rule on the merits of Peter's action? Discuss.

2. If the trial court issues a mandatory injunction requiring Debbie to have the porch removed within 30 days, but Debbie does not comply, what procedural steps should Peter take to make her comply and what should be the result? Discuss.

3. If the trial court concluded that Debbie willfully disobeyed the injunction and fines her \$1,000, but on Debbie's appeal the appellate court concluded that the injunction should not have issued, how should the appellate court rule on whether Debbie must pay the \$1,000 fine? Discuss.

4. If Peter had not commenced his action until one year after his discovery of the encroachment and Debbie had moved to dismiss the action because of this delay, how should the trial court rule? Discuss.

- I. The Merits of Peter’s Action
 - A. Encroachment
 - B. Defense: Adverse Possession
 - 1. Mental Element
 - 2. Physical Element
 - 3. Time Element
 - C. Remedies
 - 1. Damages
 - 2. Restitution
 - 3. Mandatory Injunction
 - a. Damages are Inadequate
 - b. Property Right
 - c. Feasibility
 - d. Balancing Hardships
 - e. Defenses
 - D. Conclusion

- II. Procedural Steps to Make Debbie Comply, and the Result
 - A. Contempt Sanction
 - B. Defense: Good faith appeal underway
 - C. Result: If Debbie does not ask for a stay, she will be sanctioned.

- III. The Appellate Court Will Uphold the Fine
 - A. Collateral Bar Rule
 - B. Debbie failed to seek a stay of the injunction.
 - C. Conclusion

- IV. Debbie’s Motion to Dismiss
 - A. Statute of Limitations
 - B. Laches
 - C. Conclusion

Remedies Hypothetical #6

Halfway, Inc. is a nonprofit organization, licensed by the state, to assist with the rehabilitation of former convicts. It owns a five-bedroom house in a residential neighborhood of well-maintained single-family homes. The house purchased by Halfway is on a parcel zoned for multiple family use, as is a small apartment building across the street. The remaining parcels are zoned for single family use only.

For the past three months, Halfway has been using the building as a halfway house for parolees from state prison. At any given time, six to eight parolees live in the house while they look for employment and adjust to life in society. Most of the parolees are former sex and drug offenders. Such offenders have high recidivism rates. There is strict supervision by at least one resident director on the premises at all times. Halfway has successfully operated halfway houses in three other residential neighborhood locations in the state, attributing its success to the behavioral influences inherent in established residential environments.

Residents and property owners in the neighborhood have formed NASS, a neighborhood association that wants to prevent the halfway house from continuing to operate. NASS members are concerned about their safety, the safety of their children and their property values. While the halfway house was being renovated in preparation for the parolee program, one of Halfway's employees, not a parolee, assaulted a woman who lives in the neighborhood and is a NASS member.

NASS recently discovered that 20 years ago an injunction had issued and been recorded in the chain of title of Halfway's parcel forbidding the use of the property as a residence by unmarried persons living together. The injunction had issued because a group of college students, while living in the house, caused disturbances with late-night parties and loud rock music.

NASS, on behalf of its members, has sued Halfway. In its complaint, NASS prays for: (1) an injunction against operation of a halfway house on the parcel Halfway has purchased on the grounds that the halfway house constitutes both a public and a private nuisance and (2) a declaratory judgment that the 20-year-old injunction is an in rem injunction that prevents Halfway from operating a halfway house.

What evidence must NASS produce to make a prima facie showing on each of its claims, what defenses might Halfway reasonably assert, and how should this court rule on each of NASS's claims? Discuss.

- I. NASS v. Halfway
 - A. Association Standing
 - B. Public Nuisance: Special Injury
 - 1. Special Injury
 - 2. Public Safety, Health or Property
 - C. Private Nuisance
 - 1. Intentional Interference
 - 2. Balancing Test
 - 3. Conclusion
 - D. Defenses
 - E. Injunctive Relief
 - 1. Inadequate Legal Remedy
 - 2. Property Right
 - 3. Feasibility
 - 4. Balancing
 - 5. Defenses
 - F. Conclusion: No injunction will issue.

- II The Declaratory Judgment
 - A. The in rem injunction theory:
 - B. Defense
 - C. Conclusion