

QUESTION ONE

In June 2003, Michael and Linda Tucker purchased a home in Wytheville, Virginia. The house sits on the crest of a hill in this historic town. The Tuckers were school teachers living in Milwaukee, Wisconsin; they used the Virginia house only in the summer. Adjacent to their property, down the hill, is a private school, Rutherford Military Academy, for children 12 -18 years. The Academy is a longstanding part of life in Wytheville; it has operated for over one-hundred years. Two-hundred students attend the Academy; twenty of these students are local residents of Wytheville. The Academy allows children living in Wytheville to attend for reduced tuition because Wytheville does not operate public schools of any sort. The village of Wytheville pays the tuition for its resident students. The other Academy students come from out-of-state.

Michael and Linda Tucker knew the Academy operated on land adjacent to them before they bought the house on June 1, 2003. Because they stayed in Virginia in the summer, however, they had not observed the Academy's activities because the Academy was closed and not conducting classes in the summer. In September 2004, as winter approached, the Tuckers retired to live year-round in Virginia. Arriving on September 10, 2004, the Tuckers witnessed Academy students and activities in full force.

All Academy students march on the parade grounds for one hour every day, year round, at dawn. The noise of two hundred students marching in boots is deafening; they shout cadences constantly as they march. By early November, the Academy needed to heat its facilities using a coal-fueled power plant located a fair distance from the Tucker's house. The plant generates smoke daily that drifts toward their home. The power plant operated fully on November 10, 2004. Linda easily tolerated the smoke, but Michael, a smoker for thirty years, has emphysema; the smoke caused him difficulty in breathing.

On December 15, 2004, the Tuckers met with the Academy's headmaster about the smoke and the noise. The headmaster, George Collin, was sympathetic to their plight, but had no help to offer. He already had in consultants to look at modifying the power plant, but even with expensive modifications, the smoke would not be eliminated and the school lacked funds for costly renovations. The morning drills arise from a bequest made to the Academy. A famous, living graduate donated a large gift conditioned on student marches and chants each dawn for an hour. The gifts continue with the same condition.

It is March 5, 2005, and nothing has changed. The Tuckers ask for advice. They are miserable; Michael suffers each day; the marching is awful; they don't want to move and fear the house would not sell anyhow.

1. Analyze claim [s], with required elements, that may be available to the Tuckers.
2. Analyze the remedies, with their requirements, that may be available to the Tuckers
3. Analyze the defense[s], if any, that the Academy may assert and assess the Tuckers' prospects for securing relief.

QUESTION TWO

John Ankenny, a new client, recounted his problems in a *recent* interview. First, Ankenny has a contract problem *from* his sale of some stock to his broker, Susan Boston. Ankenny sold Boston 200 shares of a very old unlisted stock in Nebuli Corporation, *for* \$20,000. Nebuli was not listed in standard stock registries. But Ankenny told Boston that he understood that Nebuli had been bought out by the Starstream Energy Corporation. Boston researched *for* herself and then paid Ankenny \$20,000, a figure based on her research of the stock value *for* the Starstruck Energy Corporation. Unfortunately, Nebuli had in fact been bought out by Startrack, a corporation whose stock was worthless at that time. My research shows Ankenny has no claims *for* negligence, fraud, or any securities fraud claims, so don't address these.

Next, Ankenny contracted with Carl's Construction to build a retail building *for* his new store selling dolls and wooden toys, part of the chain stores, "The Elves' Workshop." Carl agreed to complete the building in time *for* the holidays, by November 26, 2004. The contract was a boilerplate *form*. He ordered his stock, but Carl did not complete the building until late February 2005. He missed the holiday season, but is unsure how to estimate lost profits because he took the stock ordered *for* the new store and sold it at his three other "The Elves' Workshop" area stores. Ankenny figures \$100,000 in lost profits *from* the delay, but the figures from his other three stores *for* that time period do not support that amount. He can show rental value of the new store for three months \$30,000- based on his other stores in the same area.

Then, Ankenny's wife, Wendy, found a Colonial bookcase in an antique store; it was authenticated as made by J. Campbell, a noted Colonial craftsman. The price tag taped to it read \$800. He went to the store to buy it *for* Wendy, but as he was giving his \$800 payment, the store owner, Oscar, raised the price to \$1,200, having learned a comparable bookcase had just sold *for* that price. Ankenny is outraged; Wendy was very unhappy; he wants the Campbell bookcase and he wants Oscar punished.

1. What contract remed[ies], if any, could Boston have against Ankenny?
What contract remed[ies], if any, could Ankenny have against Boston?
2. What contract damages can Ankenny recover *from* Carl?
What advice can you give Ankenny *for* contract provisions *for* similar contracts in the *future*?
3. What claims or remedies, if any, does Ankenny have against Oscar? What about Ankenny's "demand" *for* punishment?

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QUESTION THREE

Claire Peterson, a practicing attorney herself, brought an intentional infliction of emotional distress claim against her two neighbors, Ken Seymour and Barb Belle, alleging each of them intentionally used fans to channel the smell of cooking food to reach her property. They acted knowing she was on the South Beach diet regimen and that the smells would cause her extreme emotional distress. The judge in the case held the intentional infliction of emotional distress claim served no purpose other than to harass and bother them. The court found that the claim against the two defendants was frivolous.

The judge issued an order to have Peterson pay the attorney fees that the two defendants had incurred in having to respond to these baseless claims. Therefore, the order stated that Peterson was to pay each defendant \$2,000 by May 2, 2005.

Peterson did not obey the order to pay the defendants. The court issued a show cause order as to why Peterson should not be held in contempt. At the show cause hearing, Peterson stated that she was appealing the order because the decision to file the trespass claims was proper and supported by recent case law arguing the tort should be extended to cover precisely such fact settings. Further, she asserts that she really doesn't have the money on hand to pay the fine and thus it was impossible for her to comply with the order.

The judge rejected Peterson's arguments and found her in contempt of the court's order and then ordered her jailed until she was ready to comply with the order.

The judge, your boss because you are his judicial clerk, asked you to see if he reached the correct conclusion on this matter. Peterson is a well known attorney locally and the press is having a field day with this case. The order of contempt and the jail time were issued this morning and already Peterson has filed a motion to reconsider, arguing that the judge ruled incorrectly.

Please advise the judge:

1. Did he have a valid authority or basis for imposing the original order to pay attorney's fees?
2. Did Peterson's arguments at the show cause hearing have merit and should have caused the judge to stop and not issue the contempt order?
3. Did Peterson have the right to a jury trial before the judge ruled and issued the contempt order?
4. What is the nature of the contempt order the judge issued and can such an order support confirming Peterson to jail?

QUESTION FOUR

The Rib Shoppe, Inc. [Shoppe] is famous for its barbeque rib sauce, Smoke Heaven. The bottled sauce came onto the market on January 1, 2004, selling in gourmet food shops and has generated over \$3 million in sales. The Shoppe has spent over \$320,000 to promote and market the Smoke Heaven sauce. The Shoppe manufactures the sauce at a single facility, with high security to guard its unique ingredients and processing steps.

Dave Sullivan, seeing the success of the sauce, tried unsuccessfully to match its taste and texture, but could never achieve it. Posing as a health inspector, Sullivan gained access to the Smoke Heaven manufacturing and bottling plant and stole the recipe and ingredients list. Sullivan promptly set about to recreate the Smoke Heaven sauce and did so. He began to manufacture and sell the sauce; he called it Sweet Smoke sauce and marketed it to gourmet food shops. Sullivan started selling the Sweet Smoke sauce March 1, 2005. Since then, Sullivan has realized profits of \$70,000. The Shoppe quickly became aware of Sullivan's entry into the market and has been able to document its lost sales of Smoke Heaven sauce at \$8,000 and losses will continue to increase weekly as the sales of Sullivan's Sweet Smoke sauce continue.

We are representing the Shoppe. They have asked us to take the steps needed to prevent Sullivan from continuing to market his sauce based on the stolen trade secret and to provide them with a remedy for the harm his tort caused them. Misappropriation of a trade secret is a common law tort; we can state a claim because the sauce's ingredients and manufacturing process were a trade secret and Sullivan wrongfully acquired and then used the trade secret.

Please prepare a memo for our summer associate explaining:

1. How can we prevent Shoppe from losing further future sales to Sullivan as a result of its tortious use of Shoppe's trade secret? Describe the proper procedures we must take, showings we must make, and indicate any risks Shoppe will incur by requesting this relief against Sullivan.
2. What remed[ies] could we seek for Shoppe, based upon Sullivan's past wrongful use of the trade secret? Which remed[ies] are best for Shoppe to pursue and how would recovery be measured under the remed[ies]?

QUESTION FIVE

In our jurisdiction, we are governed by these statutes:

2-305-1 The right of action which a person, who dies from injuries received from another, or whose death is caused by the wrongful act, fault, or omissions of another, would have had against the wrongdoer, in case death had not ensued, shall not abate or be extinguished by the person's death but shall pass to the person's surviving spouse, or in case there is no surviving spouse, to the person's children, next of kin or personal representative, for the benefit of the person's survivors.

2-305-2 Where a person's death is caused by the wrongful act, fault, or omission of another, and suit is brought for damages, the party suing shall, if entitled to damages: [a] have the right to recover for the mental and physical suffering, loss of time, and necessary expenses resulting to the deceased from the personal injuries; and also

[b] have the right to recover the damages resulting to the parties for whose use and benefit the right of action survives from the death consequent upon the injuries received.

Jim Patton, aged 74, was a retired librarian. He had a good retirement package and continued to receive his benefits for life insurance and health insurance. While driving to the golf course early Saturday morning, his Toyota Celica was hit by an SUV driven by Kate Swanson. The Celica was insured, but totaled.

Swanson was returning from the Homecoming after-dance party and had been up all the previous night when she struck Patton. Swanson, while talking on her cell phone and trying to light a cigarette, took her eyes off the road, crossed the center line and struck Patton, who was severely injured. Patton was struck November 1, 2004, stayed in intensive care after he entered through the emergency room, and died of his injuries a month later, on December 1, 2004. He was conscious the whole month and able to speak and express himself.

Patton is survived by his widow, Martha, 65, a lifelong homemaker who devoted herself to him for forty years of marriage, and their only daughter Linda, 36. Linda has been estranged from both her parents since she graduated from high school, lives far away, and rarely visits.

We represent Martha.

1. What claim[s] can Martha pursue under 2-305-2(a) and/or (b) and how would her recovery under those claim[s] be measured?
2. Linda has notified us that she will be filing claims under both 2-305-2(a) and (b). If she files, can we advance an argument to get either claim dismissed? How would her recovery under her claim[s] be measured?

MUL TIPLE CHOICE QUESTIONS

1. Ottley v. Turner

Ottley kept his prized collection of Avon perfume bottles on his property in a backyard, locked storage shed. One evening when he went to spend time with his collection and add a new bottle to it, he discovered that some of the bottles had been taken from the storage shed and learned that a competing collector, Turner, who, lives nearby, was likely the one who came onto the property and converted the bottles to his own use. Ottley believes that Turner will likely trespass again and try to get the rest of his precious Avon bottle collection.

Ottley seeks a declaratory judgment that Turner may not trespass on to his property. The judge is most likely to:

[A] Dismiss the declaratory judgment claim because the claim is moot.

[B] Dismiss the declaratory judgment claim unless Ottley can establish an irreparable Injury.

[C] Dismiss the declaratory judgment claim because there is no live controversy.

[D] Dismiss the declaratory judgment claim because Turner is not an interested party.

2. Patton v. Donnell

Patton and Donnell contracted for Donnell to construct a building that would serve to house the stamp store that Patton had decided to open. Patton was life-long a stamp collector and knew that the major commemorative stamps were always issued on Flag Day, June 14th. Therefore, the contract indicated that Patton wanted the building completed by June 1ih so that he could open the store in time to take advantage of the strong sales that always historically occurred on Flag Day. Therefore, the contract contained this clause:

LIQUIDATED DAMAGES: Donnell agrees to pay \$10,000 if the building's completion is delayed past June 12th.

BONUS PAYMENT: Patton agrees to pay Donnell \$1,000 if the building is completed by May 31st.

Donnell breaches the contract by failing to complete the building until June 30th. Patton sues to enforce the liquidated damages clause.

Patton's LEAST persuasive argument is that:

[A] It would be difficult to prove the exact amount of loss that Patton suffered as a result of Donnell's breach of the contract.

[B] When the contract was entered into, \$10,000 was a reasonable estimate of the loss Patton would suffer from the delay.

[C] The liquidated damages clause is not unconscionable.

[D] Patton suffered approximately \$10,000 as a result of the breach.

3. What claims and remedies do Survival Statutes typically create or preserve?

[A] Survival statutes preserve a cause of action for or against a person even though the person dies.

[B] Survival statutes create a cause of action for the death of a person caused by the wrongful act of another.

[C] Survival statutes preserve the claims of survivors against those who have injured them.

[D] Survival statutes stop the running of statutes of limitations for causes of actions that arise from the wrongful death of a person.

4. Pool v. Denley

Pool went to court to request a preliminary injunction to prevent Denley from competing with him in alleged violation of an employment restrictive covenant. The judge granted the preliminary injunction and ordered Pool to post a bond for \$15,000. The case to enforce the restrictive covenant proceeded to trial and the judge then entered final judgment for Denley. Denley suffered \$25,000 as a result of the preliminary injunction order. Denley now seeks to recover \$25,000 in damages.

The result is MOST likely that:

[A] Denley is awarded the \$25,000 because he can prove the damages he suffered by a preponderance of the evidence.

[B] Denley is awarded the \$25,000 because he was unable to work while the preliminary injunction was in effect and that amount reflects his lost income.

[C] Denley is awarded \$15,000 because a amount of a preliminary injunction bond, once set, definitively limits recovery for damages as a result of the injunction order to the amount of the preliminary injunction bond.

[D] Denley is awarded \$15,000, but he could recover a greater amount if he can show that Pool's request for the preliminary injunction was made in bad faith or was frivolous.

5. Barret v. Stanlon

Stanlon and Barret have been friends for years. Stanlon owned a rare, old motorbike designed by the Wright Brothers while they were experimenting with bicycles and small engines. Barret had offered to buy the motorbike from Stanlon on several occasions, but Stanlon had never been willing to part with it. On the day Barret graduated from medical school, Stanlon and Barret went out for dinner and drinks. During their conversation, Stanlon said, "Barret, as a graduation present, I've decided I'm going to sell you my motorbike for five hundred dollars. And just to make sure I don't change my mind later, I'll put it in writing." Then, Stanlon wrote on a paper napkin, "We agree to the sale of my motorbike to Barret for five-hundred dollars, COD." Barret also signed the napkin and then put it in her pocket. The next day, Barret tendered five hundred dollars in cash to Stanlon, but Stanlon refused to sell her the motorbike.

If Barret is successful in her action for breach of contract, a court is most likely to:

[A] issue an order directing Stanlon to sell Barret the motorbike for five hundred dollars.

[B] award damages equivalent to the reasonable market value of Stanlon's motorbike.

[C] issue an order directing Stanlon to sell her motorbike for five hundred dollars and award damages equivalent to the reasonable market value of Stanlon's motorbike less five hundred dollars.

[D] award damages consisting of five hundred dollars.

6. Purdue University v. Guthrie

Purdue brings suit against a first year student, Guthrie, for hacking into its computer network and freezing up its operations during student registration in the fall term. Purdue computer personnel were able to repair some damage and restore operations partially. But, to regain full operations, the Purdue personnel need Guthrie to reveal the code he inserted into the system to freeze it up. The judge held a hearing to determine whether Purdue could get a preliminary injunction order requiring that Guthrie disclose the code. At the hearing, Guthrie's roommate, Jones, is called as a witness. Jones, however, refuses to answer the attorney's questions. Jones becomes agitated and begins to shout about the poor quality of the Purdue computer system and how his American History paper draft was destroyed when the Purdue computer repair service erased his hard drive and everything on it. The judge orders Jones to refrain from his rants and to answer the questions. He continued to list grievances against the Purdue computer system and personnel and refused to answer questions asked of him.

The judge held Jones in contempt and summarily ordered him confined to jail.

Was it proper for the judge to hold Jones in contempt without notice or a hearing?

[A] Yes, because Jones' conduct was direct and threatened the court's ability to conduct its preliminary injunction proceeding.

[B] Yes, although the contempt was indirect because it was committed by a non-party, the conduct still threatened the court's ability to conduct the proceeding.

[C] No, because the court must conduct a full hearing before any jail time can be imposed.

[D] No, because criminal contempt is a crime like any other, and thus there is a right to counsel and to a hearing before an impartial judge.

7. Purdue University v. Guthrie

Defendant Guthrie, who faces the hacking allegations, is ordered to reveal the code he used. He refuses to reveal the code. The judge orders Guthrie to jail for an indefinite term, telling him that he holds the key to his own prison, and he will be released from jail when he reveals the code.

What type of contempt order did the judge issue?

[A] The order was one for direct criminal contempt because Guthrie disobeyed the judge's order in her presence.

[B] The order was one for indirect criminal contempt because the jail term was imposed for an indefinite or indeterminate term of time.

[C] The order was one for civil contempt because the jail term was imposed to vindicate and remedy the rights of the state government of Indiana, which operates Purdue University.

[D] The order was one for civil contempt; it coerced Guthrie to reveal the code by promising to release him from jail when he complied with the court's order.

8. Petersen v. Darren

Petersen, on behalf of himself and other shareholders, brought a shareholder derivative suit against the corporate director, Darren in state court. The plaintiffs' demand for a jury trial was stricken. On appeal, the appellate court should: _____."

[A] Reverse, because a shareholder's derivative action was traditionally one at law, where juries were used.

[B] Reverse, because the Constitution guarantees all citizens a jury trial.

[C] Reverse, because the remedy sought is a legal remedy.

[D] Affirm, because the claim, a shareholder's derivative suit, is an equitable one, despite a request for relief that may be phrased like a legal remedy.

9. Pem v. Midwest Eateries, Inc.

Perry and Midwest Eateries entered a franchise agreement. Under the agreement, Perry paid Midwest a non-refundable franchise fee of \$50,000; Perry agreed to purchase its requirements for "Hot Stuff" barbeque sauce from Midwest; Perry agreed to pay a 6% royalty, based on gross sales, to be paid monthly. Perry paid the \$50,000 franchise fee and then spent another \$10,000 for advertising and marketing to promote the opening of the "Hot Stuff Homestyle Barbeque Pit" on Brown Street near the University of Dayton. Then Midwest Eateries' CEO then terminated the franchise agreement with Perry because the Dayton restaurant was part of an expansion into Southwest Ohio that came too quickly and with too many new restaurant locations. The court found liability: the termination breached the contract.

What may Perry seek to recover for the breach?

[A] Perry may seek to recover his "expectancy" damages, like lost profits, but only if he can prove them with reasonable certainty, which likely will be difficult, because it was a new business with no track record, but the court might consider other nearby businesses, such as Hickory Smoked Barbeque on Brown Street.

[B] Perry may seek to recover the \$50,000 franchise fee because Midwest Eateries is unjustly enriched by retaining the fee.

[C] Perry may seek to recover the \$10,000 he expended in reliance on the franchise agreement.

[D] Perry may seek to recover as stated above in [A], [B], and [C].

10. Lawler v. Dalton

Lawler was a pet owner and lavished much attention and care on his pet dog, Shadow. Shadow was a black Labrador retriever. Lawler and his three siblings had grown up with dogs as children. Shadow was descended from the dog they had in their home and had grown up with as children, Angus. Angus had once pushed Lawler, a toddler at the time, out of the way of a car that had jumped the sidewalk and was coming toward them. But Shadow had grown old and slow lately. Lawler was walking Shadow when a car abruptly turned into a drive way in front of them and ran over and killed Shadow.

Lawler sued the driver, Dalton, for negligence. Lawler seeks damages for the destruction of his property, his dog Shadow.

Which most accurately describes any recovery Lawler could achieve?

[A] Lawler will not recover any damages because Shadow has no market value.

[B] Lawler will not recover any damages because all courts exclude damages based on sentimental or fanciful value.

[C] Lawler will not recover any damages, unless he is able to establish the "value to the owner, "that is, the value Shadow had for him as Shadow's owner.

[D] Lawler will not be able to recover any damages because even if courts permit recovery for sentimental value, the sentiment must be attached to something that is generally capable of generating sentimental feelings.

11. - Bradford v. Dutton

Bradford's son, Junior, was 15 years old when as a result of Dr. Dutton's medical malpractice, he went into a coma with no hopes of recovery. Bradford, suing for Junior as his next friend, seeks to recover damages to compensate for Junior's lost earning capacity.

In response to the request for damages for Junior's lost earning capacity, a judge will most likely:

[A] Strike the request when it is shown that Junior had never been employed during the school year or during the summer and had never sought employment despite his parents' constant pleas that he find work.

[B] Strike the request because such damages are too speculative and will not be awarded when the victim, Junior, had not even completed high school.

[C] Permit the request, but indicate that damages must be based upon a showing of several factors, including an examination of his school record, his older siblings' education and employment, and his PSAT scores.

[D] Strike the request because Junior will already be compensated fully by an award of damages for lost future earnings.

12. A constructive trust arises from:

[A] the agreement of the parties.

[B] by operation of law and renders the defendant a constructive trustee.

[C] the equitable doctrine of equitable estoppel

[D] the legal doctrine of compensating for past injuries.

13. Parker v. Dalton

Parker contracts with Dalton to purchase timber. Dalton knows at the time of the contract that if it breaches the contract and fails to supply the timber, Parker cannot then perform its contract with Morris Furniture. Dalton knows Parker depends on Dalton for the timber it supplies to Morris Furniture. Dalton breaches the contract and fails to supply the timber and causes Parker to breach its contract with Morris Furniture.

Parker sues Dalton for breach and seeks punitive damages. What is the judge's most likely response to Parker's request for punitive damages?

[A] The judge will strike the request for punitive damages because punitive damages cannot be awarded for a breach of contract.

[B] The judge will strike the request for punitive damages unless the court determines that Dalton's breach was not an "efficient breach."

[C] The judge will allow the request for punitive damages to stand unless the legislature has already created statutory fines or penalties to deter breaches of contract.

[D] The judge will allow the request for punitive damages to stand if Dalton's breaching conduct is also found to constitute a tort.

14. Paulsen v. Delacroix & Assocs.

Dr. Paulsen decided to accept an offer from Delacroix & Assocs., a group of dermatologists in Tucson, Arizona. The Delacroix doctors had practice privileges at the University of Arizona Hospital. Paulsen had practiced medicine as a solo practitioner in Iowa for the past 15 years. When he accepted the Delacroix offer, he closed down his office, sold his business and moved to Tucson. When he arrived, the Delacroix office informed him there was no position for him. Six months earlier because of University financial mismanagement, there was a fiscal crisis declared, and Delacroix received notice that no additional doctors would be granted practice privileges at the University of Arizona Hospital. Paulsen had read about some of the financial problems in the newspapers before he left Iowa, but when he inquired, the Delacroix office told him any freeze on Hospital practice privileges would not apply to him. ."

Paulsen sued Delacroix & Assocs. for its breach of the employment agreement. P-Delacroix argued there was no breach because events at the Hospital were out of its control. But Paulsen successfully argued that Delacroix was estopped from asserting the defense. On appeal, the appellate court will find:

[A] The trial court erred to estop Delacroix's defense because equitable estoppel can serve as an equitable defense only and Paulsen used it offensively.

[B] The trial court erred to estop Delacroix's defense because Paulsen had some knowledge of the possible issues at the University of Arizona.

[C] The trial court correctly held Paulsen could assert estoppel because Paulsen had relied to his detriment on Delacroix's reassurance that his job and practice remained viable.

[D] The trial court correctly held Paulsen could assert estoppel because of Delacroix's six-month delay in informing him that he could not gain practice privileges at the University Hospital.

15. An "implied in fact" contract:

[A] is implied by the court without regard to the parties' intent.

[B] is alleged as an element in a claim for restitution.

[C] is inferred from the parties' intent and conduct.

[D] encompasses an action in quantum meruit.

16. Poston v. Delaney

Poston brought suit in state court alleging both legal and equitable claims against Delaney.

The state court would most likely:

[A] try the legal claims to a jury and dismiss the equitable claims without prejudice.

[B] decide the legal issues that are incidental or essential to the determination of the equitable issues itself without use of a jury.

[C] try the legal claims to a jury because the Seventh Amendment preserves the right to a jury trial for claims at law.

[D] convene an advisory jury.

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17. Claims *of* unjust enrichment arise when:

[A] The court concludes that the defendant has received a benefit, something *of* value, from the plaintiff and should not be allowed to retain it.

[B] The court concludes the defendant through tortious conduct has obtained a benefit, something *of* value, from the plaintiff.

[C] The court concludes that the plaintiff has suffered a detriment.

[D] The court concludes that the remedy at law would be inadequate.