

1)

Cooper should try to argue that Winter has breached their contract, and that he is entitled to specific performance of his contract with Winter. Specific performance is basically an order to make a party do what they have contracted to do. In this case,

Cooper should argue that specific performance operates to force Winter to sell the Eaton painting to Cooper for \$500.00. Specific performance is an equitable action. It requires a showing that the usual contract remedy, money damages, are inadequate and that there is no other adequate remedy at law. This can usually be accomplished by showing that an item is unique or one of a kind, and that there is no ready market for the property because of its uniqueness. Because of this, the remedy at law is inadequate, and specific performance should be granted. Cooper can easily show that the Eaton painting is unique. First, he is an art collector and is aware that Eaton was a famous painter. Also, this painting is an original, adding to its rareness and uniqueness. Finally, Cooper may be able to show the uniqueness of the painting based on Arden's observation that the painting is the *only* one of the local landscape. Cooper should be able to show that the painting is unique and that there is an inadequate remedy at law (because he wants the painting and it is the only one - he doesn't want money damages).

Specific performance also requires a showing that there is a valid contract between the parties with specific and definite terms. Cooper can point to the written agreement that called for Cooper to pay cash within thirty days (\$500.00) and to pick up the Eaton painting when he paid. Cooper should also show that both men signed the contract. A court will likely find that the contract between the two men was a valid contract.

The next element of specific performance is a mutuality of performance - both parties are able to perform under the contract. Cooper can satisfy this by showing that he made a special trip to return to town within 10 days to pay for the painting, which he told Sa!. Thus, Cooper is able to perform. Cooper should also show that although Winter has contracted with Arden to purchase the painting in two days, he has not done so yet, so he is still able to perform by selling the painting to Cooper. Cooper may wish to consider, however, requesting a temporary restraining order to prevent Winter from selling the painting to Arden. This requires showing that imminent irreparable harm will be suffered if the party (Winter) is not restrained from his action (selling the painting). The TRO will only be effective for 10 days, with an extra 10 days for good cause, but this should be enough time to forestall the occurrence of imminent irreparable harm from Winter selling the painting. ***

Balancing of the hardships is the next requirement for specific performance. Cooper should argue that after balancing the hardships of the parties, specific performance is warranted because Cooper's interest, getting the painting, outweighs Winter's interest in getting more money for the painting. Winter will already be receiving money from Cooper, whom he contracted with first to sell the painting. Cooper should argue that it is inequitable to allow Winter to back out of the contract because he is able to receive more money for the painting. Cooper can show that balancing the hardships weighs in his favor.

Enforcement of an order of specific performance must also be feasible, taking into consideration supervision issues and the integrity of the tribunal. Cooper can show that enforcement will be easy in this situation, because the court merely needs to order

that Winter sell the painting to Cooper, and any failure to do so will result in a contempt finding against Winter. The court will not need to be involved in supervision of the deal.

Finally, specific performance will not be granted if it is against the public interest. The sale of a painting to a consumer occurs everyday, and is not adverse to public interests. This should be a very easy element for Cooper to satisfy.

Winter does, however, have possible defenses he can assert against Cooper. Most importantly, Winter can argue that Cooper has unclean hands.

Unclean hands - a defense when the plaintiff has wrongdoing as it relates to the subject matter of the litigation. Winter will argue that Cooper, who is a rare art collector, knew the value of the painting before entering into the contract, and that his misrepresentation should result in the court finding that Cooper has unclean hands, thus barring his claim for specific performance. Cooper may try to rebut this by showing that he believed the painting was only worth a fraction of what its actual worth was (\$50,000.00). This, however, will not be likely to convince a judge that he is not guilty of wrongdoing because in order to assert this defense, he must still admit that he was buying the painting from Winter at \$500.00 when he thought it was worth \$50,000.00. The court will take into consideration the level of knowledge Cooper has about rare art, versus the level of knowledge Winter, a tavern owner has about art. Cooper should still try to argue that he did not make any representation about the value of the painting - he merely tried to purchase it, showing that he does not have unclean hands and is entitled to specific performance.

Winter may even try to claim unconscionability of the contract - although this is a stretch. Winter may again point to Cooper's lack of knowledge about art to show that the terms of the contract were so one-sided that they are unconscionable. However, a court will probably dismiss this defense because the contract itself contains no unconscionable terms.

Winter may try to claim that he has sold the painting to a BFP for value, and that this bars Cooper's recovery of the painting through specific performance. This is why Cooper should try to obtain a TRO to keep Winter from selling the painting. If Cooper does not get a TRO, and Winter does indeed sell the painting to Arden, the BFP status of Arden (who purchases the painting without knowledge of the facts and pays value) cuts off Cooper's claim for specific performance as to the painting. It does not, however, cut off Cooper's claim for the proceeds of the painting through a constructive trust. If Cooper can show that Winter wrongfully breached the contract and sold the painting to Arden a BFP, he may be able to impose a constructive trust on the proceeds Winter gains from the sale. A constructive trust occurs when the defendant (Winter) holds legal title to something which rightfully belongs to the plaintiff (Cooper), and it would be unjust to let them keep it. The defendant then becomes the constructive trustee for the property. In this case, Winter would be the constructive trustee of the proceeds from the painting. Tyler Guthrie should try to gain damages against Ed Smith's estate for the death of his father. First, Tyler will need to comply with the applicable statutes to establish liability. The statutes allow recovery for damages resulting in injury or death if liability is established either through the liable person's wrongful act, neglect or carelessness. Tyler should be able to establish Smith's liability because he can show that Smith's

carelessness in taking his focus off the road to reach for his sunglasses caused him to jump the curb and injure, and ultimately kill Tyler's dad. Tyler should easily show that Smith's carelessness makes him (his estate) liable for his dad's injuries.

Next, Tyler easily satisfies the requirement that action for damages under the statute are for his benefit, because he is the only child of Guthrie, and Guthrie has no spouse. Tyler is thus specifically within the group of persons designated to recover for damages.

Next, Tyler needs to fulfill the requirements of the Survival Act in order to recover. Under this act, the cause of action for injuries continues in favor of the heirs or estate of the injured individual, even after their death and the death of the injurer (Smith). Tyler is able to make a claim for personal injury, survival action, and wrongful death under these statutes because even though his father died, and Smith has died, the claims that Guthrie would have been able to pursue against Smith for his injuries carry on to Tyler and Guthrie's estate. Typically a Survival Action essentially allows the decedent's estate to step into the shoes of the decedent and make a claim for any injuries and damages that the decedent himself would have been able to pursue. These types of damages are usually non-economical, such as pain and suffering and loss of enjoyment of life, but may also include other consequential damages.

Tyler should first show that the Survival action allows him to make a claim for the pain and suffering that his father had from the time of his accident until he lost consciousness. Because his father lost consciousness after just a few hours, that is all he is able to claim for pain and suffering. Tyler may be able, through the survival action, to also claim the hospital expenses that his father incurred until his death. Although the insurance company covered his father's medical bills, the collateral source rule provides that money which is paid to the injured or deceased via some source other than the tortfeasor (injurer - Smith), is not to be deducted from the amount that the tortfeasor is required to pay for injuries. Thus, Tyler may be able to claim medical expenses. Finally, although Guthrie was beginning a new business and Tyler may wish to pursue a loss of profits claim, this will likely be difficult to do. Loss of profits are considered consequential damages and must be proven with a reasonable degree of certainty and must provide a source for a reasonable estimate to occur. Since this is a new business for Guthrie, the amount of profit he would likely have made is very subjective (he has no other similar business that he has been running to compare it to, etc.) and a court will probably not award loss of profit damages. Tyler may, however, through the Survival Act be able to claim damages in the amount that Guthrie spent in reliance on his new business - such as supplies, coffee machines, furniture, etc. because this is a claim that Guthrie himself may have been able to pursue.

Tyler will likely not be able to claim loss of consortium, because Smith's estate will likely argue that first, he is not a spouse which is the typical party who receives consortium losses, and second, the court will look at the nature and closeness of the relationship between Tyler and his dad. Although he will likely try to argue that they are father and son, which is typically a close relationship, Smith's estate will be wise to bring up the fact that Tyler disliked his father, and rarely spoke to him. Since it is in the discretion of the court to award consortium losses, these factors will probably weigh against Tyler's recovery.

Finally, Tyler should consider pursuing a wrongful death claim as well as the above claims for personal injury and survival actions. A wrongful death claim, unlike a survival action, compensates not the victim (Guthrie) for his losses, but the survivors or

heirs for their losses. Usually, these types of claims are economic claims. Tyler can try to argue that he should be awarded damages for the loss of economic support that his father provided him. Tyler can point out that his father has a Phd, and likely earned a nice chunk of change as a professor, and Tyler will no longer enjoy his economic support. As stated above, Tyler will likely not be able to claim that he has lost the guidance of his father because Smith's estate will show that the two rarely even spoke.

3)

First, the types of contempt that Lorenzi committed varies with each matter. The contempt hearings which occurred on April 12, 20, and part of the one on the 24 were instances of indirect criminal contempt. Criminal contempt is used to punish and deter bad behavior. There are two types of criminal contempt. First, Direct criminal contempt occurs in the presence of the court. Second, indirect criminal contempt occurs outside the presence of the court, but is a willful and intentional disobedience of an equitable court order. Direct criminal contempt requires no notice, hearing, or jury trial, but does require a certification by the judge about the contempt proceedings. Indirect criminal contempt requires notice and a hearing, as well as a jury trial if the offense is a "serious" offense (imprisoned for 6 months or more). Lorenzi's contempts on April 12, 20 and part of the one on the 24th were indirect criminal contempt because the court had issued an equitable order (the injunction), and Lorenzi intentionally disobeyed the order. Also, the type of contempt can be determined by the punishment imposed. If the punishment is more remedial in nature, this is a coercive civil contempt (imposes fines or imprisonments which are not fixed and can be purged in order to coerce the defendant into compliance with the order). If the punishment is more punitive in nature (fixed fines which cannot be purged, fixed imprisonment terms) this is indirect criminal contempt. The fine imposed on April 12 was a fixed fee of 100.00 which could not be purged with compliance of the order. This makes the contempt indirect criminal contempt, and means that Lorenzi was only required to have a jury trial if he was confined to 6 months in prison, which he was not. Lorenzi was properly given a hearing on the contempt. The fine imposed on April 20 was a fixed fee as well of 200.00 which could not be purged by compliance. Again, this is indirect criminal contempt, and required only notice and a hearing, which Lorenzi was given.

At the April 20 hearing, Lorenzi was told that if he defied the order again he would be fined 500.00 and put in jail for 30 days. Although this seems to come close to being coercive civil contempt (if you obey, you will not suffer the fine and prison term), the nature of the fine and imprisonment are punitive, and not remedial. The fine and prison term are fixed (was not worded so that it was 500.00 a day until he complied, etc.), and although he could comply and not suffer the consequences, the contempt that he is found guilty of on April 24 comes from not complying with this order. On the 24, he is again guilty of indirect criminal contempt, because the fine is fixed as is the prison term. Thus, only a notice and hearing, which are given, were required. On the 24th, Lorenzi also committed Direct criminal contempt. As stated above, Lorenzi's disrespect occurred in the presence of the court (in front of the judge), and this type of contempt can be decided without notice, hearing, or jury trial - which this court properly did. However, Lorenzi may be able to claim that the judge needs to certify the proceedings - but the fact pattern does not elaborate on whether this is an issue. Thus, Lorenzi's types of contempt did not warrant a jury trial.

An injunctive order is appropriate where a party shows that the remedy at law is inadequate (because of multiplicity of suits, speculative damages, willful conduct of the defendant, or the continuous nature of the action), irreparable harm will be suffered if the party is not enjoined, the balancing of the equities weighs in favor of issuing an injunction, enforcement is feasible (court will not have to supervise or affect its tribunal integrity), and the injunction is not against public interest. In this case, AGCO had preventative (prevents future harm) type of injunction known as a prohibitory injunction issued against Lorenzi to enjoin him from trespassing. A prohibitory injunction prohibits the defendant from taking an action - in Lorenzi's case, it prohibits him from trespassing (intentionally entering upon the plaintiff's land without permission). The court issued the injunction because Lorenzi's actions were not only a trespass to AGCO (in their opinion), but also were intentional and continuous. This type of action shows that there would be a multiplicity of suits necessary to remedy the situation, thus proving an inadequate remedy at law. Also, AGCO claims that the injury is irreparable because it causes great harm to their reputation, employees, etc. The court must have felt that the balancing of the equities weighed in favor of the injunction for AGCO because AGCO has the right to operate their business and their employees have the right to go to work without harassment. However, this may be a problem because Lorenzi also has a first amendment freedom of speech right which allows him to have free speech in any public place. Courts are reluctant to issue injunctions which abridge a constitutional right (such as free speech). If AGCO's parking lot is indeed a "public place" then Lorenzi has a right to be there. This will greatly affect the balancing of the equities portion of the injunction because a constitutionally protected right is very important. If the court finds that Lorenzi's 1st amendment right outweighs the rights of AGCO, then the injunction was improperly issued. However, if the underlying order is found to be invalid because of this, Lorenzi is still liable for the contempt actions against him, because criminal contempt actions remain valid even if the underlying order is found to be void.

4)

Petersen should raise a restitution claim against May for the embezzlement. Restitution claims exist to prevent unjust enrichment. Restitution also comes in many forms. One such form is the constructive trust. A constructive trust results when the defendant has legal title to something that rightfully belongs to the plaintiff, and it would be unjust to allow the defendant to keep it. The wrongdoer (the defendant) becomes the constructive trustee of the money for the plaintiff. Petersen should argue that he deserves a constructive trust for the 10,000.00 May deposited into her bank account. This means that May would hold the 10,000 in trust for Petersen. However, there are problems with this situation. May may be able to argue that there are tracing problems with the money she deposited into her bank account because some of her own funds were in the account at the time she deposited the embezzled money. In other words, she commingled funds and now tracing makes it difficult to prove which money she actually spent. There are two theories for tracing commingled funds - first in first out (the first money in an account is the first money taken out - in this case May's own money was the first in and is also the first out spent on her daily needs), and Jessels bag which says that the first money spent is determined to be the wrongdoer's own, and

the rest is the money for the remedial measure. Regardless, a constructive trust is Petersen's best bet.

The other 1 Ok that may embezzled is like a bouncing ball you have to follow. First, May used the money to buy an ATV, which she sold to a BFP for value. Petersen could have claimed a constructive trust on the ATV (assuming it hasn't diminished in value), and be entitled to legal title of it. BUT, May has now sold the ATV to a BFP, which cuts off Petersen's claim for legal title to the ATV (Cunningham gets to keep legal title). It does not, however cut off a claim for legal title to the proceeds. So, Petersen still has a claim for the proceeds of the ATV (1 Ok). May then took the 1 Ok and used some of the money to make repairs on her existing house, and the rest to purchase stock for her sister. Petersen's best bet in this situation would be to get an equitable lien for the remaining 10k. First, he cannot claim a constructive trust in the house, because May did not use the embezzled funds to buy the house, she used them to repair the existing house, so Petersen has no claim to the legal title of the home. Thus, he should pursue an equitable lien. An equitable lien gives the injured party a security interest in property of the wrongdoer. Again, this is based on the principle of unjust enrichment. The equitable lien is preferable to a constructive trust in two situations: when the property has diminished in value, and when there is no severable interest in the property. Petersen's situation with the house is the latter (no severable interest). Petersen should get an equitable lien for the value of the property used to repair the house (whatever amount this was). Petersen may run into trouble if May does not have property equal to the value of the embezzled portion of the money used to repair her home because she is insolvent. In order to get an equitable lien, May has to have property for the security interest to attach to. Considering that May used the money to repair her home, however, means that the equitable interest could at least attach to the home, and Petersen would be permitted to foreclose on the property to receive his damages.

As for the stock, Petersen should again claim that he gets a constructive trust in the stock. Although May no longer owns the proceeds from the ATV that she used to purchase the stock (because she has given the stock to her sister), she did so in a gratuitous transfer, not as a sale to a BFP for value. A sale to a BFP for value cuts off the right of the plaintiff to get a constructive trust in the item itself (but not the proceeds). A gratuitous transfer, or *gift* on the other hand, does not have the same effect. Petersen is still entitled to a constructive trust on the stock because May gave the stock as a gift to her sister. This means that May becomes the trustee for the stock holding it in trust for Petersen, and Amy is out of luck (bad birthday gift!!!). Also, this is nice for Petersen because he gets to enjoy the increase in value from the stock. In conclusion, Petersen should get a constructive trust on the 10k deposited into the account (taking into consideration May's tracing problem defense), an equitable lien in the portion of the money May ultimately used to repair her house, and a constructive trust in the stock and its increase in value.

5)

1. Count 1 will likely be heard by a judge. The 7th amendment provides for legal issues to be tried by a jury and equitable issues to be heard by a judge, not inconsistent with the legal findings. The 7th amendment is only applicable to federal courts, however, and does not apply to state courts. State courts take the approach that

you look at the aggregate of the claim to determine whether there is a right to a jury trial. States look at whether the claim is equitable or legal, and whether the remedy is mostly equitable or legal. This legal action (according to ORC 4123.90) takes place in the common pleas court of the county of such employment - a state court so the 7th amendment is not applicable. Claire's request for reinstatement to her job is predominately an equitable claim, which usually means that it is not heard by a jury but is decided by a judge. Although Claire is asking for legal money damages (backpay and attorneys fees) these are all incidental to the main equitable claim of reinstatement. The clean up doctrine allows equitable courts to decide legal issues that are merely incidental to equitable claims, such as the ones in Claire's case.

Count 2 will likely be heard by a jury because the claims are mostly for legal claims and damages. Compensatory damages and punitive damages are both forms of legal damages, and a jury will hear the claims for both.

2. In order to recover attorney fees, Claire must show that she is the prevailing party in the suit. Even if you lose on some claims, but win on others, you may be considered the prevailing party. To do this, Claire must establish that Friendly's is responsible for the actions of Claire's supervisor through respondeat superior (to show that Friendly's is responsible both for the comments and the retaliatory termination). Under this, employers are responsible for the acts of their agents within the scope of employment. Claire's supervisor berated her for moving too slowly while at work, ridiculed her for wearing back braces to work, called her Quisimodo in front of patrons, and instructed her not to seat patrons with young children. All of these comments take place while at work, and concern functions of the job. This qualifies them for "within the scope of employment." Also, because it was Claire's supervisor making these comments, it made it difficult for Claire to complain to someone higher up. A court will likely find that Friendly's is vicariously liable for the acts of the supervisor through respondeat superior.

Claire will next need to show that her termination occurred because of her workers compensation claim. Claire should argue that her supervisor's comments (and thus Friendly's comments through vicarious liability) were made in an effort to get her to quit her job. When this failed, she was fired. Claire will need to show that she was not fired because of her performance, but because of filing a workers comp claim. If Claire does this, she will likely be the prevailing party and be awarded reasonable attorney fees.

3. As stated above, Claire will likely be able to show that Friendly's is vicariously liable for the comments made by her supervisor. Punitive damages are used to punish and deter bad behavior, and are in addition to compensatory damages. In order to recover punitive damages, Claire must show that her supervisor's comments were willful, malicious and wanton action that caused her intentional infliction of emotional distress. Punitive damages are awarded at the discretion of the court, but it is likely that Claire will be able to receive the punitive damages because it was bad behavior on the part of Friendly's to allow comments like these to be made, and the comments were clearly made in a malicious and willful manner. The comments were made to tear Claire down in front of others, and this type of activity is not permitted.