

Part II: Essay Question

Patricia Pennyworth is the owner of Silver Streak Fields, which she inherited from her wealthy father. Silver Streak Fields is a horse race track situated on a prime piece of waterfront property on the San Francisco Bay. It has the capacity for 15,000 visitors at a time. Over past years, attendance and on-track betting have declined dramatically, and Patricia is faced with the unhappy prospect of having to sell the race track because it has become so unprofitable.

Patricia believes that she can increase admission ticket sales and betting revenues if she stages special events to attract new customers. She has had success with experiments such as Sunday Dollar Days and the Dachshund Derby, which alternates dog races with horse races.

Patricia decides to arrange a very special race for May 7th of this year. The horses in the race will be five rare white thoroughbreds. Only six such horses exist in the world today, and only seventeen pure white thoroughbreds have ever been registered in the 300 years of recorded thoroughbred breeding. The headliner for the race will be a horse named Prince Ivory, who races infrequently and is an enormous crowd pleaser. Patricia got the idea for the race because she is in the process of purchasing Prince Ivory from Owen Oz, the horse's current owner.

Patricia and Owen entered into a valid written contract for the sale of Prince Ivory on April 15 of this year. Patricia agreed to purchase and Owen agreed to sell the horse for \$500,000, with delivery on April 30, one week before the race. In anticipation of purchasing Prince Ivory and racing him on May 7, Patricia mounted an extensive publicity campaign about the race with advertisements in equestrian magazines and extensive media coverage. She was committed to spending approximately \$50,000 on the publicity but Patricia reasonably expected a profit of over ten times that amount from ticket sales and betting revenues. People coming from all over the world have already purchased \$150 advance admission tickets to Silver Streak Fields to watch the race and bet on this unprecedented event. Online betting has also been very brisk.

On April 23rd of this year, Owen suddenly told Patricia that he had accepted \$600,000 in cash for Prince Ivory from Faris, a wealthy breeder in Saudi Arabia. Owen stated, "Sorry, but that is what Prince Ivory is really worth." He told Patricia that he was sending Prince Ivory to Saudi Arabia within the week. Faris says he has no interest in racing Prince Ivory in the United States.

1. What remedies, if any, does Patricia have against Owen stemming from the contract breach?
2. What remedies, if any, does Patricia have against Owen to prevent him from sending Prince Ivory to Saudi Arabia?
3. Suppose for purposes of this question only that Owen delivered the horse to Patricia but she never paid for it. Owen learns that she has declared bankruptcy and has no liquid assets to make the payment. What remedies does Owen have against Patricia?

END OF EXAM: HAVE A GREAT SUMMER!

Exam Number: _____

REMEDIES FINAL EXAM – GGU – SPRING 2009

Issue	Points Available	Points Received
<p>1. What remedies, if any, does Patricia have against Owen stemming from the contract breach? (anticipatory repudiation; must mitigate damages if possible)</p> <p><u>Expectation damages</u> based on value of Prince Ivory and possible <u>cost of cover</u> if a substitute horse can be found on the open market.</p> <p><u>Consequential damages</u> for foreseeable losses associated with special race</p> <p><u>Reliance damages</u> for costs incurred in anticipation of contract</p> <p><u>Restitution</u> – replevin only if Patricia has paid for horse; possible benefit conferred on Owen would be publicity (increasing value of horse)?</p> <p><u>Specific performance</u> – most likely Patricia's first choice. Discuss (1) breach of definite and certain contract; (2) inadequacy of legal remedy to place aggrieved party in position she would have been in if the contract had been performed; (3) feasibility of enforcement; (4) mutuality; (5) absence of countervailing defenses.</p> <p><u>Modification, novation, and rescission</u> are not desirable remedies for Patricia</p> <p>Possible tort of fraud? Owen would be liable for compensatory and punitive damages.</p>	10	9
<p>2. What remedies, if any, does Patricia have against Owen to prevent him from sending Prince Ivory to Saudi Arabia? This response turned on injunctive relief.</p> <p><u>TRO</u> – Discuss emergency and irreparable harm</p> <p><u>Preliminary injunction</u> – Litigation on the merits must be in process. Discuss factors: (1) status quo; (2) likelihood of success on the merits; (3) potentially irreparable harm; (4) to balance or not to balance (deliberate conduct?); and (5) public interest at stake.</p> <p><u>Permanent injunction</u> – remedy if Patricia prevails in suit against Owen. Discuss (1) inadequacy of legal remedy (money or certain forms of restitution); (2) property interest; (3) feasibility of judicial oversight of decree; (4) balancing of hardships -- burden to plaintiff if injunction does not issue vs. burden to defendant if injunction does issue; (5) possible defenses.</p> <p>Possible <u>replevin</u> of Prince Ivory if she has paid for him (could be discussed above in Question 1).</p> <p>Possible attachment or <u>receivership</u> to prevent sale.</p>	10	10
<p>3. Suppose for purposes of this question only that Owen delivered the horse to Patricia but she never paid for it. Owen learns that she has declared bankruptcy and has no liquid assets to make the payment. What remedies does Owen have against Patricia?</p> <p><u>Rescission</u> of sale contract and <u>restitution</u> in the form of <u>replevin</u> of horse.</p> <p><u>Equitable lien</u> on horse, racetrack, and/or profits from this race and future races. Makes Owen a secured creditor.</p> <p><u>Constructive trust</u> not available on racetrack (inherited from her father, so title was not taken based on purchase with money she should have given Owen), but possibly on accounts with profits from races</p> <p>Court order to pay and contempt order for failure to do so.</p>	10	10
Other?		
TOTAL POINTS	30	29