

**University of West Los Angeles
School of Paralegal Studies Course 232
Remedies and Enforcement of Judgments
Scott F. Pearce, Esq.**

Session Twelve Materials

Specific Performance in Contracts
Scott Pearce
Remedies - Session 12

- I. Recall the elements of injunctive relief in torts:
 - A. Inadequacy of legal remedy
 - B. Property Right
 - C. Feasibility
 - D. Balancing Hardships
 - E. Defenses

- II. Here are the elements of specific performance in contracts
 - A. Inadequacy of Legal Remedy
 - B. Definite and Certain Contract
 - C. Feasibility
 - D. Mutuality
 - E. Defenses

- III. Consider the Nutshell material on this remedy.

REMEDIES & ENFORCEMENT OF JUDGMENTS
Specific Performance - Hypothetical 1

Maker manufactures printing presses. News, a publisher of a local newspaper, had decided to purchase new presses. Rep, a representative of Maker, met with Boss, the president of News, to describe the advantages of Maker's new press. Rep also drew rough plans of the alterations that would be required in the News pressroom to accommodate the new presses, including additional floor space and new electrical installations, and left the plans with Boss.

On December 1, Boss received a letter signed by Seller, a member of Maker's sales staff, offering to sell the required number of presses at a cost of \$2.4million. The offer contained provisions relating to the delivery schedule, warranties, and payment terms, but did not specify a particular mode of acceptance of the offer. Boss immediately decided to accept the offer, and telephoned Seller's office. Seller was out of town, and Boss left the following message: "Looks good. I'm sold. Call me when you get back so we can discuss details."

Boss next telephoned Pressco and rejected an outstanding offer by Pressco to sell presses to News similar to those offered by Maker. Using the rough plans drawn by Rep, Boss also directed that work begin on the necessary pressroom renovations. By December 4, a wall had been demolished in the pressroom and a contract had been signed for the new electrical installations.

On December 5, the President of the United States announced a ban on imports of foreign computerized heavy equipment. This removed from the American market a foreign manufacturer which had been the only competitor of Maker and Pressco. That afternoon, Boss received a telegram from Maker stating, "All outstanding offers are withdrawn." In a subsequent conversation, Seller told Boss that Maker would not deliver the presses for less than \$2.9 million. A telephone call by Boss to Pressco revealed that Pressco's entire output had been sold to another buyer.

1. Was Maker obligated to sell the presses to News for \$2.4 million? Discuss.
2. Assume Maker was so obligated. What are News' rights and remedies against Maker. Discuss.

REMEDIES & ENFORCEMENT OF JUDGMENTS
Session 12 - Hypothetical 1 - Outline of Issues

- I. Was Maker obligated to sell the presses to News for \$2.4 million?
 - A. The UCC controls this transaction.
 - B. Contract formation
 - 1. The meeting between Boss and Rep
 - 2. Seller's December 1 letter to Boss: a valid offer
 - 3. Seller's letter did not specify a particular mode of acceptance of the offer.
 - 4. Boss's telephone message to Seller: a valid acceptance
 - 5. Acceptance effective upon dispatch
 - 6. Consideration
 - 7. Foreseeable Reliance
 - C. Maker's Defense to Formation: The offer was withdrawn on December 5
 - D. Maker's Breach: The December 5 telegram and Seller's subsequent conversation with Boss.
 - E. Maker's Defenses to Breach: Impossibility / Impracticably / Frustration
 - F. Conclusion
- II News' rights and remedies against Maker
 - A. Damages are inadequate
 - B. Restitution
 - C. Specific Performance
 - 1. Definite and Certain Contract
 - 2. Conditions Satisfied by Plaintiff
 - 3. Damages are inadequate - discussed above
 - 4. Feasibility
 - 5. Mutuality
 - 6. Defenses
 - D. Conclusion

REMEDIES & ENFORCEMENT OF JUDGMENTS
Specific Performance - Hypothetical 2

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.

REMEDIES & ENFORCEMENT OF JUDGMENTS
Specific Performance - Hypothetical 2 - Outline of Issues

- 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?
- 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

REMEDIES & ENFORCEMENT OF JUDGMENTS

Session 12 - Hypothetical 3

Sam and Paul entered into a written contract on September 1, 1999, for the sale by Sam to Paul of a mountain lakefront lot improved with a residence (hereinafter, "the parcel") for \$100,000. The contract was silent as to the quality of title Sam would convey, but provided that a quitclaim deed would be used. Paul failed to tender the agreed-on price on the performance date. Sam sued Paul for specific performance on July 5, 2000. Paul defended the suit on the ground that Sam's title is not marketable.

Sam's claim of title goes back to Owen, who owned an unencumbered fee simple absolute in the parcel. The parcel, which was accessible only during the summer months, has been occupied by Owen and Owen's family as a summer vacation home since 1980. In 1984, Owen conveyed the parcel by recorded deed to "to my daughter, Doris, and my son, George, so long as they both shall live, and then to the survivor of them."

Owen died testate in 1987. Owen's will made no specific reference to the parcel, but the residuary clause left to Doris "all my other property not specifically disposed of by the will." Doris and George and their families continued to use the vacation home each summer. Doris died testate in April 1988, her will "devising and bequeathing all my estate to my son, Ed."

George executed a deed in May 1988, purporting to convey a fee simple absolute in the parcel to Cain. Cain and his family occupied the parcel during the summers of 1988 through 1996. In May 1997, Cain conveyed the parcel to Sam. Sam's family occupied it during the summers of 1997 through 1999.

The statute of limitations on actions to recover land in this jurisdiction is 10 years. There is no statute or decision by an appellate court either repudiating or affirming the common law doctrine of destructibility of contingent remainders.

Who should prevail in Sam's suit against Paul? Discuss.

REMEDIES & ENFORCEMENT OF JUDGMENTS
Session 12 - Hypothetical 3 - Outline of Issues

1. Sam v. Paul
 - A. The Contract
 - B. Paul's Breach
 - C. Paul's Defense to Breach
 - D. Sam's Interest in the Parcel
 1. Owen
 2. Owen to Doris and George
 3. Owen's Death
 4. Doris' Death
 5. George to Cain
 6. Cain to Sam
 7. Adverse Possession - Tacking
 8. Destructibility of Contingent Remainders
 - E. Conclusion
- II. Specific Performance
 - A. Definite and Certain Contract
 - B. Satisfaction of Conditions by Plaintiff
 - C. Legal Remedy Inadequate
 - D. Feasibility
 - E. Mutuality
 - F. Defenses
 - G. Conclusion