



5)

1. Whether there was a valid contract.

The remedies that Pam can obtain depends on whether there is a valid contract between Pam and Daniel.

CONTRACT



A valid contract must have mutuality and consideration. For there to be mutuality, the parties must have agreed to the terms of the contract. That is, the offer was clear as to the items offered, the offeree accepted the terms of the offer and they had a meeting of the minds. The offer and acceptance was also based on bargained for consideration.

Here, the parties clearly agreed that the sale price of Daniel's house includes the two paintings, and in particular, the California coastline painting. Both parties signed the contract that they both believed represented the intent of both parties. Pam paid for the house and the paintings and Daniel was to hand over the house and paintings to Pam.



If there is an ambiguity in the terms of the contract, the ambiguity will be against the person who drafted the contract.

Here, Bill, Daniel's representative drafted the contract and any ambiguity will be against Daniel.



Daniel breached the contract.

A contract is breached when a party fails to perform under the terms of the contract.

Daniel did not give the California coastline painting to Pam as agreed upon. Bill knew of his mistake in not including the painting. Daniel also should have known that this was a mistake made by Bill. Therefore, he should have given Pam the painting.

Remedies of Pam



TEMPORARY RESTRAINING ORDER (TRO) is where a party asks the court to stop a party for doing or not doing something that will cause irreparable harm before trial.

Pam should ask the court for a TRO to immediately stop Daniel from selling the painting as advertised in the newspaper before the trial in order for her to be able to get the painting.

INJUNCTION

An injunction is a remedy that protects the property in dispute from being disposed of or damaged prior to trial. If the defendant has the property, the plaintiff will place a bond to guarantee that the defendant will not lose money if the court decides in favor of the defendant. The defendant may also place a bond to get the property back until the trial.



Pam may consider this action in order to protect her right to the painting pending trial.

SPECIFIC PERFORMANCE

Specific performance is a remedy in for valid contracts where money damages is not sufficient; there is no alternative remedy; the item is rare; enforcement is feasible; and damage to the plaintiff will be irreparable.

Here, the property which is the California coastline is an original and valuable painting that could not be replaced and is rare and no amount of money can replace an original painting. It is feasible to enforce the order because the court can instruct Dan to give the painting to sam. Thus, Pam should file a suit for specific performance. The court should grant Pam the remedy of specific performance and order Daniel to give Pam the painting that she paid for and both parties agreed upon.

REPLEVIN

Replevin is a remedy where a party who has legal title to a property can petition the court to order the sheriff or any law enforcement, to retrieve the property from the defendant.

Here, Pam paid Daniel the price for the painting and therefore she has legal ownership of the painting. Daniel is not the legal owner of the painting and will be unjustly enriched if he is allowed to keep the painting. Therefore, the court may grant the replevin.

RESTITUTION

A party who breached a contract and has been unjustly enriched by his breach must pay damages based on restitution. Here, Pam paid \$50,000 for two paintings that included the California coastline painting. Daniel only gave Pam one painting and kept the California coastline painting. If Daniel is allowed to keep the \$50,000 and the painting, Daniel will be unjustly enriched. Therefore, the court should grant Pam the remedy of restitution and give the painting to Pam.

Question #5 Final Word Count = 677

END OF EXAM