

## Memorandum

To: Remedies Class Fall 2004

From: Mike Allen

Date: December 2004

Subject: Final Exam

I have set out in this memorandum my thoughts about the essay questions on the final examination. To be sure, this answer is not comprehensive. That is, students will no doubt have given responses that I have not included in my discussion. If those responses were appropriate, you can be sure I gave you credit. By the same token, this answer is certainly more detailed than the ones produced by students. Remember, I had unlimited time and was dealing with questions that I had drafted.

### Question 1

You should have recognized that Sandra had remedial options that were both backward looking as well as forward looking. In other words, she needed advice concerning repairing harm she had already suffered as well as preventing harm that she might suffer in the future. With this preliminary matter out of the way, here are the major remedial options I would have discussed:

#### Compensatory Damages

Sandra has the potential to seek compensatory damages both with respect to past harm as well as in some measure future harm. I will address each of these options separately.

#### **Use of the Diamond Device from December 2004 - Present**

One means of placing Sandra in the position she would have been but for David's wrong is to compensate Sandra for David's wrongful use of the diamond device from his theft in December 2004 to the present. You should have recognized that this option for compensatory damages is one option for recovery during this period. The other option for recovery during this period is restitution, which I discuss below.

In any event, if one were to use this method of seeking recovery for the period the challenge would be valuing the use of the device during the period. The most likely means of doing so would be to award Sandra the rental value of the device. The problem with this method of calculating the recovery is that it is highly speculative. The diamond device is the only one of its kind. There is no track record for rental value. Moreover, the evidence suggests that Sandra had not yet determined her asking price in the face of such varying rental bids (*i.e.*, \$5,000,000

to \$100,000). Thus, it is likely that a court would be hesitant to use Sandra's after the fact estimates of rental value to support an award of any significance. In sum, this avenue of recovery is not likely to be beneficial to Sandra.<sup>1</sup>

### **Period from the Present into the future**

One could also attempt to seek compensatory damages to address the harm that Sandra could face in the future. In other words, Sandra could elect to leave the diamond device in David's hand – as she might have done had she rented it to someone in a legitimate process – and recover the value of the diamond device flowing from David's conversion of the property. This option is in the alternative to seeking replevin of the device, an issue discussed below.<sup>2</sup>

In any event, were Sandra to seek compensatory damages in this regard the issue would still be valuation. The normal rule is that we will award market damages for property wrongfully taken or damaged. The issue here is that there is no market for the diamond device. On the facts given, the device is unique. Thus, Sandra will not be constrained by the market-damages rule. The issue will be how to measure the value of the device. One could imagine seeking expert testimony about the issue or obtaining testimony from Sandra and likely buyers to address the issue. The problem is that this evidence is also highly speculative. Thus, is likely that this remedial option will be very attractive to Sandra.

One other point is worth noting. If Sandra opted for conversion damages, you would also need to try to value the continued use of the diamond-made design. This design was wrongfully obtained property the value of which may not be included in the value of the diamond device itself. Once again, however, the valuation question is quite difficult. The best one could hope for would be expert testimony on the issue. But such testimony is also going to be highly speculative.

### **Replevin**

An alternative to seeking compensatory damages for conversion would be to replevy the diamond device under the terms of the Stetson Replevin Statute. You should have noted that

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<sup>1</sup> If one were to go down this road, you might also have wanted to discuss whether these suggested rental figures needed to be pro-rated to account for David's use of the device for only 6 months. There would be argument that you should proceed in this way. However, there is a strong argument that you should not prorate the figure because Sandra lost the opportunity of rent for the entire year.

<sup>2</sup> It would have also been possible to address these compensatory damages issues in one period. That is one could have considered damages based on conversion right from the start. However, I think it opens up greatly remedial alternatives by breaking down your consideration of the period into two parts.

under the statute obtaining replevin does not bar recovery any damages or other monetary relief to which the plaintiff might be entitled. Thus, Sandra could seek replevin and still obtain either compensatory damages or restitution for the period from December 2004 to the present as well as any punitive damages to which she might be entitled.

In terms of the substantive issue of replevin, Sandra would establish that the diamond device is personal property and that it had wrongfully been detained by David. She would not need to establish irreparable harm or other requirements for an injunction because replevin is a remedy at law. In addition, it is unlikely that David could avoid replevin by tending the value of the diamond device. First, that is not usually allowed in replevin. Second, as described above, such a “value” is speculative under our facts.

### **Restitution**

A much more attractive approach for Sandra to address the issue of recovery for the period from the theft in December 2004 to the present is through restitution or unjust enrichment. Under unjust enrichment, we award a plaintiff the gains realized by a wrongdoer (the defendant) that are traceable to the benefit wrongly conferred by the plaintiff. In this situation, we would award Sandra the net profits David realized that can be traced to the theft of the diamond device.

The first step was recognizing that restitution is a viable option in this scenario. As we discussed in class, restitutionary measures of recovery of far more common in situations in which the wrongdoer is seen as morally culpable. Stated differently, we are more likely to use a restitutionary measure of recovery when the defendant has avoided the market in some way. Both these rationales support restitution here. David committed an intentional tort (and also a crime) when he stole the diamond device. In addition, David avoided the market because he theft allowed him to bypass the rental bidding process.

After having determined that restitution is appropriate on the facts, the issue becomes determining what portion of David’s profit from the sale of the silver bracelets was due to the diamond device and what was due to other factors such as the marketing of the bracelet, the silver in the bracelet, David’s efforts, etc. The idea is that we only want to take from the defendant profit that is actually attributable to the plaintiff’s contribution (unwilling though it may have been) to the project. Sandra will have the burden of establishing gross profit. David will have the burden to establish deductions.

Based on the facts, there are two issues that will need to be considered. First, one needs to determine the net profit for the silver bracelet product line. We know that the gross profit on the line is \$1,500,000, but David will likely seek to deduct certain expenses from this “top line” number. The second issue we will need to address concerns what portion of this net profit figure for the silver bracelet line is attributable to the diamond device and what is attributable to other factors.

Turning to the first issue, David will almost certainly seek to deduct expenses from the

gross revenue of \$1,500,000 for the silver bracelet line. There are certain types or categories of expenses that will clearly not be deductible: “cost of materials – gold”; “cost of materials – aluminum”; and “advertising expenses – non-Internet”. The reason is that on the facts we have been given, none of these expenses is associated with the silver bracelet line in any expenses.

There are two categories of expenses that are certainly deductible: “cost of materials – silver”; and “advertising expenses – Internet.” These expenses are fully deductible because on the facts they are attributable only to the silver bracelet product line. Thus, the \$1,500,000 gross profit figure should be reduced by \$775,000 (*i.e.*, the total of the expenses for cost of the silver and of the Internet advertising). At this stage, the profit for the silver line has been reduced to \$725,000.

It might be possible to simply stop at this point. Some jurisdictions do not allow a defendant to deduct indirect expenses, often thought of as overhead. In our case, the expenses for rent and electricity fall into that category. If Stetson were to adopt this rule the net profit on the silver bracelet line would be \$725,000.

It is probably more likely, however, that Stetson will adopt the more modern view on the deductibility of general expenses. This view allows for the deduction a share of these general expenses so long as the category of expenditure is implicated in the production of the product line at issue. In this case, both the electricity and the rent are implicated in the manufacturing of the silver bracelet line. We know this to be the case because David has only one facility at which he does all his work.

The trick with taking these general overhead expenses into account is coming up with some formula by which to allocate them. The burden to do this will be on David. I believe that are three likely formulas the court could employ here. The first would be to apply the same ratio of general expenses as reflected by the units sold of David’s three products. If one take this approach you would calculate the percentage total units sold that the silver bracelets constitute. To do this, you would take the number of silver bracelets sold in the period (250,000) and divide that number by the total units sold of all three products in the period (400,000). This yield 62.5%. Thus, under this approach 62.5% of the rent and electricity expenses would be allocated to the silver line. That would mean that you would take 62.5% of \$450,000 (*i.e.*, \$200,000 for electricity plus \$250,000 for rent) which equals \$281,250. Thus, to get the net expenses for the line under this methodology you would subtract the \$281,250 from the \$725,000 to get a net silver bracelet line profit of \$443,750.

An alternative allocation formula would be to use the gross revenue figures as the basis of comparison. Under this approach you take the gross revenue for the silver line (\$1,500,000) and divide it by the total gross revenue for all lines (\$3,700,000). The result of this calculation is 40.5%. Thus, under this approach 40.5% of the rent and electricity expenses (\$450,000) would be allocated to the silver line for a total of \$182,250. The resulting net profit under this method is \$542,750 (\$725,000 - \$182,250).

A final alternative would to divide the general expenses in thirds based on the presence of three product lines. Thus, you would multiply the rent electricity expenses (\$450,000) by 33.33% resulting in an allocation for the silver line of \$149,985. The resulting net profit under this method is \$575,015 (\$725,000 - \$149,985).

While it is impossible to predict which method the court would ultimately use, I suspect the court would be inclined to adopt the second method, the one based on the gross revenue. My prediction in this regard is based on the fact that courts tend to construe matters against the defendant in restitution.

The second inquiry would be to take the net profit on the silver line, whatever it is determined to be, and determine what portion of that net profit is attributable to the diamond device as opposed to other “factors of production.” There are really two issues in this case as set up by the facts. First, you should have recognized that there is no issue concerning the \$150,000 that is generally agreed to reflect the value of David’s artistic contribution. One is not allowed to deduct the value of one’s own services. If David had paid himself, or someone else, a salary, those expenses may have been deductible, but that is not the case here.

That leaves the various estimates Sandra obtained from experts concerning the importance of the diamond device design. The estimates ranged from 5% to 80%, but three of them were clustered around 25% (*i.e.*, 30%, 25%, and 20%). Is likely that if these estimates were produced at trial, the court would be justified in adopting anything in the range of 20% to 30% of the net profit of line as attributable to the diamond device and thus the amount to be paid to Sandra as unjust enrichment. Depending upon which allocation measure the court used, the range could be Assuming that the court used the higher net profit figure, the range would be \$88,750 - \$172,504.50. I suspect the court would err on the higher side of this range for the reason discussed above, namely the tendency of courts to give the benefit of the doubt to the plaintiff in restitution cases.

### **Punitive Damages**

Based on the facts Sandra gave you, she would also likely be able to recover punitive damages. Under Stetson Statute #2, David’s conduct will likely be found to amount to “intentional misconduct” under Section 1(a). David had actual knowledge that taking the diamond device was wrong and that taking the device would cause Sandra injury. Nonetheless, David went though with the theft. Thus, Sandra is entitled to receive punitive damages under the statute. Of course, Sandra will need to establish this entitlement by clear and convincing evidence.

The amount of punitive damages will not be limited under the terms of the statute. Under Section (2)(c) there will be no cap on the amount of punitive damages if the defendant is found to have a specific intent to harm the plaintiff and does so by his conduct. In this case, David had a specific intent to harm Sandra and did so by stealing the diamond device. Sandra should be aware, however, that there will be a limitation on punitive damages under the terms of the United

States Constitution. While the exact limitation is unclear, it is likely that in most cases, especially those involving only economic harm, a punitive damage award can be larger than 9.9 times the size of a compensatory damages award.

### **Injunctive Relief**

Finally, you should have recognized that even if Sandra obtains the diamond device back through replevin, David would still have possession of the design he created. Sandra would need to try and prevent David's use of this wrongfully obtained design. She would be able to do so by seeking an injunction preventing David from using the design in any manner in the future.<sup>3</sup>

You could have first advised Sandra concerning seeking a preliminary injunction preventing David from using the device or the design during the pendency of the case. This analysis would require that Sandra show that (1) she is likely to win on the merits; (2) that the balance of hardships tips in her favor; (3) that there is no adequate remedy at law; and (4) that the public interest would be served by granting the injunction. On these facts, Sandra would be able to show a likelihood of success on the merits. In terms of the balance of hardships, it does not appear that David would be harmed at all given his voluntary decision to refrain from suing the device. In terms of irreparable harm, we are concerned with the period from the date of the filing of the lawsuit through trial. The issue would be whether monetary damages would compensate for the harm in this period should Sandra win. There is difficulty in calculating damages here (as discussed below) and the difficulty is not lessened by the use of the shorter relevant time period. Finally, the public interest would be served by the injunction on these facts.

More important would for you to advise Sandra that she should seek a permanent injunction preventing David from using the design in the future. Equitable relief is the exception to the rule in the American legal system. In order to be entitled to injunctive relief, the first thing that Sandra will need to establish is that she would be subject to irreparable harm without the issuance of the injunction. It is likely that Sandra would be able establish that she would be subject to irreparable harm without the injunction. In other words, there is no adequate relief at law.

There are three possible arguments one could make to support a claim of irreparable harm:

- As discussed above, the damages for conversion, including valuing the design, are highly speculative. Difficulty in proving damages is a reason to find the remedy at law inadequate. (Of course, this does not mean that Sandra could not choose to try to obtain those damages. A finding of inadequacy is really about ranking the

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<sup>3</sup> As discussed above, if Sandra had opted for conversion damages the value of the design would be part of those damages.

available remedies).

- A second reason for finding the remedy at law inadequate is that relegating Sandra to damages would mean that she would have to file repeated damages actions in order to vindicate her rights.
- A final reason for finding inadequacy here is that one could argue that allowing David to keep the design would essentially be allowing him to have a certain measure of control Sandra's business. Such a lack of control could also be a reason to find the remedy at law inadequate.

A second major issue Sandra would need to address in connection with seeking injunctive relief is the "balance of hardships." It is possible that if David were able to establish that the harm to him if the injunction was granted would substantially outweigh the harm to Sandra if the injunction were denied, he could avoid injunctive relief. The first issue here is that this rule might very well not apply to David. Some jurisdictions do not balance the hardships if the defendant is an intentional wrongdoer. David is such an intentional wrongdoer. If the Stetson court follows this rule, there would be no balancing of the hardships.

Even if the court did balance the hardships, it is highly unlikely that the balance of hardships tips decidedly in favor of David. David can go on with his business without the diamond design. He can create other products. Indeed, he already has two other products. In short, there is likely to be little or no hardship on David and certainly not a "substantial" hardship.

You may also have wanted to mention that David could raise mootness as a defense here. In other words, he could claim that because he voluntarily ceased his activity there is no need to enter an injunction. Grant. You evaluate mootness claims by looking at three factors: (1) the bona fides of the expressed intent to refrain from the activity in question; (2) the effectiveness of discontinuation; and (3) the character of past violations. In this case, a mootness argument is not likely to succeed. David's wrong was intentional. He has not actually expressed his willingness to follow the law. Instead, he has only decided to "lay low." Finally, he would be able to start using the device again quite easily.

Finally, you may have wanted to mention the fact that none of the remedial defenses we studied would likely provide a means to avoid the injunction. The only conceivable argument David could make is that Sandra was unreasonable in waiting six months to discover the theft and that he relied to his detriment on Sandra's inaction. In other words, David could attempt to use laches as defense here. Such a defense would be unlikely to prevail. First, under all the facts and circumstances the delay in asserting a right here is not unreasonable. Sandra had two major projects going on at the same time. She turned attention from one to the other in a short period. Moreover, a person who has committed a crime is in a difficult position to rely on inaction

within such a short period of time after the wrongful act.<sup>4</sup>

## **Question #2**

Question #2 was designed to test your understanding of several principles concerning remedies for breach of contract. The basic rule for breach of contract is that a plaintiff is entitled to her expectancy or what she would have received had the defendant fully performed. However, the law also allows the parties to alter this baseline rule in their contract.

A good place to have begun would have been to identify the elements of damages Sandra has sustained as a result of the breach by Thomas. There are two such elements, one a direct item of damage and the other a consequential element. Thereafter, one could review the contract to see if it either restricted the damages Sandra could obtain or perhaps even provided an avenue to obtain increased damages.

### **Direct Damages**

A direct item of damage is one that inevitable would flow from the breach of a contract. In this case, the cost of obtaining a replacement manufacturer for the ruby/emerald devices is a direct item of damage to Sandra. After Thomas indicated it was unable to preform under its contract with Sandra, Sandra immediately sought a replacement, eventually settling on Ruth. Ruth charged \$350,000. To calculate Sandra's damages one would subtract from the \$350,000 Sandra paid to Ruth the \$200,000 she would have paid to Thomas. Thus, Sandra's direct damages are \$150,000.

You should also have advised Sandra that Thomas would likely assert that Sandra acted in a commercially unreasonable manner by electing to use Ruth instead of the other manufacturers Sandra consulted who promised to perform for less. While it is true that a party must act in a commercially reasonable manner in covering (or obtaining replacements), it is unlikely that Thomas would be successful in his argument. On the facts, the only possibility Sandra had for meeting her deadline with the NFL was to use Ruth. Finally, simply because Ruth was ultimately unable to meet the deadline does not mean that it was unreasonable for Sandra to try to meet the deadline by using Ruth. After all, Thomas waited until the last moment to notify Sandra of his inability to meet the deadline. Had Thomas acted earlier, Sandra would have been more likely to meet the deadline. Accordingly, he cannot now complain that Sandra took the steps she did.

### **Consequential Damages**

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<sup>4</sup> The same basic argument could also be asserted with respect to defenses of equitable estoppel and waiver.

Sandra also suffered consequential damages as a result of the breach by Thomas. Consequential damages are those that will not inevitably flow from a breach. Here, Sandra's consequential damage is her net expected profit on the NFL deal. She lost that profit as a result of the failure of Thomas to deliver on schedule. It is true that such consequential damages must be in the reasonable expectation of the parties. That condition is satisfied here because Sandra told Thomas before they entered into the contract about the NFL deal. It is immaterial that Thomas may not have known the *extent* of Sandra's anticipated profits. It is enough that he knew of the existence of the NFL deal.

The next issue would be calculation of the damages. Sandra's gross profit on the NFL deal was \$500,000. From this one would have to subtract the cost of making the devices under the Sandra/Thomas contract (*i.e.*, \$200,000). Thus, Sandra's expected net profit on the NFL deal was \$300,000.

### **The Contract**

There are two issues under the Sandra/Thomas contract that could have an impact on damages. I will first discuss the two issues separately. I will then consider how these two issues may interact with one another.

### **Exclusion of Consequential Damages**

The second sentence of Paragraph 4 of the Sandra/Thomas contract sets forth an unambiguous exclusion of consequential damages. The parties are allowed to modify the fundamental rule of contract damages in such a way. The result of this provision, if it is ultimately enforceable, is that Sandra would not be entitled to recover the \$300,000 in net lost profits on the NBA transaction.

Sandra might attempt to argue that the exclusion of consequential damages is unconscionable and, therefore, unenforceable. Sandra is likely to be successful in such an argument. Sandra and Thomas are commercial parties. As the UCC recognizes (cited here are merely persuasive authority), it is highly unlikely to find unconscionability in commercial transactions. Moreover, nothing in the facts suggests that Thomas had grossly superior bargaining power or exploited any vulnerability in Sandra's financial position. Finally, Paragraph 5 of the Sandra/Thomas contract recites that each party was represented by counsel in connection with the negotiation, drafting and execution of this agreement. Such representation also counsels against a finding of unconscionability.

### **Liquidated Damages Provision**

You should also have advised Sandra concerning the first sentence of Paragraph 4 of the Sandra/Thomas contract. This sentence provides that the parties have agreed that \$400,000 is a reasonable estimation of damages for breach of the contract. The issue here is whether the provision sets forth a penalty (which is not allowed) or a liquidated damages provision (which is

enforceable). The basic test is that a provision such as this will be upheld as a liquidated damages provision if the amount identified is a reasonable estimation of either (1) actual damages or (2) estimated damages at the time of contracting.

In this case, Sandra's actual damages based on the breach are \$450,000 (\$300,000 in lost profits and \$150,000 in replacement manufacturing costs). This does seem like a reasonable estimation of damages. There are, however, some issues that you should have raised. First, this clause is at risk of being classified as a penalty because it recites that the \$400,000 amount is a reasonable estimation of damages "for *any* breach" of the contract. Courts are leery of such phrasing because it suggests that the parties actually were attempting to create a penalty and not merely avoid difficult in proving damages. A second potential issue is that actual damages are relatively easy to calculate. In situation where this is the case, a court is less likely, all other things being equal, to use a liquidated damages provision.

In the final analysis, it is a close call about whether this provision would be upheld. You should have reached a conclusion based on your analysis.

### **Interaction of Liquidated Damages Provision and Exclusion of Consequential Damages**

A final point that was worth discussing is the potential interaction of the liquidated damages provision and the exclusion of consequential damages. First, if you concluded that it was possible for Sandra to recover consequential damages despite the exclusion, a logical follow-up would be to counsel Sandra to attempt and *avoid* the liquidated damages provision. The reason is that under the liquidated damages provision she gets \$400,000 while under normal damages rules she gets \$450,000 (\$300,000 in consequential damages and \$150,000 in direct damages). In other words, you should have at least considered the interplay of these damages calculations.

Another issue to consider is whether a difficulty in enforcing either provision standing alone has any impact on the other provision. In other words, if the liquidated damages provision is considered unenforceable as a penalty, what does this mean for the exclusion of consequential damages? The same basic question could be considered if one struck the consequential damages exclusion but would otherwise uphold the liquidated damages provision.

I think this is a challenging issue. It is certainly one on which reasonable people could differ. You should have made sure to discuss it and come to a resolution. In my view, the most likely result is that a court would treat the two sentences as reflecting separate parts of the contract and so striking one part would not likely have an impact on the other. That being said, I do think one can make a strong argument that the liquidated damages provision should be upheld precisely because the parties may have considered it in setting the amount of liquidated damages in the first place.

### **Conclusion**

You should have made sure to state your bottom line. I could envision students stating the bottom line as \$150,000, \$400,000 or \$450,000, with the first two being most likely. In any event, stating a bottom line and explaining how you got there was critical in answering this question.

### **Question #3**

William is requesting two types of relief from Sandra. A logical means to address this question is to divide your answer by discussing each type of relief.

#### **Damages**

William seeks to recover from Sandra lost profits in his business allegedly caused by noise from Sandra's workshop. There are two issues that you should have raised as potential obstacles to this form of relief. Before addressing those issues, one thing that will not be an obstacle to seeking this form of relief is the statute of limitations. On these facts, there is no question that William's claim is timely. Laches (which as discussed below is a viable defense with respect to the injunctive relief William seeks) is not applicable to the claim for compensatory damages. The two viable defenses are:

#### **Speculative Damages / Causation**

The first line of defense Sandra could mount concerns William's ability to prove either causation of the harm or the amount of the damages with reasonable certainty. We do not have enough facts to really analyze these issues in any great detail. One point that would have been worth making is that William does not have much of a track record either in the Spa business in general or at this location without Sandra being present. The relevance of these facts is to suggest that claims of lost profits will be based on less of a track record. This point is not to suggest that William cannot establish lost profit damages but rather that, all things being equal, it will be more difficult for him to do so. The best thing or you to have done is identify the issues.

#### **Economic Harm Rule**

The second damages related issue you should have discussed concerned the economic harm rule. This common law rule provides that a plaintiff is not entitled to recover for economic losses – quite often lost profits – in tort without some physical injury to it or its property. This rule applies even though the plaintiff's harm has been caused by the defendant's actions.

The economic harm rule is one of common law. We do not know if Stetson has adopted the rule. If it has not, and Sandra is not successful in urging its adoption, the rule will have no impact on this case. On the other hand, if the rule is a part of Stetson common law, William's claim for lost profits will almost certainly be precluded.

On the facts given, William is seeking to recover for only economic losses, lost profit.

His claim is in tort. Finally, William has made no claim that either he or his property has suffered a physical impact as a result of Sandra's action. Thus, these facts are a textbook case for the preclusion of claimed damages under the economic harm rule.

### **Injunctive Relief**

The second type of relief William seeks is a permanent injunction prevention Sandra from conducting her work at the workshop, at least in her current manner. I would have addressed the issue in two steps: (1) whether William would likely be entitled to relief under basic equitable doctrines and (2) whether there are any defenses Sandra could assert that could, nonetheless, bar injunctive relief in this case.

As to the entitlement to the injunction in the first instance, the two principal issues to consider were whether William would suffer irreparable harm if the injunction were not granted and whether the balancing of hardships supports the grant of the injunction.

With respect to the question of irreparable harm, the issue is whether William would have an adequate remedy at law. There are two reasons why, it seems to me, William would satisfy the requirement here. First, we are dealing with the use of William's real property. The law has traditionally treated real property as unique and thus been more liberal in the use of equitable relief. Second, it seems fairly clear that damages are not a realistic alternative here. There would need to be repeated suits. Moreover, the damages appear to be speculative. Finally, as discussed above, the economic harm rule would likely bar these damages.

The question is closer with respect to the balance of hardships. The black letter law is that a plaintiff is not entitled to injunctive relief if the defendant is able to demonstrate that the balance of harms tips substantially in its favor. That is, if the defendant is able to show that the harm to it if the injunction is granted is substantially greater than the harm to the plaintiff if the injunction is denied, the injunction should not enter. Sandra could argue that the harm to her is stopping her business totally (at least as currently constituted). The harm to William is only a reduction in his business. Thus, Sandra could argue that the balance of hardships tips substantially in her favor. You should have reached a conclusion on this point.

Finally, you could also have discussed the public interest factor. The argument would be that the injunction should be granted in order to protect the public health. We would need more facts to fully evaluate this argument.

Even if William were able to satisfy the basic requirements for an injunction, it is likely that the court will deny his request. First, the doctrine of laches applies to William's request for an injunction. If a party seeks both a legal and equitable remedy for the same cause of action, both the statute of limitations and laches will apply to the equitable relief. There is no problem with the statute of limitations, but there probably is in terms of laches.

Under the doctrine of laches, a party is not entitled to equitable relief if the court

determines that (1) he waited for an unreasonable length of time to assert the claim for relief at issue and (2) the other party (here Sandra) has been prejudiced by the unreasonable delay. In this case, William knew of the problems with loss of clients due to the sound from Sandra's shop almost immediately after Sandra started her business three years ago. Instead of acting quickly or even informing Sandra of the problem, William allowed the situation to continue. Moreover, Sandra relied on William's silence by agreeing to enter into the long term lease and to redevelop her workshop. Such detrimental reliance is the most common form of prejudice in terms of laches.

It is also technically possible to assert the laches argument under either a theory of equitable estoppel or waiver. All three doctrines lead to the same result, but laches works best here. In terms of equitable estoppel, the elements of the doctrine are (1) an act or conduct by William inconsistent with the relief he now seeks against Sandra, (2) Sandra's reasonable reliance on William's actions, and (3) injury to Sandra. In terms of the first element, the key point to discuss is whether in the factual circumstance here you can have estoppel by silence. This is a difficult issue in general but courts have under certain circumstances found a failure to act to itself be action. In terms of reliance and injury, the arguments largely track those made above with respect to laches.

Finally, one could argue that William waived his right to assert the nuisance claim. The definition of waiver is intentional conduct by William that is inconsistent with the assertion of the right at issue in the lawsuit with Sandra. While it is possible to make this argument, it certainly does not fit as well as the laches argument.

In sum, you should have concluded that Sandra has a strong argument that William's claim for an injunction should be denied.