

Specific performance

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Specific Performance MT311 Business Law Part I There are four situations we have to review in terms of specific performance and possible breach of contract. First we must understand the elements of specific performance then we can evaluate how they relate to each scenario. “ In some situations, damages are an inadequate remedy for a breach of contract...equitable remedies include rescission and restitution, specific performance, and reformation” (Miller & Jentz, 2009). Specific performance is an equitable remedy that requests the promised act be performed per the contract.

This is not to be confused with any monetary exchange, rather that the contract be fulfilled as agreed upon originally. Sometimes the performance is of more value than monetary damages, which is why the specific performance remedy appealing for certain types of situations. “ Normally, however, specific performance will not be granted unless the party’s legal remedy (monetary damages) is inadequate” (Miller & Jentz, 2008). A good example of this clause is in regards to unique or rare items that cannot just be bought on the open market.

This is where monetary damages would not be a factor. The advantages of specific performance are that the non-breaching party is spared the hassle of collecting judgment, they do not need to set up another contract, and the performance may be of more value than monetary damages. The first scenario states: Tarrington contracts to sell her house and lot to Rainier. Then, on finding another buyer willing to pay a higher purchase price, she refused to deed the property to Rainier.

The specifics of this case are unknown; however, based solely on the information provided I believe Rainier is entitled to specific performance as long as the property has not yet been sold. One element of real estate specific performance is that the contract must be fulfilled, unless the land is unavailable because it was sold to someone else. In that scenario damages will be awarded instead. The courts would rather uphold specific performance in relation to the sale of land because every piece of land is unique, and monetary damages will not compensate the buyer adequately.

We could argue this dependent on the specifics of the case. In the case of *Stainbrook v. Low* the court upheld specific performance based on the reasoning that “ a party seeking specific performance of a real estate contract must prove that he has substantially performed his contract obligations or offered to do so” (Miller & Jentz, 2008). Based on this case decision we must assume that Rainier followed through with his part of the contract in terms of financing and inspections.

If the courts find that he did not fulfill his obligations or at least offer to follow through they could overturn the case and Rainier will not get the property or any monetary damage. The second case states: Marita contracts to sing and dance in Horace’s nightclub for one month, beginning June 1. She then refuses to perform. In this scenario a contract for personal services is present, and a court will normally not grant specific performance of contracts for personal services. This is because to order a party to perform personal services against his or her will amounts to a type of involuntary servitude, which is contrary to the public policy expressed in the Thirteenth Amendment to the U. S. Constitution” (Miller & Jentz, 2008). Horace may be <https://assignbuster.com/specific-performance/>

entitled to monetary damages from her backing out of the performances in this case. The third case states: Juan contracts to purchase a rare coin from Edmund, who is breaking up his coin collection. At the last minute, Edmund decides to keep his coin collection intact and refuses to deliver the coin to Juan.

This goes back to the element of the performance that is specific to a rare good. The coin is unique and monetary damages will not necessarily allow Juan to go out and purchase an identical substitute. In this case the courts would probably uphold the specific performance and make Edmund follow through with the original contract which is to sell the coin. Lastly, the final case states: Astro Computer Corp. has three shareholders. Among them are Coase, who own 48%, and Cary, who owns 4%. Cary contracts to sell his 4% to DeValle but later refuses to transfer the shares to him.

I would say this share would be considered a unique good because each business has its own properties that make it different than other companies. I do not think we could compare the shares to a personal service, and the 4% would not have a definite monetary value. The monetary value of the share could change dramatically depending on the business. I think the courts would force Cary to uphold his contract and give the 4% to DeValle based on the fact that it would be hard to go out and purchase an identical substitute. References Miller, R. L. & Jentz, G. A. (2008). Fundamentals of Business Law Part I.