

Answer of ChatGPT o3 - to July 2024 California Bar Exam Questions

05/12/25 (based on prompt by Ralph Losey)

QUESTION ONE — PERRY v. DENISE

I. Damages Recoverable for Fraud

A. Compensatory (Economic) Damages

1. Jaguars Ball

California allows a fraud victim to recover at least “out-of-pocket” damages—the difference between the actual value of what the victim received and what he paid (Civ. Code § 3343(a)). Perry paid **\$20** for a ball worth **\$5,000**, so he may recover **\$4,980**.

2. Sluggers Ball

Denise told Perry the Sluggers ball had sold for **\$2,000** and remitted that amount, when in fact she sold it to Bob for **\$10,000**. Perry’s out-of-pocket loss is the **\$8,000** concealed profit.

3. Benefit-of-the-Bargain Enhancement

California permits an election between the statutory out-of-pocket measure and the general tort “benefit-of-the-bargain” measure when necessary to make the plaintiff whole (§ 3343(a)(4)). Benefit-of-the-bargain would yield the same \$4,980 on the Jaguars ball (true value – purchase price) and \$8,000 on the Sluggers proceeds, so the statutory measure suffices.

4. Consequential & Incidental Losses

Perry may also receive incidental expenses reasonably incurred in reliance on Denise’s misrepresentations (§ 3343(a)(1)), but none are indicated.

5. Pre-Judgment Interest

Under Civ. Code § 3288, the court may award interest from the date of loss in an action sounding in fraud.

B. Punitive Damages

Because Denise's deceit was intentional and malicious, punitive damages are available upon clear-and-convincing proof (Civ. Code § 3294(a)). The amount is discretionary but must bear a reasonable ratio to Perry's compensatory award.

C. Attorney's Fees and Costs

Fraud actions normally do not shift fees absent statute or contract; Perry may recover allowable costs under CCP § 1032.

II. Equitable Relief

Equity intervenes where legal damages are inadequate—here, because the memorabilia and the Voy car are unique and have appreciated.

A. Rescission & Restitution — Jaguars Ball

Perry may elect **rescission** of the \$20 sale contract on grounds of fraud (Civ. Code § 1689(b)(1)). Rescission voids the contract ab initio; Perry tenders back the \$20 and recovers the Jaguars ball. Because the ball's value has not changed since Denise acquired it, restitution of the chattel plus tender is adequate.

B. Constructive Trust — Jaguars Ball (Alternative)

A constructive trust may be imposed on property wrongfully acquired by fraud, transferring equitable title to Perry. This remedy is preferable if Denise contests rescission or if the ball's value has appreciated so that restitution alone would be under-inclusive.

C. Tracing Remedy — Voy Car

Denise used \$8,000 of wrongfully obtained Sluggers proceeds to buy a **Voy car now worth \$20,000**.

1. **Constructive Trust.** Perry can trace his equitable ownership of the \$8,000 into the Voy and obtain a constructive trust. As equitable owner, he receives the entire Voy, including its appreciation, because the wrongdoer—not the innocent victim—bears the risk of gain or loss.
2. **Equitable Lien.** Alternatively, the court may impress an equitable lien securing repayment of \$8,000 plus identifiable appreciation; however, a lien would give Perry only a security interest, not title, so constructive trust is superior.

D. Replevin / Claim & Delivery

If necessary to enforce possession, Perry can bring a claim-and-delivery action to recover the Jaguars ball and Voy car once equitable title is decreed.

E. Accounting & Disgorgement

Equity may order Denise to account for all profits derived from the fraud—including any additional undisclosed proceeds from the memorabilia market—so that no unjust enrichment remains.

F. Election of Remedies & Adequacy

Perry must elect between rescission (restoring the ball) and damages for the Jaguars transaction; he cannot obtain both because that would be double recovery. Likewise, constructive trust over the Voy substitutes for the \$8,000 damages relating to the Sluggers ball; the court will craft relief to avoid duplication.

III. Conclusion

Perry can recover (1) \$4,980 for the Jaguars purchase, (2) \$8,000 concealed profit on the Sluggers sale, (3) pre-judgment interest, (4) punitive damages, and costs. Equitably, he can rescind the Jaguars sale or obtain a constructive trust over the ball, and he can impress a constructive trust on the Voy car (or an equitable lien) to capture the traced \$8,000 plus all appreciation. These remedies fully compensate Perry and prevent Denise's unjust enrichment.

QUESTION TWO — PROFESSIONAL RESPONSIBILITY

I. Ethical Violations by August

1. Failure to Communicate Settlement Offer

ABA Model Rule 1.4(a)(1) and *Cal. RPC 1.4(a)(1)* require prompt communication of all material settlement offers. After learning Dani never received the \$500 k demand—and knowing Len withheld it—August “did nothing” , thereby failing to keep Paul “reasonably informed.”

2. Lack of Diligence & Competence

By ignoring the breakdown in negotiations, August violated the duty of reasonable diligence (Model Rule 1.3; Cal. RPC 1.3) and arguably competence (Model Rule 1.1; Cal. RPC 1.1). An ordinarily prudent lawyer would press Len or move to compel good-faith participation.

3. Improper Contact with Represented Person

A lawyer must not communicate with a represented adverse party, nor “cause” another to do so (Model Rule 4.2; Cal. RPC 4.2). August directed **Paul** to contact **Dani**, a represented litigant, to convey the demand and advocate its merits. That violates the rule because August used his client as an agent to bypass counsel.

4. Fee-Sharing Arrangement Without Informed Written Consent

When August asked Rita to “assume joint responsibility ... in return for 50 %” of his contingent fee and immediately agreed, he entered a fee-split governed by Cal. RPC 1.5.1 and Model Rule 1.5(e). Those rules require:

- (i) Written agreement between lawyers;
- (ii) Written disclosure to and **informed written consent** of the client; and
- (iii) The total fee to be reasonable.

August’s letter to Paul was sent **after** the arrangement and Paul had not yet received it when Rita settled. Consent was neither timely nor written, violating both rules.

5. Delegation Without Supervision / Settlement Authority

By turning the matter over to Rita without securing Paul’s prior consent and without ensuring Rita possessed the file or adhered to the fee agreement, August breached his duty to supervise associated counsel and protect client interests (Model Rule 5.1(b); Cal. RPC 5.1(b)).

6. Potential Conflict of Interest

August’s personal interest in splitting a large contingent fee could materially limit his representation if the split induced premature settlement. Absent written informed consent, this is a potential violation of Model Rule 1.7(a)(2) and Cal. RPC 1.7(b).

II. Ethical Issues in the August–Rita Fee Arrangement

1. Failure to Obtain Client’s Signed Consent

Cal. RPC 1.5.1 requires the client’s **signed** written consent either before or within a reasonable time after disclosure. Because Paul was unaware until after settlement, the requirement was unmet.

2. Proportionality / Joint Responsibility

Model Rule 1.5(e)(2) allows fee division only in proportion to services or if each lawyer assumes joint responsibility. Rita settled within days with minimal services, suggesting the 50-50 split is disproportionate and unethical unless genuine joint responsibility existed.

3. Reasonableness of Total Fee

The combined contingent fee must remain reasonable (Model Rule 1.5(a); Cal. Bus. & Prof. Code § 6147). An undisclosed split threatens reasonableness and could void the fee agreement.

4. Premature Settlement Authority

Rita settled for the full \$500 k before Paul even knew she was involved. Settling without the client's informed consent violates Model Rule 1.2(a) and Cal. RPC 1.2(a). August is vicariously liable because he associated Rita and failed to supervise.

III. Ethical Violations by Len (Dani's Counsel)

1. Failure to Communicate Settlement Offer

Len had a duty under Model Rule 1.4(b) and Cal. RPC 1.4.1 to promptly inform Dani of "all terms and conditions of any written settlement offer." He intentionally withheld the \$500 k demand because he deemed it "too high," breaching that duty and denying Dani decision-making authority (Model Rule 1.2(a)).

2. Neglect of Client Matter

By ignoring a material offer, Len failed to act with reasonable diligence (Model Rule 1.3; Cal. RPC 1.3).

3. Potential Misrepresentation to Client

Len's silence carried an implication that no offer existed. Omitting a material fact when duty to disclose exists can be dishonest under Model Rule 8.4(c) and Cal. Bus. & Prof. Code § 6068(d).

4. No Violation of Rule 4.2

Although Paul later contacted Dani directly, Len was not involved in that communication; thus Rule 4.2 does not apply to him.

IV. Conclusion

August breached duties of communication, diligence, no-contact, fee-splitting consent, and supervision, and may face discipline and fee forfeiture.

The *August-Rita* arrangement violated the California and ABA requirements for proportional fee division and timely, informed written client consent.

Len violated his duty to convey settlement offers, compromised diligence, and misled his client.

Collectively, these violations expose the lawyers to State Bar discipline and potential civil malpractice liability.