

# Chapter 11

## Contract Remedies



# I. Types of Remedies

## A. Equitable Remedies

- Does not involve money
- Requires action to make up for wrong suffered

## B. Legal remedies

- Involves money damages as benefit
- Damages – money ordered to harmed party in litigation

## C. Contractual Remedies

1. Three Types of Contractual Remedies
  - a. Expectation Damages
  - b. Restitution
  - c. Reliance
  
2. Duty to Mitigate / Minimize damages
  - a. Avoid costs that can reasonably be avoided
  - b. Court will offset
    - » Amount of \$\$ deducted from damages for failure to mitigate
  
3. Contract Price – form of Expectation Damages
  - Damages meant to reimburse the non-breaching party from breacher's failure to perform.
  - Meet Expectations!!

- a. General Damages
  - » Damages that flow naturally from the type of breach
  - » Attempt to put the non breaching party into position as if the contract had been fully performed

Formula Examples: See Ex 11.1

### Employment Contract

Employer Breach → unpaid wages - wages earned from other employment

Employee Breach → Difference b/t employee wages and replacement employee wages + replacement costs

### Real Property

Seller Breach → out of pocket expenses unless bad faith, if bad faith, then difference b/t contract \$\$ and fair market value

Buyer Breach → Difference b/t contract \$\$ and FMV of property

(Think benefit of the bargain)

## Construction Contract

Contractor Breach → Material: Cost of substitute contractor plus materials; Minor: Cost of completion

Owner Breach → After performance: Contract \$\$ - unincurred expenses - payments made; Before Performance: Lost Profit on contract + out of pocket exp. - payments made

### b. General Damages under UCC

- » Both buyer and seller must behave in commercially reasonable manner
- » Both have a duty to mitigate their damages!

## i. If Seller Breaches

- Failure to Deliver:
  - » Buyer gets substitute goods (COVER) → receives damages based on difference b/t contract \$\$ and cover \$\$.
  - » No Cover → Receive difference b/t contract \$\$ and market price at time cover could have occurred
  
- Wrong / Defective Goods:
  - » Accept non-conforming goods → Damages difference b/t value of non-conforming goods and value of proper goods
  - » Reject goods → COVER → damages difference b/t contract price and cover price
  - » Reject goods → NO COVER → damages difference b/t contract \$\$ and market \$\$ at time of breach

## ii. If Buyer Breaches

- If Rejected with resale of goods:
  - » Difference b/t resale and contract \$\$
  - » Profit expected under contract
  
- If no resale
  - » Difference b/t contract \$\$ and market \$\$

## D. Consequential Damages

- Caused by specific circumstances of the individual case
- Given for extra losses that are caused by the breach but not compensated under general damages
- Hadley v. Basendale
  - » For consequential damages, Defendant is not liable unless the Plaintiff has put him on notice of the potential for their loss by communication of the special circumstances that might produce loss.

## E. Incidental Damages

- Damages given to reimburse party for small costs of administering breach.
- Shipping, insurance, transportation, advertising
- Must be reasonable and foreseeable

## F. Nominal Damages

- A token award in a very small amount when no economic loss.
- Think \$1 verdict

## G. Punitive Damages

- Exemplary or “bad guy” damages
  - Used for punishment and deterrence
  - NOT awarded to reimburse actual loss
  - Used to punish the Defendant for malicious and reprehensible conduct
1. Allowed in certain situations:
    - » Contract breach is also a tort, e.g. Fraud, malicious, willful, intentional conduct
  2. Where fiduciary relationship existed
  3. Insurance bad faith

## H. Emotional Distress

- Damages for mental suffering
- Only where contract involved matters of intensely personal nature - burial

## I. Liquidated Damages

- Contract provision that sets forth amount of damages ahead of time (p. 233)
- Used instead of other damage calculations
- Cannot be a penalty → not enforceable
- Must show:
  1. Intent of parties
  2. Whether actual damages are difficult to prove
  3. Whether damages under the clause is reasonable in light of actual damages; must bear a reasonable relationship to actual damages

## J. Reliance Damages

- Calculating out of pocket losses
- In lieu of general, consequential, or incidental damages
  1. Promissory estoppel - detrimental reliance
    - » Reasonable and foreseeable reliance
  2. Precontractual Liability
    - » Loss suffered because of changes in position during negotiations
    - » Other party detrimentally relies, etc.

## K. Restitution

1. Not based on contract
  2. Breaching party has received benefit if unfair to allow party to retain benefit
  3. Unjust enrichment → a person who has been unjustly enriched at expense of other is required to make restitution
  4. Given in lieu of general, consequential, or incidental damages
- Examples p. 237-8 #1-3
  - Assignment Hypo #1 and 2 p. 239

# II. Equitable Remedies

- *Where damages do not fully compensate, equitable remedies are available*

## A. Specific Performance

1. Where court orders parties to perform according to contract.  
Occurs when:
  - a. Subject matter is unique or irreplaceable
  - b. Damages cannot be calculated with reasonable accuracy
  - c. Winning party may not be able to collect damages from loser
2. Must be feasible
  - a. Must be possible to carry out performance
  - b. Supervision to carry out performance not too great
3. UCC §2-716 – to get Specific Performance goods must be “unique” or “in other proper circumstances”
4. Employment Contract
  - » Not practical
  - » Enforcement with covenant not to compete → promise not to go into business against former employer
  - » Specific Performance in form of INJUNCTION – Restraining order to take or refrain from action.

## B. Declaratory Judgment

1. Determination by the court defining rights and responsibilities of parties to contract at issue in dispute

## C. Rescission

1. Decision of court or parties to cancel contract between them
  - » Fraud in the inducement
  - » Mutual mistake
  - » Illegality

## D. Reformation

1. Court makes a written contract conforming to parties original oral agreement or understanding
2. Cannot where insufficient proof
3. Cannot complete an incomplete contract