

CHAPTER 19

Breach of contract and remedies

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REMEDIES AVAILABLE TO NON-BREACHING PARTY



Damages



Rescission
and Restitution



Specific
Performance



Reformation

DAMAGES

There are four broad categories of damages:

- Compensatory (to cover direct losses and costs).
- Consequential (to cover indirect and foreseeable losses).
- Punitive (to punish and deter wrongdoing).
- Nominal (to recognize wrongdoing when no monetary loss is shown).

Compensatory Damages:

compensate the injured party only for damages actually sustained and proved to have arisen directly from the loss of the bargain caused by the breach of the contract.

Consequential Contracts:

foreseeable damages that resulting from a party's breach of contract.

Punitive Damages:

Generally, are not awarded on lawsuits for breach of the contract. They have no legitimate placed in contract law. The law may compensate no more and no less. However, when a person's actions cause both a breach of contract and a tort (fraud), punitive manages may be available.



Nominal Damages:

When no actual damage for financial loss results from a breach of contract and only a technical injury is involved, the court may award nominal damages to the innocent party.

Liquidated Damages:

Specifies that a certain dollar amount is to be paid in the event of a future default or breach of contract.



RESCISSION AND RESTITUTION

Rescission: is essentially an action to undo, or terminate a contract. Both of the contracting parties are restored to the legal positions they occupied prior to the transaction.

- Available for fraud, mistake, duress, and failure of consideration.

Restitution: Generally, to rescind a contract, both parties must make restitution to each other by returning goods, property, or funds previously conveyed.

- If the property of goods can be returned, they must be.
- If the goods or property have been consumed, restitution must be made in an equivalent dollar amount.



Ex.

Tania contracts with Linda to design a house for her. Tania pays Linda \$9,000 and agrees to make two more payments of \$9,000 (for a total of \$27,000) as the design progresses. The next day, Linda calls Tania and tells her that he has taken a position with a large architectural firm in another state and cannot design the house. Tania decides to hire another architect that afternoon. Tania can obtain restitution of the \$9,000.

SPECIFIC PERFORMANCE

An equitable remedy calling for the performance of the act promised in the contract.

- This remedy is attractive to a non-breaching party because it provides the **EXACT** bargain promised in the contract.
- Specific performance is only available when monetary damages would be inadequate, such as the sale of land or **UNIQUE** goods.

For instance, paintings, sculptures, rare books or coins are so unique that monetary damages will not enable a buyer to obtain substantially identical substitutes in the market.



REFORMATION

An equitable remedy allowing a contract to be reformed or rewritten, to reflect the parties' true intentions.

- Reformation is available when the parties have imperfectly expressed their agreement in writing.
- When fraud or mutual mistake is present
 - ex. Critical error
- Written contract incorrectly states the parties' oral agreement
 - ex. Two parties enter into a binding oral contract, but later make an error when they attempt to put the terms into writing.

Thank you!