**Chapter 15: Remedies for Breach**

In addition to remedies of termination (the right to treat the contract as discharged as a result of breach) , the injured party may have several other remedies available, depending on the type of breach and the subject matter of the contract:

a) damages  
 b) equitable remedies  
 c) quantum meruit

**Damages** – a money award to compensate an injured party for the loss caused by the other party’s breach  
- this is not intended to punish the party liable for the breach

**Mitigation** – action by an aggrieved party to reduce the extent of loss caused by the breach of the other party

An injured party can recover only for the losses resulting from the breach *that could not be reasonably avoided****.*** If a party acts in a manner that aggravates or increases the resulting loss, it will be denied recovery for the additional damages.

To qualify for recovery, damage arising from breach of contract must “flow naturally from the breach” – a loss resulting from breach must be within the foreseeable limits of what the parties would have expected as a likely consequence of a failure to perform (had they thought about it when they drew up their contract). Damages usually are not awarded to compensate an injured party for some unusual or unexpected consequence of breach.

Tort vs. Contract  
- in tort, the only conceivable time for measuring damages is the time of wrongdoing (when the tort is committed)  
- in breach of contract, the reason for referring to the earlier moment of formation is that from that moment, a promisor becomes liable to uphold the promise and the promise becomes entitled to a continuous expectation of performance until the time for performance arrives

**Expectation Damages** – an amount awarded for breach of contract based on expected profits

**Opportunity Cost** – the lost chance of making a similar contract with a different promisor

Consequential damages may arise from breach of a wide variety of contracts, not just the sale of goods  
- ex. failure to repair the heating system of a concert hall as promised in time for a performance in midwinter could lead to cancellation, making the heating contractor liable for the losses as well as damage to the building by frozen pipes

**General Damages** – an estimated amount that a court may award, over and above specific losses for harm, that cannot be calculated in precise monetary terms, but that the court believes necessary to compensate the aggrieved party fairly

**Reliance Damages** – expenditures and wasted effort that were reasonably made in preparation for the first job (ex. consultant researching a company and then told their services were no longer needed)

**Liquidated Damages** – an amount agreed to be paid in damages by a party to a contract if it should commit a breach  
- parties to a contract may agree in advance to terms stating an amount to be paid in damages if a breach should occur

**Penalty Clause** – a term specifying an exorbitant amount of breach of contract, intended to frighten a party into performance  
- a court will disregard penalty clauses in awarding damages (will base on an assessment of the actual loss suffered)

**Nominal Damages** – nominal damages may be awarded to acknowledge a breach of contract where the loss sustained by the promise is negligible

Mental Anguish  
- damage for mental distress may be awarded in any breach of contract action if this type of damage was reasonably foreseeable by the parties at the time the contract was created

Wrongful Dismissal- dismissed employee may feel humiliated and suffer a loss of confidence  
- when the employer engages in conduct during the course of dismissal that is unfair or in bad faith, the courts may consider this type of damage (but not for normal distress and hurt feelings from dismissal)

**Equitable Remedies** – special non-monetary remedies given only when damages alone will not adequately compensate for a loss

There are circumstances where money damages along are inadequate, for example, suppose a purchaser wishes to construct a large factory and for that purpose enters into contracts to buy adjoining lots from five different vendors. If one vendor, who owns a crucial middle lot, repudiates the agreement to sell, the purchaser will be left with 4 lots, now of no use and will be unable to proceed with building. Damages suffered by the purchaser may be very large and the most sensible remedy would be to order the vendor to transfer the lot to the purchaser on payment of the purchase price.

Equitable remedies are discretionary, and the court decides whether there are good reasons to go beyond the ordinary common law remedy of damages. A remedy is granted almost automatically if:  
 a) the plaintiff has not acted unethically  
 b) the plaintiff did not delay unreasonably in bringing an action  
 c) it cannot affect an innocent purchaser  
 d) plaintiff must have paid a substantial consideration for the defendant’s promise

**Specific Performance –** an order requiring a defendant to do a specified act, usually to complete a transaction  
- usually applied to contracts for the sale of land – each piece of land is unique and money damages are an inadequate remedy

**Injunction** – a court order restraining a party from acting in a particular manner, such as committing a breach of contract   
- for the remedy to be available, the courts require the contract to contain a *negative covenant*

**Negative Covenant** – a promise not to do something

An *express promise* by a tenant to use leased premises for office space would likelybe construed to contain an *implied promise* not to use them for a nightclub; the landlord could obtain an injunction prohibiting their use for a nightclub

**Interlocutory Injunction** – a temporary restraining order (junction)  
- restrains immediate harm from being done by a breach of contract, pending formal resolution of the dispute at trial

**Rescission** – setting aside or rescinding a contract in order to restore the parties as nearly as possible to their pre-contract positions

An aggrieved party must choose between an action for damages to obtain the benefit of the contract and one for rescission to return her to the position that she would have been in if a contract had never existed at all; they cannot have both remedies since they have contradictory purposes.

Rescission often applies when durable goods (such as equipment, machinery) fail to perform as required in a contract of sale. They want to return them and get their money back but a court would probably refuse if the goods have been damaged or deteriorated in value.

When rescission is available, it may sometime be more beneficial for a plaintiff than an action for damages. People may sue for a breach of contract and collect damages of money for missed payments, but will get nothing for the loss of profits. If rescission is used they may be able to get more money from the opportunity cost.

**Judgement Creditor** – a party who has obtained a court judgement for a sum of money  
**Judgement Debtor** – a party who has been ordered by the court to pay a sum of money

- the debtor is not a criminal (unless they partake in fraud) and usually the creditor is paid soon after the judgement is obtained

**Levy Execution** – seize and sell a debtor’s chattels or arrange for a sale of his lands  
- most usually procedure then the judgement debtor doesn’t pay promptly

**Execution Order** – an order that gives the sheriff authority to levy execution