

Hawkins v. McGee
Supreme Court of New Hampshire, 1929.

I Whether or not the Defendant's promise constituted a verbal contract when he said "I will make your hand a 100 percent perfect hand.

R

"As a general rule, the measure of the vendee's damages is the difference between the value of the goods as they would have been if the warranty as to the quality had been true, and the actual value at the time of the sale, including gains prevented and losses sustained, and such other damages as could be reasonably anticipated by the parties as likely to be caused by the vendor's failure to keep his agreement, and could not by reasonable care on the part of the vendee have been avoided."

A/F

The defendant promised the plaintiff that after the operation he would make his hand a "one hundred percent good hand." Defendant claims that this was a strong verbal statement that represented his belief that he would fix his hand. Court found that these mental reservations by the defendant were immaterial and if he in fact did promise a perfect hand then those assertions were external not internal. The true measure of the damages is those between a perfect hand and a good hand according to the court.

C

New trial awarded

Nurse v. Barns
King's Bench, Sir T Raym 77 (1664)

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Sullivan v. O'Connor
Supreme Judicial Court of Massachusetts, 1973

I: Whether damages can be awarded to the plaintiff in expectation interest, or with reliant interest, if they are also including pain and suffering and emotional distress.

R: Pain and suffering and emotional distress that occur naturally in a breach are compensable contract damages under either an expectancy or reliance measure

A/F: Plaintiff (Alice Sullivan) is a professional entertainer who contracted defendant (Dr. James O'Connor) for a nose surgery that he claimed would result in a more attractive nose. Defendant had to perform three surgeries and by the end of them had resulted in the worsening of plaintiff's nose appearance. Sullivan sued O'Connor for malpractice and breach of contract. Her negligence claim was denied, but she won on the breach of contract count. The trial judge instructed the jury that damages could be awarded on the breach of contract for both her out of pocket expenses and her disfigurement, emotional distress related to her profession, and pain and suffering for the third surgery. The jury awarded damages in an amount that substantially exceeded the amount of plaintiff's out of pocket expenses. Defendant appealed on the amount of damages awarded.

C: Yes. Although damages for pain and suffering and emotional distress are not generally available as contract damages, when those damages flow directly and naturally from the breach, they are compensable as either expectancy damages or reliance damages.

Damages can be awarded for pain and suffering and emotional distress when those damages flow naturally from the breach.

J.O. Hooker & Sons v. Roberts Cabinet Co.
Supreme Court of Mississippi, 1996

I:
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KGM Harvesting Co. v. Fresh Network
Court of Appeal, Sixth District, California, 1995

I

R

A/F: Plaintiff had contractual obligation to deliver fourteen loads of lettuce each week to Defendant.

C

Hadley v. Baxendale
England, 1854

Remoteness or Foreseeability of Harm

F: Plaintiff's, employed as millers, went their broken crank shaft component to defendant, an engineering company, it was promised that if the crank shaft was sent by 12'o clock on any day it would be delivered back on the following day. 2.4 L was payed to deliver the package. The plaintiffs did not receive the package for several days which contradicted the original agreement. The working of the plaintiff's mill was thereby delayed and they thereby lost profits they would have otherwise received. They claimed damages in the amount of 300L for lost business and the wages paid to their idle employees. Defendant denied ever making a contractual agreement and offered 25L to cover damages.

I: Whether or not the plaintiff should have reasonably foreseen the possibility of the defendant being delayed in delivering the crank shaft.

R:

A: The judge ruled that the plaintiff should have reasonably foresaw the potential circumstance of the defendant failing to produce the crank shaft in a reasonable amount of time. This was inferred by the judge in determining that the plaintiff had agency when communicating the terms of his contractual agreement, and since he did not specify during the initial bargaining, a mere notice was not sufficient.

C:

Hector Martinez and Co. v. Southern Pacific

F: plaintiff appealed on the trial courts dismissal of his claim. The trial court granted the defendants motion under rule 12(b) (6) to dismiss the claim, for delay damages. It held that the damages Martinez suffered were special and that plaintiff failed to allege that the carrier had any notice that such damages would accrue upon a breach of contract between the parties.

Martinez had a 2499 Lima Dragline delivered, and during transit the car was damaged and he had to make repairs in the amount of 14,467. Plaintiff further contends that he suffered damages of 117,600 due to inability to use the car during the time between April and June 20, 1974.

Martinez sought damages for 1) the repairs 2) storage at defendants facility, and 3) compensation for damages during the time the car was unusable. The first two were granted, but the third was dismissed by the trial court. Defendant argued that the loss of use damages were too speculative.

I

R:

A:

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Chicago Coliseum Club v. Dempsey
Illinois court of appeals

F: Dempsey (defendant) signed a contract and received ten dollars for the signing; he further agreed to abstain from fighting till his up and coming contracted fight and to submit to medical examination by doctors provided by the plaintiff. Dempsey breached the contract when he fought prior to the agreed fight and refused medical examination by the plaintiff's doctor. Chicago coliseum club claimed it was entitled to four damages including lost profits, expenses incurred before the contract was signed, expenses incurred filing suit in Indiana, and expenses incurred after the contract was signed, but before Dempsey's breach of contract. Trial court disagreed on most of the damages, and the plaintiff appealed too the illinois appellate court level.

I: The court was asked, whether in a breach-of-contract action, may an injured party recover related expenses the party incurred **before the contract was signed or after the contract was breached.**

R: In an action for breach of contract, a party can recover only damages that naturally flow from and are the result of the breach.

A: Justice Wilson explained that **recoverable damages** in a breach of contract are those that naturally flow from and are the result of the breach. **Expectation damages**, such as lost profits, are only recoverable **if they can be ascertained by the court**, to a reasonable degree of certainty. He further stated that expenses incurred prior to signing a contract are too speculative, and expenses incurred after the date of breach aren't collectable as damages.

C: The lost profits (\$ 1,600,000) were impossible to ascertain to a reasonable degree of certainty; and expenses incurred before the contract was signed were too speculative; and the expenses incurred during the filing of suit in Indiana were not recoverable, and; finally, expenses incurred after the contract was signed, but **before** Dempsey's breach **were** recoverable in the form of **reliance** damages. Thus, only the fourth type of damage was recoverable and remanded the trial court to instruct the jury on the recovery of reliance damages only.

Winston Cigarette Machine Co. v. Wells-Whitehead Tobacco Co.
Supreme Court of North Carolina, 141 N.C.

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Anglia Television Ltd. v. Reed
Court of Appeal, Civil Division, 1971

F: Plaintiff had made major preparations to create a movie. The total expenses incurred were 2,750 Euros. The expenses incurred after the signing of the contract were only 854. Once the plaintiff found an eligible candidate, who was the defendant (Reed), they made preparations to shoot the film. The defendant breached the contract when he stated he could not fly to England to shoot the film since he had to appear in another film. Arguments between the plaintiff and defendants counsel came up on whether the plaintiff had the ability to claim damages for the expenses incurred before the signing of the contract, since the contract had not been officially signed yet.

I: Whether or not a nonbreaching party can claim damages for expenses incurred before the signing of the contract.

R: The nonbreaching party can claim an expenditure incurred before the contract, provided that it was such as would reasonably be in the contemplation (knowledge) of the (breaching) party as likely to be wasted if the contract was broken.

A

C: Appeal dismissed; defendant was liable for both the expenses incurred before the signing of the contract and after in the amount of 2,750.

A nonbreaching party can recover damages for expenses incurred before the signing of a contract if the breaching party had knowledge, to a reasonable degree, when the contract was signed that his breach would result in those losses.

Security Stove & Manufacturing Co. v. American Railway Express Co.
Kansas City Court of Appeals, Missouri, 1932.

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Rockingham County v. Luten Bridge Co.
Circuit Court of Appeals, Fourth Circuit, 1929.

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Shirley MacLaine Parker v. Twentieth Century-Fox Film Corp.
Supreme Court of California, 1970

F
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C

Neri v. Retail Marine Corp.
Court of Appeals of New York, 1972.

F
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Kemble v. Farren *Reread*

England and Wales Court of Common Pleas, 1829.

F: Kemble (plaintiff) manager of a theater hired Farren (defendant) to perform as the principal comedian for four seasons. He would pay him 3.6.8 per day. Contract had a liquidated damage clause that stated if any party breached the contract in any way, the breaching party would pay 1,000 pounds in liquidated damages. Defendant refused to perform and the plaintiff sued for breach of contract and sought the 1,000 pounds specified in the contract. The jury awarded plaintiff 750 pounds; plaintiff then moved for a judgement for the entire 1,000 pounds.

I: The court considered whether a liquidated damages provision can be enforced?

R: Parties may agree on liquidated damages when forming a contract. Liquidated damages are allowed only in an amount that's **reasonable** considering anticipated or actual harm and difficulty of proving loss.

A: During contract formation parties may specify a clear amount at a time when damages may be difficult to calculate. This process is favorable to the courts since they don't have to liquidate for damages. If the amount of liquidated damages significantly exceeds the amount of actual damages they will not award them. In this instance a penalty occurs and a penalty isn't enforceable.

C: Yes, contractual liquidated damage clauses can be enforced. However, the court found that if the plaintiff failed to pay the defendant for one day then he would owe him the full liquidated damage amount which would be 300x the amount of a days pay. Therefore the penalty was placed on the contract.

Wassenaar v. Towne Hotel
Supreme Court of Wisconsin, 1983

F: Circuit court approved the plaintiff an award of liquidated damages stipulated in the event of his employment being terminated in the amount of the remainder of his salary for the contracted term. The court of appeals reversed this decision and the supreme court of wisconsin reinstated the circuit courts decision. The jury had awarded the plaintiff \$ 24,640. The supreme court of Wisconsin stated that the doctrine of mitigation of damages does not apply in this instance.

Stipulated damage clause in issue reads as follows:

- It is further understood, that should this contract be terminated by the Towne Hotel prior to its expiration date, the Towne Hotel will be responsible for fulfilling the entire financial obligation as set forth within this agreement for the full period of (3) years

The employer terminated the plaintiff 21 months prior to the contract's expiration date.

I: Whether the stipulated damage clause in the contract was reasonable and if the employee had a duty to mitigate his potential losses.

R: Damages for breach of contract by either party may be liquidated in the agreement but only at an amount that is reasonable in the light of the anticipated or actual loss caused by the breach.

A: The court found that the stipulated amount in the liquidated damages clause was reasonable and did not exceed any anticipated or actual loss. This is because it was simply the amount of salary that the employee would have earned if he had the benefit of finishing his employment term. The court further stated that the employee did suffer loss even if he found another job at a different hotel since it was not the same job with opportunities for advancement, pay, or other benefits.

C: Plaintiff won; judgement of circuit court affirmed.

Lake River Corp v. Carborundum Co.
US Court of Appeals, Seventh Circuit, 1985

F:

I:

R:

A:

C: Under Illinois law a liquidation of damages must be a reasonable estimate at the time of contracting of p. 151the likely damages from breach, and the need for estimation at that time must be shown by reference to the likely difficulty of measuring the actual damages from a breach of contract after the breach occurs.

Loveless v. Diehl
Supreme Court of Arkansas, 1963

F:
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R:
A:
C: IDK

Cumbest v. Harris
Supreme Court of Mississippi, 1978

F: Plaintiff signed a contract selling hi-fi audio equipment to the defendant and the plaintiff was to repurchase the equipment on or before Monday, June 7, 1976. Plaintiff said that this contract was designed to be a loan in substance and that he intended to repurchase the equipment. Plaintiff made every attempt to pay him on Monday before the cut off time and the defendant avoided him deliberately, making his conduct fraudulent.
I: Whether the property that was to be sold had unique value and should have the court order a specific performance.
R: When the property has sentimental or unique value or where due to scarcity the chattel is not readily available the court will consider a specific performance.
A: Since the audio equipment was custom made by the plaintiff and was unique in its own right the supreme court reversed the decision and ordered the trial court to take the uniqueness of the item into consideration.
C: Reversed for new trial

Sedmak v. Charlie's Chevrolet, Inc.
Missouri Court of Appeals, 1981

F: Plaintiff was contracted to buy a limited edition Corvette for the price of \$ 15,000. Defendant breached the contract when they stated that instead of being able to purchase the vehicle for the agreed price—they would have to bid on it.
I: Whether the vehicle in question was unique and if the defendant breached a contract when he stated the plaintiff must bid on the vehicle rather than purchase it for the agreed price.
R: Specific performance may be ordered where the goods are unique. Buyer has a right to replevin if after a reasonable effort he is unable to cover for such goods.
A: Since this corvette, its design, mileage, and other aspects is unique in its own regard the plaintiff is entitled to a specific performance.
C:

Mary Clark
Supreme Court of Indiana, 1821

F:
I:
R:
A:
C:

Lumley v. Wagner
Chancery Division, 1852

F:
I:
R:
A:
C:

Dallas Cowboys Football Club v. Harris
Court of Civil Appeals Texas, 1961

F: defendant had a contractual agreement with plaintiff to only play for their team and breached that agreement by playing with the Dallas Texans Football club.

I:
R:
A:
C:

In re IBP, Inc. shareholders litigation

Bush v. Canfield

Sup. Ct. 1818

F: D and P entered into a contractual agreement stating D would deliver flour and P would advance pay 5,000. It was agreed P would pay four months later 3,000, and the remaining balance 6 months after first advance. Barrels cost 7\$ and a total of 2,000 would be delivered. P breached the contract. Court showed barrels were worth \$ 5.50 rather than \$ 7. It appears that the price of flower dropped in price and the D breached the contract due to this but this is never directly mentioned. Jury awarded P 6,771 in damages (5k + interest) D appealed for new trial.

I: Whether the party's damages for breach of a delivery contract, where money was paid in advance, be based on the price of the goods at the time of the delivery?

R: When a party pays in advance under a contract for delivery of goods, the proper measure of damages in the event of breach is to refund the advance. Calculated by (value of goods on day of delivery) + (interest for any delay). When the seller fails to deliver, the buyer is entitled to a rescission of the contract.

A: If the jury found for the P the proper measure of damages would be the \$ 5,000 paid in advance plus interest.

C: Affirmed; no new trial.

Two types of Restitution for breach of contract

1. Action in quasi-contract: Implied contract → Prevent unjust enrichment
2. Right of rescission: Cancellation →

If a buyer pays money in advance for delivery and seller fails → buyer has right to rescission ⇒ buyer may collect restitution damages.

- Calculated by (value of goods day of delivery) + (interest)

Attorney General v. Blake

House of Lords, 2001

F: MI6 agent defected to the soviet union and was placed in prison for 40 years when he escaped 5 years later and found refuge in the soviet union. He later wrote a book and under his contract with the English government it was agreed that he would not write any books without first conferring with the English government and receiving authorization. This is a claim for royalties on the book in question.

I: May an account of profits be a proper remedy for breach of contract?

R: An account of profits may be proper, but only in **exceptional** cases where **other remedies are inadequate**.

A: When determining an exceptional case the court found that the contract's subject matter and purpose should be weighed in addition to the circumstances and consequences of the breach.

C: The crown had a legitimate interest in prohibiting D from receiving royalties.

Britton v. Turner
Sup. Ct. NH, 1834

F: P agreed to work for D for a year and be paid in the amount of \$ 120 from March 18, 1931 to March 18, 1932. P breached the contract in December and sued for \$ 100 saying he was still entitled to the labor he did perform. Jury awarded P 95 \$ and D appealed

I: Was P able to recover from D if he breached the contract by quitting early?

R: Yes, P can recover restitution damages (*quantum meruit*) for the value of his services

A: Typically to sue under breach of contract a P must establish that he fulfilled all of his contractual obligations but even if P can't sue for breach of contract the court noted that other causes of action might be available

C: Jury verdict to award P restitution damages based on theory of *quantum meruit* upheld by supreme court.

Restitution Damages:

Theory of *Quantum Meruit* A party who has provided a benefit may sue for the **value of that benefit**, even if that party hasn't completely satisfied the contract

- P's recovery must be reduced by any damages D suffers from the P's failure to satisfy the contract.

Al-Ibrahim v. Edde
U.S. Dist. Ct. Col. 1995

F: Al told Edde to claim Al's earnings as his own and that Al would reimburse him on his taxes. This allowed the Sheikh to avoid paying taxes at a higher rate. Edde claims this was a condition of his employment but never presented any evidence that the Sheik threatened to fire him if he refused. Sheikh refused to pay him and Edde sued for breach of contract, restitution, and fraud. .

I: Are traditional contract remedies or equitable remedies available for breach of a contract to perform an illegal act?

R: Contracts to perform illegal acts are unenforceable except when recovery enforces the law, or relief to prevent harsh forfeiture. **Equitable remedies** are not available to people who acted inequitably, in bad faith, or illegally.

A: Contracts to perform illegal acts are unenforceable, so traditional remedies like expectation damages are unavailable.

C: Unenforceable due to P's illegal conduct.

Pelletier v. Johnson
Ct. App. AZ, 1996

F: P agreed to install vinyl siding on the D's home. Contract specified D's may cancel the contract within three business days of execution. P sued for breach of contract and claim for quantum meruit and a claim for unjust enrichment. D claimed the contract was unenforceable because it failed to comply with AZ statutes. That statute states contracts must contain specific language notifying buyers of their right to cancel. Trial court found contract did not contain the specific language mandated by the statute. Contract was found to be unenforceable but P was entitled to recover value of the improvements under restitutionary and unjust enrichment principles.

I: May a party who performs under an unenforceable contract recover the reasonable value of his performance under an unjust enrichment theory?

R: Yes, if the nonbreaching party conferred a benefit and did not act inequitably, in bad faith, or illegally then he may recover restitution damages.

A:

C:

Theory of Unjust Enrichment

Lumley v. Gye
Queen's Bench, Eng. Rep. 1853

F: P operated the queens theater in London and he procured famous musicians to perform at the theater. Contract stated Wagner was to perform at queens theater for three months and could not perform anywhere else during that time. Frederich Gye(D) offered more money for the performer to perform at his venue if she would break her contract with the P.

I: Is a person who intentionally persuades a contracting party to break a contract liable to the injured party?

R: Yes, a person who intentionally persuades a contracting party to break a contract may be held liable to the injured party.

A:

C: Judgement granted for Lumley(p)

- Injunctive relief: Restricted from performing at other opera house

Texaco v. Pennzoil
Ct. App. TX 1987

F: Pennzoil wanted to buy Getty oil company, they made a public offer, and entered into a memorandum of agreement. Despite the agreement Getty met with Texaco who offered them a higher price. Texaco merged with Getty. Pennzoil sued Texaco for tortious interference with the contract between Pennzoil and Getty. Trial court level Texaco loses and owes over 10 billion dollars.

I: Can a party be bound by an agreement that isn't in final, written form? Can a person who interferes with a contract be held liable for causing a breach of contract?

R: Yes to both: Parties who intend to **bind themselves** to an agreement are **bound by the initial agreement** even if a **formal document hasn't been signed**. A person **who knows** a contract exists and **actively causes a party to breach** is liable to the injured party

A:

C:

Embry v. Hargadine Mckitrick Dry Goods

Lucy v. Zehmer

Nebraska Seed Co v. Harsh

Lefkowitz v. Great Minneapolis Surplus Store

Arnold Palmer Golf Co. v.

Copeland v. Baskin Robbins