A baseball player contracted with the local orchestra to perform for $5,000 at a children's concert. Shortly before the concert, the baseball player became embroiled in a highly publicized controversy over whether he had cursed and assaulted a baseball fan. The orchestra canceled the contract out of concern that attendance might be adversely affected by the baseball player's appearance.

The baseball player sued the orchestra for breach of contract. His business agent testified without contradiction that the cancellation had resulted in the baseball player not getting other contracts for performances and endorsements.

The trial court instructed the jury, in part, as follows: "If you find for the plaintiff, you may award damages for losses which at the time of contracting could reasonably have been foreseen by the defendant as a probable result of its breach. However, the law does not permit recovery for the loss of prospective profits of a new business caused by breach of contract."

On the baseball player's appeal from a jury verdict for the baseball player awarding damages only for the $5,000 fee promised by the orchestra, what will be the likely result?

A. Affirmed, because the issue of damages for breach of contract was solely a jury question.

B. Affirmed, because the trial court stated the law correctly.

C. Reversed, because the test for limiting damages is what the breaching party could reasonably have foreseen at the time of the breach.

D. Reversed, because under the prevailing modern view, lost profits of a new business are recoverable if they are established with reasonable certainty.

Explanation:

Consequential damages

Damages for losses stemming from nonbreaching party's special circumstances if breaching party:

knew of those special circumstances
OR

could have reasonably foreseen harm caused by breach

After a **breach of contract**, the nonbreaching party can recover compensatory damages to compensate for actual economic losses. **Compensatory damages** include:

expectation damages – the lost value of the breaching party's performance (eg, the $5,000 fee promised by the orchestra) *and*

consequential damages – losses arising from the nonbreaching party's **special circumstances** (eg, the loss of prospective profits from other contracts) that were **reasonably foreseeable** to the breaching party when the contract was entered **(Choice C)**.

Consequential damages **cannot be speculative**. Instead, the nonbreaching party must prove the dollar amount with **reasonable certainty**.

Here, the trial court instructed the jury that "the law does *not* permit recovery for the loss of prospective profits of a new business caused by breach of contract." However, the law *does* permit recovery of such consequential damages, provided that the dollar amount is established with reasonable certainty. For this reason, the jury verdict for the baseball player awarding only expectation damages for the $5,000 fee promised by the orchestra will likely be reversed **(Choice B)**.

But even if the jury charge had been correct, it is unlikely that the baseball player would have recovered these consequential damages. That is because lost profits, especially for a new venture, are difficult to prove and there is no indication that the baseball player proved their dollar amount with reasonable certainty here.

(Choice A) Although the *amount* of damages for breach is a question of fact for the jury, the court erred by improperly stating the *law* to be applied for lost profits.

Educational objective:

Consequential damages (eg, lost profits) are recoverable only if the nonbreaching party proves the dollar amount with reasonable certainty.