

Remedies for Breach of Contract

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Damages

- Right to claim
 - Compensation
 - Liability to compensate
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- Causation
 - Contemplation
 - Mitigation

“as if the contract is performed”

Which losses

- Section 73 of the ICA
- Naturally arise :
 - e.g., difference between contract and market price
- Contemplated or known by parties
 - when they made the contract
 - Hadley v Baxendale*
 - Victoria Laundry v Newman Industries*

Which losses ...

- No compensation unless existence of loss is proved
- Motives of contract breaker are irrelevant
- Difficulty of calculation no bar
- Promisee need not have actually suffered that loss

Expectation basis

- Cost of substitutes
- Loss of profits
- Loss of enjoyment, mental agony
- Cost of cure

- Consequential losses
 - losses that follow physical damage

- Incidental loss
 - suffered by plaintiff after he knew about breach

Reliance basis

- Amount spent on substitutes
- Expenses incurred in anticipation of performance by other party

Breach

- Breach
 - Must be adjudicated
 - Cannot be decided by party
- Compensation
 - Must be adjudicated
 - Cannot be decided by party

Assessment

- Plaintiff must prove
 - Loss and amount
 - Estimate
 - Difficulty in proving does not bar
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- *Ruxley Electronics v Forsyth* (HL 1995)

Parties' freedom

- No liability
 - Exclusion clauses
- Limited liability
- Limit on losses
- Specified amount : LIQUIDATED DAMAGES

Liquidated damages section 74 of the ICA

- Specified amount
- Payable in case of breach
- Breach must be proved
- Loss must be proved
- Amount must be reasonable
- Specified amount is the maximum
- Penalty – not enforced
 - Reasonable compensation

Specific performance

- Nature of remedy
- General remedy
 - (After Oct 2018) Not exceptional, nor discretionary
- Not granted in some contracts
 - Personal contracts
 - Contracts requiring constant supervision
 - Determinable contracts
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Injunction

- Temporary and permanent
- Prohibitory
 - Restrains a party
- Negative covenants
- Mandatory injunction

Substituted performance

Section 20 of the Specific Relief Act amended in 2018.

- Breach
- 30 days notice
 - Stating time for completion
- Failure
- Get promise performed
 - By promisor himself
 - Or by another agency
- Claim cost and expenses incurred
- Does not bar claim for compensation
