

12.8: Remedies

The four main remedies for breach of contract are damages, specific performance, rescission, and restitution. The purpose of contract remedies is to compensate the non-breaching party for the losses suffered. In other words, remedies must put the non-breaching party in the position it would have been if there had been no breach.

Damages

Damages are the money paid by one party to another to discharge a legal liability.

Types of Monetary Damages	Purpose
Compensatory	To make the non-breaching party “whole” as if breach did not occur
Consequential	To cover indirect but foreseeable losses flowing from the breach
Incidental	To cover direct losses flowing from the breach & to avoid further loss
Nominal	To recognize legal breach although no actual damages resulted
Punitive	To punish and deter future wrongful behavior; only available if breach itself is a tort
Liquidated	To allow parties to determine value of contract in case of breach

Compensatory Damages

Compensatory damages are paid to compensate the non-breaching party for the loss suffered as a result of the breach. It is the general category of damages awarded to make the party whole. Compensatory damages include out-of-pocket losses and costs associated with the loss of the bargain. They are the primary damages in contract breach cases and are a direct, foreseeable result of the breach of contract.

Consequential Damages

A basic principle of contract law is that a person injured by breach of contract is not entitled to compensation unless the breaching party, at the time the contract was made, had reason to foresee the loss as a probable result of the breach.

Consequential damages are damages that flow as a foreseeable but indirect result of the breach of contract. For example, a roofer takes longer to fix a leaky roof than specified in a contract. The delay results in a retailer remaining closed for an additional week until the roof is repaired. The loss of sales from that week are consequential damages.

Consequential damages often include:

- Loss of profits due to the interruption of normal business practices;
- Loss of customers due to delays or cancellations; and
- Cost of replacement goods or services.

Incidental Damages

Incidental damages are damages that are paid to the non-breaching party in an attempt to avoid further loss on account of the breach. These damages include additional costs incurred by the non-breaching party after the breach in a reasonable attempt to avoid further loss, even if that attempt was unsuccessful.

For example, an electrician contracts to install light fixtures in a warehouse within seven days. The electrician enters into a purchase agreement with a supplier to buy the fixtures which are to be delivered within three days. On the fifth day, the supplier notifies the electrician that it cannot fill the order, breaching the contract. Because he cannot fulfill his contract with another supplier in time, the electrician breaches his contract with the warehouse and has to refund the warehouse its money. The losses incurred by the electrician to the warehouse are a direct result of the supplier's breach of contract, and are incidental damages.

Incidental costs often include:

- Inspection of items;
- Transportation or care of items;
- Expenses or commissions incurred in connection with incident or delay of items; and

- Storing of defective items until the supplier can retrieve them.

The difference between incidental and consequential damages is the cause of the expense or loss. Incidental damages are the direct result of one party's breach of contract. Consequential damages are more indirect, being incurred not as a result of the breach itself, but due to the end result of the breach.

Nominal Damages

If the breach of contract caused no actual loss, the non-breaching party may be awarded nominal damages. **Nominal damages** are a token amount of money paid when the breach has caused no actual loss. Nominal damages are often awarded symbolically by juries when they find legal liability but believe the breach was minor or could have been accommodated in another way. For example, a buyer could have purchased the same commodity at the same price without spending any extra time or money.

Punitive Damages

Punitive damages are awarded to a non-breaching party in excess of any loss suffered to punish the breaching party. Punitive damages are awarded when the defendant acted willfully and maliciously, and the purpose is to deter similar future bad conduct. Punitive damages are not usually available for breach of contract claims, unless the breach of contract itself constitutes a tort. In other words, punitive damages may be available when the contract breach itself is fraudulent or malicious. Punitive damages have been awarded against insurance companies that have refused to honor disability payments and that have acted in bad faith in denying legitimate claims.

Liquidated Damages

Liquidated damages are damages agreed upon by parties to a contract to be paid in the event of a breach. Because the parties are often in the best position to know the value of their contract, they can negotiate a fixed sum or method to calculate damages in the event of a breach. To be enforceable, liquidated damage provisions must apply equally to all parties, be negotiated fairly at the time the contract is executed, and must bear a reasonable relation to the probable damage in case of a breach.

Equitable Remedies for Breach of Contract

Equitable remedies involve a request for relief that does not include money damages. Equitable remedies are useful for when money does not provide adequate relief to the non-breaching party.

Equitable Remedy	Purpose	Description
Specific Performance	The object of the contract is unique & the loss cannot be easily compensated through money	Party must perform under terms of contract
Rescission	Contract was executed based on mutual mistake or fraud	Parties are put back into position they were in before contract was made
Restitution	Parties must return any benefit received	Benefit or item unjustly obtained is returned

Specific Performance

Specific performance is a judicial order directing a party to deliver the exact property (real or personal) under the terms of a contract. Specific performance is an alternative remedy to damages and may be issued at the discretion of the court. Specific performance is granted when money damages are not an adequate remedy. For example, sale of specific real property (real estate is always unique), artwork, antiques, and heirlooms.

To warrant specific performance, a contract must be clear, definite, complete, and free from fraud and duress.

Specific performance is generally not available for service contracts. This is because ordering someone to perform a contract against their will is a type of involuntary servitude banned by the Thirteenth Amendment of the US Constitution. However, courts have occasionally entered injunctions prohibiting entertainers from performing at alternative venues until they perform at the venue under their original contract. These cases are in response to unethical forum shopping in the entertainment industry, and are very limited in nature.

Rescission

Rescission occurs when one party seeks to undo a contract and return to the position it was in before the contract was made. Rescission often occurs when fraud and mutual mistake occur and enforcing the contract would be unjust. Rescission may also be available when one party materially breaches the contract to such an extent that requiring the other party to perform would be unjust.

A party seeking rescission must notify the other party within a reasonable time after discovery of the facts that are the basis for rescission. The reason is that restoring the parties to their pre-contractual positions is easiest before too much time and performance has passed. Failure to rescind a contract in a timely manner may be held to affirm the contract or waive a breach of contract.

Restitution

Restitution is restoring property to the original owners. In other words, parties must return any benefit received under the contract. Therefore, only to the extent that the injured party conferred a benefit on the other party may the injured party be awarded restitution. Restitution often follows rescission of a contract. The purpose of restitution is to prevent a party from being unjustly enriched when a contract has been legally annulled.

12.8: Remedies is shared under a [not declared](#) license and was authored, remixed, and/or curated by LibreTexts.

- **10.8: Remedies** by [Melissa Randall and Community College of Denver Students](#) is licensed [CC BY 4.0](#). Original source: <https://introductiontobusinesslaw.pressbooks.com>.