

ASPEN PARALEGAL SERIES

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Basic Contract Law for Paralegals
Ninth Edition



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Chapter 11

REMEDIES

Learning Objectives

After studying this chapter you will be able to:

- ▶ Distinguish between legal and equitable remedies
- ▶ Define “compensatory damages”
- ▶ Discuss when punitive damages may be sought
- ▶ Explain what is meant by “consequential damages”
- ▶ Distinguish between liquidated damages and limitation of damages
- ▶ Define “injunction”
- ▶ Understand when specific performance may be sought as a remedy
- ▶ Explain the effect of rescission and restitution on a contract
- ▶ List the quasi-contractual remedies
- ▶ Discuss the effect of waivers on a breach of contract

Legal Remedies

Legal Remedies or **damages** are monetary awards granted to an injured party in a contractual dispute whenever money would be an appropriate method of rectifying the injury

Four Types of Damages

- Compensatory damages
- Punitive damages
- Consequential damages
- Liquidated damages

Compensatory Damages

- ▶ **Compensatory damages** are monetary awards designed to put the injured party in the same position he would have been in had the contract been completed as originally planned.
- ▶ The court determines the amount of the monetary loss the injured party suffered because of the breach.

Punitive Damages

- **Punitive, or exemplary, damages** are monetary awards granted by a court for a breach of contract that involves very unusual circumstances.
- Exemplary damages are intended not only to compensate the injured party but to punish the breaching party.
- Punishment is not a usual aspect of contract law. As a consequence, for a party to be entitled to punitive damages, there must be some statutory basis for the award under the state's law.

Consequential Damages

- ▶ **Consequential damages** are monetary awards beyond the standard measure (compensatory damages) due to the special circumstances and expenses incurred because of the injury.
- ▶ For the innocent party to be entitled to consequential damages, when entering into the contractual relationship, she must make the other party aware of special losses that might result from a breach of contract.
- ▶ In this manner, the promisor can decide whether or not to enter into the contractual relationship.

Liquidated Damages

- ▶ **Liquidated damages** are reasonable damages that the parties themselves have agreed to in the contract itself.
- ▶ Normally, parties to a contract would specify liquidated damages if it would be difficult or impossible to compute compensatory damages because of the uncertain nature of the contract or the subject matter

Equitable Remedies

Equitable remedies are designed to prevent unfairness and unjust enrichment. These are largely nonmonetary awards.

Categories of Equitable Remedies

- Injunctions
- Specific performance
- Rescission and restitution
- Reformation
- Quasi-contractual

Injunctions

- ▶ An **injunction** is a court order to stop someone from engaging in a specific action

Specific Performance

- Specific performance is a court order requiring the breaching party to perform exactly what she promised under the contract.

Rescission and Restitution

- If a party to a contract finds that fulfillment of the contract would be unduly burdensome, he can ask the court for rescission and restitution, whereby the court will rescind, or revoke, the contract in the interest of fairness.

Reformation

- Reformation can be considered a court-ordered accord and satisfaction.
- When the parties to a disputed contract cannot resolve the conflict, the court may do so for them while still keeping the contractual relationship intact.

Quasi-Contractual Remedies

These are the only equitable remedies that involve a monetary award

- ▶ **Quantum meruit**: the value of the service rendered
- ▶ **Quantum valebant**: the value of the property received

Waivers

- A **waiver** is the forgiveness by a party to a contract of the other side's failure to meet a contractual obligation.
- The waiver can be for a contractual covenant or for any condition specified in the contract