Remedy
A method a court uses to compensate an injured party for a breach by the other party. We say a party has breached a contract if he *fails to perform a duty without a valid excuse*.

Contract Law Remedies
Legal remedies
- Expectation damages (money)
- Reliance damages (money)

Equitable remedies
- Restitution (money or property)
- Specific performance
- Injunction
- Reformation
Money Damages
Most often:
✓ Expectation damages
Moderately common:
✓ Reliance damages, or
✓ Restitution damages
✓ Liquidated damages

Money Damages
Rare:
✓ Punitive damages
✓ Nominal damages

Expectation Damages
What the injured party reasonably thought he would get from the contract.
✓ The goal is to put him in the position he would have been in if both parties had fully performed their obligations.
Expectation Damages are the sum of:

- Compensatory damages, if any, and
- Consequential damages, if any, and
- Incidental damages, if any.

Compensatory Damages

- Are the most common monetary awards for the expectation interest.
- Their goal is to return the injured party to the state he would have been in immediately after the breaching party had performed her promise.

Compensatory Damages

Example: Reina breaches her contract with Ace productions.

Compensatory Damages:
- Incremental cost of Kween $1.0 million
- Extra wages for crew + $2.5 million
- Total $3.5 million
Consequential Damages
✓ Also known as “special damages”
Damages which flowed foreseeably from the breach, but from events that would have occurred after the breaching party had fulfilled her duties.
✓ Must be quantifiable with reasonable certainty.
✓ Must have been foreseeable to the breaching party.

The Hadley v. Baxendale Rule
“The injured party may recover consequential damages only if the breaching party should have foreseen them.”

Bi-Economy Market, Inc. v. Harleysville Ins. Co. of New York
YOU BE THE JUDGE
✓ Facts
✓ Issue: Is Bi-Economy entitled to consequential damages for the destruction of its business?
✓ How many think the answer is NO? (NY Court of Appeals affirmed)
✓ How many think the answer is YES? (NY Court of Appeals reversed)
Incidental damages
Relatively minor costs the injured party incurs in seeking and obtaining a substitute for the breaching party’s performance.

✓ It is really the compensatory and the incidental damages together that return the injured party to the state he would have been in immediately after the breaching party had performed.

UCC: Seller’s Remedies
A seller has two choices:
1. **Sell** the goods and seek the difference between the contract price and the actual sales price, plus incidentals.
2. **Keep** the goods and seek the difference between the contract price and the open market value of the goods.

UCC: Buyer’s Remedies
A buyer also has two choices:
1. **Cover** by purchasing substitute goods in good faith, then seek the difference between the price paid and the contract price, or
2. Don’t **cover** and seek the difference between the contract price and the market value of the goods.
**UCC: Consequential Damages**

- A buyer of goods *is* entitled to consequential damages *if a seller could reasonably have anticipated them*.
- But most courts hold that a *seller of goods* is *not* entitled to consequential damages.

**Reliance Damages**

Money expended by the injured party in reliance on the agreement.

- Puts the injured party in the position he would have been in had the parties never entered into a contract.
- The only remedy available in cases of promissory estoppel.

**Equitable Remedies**

- Restitution damages
- Specific performance
- Injunction
- Reformation
Restitution Damages
✓ Designed to return to the injured party a benefit that he has conferred on the other party, which it would be unjust to leave with that person.
✓ Example: Toews v. Funk, Idaho Court of Appeals, 1994

Restitution Damages
✓ A common remedy in contracts involving fraud, misrepresentation, mistake, or duress.
✓ Generally the only remedy available in cases of quasi-contract.

If Money Damages are Given
The injured party will ordinarily receive:
✓ Expectation damages or
✓ Restitution or
✓ Reliance damages
Specific performance

✓ A court order that the parties perform the contract.
✓ Used only in cases involving the sale of **land** or some other **asset that is unique**.
✓ Not generally used in employment or service contracts.

Specific performance

Is available for:

✓ Land (always)
✓ Rare works of art
✓ Secret formulas
✓ Patents
✓ Shares in a closely-held corporation
✓ Items sought for sentimental reasons

Specific Performance on a Contract for Land

A Caveat

Courts will **only** order specific performance on a contract for **land** if the buyer was:

✓ **Ready, Willing, and Able**

…to purchase the land at the appointed time!
Injunction

- In contract law, an injunction is an order to cease and/or desist from doing something.
- Example: Money damages will not compensate for an unpleasant odor wafting in from the next door neighbor’s pig farm.

Injunction

A preliminary injunction: A court order issued early in a lawsuit prohibiting a party from doing something during the lawsuit.

A permanent injunction: Signals a victory for the plaintiff.

Reformation

- A remedy in which the court partially rewrites a contract to reflect the original intention of the parties.
- Rare and unpredictable.
- Almost always sought so that some other remedy may then be pursued, such as specific performance.
Special Issues of Damages

✓ Mitigation of Damages
✓ Nominal Damages
✓ Liquidated Damages
✓ Punitive Damages

The Doctrine of Mitigation of Damages

A party injured by a breach of contract may not recover for damages that he could have avoided with reasonable efforts.

Example: Malcolm and Zena.

Nominal Damages

✓ Sometimes people sue even though they know that proving any damages will be difficult.
✓ Nominal damages are a token award, such as $1, that says “you won.”
✓ Both parties must pay their own court costs.
Liquidated Damages

A court will generally enforce a liquidated damages clause only if:

1. At the time of creating a contract, it was very difficult to estimate actual damages, and
2. The liquidated amount is reasonable.

Liquidated Damages v. Penalties

Penalties specify a certain amount to be paid in the event of a breach of contract and are designed to penalize the breaching party and thereby discourage the breach.

✓ Penalties are not enforceable.

Punitive Damages

✓ If granted, they will be in addition to expectation, reliance, or restitution damages.
✓ Per the U.S. Supreme Court, should not be more than 9X compensatory damages.
✓ Not based on defendant’s wealth