

# Equitable Remedies: Specific Performance and Injunction

by Sophia



## WHAT'S COVERED

In this lesson, you will learn about additional remedies to breaches of contract. Specifically, this lesson will cover:

## 1. Types of Equitable Remedies

Besides monetary awards, there is also **equitable relief** available when a contract is breached.

Equitable relief refers to a court's powers to enforce contracts by ordering a person to do (or not do) something, going beyond the mere payment of money.

Two types of equitable relief are:

- Specific performance
- Injunction



### TERM TO KNOW

#### Equitable Relief

A form of relief awarded to an aggrieved party by a court of equity (as opposed to a court of law). Although modern courts do not formally have a division between courts of equity and courts of law, the old-style terminology is still in use. A court of law applies the law more strictly and by the book than a court of equity does. A court of equity is a court that offers more remedies than a court of law does. For example, a court of equity can order performance of a contract rather than awarding monetary damages alone. Equity allows a judge to use more discretion than law, which applies a strict code with only recognized exceptions.

#### 1a. Specific Performance

**Specific performance** is a judicial order to the promisor that he undertake the performance to which he obligated himself in a contract.

Specific performance is an attractive but limited remedy: It is only available for breach of contract to sell a unique item (real estate is always unique) or where monetary damages are insufficient to make a non-breaching party whole.

➞ **EXAMPLE** Emily signs a contract to sell Charlotte a gold samovar, a Russian antique of great sentimental value because it once belonged to Charlotte's mother. Emily then repudiates the contract while it is still **executory** (meaning it has not yet been performed). A court may properly grant Charlotte an order of specific performance against Emily, requiring her to sell the item to Charlotte.

As an alternative remedy to damages, specific performance may be issued at the discretion of the court, subject to a number of exceptions.



#### TERM TO KNOW

##### **Specific Performance**

An equitable remedy that, rather than awarding monetary damages for breach of contract, affirmatively requires a party to fulfill the terms of a contract. Primarily used where performance involves something unique for which monetary damages are not an adequate remedy.

##### **Executory**

In contracts, a description of the state in which a contract has still not been performed fully. For example, a car loan that has not been paid off.

## 1b. Injunction

One of these exceptions is when the promisee is seeking enforcement of a contractual provision for **forbearance**— a promise that the promisor will refrain from doing something .

In that case, an **injunction**, may be the appropriate remedy. An injunction is a judicial order not to act in a specified manner.

➞ **EXAMPLE** Returning to the scenario above, the court may also issue an injunction that prevents Emily from selling the item to anyone other than Charlotte.

### **CASE STUDY: *Whitmill v. Warner Brothers Entertainment, Inc.***

Whitmill, the artist who designed Mike Tyson's facial tattoo, sought to stop the movie *Hangover II* from being released because he had not given permission for the copyrighted tattoo to be used in the picture. Since Mike Tyson's use of the tattoo was not restricted and he appeared in the first version of the movie, it appears Warner Brothers felt it could use the tattoo in the second version where it appears on the face of a different character played by the actor Ed Helms. Judge Catherine Perry of the U.S. District Court for the Eastern District of Missouri was asked to decide whether or not to grant Whitmill's request for an injunction that would have prevented the movie from being released.

While Judge Perry acknowledged that Whitmill's case for copyright infringement was strong since he had not given permission for his copyrighted work to be used in the film, she denied the request for the injunction. Her decision was based on a "balancing" of the interests of both sides. Whitmill, she conceded, had suffered irreparable harm because he had lost control of his protected image. Warner Brothers, on the other hand, stood to lose millions of dollars if the movie were not released. Judge Perry also considered the interests of the public in having the movie released as well as the effects on theater owners and distributors. She, therefore, denied the injunction, and set a hearing date for a determination of Whitmill's damages.

Was this a fair decision? In fact, it may have been a very wise decision because damages for violation of copyright and any associated contracts are based, in part, on the amount of money earned by the copyright infringer in using the material without permission. Here, without release of the movie, it would be hard to quantify such damages. The parties ended up settling their dispute for an undisclosed amount of money, but the case serves as an effective example of an injunction that would have, if granted, forbidden the release of the movie to satisfy the artist's control over his copyrighted property, and how a court of equity weighs the relative interests of parties (and the public) in deciding whether to grant an injunction.

*Whitmill v. Warner Brothers Entertainment, Inc., 11-cv-00752 (E.D. Mo. April 28, 2011).*



## TERMS TO KNOW

### Forbearance

Refraining from doing something that one has a right to do.

### Injunction

An equitable remedy that forbids a party from doing something, the verb form of which is "to enjoin."



## SUMMARY

In this lesson, you learned that **specific performance** and **injunction** are **types of equitable remedies**. Specific performance is a special type of remedy that orders a promisor to actually perform what was promised, as opposed to having to merely pay monetary damages for breach of contract. This remedy is considered appropriate when monetary damages are not sufficient relief for the promisee. An injunction, on the other hand, is a special type of remedy that prevents a party from doing something.

Best of luck in your learning!

Source: THIS TUTORIAL HAS BEEN ADAPTED FROM (1) "BUSINESS LAW AND THE LEGAL ENVIRONMENT" VERSION 1.0 BY DON MAYER, DANIEL WARNER, GEORGE SIEDEL, AND JETHRO K. LIEBERMAN. COPYRIGHT 2011. ISBN 978-1-4533-3050-0. (2) "THE LEGAL AND ETHICAL ENVIRONMENT OF BUSINESS" VERSION 1.0 BY TERENCE LAU AND LISA JOHNSON. COPYRIGHT 2012. ISBN 978-1-4533-2750-0 (LICENSEE PRODUCT: BUSINESS LAW), BOTH SOURCES REPRINTED WITH PERMISSION FROM FLATWORLD.



## TERMS TO KNOW

### Equitable Relief

A form of relief awarded to an aggrieved party by a court of equity (as opposed to a court of law).

Although modern courts do not formally have a division between courts of equity and courts of law, the old-style terminology is still in use. A court of law applies the law more strictly and by the book than a court of equity does. A court of equity is a court that offers more remedies than a court of law does. For example, a court of equity can order performance of a contract rather than awarding monetary damages alone. Equity allows a judge to use more discretion than law, which applies a strict code with only

recognized exceptions.

**Executory**

In contracts, a description of the state in which a contract has still not been performed fully. For example, a car loan that has not been paid off.

**Forbearance**

Refraining from doing something that one has a right to do.

**Injunction**

An equitable remedy that forbids a party from doing something, the verb form of which is "to enjoin."

**Specific Performance**

An equitable remedy that, rather than awarding monetary damages for breach of contract, affirmatively requires a party to fulfill the terms of a contract. Primarily used where performance involves something unique for which monetary damages are not an adequate remedy.