

# Monetary Awards

by Sophia



## WHAT'S COVERED

In this lesson, you will take a closer look at one type of contract remedy. Specifically, this lesson will cover:

## 1. Purpose of Contract Remedies

Since contract law places so much importance on the intention of the parties, it may be surprising to learn that not every breach of contract results in a court order compelling one party to carry out the obligations of the contract.

At times this is because certain duties cannot be performed after a breach: Time and circumstances will have altered their purpose and rendered many worthless.

Still, although there are numerous occasions on which it would be theoretically possible for courts to order the parties to carry out their contracts, the courts will seldom do it.

### IN CONTEXT

In 1897, Justice Oliver Wendell Holmes, Jr., declared in a famous line that “the duty to keep a contract at common law means a prediction that you must pay damages if you do not keep it.”

By that he meant simply that the common law looks more toward compensating the promisee for his loss than toward compelling the promisor to perform— a person always has the power, though not the right, to breach a contract. Indeed, the law of remedies often provides the parties with an incentive to break the contract. In short, the promisor has a choice: to perform or pay.

The purpose of contract remedies is thus, for the most part, to compensate the non-breaching party for the losses suffered— to put the non-breaching party in the position he, she, or it would have been in had there been no breach.

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## 2. Types of Monetary Awards

There are three principle remedies to a breach of contract:

- **Monetary awards** (called “damages”)
- Specific performance
- Restitution

We will look at specific performance and restitution in later lessons; for now, we will focus on the different types of monetary awards.



#### TERM TO KNOW

### Monetary Awards

A form of damages awarded in a case where money is the only form of restitution that can be made for a wrong, such as a tort. Even though money cannot replace a lost limb or a life, for example, it is the best a court can do to compensate a victim.

## 2a. Compensatory Damages

One party has the right to damages (money) when the other party has breached the contract unless, of course, the contract itself or other circumstances suspend or discharge that right.

**Compensatory damages** are the general category of damages awarded to make the non-breaching party whole.



#### TERM TO KNOW

### Compensatory Damages

A form of monetary award intended to make a victim whole by compensating the victim to place him or her in the position he or she would have been in had the damage not occurred, and nothing more.

## 2b. 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.

### CASE STUDY: *Hadley v. Baxendale*

Perhaps the most studied case in all the common law is *Hadley v. Baxendale*, decided in England in 1854. Joseph and Jonah Hadley were proprietors of a flour mill in Gloucester. In May 1853, the shaft of the milling engine broke, stopping all milling. An employee went to Pickford and Company, a common carrier, and asked that the shaft be sent as quickly as possible to a Greenwich foundry that would use the shaft as a model to construct a new one. The carrier’s agent promised delivery within two days. But through an error, the shaft was shipped by canal rather than by rail and did not arrive in Greenwich for seven days. The Hadleys sued Joseph Baxendale, managing director of Pickford, for the profits they lost because of the delay. In ordering a new trial, the Court of Exchequer ruled that Baxendale was not liable because he had had no notice that the mill was stopped:

*"Where two parties have made a contract which one of them has broken, the damages which the other party ought to receive in respect of such breach of contract should be such as may fairly and reasonably be considered either arising naturally, i.e., according to the usual course of things, from*

*such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties, at the time they made the contract, as the probable result of the breach of it."*

This rule, it has been argued, was a subtle change from the earlier rule that permitted damages for any consequences as long as the breach caused the injury and the plaintiff did not exacerbate it. But the change was evidently rationalized, at least in part, by the observation that in the "usual course of things," a mill would have on hand a spare shaft, so that its operations would not cease.

*Hadley v. Baxendale (1854), 9 Ex. 341, 354, 156 Eng.Rep. 145, 151.*

This sub-set of compensatory damages is called **consequential damages**— damages that flow as a foreseeable consequence of the breach.

➞ **EXAMPLE** If you hire a roofer to fix a leak in your roof and he does such a bad job that the interior of your house suffers water damage, the roofer is liable not only for the poor roofing job, but also for the ruined drapes, damaged flooring and walls, and so on.

Many contracts expressly exclude consequential damages— something to look for in a contract because it could limit your damages!



#### TERM TO KNOW

##### Consequential Damages

Damages that occur from loss or injury that do not flow immediately or directly from the act of the liable party but only from the consequences or result of the act. Typically, the law requires such damages to be foreseeable in order to be compensable.

## 2c. Nominal Damages

If the breach caused no loss, the plaintiff is nevertheless entitled to a minor sum, perhaps even one dollar, called **nominal damages**.

➞ **EXAMPLE** When a buyer could purchase the same commodity at the same price as that contracted for, without spending any extra time or money, there can be no real damages in the event of breach.



#### TERM TO KNOW

##### Nominal Damages

Damages that are awarded to a plaintiff in a trifling amount where a substantial injury has not been sustained although the law does recognize the plaintiff's right not to have his or her rights invaded.

## 2d. Incidental Damages

**Incidental damages** are the direct costs incurred by the non-breaching party in order to avoid additional damages.

#### IN CONTEXT

Suppose City College hires Professor Blake on a two-year contract, after an extensive search. After one year, the professor quits to take a job elsewhere, in breach of her contract. If City College has to pay \$5000 more to find a replacement for the year, Blake is liable for that amount— that's compensatory damages.

But what if it costs City College \$1200 to search for, bring to campus, and interview a replacement? City College can claim that, too, as incidental damages which include additional costs incurred by the non-breaching party after the breach in a reasonable attempt to avoid further loss, even if the attempt is unsuccessful.



#### TERM TO KNOW

#### Incidental Damages

Damages incurred in commercial shipping where a delay or breach of contract by the seller results in costs of storage, inspection, or some other commercially foreseeable cost.

## 2e. Punitive Damages

**Punitive damages** are those awarded for the purpose of punishing a defendant in a civil action, in which criminal sanctions may be unavailable.

They are not part of the compensation for the loss suffered; they are proper in cases in which the defendant has acted willfully and maliciously and are thought to deter others from acting similarly. Since the purpose of contract law is compensation, not punishment, punitive damages have not traditionally been awarded, with one exception: when the breach of contract is also a **tort** for which punitive damages may be recovered.

Punitive damages are permitted in the law of torts (in most states) when the behavior is malicious or willful (reckless conduct causing physical harm, deliberate defamation of one's character, a knowingly unlawful taking of someone's property), and some kinds of contract breach are also tortious.

➔ **EXAMPLE** When a creditor holding **collateral** as security under a contract for a loan sells the collateral to a good-faith purchaser for value even though the debtor was not in default, he has breached the contract and committed the tort of conversion (which means, essentially, stealing).

Punitive damages may be awarded, assuming the behavior was willful and not merely mistaken.

Punitive damages are not fixed by law. The judge or jury may award at its discretion whatever sum is believed necessary to redress the wrong or deter like conduct in the future. This means that a richer person may be slapped with much heavier punitive damages than a poorer one in the appropriate case because a richer person is not deterred by a small punitive damage award. But the judge in all cases may remit (lower) some or all of a punitive damage award if he or she considers it excessive.

Punitive damage claims have been made in cases dealing with the refusal by insurance companies to honor their contracts. Many of these cases involve disability payments, and among the elements are charges of tortious conduct by the company's agents or employees.



#### DID YOU KNOW

California has been the leader among the state courts in their growing willingness to uphold punitive damage awards despite insurer complaints that the concept of punitive damages is but a device to permit plaintiffs to extort settlements from hapless companies. Courts have also awarded punitive damages against other types of companies for breach of contract.



## TERMS TO KNOW

### Punitive Damages

Damages that are awarded to make an example of a plaintiff's wrongdoing on an increased scale above what is compensatory, usually requiring conduct that is violent, oppressive, malicious, or wanton and wicked to compensate the victim for the wrong and also punish the liable party.

### Collateral

Security for a debt or loan taken by the lender to ensure repayment of a debt. An example is a mortgage lien on real estate that gives the lender an interest in the property to ensure repayment by the borrower of the loan. If the debt or loan is not repaid, the holder of collateral may execute on the lien or mortgage and take possession thereof.

## 2f. Restitution

As the word implies, **restitution** is a restoring to one party of what he gave to the other. Therefore, only to the extent that the injured party conferred a benefit on the other party may the injured party be awarded restitution.

If the claimant has given the other party a sum of money, there can be no dispute over the amount of the restitution interest.

➔ **EXAMPLE** Tom gives Tim \$100 to chop his tree into firewood. Tim repudiates. Tom's restitution interest is \$100.

But serious difficulties can arise when the benefit conferred was performance. The courts have considerable discretion to award either the cost of hiring someone else to do the work that the injured party performed (generally, the market price of the service) or the value that was added to the property of the party in breach by virtue of the claimant's performance.

### IN CONTEXT

Mellors, a gardener, agrees to construct ten fences around Lady Chatterley's flower gardens at the market price of \$2,500. After erecting three, Mellors has performed services that would cost \$750, market value. Assume that he has increased the value of the Lady's grounds by \$800.

If the contract is repudiated, there are two measures of Mellors' restitution interest: \$800, the value by which the property was enhanced; or \$750, the amount it would have cost Lady Chatterley to hire someone else to do the work. Which measure to use depends on who repudiated the contract and for what reason.



## TERM TO KNOW

### Restitution

In torts, the measure of damages to compensate a victim who has been wronged. Also referred to as compensatory damages.

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## 3. Tort vs. Contract Remedies

As mentioned earlier, a contract breach may also amount to tortious conduct.

➔ **EXAMPLE** A physician warrants her treatment as perfectly safe but performs the operation negligently, scarring the patient for life. The patient could sue for malpractice (tort) or for breach of warranty (contract).

The choice involves at least four considerations:

1. **Statute of limitations:** Most statutes of limitations prescribe longer periods for contract than for tort actions.
2. **Allowable damages:** Punitive damages are more often permitted in tort actions, and certain kinds of injuries - such as pain and suffering - are compensable in tort but not in contract suits.
3. **Expert testimony:** In most cases, the use of experts would be the same in either tort or contract suits, but in certain contract cases, the expert witness could be dispensed with, as, for example, in a contract case charging that the physician abandoned the patient.
4. **Insurance coverage:** Most policies do not cover intentional torts, so a contract theory that avoids the element of willfulness would provide the plaintiff with a surer chance of recovering monetary damages.



## SUMMARY

In this lesson, you learned that **the purpose of contract remedies** is, usually, to put the non-breaching party in the position he or she would have been in had there been no breach. The **types of monetary awards** available as remedies are **compensatory damages** (money paid to compensate the non-breaching party for the losses caused by the breach), which also include the subcategories of **consequential damages, nominal damages, incidental damages, punitive damages** (to punish the breaching party), and **restitution**.

You also learned that sometimes contract breaches rise to the level of tortious conduct; in those cases, injured parties must decide whether to pursue **tort or contract remedies**.

Best of luck in your learning!

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