

## Damage

- Determine the damage

### **Concept: Damage - Remoteness**

If the loss was not an ordinarily reasonable flow from the breach for a reasonable person, then the loss was too remote from the breach, and the defendant should not be sued for the damage.

*[CASE] Hadley v Baxendale (1854) 9 Exch 341 p3-2*

-Facts:

- 1) Baxendale's delivery of the required goods was delayed due to Baxendale's neglect. Baxendale was unaware of its importance to the flour mill.
- 2) As a result, the flour mill shut down due to its delay. Hadley sued Baxendale for the loss of profit due to the delay.

-Issue: whether Baxendale was liable for the loss of profit?

-Conclusion:

*Baxendale was not liable for the loss of profit. The loss was too remote from the delay of the delivery. The loss and the bankruptcy of the flour mill were not reasonably foreseeable when the delay occurred for a reasonable person.*

The relevance between the breach and the loss should be confirmed.

*[CASE] Reg Glass Pty Ltd v Rivers Locking Systems Pty Ltd (1968) 120 CLR 516 p3-1*

-Facts:

- 1) Rivers Locking Systems installed a burglar-proof door for Reg in an incorrect way.
- 2) Theft occurred and Reg sued Rivers Locking Systems for damage.

-Issue:

Whether the breach is sufficiently relevant and important for the loss of the theft?

-Conclusion:

*Breach of the contract. Damage occurred.*

### **Concept: damage - disappointment**

Disappointed (loss of enjoyment or happiness) could be considered to be a damage.

*[CASE] Jarvis v Swans Tours Ltd p4-4*

-Facts:

- 1) Jarvis was disappointed by the tour organized by Swans and sued for the loss of enjoyment.

-Conclusion:

*The loss of enjoyment should be considered as the damage and entitled the plaintiff the damage equal to twice the cost of the tour.*

Damages for disappointment and distress following breach of contract are not available unless (para 44): they proceed from physical inconvenience caused by the breach; or the object of the contract is to 'provide enjoyment, relaxation or freedom from molestation'

**[CASE] Baltic Shipping Co v Dillon p5-2**

-Factors:

- 1) Mrs. Dillon was a passenger of a cruise owned by Baltic Shipping Co. The cruise sank and Mrs. Dillon lost all her belongings and suffered injuries.
- 2) Mrs. Dillon sued for the refund of the cruise fare and the damage.

-Conclusion:

*The cost of the fare could not be recovered as it was not a failure of consideration. The damage for the distress and injuries could be recovered due to the physical inconvenience and the breach of the contract to provide enjoyment and relax.*

- Calculate the damage

If the contract entitled the plaintiff to retain the control over the breached part, the damage should include the cost to reinstate it to the original status.

**[CASE] Tabcorp Holdings Ltd v Bowen Investments Pty Ltd [2009] HCA 8 p2-2**

**-Facts:**

- 1) Tabcorp breached the terms in the lease contract and Bowen sued for damages.
- 2) Tabcorp made substantial alterations to the building without Bowen's written consent. T should have obtained it.
- 3) The alterations made little difference (\$35,000) but making it back costed \$1M. -

**-Issue:**

How much compensation should be entitled to Bowen?

**-Conclusion:**

*As the term entitled Bowen to retain control over alterations, the measure of damages had to include the cost to reinstate it to the original status. Bowen was entitled for \$1 M.*

**Concept: Damage - Quantum**

If the damage could be estimated through market price, then it should be 'on expectation basis'. (the cost incurring in performing the contract + expected profit or loss)

If the damage could not be estimated, then it should be 'on reliance basis'. (only the cost incurring in performing the contract)

**[CASE] Commonwealth v Amann Aviation Pty Ltd p4-1**

-Facts:

- 1) Amann Aviation had a contract with Commonwealth with regard to flight surveillance.
- 2) Commonwealth wrongly terminated the contract when Amann Aviation was not ready to perform.
- 3) Amann sued Commonwealth for the cost to prepare the performance.

-Issue:

How much cost could be recovered for Amann?

-Conclusion:

*The calculation of damage was on an expectation basis = the cost to perform the contract + expected profit or loss. If the expected profit or loss could not be evaluated through market price, then it could only recover on a reliance basis = the cost to perform the contract.*

*e.g. if B breached the contract of the purchase of a computer by refusing to provide the product after A*

*paid \$3000, then A could recover the amount of the market price on the basis that the market price of a computer was known and could only recover the amount that A spent for it on the ground that the market price was difficult to estimate.*

'For those that could not be compensated by money' = specific performance + injunction

### **Specific performance**

-for one-off product transaction only!!!

-Only if the piece of the product is exceptional rare and value to the purchaser. E.g. land, taxi license, rare products that are almost impossible to obtain a same one in the market.

-if the product could be bought in the market, then the loss was remedied by damage; if the product could not be bought a same one which has the same particular value for the purchaser, then go for specific performance.

*[CASE] Dougan v Ley p5-3*

-Facts:

1) Dougan refused to proceed with the sales of his taxicab with taxi license and Ley sued for specific performance.

-Conclusion:

*The specific performance was granted because the taxi license was rare and one could not go out into market for replacement. Dougan should continue the proceed with the sales of his taxicab.*

### **[Discussion Question] Topic 7-2**

-Facts:

1) Mario promised to sell his peculiar motorbike to Joe and received deposit from Joe. The motorbike was difficult to buy in Australia.

2) Mario changed his mind and decided to sell his bike to Frank at a higher price.

3) Joe, before knowing Mario's new decision, booked a whole day ride which was non-refundable.

*Whether specific performance could be entitled to force Mario to perform the contract?*

*Yes, as the transaction involved with product trade and the product was rare and had particular value for the purchaser and the purchaser could not buy a same one in the market, specific performance could be entitled to continue the performance of the contract.*

*Whether Joe could claim the deposit he paid for the booking of the ride?*