

Week 4 – Remedies for breach

The compensation principle

- The guiding principle for an award of damages for breach of contract is that the damages are compensatory:
 - “where a party sustains a loss by reason of a breach of contract, he is, so far as money can do, to be placed in the same position with respect to damages, as if the contract had been performed” – Parke B in *Robinson v Harman (1848)*
 - affirmed by the HCA *CTH v Amann*

- 1. **Damages**
- **Expectation loss**
- **Reliance loss**
- **Loss of chance**
- **Enjoyment**

The right to terminate

- Whenever a party to a contract breaches that K, the other party (aggrieved) will be entitled to an award of damages as monetary compensation for that breach.
 - **E (expectation loss)** = CP + NP = cost of performance + next profit
 - *Bellgrove v Elderidge* – cost of cure, in this case **diminution in value** (i.e. the difference between the house properly built and the actual value of the defective house) and **cost of cure** (i.e. the cost of demolition and the re-erecting the house)
 - *Tabcorp v Bowen* – a party cannot buy the right to terminate, **cost of cure** damages was granted.
 - *Ruxley* – constructing a pool, **diminution in value** is disproportionate and a diminution in value was granted
 - **R (reliance loss)** = WE = wasted expenditure
 - *McRae v Commonwealth* – *wasted expenditure*
 - *Commonwealth v Amann* – *loss making contract*
 - **Chance** – one party has a chance of making more money
 - *Chaplin v Hicks* – beauty competition
 - *Howe v Teefey* – the calculation is not how much he would probably have made but how much his *chance of making that profit was worth in money*
 - **Enjoyment** – distress or disappointment

- 2. **Limitation on damages**
- **Causation**
- **Remoteness**
- **Mitigation**

2.1 Causation

In order to recover damages for a breach of a contract, a plaintiff must show a causal connection between the defendant's breach and the loss for which the plaintiff is seeking compensation.

- As a preliminary assessment of causation the ‘but for’ test is often relied upon (*Alexander v Cambridge*), “*whether the breach is only one of a set of necessary conditions jointly sufficient to produce the injury or damage*”
- Ultimately causation is a matter of common sense

The damage must be caused by the breach and it must not be too remote from the breach i.e. there must be both an element of causation and predictability (at the time of contracting) of the damages.

2.2 Remoteness of damage

- *Alexander v Cambridge Credit Corp*
- *Hadley v Baxendale* – “*fairly and reasonably be considered either arising mutually, that is, according to the usual course of things, from such breach of contract itself, or such as may reasonably be suspended 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*”
- *Victoria Laundry v Newman Industries* – *an issue of ‘degree’ of loss, only entitled to general damages but not the particularly large loss from the government contract*

2.3 Mitigation of damages

- Reasonable steps in mitigation and the impecunious plaintiff
- Attempts to mitigate loss – entitled to the costs of such attempts (*Simonius Vischer & Co v Holt & Thompson*)

2.4 Limitations relating to specific types of claim

- Disappointment, distress, loss of reputation – a term in the contract or exceptions including physical inconvenience (*Mason CJ* and *McHugh J*, *Baltic Shipping v Dillon*)
- Contributory negligence, or as per *Wrongs Act 1958 Vic*
- Loss of bargain damages and termination under a term (*Shevill v Builder*)