

TOPIC 7: Contract IV – Remedies, Estoppel, Vitiating factors

Remedies

There are various remedies available to a person if successful in an action for breach of contract. 如果一方违背了合同，则对方会有一些 remedies。

回忆 week1 的资料，两种 remedy: legal remedy, equitable remedy.

Legal remedy: Damage. Under common law, usually a specific amount of monetary damages.

Equitable remedy: 例如 injunction 禁止令 or specific performance 特定履行. Under equity. 如今法庭会结合 common law 和 equity 一起审理案件。

Damages: the purpose of awarding damage is to compensate the innocent party, not to punish the defaulting party. Damage 的目的是为了补偿受害者，而不是为了惩罚违约者。As the purpose is compensation, the quantum 限额 of damages should place the innocent party, so far as is reasonable, in the position he or she would have been in if the contract had been properly performed.

Tabcorp Holdings Ltd v Bowen Investments Pty Ltd [2009] HCA 8

Facts: A term in a lease between Tabcorp and Bowen prohibited the making of any substantial alterations or additions to a building without Bowen's written consent. Tabcorp breached this term in making alterations to the lobby of the building and Bowen sued for damages. T 和 B 之间有租约。写明除非有 B 的许可，T 不能随意对大楼进行改动或者扩建。T 违反了合约对大楼的大厅装修，B 起诉。Expert evidence concluded that the alterations made very little difference to the amount of rent the building would attract, and so damages would only be \$35,000. 专家说这个装修对以后租客租金的影响不大，也就损失\$35,000. The cost of reinstating the lobby would cost over \$1 million. 但是恢复大厅的成本需要\$1m。

Issue: 赔偿是多少？\$35,000 or \$1m?

Held: B have control over any substantial alterations or additions to the building. To ensure B's benefit of this building, the measurement of the damage had to be the cost of reinstatement to its original condition. So \$1m. B 对任何大楼的改动/建造享有控制权。为了保护 B 在大楼的利益，赔偿应该以恢复大楼原貌 reinstatement to its original condition 为准。

Losses must be caused by breach of the contract. 损失必须由违约引起。The plaintiff can only obtain damages for those losses which were caused by the breach of contract. The breach must be 'sufficiently important that 'but for' the breach, the loss would not have occurred. (But for test)

Reg Glass Pty Ltd v Rivers Locking Systems Pty Ltd (1968) 120 CLR 516

Facts: RL 向 RG 的商店提供大门。大门号称“防盗”。RL 把大门安装在现有的木质门框里。盗贼把门从门框里撬出来以后偷了很多东西。

Issue: was the breach of contract (failing to provide a door that was reasonably fit for keeping breakers out of the shop) a cause of the loss of goods?

Held: The court was satisfied that had such a door 'reasonably fit' for its purpose been installed, the burglary would not have occurred. Thus 'but for' the defendants breach, the loss would not have been suffered.

Damages – remoteness

Damage must not be too remote. 合同方无须为不可预见或不知情的损失负责。

Hadley v Baxendale (1854) 9 Exch 341

Facts: H 雇佣 B 运输研磨器，但是 B 延误了送达。H 因此遭受了比预期更长的停工，但是 B 并不知道延误送达会让 H 遭受损失。H sued for the loss of profits to the mill as a result of B's delay.

Issue: Was B liable for the damages for the loss from the mill's closure?

Held: The court held however that the damages claimed were too remote: it was unreasonable that the mill would stop because of a broken crankshaft. B was therefore not liable in damages for the loss of profit. 法院认为损失对于 B 来说太遥远了——B 无法预见并且不知情。另外，H 有必要为 mill 准备备用零件，或者从别处获得这些零件。

TWO LIMBS OF THE RULE IN HADLEY v BAXENDALE (1854):

1. The defaulting party will be liable for losses which flow 'according to the usual course of things' from the breach. 'It was a special circumstance, (NOT usual course of things) meaning the loss was out of the ordinary and could not have been reasonably foreseen by Baxendale'. Damage 是否符合常理。
2. Where the loss does not occur in the first limb, the plaintiff will only be able to claim damages if the loss was such that it must have been within the reasonable contemplation of the parties at the time the contract was made. 双方在签订合同之前是否有适当的关于损失的沟通/考量，能否预期/预见。

Damages – quantum

Two basis to calculate the damage:

1. Expectation basis: costs incurred in performing the contract + (-) expected profit (loss)
2. Reliance basis: cost only. Where expected profit or loss cannot be calculated.

不会考计算题 The profit cannot be remote.

Reliance damages: "damages equivalent to the wasted expenditure which has been reasonably incurred in reliance upon the assumption that the contractual promises of the defendant would be honoured" (Deane J.).

Commonwealth v Amann Aviation Pty Ltd (1991) 174 CLR 64

Facts: Amann successfully tendered to provide aerial surveillance over the northern Australian coastline for three years. Unfortunately it encountered delays assembling an appropriately equipped fleet of planes, and the Commonwealth wrongly repudiated the contract. A 中标为 C 提供空中巡逻服务。在组装飞机的时候延误了工期，并且 C 不小心否认了合同。

Issue: How to calculate the damage for A, on expectation basis or reliance basis?

Held: The Plaintiff incurred heavy expenditure in preparation. Moreover, this expenditure is completely wasted if the contract is terminated because the preparation of the aircraft was specific for that task. A 在履行合同（准备飞机）的过程中产生了很大的成本，并且这些成本是为 C 准备的，如果 C 终止了合同，这些成本就被浪费了。In this case, to combat the Plaintiff's claims for reliance damages, the Defendant had to show that that the Plaintiff's expenditure would have been wasted even if the contract would have been fully performed. However, it was impossible for the Defendant to show this. Thus the Plaintiff was entitled to reliance damages. 如果 C 想反驳 A 的要求，C 必须证明即使合同履行 A 也无法收回成本 (cannot recoup its costs)。然而 C 并不能证明。