

REMEDIES

COURT REMEDIES FOR BREACH

DAMAGES

STEP 1 → Identify breach and consider if also invokes a right to terminate (above)

Relevant to ALL types of breaches, big or small

Damages are as of right if there is a breach of contract

Damages will be nominal unless the aggrieved party can prove (on balance) that they have suffered loss as a result of the breach

STEP 2 → State general Rule: Compensation principle

“where a party sustains a loss by reason of a breach of contract, he is, *so far as money can do it*, to be placed in the same position with respect to damages, *as if the contract had been performed*”
(*Robinson v Harman*)

- If no loss, only nominal damages awarded
- AP cannot claim more than he or she has lost

STEP 3 → Argue for expectation damages

DEFINE: the position the party would have been in, had the K been properly performed (attempt to give them the actual value)

IF repudiation by supplier of services – customer’s expectation loss is additional cost of substitute services:

- e.g. Bert is a painter. He agrees to paint Ernie’s house for \$10,000. Bert repudiates and refuses to do the work. Another painter charges Ernie \$12,000.
- Expectation loss = \$2,000

IF defective goods – buyer’s expectation loss is difference in value between goods supplied and goods promised

- e.g. Contract for the sale of truckload of apples – price \$100. Apples not of high quality as promised in contract. If apples had complied with contract, value at date of delivery would have been \$200. Value of the delivered (low quality) apples is only \$150.
- Diminution of value (expectation loss) = \$50

E.g. K for supply of eggs. K breached. New supply costed \$5000 more. Expectation of \$5000

CONSIDER if K involved defective work –

Two methods of calculating aggrieved party’s loss:

- i. **Diminution in value:** diminution in overall financial position
- ii. **Cost of cure:** money to spend on substitute performance

Test for cost of cure: the AP will be entitled to cost of cure if the alterations is **necessary and reasonable** (*Bellgrove*)

- i. Only exceptional circumstances were cost of cure cannot be claimed (*Tabcorp*)

- ii. Compare the cost of cure vs the disadvantage of not altering (if disproportionate it is unreasonable) (*Ruxley*)
- iii. Unreasonable if thing still fit its purpose and there is no decrease in its financial value(*Ruxley*) c.f. a party's interest may be aesthetic and not merely financial (*Tabcorp*)

Tabcorp Holdings v Bowen Investments (2009) HCA

FACTS: Contract between Bowen and Tab for lease of 5 Bowen Cr. In Melbourne.

Clause 2.3: Tenant promised: 'Not without the written approval of the Landlord first obtained (which consent shall not be unreasonably withheld or delayed) to make or permit to be made any substantial alteration or addition to the Demised Premises'

Tab breached clause 2.3 completely altering the building's foyer (made of marble and timber), with Bowen's prohibition.

ISSUE: How should damages be assessed – cost of cure?

Tenant argued (trial judge agreed): damages should be the difference in value between new foyer and old foyer - \$34,820 (diminution in value)

Landlord argued (FFC agreed): damages should be the cost of restoring the original condition - \$1.38M (cost of cure)

HELD: Cost of cure damages available.

- Putting the plaintiff in the same position as if the contract has been performed does not mean the same *financial* position.
- It is for the plaintiff to judge what its interests are – they may be financial, aesthetic or merely eccentric.
- It will only be in fairly exceptional cases that it will be unreasonable to recover the cost of repair.
- As the tenant was contractually obliged to preserve the premises, damages are the losses sustained by the landlord by that failure. The landlord is entitled to the cost of restoring the premises and it is not unreasonable for them to have damages assessed on that basis.