

REMEDIES OF BREACH OF CONTRACT

Remedies for breach of contract

- A plaintiff who establishes that the defendant has breached the contract is entitled to ask the court for a remedy

Common law remedies	<ul style="list-style-type: none">• damages- money payable by the defendant to the plaintiff to compensate the plaintiff for any loss caused by the breach, most common• termination- plaintiff's right to terminate the defendant's right to perform the contract, only available for a serious breach of contract, can be combined with a claim for damages
Equitable remedies	<ul style="list-style-type: none">• only available in special circumstances and at the court's discretion• order of specific performance- court requires the defendant to carry out the contractual promises that have not been voluntarily performed• injunction- an order made to prevent a threatened or continuing breach of the law, including a breach of contract
Statutory remedies	<ul style="list-style-type: none">• eg. sale of goods legislation of the states and territories, which sets out the remedies available in the event of a breach of the terms implied by that legislation into a contract for the sale of goods• Australian Consumer law
Agreed remedies	<ul style="list-style-type: none">• parties have, within the contract, made their own provisions regarding remedies for breach• such terms are enforced by courts in the same way as other agreed terms in a contract• many forms (eg. invention of new remedies not provided for by law, modification of existing remedies)

Choosing a remedy

- party suing is entitled to **specify what particular relief they want**, which can be a combination of remedies (eg. terminating performance and also claiming damages)
- sometimes a plaintiff asks for **alternative remedies** (eg. specific performance, or if the judge is not willing to grant this, then argue in the alternative for damages)
- nature of the performance owed may affect the remedies available
- in some contracts, **performance is a 'one-off' event** (eg. delivering a particular thing that has been bought and sold)
- in other contracts, performance is agreed to take place on a number of occasions over a period of time (eg. when services of a particular type are to be performed each month for a year)- **'on-going agreements'**

Damages for breach of contract

- consist of an **award of money to be paid by the defendant to the plaintiff**
- 'ordinary' remedy for breach of contract- available for **any breach** of contract that causes recognisable loss
- can be claimed for losses flowing from a breach of warranty, breach of condition or breach of an innominate term
- can be claimed for a breach in the form of non-performance, partial performance, substantial performance, defective performance, late performance or following termination of performance on grounds of anticipatory breach
- to successfully claim damages, the **non-defaulting party must be able to prove both** that:
 - a breach of contract took place
 - losses in question were **caused** by that breach
- damages are not awarded simply to punish a breach that caused no loss, they compensate for a loss suffered by the plaintiff because of the defendant's breach