

Remedies

Contracts - Legal Remedies

Expectation Damages

put P the same position but for breach / 1) cause, 2) foreseeable, 3) certain, 4) unavoidable

Reliance Damages

put P position if K never existed / 1) act in reliance, 2) foreseeable

Consequential Damages

indirectly damages / 1) foreseeable, 2) arise from circumstances known/should be know to D, 3) certain

Incidental Damages

reasonable cost incurred (i.e. returning cost, etc.)

Restitution Damages (Unjust Enrichment)

P confers a benefit to D (unjust enriched) ⇒ value of the benefit conferred

NG: Both Expectation Damage & Restitution Damage

Contract - Equitable Remedies

Reformation

change K: 1) valid K, 2) misrepresentation, mutual mistake

Rescission

cancel K: problem with the formation of K (misrepresentation, fraud, etc.)

Specific Performance

1) valid K, 2) P has performed or ready to perform, 3) legal remedies are inadequate, 4) enforcement is feasible, 5) no defense

Tort - Legal Remedies

Compensatory Damages

put P the same position but for injury: 1) cause, 2) foreseeable, 3) certain, 4) unavoidable

Nominal Damages

not suffered an actual damage

Punitive Damages

1) awarded damages, 2) proportional, 3) willful, malicious, egregious

Restitution Damages

P confers a benefit to D (unjust enriched) ⇒ value of the benefit conferred

Equitable Remedies (Contracts & Torts)

Temporary Restriction Order

maintain the status quo (Fed. 14days) / ex parte: 1) immediate & irreparable harm, 2) effort to notice/reason why should not notice, 3) give security / on notice: same as Preliminary Injunction

Preliminary Injunction

1) likelihood of success on the merit, 2) irreparable harm, 3) balancing of the hardship

(Permanent) Injunction

1) legal remedies are inadequate, 2) protectable interest, 3) enforcement is feasible, 4) balancing of hardship, 5) no defense

Equitable Lien

1) wrongfully acquired title, 2) unjustly enriched ⇒ force the sale, P receive proceed

Constructive Trust

1) wrongfully acquired title, 2) unjustly enriched ⇒ force to hold property as trustee and return

Ejectment / Replevin

Ejectment: real property / Replevin: personal property

1) wrongfully withholding, 2) P has a right to possess ⇒ force recovery

Defenses

Laches (Equitable Defense)

1) unreasonable delay, 2) D is prejudiced by the delay

Unclean Hands (Equitable Defense)

P is unethical, unlawful, improper conduct

Mitigation of Damages

fail to take reasonable step to mitigate the loss \Rightarrow reduce avoidable damages