

## 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 known 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)  $\Rightarrow$  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)  $\Rightarrow$  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  $\Rightarrow$  force the sale, P receive proceeds

#### **Constructive Trust**

1) wrongfully acquired title, 2) unjustly enriched  $\Rightarrow$  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  $\Rightarrow$  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 ⇒ reduce avoidable damages