

## Introduction

- A remedy is a 'solution' in a civil case.
- There are two types of remedy that need to be considered:
  - **Common law** remedy of **damages**
  - **Equitable remedies**

## Common law remedy of damages

- **Damages** – *An award of money that aims to compensate the innocent party for the financial losses they have suffered as a result of the breach.*
- Purpose of damages – to put the victim, so far as it is possible and so far as the law allows, in the same position he would have been in had the contract not been broken but had been performed in the manner and at the time intended by the parties.
- The common law remedy of damages is available '**as of right**' if it is established that a contract is breached.
- Broken down into **pecuniary** loss and **non-pecuniary loss**.

## Equitable Remedies

- **Discretionary** i.e., awarded at the **choice** (discretion) of the court
- Equity – 'fair'. Equitable – 'fairness'
- Where common law remedies are inadequate to compensate the claimant, there are, instead, equitable remedies.
- Provided at the discretion of the court and take into account the behaviour of both parties and the overall justice of the case.
- There are **four main** equitable remedies:

## Injunction

An injunction normally compels the defendant not to do a particular thing (called a **prohibitory injunction**) e.g., *Warner Bros Pictures Inc. v Nelson (1937)*. However, where the action has already taken place, the court may instead order a **mandatory injunction** compelling the party to do something. This would normally be an order that the defendant take action to restore the situation to that which existed before the defendant's breach.

## Specific performance

An order of Specific Performance is an order compelling one side of the contract to perform their obligations under a contract. This is a rarely awarded remedy and is only awarded where damages would be inadequate (*Beswick v Beswick (1968)*); the contract has been made fairly (*Walters v Morgan (1861)*); and the award of specific performance would not cause great hardship or unfairness for the defendant (*Patel v Ali (1984)*). This supports the equitable nature of specific performance as a remedy.

## Rescission

This remedy places parties back in their pre-contractual position. If this is not possible, rescission is not granted. It is mainly granted as a remedy in misrepresentation cases. This is known as *restitutio in integrum* e.g., *Clarke v Dickson (1858)*.

## Rectification

This is an equitable remedy under which a written document can be altered to correct a mistake. It will be granted when a written agreement contradicts the actual agreement made by the parties e.g., *Craddock Bros Ltd v Hunt (1923)*.

### Pecuniary loss

- These are the financial losses that result from a breach of contract.

### Non-pecuniary loss

- Other losses, such as mental distress, disappointment, hurt feelings or humiliation.
- Available for contracts which are specifically for pleasure, relaxation and peace of mind e.g., *Jarvis v Swans Tours Ltd (1973)* and *Farley v Skinner (2001)*.

### Limitations:

- Causation - *Quinn v Burch Bros (Builders) Ltd (1966)*
- Remoteness - *Transfield Shipping v Mercator Shipping [The Achilles] (2008)*
- Duty to mitigate (limit/reduce) loss - *Pilkington v Wood (1953)*

### Calculating loss:

- Loss of expectation - *Golden Victory case (2007)*
- Reliance loss - *Anglia Television Ltd v Reed (1972)*