

# Overview of Damages for Breach of Contract

## The fundamentals

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## Substitutional versus actual relief

- Compelled performance (specific performance) is the exception
- The problems that substitutional relief brings with it



## The mitigation principle as a general limit

- Shirley Maclaine's case
- The UCC's implementation as examples
  - Only “consequential damages” “that could not have been avoided by cover or otherwise” may be recoverable
  - Damages calculated based on “cover” depend on “cover” being “commercially reasonable”



## “General” and “Special” Damages

- Problems with nomenclature
- Examples
  - Hypothetical versus real
  - “Obvious” versus non-obvious
- You need to know:
  - You always have to plead special damages
  - If other counsel uses either term, ask for a definition

## Understanding the “benefit of the bargain”

- Difference in the value of the promises being exchanged, as of some date or other standard
- The valuation problem in finding what the performance was “worth” is the litigated issue in many damages cases.
- Real estate example
- The UCC



## Consequential Damages and Foreseeability

- General Rules
- The UCC:
  - “Consequential damages ....
- “Incidental Damages”



## Agreed Remedies

- Liquidated Damages and Penalties
  - Why this matters to litigators. To transactional lawyers
  - Liquidated damages OK; penalties not OK
    - E.g., cell phone early termination fee cases
- Other agreed remedies
  - Agreed “specific performance”?
  - Agreed dispute resolution process



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