Reliance and Restitution

Reliance Damages

- Seek to put the aggrieved party in the position he or she would have been in had the contract never existed.

  Applies:

  - where expectation cannot be measured with reasonable certainty
  - promissory estoppel cases

Reliance and Restitution (cont.)

Restitution:

- Seeks to give back to a party whatever benefit it conferred under a contract that was breached. Often, this is part of reliance damages.

  Most relevant in the following cases:

  - Contracts implied by law (quasi contract cases)
  - Contracts where the performance of a service was never completed because of a breach by the customer (e.g. attorney fees when the attorney is fired in the middle of a case)
  - To prevent unjust enrichment; can even apply when the breaching party is suing (e.g., an employee quits in the middle of a contract)

Specific Performance

Definition: the aggrieved party is seeking to have the court force the other party to undertake an action or to desist from undertaking an action based on a contract

- Most applicable to contracts that protect intellectual property; where a court will order the other party not to breach a confidentiality agreement.
- Generally not applicable to services contracts (13th Amendment issues). However, it can be used to stop someone under a contract from working for a competitor ("negative specific performance").

Specific Performance, cont'd

- **For sales contracts:**
  - Generally not applicable for sales of goods cases, as monetary damages is the preferred remedy.
  - Applicable in cases where the buyer is trying to enforce a contract for the sale of "unique" goods, because money will not adequately meet the expectation of the buyer.
  - Always applicable in real estate sales cases, because every piece of real estate is inherently considered "unique".

Liquidated Damages Clauses

- This clause sets the amount of the damages at the time that the contract is executed, in the event of a breach.
  (e.g., $100 for every day after April 1 that you stay in the house)

- To be valid, a liquidated damages clause cannot be a "penalty." (Penalty clauses are invalid!)
  Two elements to test whether the clause is valid or a penalty:

Liquidated Damages Clauses

1) Are the damages for this type of case hard to measure?

(Must be yes - if they are not, then there's no reason to resort to the liquidated damages clause.)

2) Is the sum listed in the clause a reasonable approximation of what the actual damages will turn out to be?

Reasonableness is measured based on the time that the contract is signed.

(Again, must be yes, otherwise the clause is an invalid penalty clause.)

Quiz Time!

