Contract Damages Outline

If Contracts is tested, Remedies is naturally a part of the answer. Here is a brief outline of how to tackle remedies.

When you see a breach, you want to locate and identify the following four numbers. These will help you frame your issues and analysis (this works for MBE too!) If you don't anchor your answer to these, your analysis will feel scattered.

1. Contract price
2. Profit
3. Mitigation amount
4. Amount expended

In general, you will hit these four issues in order every time. 1) Compensatory damages, 2) Expectation damages, 3) Reliance damages, and 4) Consequential damages. These are the four pillars to Contract damages and are almost certain to be issues worth addressing if even briefly.

LEGAL REMEDIES

COMPENSATORY DAMAGES – this is your starting point for Tort remedies as well. The Plaintiff must show they are first entitled to relief using these 4 common law elements. Do not miss these easy threshold points!

Legal damages must be 1) foreseeable, 2) caused by D, 3) certain and not speculative, 4) and unavoidable.

EXPECTATION DAMAGES

Expectation damages are designed to put the non-breaching party in the position they would have been in had the contract been fulfilled.

CONSEQUENTIAL DAMAGES – triggered in the essay by lost profits or some statement by the non-breaching party about how they intend to use the contract to further their business.

Consequential damages are lost profits that are reasonably foreseen at the time the contracted was entered into.

RELIANCE DAMAGES

Reliance damages are awarded for losses suffered in reliance on the promise.

INCIDENTAL DAMAGES

Incidental damages are expenses reasonably incurred for cost of shipping, storage, inspection of goods, etc.

MITIGATION – (DO NOT MISS THIS) this must be addressed at the end of EVERY Contract Remedies discussion.

Non-breaching party has a duty to minimize damages with reasonable effort.

EQUITABLE REMEDIES

Equitable remedies exist for when legal (money) damages would be inadequate and can be tested in conjunction with legal damages.

1) Specific performance - for land sale and sale of goods.

2) Replevin - return of personal property.

3) Restitution - contract must be unenforceable but one party still received a benefit. The party who performed and extended benefit might be entitled to restitution to avoid unjust enrichment.

4) Injunction - more of a Torts remedy but can be worth discussing IF you have time.

5) Constructive Trust - prevents unjust enrichment and conveys property back to rightful owner

6) Equitable Lien - similar to Constructive Trust, allows creditor (plaintiff) to place a lien when Defendant wrongfully has title over the property

7) Rescission – Rescission restores the parties to their pre-contract positions by voiding the contract.

* If this feels straightforward reading it, but harder when you actually write it out, that's normal. If you want, send me a Contracts/Remedies essay and I'll markup exactly how and where to apply this framework. *