

Cambridge University Press

978-0-521-60605-9 - Remedies in Contract and Tort, Second Edition

Donald Harris, David Campbell and Roger Halson

Index

[More information](#)

Index

Accident

personal injury by
compensation for, 427-453

Account of profits

passing off, and, 570-572

Aggravated damages, 580-585

calculation, 582-583
definition, 580-581
distinction from exemplary
damages, 582
intangible loss, and, 582-583
intention, 581
lack of consistent principles, 583
Law Commission proposals, 584
punitive aspect, 584-585

Alternative dispute resolution, 38-40

cost, 39
delay, and, 39

Australia

injurious falsehood, 572-574
misrepresentation, 572-574
passing off, 572-574

Breach in order to minimise loss, 13-21

allocation of risks of non-
performance, and, 14-15
co-operation in normal case of
breach, 20
cost of complete performance, and,
13-14
damages as 'adequate' remedy, 16
flexibility, and, 17

Breach in order to minimise loss—

contd

good faith, and, 18
impossibility, and, 19
policy, and, 21
protection of expectation interest,
and, 17
reciprocal allocation of risks, and,
15
voluntary and involuntary breach,
18

Breach of contract

different types of claim arising
from, 122-123

Causation in contract, 84-86, 269-309, 317-318

Causation in tort

abnormal occurrences, 306-307
conspiracy, 566
financial interests, and, 551
intimidation, and, 567
loss of a chance, 302-303
medical or scientific evidence, 298-
300
multiple tortfeasors, 300
omissions, 301-302
protecting financial interests, and,
551
providing opportunity for harm,
304-305
successive causes of disability, 300-
301
ulterior harm, 305-306

Cambridge University Press

978-0-521-60605-9 - Remedies in Contract and Tort, Second Edition

Donald Harris, David Campbell and Roger Halson

Index

[More information](#)622 *Index***Causation in tort—contd**

voluntary intervention by third party, 303-304

Chattels, protecting the right to use, 530-550

destruction, 535-541

cost of replacement, 538

ex ante position, 537

loss of non-profit-earning chattel, 540-541

loss of profit-earning chattel, 536-540

market value, 535-536

insurance, and, 530

misappropriation, 541-547

damages for, 542-543

improvements, 544-545

limited interest in chattel, and, 546-547

redelivery in mitigation of claim, 545-546

specific return of chattel, 542

time for assessing value, 543-544

nature of remedy, 530

physical damage, 531-535

cost of hiring substitute, 533

cost of repairs or diminution in value, 531-532

expenses, 532-533

loss of profits, 533-534

loss of use of non-profit-earning chattel, 534-535

unauthorized use, 547-550

damages for loss of use, 547-548

loss of profits, 549-550

opportunity cost, 548-549

Compensation for personal injury by accident, 427-453

amounts of damages actually

awarded, 436-437

criminal injuries, 417-419

deficiency, 437

delays in obtaining, 429-430

legal advice, 428

non-pecuniary loss, 438-442. *See**also* Non-pecuniary loss

settlement process, 430-434

advice of lawyers, 433-434

insurance companies, and, 432-433

negotiations, 430-431

structural imbalance, 431-432

settlement range, 434-436

Compensation for personal injury by accident—contd

unmet legal need, 427-428

Complaints, 44-45

threats to reputation, and, 44-45

Concurrent liability in contract and tort, 575-578

advantage of tort rules, 576

contributory negligence, 578

duty to take reasonable care, 577-578

exclusion clauses, and, 577

Henderson v Merrett, 575-576

limitation, 576

relationship between contract and

extent of tortious duty, 576-578

terms of contract, 576-577

voluntary assumption of responsibility, 575-576

Conspiracy, 565-567

assessment of damages, 566-567

causation, 566

definition, 565

Consumer protection, 65-70

administrative action, 69-70

advice, 67

class action, 66

consumer credit transactions, 68

criminal responsibility, 68-69

Office of Fair Trading, 69-70

private law remedies, 66-67

private law rights given by statute, 67

public law, intervention by, 68-69

standard form contracts, 65

Consumer surplus, 171-175idiosyncratic loss. *See* Specific performancespecific performance, and. *See* Specific performance**Contract, law of**

economic exchange, and, 5-6

function of, 5-7

reliance interest, and, 6

Contributory negligence

Act of 1945, 308-309

concurrent liability in contract and tort, and, 578

damages in contract, and, 86-87

torts, 296-309

Criminal Injuries Compensation**Scheme, 417-419**

anomalies, 423-424

Cambridge University Press

978-0-521-60605-9 - Remedies in Contract and Tort, Second Edition

Donald Harris, David Campbell and Roger Halson

Index

[More information](#)

Index 623

Criminal Injuries Compensation**Scheme—contd**

assessment of awards, 417-419
defects, 418-419

Damages in contract

breach. *See* breach in order to minimise loss
causation, 84-86
choice of ground for claim, and, 83
compensation for loss, 74-75
concurrent liability. *See* Concurrent liability in contract and tort
contributory negligence, and, 86-87
cost to complete. *See* Damages assessed as cost to complete by third party
debt, compared with, 158-165
efficient breach, 11-21
evaluation in terms of market, 82
exemplary damages. *See* Exemplary damages – contract
expectation losses. *See* Expectation losses
expenditure. *See* Performance expenditure (contract) and reliance expenditure (contract)
expenditure rendered futile or incurred by breach, for, 121-123
inadequacy. *See* Specific performance
loss, concept of, 74-75
loss of profits, claims for wasted expenditure, and, 130-132
misrepresentation. *See* misrepresentation
performance. *See* Remedies for failure to perform contractual obligations
pre-estimated. *See also* Pre-estimated damages
protected contractual interests, and, 73-87
purpose of awarding, 74-75
reliance losses, 82-83, 121-132. *See* Reliance expenditure (contract)
restitution of benefits, 83
restrictions on recovery, 84-87
substitute performance, 210-219

Damages in tort

aggravated. *See* Aggravated damages

Damages in tort—contd

chattels, protecting right to use. *See* Chattels, protecting right to use
compensation for personal injury by accident, 427-453.
See also Compensation for personal injury by accident
conspiracy, 565-567
deceit, and, 556-557
exemplary. *See* Exemplary damages
intimidation, and, 568
negligent misrepresentation, and.
See Negligent misrepresentation
passing off, and, 570-572
personal injury. *See also* Personal injury damages
wrongful interference with contractual relations, 564-565

Damages assessed as cost to complete by third party, 210-211

evaluation of surplus, and, 214
limitations on availability, 211-214
measure of, 211-214
mitigation rules, 212-213
social waste, and, 214
'windfall', 215-216

Death

damages upon. *See* Fatal accident claims

limitation, and, 618

Debt, claims in, 158-165, 218

claim for damages, and, 165
co-operation, compelling, 162-163
hire, contracts of, 159
legitimate interest, and, 163-164
mitigation, 160-165
policy underlying, 165
nature of, 158
power to terminate, and, 161
price of goods, 159-160
social waste, and, 162
sum due, whether, 158-159

Deceit, 554-557

damages, and, 556-557
essence of, 554
rescission, and, 555-556
unconscionability, and, 555
underlying rationale, 554-555

Declarations, 217-218**Deposits**

forfeiture of, 147-150

Cambridge University Press

978-0-521-60605-9 - Remedies in Contract and Tort, Second Edition

Donald Harris, David Campbell and Roger Halson

Index

[More information](#)624 *Index***Deposits—contd**

penalties, and, 58-61

Deterrence. See Objectives of law of torts**Disablement benefit**

damages, and, 416

Economic torts, 563-574**Efficient breach, 11-21, 263-267, 279-280****Ejectment. See Land, protecting right to occupy or use****Employment contract**

outrageous breach, 601-603

Entire contracts rule, 46-48. See also Withholding performance**Environmental protection**

private nuisance, and, 485-486

Equitable remedies

limitation, and, 619

Exemplary damages, 23-24, 579-608aggravated damages. *See* Aggravated damages

concurrent liability and bad faith breach, 604-608

performance interest, and, 604

quantum, 606

US bad faith damages, 605-606

contract, 594-603

commercial disputes, 600

damage to reputation, 602

disappointment, 595-601

distress, 595-601

loss of enjoyment, 595-601

outrageous breach of

employment contract, 601-603

non-pecuniary loss, 595-596

package holidays, 598

psychiatric injury, 596

'wrongful' breach, 603

functions, 607-608

meaning, 579-580

restitution as, 606-608

tort, 580-594

categories test, 585-588

cause of action test, 588-590

common law categories, 585-587

evaluation of conduct, 590-591

profit-calculation basis, 587

reform, proposals for, 593-594

social policy, and, 591-592

Exemplary damages—contdtort—*contd*

suggested guidelines for assessment, 592-593

Expectation losses (contract), 75-82

damages, and, 75-82

damages in respect of third party's interest, 79-81

recent case law, 79-81

minimum legal obligation rule, 75-76

net loss approach, 76-77

no loss, where, 81-82

profit made after breach, and, 78-79

speculative loss, and, 81-82

taxation, 77-78

Fatal accident claims, 391-404

assessment of pecuniary loss:

multiplicand, 399-400

assessment of pecuniary loss:

multiplier, 400-402

Fatal Accidents Act 1976, claims under, 393-399

bereavement claim, 393-395

dependency claim, 395-398

dependants, category of, 398-399

future expenses, 396

no deduction, 403-404

reasonable expectation test, 397-398

services of homemaker or primary care provider, 397

remarriage of dependant, 420-403

survival claim, 392-393

Financial interests, protecting, 551-574

causation, and, 551

Force majeure clause

rescission, and, 244

Forebearance (contract), 27-38

contribution of law to business, and, 37-38

frameworks of contractual behaviour, and, 36-37

influence of formal remedies, and, 34-36

nature of, 33-38

non-use of contract remedies, 27-31

consumer complaints, and, 29-30

meaning, 28

Cambridge University Press

978-0-521-60605-9 - Remedies in Contract and Tort, Second Edition

Donald Harris, David Campbell and Roger Halson

Index

[More information](#)

Index 625

Forebearance (contract)—contd

- non-use of contract remedies—
contd
- reform of civil justice system,
and, 29
- restricted access to civil justice
system, and, 28-29
- superior legal resources of party,
and, 30-31
- pacta sunt servanda*, 27-28
- relational contract, 31-33
- ‘asset specific’ investment, and,
33
- commerce, and, 31-32
- Macneil on, 32-33

Fraud

- limitation, and, 618-619
- misrepresentation, and. *See* Deceit

Frustration

- Law Reform (Frustrated Contracts)
Act 1943, 246-254
- just sum, 250-252
- reform, proposals for, 252-254
- reliance interest, and, 248
- valuation of benefit, 249
- rescission for, 241-254
- restitution, and, 22-23

Good faith

- self-help, and, 64

Guarantees

- literal enforcement, and, 220

Impossibility

- frustration. *See* Frustration
- specific performance, and, 181-182

Incapacity

- personal injury damages, and, 410-412

Incapacity benefit

- damages, and, 415-416

Income support

- damages, and, 416

Injunctions, 198-209

- distinguishing between negative and
positive undertakings, 200-208
- indirect specific performance, 204-208
- breach of exclusive agencies,
207-208
- pressure to fulfil positive
obligation, and, 206-207
- restraint of trade doctrine, and,
207

Injunctions—contd

- interim. *See* Interim injunction
- long-term supply contractor, 200-204
- damages inadequate remedy, 202
- economic advantages, 201-202
- specific performance, and, 203-204
- mandatory, 208-209
- negative covenants, 198-199
- passing off, and, 569
- private nuisance, and. *See* Private nuisance
- prohibitory, 199
- protecting right to occupy or use
land. *See* Land, protecting
right to occupy or use land

Injurious falsehood, 568-572. *See also***Passing off**

- Australian remedy, 572-574
- meaning, 568-569

Insolvency

- specific performance, and, 185-186

Interest

- personal injury damages, and, 389-390
- remoteness, and, 107-108

Interim injunction, 609-613

- Cyanamid* decision, 609-612
- mandatory, 612
- nature of, 609
- public interest, and, 611
- without notice, 613

Interim protection, 609-613**Interference with enjoyment of****land. *See* Private nuisance****Intimidation, 567-568**

- assessment of damages, 568
- causation, 567
- definition, 567
- remoteness of damage, 567-568

Land

- damages to (tort). *See* Land,
damages to (tort)
- nuisance. *See* Private nuisance
- occupation or use. *See* Land,
protecting right to occupy
or use
- sale and purchase of. *See* Specific
performance

Land, damage to (tort), 523-527

- consequential loss, 527
- damages for loss, 524-526

Cambridge University Press

978-0-521-60605-9 - Remedies in Contract and Tort, Second Edition

Donald Harris, David Campbell and Roger Halson

Index

[More information](#)626 *Index***Land, damage to (tort)—contd**

- physical, 523-526
- reasonable cost of repair, 525-526
- time for assessing reinstatement damages, 526

Land protecting right to occupy or use, 520-529

- damage to land, 523-527. *See also*
 - Land, damage to
- damages under special jurisdiction, 522-523
- injunctions, 520-523
 - Access to Neighbouring Land Act 1992, 521
 - flexibility, 521-522
 - squatting, 522
 - trespassers causing no injury, 522
- wrongful occupation or use of land. *See* Land, wrongful occupation or use of

Land, wrongful occupation or use of, 527-529

- deprivation of profit, 528-529
- wayleave, 527-528

Latent damage

- limitation, and, 617-618

Legal aid

- personal injury damages, and, 450-451

Liens, 48-49**Limitation, 615-619**

- concealment, and, 618-619
- death, and, 618
- equitable remedies, 619
- fraud, and, 618-619
- latent damage, 617-618
- mistake, and, 618-619
- personal injuries, 616-617
- pleading defence, 615-616

Liquidated damages, 133-150

See Pre-estimated damages

Literal enforcement, 153-157

- appraisal, 217-227
- appraisal of legal remedies, 221-226
- clauses invoking, 221
- consequences of wider availability, 226-227
- contractual provision for, 219-221
- damages inadequate, where, 154-157
- debt, 218
- declarations, 217-218
- denial, effect of, 156

Literal enforcement—contd

- deprivation of gain resulting from breach, 219
- forfeiture of deposit or other advance payments, 220
- guarantees, 220
- issues common to forms of, 221-222
- liquidated damages, 220
- mitigation of loss, and, 155-156
- reasons for seeking and granting, 154-157
- remedies, 153
- restitutionary argument, 157
- social waste, concept of, 222-226
 - cost of performance, and, 224
 - mitigation, and, 222-223
 - potential loss, and, 225-226
- specific relief, 218
- specific performance. *See* Specific performance
- substitute performance damages, 218-219
- unliquidated damages, 218
- withholding performance by termination, 220
- withholding performance by use of conditional or entire obligations, 220

Litigation

- settlement compared, 40-41

Liquidated damages. See Pre-estimated damages**Loss of earnings (personal injury), 342-363**

- adjustment for higher tax on income from invested damages, 359-360
- annual loss: multiplier, 349
- assessing net loss, 350-351
- compulsory deductions from earnings, and, 343-345
- contingencies other than death, 358
- disadvantage in labour market, 352
- discounting: multiplier system, 354-358
- expected period of incapacity, 346-347
- future, 346
- income tax, and, 343-345
- inflation, and, 360-361
- 'lost years', 347-349
- lump sum or periodic payments, 361-363

Cambridge University Press

978-0-521-60605-9 - Remedies in Contract and Tort, Second Edition

Donald Harris, David Campbell and Roger Halson

Index

[More information](#)

Index 627

Loss of earnings (personal injury)—
contd

Ogden Tables, example of use of, 358-359
 trial, up to, 342-343
 unused earning capacity, 352-354
 young victims, 351-352

Misrepresentation, 553-563

Australian remedy, 372-374
 deceit. *See* Deceit
 fraudulent. *See* Deceit
 negligent. *See* Negligent misrepresentation
 non-fraudulent, 562-563
 non-fraudulent pre-contractual statements, 557-558
 origins of law, 553-554
 pre-contractual bargaining, and, 557-558
 rescission, and, 558-560
 specific performance, and, 179-180

Mistake

equitable alternative to dealing with, 245
 limitation, and, 618-619
 rescission for, 241-254
 restitution, and, 22-23
 specific performance, and, 179-180

Mitigation in contract, 109-120

alternative uses of resources released by breach, 115-120
 avoidable loss, 110-111
 competitive supply, importance of, 114-115
 incentives not to perform, 109
 legal rules, 110-114
 literal enforcement, and, 155-156
 loss actually avoided, 112-114, 115-120
 actual earnings, 118
 avoidance of social waste, and, 119-120
 commonsense approach, 113
 future breach, and, 113-114
 hypothetical earnings, 117-118
 redeployment of released resources into dissimilar activity, 118-119
 net benefit, and, 117
 reasonably avoidable loss, 115-116
 market price rule, 114-115

Mitigation in contract—contd

protection of steps taken in, 111-112
 restitution, and, 273-274
 scope of rules, 120
 social waste, 222-223
 time for, 111

Mitigation (torts), 296-309

personal injuries, 307-308

National Health Service

damages, and, 452

Negligent misrepresentation, 561-562

computation of damages, 562-563
 special relationship, 561-562

Negligent statements

financial or economic loss caused by, 323-324

Non-pecuniary loss (personal injury), 438-442

arbitrariness of awards for, 438
 function of tort system, and, 439
 philosophical bases of tort system, and, 440
 proposed increase in compensation, 441-442

Nuisance. See Private nuisance**Objectives of law of torts, 289-295**

compensation, 294-295
 defining and protecting rights and freedoms, 289-290
 inquests into accidents, 294
 regulating behaviour: deterrence, 290-294
 appraisal of deterrence in personal injury accident cases, 292-293
 external cost, 291
 general deterrence, 293-294
 market deterrence, 293-294

Office of Fair Trading, 69-70**Passing off, 568-572. See also Injurious falsehood**

account of profits, 570-572
 Australian remedy, 572-574
 damages, 570-572
 injunction, 569
 meaning, 568-569

Penalties, 134-136. See also Pre-estimated damages

deposit, and, 58-61

Cambridge University Press

978-0-521-60605-9 - Remedies in Contract and Tort, Second Edition

Donald Harris, David Campbell and Roger Halson

Index

[More information](#)628 *Index*

Performance. See Remedies for failure to perform contractual obligation; Termination for failure to perform

Performance by a substitute, 210-216

Performance expenditure (contract), 123-127

different stages of performance, 125-127

expenses incurred in preparing to perform, 123-127

price, and, 123-124

Personal injury

accident, by

compensation for, 427-453

limitation, 616-617

Personal injury damages, 338-390

abandoning goal of compensation, 453-461

abolition of tort, and, 457

Atiyah, views of, 454-461

Beveridge Report, and, 459-460

personal injury advice, and, 453

public finances, and, 457-458

uniform prevention of want

caused by incapacity, and, 461

welfare provision, and, 456-457

analysis of system, 405-410

calculation, 369

collateral benefits: deductions from

damages, 382-389

appraisal, 387-389

charitable payments, 383

disablement pensions, 385

retirement pensions, 386

sick pay or wages, 384-385

social security benefits,

386-387

compensation. *See also*

Compensation for personal

injury by accident

compensation outside system, 412-427

Australia, 412-413

sick pay, 413-417

social security benefits, 413-417

evaluation, 420-424

costs of system, 445-448

moral hazard, and, 447

ratio, 445-446

self-interest of legal profession, and, 446

Personal injury damages—*contd*

Criminal Injuries Compensation

Scheme. *See* Criminal Injuries

Compensation Scheme

criticism of system, 407-410

domestic element in cost of care, 365

evaluation of system, 449-453

expenses, 369-371

expenses arising from disability, 363-373

formal law, 338-390

home nursing, cost of, 366-368

hospital expenses, 363-365

incapacity, and, 410-412

effectiveness of system, 410-412

interest, 389-390

investment of, 443-444

itemisation of awards, 339

Judicial Studies Board Guidelines,

380-382

legal aid, and, 450-451

loss of amenity, 378

loss of earnings, 342-363. *See also*

Loss of earnings (personal injury)

medical expenses, 363-365

NHS, and, 452

non-pecuniary loss, 371-382, 438-

442. *See also* Non-pecuniary

loss (personal injury)

'diminution in value' approach,

373-374

tapered increase in level of

damages, 375-376

underlying basis of law of tort,

and, 374-375

pain and suffering, 377-378

periodic payments, 341

private insurance, and, 424-427

first-party, 425-426

permanent health, 426

third-party, 424-425

provisional damages, 341

quantum, 368-369

reform, 453-467

research studies, 405-406

'right to compensation', 449-450

social services, and, 419-420

split trial, 340-341

structured settlement, 341-342

structured settlements, 444-445

system in practice, 405-461

Cambridge University Press

978-0-521-60605-9 - Remedies in Contract and Tort, Second Edition

Donald Harris, David Campbell and Roger Halson

Index

[More information](#)

Index 629

Personal injury damages—contd

timing of trial or settlement, 340
 unconscious claimant, 378-380
 use of, 442-445
 voluntary, informal care, and, 420

Pre-estimated damages, 133-150, 220

advance payments, forfeiture of, 149
 advantages, 139-142
 assurance of reliability, 141
 avoiding risk of under-
 compensation, 140-141
 clauses fixing amount, 133-137
 flexibility, 142
 forfeiture of deposits, 147-150
 genuine pre-estimate test, 136
 incentives to perform, 138-139
 inequality of bargaining power, and, 138-139
 limitation of liability, 141-142
 'liquidated damages', 134-136
 minimum payment clause, 136
 no express forfeiture clause, where, 150
 penalties, scope of law on, 142-145
 acceleration of payment of
 stipulated price, 144-145
 condition, and, 145
 forfeiture of deposits, 143
 obligations performed in more
 than one way, 144
 'penalty', 134-136
 purpose of law on penalties, 146-147
 reduction in post-breach transaction costs, 140
 Unfair Terms in Consumer Contracts Regulations 1999, 137-138

Private insurance

damages, and, 424-427

Private nuisance, 465-519

comparison of liability rules, 518-519
 compulsory grant of permission to defendant, 517
 critique of externality, 518
 damages for past interference, 518
 common law, 469
 cost of repair, and, 470
 diminution in value, and, 471-472
 injunction, and, 478-487

Private nuisance—contd

damages for past interference—

contd

intangible loss, 471
 measure of, 469-470
 personal injury, and, 471
 damages in lieu of injunction, 488-495
 activities beneficial in
 community, and, 495
 compensation for hypothetical
 release, 494
 difference between mandatory
 and prohibitory injunction,
 492-493
 discretion of court, 489
 effect, 495
 expropriation, 494-495
 hypothetical release, price of,
 490-491
 influence on negotiations, 492
 quantification, 491-494
 damages for past interference, 468-472
 defendant purchasing permission to
 continue future interference,
 516-517
 empirical studies, 519
 government failure, 519
 injunction with compensation to
 defendant, 515-516
 injunctions, 473-478
 anticipated harm, 477
 damages, and, 478-487
 discretion of court, 473
 mandatory, 477-478
 modification, 475
 suspension of, 475-476
 prohibitory, 473-474
 qualified, 474-475
 interference and problem of social
 cost, 496-510
 choice of systems of liability,
 501
 competitive economy, and, 502-503
 cost-benefit calculations, and,
 506
 current role of nuisance, and,
 508-509
damnum absque injuria, 497
 economic growth, and, 498
 environmental problems, and,
 505

Cambridge University Press

978-0-521-60605-9 - Remedies in Contract and Tort, Second Edition

Donald Harris, David Campbell and Roger Halson

Index

[More information](#)630 *Index***Private nuisance—contd**

- interference and problem of social cost—*contd*
 - evaluation of remedies, and, 496
 - externalities, and, 502
 - function of judge, 509
 - government failure, and, 505-508
 - inalienability of private right, 500
 - industrialization, and, 504
 - market failure, and, 507
 - nature of markets, and, 508
 - overall social benefit, and, 499
 - position under current liability rule, 496-499
 - positive transaction costs, and, 503
 - sic utere*, 500-501
 - strict liability, defence of, 500-505
- 'land law' perspective, 466
- law and economic works on, 518-519
- legal criteria for choice between injunction and damages, 478-487
 - conduct of parties, 487
 - cost of injunction, 481
 - delay, 487
 - discretion to confine remedy to damages, 480-481
 - environmental protection, 485-486
 - individual property rights, 479-480
 - negative externality, 485-486
 - pollution by water, 485
 - positive externality, 482-483
 - preference for prohibitory injunction, 479-480
 - public interest, 482-484
 - regulatory control, and, 486
 - social cost, 482-484
 - social welfare, 479-480
 - suspension of injunction, 484-485
- nature of liability for, 465-468
- obstacles to negotiated solutions, 510-513
 - 'free-rider' problem, 511
 - incentives to compromise before trial, 512-513

Private nuisance—contd

- obstacles to negotiated solutions—*contd*
 - inequality of bargaining power, 511
 - injunction as prima facie remedy, 512
 - response of courts, 510-513
 - possible outcomes when remedy sought, 513-518
 - prohibition at expense of claimant, 515
 - prohibition at expense of defendant, 513-515
 - reasonableness, and, 468
 - strict liability, 467-468
 - suspended injunction, 517
- Psychiatric injury, 324-326**
 - breach of contract, and, 596
 - control mechanisms for, 324-326
 - primary victims, 324
 - secondary victims, 324-326

Quantum meruit, 231, 236-240

- calculation, 236-237
- contractual rate of remuneration, and, 240
- divergence from damages, 238

Relational contract, 31-33**Reliance expenditure (contract), 121-132**

- claims for both wasted expenditure and loss of profits, 130-132
- damages for expenditure rendered futile or incurred by breach, 121-123
- expenditure incurred before making contract, 127-128
- expenditure incurred in reliance on contract but not towards performance, 128-129
- expenses incurred as result of breach, 129-130
- performance expenditure. *See* Performance expenditure

Remedies for failure to

- perform contractual obligation, 3-26**
 - assumption of existence of enforceable contract, 4
 - breach in order to maximize gain, 11-13

Cambridge University Press

978-0-521-60605-9 - Remedies in Contract and Tort, Second Edition

Donald Harris, David Campbell and Roger Halson

Index

[More information](#)

Index 631

Remedies for failure to perform contractual obligation—contd

- breach in order to minimize loss, 13-21. *See also* Breach in order to minimize loss
- breach, reasons for, 7-10
 - compensatory damages, and, 9
 - compensation, goal of, 10
- choice, 5
- economic exchange, and, 5-6
- efficient breach, concept of, 11-13
- exceptions to general preference for compensatory damages, 21-24
 - restitution, 22-23
- exemplary damages, 23-24
- law of contract, function of, 5-7
- layperson, expectations of, 4
- literal enforcement, 24
- remedies, meaning, 3
- reliance interest, and, 6
- withholding performance. *See* Withholding performance

Remoteness (contract), 88-108

- anticipatory breach, and, 106-107
- breach-date assessment of damages, and, 104-105
- buyer's loss of profits under contract of sale, 100-101
- comparison with rules on tort, 331-333
- damages for late payment, and, 107-108
- delayed delivery of profit-earning chattel, 98-99
- disappointment, and, 104
- distress, and, 104
- foresight, and, 103
- illustrations of test, 98-104
- interest, and, 107-108
- intimidation, and, 517-568
- loss of enjoyment, and, 104, 595-601
- market price, and, 106-107
- profits lost through defective quality of goods, 101-102
- seller's loss of profits in contracts for sale of goods, 99
- special case: failure to pay money, 104
- time for assessing damages, and, 104-107
- transaction costs, and, 88-89
- types of physical damage, 102-103

Remoteness (torts), 310-333

- allocation of risks, 312-313
 - assuming responsibility for task, 324
 - categories of causation, 317-318
 - categories of harm, 316-317
 - comparison with rules on contract, 331-333
 - defamation, consequences of, 328
 - duty of care with inbuilt limitation on liability, 321-322
 - financial loss caused by negligent acts, 327-328
 - financial or economic loss caused by negligent statements, 323-324
 - incentives, 310-311
 - intimidation, 567-568
 - justification for restricting liability to usual consequences, 310-333
 - lack of financial resources, 326-327
 - legal rules, 313-328
 - psychiatric injury. *See* Psychiatric injury
 - strict liability, 328-330
 - 'thin skull' rule, 319-320
 - torts involving deliberate wrongdoing, 330-331
 - unforeseeable extent of foreseeable type of harm, 318-321
 - unwanted pregnancies, 322-323
 - Wagon Mound*, 314-316
- Rescission, 241-254**
- automatic discharge rule, and, 243
 - damages in lieu, 560-561
 - deceit, and, 555-556
 - effect, 559-560
 - force majeure clause, and, 244
 - frustration, for, 241-254
 - Law Reform (Frustrated Contracts) Act 1943, 246-254
 - meaning, 242-243
 - mistake, for, 241-254
 - third parties, and, 559-560
- Restitution, 22-23, 231-284**
- availability of remedies, 232
 - C conveys valuable benefit which unjustly enriches D, 22
 - common mistake, 22-23
 - correction of wrong, 268-272
 - apportionment, 268-269
 - quantification of damages, 269-270
 - uncertainty, and, 271-272

Cambridge University Press

978-0-521-60605-9 - Remedies in Contract and Tort, Second Edition

Donald Harris, David Campbell and Roger Halson

Index

[More information](#)632 *Index***Restitution—contd**

- diminution measure, 256
- disgorgement of gains from breach, 262-268
 - appropriate situation, 262-263
 - assessment of loss, 265
- 'efficient breach', 263-264
 - unjust enrichment, and, 266-267
- exemplary damages, as, 606-608
- existing forms, 231-254
- expansion, 255-284
- frustration, and, 22-23
- hypothetical release from literal enforcement, 257-262
 - compensatory damages, whether, 258-263
- equitable remedies, and, 25
- general principle of restitution, and, 261-262
- justification, 260
- profit made by D after breach, 23
- proper limits following non-performance of contractual obligation, 282-284
- quantum meruit, 231, 236-240
- recovery of money paid by C to D, 233-235
 - benefit, 234
 - simplicity of claim, 235
- services rendered, 235-241
 - quantum meruit, 236-240
- uncompensated loss, 255-257
- 'wrong' in 'wrongful' breach, whether, 272-282
 - adjustment of price, and, 277
 - choice of remedies, and, 279
 - 'default rules', 275
 - efficiency of rules, 279-280
 - inadequate damages, 273
 - 'justice', and, 278
 - mitigation, and, 273-274
 - perceived injustice, 275-276
 - proposed reform, effect of, 281-282
 - reasonable expectations of parties, 276
 - transaction costs, and, 280

Romalpa clause, 50**Sale of goods**

- damages. *See* Remoteness (contract)
- self-help, and, 49-50

Security

- self-help, and, 49

Self-help (contract), 43-64

- advantages, 43-44
- appraisal of, 62-64
- complaints, 44-45
- costs, 63
- deposit, and, 58-59
- forebearance. *See* Forebearance (contract)
- forfeiture of advance payments, 58-61
- good faith, and, 64
- liens, 48-49
- penalties, and, 59-61
- post-breach negotiations, and, 44
- practical advantage, 62-63
- sale of goods, 49-50
 - lien, 49-50
 - Romalpa* clause, 50
 - stoppage in transit, 49-50
- security, 49
- set-off, 61-62
- termination for failure to perform, 51-57. *See also* Termination for failure to perform
- withholding performance, 45-48, 220. *See also* Withholding performance

Self-help (torts), 334-337

- detention of 'trespassing' chattel, 336-337
- land, protection of occupation of, 334-336
- retaking of chattels, 336

Set-off, 61-62**Settlement (contract), 40-42**

- direct negotiations, 40-41
- extra-legal factors, 41
- litigation compared, 40-41

Sick pay

- personal injury damages, and, 413-417

Social security

- criticism of system, 423
- demand for, 422
- evaluation, 420-424
- fraud, and, 423
- lack of coherence in system, 424
- moral hazard, and, 421

Social security benefits

- personal injury damages, and, 413-417

Social services

- personal injury damages, and, 419-420

Cambridge University Press

978-0-521-60605-9 - Remedies in Contract and Tort, Second Edition

Donald Harris, David Campbell and Roger Halson

Index

[More information](#)

Index 633

Social waste

literal enforcement, and, 222-226
 mitigation, and, 119-120

Specific performance, 166-197

avoiding multiplicity of suits, 192-193
 commercial uniqueness, 171-175
 consumer surplus, 168-171
 legal significance, 169-170
 valuation, 170
 contracts involving personal service, 190-192
 negative promise, 192
 unfair dismissal, and, 191
 contractual clauses affecting, 194-197
 agreed damages clause, 195-197
 party stipulation, 196-197
 enforcement in favour of third-party beneficiary, 176-178
 Contracts (Rights of Third Parties) Act 1999, 178
 equity, and, 177
 equitable factors relevant to
 exercise of court's discretion, 178-187
 arising after date of contracting, 181-187
 arising from situation at or before time of contracting, 179-181
 election to claim damages, 186-187
 hardship, 182-183
 impossibility, 181-182
 insolvency, 185-186
 misrepresentation, 179-180
 mistake, 179-180
 mutuality, 184-185
 prior breach of contract, 183
 time for considering, 179
 unfairness, 180-181
 equity, and, 166-167
 historical background, 166-167
 idiosyncratic loss, 171-175
 causation, 173-174
 limited exemplary damages in contract, 174
 limited use of specific relief, 173
 onus of proof, 173
 penalties, law on, 174
 remoteness, 173-174
 special clauses, 174-175

Specific performance—contd

inadequacy of damages, 167-178
 benefit, and, 168
 exchange-value, 167
 use-value, 167
 indirect, 204-208. *See also*
 Injunctions
 literal enforcement, and. *See* Literal enforcement
 long-term supply contracts, 203-204
 practical factors relevant to
 exercise of court's discretion, 187-193
 sale and purchase of land, 175-176
 severable obligations, of, 194
 substitute, 210-216
 supervision of compliance with order, 187-190
 contempt, and, 189-190
 continued supervision, 188-189
 terms, on, 193-194

Statutory sick pay

personal injury damages, and, 414-415

Strict liability, 328-330

remoteness, and, 328-330

Taxation

damages, and, 77-78

Termination for failure to perform, 51-57

alternatives to, 57
 condition, and, 53
 control by courts, 54-55
 effect, 51-57
 innominate terms, and, 53-54
 self-help, as, 56-57
 terminology, 51
 warranty, and, 53
 whole contract, 56-57

Time limit for claims. See Limitation**Torts**

limits on recovery of damages, 296-297
 objectives of law, 289-295. *See also*
 Objectives of law of torts

Trespass. See Land, protecting right to occupy or use land**Unfair Terms in Consumer****Contracts Regulations 1999**

pre-estimated damages, and, 137-138

Cambridge University Press

978-0-521-60605-9 - Remedies in Contract and Tort, Second Edition

Donald Harris, David Campbell and Roger Halson

Index

[More information](#)634 *Index***Unjust enrichment**restitution, and, 266-267. *See also*
Restitution**Unwanted pregnancies**

remoteness, 322-323

Wasted expenditureclaims for loss of profits, and, 130-
132**Withholding performance, 45-48**

effect, 46-48

Withholding performance—contd'entire contracts' rule, 46-48
'entire obligation' rule, 46-48**Wrongful interference with****contractual relations, 563-565**

assessment of damages, 564-565

injury to feelings or reputation,
564-565

meaning, 563

remedy, 563-564