

Remedies

Types of Remedies	Legal remedies	Are available for a breach of contract as of right, these can be financial compensation or remedies against the goods.		
	Equitable remedies	Are discretionary, you do not have a right to an equitable remedy but the courts may award one if they think legal remedies are not appropriate in the circumstances.		
	Remedies under a specific statute	The ones you need to know about are the Law Reform (Frustrated Contracts) Act 1943 and the Consumer Rights Act 2015		
Compensatory Damages	Meaning	These are available as of a right to anyone who has suffered a breach of contract. Even if there is no loss the courts will award nominal damages. The aim of damages is to put the C in the position they would have been in had the contract been completed. Damages are normally awarded for expectation loss (loss of bargain) reliance loss (wasted expenditure)		
	Types of damages	Nominal Damages	Damages awarded when there is no loss. However, in some cases substantial damages may be awarded when nominal damages may seem more appropriate. This is sometimes called a Wrotham Park award and used when the actual amount of damages would be difficult to work out.	Staniforth v Lyall (1830) Experience Hendrix LLC v PPX Enterprise Inc. (2003) Wrotham Park Estate Co. Ltd v Parkside Homes Ltd (1974) Morris-Garner v OneStep Support Ltd (1974)
		Speculative Damages	The courts have been reluctant to award speculative damages as it is an award for a loss of change of the benefit denied to the C. In Addis , the court refused to award damages for humiliation caused by being dismissed and would only award in relation to lost salary. However, in Chaplain damages for loss of chance were awarded to a C who was denied the opportunity of participating in a beauty contest. In Ruxley damages were awarded for loss of pleasurable amenity.	Addis v The Gramophone Company (1909) Chaplin v Hicks (1911) Ruxley Electronics and Construction Ltd v Forsyth (1996)
	Causation and remoteness of damage	Losses can only be recovered if they were caused by the breach of contract. C must prove the breach caused the loss. The 'but for' test for contract is but for the breach of contract would the C have suffered loss? If the loss would have occurred regardless there is no causation. Remoteness of damage does not establish how much compensation will be payable (damages) but merely which losses can be the subject of compensation (damage) The test for remoteness was set out in Hadley v Baxendale (1854) – it is a 2 part test 1) What loss is a natural consequence of the breach (objective) 2) What specific losses are in the minds of both parties when the contract is formed (subjective) The test has been developed in Victoria Laundry Ltd v Newman Industries Ltd (1949) <ul style="list-style-type: none">Recoverable loss should be measured against a test of reasonable foreseeabilityForeseeability of loss is itself dependant on knowledge at the time the contract is made.Knowledge is of two types: Common knowledge and actual knowledge of the D. Knowledge can be implied on the basis of what the reasonable man may have contemplated in the circumstances (Czarnikov) Once causation and remoteness of damage have been establish the courts can then determine how much the C can recover.		
		Loss of Bargain	To place the C in the position they would have been in if the contract had been properly performed. This can be seen in a number of ways.	
	Categories of Recoverable loss	·	1) The difference between the goods and services required in the contract and those actually provided.	Bence Graphics International Ltd v Fasson UK Ltd (1996)
			2) Where there is a market, damages will be the difference between the contract price and the market price. If C's profit remains there is no loss, if there is no available market the C can recover the full amount.	Charter v Sullivan (1957) WL Thompson Ltd v Robinson Gunmakers Ltd (1955)
			3) Loss of profit – not just goods and also in other contracts	Victoria Laundry Ltd v Newman Industries Ltd (1949)
			Loss of chance – generally a speculative loss and generally not recoverable in contract. However, Chaplain v Hicks in the exception to this rule.	Chaplain v Hicks (1911)
		Expectation Loss	The normal measure for damages and refers to the innocent party's loss of bargain and can include the profits they would have expected to receive had the contract been performed, taking into account any costs incurred in performing the contract. The aim is to put the innocent party in the position they would have been in had the contract been performed.	
	Reliance Loss	This is the expense incurred by C who relied on the contract being performed. Expenses paid before the breach may also be recoverable.	Anglia Television Ltd v Reed (1972) Farley v Skinner (2001)	
Duty to mitigate loss	The injured party must take reasonable steps to minimise their loss. The C is not bound to go to extraordinary lengths to mitigate loss. In anticipatory breach the C is not bound to sue immediately and can wait to see the full effect of the breach.			
Liquidated damages	Where the amount of damages are fixed by a term in the contract. The amount should represent a proper and accurate assessment of loss, if it is not it will be seen as a penalty and not enforceable. An extravagant sum will always be seen as a penalty. The party seeking to rely on a contract that predetermines the amount of damages to be paid must show that the clause is there to protect a legitimate interest and is not exorbitant or unconscionable.			
Quantum Meruit	Recovery of unqualified sum for services already rendered			
Equitable remedies	Will not be available if damages are more appropriate or if they would be impossible to perform or cannot be supervised.	Specific Performance	A court order compelling someone to do something – typically hand over the property that has been agreed in the contract.	
		Injunctions	Where the courts will order a specific behaviour to prevent a breach of contract. You don't need to know about these for AQA!	
		Restitution	A simple payment of any money or other benefits passed to the D	
		Rescission	The parties are returned to the position they would have been in before the contract was made.	
Termination for breach of contract	This can be a repudiatory breach by the guilty party to the contract. At common law breach can result in terminating the contract, if the affect party chooses to do so where <ul style="list-style-type: none">There is a breach of condition or of an innominate term construed as a conditionOne party refuses to perform his or her obligations under a contract at all or the substantial part of its obligations, including anticipatory breachOne party makes it impossible to perform the contract			
Rights against the goods	E.g. those given in the Consumer Rights Act 2015 – the short time right to reject. Many contract include a reservation of title clause, whereby the title (ownership) remains with the seller until the buyer has paid for them all. The Sale of Goods Act 1979 provides three specific rights for an unpaid seller of goods. Lien – a right to retain possession of goods until the debtor has paid In cases of insolvency a right to stop goods in transit and of regaining possession of goods from the carrier A right of resale as limited by the act Consumers have rights and remedies with respect to the goods. These are s.20 – Short term right to reject s.23 – Right to repair or replacement s.24 – the right to a price reduction or the final right to reject			

