

Biz Legal Contract Term EXPLORED: Damages

Introduction/Definition

Damages are the actual harm, physical or not, as a result of a breach of contract or injury (tort).

NOTE: Without damages, there can be NO cause of action. There is nothing to remedy and the Court cannot make you whole.

There are all types of damages: punitive damages (which you cannot receive under contract law), liquidated damages (which we will explore more), compensatory damages (to make you whole as in contract law) and others.

There is only ONE goal of damages in contract law: To make the injured side whole as if the contract had never been broken.

Liquidated damages are found most often in business contracts. These are damages whose amount has been placed in the contract by the parties for the injured party to collect upon breach. Otherwise, the Court would decide what is the proper amount to make the injured party "whole" again.

Points to Consider

1. For courts to honor liquidated damages, two conditions must be met: First, the damages must be reasonable and second, they must be sufficiently uncertain at the time the contract is made. (*unlike credit card damages- These are ascertainable by charges so they cannot be qualified as liquidated damages.*)
2. Example of when liquidated damages would be appropriate: Small business has an agreement to lease storefront from Company Y. If Company Y refuses the lease the storefront, resulting in loss profits from the small business, it's hard to determine what loss profits the small business would have so it's important to put a liquidated damages clause if Company Y fails to perform.

In GA...

- Contractual damages are enforceable liquidated damages if (1) the injury is difficult to estimate, (2) the sum is a reasonable pre-estimate of loss and (3) the parties intended to provide for these damages (vs. a penalty)

My Advice

Parties to a contract can contract for an amount of damages if there is breach by the other party so you would be wise to plan ahead and place damages in the agreement.

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