

CONCEPT SUMMARY**TYPES OF EQUITABLE REMEDIES**

Type of Equitable Remedy	Description
Specific performance	A court orders the breaching party to perform the acts promised in the contract. The subject matter of the contract must be unique.
Reformation	A court rewrites a contract to express the parties' true intentions. This remedy is usually used to correct clerical errors.
Injunction	A court prohibits a party from doing a certain act. Injunctions are available in contract actions only in limited circumstances.

Key Terms and Concepts

Accord and satisfaction (217)	Discharge by agreement (217)	Liquidated damages (220)	Real property (211)
Agents' contract (212)	Dominant party (210)	Liquidated damages clause (220)	Reformation (221)
Assignment of rights (assignment) (215)	Duress (210)	Material breach (219)	Reliance on a misrepresentation (208)
Assignee (215)	Economic injury (208)	Material fact (207)	Rescind (211)
Assignor (215)	Equal dignity rule (212)	Merger clause (integration clause) (213)	Rescission (219)
Breach of contract (218)	Equitable remedies (221)	Minor breach (218)	Sales contract (212)
Compensatory damages (219)	Executed contract (218)	Misrepresentation of a material fact (208)	Scienter ("guilty mind") (208)
Complete integration (213)	Executory contract (211)	Mitigate (220)	Section 2-201(1) of the Uniform Commercial Code (UCC) (212)
Complete performance (strict performance) (218)	<i>Force majeure</i> clause (218)	Monetary damages (dollar damages) (219)	Section 2A-201(1) of the UCC (213)
Condition (217)	Genuineness of assent (207)	Mutual mistake of a material fact (207)	Servient party (210)
Condition precedent (217)	Guarantor (212)	Mutual mistake of value (208)	Specific performance (221)
Condition subsequent (217)	Guaranty contract (212)	Mutual rescission (217)	Statute of Frauds (211)
Conditional promise (qualified promise) (217)	Inferior performance (219)	Novation agreement (novation) (217)	Subsequent assignee (subassignee) (215)
Consequential damages (special damages or foreseeable damages) (220)	Impossibility of performance (objective impossibility) (218)	Obligee (215)	Substantial performance (218)
Covenant (216)	Incidental beneficiary (215)	Obligor (215)	Tender of performance (tender) (218)
	Injunction (221)	One-year rule (212)	UCC Statute of Frauds (213)
	Intended third-party beneficiary (215)	Original contract (primary contract) (212)	Undue influence (210)
	Intent to deceive (208)	Parol evidence (213)	Unilateral mistake (207)
	Intentional misrepresentation (fraudulent misrepresentation or fraud) (208)	Parol evidence rule (213)	
	Lease contract (213)	Part performance (212)	
		Penalty (220)	

Law Case with Answer**California and Hawaiian Sugar Company v. Sun Ship, Inc.**

Facts The California and Hawaiian Sugar Company (C&H), a California corporation, is an agricultural cooperative owned by 14 sugar plantations in Hawaii. It transports raw sugar to its refinery in Crockett,

California. Sugar is a seasonal crop, with about 70 percent of the harvest occurring between April and October. C&H requires reliable seasonal shipping of the raw sugar from Hawaii to California. Sugar stored

on the ground or left unharvested suffers a loss of sucrose and goes to waste.

After C&H was notified by its normal shipper that it would be withdrawing its services at a specified date in the future, C&H commissioned the design of a large hybrid vessel—a tug of a catamaran design consisting of a barge attached to the tug. After substantial negotiation, C&H contracted with Sun Ship, Inc. (Sun Ship), a Pennsylvania corporation, to build the vessel for \$25,405,000. The contract gave Sun Ship nearly two years to build and deliver the ship to C&H. The contract also contained a liquidated damages clause calling for a payment of \$17,000 per day for each day that the vessel was not delivered to C&H after the agreed-upon delivery date. Sun Ship did not complete the vessel until eight and one-half months after the agreed-upon delivery date. Upon delivery, the vessel was commissioned and christened the *Moku Pahu*.

During the season that the boat had not been delivered, C&H was able to find other means of shipping the crop from Hawaii to its California refinery. Evidence established that actual damages suffered by C&H because of the nonavailability of the vessel from Sun Ship were \$368,000. When Sun Ship refused to pay the liquidated damages, C&H filed suit to require payment of \$4,413,000 in liquidated damages under the contract. Can C&H recover the liquidated damages from Sun Ship?

Answer Yes, C&H can recover the liquidated damages from Sun Ship. Contracts are contracts because they contain enforceable promises, and absent some overriding public policy, those promises are to be enforced.

Here there was a liquidated damages clause entered into by two experienced businesses. They could have each assessed the value of the risk in this case. C&H faced an uncertain loss if Sun Ship did not deliver the boat at the agreed-upon time. C&H's loss, should the boat not be delivered in time, could have been the loss of an entire season's crop. Therefore, the parties placed in their contract a liquidated damages clause that would protect C&H from reasonably estimated economic loss should Sun Ship fail to perform the contract on time. Proof of this loss is difficult. Whatever the loss, the parties had promised each other that \$17,000 per day was a reasonable measure. Where each of the parties is content to take the risk of the contract turning out in a particular way, a contracting party should not be released from the contract in the face of no misrepresentations or other want of fair dealing. Here, Sun Ship agreed to pay liquidated damages of a fixed amount after assessing its risks. Merely because the other party, C&H, figured out a way to have its sugar transferred from Hawaii to the processing plants in California while incurring slight actual damages does not relieve Sun Ship from its bargain. In this case, there is no evidence that the liquidated damages clause is a penalty. On the contrary, it was agreed upon by two experienced parties. Therefore, the liquidated damages clause should be enforced against Sun Ship. Therefore, C&H should be awarded the \$4,413,000 in liquidated damages plus interest. *California and Hawaiian Sugar Company v. Sun Ship, Inc.*, 794 F.2d 1433, Web 1986 U.S. App. Lexis 27376 (United States Court of Appeals for the Ninth Circuit)

Critical Legal Thinking Cases

10.1 Intended or Incidental Beneficiary The Phillies, L.P., the owner of the Philadelphia Phillies professional baseball team (Phillies), decided to build a new baseball stadium called Citizens Bank Park (the Project). The Phillies entered into a contract (Agreement) with Driscoll/Hunt Joint Venture (DH) whereby DH would act as the construction manager of the Project. In that capacity, DH entered into multiple contracts with subcontractors to provide material and services in constructing the Project. One such subcontractor was Ramos/Carson/DePaul, Joint Venture (RCD), which was hired to install concrete foundations for the Project. The Project was beset with numerous delays and disruptions, for which RCD claimed it was owed additional compensation from DH and the Phillies. Subcontractor RCD sued the Phillies to recover the compensation, alleging it was an intended beneficiary to the Phillies–DH Agreement, thus giving it rights to recover compensation from the Phillies. The Phillies argued that RCD was merely an incidental beneficiary to the Phillies–DH

Agreement and could not recover compensation from the Phillies. Is RCD an intended or an incidental beneficiary of the Phillies–DH Agreement? *Ramos/Carson/DePaul, a Joint Venture v. The Phillies, L.P.*, Web 2006 Phil.Ct.Com. PL Lexis 397 (Common Pleas Court of Philadelphia County, Pennsylvania)

10.2 Specific Performance Jean-Claude Kaufmann owned approximately 37 acres of real property located in the town of Stephentown, Rensselaer County, New York. The property is located in a wooded area and is improved with a 19th-century farmhouse. Kaufmann and his spouse, Christine Cacace, resided in New York City and used the property as a weekend or vacation home. After Kaufmann and Cacace lost their jobs, their financial situation prompted Kaufmann to list the property for sale for \$350,000.

Richard Alba and his spouse (Albas) looked at the property and offered Kaufmann the full asking price. The parties executed a contract for sale, and the