

Publisher's Note

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Previous release was 2018-3

From Your Library:

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Damages for Breach of Contract

This looseleaf service thoroughly examines the principles of law applicable to the remedy of damages for breach of contract. The authors provide a clear, comprehensive treatment of all types of damages including liquidated damages, punitive damages, damages for mental distress, aggravated damages and nominal damages. Individual chapters cover compensation for pecuniary and non-pecuniary loss, valuation of damages, measuring damages, pre-judgment interest, taxation and damages, and practice and procedure.

What's New in this Update:

This release includes updates and additions to the case law and commentary in Chapter 2 Valuation of Damages: Cost of Performance v. Diminution of Value. This release also features updates to the Words and Phrases section.

Release Highlights

Chapter 2 — Valuation of Damages: Cost of Performance v. Diminution of Value — Cost of Performance Test — Conditions of Cost of Performance Test — The “Minimum Performance” Measure

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of Damages — What if cost of performance damages is appropriate but the contract provides for alternative methods of performance, each having a different cost to the defendant? In such cases, Courts have determined that the defendant is liable only for the “minimum performance” of the contract, that is, for least costly method of fulfilling its obligations. The nature of the problem and the rationale for the minimum performance principle are well illustrated by an example formulated by the English Court of Appeal in *Withers v. General Theatre Corp.*: if a vendor contracts to provide a purchaser with between 800 and 1200 pounds of a commodity but fails to deliver any, the purchaser cannot insist on damages calculated on the basis of the non-delivery of 1200 pounds. Since the defendant could have satisfied its obligations with the delivery of the minimum amount promised, 800 pounds, this amount is the basis for quantifying the defendant’s liability: *Withers v. General Theatre Corp.*, [1933] All E.R. Rep. 385, [1933] 2 K.B. 536 (C.A.).

Chapter 2 — Valuation of Damages: Cost of Performance v. Diminution of Value — Application of Diminution Test Principles and Cost of Performance — In *Scaffidi-Argentina v. Tega Homes Developments Inc.*, the Court followed the approach outlined in *Safe Step* for determining measure of damages; cost of performance damages were not appropriate and damages were assessed based on diminution in value where the plaintiff’s 5-unit rental building was irreparably damaged by construction on an adjoining property and the costs of rebuilding would grossly exceed the value of a rebuilt building: *Scaffidi-Argentina v. Tega Homes Developments Inc.*, 2016 ONSC 5448, 2016 CarswellOnt 13960, 32 C.C.L.T. (4th) 315, 60 C.L.R. (4th) 138, 72 R.P.R. (5th) 103 (Ont. S.C.J.), additional reasons 2016 ONSC 5897, 2016 CarswellOnt 14459 (Ont. S.C.J.), additional reasons 2017 ONSC 3427, 2017 CarswellOnt 8257, 41 C.C.L.T. (4th) 309, 71 C.L.R. (4th) 159 (Ont. S.C.J.).