# CONTRACT DAMAGES

## COMPENSATORY CONTRACT DAMAGES

## NON-COMPENSATORY CONTRACT DAMAGES

### LIQUIDATED DAMAGES

Parties negotiating a contract may make an explicit agreement as to what each party's remedy for breach will be. Such a liquidated damages provision determines the measure of damages which the court will award.

### RULE OF ENFORCEABILITY

The liquidated damages clause must be reasonable at the time it was entered into. That is, it must be a reasonable projection of anticipated damages at the time the contract was entered into.

No actual damage is required, but proof of actual damages, or lack thereof may be relevant evidence of whether or not the contractual provision was reasonable at the time it was entered into.

Damages need not be impossible or difficult to ascertain, but ease of calculation may be a factor in determining that the clause was reasonable at the time it was entered into.

### GENERAL / DIRECT / DAMAGES

A loss that arises naturally, *i.e.*, according to the usual course of things, from the breach of the contract.

Rule of *Hadley v. Baxendale*

### SPECIAL / INDIRECT / CONSEQUENTIAL DAMAGES

A loss that arises as a result of special circumstances, beyond the ordinary course of events, that the breaching party had reason to know, *i.e.*, those damages that may reasonably be supposed to have been in the contemplation of both parties. These types of damages do not arise within the scope of the immediate transaction between the parties, but occur as a remote consequence of the breach. In other words, it is a loss that does not flow directly and immediately from the wrongful act, but that results indirectly from the act.

Must be plead with particularity.

### EXEMPLARY/PUNITIVE

Exemplary damages are considered punitive in nature and are not recognized in Washington for contract actions. These may be recovered statutorily, however, such as under the Consumer Protection Act.

### NOMINAL DAMAGES

For every breach of contract, a cause of actions exists. If the plaintiff has suffered no damage, he is still entitled to a judgment of nominal damages, such as $1.00, to symbolize vindication.

### EXPECTATION DAMAGES

"Benefit of the Bargain."

This is the usual measure of contract damages. Goal: Put plaintiff in the position he would have been in had the contract been performed, including any profits.

### RELIANCE DAMAGES

"Put Plaintiff in as Good a Position as Before the Contract was Made."

Where it is impossible to measure expectation interest interest (e.g., where profits are speculative), plaintiff may instead recover expenses of preparation and part performance, as well as foreseeable expenses incurred in reliance on the contract sufficient to place plaintiff in the same position as if the contract had never been entered into.

### RESTITUTION

"Benefit that the Defenant has Received."

Where expectation damages are too uncertain, and reliance damages are not a fair measure of recovery, restitution damages may be awarded. Restitution is an obligation created by law when one person confers a benefit on another (such as giving money, property, services) AND when it would be unjust for that person to retain such benefit. Damages are not limited to contract price, but is usually based on the market value of the plaintiff's performance under the contract.

### LIMITATIONS

(1) Foreseeability
(2) Reasonably Certainty as to Amount
(3) Proximate cause
(4) Avoidability (duty to mitigate)

### INCIDENTAL DAMAGES

Losses that are reasonably associated with or related to actual damages

### LIMITATIONS

(1) Foreseeability
(2) Reasonable Certainty as to Amount
(3) Avoidability (duty to mitigate)

### EXAMPLES

(1) Loss of profits (except benefit of the bargain loss of profits)
(2) Loss of goodwill that results in devaluing of a business
(3) Losses resulting from interruption of production
(4) Lost interest

### UCC

Incidental damages are most commonly those damages that occur when a buyer or seller breaches, causing the other to incur certain expenses. Unlike consequential damages, incidental damages arise within the scope of the immediate transaction between the parties.

### NON-UCC

The line between consequential and incidental damages is less clear in non-UCC cases, but like UCC circumstances, incidental damages include those expenses incurred by the non-breaching party that are related to the actual damages.

### EXAMPLE

Tenant leases building from landlord that is uninhabitable. Tenant is entitled to recover from landlord the difference between the value of premises as furnished by the landlord and the amount of rent paid by the tenant.

### FORMULA FOR CALCULATING EXPECTATIONS OF DAMAGES

Value of Defendant's Promised Performance (Usually contract price minus cost avoided)

### LOSS OF PROFITS

Can include lost profits, *i.e.*, those profits that would have been earned had the contract not been breached. Lost profits, as part of the benefit of the bargain, should not be confused with lost profits as consequential damages.

### EXAMPLES

(1) Transportation
(2) Storage

### EXAMPLE

(1) Moving expense associated with a landlord's wrongful eviction.
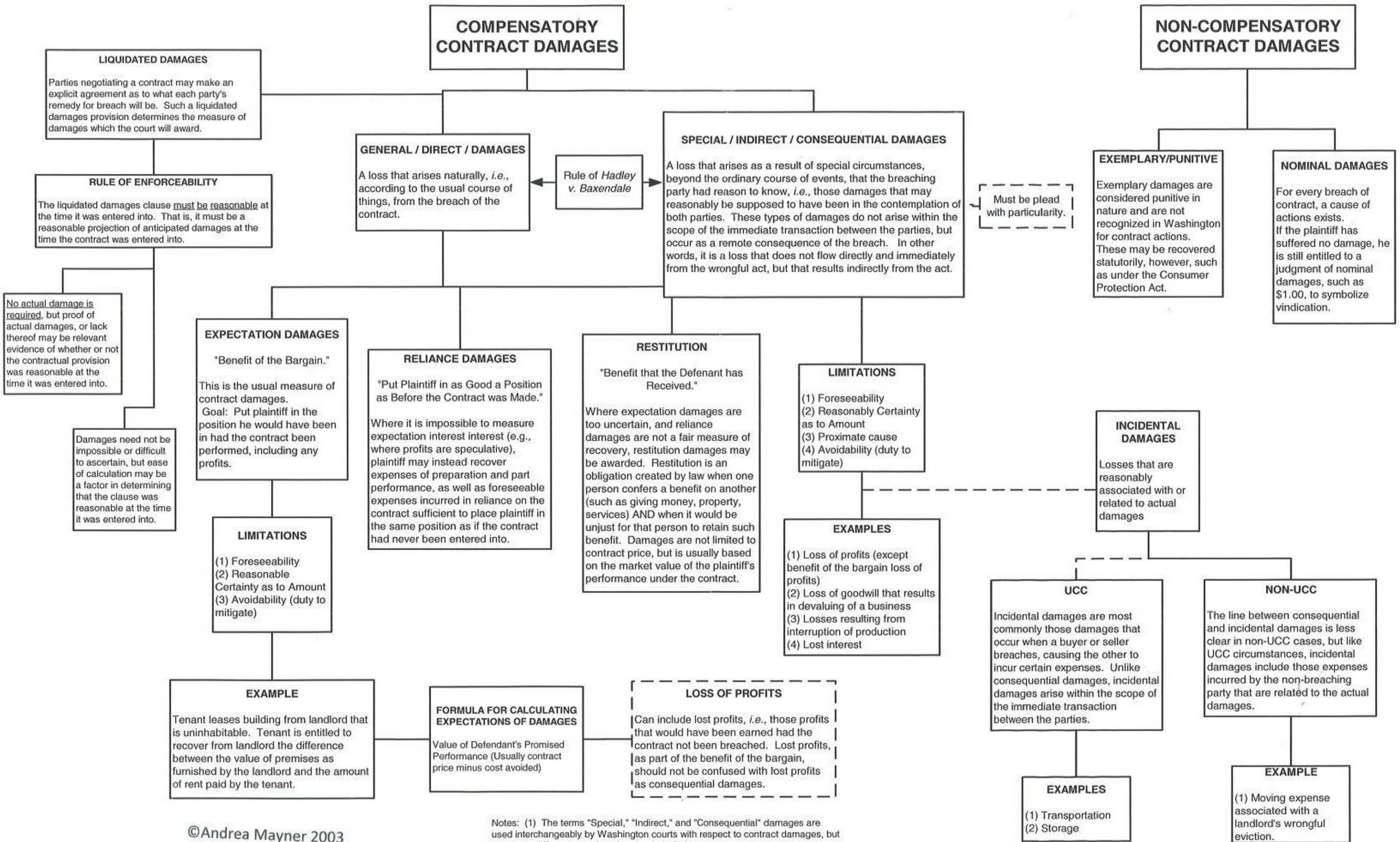
Notes: (1) The terms "Special," "Indirect," and "Consequential" damages are used interchangeably by Washington courts with respect to contract damages, but may have different meanings in other jurisdictions.

©Andrea Mayner 2003