Course-focused and comprehensive, the Textbook on series provides an accessible overview of the key areas on the law curriculum. Where there is breach of contract, the aggrieved party is entitled to the remedy of damages as of right. Contractual damages aim to compensate the claimant for losses suffered rather than punish the defendant. To achieve compensation the claimant is put in the position he would have been in if the contract had been properly performed and the breach had not occurred. In other words, the aim is to protect the expectation of performance (known as the ‘expectation interest’ or the ‘performance interest’). This may involve any difference in value between the promised and the actual performance, loss of profits or reimbursing the claimant for any expenditure that had been wasted due to the breach. A claimant may not be fully compensated for his losses as a result of the remoteness rule, which limits recovery of losses and/or the duty to mitigate (minimize) loss. Damages may also be apportioned, in some circumstances, for the claimant’s own contributory negligence in contributing to his own loss. In general, non-pecuniary losses are not
9. Damages for breach of contract

recoverable in a claim for breach of contract, but there are cases where a modest sum may be awarded for the disappointment resulting from not receiving the promised performance. The parties may include an agreed damages clause in their contract but in the event of breach only a liquidated damages clause will be enforceable; a penalty clause will not be enforceable beyond the claimant’s actual loss.

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