

ISSUE CHECKLIST – REMEDIES

LEGAL REMEDIES

- Contracts only
 - Expectation damages: general calculation and calculation in different types of contracts
 - Consequential damages
 - Reliance damages
 - Incidental damages
 - Nominal damages
 - Liquidated damages
 - Punitive damages
- Torts only
 - Compensatory damages: general damages, special damages, nuisance actions
 - Nominal damages
 - Punitive damages
- Both contracts and torts: limitations on damages
 - Causation: actual (both) and proximate cause (torts only)
 - Foreseeability
 - Certainty
 - Avoidable consequences (mitigation)

RESTITUTION-BASED REMEDIES

Note: money damages are a bit different between the two but all else is the same

- Contracts only
 - Money damages – unjust enrichment: non-breaching party, breaching party, implied in law contract
- Torts only
 - Legal restitution-based remedies: money damages
- Both contracts and torts
 - Legal restitution-based remedies
 - Replevin
 - Ejectment
 - Equitable restitution-based remedies
 - Constructive trust (property returned, subject to value fluctuations)
 - Equitable lien (prop sold/cash returned, not subject to value fluctuations)

EQUITABLE REMEDIES

Note: contracts have a few unique equitable remedies, all else are the same as torts e.g. injunctions and equitable defenses

- Contracts only
 - Specific performance, personal service contracts and equitable defenses
 - Rescission
 - Reformation
- BOTH Contracts and torts
 - Injunctive relief: TRO, preliminary injunction, permanent injunction
 - Equitable defenses
 - Laches
 - Unclean hands
 - Misrepresentation
 - Equitable conversation (BFP)
 - Election of remedies