

CHAPTER 7

Remedies

Introduction

Most parties commence proceedings to vindicate their rights, not by reference to an interest in a particular construction but by reference to the remedy that success will bring. In this way, most parties, like Rod Tidwell in *Jerry Maguire*, require their advisors only to (adopting Tidwell's words) 'show me the money'. This highlights the importance of reflecting upon not only the measure but also the basis for recovery. Generally speaking, the common law is less inclined to order specific performance¹ and the primary remedy for breach of contract is an award of damages. This is not the case in all jurisdictions; some civil jurisdictions treat specific performance as the default remedy.²

But under Australian law, the focus remains on damages. Even with this focus, and although the principles may readily be stated, their application is difficult and raises fine questions of both legal doctrine and causation philosophy.

The papers by Brahma Dharmananda SC, Professor Triantis, and Owain Stone delve deeply into the legal, conceptual and financial aspects of the determination of damages payable for breach of a contract, including a long term contract. Rather than summarising the effect of those papers, it may be useful to provide a scheme for the practical consideration of damages that may be payable following a breach of a long term contract.

1 N Seddon, R Bigwood and M Ellinghaus (2012) *Cheshire & Fifoot: Law of Contract* (Sydney: LexisNexis, 10th edn), [24.1]; J Beatson, A Burrows and J Cartwright (2010) *Anson's Law of Contract* (United States: Oxford University Press, 29th edn), 575.

2 Ibid.

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