

# CONTRACTS

## Class 15



# RELIANCE AND RESTITUTION

- **Reliance Damages**

- Seek to put the aggrieved party in the position he or she would have been in had the contract never existed.

- **Applies:**

- where expectation cannot be measured with reasonable certainty
- promissory estoppel cases



# RELIANCE AND RESTITUTION (CONT.)

- **Restitution:**

- Seeks to give back to a party whatever benefit it conferred under a contract that was breached. Often, this is part of reliance damages.
- Most relevant in the following cases:
  - Contracts implied by law (quasi contract cases)
  - Contracts where the performance of a service was never completed because of a breach by the customer (e.g., attorney fees when the attorney is fired in the middle of a case)
  - To prevent unjust enrichment; can even apply when the breaching party is suing (e.g., an employee quits in the middle of a contract)



# SPECIFIC PERFORMANCE

- **Definition:** the aggrieved party is seeking to have the court force the other party to undertake an action or to desist from undertaking an action based on a contract
  - Most applicable to contracts that protect intellectual property; where a court will order the other party not to breach a confidentiality agreement.
  - Generally not applicable to services contracts (13<sup>th</sup> Amendment issues). However, it can be used to stop someone under a contract from working for a competitor ("negative specific performance").



# SPECIFIC PERFORMANCE (CONT.)

- **For sales contracts:**

- Generally not applicable for sales of goods cases, as monetary damages is the preferred remedy.
- Applicable in cases where the buyer is trying to enforce a contract for the sale of "unique" goods, because money will not adequately meet the expectation of the buyer.
- Always applicable in real estate sales cases, because every piece of real estate is inherently considered "unique".



# LIQUIDATED DAMAGES CLAUSES

- This clause sets the amount of the damages at the time that the contract is executed, in the event of a breach.
  - Example: \$100 for every day after April 1 that you stay in the house
- To be valid, a liquidated damages clause cannot be a "penalty."
  - Penalty clauses are invalid!



# LIQUIDATED DAMAGES CLAUSES (CONT.)

- Two elements to test whether the clause is valid or a penalty:
  1. **Are the damages for this type of case hard to measure?**
    - (Must be yes - if they are not, then there's no reason to resort to the liquidated damages clause.)
  2. **Is the sum listed in the clause a reasonable approximation of what the actual damages will turn out to be?**

**Reasonableness is measured based on the time that the contract is signed.**

- (Again, must be yes, otherwise the clause is an invalid penalty clause.)



# QUIZ TIME!

