**Task 1. Legal Services**

**Resource A**

Breach of contract is where one, or both of the parties to a contract fail to perform their contractual obligations, either partially or fully. Remedies for breach of contract can be legal, equitable or under a specific statute. Legal remedies are available for breach of contract “as of right” and can include repudiation or damages. Equitable remedies on the other hand are discretionary and are only available where damages would not be appropriate. They can take the form of specific performance which orders one of the parties to perform their obligations, or rescission which allows a party to cancel the contract, but only where there has been a misrepresentation.

One of the main remedies for breach of contract is an award of damages. In UK law, there is no concept of “punitive” damages. This means that compensation will only reflect the actual loss you have incurred as opposed to punishing the wrongdoing for breaching their contract. Lord Atkinson in *Addis v Gramophone* [1909] AC 488 explained that a claimant “is to be paid adequate compensation in money for the loss of that which he would have received had his contract been kept and no more”. As such, damages are awarded to compensate the “victim” of the breach of contract for their loss. This is based on the Latin maxim *restitutio in integrum*, which translates into “restoration to original condition”.

The case of *Robinson v Harman* (1848) 1 Ex 850 illustrates how damages in contract law are compensatory in their nature. In that case, there had been an agreement between Mr Robinson and Mr Harman that Mr Robison could have a 21-year lease on a house in Croydon. Mr Harman then discovered that the house was worth more than the agreed price and refused to go through with the lease. It was later found out that when Mr Harman had entered into the contract with Mr Robinson, he was not actually allowed to do so as the house was being held on trust.

The court decided that given the facts of the case, Mr Robinson was able to recover damages that went beyond the expenses in preparing for the lease and would also include loss of a bargain. In making the decision, *Parke B* (at para 855) stated quite clearly that

*“the rule of the common law is, that where a party sustains a loss by reason of a breach of contract, he is, so far as money can do it be placed in the same situation, with regard to damages as if the contract had been performed”.*

It can be seen from this case that when the court are calculating damages, they are looking at the losses that have been or may have been caused by the breach in order to put the claimant in the position they would have been had the breach not occurred.

The court will therefore consider:

* The type of loss
* Whether the loss was caused by the breach of contract
* Any restrictions on the amount that can be claimed for, including remoteness, mitigation of loss and contributory negligence.

**Resource B**

The majority of damages for breach of contract relate to the award of compensation where there is financial loss. There are several types of loss that may be claimed for.

The is the normal measure of loss in breach of contract is expectation. This is because most parties that enter into a contract do so with a view to making a profit. Expectation loss, therefore, compensates for things such as loss of the profit that you have incurred because the contract has not been performed. The burden of proof will be on the victim to establish how much profit they would have made and therefore how much loss should have been awarded (*Georges Mitchell (Chesterhall) Ltd v Finney Lock Seeds Ltd* (1982) 2 AC 803).The courts will apply the market rule in this case, meaning that the measure of damages will be determined by the difference between the contract and the current price of the goods when the contract should have been completed. However, where the demand for the goods is great than the supply, *Charter v Sullivan* [1957] 2 WLR 528 states that the claimant may be unable to claim.

A party can also claim for expenses they have incurred believing that the contract would be successfully completed. This could be losses such as wasted cost of transport or repairs to a vehicle in preparation for the contract. For example in *Anglia TV v Reed* [1972] 1 QB 60 a TV company has entered into a contract with Robert Reed (an actor) to take part in a film. The TV company had spend a lot of money in preparation for the film, however, he broke his contract and did not appear in it. The court awarded the TV company the expenses they have incurred as a result of relying on the contract. The court will not, however, allow a claimant to use reliance loss to recover if a bad bargain has been made such as where the contract is less profitable than originally thought.

It is possible to claim for speculative loss, which compensates for “loss of a chance”. This is compensation for losses that may occur in future. The courts are often reluctant to award damages for these types of losses, but have done so in the past. In *Chaplin v Hicks* [1911] 2 KB 786 the claimant (who was an actress) had entered into a beauty contest organised by the defendant that she had seen advertised in the paper. She did not receive her invitation to the contest until it was too late to attend. She had brought an action against the defendant for the loss of her chance to gain employment and was successful, even though there was no certainty she would have won. The court stated, “*the fact that damages cannot be assessed with certainty does not relieve the wrongdoer of the necessity of paying damages for the breach of contract”.* The court therefore awarded damages despite the fact there was no certainty the claimant would win.

An unusual form of loss was created in *Farley v Skinner* [2001] UKHL 49 in which the court awarded damages essentially for distress and discomfort. In that case, the claimant had bought a large estate in Essex, not far from Gatwick Airport. The claimant had hired the defendant to survey the house, specifically he wanted the level of aircraft noise to be determined. It was reported that the level of aircraft noise was acceptable, however, this was not the case as at 6am, the noise was intolerable. This distressed the claimant who often spent early mornings in his garden. The House of Lords held that the claimant would not have bought the property had he known of the noise. IT was held (at para 108) that the claimant (Mr Farley) could claim compensation for the discomfort as consequential loss. Had it not been for the breach of contract, he would not have suffered the discomfort. It was also stated that this form of discomfort was a consequence which would have been reasonably in contemplation of the parties at the time of the contract.

Once it has been determined what type of loss has been suffered by the claimant, it must be determined whether the defendant is the cause of that loss. It should be noted that not all losses that flow from a breach of contract are recoverable.

It needs to be determined:

1. Was the defendant the factual cause of the claimant’s loss? This is ascertained using the “but for test” which states “but for the breach of contract, would the claimant have suffered the loss?” This is used to compare what the position of the claimant was in before the breach and after, to show that they were left in a worst position as a result of it.
2. Was the defendant the legal cause of the claimant’s losses? This is known as legal causation and establishes whether the defendant was the true cause of the breach, or whether there were other intervening factors that were more responsible for the losses suffered by the claimant. In *Stansbie v Troman* [1948] 2 KB 48 the court made it clear that an intervening act of a third party that causes the loss will not prevent the defendant from being liable if the intervening act was foreseeable. In that case it was foreseeable that by failing to secure the property it was foreseeable that someone could have broken in.

The courts will however, award damages where there is no actual loss, but these will be nominal.

**Resource C**

Mitigation of loss is the idea that the claimant must take action to reduce (mitigate) their loss. If they have not acted in a way to reduce their loss or if they have acted unreasonably and therefore increase their loss, the court may reduce the amount of damages awarded to the claimant to reflect this.

In relation to mitigation of loss, the rules are:

* The claimant must take all reasonable steps to mitigate their loss and cannot seek loss for damages that could have been avoided
* The claimant is entitled to recover losses for steps they have taken to reduce the overall loss

The case of *Thai Airways v KI Holdings* [2015] EWCH 1250 clarifies the key points on the duty to mitigate loss in contract law.

The dispute was between a commercial airline (Thai Airways) and an aircraft seat manufacturer (KI Holdings). The defendant has failed to supply seats to the claimant, either on time or in some cases not at all. As a result, Thai Airways could not use five of its new planes for 18 months until they were able to obtain replacement seats.

In order to mitigate their losses, Thai Airways ordered new seats from a different supplier. Whilst the seats were lighter than the ones they have ordered from the defendant, they were more expensive. They had also leased planes for three years to replace the ones they couldn’t fly until the new seats had been delivered and fitted. The replacement seats were actually installed in the first two years of the leases.

The claimant wanted to recover for all of the costs as a result of having to purchase new seats and lease more planes as a replacement for theirs that couldn’t fly. The defendant, on the other hand, said that even though costs were clearly incurred, the claimant did receive some financial benefits, such as fuel savings as a result of operating planes with lighter seats.

The court agreed that the leasing of the new aircraft was the only reasonable step that Thai Airways could have taken to mitigate their loss. They did, however, recognise that the benefits as a result of leasing the aircraft would have to be taken into account.

The could confirmed that the claimant is entitled to an award of damages to compensate for breach of contract and stated:

* The claimant need only take reasonable steps in mitigating their losses
* Although a claimant is entitled to an award of damages to compensate for loss as a result of D’s breach, a defendant will be credited for any benefit arising from the claimant’s actions and will only be liable for actual loss.

In addition to mitigating their loss, if it is shown that the claimant is has been contributorily negligent, this will limit the amount they can claim.

Contributory negligence is where the claimant has themself contributed to the loss suffered. If this is the case, the claimant will be entitled to less damages.