

IV. Breach of Contract

- Headings:
 - Remedies
 - Damages
 - Recoverable loss
 - Duty to mitigate
 - No-shows



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Remedies for Breach of Contract

- When hotel/consumer fails to keep a contract promise it is in breach of contract
- Courts can theoretically order:
 - the contract to be performed ('specific performance')
 - the restraint of the breach of contract ('injunction')
 - Award damages (compensation)



Damages

- Damages are the more typical remedy
- Contract law says damages are the standard remedy for a breach of contract but only for **actual provable loss**
- Contract law also says contract can contain an agreed damages term/clause (typically for consumer cancellation) where parties agree beforehand on the amount of damages



Recoverable Loss

- But amount agreed must not be a '**penalty**' and must not be **unfair** to consumer
- Only loss within reasonable contemplation of **both** parties when making contract are recoverable
- Loss known to **one side only** not recoverable:
 - e.g. if hotel fails to make wake-up call and guest misses flight/important business meeting hotel does not know of these consequences (or if it did it does not agree to make call on this basis)

Types of Recoverable Loss

- **Loss of bargain** meaning the difference between what consumer paid for and actually received
- **Loss of profit** meaning the profit the hotel expected to make on selling the bedroom if the contract had been properly performed by the consumer



Types of ...

- **Loss of expenditure** (less relevant to accommodation contracts) meaning cost of purchases hotel makes in readiness to provide the bedroom (more relevant to function/meal bookings)
- Loss of profit on bedroom is typically greater for hotel than loss of expenditure

Types of ...

- **Consequential loss** meaning losses following on from the initial loss suffered
- For hotel it's the loss of **likely spending** consumer might have made while in hotel



Types of ...

- For consumer its extra cost of obtaining **alternative accommodation**
- Typically difference in room prices, cost of taxis, phone calls etc.
- **Loss of enjoyment** (annoyance, distress, humiliation, vexation etc) sometimes also recoverable

Recoverable Loss

- But only where **both sides knew** the contract was made with celebration/enjoyment etc as the basis of the contract, such as:
 - wedding, wedding anniversary etc
 - perhaps some hotel-organised packages
- Or where infringement of privacy causes emotional distress

Duty to Mitigate

- Contract law says the victim of a breach of contract must take all reasonable steps to **reduce** his/her losses arising from the breach
- If consumer cancels hotel must make reasonable efforts to re-sell bedroom and may end up suffering no loss or, with late sales, suffer loss of difference between late sale rate and contract price



Duty to mitigate

- If hotel **overbooks** (which is a breach of contract and sometimes even the crime of telling a commercial lie) consumer must accept reasonable offers by the hotel of appropriate alternative accommodation
- This can reduce consumer loss to nil



Set-off

- Contract law says booker has a self-help remedy when hotel breaks contract and booker still has to pay
- Booker can off-set one against the other and pay reduced amount
- Possibility of dispute over how much consumer deducts
- Hotel can include written contract term denying right of set-off, but its validity depends on whether its fair



'No-shows' and Credit Card Bookings

- No-shows and cancellations by consumers are equally a breach of contract
- With credit card booking hotel typically deducts cost of first night for a no-show which is typically greater than the hotels actual loss (loss of profit on the bedroom which is less than the room rate)



'No-shows'

- Hotel is also sometimes able to re-sell room and so is paid twice for it
- No clear authority on legality of this but probably illegal
- Contract and consumer protection law says all no-show/cancellation fees/charges must not be excessive or unfair

