**REMEDIES - SUMMARY**

Damages: When a legally enforceable promise is breached, the court typically awards money damages to compensate non-breaching party.

Exception: Specific performance is available for unique goods or relations that cannot be readily recreated, e.g., output, requirements or exclusive dealing contracts (2-716). Seller can get price when resale is not possible (2-709).

Basic Rule: Expectation measure of damages = the positive difference between the foreseeable (Hadley) position of the non-breaching party as a result of the breach (*assuming the party has reasonably mitigated*) and the position the non-breaching party can prove with reasonable certainty s/he would have been in if the promise had been kept.

If damages can't be proven with reasonable certainty, reliance damages may be available. If damages can’t be proven with reasonable certainty then the non-breaching party can seek the cost of completion or repair, if that would not result in waste or would be grossly disproportionate to value as promised

Losing contracts: If the breaching party can prove with reasonable certainty that the non-breaching party would have lost money had the contract been performed then their recovery can be reduced this amount. In this situation, the non-breaching party may sue for reliance damages (as their expectation is negative).

Clauses in contracts setting liquidated damages are not voided by courts (i.e., called “penalty clauses”) if losses are difficult to calculate and the damages set in the contract are reasonable estimate at time of contracting of the harm that would be caused by the breach or in light of the actual harm caused).

Restitution damages = either reasonable value of benefit conferred on defendant or reasonable value of plaintiff’s services (*quantum meruit*). Two measures to prevent defendant’s unjust enrichment.

# UCC Remedy Formulas

Seller Breaches: ((Cover or Market price) - Kontract price) + (Incidental and

Consequential damages) - Expenses Saved

UCC: perfect tender rule with seller right to cure

Buyer breaches: Kontract price - (resale or market price) + incidental damages - expenses saved.

lost profits available if seller is a loss volume seller (2-708(2))