

Publisher's Note

An Update has Arrived in Your Library for:

Please circulate this notice to anyone in your office who may be interested in this publication. <i>Distribution List</i>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>

DAMAGES FOR BREACH OF CONTRACT

Harvin D. Pitch and Ronald M. Snyder

Release No. 1, April 2024

This looseleaf service thoroughly examines the principles of law applicable to the remedy of damages for breach of contract. The authors provide a clear, comprehensive treatment of all types of damages including liquidated damages, punitive damages, damages for mental distress, aggravated damages and nominal damages. Individual chapters cover compensation for pecuniary and non-pecuniary loss, valuation of damages, measuring damages, pre-judgment interest, taxation and damages, and practice and procedure.

THOMSON REUTERS®

Customer Support

1-416-609-3800 (Toronto & International)

1-800-387-5164 (Toll Free Canada & U.S.)

E-mail CustomerSupport.LegalTaxCanada@TR.com

This publisher's note may be scanned electronically and photocopied for the purpose of circulating copies within your organization.

What's New in This Update:

This release features an update to Chapter 18. This release features an update to Chapter 11. Contributory Fault and Apportionment of Damages, and Chapter 13. Date of Assessment of Damages.

Highlights

- **Chapter 11. Contributory Fault and Apportionment of Damages – Introduction – Contributory Negligence Legislation – Ontario –** Ontario courts appear willing to apply the apportionment provisions of the *Negligence Act* in cases where a party (including potentially the plaintiff) contributes to the plaintiff's loss through a breach of contractual duty of care. This is demonstrated in the 2022 decision *Priestly Demolition Inc. v. Walsh Construction Company Canada*, 2022 CarswellOnt 12686, in which the judge found a general contractor had contributed 15% to the loss through its "own fault or negligence" within the meaning of section 3 of the *Negligence Act*.
- **Chapter 13. Date of Assessment of Damages – The General Presumptive Rule: Date of Breach – The Breach Date Rule –** The Ontario Court of Appeal confirmed that the breach date rule is presumptively applicable in the 2022 decision *Akelius Canada Ltd. v. 2436196 Ontario Inc.*, 2022 CarswellOnt 3894. In the decision, the court held that damages will usually be assessed as of the date of breach unless circumstances dictate otherwise. In the case, the plaintiff purchaser had entered into an agreement with the defendant vendor for the purchase of seven apartment buildings for \$230 million. The sale failed to close due to the vendor's failure to remove encumbrances, and the plaintiff's deposit was returned. The plaintiff opted not to purchase alternate properties, and two and a half years after failed closure, the vendor sold the same properties to another purchaser for \$56 million over the original purchase price. The original purchaser claimed the vendor had purposefully failed to close in order to take advantage of increasing market prices. The plaintiff sued for the difference in purchase price, claiming that the fairness principle dictated that the date of breach should be assessed at the date the vendor resold the properties, rather than the date the original sale failed to close. The court disagreed, stating that there were no facts to justify a departure from the presumptive breach date rule.

ProView Developments

Your ProView edition of this product now has a new, modified layout:

- The opening page is now the title page of the book as you would see in the print work
- As with the print product, the front matter is in a different order than previously displayed
- The Table of Cases and Index are now in PDF with no searching and linking
- The Table of Contents now has internal links to every chapter and section of the book within ProView
- Images are generally greyscale and size is now adjustable

- Footnote text only appears in ProView-generated PDFs of entire sections and pages