

MEASURING EXPECTATION DAMAGES

Prof. Bell

I. Formula A (p. 470 of text)

<u>Original wording:</u>	<u>Revised wording:</u>	<u>Restatement (2nd) § 347:</u>
loss in value	performance loss	(a) performance loss
+ other loss	+ other loss	+ (b) other loss
- cost avoided	- perf. cost avoided	- (c) any cost avoided
- loss avoided	- other loss avoided	- (c) other loss avoided
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= expectation damages	= expectation damages	= expectation damages

II. Formula B (p. 471 of text)

<u>Original wording:</u>	<u>Revised wording:</u>
cost of reliance	cost of perf. done in reliance
+ profit	+ expected profit
- loss avoided	- other loss avoided
+ other loss	+ other loss
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= expectation damages	= expectation damages

III. Explanation of Key Terms

Performance loss: What should have been received under the contract minus what was actually received; e.g., payment due for work done.

Other loss: Loss other than performance loss caused by breach; see, e.g., UCC §§ 2-710 (seller's incidental damages such as stopping shipment), 2-715 (buyer's incidental or consequential damages such as storage of rightfully rejected goods).

Performance cost avoided: Expenses avoided by not performing under a breached contract; e.g., stopping construction.

Other loss avoided: Loss other than performance cost avoided; e.g., loss avoided by salvage.

Cost of performance done in reliance: Loss incurred in preparation for or in performance; e.g., work done under a construction contract.

Expected profit: Expected payment for complete performance - cost of complete performance. *NB: Reasonable fixed costs not deducted.*

IV. Caveat: These formulas establish only a general measure of expectation damages; limitations and other theories of recovery may apply.