



1962

Damages - Mental Suffering - Recovery of Damages for Mental Anguish Caused by Breach of Contract

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Recommended Citation

Birdsall, C. Laurel (1962) "Damages - Mental Suffering - Recovery of Damages for Mental Anguish Caused by Breach of Contract," *North Dakota Law Review*: Vol. 38 : No. 1 , Article 10.

Available at: <https://commons.und.edu/ndlr/vol38/iss1/10>

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ed the common-law rule of admissibility of illegally seized evidence.

It is the writer's belief that a rule somewhat more flexible than that which is stated in the principal case should be adopted. In determining whether illegally obtained evidence should be admissible, an individual's constitutional right of privacy should be weighed against the protection of society against crime. The courts should then have the freedom to protect that interest which would suffer the greater harm.

Despite the writer's views, it appears that North Dakota would best serve the interests of uniformity if the legislature were to formally adopt the federal exclusionary rule.

DENNIS L. THOMTE

DAMAGES—MENTAL SUFFERING—RECOVERY OF DAMAGES FOR MENTAL ANGUISH CAUSED BY BREACH OF CONTRACT—Plaintiff, a recently married woman, brought this action for damages resulting from defendant's failure to deliver a gown and a veil in time for her wedding and also for her mental anguish, humiliation, and embarrassment. In reversing judgment for the plaintiff, the Supreme Court of Oklahoma *held*, three judges dissenting, that the plaintiff could not recover for mental anguish, humiliation, and embarrassment in the absence of physical injury. *Seidenbach's Inc. v. Williams*, 361 P. 2d (Okla. 1961).

It has been said that damages for mental anguish have been awarded in two classes of cases.¹ The first class proceeding on a tort theory is where both anguish and bodily injury result.² The second class of cases allows recovery for mental anguish which was caused by an infraction of a legal right though physical injury is nonexistent.³ A further restriction enunciated is that the infraction must be wilful or malicious.⁴ The act or omission causing mental disturbance may be tortious or from a breach of contract. The carrier⁵ and innkeeper⁶ cases are good examples of businesses which can be made defend-

1. See 5 CORBIN, CONTRACTS §1076 (1951).

2. *Baltimore and Ohio R. Co. v. McBride*, 36 F.2d 841 (6th Cir. 1930); *Easton v. United Trade School Contracting Co.*, 173 Cal. 199, 159 Pac. 597 (1916).

3. *Larson v. Chase*, 47 Minn. 310, 50 N.W. 239 (1891).

4. *Beaulieu v. Great Northern R. Co.*, 103 Minn. 47, 114 N.W. 353 (1907) (dictum); *Texas and P. R. Co. v. Gott*, 20 Tex. Civ. App. 235, 50 S.W. 193 (1899) (dictum); *Brown v. Railway Co.*, 54 Wis. 342, 11 N.W. 356 (1882) (dictum).

5. *Beaulieu v. Great Northern R. Co.*, 103 Minn. 47, 114 N.W. 353 (1907).
6. *Boyce v. Greeley Sq. Hotel Co.*, 228 N.Y. 106, 126 N.E. 647 (1920) (dictum); *DeWolf v. Ford*, 193 N.Y. 397, 86 N.E. 527 (1908) (dictum).

ants in either a tort or contract action because of a single wrongdoing.

Pecuniary harm is usually the element present in contract actions. Therefore it is much disputed whether recovery should be allowed where damages resulted only from mental anguish caused by the breach of contract.⁷ The weight of authority⁸ asserts damages will be awarded for mental anguish which the promisor had reason to anticipate and which was caused by the wanton or reckless breach of contract.

North Dakota has held,⁹ as does the instant case, that no damages can be recovered for a shock or outrage to the feelings caused by a breach of contract. Compensation for mental disturbance may be had only in the presence of physical injury.¹⁰

A North Dakota statute provides that damages must be the amount that will compensate the injured party.¹¹ Moreover, they must be clearly ascertainable or there can be no recovery.¹²

North Dakota, then, is in alignment with the minority rule espousing refusal of recovery for mental anguish resulting from a breach of contract. Perhaps North Dakota should change its position and allow recovery for mental anguish caused by factors other than physical injuries. This would certainly be more just to many plaintiffs who are denied recovery under North Dakota law today.

C. LAUREL BIRDSALL

EVIDENCE—DISCOVERY AGAINST THE GOVERNMENT—GOVERNMENTAL PRIVILEGE TO WITHHOLD THE CONTENTS OF OFFICIAL DOCUMENTS.—Plaintiff, a member of the Air Force, was the sole survivor of an airplane crash. He brought an action against the company which manufactured the aircraft to recover for his injuries. The Secretary of the Air Force was requested by plaintiff's counsel to release a copy of the Air-

7. Compare *O'Meallie v. Moreau*, 116 La. 1020, 41 So. 243 (1906) (Recovery); and *Bailey v. Long*, 172 N.C. 661, 90 S.E. 809 (1916) (Recovery); with *Hall v. Jackson*, 24 Colo. App. 225, 134 Pac. 151 (1913) (No recovery); and *Adams v. Brosius*, 69 Ore. 513, 139 Pac. 729 (1914) (No recovery).

8. *Westesen v. Olathe State Bank*, 78 Colo. 217, 240 Pac. 689 (1925); *McConnell v. United States Express Co.*, 179 Mich. 522, 146 N.W. 428 (1914); *Burrus v. Nevada-California-Oregon Ry.*, 38 Nev. 156, 145 Pac. 926 (1915).

9. *Russell v. Western Union Telegraph Co.*, 3 Dak. 315, 19 N.W. 408 (1884) (Recovery, however, may be had for breach of a marriage contract).

10. *Id.* at 409.

11. N.D. Cent. Code § 32-03-09 (1961).

12. *Ibid.*