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BROKEN PROMISES – RECOVERY OF EMOTIONAL  
DISTRESS FOR BREACH OF WEDDING  
RELATED CONTRACTS

By

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INTRODUCTION

Damages for emotional distress are not usually recoverable in breach of contract actions. The Restatement (Second) of Contracts Section 353 provides:

Recovery for emotional disturbance will be excluded unless the breach, also caused bodily harm or the contract or the breach is of such a kind that serious emotional disturbance was a particularly likely result<sup>1</sup>

Where a breach results in physical injury, a tort action may be more appropriate. Under the second exception, the official comment to the Restatement gives examples of contract breaches that satisfy the "particularly likely" test as contracts of carriers and innkeepers with passengers or guests, contracts for the transport or proper disposition of dead bodies and contracts for the delivery of messages concerning death.<sup>2</sup>

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The Appellate Court stated that in order to establish a claim of negligent infliction of emotional distress, the plaintiff needed to prove that the defendant's actions created an unreasonable risk of causing emotional distress. Noting that a contract for wedding services creates a rigorous expectation for contractual performance:<sup>1</sup> the court concluded that the manor's conduct in giving her wedding date to another couple would undoubtedly cause any bride emotional distress. The court stated:

A wedding is generally considered one of the most important days in one's life. It is also widely known that such a ceremonious event requires extensive planning and preparation... The manor is in the business of hosting weddings and receptions. It is in a position to see how clients react to a myriad of wedding related mishaps.<sup>12</sup>

The court determined that an award of \$2000 in economic damages for breach of contract and \$15,000 in compensatory damages for the negligent infliction of emotional distress was fair and reasonable.<sup>13</sup>

In another Connecticut case where a wedding photographer breached an agreement to take wedding photos, a bride sued both for breach of contract and the intentional imposition of emotional distress. In *Baillargeon v. Zartman*,<sup>14</sup> the bride alleged that she contacted defendant photographer several times about retaining his services to photograph her wedding. When the bride appeared at his studio to pay for the photos and albums, the photographer made her leave and denied having any knowledge of the bride or her wedding date.

She was unable to obtain a substitute photographer on such short notice, and asked a friend to attempt to take some photos at the wedding. She was left with only a handful of inferior small size color prints. The bride claimed that she became extremely distraught following defendant's refusal to perform the services. The court stated:

The emotional impact of this episode on this 21 year old woman preparing for her first marriage, in the midst of other wedding plans and preparations, is not hard to imagine. The Court concludes that this callous, cruel, and unethical behavior of the defendant not only deprived her of a major part of her wedding day pleasure and its tangible reminder, she also suffered extreme emotional anguish because of the intentional, willful and wanton behavior of the defendant."

The court awarded \$4500 for the breach of contract and the intentional infliction of emotional distress.

In these cases, plaintiffs sought emotional distress damages under a mixture of tort and contract theories. The facts in both cases essentially involved a breach of contract, but the courts found the manner of breach sufficiently objectionable so as to constitute an independent wrong. The emotional distress damages were awarded primarily to compensate for the wrongful conduct and not as reimbursement for contractual losses. While the cases do not specifically exclude emotional distress damages in a breach of contract action, the decisions seem to indicate that these claims are more properly asserted in a tort. The cases provide limited

guidance as to whether emotional distress damages should be available where the action is exclusively for breach of a wedding-related contract.

*2. Emotional Distress Damages Not Permitted Unless Breach Causes Physical Injury*

Several jurisdictions strictly adhere only to the first exception set forth in the Restatement, namely, that damages for emotional distress are excluded unless the breach also caused bodily harm.<sup>16</sup> The official comment to the Restatement Second (Contracts) Section 353 provides:

Damages for emotional disturbance are not ordinarily allowed. Even if they are foreseeable, they are often particularly difficult to establish and to measure. There are, however, two exceptional situations where such damages are recoverable. In the first, the disturbance accompanies a bodily injury. In such cases the action may nearly always be regarded as one in tort, although most jurisdictions do not require the plaintiff to specify the nature of the wrong on which his action is based and award damages without classifying the wrong,<sup>17</sup>

Oklahoma courts are committed to the rule that no recovery can be had for mental pain and anguish, which is not produced by, connected with, or the result of, some physical suffering or injury, to the person enduring the mental anguish.<sup>18</sup> In other words, Oklahoma law does not compensate for mental anguish or disturbance alone - it must be a part of the physical suffering and inseparable therefrom, as where the mental anguish is superinduced by physical hunger pains.<sup>19</sup>

The requirement of physical injury prevented the bride in *Seidenbach v. Inc. v. Williains*<sup>20</sup> from recovering damages for mental pain and anguish caused by the nondelivery of her wedding dress. The bride sought \$716.61 in actual damages caused by defendant department store's failure to deliver her wedding gown and veil in time for her wedding. The bride also sought \$10,000 in special damages as a result of the wanton, negligent and willful acts of defendant, claiming that her "formal wedding was shattered and laid to ruin from the absence of the gown and veil, causing her to suffer great mental anguish, humiliation and em.barrassment"<sup>21</sup> because she was forced to be married in her honeymoon trip suit. Noting that a substantial portion of the bride's recovery was for mental anguish, and also that she neither alleged nor proved that defendant's failure to deliver her gown and veil caused her any physical injury, the Supreme Court held that an award for mental anguish was improper.<sup>22</sup>

There can be no recovery for mental pain and anguish unconnected with physical injury in an action arising out of breach of a contract under Florida law.<sup>23</sup> In *Floyd v. Video Barn, Inc.*,<sup>24</sup> the plaintiffs entered into a contract with the Video Barn for the videotaping of their daughter's wedding. On the day of the wedding, a Video Barn employee mistakenly videotaped another wedding taking place at a nearby church. The bride's parents sued for breach of contract and included a claim for mental and emotional pain because they did not have a videotape to memorialize their daughter's wedding. The bride's mother claimed that she was looking forward to being able to view her daughter's wedding ceremony for years to come and that she was terribly upset and disappointed when

she realized that she would not have the opportunity to do so. The Court of Appeals of Florida denied the claim for mental and emotional pain resulting from Video Barn's taping the wrong wedding and stated, "Where the gravamen of the proceeding is breach of contract, even if such breach be willful and flagrant, there can be no recovery for mental pain and anguish resulting from the breach."<sup>25</sup>

Mental suffering is not a proper element of damages for breach of contract under Pennsylvania law except where the breach was wanton or reckless and caused bodily harm. In *Carpel v. Saget Studios, Inc.*,<sup>26</sup> a newly married couple sued defendant photography studio for failure to deliver their wedding photographs. The couple had contracted with the photography studio to take black and white photographs of their wedding, but received only ten color photographs taken during the service. In rejecting plaintiffs claim for emotional distress damages, the District Court held, "In actions for breach of contract, damages will not be given as compensation for mental suffering, except where the breach was wanton or reckless and caused bodily harm."<sup>27</sup>

Requiring that physical or bodily injury accompany the contract breach imposes a special condition for recovery of emotional distress damages not required for any other type of consequential contract damages. When bodily injury occurs in connection with a contract breach, emotional distress damages compensate mainly for the physical pain and suffering caused and not the harm to plaintiff's emotional well-being. In the context of wedding-related contracts, denying recovery for emotional distress absent physical impact may lead to the

overly harsh result of excluding emotional distress damages in nearly all such cases. The requirement of bodily injury or physical impact imposes an unnecessary restriction on the availability of emotional distress damages in breach of contract actions.

### 3. *Emotional Distress Damages Permitted If Foreseeable*

As already indicated above, courts have permitted contract recoveries for cases involving services to be rendered upon one's physical person or services which relate to matters of highly charged emotional or sentimental nature, such as weddings, illness, death or burial.<sup>28</sup> The rationale is that in contracts dealing with particularly personal or sensitive matters, it is foreseeable that a subsequent breach will cause mental distress.<sup>29</sup> The common bond among such contracts is that they are all of a highly personal nature and deal with peace of mind.<sup>36</sup> Jurisdictions that award emotional distress damages for breach of wedding-related contracts recognize the unique circumstances which make emotional distress a highly foreseeable effect of a breach, and essentially apply the "particularly likely" test contained in the Restatement.

Louisiana courts have long been sympathetic to the plight of brides and grooms who suffer mishaps on their wedding day. In 1903, the bride in *Lewis v. Holmes*<sup>31</sup> sued to recover damages for breach of contract resulting from defendant millinery's failure to sew and deliver four dresses for her wedding trousseau. The Supreme Court of Louisiana ruled that the bride's disappointment, and her humiliation in going to

her husband without a suitable trousseau, was within the contemplation of the parties. The court stated:

In computing the damages, the allowance must be restricted to what may reasonably be held to have been within the contemplation of the parties in entering into the contract. The contract was to furnish the dresses in time for the wedding on the 19<sup>th</sup>. D.H. Holmes must be held to have known that, if the dresses were not furnished by that day, the bride would be keenly disappointed. Also that the bride would need the dresses for the festivities incident to her wedding and immediately following, for which it is customary for brides to provide themselves with a trousseau. In gauging this disappointment of the bride the surrounding circumstances, must, as a matter of course, be considered. And one of these is the fact that entertainments were planned, and that for want of the dresses these entertainments would have to be given up: and another is her humiliation in going to her husband unprovided with a suitable trousseau.<sup>32</sup>

In light of these unusual circumstances, the court awarded the bride \$575 in special damages caused by the failure to make and deliver the dresses.<sup>33</sup>

In *Mitchell v. Shreveport Laundries, Inc.*,<sup>34</sup> the groom left his wedding suit with a laundry to be cleaned and pressed, telling the laundry that he wanted to wear the suit at his wedding eight days later. Despite repeated assurances by the laundry, on the day of the wedding the groom learned that his

suit was lost. The groom, of unusual size and physique, was unable to find another suit to fit him in time for the ceremony. He was forced to be married in the only other good suit of clothes he owned, a light colored suit that he had been wearing for several weeks which was noticeably soiled and unkempt in appearance. Further, he had to travel on his honeymoon with only the soiled suit "and that he was humiliated and embarrassed by being subject to ridicule of the guests of the hotel and the general public."<sup>35</sup> The groom sued the laundry for the cost of the suit and sought damages for embarrassment and humiliation. The Court of Appeal of Louisiana held that damages for mental anguish, mortification and embarrassment were appropriate because such damages must have been foreseen at the time of making the contract.<sup>36</sup>

In *Grather v. Ripely Studios, The.*,<sup>37</sup> a married couple sought damages for mental anguish and embarrassment for the unprofessional manner in which a photographer took pictures of their wedding. The couple claimed that the photographer was impatient and careless when taking their wedding photos, resulting in photographs with poor positioning and unsatisfactory backgrounds including exit signs and dirty dinner dishes. The Louisiana Court of Appeal stated that "A bride and groom who desire nonamateur photographs and employ a professional photographer are seeking 'the gratification of some intellectual enjoyment' ... When the photographs are of less than professional quality, the bride and groom are deprived of the full enjoyment, which they can rightfully expect, of pictures commemorating their wedding and reception."<sup>38</sup> Plaintiffs were entitled to compensation for

this loss of enjoyment and the court awarded damages for mental anguish and humiliation.<sup>39</sup>

Ohio state law does not usually permit compensation for emotional distress resulting from a breach of contract, but recognizes an exception for cases involving marriage where ordinary contract remedies are clearly inadequate.<sup>40</sup> In *Deisch v. The Music Co.*,<sup>41</sup> the newlyweds sued defendant music company when a four-piece band failed to arrive and play at their wedding reception. The couple made several attempts to contact defendant from the reception hall, but were unsuccessful. "After much wailing and gnashing of teeth, plaintiffs were able to send a friend to obtain some stereo equipment to provide music."<sup>42</sup> In determining the correct measure and amount of damages for the breach, the court found that the simple return of the deposit would not adequately compensate plaintiffs. "Certainly, it must be in the contemplation of the parties that the damages caused by a breach by defendant would be greater than the return of the deposit that would be no damages at all."<sup>43</sup> The court held that in a case of this type, the out-of-pocket loss, which would be the security deposit, or even perhaps the value of the band's services, where another band could not readily be obtained at the last minute, would not be sufficient to compensate plaintiffs. The court awarded damages for the couple's distress, inconvenience, and the diminution in value of their reception, as well as the refund of their security deposit.<sup>44</sup>

In *Browning v. Fies*,<sup>45</sup> the Court of Appeals of Alabama stated that "Injury to the feelings - mental harassment

- is an element of actual damages. Wounding a man's feelings

is as much an element of actual damages as breaking his limb."<sup>46</sup> In *Browning*, the defendant livery service contracted with plaintiff bridegroom to provide a carriage and team for transportation of the wedding party on plaintiff's wedding day. The defendant failed to send a carriage and the groom and his family were forced to board a public street car and walk along the streets in their wedding apparel. The wedding ceremony was delayed because the groom did not reach the church on time. The groom sought damages for the actual financial loss arising out of the breach and damages for mental suffering, physical pain, humiliation and mortification. The lower court refused to allow damages for mental suffering. The Court of Appeals of Alabama, however, reversed and held:

In this particular case, considering the subject-matter of the contract, the special purpose and exceptional use to which plaintiff intended to put the carriage, which was communicated and well known to the defendants ... it would seem that it was in the reasonable contemplation of the parties when the contract was entered into under the known circumstances, that the immediate effect and proximate result ensuing from a breach of the contract by the defendants would cause the plaintiff inconvenience, annoyance, mental harassment, or distress .. as well as mental pain in consequence thereof Certainly it is but common knowledge that some distress of mind must be the natural and proximate consequence of being delayed and not having proper conveyance to meet an appointment of such delicate nature.<sup>47</sup>

These jurisdictions permit recovery of emotional distress damages for breach of wedding-related contracts due to the sensitive, personal nature of such agreements. A wedding is universally considered to be one of the most significant events in one's lifetime, and the contracts made in connection with the wedding festivities inevitably include heightened expectations of perfect or near perfect contractual performance. Those businesses involved in the wedding industry have reason to know how clients react to wedding mishaps. Given this emotionally charged contractual setting, the parties must certainly foresee that any defective performance will cause severe anxiety and mental distress for the bride and groom. While the above cases do not specifically reference the Restatement rule, the courts essentially consider the unique circumstances surrounding the contract formation and conclude that it is "particularly likely" that any breach of a wedding-related contract will lead to severe anxiety and mental distress for the bride and groom.

#### CONCLUSION: EMOTIONAL DISTRESS DAMAGES ARE JUSTIFIED FOR BREACH OF WEDDING-RELATED CONTRACTS

The "particularly likely" test set forth in Restatement Section 353 offers the most reasonable and logical approach for determining when damages for emotional distress are properly awarded in a breach of contract action. Applying this test imposes a sensible tightening of the basic requirement that contract damages be foreseeable. To justify emotional distress damages, the breach must be of such a kind that emotional

disturbance was a particularly likely result, not merely an incidental consequence of the breach.

As stated in the landmark case *Hadley v. Baxendale*,<sup>48</sup> contract damages are limited to "such as may fairly and reasonably be considered either arising naturally, i.e., according to the usual course of things, from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties at the time they made the contract, as the probable result of the breach of it."<sup>49</sup> The Restatement (Second) of Contracts Section 351 further provides:

Damages are not recoverable for loss that the party in breach did not have reason to foresee as a probable result of the breach when the contract was made. Loss may be foreseeable as a probable result of a breach because it follows from the breach...as a result of special circumstances, beyond the ordinary course of events, that the party in question had reason to know.<sup>50</sup>

The "particularly likely" test goes further than mere foreseeability and limits claims to those situations where the emotional distress was unquestionably anticipated by both parties as a consequence of a breach in light of special circumstances known to both parties at the time of contracting. When making contractual arrangements for a wedding, peace of mind is clearly a priority for the bride and groom. The provider of wedding goods or services knowingly undertakes more than typical business obligations; emotional well-being



becomes part of the subject matter.<sup>51</sup> A contract breach that

causes a wedding day mishap leads to predictable emotional distress for the bride and groom and this anxiety should come as no surprise to a business person dealing with these contracts every day. As Professor Douglas Whaley states:

Most contract breaches do not cause significant amounts of mental anguish. But for the sorts of contracts where human emotions are very much at issue: weddings, ... etc., peace of mind and freedom from worry are part of the bargain as the defendant very well knew, and if the defendant breaches these sorts of contracts, the defendant should pay for the agony suffered as an obvious consequence. There is no surprise here; the issue of foreseeability takes care of that. Nor is the rule unfair to the defendant. If defendant is going to traffic in the kind of contract that risks emotional distress when breached, let the defendant bear that risk.<sup>52</sup>

The risks associated with the wedding industry are balanced by the potential for high profit. According to one survey conducted in 2009,<sup>53</sup> the average wedding budget in the U.S. was \$28,385 (not including the honeymoon) with New York City and Long Island having the highest national average of \$56,999 and \$55, 877 respectively.<sup>54</sup> As one New York judge observed:

Weddings are a special time for celebration and happiness filled with special moments that mark the beginning of a new family and a life together. Weddings are unique and, hopefully, once in a lifetime

events. Weddings have endured the passage of time which is why they are still celebrated today. Brides, grooms and parents spend extraordinary sums and expect the wedding and reception to be magical and memorable in every respect. Generally, the courts agree.<sup>55</sup>

In light of the lavish spending and fairytale image associated with weddings, compensation for emotional distress due to a wedding day mishap is clearly appropriate.

Many jurisdictions permit emotional distress damages for breach of wedding-related contracts, and the remaining jurisdictions should uniformly follow suit. Such awards are consistent with traditional rules limiting contract damages to those that are foreseeable and within the contemplation of both parties at the time of contracting. In addition, a breach of any promise to provide wedding goods or services is "particularly likely" to cause severe emotional distress for the disappointed bride and groom. Businesses that provide wedding goods and services are keenly aware of the emotional significance of the contracts they make, and often exploit the "dream wedding" scenario to their own financial advantage. A bride and groom who experience a wedding day disaster are entitled to compensation for the understandable anxiety (and tears) that flow from the breach.

<sup>1</sup> Restatement (Second) of Contracts §353 (2008).

<sup>2</sup> *Id.* §353 comment a.

<sup>3</sup> *Id.*

<sup>37</sup> *Grather v. Tipery Studios, Inc.*, 334 So.2d 758 (La. Ct. App. 1976).

<sup>38</sup> *id.*

<sup>39</sup> *Id.*

10 *International Union of Automobile Workers v. Park-Ohio Industries*, 687 F.Supp. 338, 342 (N.D. Ohio 1987).

<sup>41</sup> *Deutsch v. The Music Co.*, 6 Ohio Misc.2d 6, 453 N.E.2d 1302 (1983).

<sup>2</sup> *id.* at 7, 453 N.E.2d at 1303. <sup>43</sup> *Id.* at 8, 453 N.E.2d at 1304.

*Id.*, See also *Pullman Company v* , 72 Ohio St. 690, 76 N.E. 1131 (1905).

*Browning v. Pies*, 4 Ala. App. 580, 58 So. 931 (1912).

*Id.* at 587, 58 So. at 933 (quoting *Birmingham Water Works Co. v. Martini*, 2 Ala. App. 652, 657, 56 So. 830, 832 (1911)).

<sup>47</sup> *Id.* at 589, 58 So. 934.

<sup>46</sup> 9 Exch. 341 (1854).

<sup>49</sup> *Id.* at 354.

<sup>50</sup> Restatement (Second) of Contracts §351 (2008).

<sup>31</sup> *Id.* (field, 100 Idaho at 848, 606 P.2d at 952).

<sup>52</sup> Whaley, *supra* note 7 at 953.

<sup>53</sup> The Knot Inc., <http://www.marketwatch.com/story/the-knot-unveils-2009-real-weddings-survey-results-2010-02-17>.  
<sup>54</sup> *Id.*

<sup>55</sup> *Griffin-Amiel v. Frank Terris Orchestras*, 178 Misc. 2d 71, 74, 677 N.Y.S2d 908, 910(1998).