

Connecticut

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A. Adoption of the UCC

Connecticut has adopted and codified Articles 2, 3, 4, 5, 7, 8, 9 and 10 of the Uniform Commercial Code.¹

B. Compensatory Damages

Damages for a breach of contract are compensatory in

nature and seek to award the injured party the benefit of their bargain and to restore an injured party to the position he or she would have been in if the wrong had not been committed.² Compensatory damages are distinguished in caselaw as general damages that consist of losses that naturally and inevitably flow from the breach of contract.³

¹ See CONN. GEN. STAT. §§ 42a-1-101 et seq.

² *Whitney v. J.M. Scott Assocs.*, 137 A.3d 866, 873 (Conn. App. Ct. 2016) (affirming decision to award plaintiff damages on the theory of “the benefit of the bargain” and holding that appropriate damages were the determination of the benefit of the bargain owed to the plaintiff and what was necessary to put him in as good a position as he would have been in had the contract been performed).

³ *City of Milford v. Coppola Const. Co.*, 891 A.2d 31, 39 (Conn. App. Ct. 2006) (affirming

The usual recovery for breach of contract is the contract price or the lost profits therefrom. The party receiving the damages award has a duty to make a reasonable effort to mitigate damages.⁴ A trier of fact will determine what establishes a reasonable effort under the circumstances. The breaching party has the burden of proving the plaintiff failed to make reasonable efforts to mitigate the amount of damages. The breaching party must show the injured party failed to take reasonable action to lessen the damages, the damages were

judgment that damages for idle equipment and unused materials are general damages expected to flow naturally from a breach of construction contract).

⁴ Webster Bank, N.A. v. GFI Groton, LLC, 116 A.3d 376, 384 (Conn. App. Ct. 2015) (affirming judgment that lender's refusal of defendants' offer to buy construction notes on which developer had defaulted did not constitute a failure to mitigate damages).

enhanced by this failure, and that the avoidable damages can be measured with reasonable certainty. However, the duty to mitigate damages does not require a party to sacrifice a substantial right of his own in order to minimize a loss.⁵ Compensatory damages may be recoverable for the following types of claims in Connecticut:

- breach of contract;⁶
- breach of warranty;⁷
- fraud;⁸
- misappropriation of trade secrets;⁹
- defamation;¹⁰

⁵ *Id.*

⁶ Hawley Ave. Associates LLC v. Russo, 25 A.3d 707 (Conn. App. Ct. 2011).

⁷ The measure of damages for breach of warranty is the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted unless special circumstances show proximate damages of a different amount. CONN. GEN. STAT. § 42a-2-714.

⁸ Harold Cohn & Co. v. Harco Intern., LLC, 804 A.2d 218 (Conn. App. Ct. 2002) (establishes elements of a cause of action for fraud).

⁹ In addition to or in lieu of injunctive relief, a complainant may recover damages for the actual loss caused by misappropriation. A complainant also may recover for the unjust enrichment caused by misappropriation that is not taken into account in computing damages for actual loss. CONN. GEN. STAT. § 35-53.

¹⁰ DeVito v. Schwartz, 784 A.2d 376, 381 (Conn. App. Ct. 2001) (affirming judgment for defamation damages as a matter of discretion to be determined by a jury. A jury may award the plaintiff general damages without any further proof but special

- conversion;¹¹
- unfair competition;¹²
- breach of fiduciary duty of officers;¹³
- tortious interference with business;¹⁴
- tortious interference with contract;¹⁵ and
- account stated.¹⁶

damages if proven and punitive damages as a matter of discretion. If defamation *per se* has been established, a plaintiff should receive at least nominal damages).

¹¹ Any person who steals any property of another, or knowingly receives or conceals stolen property, shall pay the owner treble his damages. CONN. GEN. STAT. § 52-564.

¹² Any person who suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment of a method, act or practice prohibited by Section 42-110b, may bring an action in the judicial district in which the plaintiff or defendant resides or has his principal place of business or is doing business, to recover actual damages. Proof of public interest or public injury shall not be required in any action brought under this section. The court may, in its discretion, award punitive damages and may provide such equitable relief as it deems necessary or proper. CONN. GEN. STAT. § 42-110g.

¹³ Plaintiff must plead and prove the damages were proximately caused by the fiduciary's breach of his or her fiduciary duty. *Barash v. Lembo*, 303 A.3d 577, 598-599 (Conn. 2023).

¹⁴ *Hi-Ho Tower, Inc. v. Com-Tronics, Inc.*, 761 A.2d 1268, 1273 (Conn. 2000) (establishing elements of a claim for tortious interference with business expectancies as: (1) a business relationship between the plaintiff and another party; (2) the defendant's intentional interference with the business relationship while knowing of the relationship; and (3) as a result of the interference, the plaintiff suffers actual loss). Proof of sustained damages is necessary, but it is difficult to prove in certain circumstances with a reasonable degree of

certainty. An award of compensatory damages is not necessary to establish a cause of action for tortious interference as long as there is a finding of actual loss, and a finding of actual loss may support an award of punitive damages. *Id.* at 1276

¹⁵ *Companions and Homemakers, Inc. v. A&B Homecare Sols., LLC*, 302 A.3d 283, 289 (Conn. 2023) (establishes elements of a claim for tortious interference with contract as (1) the existence of a contractual or beneficial relationship; (2) the defendant's knowledge of that relationship; (3) the defendant's intent to interfere with the relationship; (4) the interference was tortious; and (5) a loss suffered by the plaintiff that was caused by the defendant's tortious conduct.) To prevail with damages, the plaintiff must show that they suffered an actual loss as a result of the interference. But for the tortious interference by the defendant, there was a reasonable probability that the plaintiff would have entered into or retained a contract or made a profit. This determination is a question for the trier of fact. *Id.* at 291.

¹⁶ *Cuda & Associates, LLC v. Athay*, No. MMXCV106002588S, 2012 WL 1959053, at *2 (Conn. Super. May 8, 2012) (affirming judgment for damages in the amount owed on the balance and determined that a prejudgment interest award would not be equitable in such case as interest has already been included in the balance fully awarded by the court). The elements of a cause of action based on an account stated are that (1) the creditor delivered periodic statements to the debtor which document the charges against the account, and (2) the debtor retained the statements without objection for an unreasonable period of time.

C. Consequential Damages

Under the UCC, only a buyer can recover consequential damages. Consequential damages resulting from the seller's breach include (a) any loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and (b) injury to person or property proximately resulting from any breach of warranty.¹⁷

The seller is liable for consequential damages in all cases where they had reason to know of the buyer's general or particular requirements at the time of contracting. Particular needs of the buyer must generally be made known to the seller while general needs must rarely be made known to charge the seller with knowledge.¹⁸

Consequential damages arise from the defendant's breach of contract and are unique to the parties' circumstances. In contrast, general or direct damages flow

naturally and proximately from a defendant's breach and are presumed to arise in every instance of breach. When a defendant has reason to know, before entering into the contract in question, of facts indicating that particular, though unusual, damages will follow or may follow the defendant's failure to perform its agreement, the defendant is liable for such damages.¹⁹ The burden of proving the extent of the loss is on the buyer. Loss may be determined in any manner which is reasonable under the circumstances.²⁰

Consequential damages may be limited or excluded by contract unless the limitation or exclusion is unconscionable. Limitation of consequential damages for injury to the person in the case of consumer goods is *prima facie* unconscionable but a limitation of damages where the loss is commercial is not.²¹

To avoid excess and unfair liability, courts have traditionally limited recovery of consequential damages by applying the doctrines of foreseeability, causation,

¹⁷ CONN. GEN. STAT. § 42a-2-715.

¹⁸ *Id.*

¹⁹ *City of Milford*, 891 A.2d at 39 (affirming judgment that idle and unused equipment are considered to be general damages and not consequential, as they are expected to flow from that particular breach).

²⁰ *Gargano v. Heyman*, 525 A.2d 1343, 1346 (Conn. 1987) (affirming judgment that demonstration of income tax forms to show loss profits does not constitute a sufficient basis for showing their amount with reasonable certainty).

²¹ CONN. GEN. STAT. § 42a-2-719(3).

certainty, and avoidable consequences (mitigation).

- **Foreseeability:** Under common law and specifically under the U.C.C. for contracts for the sale of goods, special or consequential damages must have been reasonably foreseeable at the time of contracting.²²
- **Causation:** Plaintiffs seeking to recover special or consequential damages in a contract action must show that the defendant's breach caused the damages in question.²³
- **Certainty:** Connecticut case law holds that

special or consequential damages must be proved to reasonable certainty.²⁴ Often plaintiffs in contract actions seek to recover lost future profits as special damages caused by the defendant's breach. In those cases, the courts do not require proof of damages to a degree of absolute certainty but provide a reasonable basis on which lost profits can be calculated. Because future lost profits are inevitably uncertain, plaintiffs need not prove them with mathematical precision.²⁵ Lost profits cannot be based

²² *L.F. Pace & Sons, Inc. v. Travelers Indem. Co.*, 514 A.2d 766, 771-772 (Conn. App. Ct. 1986) (affirming award of consequential damages when plaintiff was unable to obtain supporting bonds necessary for obtaining public construction contracts. Consequently, plaintiff was unable to obtain any new contracts and had to close operations).

²³ *Meadowbrook Ctr., Inc. v. Buchman*, 90 A.3d 219, 227 (Conn. App. Ct. 2014) (applying Connecticut standard, the causation standard applicable to breach of contract actions asks not whether a defendant's conduct was a proximate cause of the plaintiff's injuries, but rather whether

those injuries were foreseeable to the defendant and naturally and directly resulted from the defendant's conduct).

²⁴ *Sullivan v. Thorndike*, 934 A.2d 827, 833 (Conn. App. Ct. 2007) (reversed judgment on consequential damages as plaintiff had failed to introduce evidence such as what overhead might have been required for the maintenance of these properties: repairs, salaries, taxes, insurance, carrying costs). It is the defendant's burden to show any expenses that may have reduced the profit from the sale of the real estate.

²⁵ *Robert S. Weiss & Associates, Inc. v. Wiederlight*, 546 A.2d 216, 225 (Conn. 1988) (affirming judgment that plaintiff's request

on speculation or conjecture.²⁶

- Avoidable consequences (Mitigation): In general, plaintiffs seeking special or consequential damages cannot recover them unless they make a reasonable attempt to mitigate their losses.²⁷ The mitigation duty is also referred to as the doctrine of avoidable consequences by some authorities. The nonbreaching party is not allowed to let damages pile up if some or perhaps all of them could be avoided through reasonable mitigation efforts. Under the U.C.C., a buyer can recover consequential

damages only if they “could not reasonably be prevented by cover or otherwise.”²⁸

D. Incidental Damages

A seller’s incidental damages include “any commercially reasonable charges, expenses or commissions incurred in stopping delivery, in the transportation, care and custody of goods after the buyer’s breach, in connection with return or resale of the goods or otherwise resulting from the breach.”²⁹ If a seller incurs expenses in advertising and preparing the goods for resale, those can be recovered as incidental damages.³⁰ A buyer’s incidental damages are similarly defined, but with the focus on reasonable expenses in effecting “cover,” as opposed to resale of the goods. Incidental damages that may be recovered, even if sales contract excludes consequential damages, are intended to provide reimbursement for buyer who

for damages was too speculative using evidence such as a list of solicited customers, each account’s name and date of inception, the total commission earned, the profit on the commission, and defendant’s share in the commission).

²⁶ *Ambrogio v. Beaver Rd. Assocs.*, 836 A.2d 1183, 1188 (Conn. 2003) (affirming that reasonable value for which recovery may be had in cases of substantial performance of building contracts, is to be ascertained with reference to the contract price and by deducting from that price such sum as ought

to be allowed for the omissions and variations).

²⁷ *Willametz v. Goldfeld*, 370 A.2d 1089, 1091–1092 (Conn. 1976) (affirming decision to award plaintiff damages for “unused vehicles” for the two days the plaintiff attempted work and not for the 35 days the vehicles were left idle).

²⁸ CONN. GEN. STAT. § 42a-2-715(2)(a).

²⁹ CONN. GEN. STAT. § 42a-2-710.

³⁰ *Bennett v. S. Blumenthal & Co.*, 155 A. 68 (Conn. 1931) (seller was entitled to costs of preparation for manufacturing as well as storage costs).

incurs reasonable expenses in connection with handling of rightfully rejected goods or goods for which acceptance may be justifiably revoked.³¹ If an aggrieved buyer has to pay additional shipping charges to procure substitute goods, those charges would be recoverable as incidental damages.³²

E. Punitive Damages

In most cases, punitive damages will not be awarded for breach of contract.³³ The primary goal of contract damages is to give the plaintiff the benefit of their bargain and compensate them for the loss. Punitive damages, on the other hand, traditionally are designed to punish and deter particularly egregious or wrongful conduct.³⁴ Simply breaching a contract does not generally indicate a malicious or wanton state of mind, nor does it constitute outlandish conduct.

If the defendant's breach also constitutes an independent tort, such as fraud, conversion or tortious inference with contractual relations,

then punitive damages may be assessed.³⁵ In addition, punitive damages may be awarded for outrageous conduct, that is, acts that are done with a bad motive or with reckless indifference to the interests of others. Otherwise summarized, punitive damages can also be awarded for wanton and malicious injury, evil motive and violence.³⁶

In Connecticut, common-law punitive damages are limited to the plaintiff's litigation expenses, such as attorneys' fees, less taxable costs.³⁷ The goal of punitive damages is to provide full compensation to the injured party by covering their litigation costs while "avoiding the potential for injustice which may result from the exercise of unfettered discretion by a jury."³⁸ Given the high costs of litigations, common-law punitive damages also, in some measure, punish and deter wrongful conduct.³⁹ However, in certain cases, for example unfair trade practices, vexatious litigation, and theft, punitive damages may include more than the costs of litigation, usually a

³¹ *Gaynor Elec. Co., Inc. v. Hollander*, 618 A.2d 532 (Conn. App. Ct. 1993) (finding the costs incurred by the buyer in inspecting, packaging, and transporting defective switches to the seller's plant for repair were "costs of correcting the defect" within the provision of the contract that allowed the buyer to recover incidental damages).

³² CONN. GEN. STAT. § 42a-2-715.

³³ *City of Hartford v. International Ass'n of Firefighters*, 717 A.2d 258, 266 (Conn. App. Ct. 1998).

³⁴ 1 Connecticut Contract Litigation § 18.05 (2023).

³⁵ *Triangle Sheet Metal Works, Inc. v. Silver*, 222 A.2d 220 (Conn. 1966).

³⁶ *Id.* at 220.

³⁷ *Hylton v. Gunter*, 97 A.3d 970, 978 (Conn. 2014).

³⁸ *Berry v. Loiseau*, 614 A.2d 414, 435 (Conn. 1992).

³⁹ *Waterbury Petroleum Products, Inc. v. Canaan Oil & Fuel Co.*, 477 A.2d 988, 1004 (Conn. 1984).

statutorily defined amount, such as double or treble damages.

F. Liquidated Damages

Contract parties can agree to a preset amount of damages in the event of breach and insert a liquidated damages clause into their agreement. Such clauses are useful for avoiding future disputes over fair market value, lost profits and other elements of actual damages.⁴⁰ Courts will generally enforce liquidated damages clauses if (1) the damage anticipated as a result of a breach of the contract was uncertain in amount or difficult to prove; (2) the parties intended to liquidate damages in advance; and (3) the amount stipulated was reasonable and not greatly disproportionate to the amount of the damage which the parties anticipated would occur the event of a breach of the contract.⁴¹ A liquidated damages provision that does not meet these criteria will be considered an unenforceable penalty.⁴² If the nonbreaching party retains a stipulated amount as liquidated damages under the contract, they are then barred from recovering actual damages for the breach.⁴³

⁴⁰ Peterson v. McAndrew, 125 A.3d 241, 255–256 (Conn. App. Ct. 2015).

⁴¹ HH East Parcel, LLC v. Handy & Harman, Inc., 947 A.2d 916, 927 (Conn. 2008); CONN. GEN. STAT. § 42a-2-718(1).

⁴² Am. Car Rental, Inc. v. Comm’r of Consumer Prot., 869 A.2d 1198, 1205–1206 (Conn. 2005).

G. Pre- and Post-Judgment Interest

A prejudgment interest award is an element of damages. The allowance of prejudgment interest under Connecticut General Statutes § 37-3a is a matter within the discretion of the trial court. This allowance turns on whether the detention of the money is or is not wrongful under the circumstances. The primary purpose of § 37-3a “is not to punish persons who have detained money owed to others in bad faith but, rather, to compensate parties that have been deprived of the use of their money.”⁴⁴ If the trial court determines that one party has wrongfully detained funds, it must next determine the date the wrongful detention began. Where the claim rests on a breach of contract, prejudgment interest, as damages for detention of money after it becomes payable, accrues from the date the contract was breached.⁴⁵

The rate of interest will be no more than ten percent that can be recovered as damages for the detention of money after it becomes payable.⁴⁶ The burden of proof is satisfied by the underlying legal

⁴³ Hanson Dev. Co. v. East Great Plains Shopping Center, Inc., 485 A.2d 1296, 1299 (Conn. 1985).

⁴⁴ Sosin v. Sosin, 14 A.3d 307 (Conn. 2011).

⁴⁵ CONN. GEN. STAT. § 37-3a; LPP Mortg., Ltd. v. Lynch, 1 A.3d 157, 164–165 (Conn. App. Ct. 2010).

⁴⁶ CONN. GEN. STAT. § 37-3a.

claim and this requirement is met once the plaintiff obtains a judgment in his favor on that claim.⁴⁷

To award an interest under § 37-3a, two components must be present. First, the claim to which the prejudgment interest attaches must be a claim for a liquidated sum of money wrongfully withheld, and second, the trier of fact must find, in its discretion, that equitable considerations permit the payment of interest. When the damages awarded to the plaintiff are for the loss of the benefit of the bargain and do not involve liquidated damages, § 37-3a does not apply, and the plaintiff is not entitled to prejudgment interest.⁴⁸

Post-judgment interest is also an equitable and discretionary matter to be determined by the trial court. According to Connecticut General Statutes § 37-1, (a) compensation in the absence of any contrary agreement shall be at the rate of eight percent per year, and (b) unless otherwise provided by agreement, interest at the legal rate from the date of maturity of a debt shall accrue as an addition to the debt. Interest accrual for post-judgment interest begins to run from the date of judgment.

⁴⁷ DiLieto v. County Obstetrics & Gynecology Group, P.C., 74 A.3d 1212 (Conn. 2013).

⁴⁸ *Whitney*, 137 A.3d at 878.

H. Attorneys' Fees

Connecticut follows the American Rule, which requires that litigants must bear their own litigation expenses, including attorneys' fees.⁴⁹ The court will not award attorneys' fees to the prevailing party. It is believed that routine fee shifting would deter plaintiffs from commencing meritorious but uncertain claims and defendants from raising appropriate defenses for fear of having to bear not only their own but also the other party's litigation costs.⁵⁰ In Connecticut, the prevailing party may recover attorneys' fees only if the parties have a contract that so provides, there exists a statute permitting or requiring fee shifting, or some other exception applies such as a common fund or court issued sanctions.⁵¹

However, Connecticut recognizes a bad faith exception to the American Rule. If either plaintiff or defendant exhibits bad faith, wanton, or fraudulent behavior in the conduct of the litigation, courts may award attorneys' fees to the other party. Under this exception, the award of fees serves to support the idea of justice by punishing and deterring litigation misconduct, and

⁴⁹ *Maris v. McGrath*, 850 A.2d 133, 134 (Conn. 2004).

⁵⁰ *CFM of Connecticut, Inc. v. Chowdhury*, 685 A.2d 1108, 1118-1119 (Conn. 1996).

⁵¹ *Ernst Steel Corp. v. Reliance Ins. Co.*, 536 A.2d 969, 974 (Conn. App. Ct. 1988).

to compensate the innocent party for the fees incurred because of the blameworthy party's conduct.⁵²

A plaintiff who brings or maintains a frivolous action engages in bad faith litigation conduct and may be ordered to pay the defendant's attorneys' fees.⁵³ An action is considered frivolous when "the client desires to have the action taken primarily for the purpose of harassing or maliciously injuring a person *or* if the lawyer is unable either to make a good faith argument on the merits of the action taken or to support the action taken by a good faith argument for an extension, modification or reversal of existing law."⁵⁴ The filing of an action or defense or similar action taken for a client is not frivolous merely because the facts have not first been fully substantiated or because the lawyer expects to develop vital evidence only by discovery. What is required of lawyers, however, is that they inform themselves about the facts of their clients' cases and the applicable law and determine that they can make good faith arguments in support of their clients' positions.

⁵² Stein v. Horton, 914 A.2d 606 (Conn. App. Ct. 2007).

⁵³ Schoonmaker v. Lawrence Brunoli, Inc., 828 A.2d 64 (Conn. 2003).

⁵⁴ *Id.* at 95.

I. Reliance Damages

In some cases, compensatory damages for breach cannot be measured with any degree of accuracy, and courts award restitution or reliance damages instead. Courts will protect the injured party's reliance interest by seeking to achieve the position that it would have obtained had the contract never been made, usually through recovery of amounts made in performance or in anticipation of performance of the contract.⁵⁵ Reliance damages are distinguished by being measured on the extent of the promisee's reliance and on principles of promissory estoppel.⁵⁶

J. Unjust Enrichment

Unjust enrichment is based upon the principle that one should not be permitted unjustly to enrich themselves at the expense of another but should be required to make restitution of or for property received, retained or appropriated. The question to ask is: did the liable party, "to the detriment of someone else, obtain something of value" to which the liable party was not entitled?⁵⁷ Unjust enrichment is consistent with the principles of

⁵⁵ Scapa Tapes N. Am., Inc. v. Avery Dennison Corp., 384 F. Supp.2d 544 (D. Conn. 2005).

⁵⁶ Goldstein v. Unilever, No. 397881, 2004 WL 1098789, at *6 (Conn. Super. Ct. May 3, 2004).

⁵⁷ Town of New Hartford v. Conn. Res. Recovery Auth., 970 A.2d 592 (Conn. 2009).

equity as a broad and flexible remedy.⁵⁸

Unjust enrichment is a noncontractual means of recovery in restitution. It is not available as a remedy when there is a valid contract between the parties and that contract addresses the matter at issue in the unjust enrichment action.⁵⁹ However, when an express contract does not fully address a subject, a court of equity may impose a remedy to further the ends of justice. Therefore, it can serve as a “catchall remedy.”⁶⁰

There is no specific formulaic test for determining unjust enrichment; instead, it relies on the circumstances to evaluate whether the matter is just or unjust, equitable or inequitable, conscionable or unconscionable. In any case where the benefit of the doctrine is claimed, courts must examine the circumstances and the conduct of the parties and apply this standard.⁶¹ The measure of damages in an unjust enrichment case ordinarily is not the loss to the plaintiff, but the benefit to the defendant.⁶²

Quantum meruit is a theory of recovery permitting restitution in the context of an otherwise

unenforceable contract. In contrast, recovery under a theory of unjust enrichment applies in the absence of a quasi-contractual relationship. The same equitable considerations apply to cases under either theory as they are both restitutionary doctrines. The terms of an unenforceable contract will often be the best evidence for restitution of the reasonable value of services rendered in quantum meruit, although sometimes the equities may call for a more restrictive measure. The Connecticut Supreme Court has used quantum meruit and unjust enrichment interchangeably, or as equivalent terms for recovery in restitution.⁶³

K. Unique Remedies

Connecticut has adopted and codified a procedure for obtaining prejudgment remedies.⁶⁴ A prejudgment remedy is defined as any remedy or combination of remedies that enables a person by way of attachment, foreign attachment, garnishment, or replevin to deprive the defendant in a civil action of, or affect the use, possession, or enjoyment by such defendant of his property prior to final judgment.⁶⁵

⁵⁸ *Gleason v. Durden*, 272 A.3d 1129, 1138 (Conn. App. Ct. 2022).

⁵⁹ *Connecticut Light & Power Co. v. Proctor*, 118 A.3d 702 (Conn. App. Ct. 2015).

⁶⁰ *Gleason*, 272 A.3d at 1138.

⁶¹ *Pro. Elec. Contractors of Connecticut, Inc. v. Stamford Hosp.*, 230 A.3d 773, 781 (Conn. App. Ct. 2020).

⁶² *Hartford Whalers Hockey Club v. Uniroyal Goodrich Tire Co.*, 649 A.2d 518 (Conn. 1994).

⁶³ *Pro. Elec. Contractors*, 230 A.3d at 781.

⁶⁴ See CONN. GEN. STAT. §§ 52-278a through 52-278n.

⁶⁵ CONN. GEN. STAT. § 52-278a.

A prejudgment remedy is available upon a finding by the court that there is probable cause that a judgment in the amount of the prejudgment remedy sought, or in an amount greater than the amount of the prejudgment remedy sought, considering any defenses, counterclaims or setoffs, will be rendered in the matter in favor of the plaintiff or counterclaimant. The standard for proof of probable cause as a condition of obtaining a prejudgment remedy is not as demanding as proof by a fair preponderance of the evidence. The theory of probable cause is a *bona fide* belief in the existence of the facts essential under the law for the action and as such would warrant a man of ordinary caution, prudence and judgment, under the circumstances, to have confidence in such a belief. It does not demand that a belief be correct or more likely true than false.⁶⁶

L. Public Policy Prohibitions

Although there is a strong public policy to favor the right and freedom to contract, if a contract violates public policy, this would be ground

to not enforce the contract. The question of whether a contract is against public policy is dependent on the specific circumstances of the particular case.⁶⁷ Contracts that are contrary to public policy, such as those that negate laws enacted for the common good, that secure health, safety, comfort or just general welfare, are illegal and therefore unenforceable.⁶⁸ A contract made in violation of a statute is illegal and unenforceable.⁶⁹ A contract could also be voided on grounds of:

- Mistake: A mistake could be unilateral or mutual for grounds of rescission of a contract. Mutual mistake may be ground for rescission where the mistake is common to both parties and by reason of it each has done what neither intended to do.⁷⁰ A unilateral mistake inducing a contract can also be

⁶⁶ Johnson v. Vita Built, LLC, 287 A.3d 197, 206 (Conn. App. Ct. 2022).

⁶⁷ Stamford Wrecking Co. v. United Stone Am., Inc., 912 A.2d 1044, 1053 (Conn. App. Ct. 2007).

⁶⁸ 12 Havemeyer Place Co., LLC v. Gordon, 820 A.2d 299, 307 (Conn. App. Ct. 2003).

⁶⁹ Carriage H. I-Enfield Ass'n, Inc. v. Johnston, 124 A.3d 952, 963 (Conn. App. Ct. 2015).

⁷⁰ Lopinto v. Haines, 441 A.2d 151 (Conn. 1981).

- grounds for cancellation;⁷¹
- Fraud;⁷² and
 - Unconscionability: In order to use this as a defense to contract enforceability, it is generally required that

the contract be both procedurally and substantively unconscionable when made.⁷³

⁷¹ Shoreline Commun., Inc. v. Norwich Taxi, LLC, 797 A.2d 1165, 1169 (Conn. App. Ct. 2002).

⁷² Billington v. Billington, 595 A.2d 1377, 1379 (Conn. 1991).

⁷³ Hirsch v. Woermer, 195 A.3d 1182, 1187–1188 (Conn. App. Ct. 2018).