

Georgia

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A. Adoption of the UCC

Georgia has adopted the Uniform Commercial Code (UCC),¹ which governs commercial transactions.

The UCC is applied to contracts for sale of goods, negotiable instruments, secured transactions, and related commercial disputes.² Georgia courts interpret UCC provisions consistently with the Code's underlying purpose: to simplify and unify commercial law

among the various jurisdictions.³ Where the UCC is silent, courts supplement the UCC with equity and common law principles.⁴

B. Compensatory Damages

Compensatory damages aim to make the injured party whole and place them in a position they would have been in had the breach not occurred. Georgia law distinguishes between general damages, which flow naturally and directly from the

¹ Codified as Title 11 of the Official Code of Georgia Annotated (O.G.C.A.).

² See *Franklin v. Demico Inc.*, 179 Ga. App. 775 (Ga. Ct. App. 1986) (affirming an award of damages to a seller who had begun manufacturing proprietary goods when the buyer breached); see also *Unique Designs, Inc. v. Pittard Machinery Co.*, 200 Ga. App. 647 (Ga. Ct. App. 1991) (a lost volume dealer

is entitled to recover lost profits, even where the seller resold the goods to a third-party).

³ See O.C.G.A. §§ 11-1-103.

⁴ See O.C.G.A. § 11-1-103(b) (“[u]nless displaced by the particular provisions of this title, the principles of law and equity...shall supplement its provisions”); see also *Estate of Bass v. Regions Bank*, 947 F.3d 1352, 1358 (11th Cir. 2020) (applying Georgia law and citing O.C.G.A. § 11-1-103(b)).

breach, and special damages, which are not the necessary result of the act complained but arise from the particular circumstances of the case.⁵ General damages may be recovered without proof of amount, but special damages must be pled with particularity and proven with specificity.⁶

Under Georgia's UCC, a seller may recover the difference between the contract price and the market price at the time and place of tender if the buyer wrongfully rejects or repudiates the goods.⁷ If that measure is inadequate to put the seller in as good a position as performance would have done, then the seller may recover lost profits.⁸ A buyer may similarly recover the difference between the cost of cover

and the contract price, as well as any incidental or consequential damages.⁹

Compensatory damages must be based on actual loss and may not be speculative.¹⁰ Mathematical certainty is not required where evidence provides a reasonable basis for computation.¹¹ Nominal damages are allowed only when the extent of loss cannot be determined with reasonable certainty.¹² Where a jury awards general or special damages based on sufficient evidence, a nominal damages award is not authorized.

C. Consequential Damages

⁵ See O.C.G.A. § 13-6-2.

⁶ See O.C.G.A. §§ 9-11-9(g) and 13-6-8.

⁷ See O.C.G.A. § 11-2-708(1).

⁸ See O.C.G.A. § 11-2-708(2); see also *Franklin*, 179 Ga. App. at 777-778 (affirming lost profit award under U.C.C. § 11-2-708(2)).

⁹ See O.C.G.A. §§ 11-2-712(2) and 11-2-715(1)-(2).

¹⁰ See *EZ Green Assocs. LLC, Georgia-Pacific Corp.*, 331 Ga. App. 183, 189 (Ga. Ct. App. 2015) (damages which are speculative, remote, or uncertain are not recoverable and that damages must be capable of reasonable approximation).

¹¹ See *Bill Parker & Assocs. v. Rahr*, 216 Ga. App. 838, 841 (Ga. Ct. App. 1995) (allowing recovery of general and special damages in contract where they arose naturally from the breach and were contemplated by the parties); see also *Eastgate Assocs. v. Piggly Wiggly S., Inc.*, 200 Ga. App. 872, 875 (Ga. Ct. App. 1991) (necessary expenses incurred in compliance with a contract may be recoverable as damages).

¹² See *Ponce de Leon Condos v. DiGirolamo*, 238 Ga. 188, 190 (Ga. 1977) (nominal damages appropriate where a right is violated and actual loss is proven, but damages are not susceptible of reasonable certainty as to their extent).

Consequential damages arise from special circumstances surrounding a breach and must be reasonably foreseeable, provable to a reasonable certainty at the time of contract formation.¹³

Georgia courts define consequential damages as losses that result indirectly from the defendant's conduct, such as lost profits, damages to goodwill or reputation, or other nonperformance-related losses, so long as such damages were within the contemplation of the parties at the time of contracting.¹⁴ To recover such damages, a plaintiff must plead them with particularity and provide

evidence of their existence and amount to a reasonable degree of certainty.¹⁵

Under the UCC, consequential damages are available to a buyer for any loss resulting from general or particular requirements and needs of which the seller had reason to know at the time of contracting and could not reasonably be prevented by cover or otherwise.¹⁶ Consequential damages may include injury to a person or property proximately resulting from any breach of warranty.¹⁷

Georgia courts emphasize that consequential damages must not be remote, speculative, or conjectural.¹⁸ The damages must have a direct connection to the breach and be the probable result of the breach in the ordinary course of events.¹⁹ Although exact precision is not required, there must be sufficient proof to support a

¹³ See O.C.G.A. § 51-12-3 (defining consequential damages as “the necessary and connected effort of a tortious act...even though they depend upon other circumstances”); see also O.C.G.A. § 13-6-2 (damages must be “contemplated...as the probable result” of the breach); O.C.G.A. § 13-6-8 (damages that are remote and speculative are not recoverable unless traceable and capable of exact computation).

¹⁴ See *McDevitt & Street Co. v. K-C Air Conditioning Serv. Inc.*, 203 Ga. App. 640, 644 (Ga. Ct. App. 1992) (lost profits are recoverable as consequential damages because the defendant had reason to know at the time of contracting); see also *Imaging Systems Int'l, Inc. v. Magnetic Resonance Plus, Inc.*, 227 Ga. App. 641, 643-644 (Ga. Ct. App. 1997) (consequential damages include

loss of goodwill and are recoverable if not expressly excluded by contract).

¹⁵ See O.C.G.A. § 9-11-9(g) (governs the pleading requirement for special damages); see also O.C.G.A. §§ 13-6-2 and 13-6-8 (discusses foreseeability, traceability, and certainty requirements).

¹⁶ See O.C.G.A. § 11-2-715(2)(a).

¹⁷ See O.C.G.A. § 11-2-715(2)(b).

¹⁸ See *Kroger Co. v. Perpall*, 105 Ga. App. 682, 685-686 (Ga. Ct. App. 1962) (consequential damages must be reasonably certain and not purely speculative).

¹⁹ See *Speed Oil Co. v. Griffin*, 73 Ga. App. 242, 244 (Ga. Ct. App. 1945) (rejecting claim for damages not arising from breach or contemplated by the parties as a probable result).

reasonable basis for the jury's calculation.²⁰

Consequential damages are frequently claimed in business disputes involving lost profits, project delays, lost business opportunities, increased costs of performance, and downstream penalties.²¹

D. Incidental Damages

Incidental damages are defined and recoverable under the UCC by both buyers and sellers for commercial transactions.²² These damages are distinct from consequential damages and refer to commercially reasonable expenses incurred as a direct result of the breach.²³

A buyer may recover incidental damages resulting from the seller's breach, which include expenses reasonably incurred in inspection, receipt, transportation, and care and

custody of goods rightfully rejected, as well as any other reasonable expenses or commissions incident to the breach.²⁴ Georgia courts recognize a buyer's right to recover these damages as long as they were reasonably incurred and directly tied to the breach.²⁵ Increased labor and inventory storage costs incurred due to the delayed delivery have been upheld as incidental damages.²⁶

Similarly, a seller may recover incidental damages including commercially reasonable charges, expenses, or commissions incurred in stopping delivery, transportation, care, and return or resale of the goods following a buyer's breach.²⁷ Georgia courts have permitted sellers to recover costs for advertising resale, storing returned goods, and arranging substitute sales, provide the expenses were commercially reasonable and

²⁰ See *Singleton v. Phillips*, 229 Ga. App. 286, 288 (Ga. Ct. App. 1997); see also *QuikTrip Corp. v. Childs*, 220 Ga. App. 463, 467 (Ga. Ct. App. 1996) (lost wages and earnings must be shown with reasonable certainty and must allow the jury to estimate damages without speculation or guesswork).

²¹ Cases recognizing various types of consequential damages in Georgia business litigation, including lost profits, increased costs, and lost goodwill include *McDevitt*, 203 Ga. App. at 644, *Imaging Systems*, 227 Ga. App. at 643-644; *Franklin*, 179 Ga. App. at 777-778; see also O.C.G.A. §§ 11-2-715(a), 13-6-2, and 13-6-8.

²² See O.C.G.A. §§ 11-2-710 and 11-2-715(1).

²³ See O.C.G.A. §§ 11-2-710 and 11-2-715(1); see also *Franklin*, 179 Ga. App. at 777

(recognizing distinction between incidental damages and consequential damages under the UCC).

²⁴ See O.C.G.A. § 11-2-715(1).

²⁵ See *Billy Cain Ford Lincoln Mercury, Inc. v. Kaminski*, 230 Ga. App. 598, 600-601 (Ga. Ct. App. 1998) (incidental damages were properly submitted to the jury where the buyer presented evidence of reasonable expenses tied to the breach of warranty).

²⁶ See *Latex Equip. Sales & Serv. v. Apache Mills, Inc.*, 225 Ga. App. 516, 518-519 (Ga. Ct. App. 1997) (awarding labor and storage costs as incidental damages because they were a direct result of the seller's failure to deliver custom equipment).

²⁷ See O.C.G.A. § 11-2-710.

traceable to the buyer's breach.²⁸ A lost volume dealer may recover incidental damages from a breaching buyer, even if the goods were resold at the sale price, because the original sale would have allowed the seller to earn profit on both sales.²⁹

Georgia law provides that incidental damages are intended to place the aggrieved party in as good a position as full performance would have done by compensating for commercially reasonable costs incurred as a direct result of the breach.³⁰ Such damages must be traceable to the breach and are not recoverable if they are speculative or remote.³¹

E. Punitive Damages

Punitive damages are generally not recoverable in actions based

solely on breach of contract.³² They may be awarded in tort claims arising from the same conduct where the defendant acted with willful misconduct, malice, fraud, wantonness, oppression, or an entire want of care that raises the presumption of conscious indifference to consequences.³³ Punitive damages are awarded not to compensate the plaintiff but to punish, penalize, or deter a defendant.³⁴

In commercial tort litigation, punitive damages may be available where the defendant's conduct meets the heightened culpability threshold.³⁵ Mere negligence or even gross negligence is insufficient; there must be clear and convincing evidence of aggravating circumstances.³⁶ The burden of proof lies with the plaintiff, who must show by clear and convincing

²⁸ See *Franklin*, 179 Ga. App. at 778 (affirming a jury award for a seller that included incidental costs of resale, explicitly applying O.C.G.A. § 11-2-710).

²⁹ See *Unique Designs*, 200 Ga. App. 647 (confirming that a lost volume dealer is entitled to recover incidental damages, even where the seller resold the goods to a third-party).

³⁰ See O.C.G.A. § 11-1-305 (“[t]he remedies...shall be liberally administered to the end that the aggrieved party may be in as good a position as if the other party had fully performed”); see also *Latex Equip. Sales*, 225 Ga. App. at 517.

³¹ See O.C.G.A. § 11-2-715(1) (defining incidental damages as “any commercially reasonable charges, expenses, or commissions...incident to the delay or other breach”).

³² See generally *Colonial Pipeline Co. v. Brown*, 258 Ga. 115 (Ga. 1988) (punitive damages are not available in breach of contract actions); see also O.C.G.A. § 15-12-5.1(b) (limiting punitive damages to tort actions involving specific culpable mental states).

³³ See O.C.G.A. § 51-12-5.1(b); see also *DiGirolamo*, 238 Ga. at 189-190 (demonstrating an entire want of care raises the presumption of conscious indifference to consequences).

³⁴ See O.C.G.A. § 51-12-5.1(c).

³⁵ See O.C.G.A. § 51-12-5.1(b)-(c).

³⁶ See *Southern Ry. Co. v. O'Bryan*, 119 Ga. 148 (Ga.1903); *Chattanooga Railroad Co. v. Liddell*, 85 Ga. 482, 495 (Ga. 1890). Both are older cases that have been heavily relied on by Georgia courts in assessing punitive damages.

evidence that the defendant acted with the requisite intent or recklessness.³⁷

Georgia caps punitive damages in most civil cases at \$250,000 unless the defendant acted with specific intent to harm or was under the influence of drugs or alcohol at the time of the tort.³⁸ No cap on punitive damages exists in tort actions arising from product liability, where only one punitive damages award may be recovered from a defendant, regardless of the number of plaintiffs or actions.³⁹ Georgia courts have made clear that punitive damages are disfavored and must be applied cautiously.⁴⁰

F. Liquidated Damages

Under Georgia law, parties to a contract may agree in advance to an

amount of damages to be paid in the event of a breach, known as liquidated damages.⁴¹ These provisions are generally enforceable only if they meet the following requirements: (1) the injury caused by the breach is difficult or impossible to estimate accurately; (2) the parties intended to provide for damages rather than a penalty; and (3) the stipulated sum is a reasonable pre-estimate of the probable loss.⁴² If the amount is found to be a penalty rather than a genuine estimate of damages, the provision will not be enforced.⁴³ Another feature implicit in the concept of liquidated damages is that both parties are bound by their agreement.⁴⁴

Georgia courts carefully scrutinize liquidated damages clauses to ensure they do not serve

³⁷ See O.C.G.A. § 51-12-5.1(b)-(c).

³⁸ See O.C.G.A. § 51-12-5.1(f)-(g).

³⁹ See O.C.G.A. § 51-12-5.1(e).

⁴⁰ See *generally* Taylor v. The Devereux Foundation, Inc., 316 Ga. 44 (Ga. 2023) (upholding a cap reduction on a massive punitive award, reinforcing Georgia's commitment to proportionality); see also Stone Man, Inc. v. Green, 263 Ga. 470, 471-472 (Ga. 1993) ("compliance with the law...tend[s] to show that there is no clear and convincing evidence" to support punitive damages).

⁴¹ See O.C.G.A. § 13-6-7.

⁴² See JR Real Est. Dev., LLC v. Cheeley Inv., L.P., 309 Ga. App. 250, 253 (Ga. Ct. App. 2011); see also Southeastern Land Fund Inc., v. Real Estate World, Inc., 237 Ga. 227, 230 (Ga. 1976) (setting out the three part-test for enforceability of liquidated damages provisions).

⁴³ See Insight Glob., LLC v. Marriott Int'l, Inc., Ga. St.-Wide Bus. Ct. LEXIS 8 (Ga. St.-Wide Bus. Ct. June 8, 2022) ("liquidated damages...will be upheld [under Georgia law] if it is truly the nature of liquidated damages and is not a penalty"); see also AcryliCon USA, LLC v. Silikal GmbH, 985 F.3d 1350, 1373 n. 44 (11th Cir. 2021) (Georgia courts enforce liquidated damages provisions "to the extent such provisions are not penal in nature").

⁴⁴ See *Southeastern Land Fund*, 237 Ga. at 230 (interpreting former GA. CODE ANN. § 20-1402, now codified at O.C.G.A. § 13-6-7).

as a penalty.⁴⁵ When analyzing enforceability, courts consider the circumstances at the time of contracting, not at the time of breach.⁴⁶ If the agreed sum bears no reasonable relation to the probable actual damages, the clause is likely to be deemed a penalty.⁴⁷

Courts may uphold a liquidated damages provision even if no actual damages occurred, so long as the provision was reasonable and not punitive at the time of contract formation.⁴⁸

G. Pre- and Post-Judgment Interest

Georgia law authorizes both pre- and post-judgment interest, but the rules vary depending on the nature of the claim and the damages awarded.

For liquidated claims, pre-judgment interest is generally recoverable as a matter of right. When the amount owed is ascertainable and due at a particular time, interest accrued at the legal rate from the time it becomes due until paid.⁴⁹ For unliquidated claims, prejudgment interest is only available where authorized by statute or contract.⁵⁰

In tort actions, if a claimant sends a written notice demanding an amount of unliquidated damages and the opposing party does not pay within 30 days, the claimant may recover interest if the judgment equals or exceeds the demand.⁵¹ The statute authorizes interest at the prime rate published by the Federal Reserve plus 3%, adjusted annually on January 1.⁵² Interest is excluded from the jury's consideration and

⁴⁵ See *id.* at 231 (“in cases of doubt, the courts favor a construction which holds the stipulated sum to be a penalty, and limits the recovery to the amount of damage actually shown, rather than a liquidation of the damages”); see also *Physician Specialists in Anesthesia, P.C. v. MacNeill*, 246 Ga. App. 398, 402 (Ga. Ct. App. 2000).

⁴⁶ See *J.P. Carey Enterprises v. Cuentas, Inc.* 361 Ga. App. 383, 388 (Ga. Ct. App. 2021) (holding those damages for the untimely delivery of stock – which price changes daily – are not difficult to estimate at the time of contracting).

⁴⁷ See *Nat'l Serv. Indus. v. Here to Serve Restaurants*, 304 Ga. App. 98, 104 (Ga. Ct. App. 2010) (a liquidated damages clause is unenforceable where “the amount [of liquidated damages] plainly has no reasonable relation to any probable actual damage which may follow a breach”).

⁴⁸ See *Insight Glob., Ga. St.-Wide Bus. Ct.* LEXIS 8 (upholding a liquidated damages clause despite no actual damages where the amount was reasonable and non-punitive at the time of contracting) (citing *Techworld Hotel Assocs., LLC v. NCS Pearson, Inc.*, No. 02-CV-02055 (RMC) at *13 (D. D.C. July 9, 2023) (anticipated revenue “amounts to a lost business opportunity and points to...the difficulty in forecasting actual damages”).

⁴⁹ See O.C.G.A. § 7-4-15.

⁵⁰ See *Kuhl v. Shepard*, 226 Ga. App. 439, 440 (Ga. Ct. App. 1997) (the Unliquidated Damages Interest Act is in derogation of the common law and must be strictly construed; prejudgment interest is unavailable without satisfaction of statutory requirements).

⁵¹ See O.C.G.A. § 51-12-14(a).

⁵² See O.C.G.A. § 51-12-14(c). This rate is effective for all civil actions filed on or after July 1, 2003. Prior to this amendment,

added to judgment only upon judicial determination that all procedural requirements have been met.⁵³ Courts emphasize that the purpose of prejudgment interest is to compensate a plaintiff for the delay in receiving the value of their claim, but it is not meant to punish.⁵⁴ Whether damages are liquidated or unliquidated is a threshold issue.⁵⁵

Post-judgment interest is mandatory in Georgia.⁵⁶ The rate is set at the prime rate published by the Federal Reserve plus 3%.⁵⁷ Parties may contract for a specific post-judgment rate, which will control if clearly set forth by the agreement.⁵⁸ Absent such an agreement, the statutory rate

applies.⁵⁹ The interest accrues on the entire judgment amount, including any prejudgment interest awarded.⁶⁰ Post-judgment interest is designed to encourage timely satisfaction of judgments and to fairly compensate plaintiffs for continued delay.⁶¹

H. Attorney's Fees

Georgia follows the American Rule, which generally precludes a prevailing party from recovering attorney's fees unless authorized by statute or contract.⁶² However, Georgia law recognizes several statutory and common law exceptions.⁶³

Georgia courts routinely applied a fixed 7% to 9% interest rate, with 9% frequently cited in earlier case law. Courts must now determine the interest rate based on the prime rate in effect 30 days after the notice is sent.

⁵³ See O.C.G.A. § 7-4-12(d).

⁵⁴ See *General Motors Corp. v. Moseley*, 213 Ga. App. 875, 889 (Ga. Ct. App. 1994) (prejudgment interest compensates for delay in receiving damages, while punitive damages serve a different purpose, and thus prejudgment interest should not apply to punitive awards).

⁵⁵ See *Crown Series, LLC v. Holiday Hospitality Franchising, LLC*, 357 Ga. App. 523, 532 (Ga. Ct. App. 2020) (interest on liquidated claims begins when entitlement attaches, reinforcing that liquidated status is a threshold matter).

⁵⁶ See O.C.G.A. § 7-4-12(a), (c).

⁵⁷ See O.C.G.A. § 7-4-12(a).

⁵⁸ See O.C.G.A. § 7-4-12(b).

⁵⁹ See O.C.G.A. § 7-4-12(a).

⁶⁰ See O.C.G.A. § 7-4-12(c); see also *Security Life Ins. Co. of Am. v. St. Paul Fire & Marine*

Ins. Co., 278 Ga. 800, 803 (Ga. 2004) (post-judgment interest on compensatory damages runs from the date of the original judgment and applies to the full judgement amount, unless vacated or reduced on appeal).

⁶¹ See O.C.G.A. § 7-4-12(a); see also Jill Sandt, "Georgia Judgments Accrue Interest Over Time", Sandt Law LLC, available at <https://www.sandtlawllc.com/post-judgment-interest-in-georgia/> (post-judgment interest accrues from entry of judgment "until the judgment is satisfied" and ensures the balance does not stay stagnant).

⁶² See *Suarez v. Halbert*, 246 Ga. App. 822, 824 (Ga. Ct. App. 2000) ("As a general rule, Georgia law does not provide for the award of attorney fees even to a prevailing party unless authorized by statute or by contract.").

⁶³ See O.C.G.A. §§ 13-1-11 (contractual provision), 13-6-11 (bad faith, stubborn litigiousness, or unnecessary trouble or expense), and 9-15-14 (frivolous litigation or unnecessary delay).

Attorney's fees may be awarded in contract or tort actions where the plaintiff has shown that the defendant acted in bad faith, was stubbornly litigious, or caused the plaintiff unnecessary trouble or expense.⁶⁴ These fees are ordinarily for the jury unless the evidence is undisputed.⁶⁵ To recover fees under this statute, the plaintiff must prevail on the underlying claim and demonstrate one of the statutory grounds.⁶⁶ Stubborn litigiousness may be found where there is no bona fide controversy, and the defendant refuses to settle or negotiate in bad faith.⁶⁷

Contractual provisions for attorney's fees are enforceable in Georgia when the debt is collected through an attorney after maturity.⁶⁸ If the contract specifies a percentage, the award is capped at 15% of the principal and interest owed.⁶⁹ If no percentage is stated,

the statute implies 15% on the first \$500 and 10% on the remainder of the attorney's fees.⁷⁰ The creditor must send written notice after maturity, giving the debtor ten days to pay in full to avoid fees.⁷¹ If the calculated fee yields more than \$20,000, the debtor may petition the court for a reasonableness determination prior to judgment.⁷² This statute does not apply to tort claims.⁷³

Attorney's fees may be available as an element of damages in limited tort contexts, such as in malicious prosecution or abusive litigation claims, or where a party's misconduct forces another to litigate with a third-party.⁷⁴ Georgia law permits fee-shifting in civil actions where a party brings or defends a claim or position that lacks substantial justification or is interposed for delay or harassment.⁷⁵ Fee awards under

⁶⁴ See O.C.G.A. § 13-6-11; see also *City of Atlanta v. Hofrichter/Stiakakis*, 291 Ga. App. 883, 888 (Ga. Ct. App. 2008).

⁶⁵ See *Rossee Oil Co. v. BellSouth Telecomms., Inc.*, 212 Ga. App. 235, 236 (Ga. Ct. App. 1994) (questions under § 13-6-11 are generally for the factfinder); see also *Webster v. Brown*, 213 Ga. App. 845, 846 (Ga. Ct. App. 1994).

⁶⁶ See O.C.G.A. § 13-6-11; see also *Daniel v. Smith*, 266 Ga. App. 637, 641 (Ga. Ct. App. 2004).

⁶⁷ See *Daniel*, 266 Ga. App. at 638; see also *Brown v. Baker*, 197 Ga. App. 466, 468 (Ga. Ct. App. 1990) (finding no evidence to support attorney's fees where a bona fide controversy existed and bad faith was not at issue).

⁶⁸ See O.C.G.A. § 13-1-11(a).

⁶⁹ See O.C.G.A. § 13-1-11(a)(1).

⁷⁰ See O.C.G.A. § 13-1-11(a)(2).

⁷¹ See O.C.G.A. § 13-1-11(a)(3).

⁷² See O.C.G.A. § 13-1-11(b)(1).

⁷³ See O.C.G.A. § 13-1-11(d).

⁷⁴ See O.C.G.A. § 13-6-11; see generally *Dunwoody Plaza Partners, LLC v. Markowitz*, 346 Ga. App. 516 (Ga. Ct. App. 2018) (recognizing attorney's fees as a potential remedy under Georgia's abusive litigation statute but emphasizing strict requirements with statutory notice requirements); see also *Vogtle v. Coleman*, 259 Ga. 115, 118 (Ga. 1989) (attorney's fees may be recovered for prosecuting a counterclaim for abusive litigation).

⁷⁵ See O.C.G.A. § 9-15-14(b) (authorizing sanctions where a claim "lacked substantial justification" or was "interposed for delay or harassment").

this statute are within the trial court's discretion and must be supported by findings of fact.⁷⁶

Statutory provisions in Georgia also allow for attorney's fees in certain business tort contexts. The Georgia Trade Secrets Act permits recovery of attorneys' fees if a claim of misappropriation is made in bad faith or willful and malicious misappropriation is found.⁷⁷ The Georgia RICO Act allows for treble damages and attorney's fees to prevailing plaintiffs.⁷⁸ The Uniform Deceptive Trade Practices Act permits a court to award reasonable attorney's fees to a prevailing party in exceptional cases.⁷⁹

I. Reliance Damages

Reliance damages may be awarded in Georgia to compensate a party for losses incurred in

reasonable reliance on a promise, often in circumstances where no enforceable contract exists or where a promissory estoppel theory applies.⁸⁰ An essential element of a claim of promissory estoppel is that the defendant made certain promises to the plaintiff.⁸¹ Under Georgia law, a promise is binding if the promisor should reasonably expect it to induce action or forbearance, and if injustice can only be avoided by enforcement of the promise.⁸² The statute explicitly permits enforcement of such promises where reliance has occurred, even in the absence of consideration.⁸³

Reliance damages are measured by the out-of-pocket expenses and losses actually incurred in reliance on the promise, not by the benefit of

⁷⁶ See O.C.G.A. § 9-15-14(f) (court must determine award without a jury and issue and enforceable order); *see also* *Williams v. Warren*, 322 Ga. App. 599, 602-603 (Ga. Ct. App. 2013) (noting the importance of distinguishing between subsections (a) and (b) because appellate review differs; (b) is reviewed for abuse of discretion).

⁷⁷ See O.C.G.A. § 10-1-767(a) (providing civil remedies for misappropriation of trade secrets); *see also* O.C.G.A. § 10-1-764 (authorizing attorney's fees for bad faith claims or willful and malicious misappropriation).

⁷⁸ See O.C.G.A. § 16-14-6(c) ("[s]uch person shall also recover attorney's fees in the trial and appellate courts and costs of investigation and litigation reasonably incurred").

⁷⁹ See O.C.G.A. § 10-1-373(b) (allowing fees to prevailing party where plaintiff brings a knowingly groundless claim or defendant willfully engages in deception).

⁸⁰ See O.C.G.A. § 13-3-44(a).

⁸¹ See *Mooney v. Mooney*, 245 Ga. App. 780, 783-784 (Ga. Ct. App. 2000); *see also* *Woodstone Townhouses, LLC v. Southern Fiber Worx, LLC*, 358 Ga. App. 516, 531 (Ga. Ct. App. 2021).

⁸² See O.C.G.A. § 13-3-44(a); *see also* *Mooney*, 245 Ga. App. at 782-783 (reliance may substitute for consideration where injustice can only be avoided by enforcement of a definite promise).

⁸³ See O.C.G.A. § 13-3-44(a); *see generally* *Wight v. Newman*, 266 Ga. 519 (Ga.1996) (enforcing a promise for child support under O.C.G.A. § 13-3-44 where reliance substituted consideration).

the bargain or lost profits.⁸⁴ Georgia courts emphasize that reliance damages are not intended to provide a windfall or expectation-based recovery, but to restore the promisee to the position they occupied before the promise was made.⁸⁵

While often asserted in promissory estoppel claims, reliance damages may also be available in tort actions involving negligent misrepresentation or fraudulent inducement where a party's reliance on a false statement resulted in a foreseeable loss.⁸⁶

Promissory estoppel claims do not require mutual assent or

consideration and may provide limited recovery where the promise induces definite and substantial reliance.⁸⁷ This remedy may be limited "as justice requires," giving courts flexibility to tailor reliance to particular equities of the case.⁸⁸

J. Unjust Enrichment

Georgia recognizes unjust enrichment, or restitution, as an equitable doctrine that applies when one party has conferred a benefit on another under circumstances that make it unjust for the recipient to retain that benefit without compensation.⁸⁹

⁸⁴ See *BDO Siedman, LLP v. Mindis Acquisition Corp.*, 276 Ga. 311, 312 (Ga. 2003) ("out-of-pocket standard" are damages measured by the difference in value and purchase price plus losses from reliance).

⁸⁵ See *Hendon Props., LLC v. Cinema Dev., LLC*, 275 Ga. App. 434, 441 (Ga. Ct. App. 2005) (setting forth elements of promissory estoppel; holding that promissory estoppel damages are limited to "those damages as are equitable and necessary to prevent injustice from occurring").

⁸⁶ See *BDO Siedman*, 276 Ga. at 311 (out-of-pocket reliance damages are available in tort claims for negligent misrepresentation where the plaintiff suffers pecuniary loss as a consequence of reliance on a false statement); see also Restatement (Second) of Torts § 552B.

⁸⁷ See O.C.G.A. § 13-3-44(a); see also *Mooney*, 245 Ga. App. at 782-783 (promissory estoppel applies even without bargained-for consideration if a definite promise induces reliance); see also *Bank of Dades v. Reeves*, 257 Ga. 51, 53 (Ga. 1987) (explaining that promissory estoppel does not apply where mutual consideration supports a contract, as it substitutes for consideration only when no contract exists). See also *DPLM, Ltd. v. J.H. Harvey Co.*, 241 Ga. App. 219, 221 (Ga. Ct. App. 1999).

⁸⁸ See O.C.G.A. § 13-3-44(a); see also *First Bank of Ga. v. Robertson Grading, Inc.*, 328 Ga. App. 236, 242 (Ga. 2014) (courts may limit promissory estoppel remedies as justice requires).

⁸⁹ See *Toll Bros. Inc. v. Larkabit P'ship, L.P.*, 2025 WL 1552603 at *6 (Ga. Ct. App. June 2, 2025) (recognizing unjust enrichment as an equitable doctrine that applies when one party has conferred a benefit on another that makes it unjust for the recipient to retain that benefit without compensation); see also *Hollifield v. Monte Visa Biblical Gardens, Inc.*, 251 Ga. App. 124, 130 (Ga. Ct. App. 2001).

Unjust enrichment is typically available when no enforcement contract exists, but fairness dictates restitution.⁹⁰

To prevail on a claim for unjust enrichment in Georgia, a plaintiff must show: (1) the plaintiff conferred a benefit on the defendant; (2) the defendant appreciated and accepted the benefit; and (3) it would be inequitable for the defendant to retain the benefit without compensating the plaintiff.⁹¹ A written contract is not required; unjust enrichment is generally not available where an express contract governs the same subject matter.⁹²

The measure of damages for unjust enrichment is the value of the benefit conferred upon the defendant, not the detriment to the

plaintiff.⁹³ Courts aim to restore the plaintiff to the position they occupied before the benefit was conferred, preventing the defendant from receiving a windfall.⁹⁴ Georgia courts emphasize that recovery is limited to the value of the benefit unjustly retained – not lost profits, consequential damages, or punitive damages.⁹⁵

Unjust enrichment is often pleaded in the alternative to breach of contract or quantum meruit claims and may be invoked in disputes such as services rendered.⁹⁶ Unlike claims of quantum meruit, an unjust enrichment claim does not necessarily require an implied promise to pay.⁹⁷

Unjust enrichment claims are subject to equitable defenses such

⁹⁰ See *Hollifield*, 251 Ga. App. at 130 (unjust enrichment arises both at law and in equity when no contract governs, but fairness requires restitution); see also *Toll Bros. Inc.*, 2025 WL 1552603 at *6.

⁹¹ See *id.* at 128-129 (distinguishing the elements of unjust enrichment from quantum meruit by explaining that only the latter requires and expectation of compensation at the time services are rendered).

⁹² See *Smith v. McClung*, 251 Ga. App. 786, 789 (Ga. Ct. App. 1994).

⁹³ See *Zampatti v. Tradebank Int'l Franchising Group*, 235 Ga. App. 333, 340 (Ga. Ct. App. 1998) (the measure of unjust enrichment damages is based on the benefit to the defendant, not the cost to the plaintiff).

⁹⁴ See *St. Paul Mercury Ins. v. Meeks*, 270 Ga. 136, 137 (Ga. 1998). (describing unjust enrichment as an equitable remedy that applies when a party has received a benefit “which the benefitted party equitably ought to return or compensate for”); see also *Smith*, 215 Ga. App. at 789.

⁹⁵ See *Zampatti*, 235 Ga. App. at 337 (unjust enrichment damages are measured by the benefit conferred upon the defendant, not by the cost to the plaintiff or other types of damages).

⁹⁶ See *Broughton v. Johnson*, 247 Ga. App. 819, 819 (Ga. Ct. App. 2001) (quantum meruit may be pleaded in the alternative to breach of contract to recover for services rendered where no express agreement exists).

⁹⁷ See *Yoh v. Daniel*, 230 Ga. App. 640, 642 (Ga. Ct. App. 1998) (“because an implied contract is not necessary for unjust enrichment, a showing of an expectation of compensation is not required”).

as laches, estoppel, and unclean hands.⁹⁸ The existence of an adequate legal remedy may preclude equitable relief.⁹⁹ Unjust enrichment claims have a four-year statute of limitations.¹⁰⁰

K. Unique Equitable Remedies

Georgia law provides for several unique or equitable remedies beyond compensatory and punitive damages. One notable remedy is **prejudgment attachment**, which allows a plaintiff to seek a lien or levy on a defendant's property before judgment where the plaintiff can show risk of non-collection.¹⁰¹ This remedy is authorized by statute

and is typically granted only in cases involving fraud, insolvency, or attempts to dispose of assets to avoid judgment.¹⁰²

In equity, **constructive trusts and liens** are also available where unjust enrichment has occurred and legal remedies are inadequate.¹⁰³ Georgia courts have clarified that a constructive trust is a remedial device used to prevent unjust enrichment rather than a standalone cause of action.¹⁰⁴

Additionally, Georgia courts may issue **injunctions** to prevent irreparable harm where no adequate remedy at law exists.¹⁰⁵ To properly grant an **interlocutory injunction**, the court must find (1)

⁹⁸ See generally *Hasty v. Castleberry*, 293 Ga. 727 (Ga. 2013) (not involving unjust enrichment but holding that equitable defenses like unclean hands, laches, and estoppel apply only to equitable claims, supporting their applicability to unjust enrichment as an equitable remedy).

⁹⁹ See *BJL Enterprises, LLC v. Level One Contract, Inc.*, 314 Ga. App. 42, 44 (Ga. Ct. App. 2012) (equitable relief in the form of a constructive trust was unavailable where the plaintiff had an adequate legal remedy for unpaid rent).

¹⁰⁰ See O.C.G.A. § 9-3-26.

¹⁰¹ See O.C.G.A. § 18-3-1; see also *D.C. Micro Dev., Inc. v. Lange*, 259 Ga. App. 611, 615 (Ga. Ct. App. 2003) (rejecting the argument that pretrial receivership amounted to unlawful prejudgment attachment and noting that Georgia law permits such relief under appropriate circumstances); see also *Allied Prods. Inc. v. Peterson*, 233 Ga. 266, 267 (Ga. 1982) (upholding equitable remedy to prevent dissipation of assets; does not explicitly discuss prejudgment attachment).

¹⁰² See O.C.G.A. § 18-3-1 (authorizing attachment when the debtor absconds, moves out of country or state, removes property, etc.); see also *Lange*, 259 Ga. App. at 615 (affirming appointment of receiver to preserve assets amid evidence of financial misconduct, underreporting income, and diversion of funds).

¹⁰³ *Jonas v. Jonas*, 280 Ga. App. 155, 162 (Ga. Ct. App. 2006) (stating that a constructive trust is a remedial device created by a court of equity where legal title is held in violation of equitable principles); see also *McArthur Elec., Inc. v. Cobb Cnty. School Dist.*, 281 Ga. 773, 774-775 (Ga. 2007) (holding that an equitable lien is available only where legal remedy is inadequate, and equity requires it).

¹⁰⁴ See *St. Paul Mercury*, 270 Ga. at 137 (stating that "a constructive trust is a remedy created by a court in equity to prevent unjust enrichment"); see also *Jonas*, 280 Ga. App. at 162.

¹⁰⁵ See O.C.G.A. § 23-1-4 (equity will grant relief only when there is no adequate remedy at law).

that the legal remedy is inadequate; (2) that the plaintiff will suffer immediate and irreparable harm without relief; and (3) that the injunction is necessary to preserve the status quo until the case is resolved.¹⁰⁶ Unlike a **temporary restraining order**, which may be granted without notice and typically expires within 30 days, an interlocutory injunction requires notice and is designed to provide equitable relief pending a final judgment.¹⁰⁷

Specific performance is commonly used to enforce contracts involving unique goods or real property where damages are insufficient to make the plaintiff whole.¹⁰⁸

¹⁰⁶ See O.C.G.A. § 9-11-65(a); *see also* City of Waycross v. Pierce County Bd. Of Commrs., 300 Ga. 109, 111 (Ga. 2016) (laying out the elements for an interlocutory injunction).

¹⁰⁷ See O.C.G.A. §9-11-65(b) (describing when temporary restraining orders may be issued without notice, their short-term duration, and the requirement that a motion for interlocutory relief follow promptly).

¹⁰⁸ See O.C.G.A. § 23-2-130 (specific performance of a contract should only be used where legal damages are not an adequate remedy); *see also* Hampton Island, LLC v. HAOP, LLC, 306 Ga. App. 542, 548-549 (Ga. Ct. App. 2010) (affirming specific performance of contract for sale of unique real property where damages are inadequate to make the plaintiff whole).

Georgia also provides that a contract induced by fraud, mistake, or duress is voidable, and equity may grant **rescission** to return the parties to their pre-contractual positions.¹⁰⁹

Equitable **accounting** may be granted in business tort or fiduciary duty cases where financial transactions are complex and legal damages cannot be determined without judicial oversight.¹¹⁰

L. Public Policy Prohibitions

Georgia courts will not enforce contracts that violate public policy, statutes, or the Georgia constitution.¹¹¹ This includes agreements that contravene statutory prohibitions or seek to waive

¹⁰⁹ See O.C.G.A. §§ 23-2-51 (fraud), 23-2-21 (mistake), 13-5-6 (duress), and 23-1-3 (stating that equity may provide full relief). *See also* Thompson v. Wilkins, 143 Ga. App. 739, 740 (Ga. Ct. App. 1977) (holding that rescission is appropriate when material misrepresentation invalidated the contract).

¹¹⁰ See O.C.G.A. § 23-2-70; *see also* Herring v. Standard Guaranty Ins. Co., 238 Ga. 261, 262 (Ga. 1977) (equitable accounting is not an automatic right but is available only when legal remedies are inadequate and the accounts are complex, fiduciary in nature, or otherwise within the statute); *see also* Peeples v. Peeples, 193 Ga. 358, 365-366 (Ga. 1942) (affirming dismissal where plaintiff failed to show a court of law could not afford adequate relief).

¹¹¹ See O.C.G.A. § 13-8-1 (“a contract that is against the policy of the law cannot be enforced”); *see also* Community & Southern Bank v. Clear Creek Properties, 333 Ga. App. 280, 283 (Ga. 2015) (applying O.C.G.A. 13-8-1).

statutory rights. Statutory examples include contracts that corrupt the judiciary, restrain trade, evade foreign revenue laws, or involving wagering or champerty.¹¹²

Courts have likewise invalidated exculpatory clauses that purport to relieve a party of liability for gross negligence or intentional misconduct.¹¹³ Georgia law prohibits contractual provisions that seek to exonerate one from liability for willful or wanton conduct.¹¹⁴ Similarly, contracts purporting to restrain trade or competition may be void unless they comply with Georgia's statutory framework for restrictive covenants.¹¹⁵

Moreover, certain contract defenses rooted in public policy may render an agreement unenforceable, including duress, illegality, unconscionability, or contracts formed for an illegal purpose.¹¹⁶

Courts will also generally uphold waivers in settlement agreements unless enforcement would injure others or contravene the public interest.¹¹⁷

Recent tort reform legislation further emphasizes Georgia's evolving public policy on civil liability. The Georgia General Assembly enacted Senate Bill 68 and Senate Bill 69 in 2025 to reduce abusive litigation practice and promote fairness in civil actions. These statutes impose stricter standards for negligent security claims, require enhanced pleading specificity, and limit anchoring tactics during jury trials. As expressions of legislative intent, they may operate to invalidate claims or defenses that conflict with these new standards, and courts may deem non-compliant practices void as against public policy in the future.¹¹⁸

¹¹² See O.C.G.A. § 13-8-2(a) (listing contracts declared void as against public policy).

¹¹³ See *Downes v. Oglethorpe Univ. Inc.*, 342, Ga. App. 250, 253 n. 4 (Ga. 2017) (gross negligence cannot be waived by exculpatory clause, though summary judgment was affirmed on assumption of risk grounds).

¹¹⁴ See *Omstead v. BPG Inspection, LLC*, 391 Ga. 512, 517 (Ga. 2014) (exculpatory clauses cannot relieve a party from willful or wanton conduct but a one-year contractual limitation period was not an exculpatory clause and thus enforceable).

¹¹⁵ See O.C.G.A. §§ 13-8-50 to 13-8-59 (governing enforceability of employment contracts and other restrictive covenants).

¹¹⁶ See O.C.G.A. §§ 13-5-6 (duress) and 13-8-1 (illegal contracts); *see also* *Innovative*

Images, LLC v. Summerville, 309 Ga. 675, 681-682 (Ga. 2020) (contracts may be void as against public policy when the resulting agreement is illegal or immoral and recognizing unconscionability as a separate basis for unenforceability).

¹¹⁷ See *Kothari v. Tessfaye*, 318 Ga. App. 289, 299 (Ga. Ct. App. 2012) (a party may waive defenses "as long as the contract is otherwise valid and such waiver does not adversely affect others or the public interest").

¹¹⁸ See Ga. Senate Bill 68 (<https://legiscan.com/GA/text/SB68/2025>) and Ga. Senate Bill 69 (<https://legiscan.com/GA/bill/SB69/2025>).