Chapter X
Breach of Contracts and Remedies

The parties to a contract that is legally enforceable are obligated to perform the obligations arising from the contract, and failure to perform may constitute a breach of the contract for which the party in breach will be held liable. In case of a breach, the damages will be assessed and legal remedies available to the aggrieved party will be applied against the damages. Although the subject of remedies is regarded as a broad topic, the contents of the remedies basically involve the monetary compensation and non-monetary relief, which of course may have different types.

1. Liability for Breach: A Chinese Concept

In China, a heavily discussed term concerning the remedies for breach of contract is the “liability for breach” – a concept that is claimed as a “product of China”.1 Generally the liability for breach is defined as the civil liability that arises from the conduct of violation of a contract. In describing the liability for breach, however, scholars in China take different views. One view is that the liability for breach is the legal consequence that a party must face if the party fails to perform his obligations under the contract. Another view deems the liability for breach as the responsibility of the party in breach to compensate

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the damages suffered by the aggrieved party. The third view tries to stress the
punishment by characterizing the liability for breach as the legal sanction
against the party in breach. The forth view insists that the liability for breach
is essentially the legal assurance for the contract performance, and if a party
defaults in performance, the other party may ask the court to enforce the con-
tractual rights against the party in default.²

There are two notable principles governing liability for breach that have fun-
damental impacts on Chinese contract law in the remedies. The first is the prin-
ciple of liability. Under this principle, a person will be legally liable for failure
to fulfill what he is obliged to do as required by law. The best example to illus-
trate this principle is Article 106 of the 1986 Civil Code. It is provided that a
citizen or legal person who breaches a contract or fail to fulfill other obligations
shall bear civil liability. Obviously, Article 106 attempts to differentiate civil lia-
Bability from obligation. Scholars have also made efforts to make distinction
between liability and obligation. In one book, obligation is defined as the com-
mitment that a party is required to make either under the provision of law or by
a contract, and the liability is termed as the consequence in which the party is
compelled to continue performing or to take other remedial acts when the party
fails to fulfill his obligation.³ Therefore, the liability is not simply the obliga-
tion, but the legal consequence facing the obligor in case the obligor defaults.⁴

The second principle is the doctrine of liability imputation. Liability impu-
tation is the process of determining whether the party in breach shall be
responsible for the breach of the contract. If a party is alleged to have
breached a contract, before any liability is to be imposed, the question that
must first be answered is whether the breach is caused by the party. The next
question then will be whether the liability shall be imposed on the party who
is found to be in breach. The liability imputation principle requires that the
civil liability be imposed for what should be legally blamed. This principle is
deemed as the cornerstone of determination of civil liabilities because it
establishes standards and rules under which the determination shall be made.

2. Liability Imputation: Fault vs. Strict Liability

In contract law theory, two basic approaches are commonly employed as the
standards to impute civil liabilities, namely the fault approach and strict
liability (or no fault) approach. The fault approach suggests that a party who

² See id., at pp. 5–7.
³ See Cui Jianyuan, Studies on Contractual Liabilities, 3 (Ji Lin People’s Publishing House,
⁴ See Wang Liming, Study on Contract Law (Vol. II), 381 (People’s University Press, 2003).