

# EXAMINING CONSUMER LOSSES AND DISSATISFACTION DUE TO BROKEN SALES AND SERVICE AGREEMENTS

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## ABSTRACT

A taxonomy of damages is proposed and is used as a basis for decomposing consumer dissatisfaction due to sales or service agreements that are broken by sellers or service providers. Sets of different circumstances surrounding broken deals are presented to respondents in order to assess the relationship between different types of damages (as well as the irresponsibility of the seller) upon dissatisfaction. Weights are obtained indicating the contribution of different factors to dissatisfaction. The results offer implications for understanding consumer dissatisfaction and mental accounting as well as for shaping the legal rules guiding damage awards. Methodologically, a decompositional approach (conjoint analysis) is found to be an effective way to determine the factors that contribute to dissatisfaction caused by complex and multiple damages.

## INTRODUCTION

Broken agreements abound around us. Most of us are forced to deal with varying degrees of agreement failures, whether they be related to providing goods or services. Consider having decided upon purchasing a particular brand from a particular merchant and then finding out that the deal will not be honored after perhaps having placed a deposit, having relied on the agreement, and having considered the agreement to be good! Such situations can be characterized as involving a number of different types of losses (or more generally, "damages") that create dissatisfaction.

Although consumer satisfaction and dissatisfaction have been studied from various theoretical perspectives (See Oliver and DeSarbo, 1988, for an integration of relevant theories), most research has focused upon dissatisfaction due to poor product or service performance without examination of the types of damages that can occur due to such poor performance. There is a need, however, to provide a framework for studying

consumer dissatisfaction caused by those damages that are prevalent in consumer transactions and that are especially apparent in cases of broken deals (prior to performance).

This study is the first to examine consumer dissatisfaction within the context of, and in relation to, different types of damages due to broken deals. It draws from the legally cognizable damages as a source from which to create distinctions among, and a taxonomy of, damages. It then examines how the various potential remedies (legally cognizable or otherwise) relate to consumers' perceptions of satisfaction. It does so by deriving weights indicating the relative importance of types of damages in determining dissatisfaction, a method traditionally employed in the evaluation of products (Green and Srinivasan 1978, 1990; Green and Wind 1975),

No individual theory provides an understanding of dissatisfaction due to the different types of damages explored herein. This study draws, therefore, from bodies of literature which complement each other and extends their application to situations of broken deals. In a recent work, Corfman and Lehmann have endeavored to bring together some of the same lines of research discussed herein in an effort to study the concern for the "other side's equity" in determining a proper bargaining stance (Corfman and Lehmann 1990). Although the focus of that study was not upon dissatisfaction, the integrative approach lends itself to this application as well.

The paper is organized into five sections. The first sets forth the scope of the research. The second provides an overview of the various theoretical aspects of the problem at hand and a brief overview of the relevant consumer research. The third introduces and discusses the various remedies that the law sets forth relating to consumers' damages. The fourth introduces a taxonomy of damages relating to broken deals; it relates the consumer research framework introduced in Section 2 to the context of the problem at hand, and sets forth hypotheses. The

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fifth introduces the empirical study and analyzes the results.

### Scope of the Term "Contract"

All marketing efforts presumably should lead to sales. Conceptually, each and every "sale" occurs via a "contract" whether or not the contract is formally in writing or whether or not it occurs prior to performance. (For example, a purchase at a grocery store entails a simultaneous implied-in-fact agreement and a performance). The focus herein is upon dissatisfaction due to broken contracts that are entered into prior to the time of performance. A contract (sometimes referred to herein as a "deal" or "agreement") is an agreement through words, conduct, or writing and need not be formal in nature. (See Restatement Second of Contracts, Farnsworth 1982). The breaking of the agreement is operationalized as the garden variety situation of nondelivery of goods by the seller. (The term "seller", as used herein, refers to a seller or a provider of goods or services, although the empirical study focuses only upon a seller of *goods*). Thus, the findings herein apply to a wide range of typical consumer transactions. The following everyday example is a contract to which this study may apply:

A consumer enters a stereo and TV store and talks about TV's with the sales representative (who has authority or apparent authority to enter into agreements). The sales representative specifically takes a packaged TV from stock and tells the consumer that he/she can have this particular TV for \$250 dollars. The consumer says, "Ok, I'll take it." A contract has been formed.

## LITERATURE RELEVANT TO THE STUDY OF FAILED DEALS

### Mental Accounting and Notions of Fairness

The emergence of prospect theory as a descriptive theory of human behavior has spawned numerous studies relating to the descriptive aspects of human behavior. These studies have focused upon choice behavior in general. In a particular application and extension of prospect theory

(Kahneman and Tversky 1979), Thaler (1985) showed how people mentally segregate or integrate losses and gains via "mental accounting" and posited that there exist two distinct types of utility in purchasing products, "acquisition utility" and "transaction utility." Despite Thaler's discussion solely of purchasing and acquiring, his analysis can shed light upon the issues surrounding damages and dissatisfaction.

First, Thaler shows that people mentally create "accounts" to evaluate and to segregate gains and losses. The scope of mental accounting and the conditions for its existence have not yet been explored in depth. This study hypothesizes certain conditions under which mental accounting may operate to create differences in dissatisfaction for different types of damages. Thus, the concept of mental accounting is examined herein and applied to the distinctions in damages as set forth in Section 4. Second, in developing the concept of two types of utility, Thaler relates utility to the concept of fairness in the transaction setting. He posits that two elements come into play in the purchase of a product. He refers to these elements as "acquisition utility" and "transaction utility", respectively.

**Acquisition Utility.** Acquisition utility is a measure of one's subjective evaluation of the relation between the value one places upon an object and the object's price. In this formulation, the term "value" is to be understood as an overall measure of real utility apart from issues of the evaluation of the fairness of the transaction. Thus, the idea of "reservation price" is highly similar to the concept of "value" in this respect. The reservation price is that price which one would not exceed in purchasing the product.

**Transaction Utility.** Transaction utility, on the other hand, is that component of utility that relates to the equities of the bargain. This notion is a highly akin to "equity theory." Equity theory derives from social psychology and sociology and has been developed somewhat in marketing as well (Homans 1974). Equity theory posits that in assessing transactions, the equity of the situation will explain or determine the outcome. The general notion is that one evaluates both the "outputs" and the "inputs" of both oneself and the

other party in a transaction. Through an analysis of the equities of the situation, an outcome will ensue, typically in the form of satisfaction and dissatisfaction which can then lead to behavioral changes (Oliver and DeSarbo 1988, Oliver and Swan 1989; O'Shaughnessy 1991).

For example, in purchasing a particular model television set, transaction utility (or a consideration of the equity of the agreement) would manifest itself by one's agreeing to pay more for the TV if purchasing it at a fancy store versus a low cost store (independent of any service gains that may exist). The reason stated for this phenomena is that the person evaluates a fair reference price given the circumstances, the most important of which may be the seller's cost. Intuitively, it makes sense and seems to occur often. As an example, it is common to pay 40-50 cents for a chocolate bar in a grocery store. If one purchases the same bar at a high end boutique, the expected and accepted price may be 55-65 cents for the same "value," without reference to the "benefits" of the higher class boutique as economists may posit. As the examples in Thaler's research demonstrate, one usually thinks of the equity of a bargain. Considerations, therefore, of transaction utility should be as common as are considerations of acquisition utility.

As discussed below, it is assumed herein, that one may account for other's welfare in determining one's own "utility," but that a strict balancing of each side's inputs and outputs need not necessarily occur. It is expected that as the salience of injustice increases, there will be a transition from the self-interested person (the economic view) toward a greater focus on the other's gains/losses and the equities of the situation.

The essential points, which are expanded upon herein to situations of damages, are: (a) that people mentally create "accounts" both to evaluate and to segregate gains and losses, and (b) that a fundamental portion of an individual's utility can derive from an assessment of another's gain or loss and not merely one's own gain or loss.

#### **Attribution of Fault for the Failed Deal**

Assigning blame is a common phenomenon in disagreements with sellers. Attribution theory is highly relevant in this context. Attribution theory

states that one's causal analysis of events (e.g., to whom or to what such a cause is attributable) influences one's behaviors. Attribution theory has been widely applied in the context of consumer complaining behavior (e.g., Curren and Folkes 1987; Folkes 1984; Folkes, Koletsky and Graham 1987). It is relevant here because dissatisfaction may be affected by attributions of fault.

#### **Disconfirmed Expectations**

Finally, disconfirmed expectations are a key component of failed deals. It has been shown that as long as a loss is not too "large," there will occur dissonance effects (a motivationally driven reduction in dissatisfaction) rather than contrast effects (a motivationally driven increase in dissatisfaction) (Anderson, 1973). Dissonance theory rests upon the assumption that people are reluctant to acknowledge differences from previously held positions. Therefore, they assimilate judgment toward their initial feelings for an object or event (Oliver and DeSarbo 1988). For dissonance to exist, Festinger required (1) a firm conviction, (2) public commitment, (3) possibility of unequivocal disconfirmation, and (4) the occurrence of the disconfirmation (Deighton 1984). Despite the fact that the second essential element - public commitment - may be lacking, dissonance-type effects have been shown to exist (Anderson 1973).

#### **THE NORMATIVE RULES COMPRISING THE LAW: FOUR TYPES OF DAMAGES**

There are four basic types of damages the courts may consider in dealing with broken agreements, each of which is discussed below. Courts determine a proper monetary award in order to counterbalance these cognizable damages. (Note that the damages discussed below relate to breaches of agreements which require not only that agreements are broken, but also that a narrow range of legally cognizable justifications do not exist for their having been broken). Contract law typically recognizes only three basic types of damages: (a) loss of expectation ("expectation damages"), (b) costs incurred in reliance on the agreement other than funds given to the one who broke the agreement ("reliance damages"), and (c)

funds given to the one who broke the agreement ("restitution damages"). The purpose of each of these awards (including a fourth type considered below) is based in major part upon making the buyer in some sense "whole", maintaining the viability of commercial agreements, and upholding justice (Pettit 1987). For convenience, when referring to a particular type of damage, such damage may be identified by the name of its monetary award. For example, a loss of a deposit may be called a "restitution-type damage" or "restitution damage" because restitution is name of the damage award that compensates one for the loss of a deposit. The types of damages are set forth below.

**Restitution Damages.** The most straightforward and basic rule in contracts is that if one breaches an agreement, the other party is entitled to any value given to the breaching party. This recovery is oriented toward placing the "injured" party (using the term loosely) in as good of a position as he/she would have been *prior* to the agreement. It is based upon the goal of compensating an injured party for his/her real losses and a moral concept of avoiding unjust enrichment on the part of the breaching party.

**Disgorgement Damages.** The related concept of disgorgement refers to recovering any gain that the breaching party received due to his/her breach. The following example, adapted from Farnsworth (1985), clarifies the difference. "Suppose that you and I have made a contract under which I am to sell you a widget for \$100, cash on delivery. I pay you a \$50 deposit for the widget. But instead of having delivered the widget to you, I found another buyer willing to pay \$125 and sold it to that buyer, realizing \$25 over our contract price. Since your only loss was \$50, I offer you the \$50 in return. Can you recover \$25 from me, that amount which I gained due to the breach?" One could recover the \$50 based upon the principle of restitution. If one could recover the \$25 as well, this would be a remedy based upon "disgorgement." Upon examination, disgorgement can be seen as oriented toward placing the *injurer* in a position *as if the deal had been consummated*. Disgorgement has been applied in cases of copyright infringement, trademark infringement,

fiduciary's misappropriation, federal insider trading cases, among others. Its application in contract cases has been limited. (Conceptually, it is arguable that it can be applied to sales as well as service agreements although it is easier to envision as applied to sales agreements).

**Reliance Damages.** One might not only pay value to the breaching party in the form of deposits or otherwise. One may give up value by doing something in reliance upon the agreement that would be unnecessary if the agreement were never made. If, in reliance on the agreement to purchase the widget referred to earlier, I purchased a widget holder from someone else, my reliance damages result from a calculation of the difference between my cost of the widget and what I can sell it for. As are restitution damages, reliance damages are oriented toward placing the injured party in as good of a position as he/she would have been *prior* to the agreement.

**Expectation Damages.** The combination of expectation damages, restitution damages, and reliance damages is the standard measure of damages which courts employ in assessing the damage caused to a buyer from a breach of contract. Expectation damages result from an assessment of the lost "benefit of the bargain" due to the breach. As such, expectation damages are oriented toward placing the injured party in a position *as if the deal had been consummated*, similar to the forward orientation of disgorgement damages. The damages are calculated from a determination of the amount of compensation that will place the buyer in a position similar to that which he/she would have been in had the contract not been broken by the seller. In other words, instead of placing the parties back to a position of parity as if they never dealt with each other (restitution and reliance damages), the parties are put in a position as if the contract were entered into and performed. The scenario above becomes as follows: "Suppose that you and I have made a contract under which I am to sell you a widget for \$100, cash on delivery. At the time we made the contract, the market value of the widget was \$110. Instead of delivering the widget to you, I found another buyer willing to pay \$125 and sold it to that buyer, realizing \$25 over our contract price.

Since you still made a deal with me to purchase the widget at \$100 (10 dollars below market value), I offered you \$10 so you can recover the gain which you would have had with me." This is an application of expectation damages using the market value of the product as a proxy for the "value" that the purchaser placed upon the item.

In the situation of a seller's breach caused by nondelivery of goods or nonperformance of services, compensation usually includes recovery for restitution-type and reliance-type damages, and an amount equal to the difference between the value the buyer contracted for and the value obtained. The value obtained in a nondelivery case is zero. The formula, therefore, translates into the value the buyer contracted for. This value is usually arrived at by determining the difference between the contract price and the market value of the goods (or services). It endeavors to give the buyer the deal he/she would have obtained had the seller performed the contract. For contracts to sell goods as opposed to contracts to provide services, the Uniform Commercial Code codifies this interpretation of expectation damages (U.C.C. 2-713). (Note that, in legal writing, the term "expectation" is often used as an umbrella-like term encompassing the combination of restitution, reliance as well as expectation damages as the term is used herein).

#### Inter-relations and Hierarchies of Damage Awards

In general, each of the legally cognizable damage awards is additive, meaning that if a "breach" has occurred and one incurs all three types of damages (and proves this), the damage award will reflect the sum of all of the separate damages. There are substantial consumer welfare issues raised by the choice of an appropriate formula for damages. There are a few traditions courts follow that highlight some of the implications for consumers. Among them is the entrenched view of the importance of expectation damages as a standard for recovery. There has been debate over when expectation damages "overcompensate" the plaintiff (the buyer herein) and when he/she is left, therefore, to plead only restitution and reliance damages (Farnsworth 1982; Slawson 1990), but typically courts will award not

only restitution and reliance damages, but also expectation damages. As referred to above, disgorgement has been applied in a limited manner in contract cases, but its viability and acceptance will depend in part upon whether one views a breach of contract as a "wrong" which can be analogized to other applications of the disgorgement principle, and whether it can overcome the practical problems of being able to claim that the profits of the seller were caused by or due to the breach. (See Farnsworth 1985).

#### Summary

The types of recovery are summarized by the case below. The numbers are picked simply for ease of presenting the example.

A pays B a deposit of \$50 for the purchase of a widget for \$100, which the market and A value at \$110. In reliance on the agreement, A pays C \$75 for a widget holder, which, when the agreement is broken, sells used for \$20. B breaches the agreement. After B breached the agreement, he/she sold the identical widget for \$120.

Restitution damages		= \$50.
Reliance damages	\$75 - \$20	= \$55.
Expectation damages	\$110 - \$100	= \$10.
Disgorgement damages	\$120 - \$100	= \$20.

It would be inconsistent to award expectation damages without at least awarding restitution and reliance, for to place the injured party in a position as if the deal were consummated requires that restitution-type and reliance-type damages be recovered. Even for disgorgement damages, restitution and reliance may likely be awarded due to the established goal of providing the injured party with the recovery of his/her real losses. A damage award based upon the above numbers can then typically translate into any of the following:

Restitution + Reliance	= \$105.
Restitution + Reliance +	
Expectation	= \$115.
Restitution + Reliance +	
Disgorgement	= \$125.

**APPLICATION TO CONSUMER DAMAGES AND BROKEN AGREEMENTS**

Toward the goal of a more complete understanding of consumer perceptions of various damages, the differences between the types of damages discussed above can be viewed as varying on two aspects *from the perspective of the buyer (the injured party)*: (a) whether the damage can be examined without resort to the deal that should have occurred (termed herein "noncontingent" damages) or whether the damage can *only* be defined in terms of a contingency that did not occur (termed herein "contingent" damages) and (b) whether the damage entails a focus upon the *gain* to the other party (the seller herein) or whether it contains *only* a focus upon the loss to oneself (the buyer herein). These two distinctions, in combination with the aforementioned four types of damages, create a four cell taxonomy of damages due to broken deals. It is proposed that contingent damages will be mentally accounted for separately, and, as discussed in greater detail below, will influence dissatisfaction less than do noncontingent damages.

Consistent with the first distinction, the term "contingent damages" from the buyer's perspective is defined herein as including those losses which are typically called opportunity losses (i.e., the buyer's foregone gains), as well as those *gains which the seller has made* solely due to the broken agreement (i.e., the seller's gains). "Noncontingent damages" from the buyer's perspective include those losses which create a reduction in real wealth for the buyer (the buyer's "real" losses).

The four types of damages discussed above can be characterized as follows relating to the above distinctions (See Table 1 below). In brief, restitution-type damage can be assessed irrespective of the broken deal (because it consists of a noncontingent damage) and it entails a focus also upon the seller's gain; reliance-type damage as well can be assessed irrespective of the broken deal (because it consists of a noncontingent damage) and it does not entail a focus upon the seller's gain; expectation-type damage cannot be assessed irrespective of the broken deal and does not entail a focus upon the seller's gain; disgorgement-type damage cannot be assessed

irrespective of the broken deal and entails a focus upon the seller's gain.

**Table 1  
Taxonomy of Damages**

Type of Damage	Buyer's Focus	
	Focus Upon Oneself Solely	Focus (also) Upon Other Party
Noncontingent Loss	RELIANCE	RESTITUTION
Contingent Loss Solely	EXPECTATION	DISGORGEMENT

**Hypotheses**

The following comparisons highlight the distinctions and underlie the predictions set forth below.

**Restitution vs. Reliance.** Restitution-type and reliance-type damages contain noncontingent, real losses from the buyer's perspective. There is no distinction, therefore, on the first factor mentioned above. There is, however, a distinction relating to the second factor. Thaler showed that people generally consider the other side to a transaction in determining their "utility." If one at all considers the seller's gain in addition to one's own loss, then restitution should be viewed as more satisfying than reliance recovery assuming equal losses to oneself. Thus, it is predicted in accordance with the findings relating to transaction utility that those buyers whose losses directly benefit the sellers should be more dissatisfied with incurring or bearing such losses than those whose losses do not directly benefit the sellers. This prediction is set forth below.

H1: A restitution-type damage will be accorded greater weight in determining dissatisfaction due to a broken deal than will a reliance-type damage, all else equal.

If this relationship holds even when the seller was not acting irresponsibly or dishonestly, then it provides evidence for the fact that considering

others' utility in a transaction may be a robust phenomenon not bounded by the limits of traditional notions of "unfairness."

**Reliance vs. Expectation.** Both reliance-type damages and expectation-type damages consist of a detriment to the buyer (and not a gain to the seller). They differ, however, on the distinction between noncontingent and contingent damages. A search of relevant research has yielded no findings relating to the impact of this difference upon dissatisfaction. Thaler's analysis does not directly address the issue of whether a foregone gain is considered less of a loss than an equivalent real loss, but Thaler's proposition that people mentally account by segregating certain losses and gains into discrete categories (in contradiction to the "rational" approach of the fungibility of money) lends support for the distinction between those gains or losses which can only be evaluated after having assumed that a deal were to have occurred versus those gains or losses which can be evaluated readily without resort to any post-deal expectations.

It is predicted that the noncontingent damages will be weighted more heavily in the creation of dissatisfaction in major part because the damages are logically more "direct" and are, therefore, more salient (i.e., there is no need to resort to an expected contingency (the occurrence of the deal)). A reliance-type damage would thus be coded as worse than an expectation-type damage (e.g., a loss of an opportunity gain) because the expectation-type damage is reasonably envisioned by the buyer in the following way: "if the deal were to have been consummated, then I would have saved X dollars." In other words, the "expectation" is viewed as having been contingent upon the existence of the deal (the condition precedent) that did not occur. So too, as discussed below, a reliance-type damage would be coded as worse than a disgorgement-type damage because the disgorgement-type damage is reasonably envisioned by the buyer in the following way: "if the deal were to have been consummated, the seller would not have made as much as he/she later made." Restitution and reliance damages, however, may be logically be assessed irrespective of the information about the contingency/opportunity which could have occurred (i.e., the

deal).

In brief, the proposed result can be set forth as follows:

H2: A reliance-type damage will be accorded greater weight in determining dissatisfaction due to a broken deal than will an expectation-type damage (e.g., a loss of an opportunity gain), all else equal.

**Expectation vs. Disgorgement.** Expectation damages and disgorgement damages are both contingent damages *from the buyer's perspective*, as discussed above. Yet, expectation-type damages represent a loss (opportunity loss) to the buyer, while disgorgement-type damages represent a gain to the seller. In accordance with the basic economic assumption that people act in their self-interest, it is reasonable to expect that a self-oriented focus would be stronger than an other-oriented focus, particularly where the equities of the situation are not sufficiently salient to promote feelings of anger and thoughts of revenge on the part of the buyer. As between expectation and disgorgement, expectation damages are self-oriented and disgorgement damages are other-oriented. Even if people consider the seller's gain to the seller as a loss to themselves, the magnitude of the loss should be less than an equivalent opportunity loss to themselves. It is expected that disgorgement-type damages will be considered as least costly to the buyer.

In brief, the proposed results can be set forth as follows:

H3: An expectation-type damage will be accorded greater weight in determining dissatisfaction due to a broken deal than will a disgorgement-type damage (e.g., a gain to the seller by being able to sell the product at a higher price), all else equal.

In sum, disgorgement-type damages are to be considered as less dissatisfying than expectation-type damages. Expectation-type damages are to be considered as less dissatisfying than equivalent reliance-type damages. Reliance-type damages are, in turn, to be considered less dissatisfying than restitution-type damages. The last relationship is considered invariant. The first two,

as discussed below, are predicted to change in the context of clear injustice.

### Injustice, Unfairness, and Inequity

The "types" of damages consumers are faced with are also intertwined with the types of broken agreements they are faced with. With varying degrees, the law recognizes "fault" or the lack thereof as distinguishing between noncognizable damages and cognizable damages. Attribution theory should predict changes in behavior based upon the analysis of the causal situations, and it is, therefore, predicted that locus of fault (or level of intent) will be a significant factor in determining dissatisfaction.

Further, the concepts of transaction utility and equity lend further guidance to the study of broken deals. It is proposed that salient information regarding the irresponsibility of the seller will have two effects. First, due to the notion of fairness as discussed above, or perhaps even the notion of revenge, both disgorgement-type damages and restitution-type damages are predicted to interact with intent of the seller and thus receive greater weight in determining dissatisfaction when the seller is responsible for the broken deal than when he/she is not responsible. Second, it is hypothesized that as the injustice becomes salient, it also becomes salient that the deal was never to have been believed to begin with. Festinger's Theory of dissonance should predict - and it is reasonable to assume - that, in reducing dissonance, one would attempt to reduce one's initial *expectation* of the gain.

It is predicted, therefore, that there will be an interaction between intent and expectation-type damages but in the reverse direction. In other words, when injustice becomes salient, expectation damages become less important in determining dissatisfaction.

(This assumes, however, that it is considered difficult to recover the damages. This assumption is necessary in order to argue that the result of attempting to reduce dissonance will be to revise one's "prior" expectations rather than trying to satisfy these expectations by fighting. This assumption is reasonable given the fact that common experience dictates that many if not most people consider a law suit and/or writing letters to

be a burden).

The above discussion can be summarized in the following two hypotheses relating to intent:

H4: Dissatisfaction will be higher when the cause of the broken deal was due to the seller's irresponsibility than when the cause is due to circumstances beyond the seller's control.

H5: The irresponsibility of the seller will interact with the types of damages in the following ways:

H5a. A positive interaction with disgorgement-type damages will occur.

H5b. A positive interaction with restitution-type damages will occur.

H5c. A negative interaction with expectation-type damages will occur.

### METHOD

A convenience sample of twenty-one respondents each received a set of 16 different scenarios in a fractional factorial design. The respondents were drawn from the university community of a major northeastern university (many from its business school) and from a small town some miles away. They consisted of eleven males and ten females. The only criteria for inclusion into the sample was whether a potential respondent agreed to allocate (exclusively and without interruption) 20-25 minutes for the task. Each scenario described the circumstances of a broken deal and consisted of five independent variables. These independent variables were varied across the different scenarios and all independent variables were orthogonal. The design offered an opportunity to decompose overall dissatisfaction into weights reflecting the contribution of a particular variable to overall dissatisfaction. A decompositional approach should help in understanding and analyzing dissatisfaction caused by complex situations (e.g., broken deals creating numerous types of damages).



### Operationalization of the "Attributes" of the Broken Deal

The five variables included one locus of fault variable (a "responsibility" or "intent" variable) and one variable for each type of damage. Each variable had two levels (where 0 = absent and 1 = present). When present, the level for each of the types of damages was equal to \$150 or 10% of the total cost of the item as discussed below. For the intent variable, the "zero" level was described as a breaking of the agreement due to a component's part manufacturer who did not reliably supply the seller (e.g., it was described as "beyond the control of the seller"). The "one" level was described as a breaking of their agreement because the seller was irresponsible and could not keep agreements (locus of fault is the seller and fault is controllable and stable). The scenarios all related to the breaking of an agreement by the seller to sell a computer system. Across all scenarios, the amount set for the price of the computer was \$1500. The computer was chosen for its ability (a) to have a typical market value (necessary to assess expectation damages), (b) to require a deposit until delivery and full payment, (c) to realistically have a reliance damage which was not recoverable (discussed below) and (d), to be specially ordered (which facilitates a measure of disgorgement damages upon resale).

The last two points require some elaboration. With respect to point (c), recall that a reliance damage is a cost incurred by the buyer in reliance upon the agreement with the seller. In the situation at hand, this was operationalized by having the buyer hire a temporary secretary (a "temp") for which a non refundable deposit was placed. This amount was lost because the computer was not delivered in time. With respect to (d), it was necessary to use a product which was not completely fungible. Recall that disgorgement-type damages are the gains to the seller by reselling the product at a higher price than under the agreement with the (first) buyer. For a typical durable good with virtually unlimited supply, it is unrealistic to imagine that the particular item that the buyer had agreed to buy was sold for a higher price, a unique item such as a piece of art can be traced from buyer to seller. Yet, such a unique

item could not be used here because, as discussed above, a market value was required for assessing expectation damages. The compromise was the specially ordered computer.

### Dissatisfaction Measure

Respondents were instructed first to rank order the profiles from most dissatisfying to least dissatisfying and then to rate each (in the manner described below) on an eleven-point Likert-type scale denoting levels of dissatisfaction with the outcome of the particular scenario. In order to maximize the variance across scenarios, the rating instructions specified that the respondents were to rate the least dissatisfying scenario as a "0" and the most dissatisfying scenario as a "10", on the eleven-point scales. For each person, the scenarios he/she chose as the extremes constituted the anchors of the rating scales upon which he/she rated the remaining scenarios (on the same 11 point satisfaction scales).

See the Appendix for the information each respondent received regarding the background of the loss and for an example of a scenario.

## RESULTS

Analyses of the results were performed separately for each individual. Twenty-one separate regressions were performed (each with nine variables including an intercept and three two-way interaction terms). Differences in standardized regression coefficients (beta weights) of the various types of fault were calculated for each individual. T-tests were performed on these differences to determine their aggregate significance. As shown in Table 2, this analysis indicates that hypotheses 1, 2, and 3 were supported. Furthermore, analysis of the individual regressions indicates that ten respondents had the order of coefficients of types of damages in the exact order predicted. Out of the remaining eleven, only six had one relationship in the *reverse* direction from that expected, and only one had more than one *reversal* (two, to be exact) from the expected ordered relationships.

The coefficients of the individual regressions also indicate the significance of responsibility of the seller in determining dissatisfaction, thereby

supporting hypothesis 4. Two thirds of the regressions yielded a significant coefficient for responsibility of the seller at the .10 level, and more than half (or 12) of the regressions yielded a significant coefficient for responsibility of the seller at the .05 level. (Without interaction terms (which, as discussed below, were not significant) two thirds of the regressions yielded a significant coefficient for responsibility of the seller at the .05 level).

Table 2  
T-Test Results

Variable	Mean	Std. Error	t-value	p-level
Restitution - Reliance	0.1556	0.0486	3.2039	0.0045
Restitution - Expectation	0.4741	0.0607	7.8078	0.0001
Restitution - Disgorgement	0.6115	0.0450	13.5835	0.0001
Reliance - Expectation	0.3185	0.0521	6.1153	0.0001
Reliance - Disgorgement	0.4559	0.0408	11.1827	0.0001
Expectation - Disgorgement	0.1374	0.0472	2.9084	0.0087

In particular, the results support the following ordering of dissatisfaction for equal levels of damages. From most dissatisfying to least, the order is: restitution-type, reliance-type, expectation-type, and finally disgorgement-type damages. There are two major implications arising from these findings. First, people *do* consider the other side's gain in assessing their satisfaction from a broken agreement. This is so even in low injustice situations. Second, expectation-type damages, as predicted, are less important in determining dissatisfaction than are reliance-type or restitution-type damages. From a policy perspective, there is little justification *from the perspective of consumer satisfaction* for using a forward-looking orientation in damages by either awarding expectation-type or disgorgement-type damages in addition to restitution-type and reliance-type damages.

It is interesting to note that there were no significant difference between the sum of disgorgement-type and reliance-type damages, and

restitution-type damages (mean difference = -0.0802,  $t = -1.3832$ ,  $p > 0.18$ ). This indicates that people do not disproportionately outweigh restitution-type damages simply because the gain to the seller and loss to the buyer were simultaneous. This lends further insight into the process of mental accounting, and may indicate that temporal differences between losses do not necessarily cause separate mental accounting whereby the losses are separately compartmentalized. Rather, conceptual linkages of the losses may be the driving force in mental accounting.

Regarding hypothesis 5, (interaction effects), none of the individual regressions yielded significant interaction effects. It may well be that the insignificant results are due to an insufficiently strong "injustice" manipulation. A stronger manipulation of injustice may have created stronger interaction effects. The "injustice" manipulation was merely a line of text from a set of lengthy instructions. Respondents may not have paid too much attention to it. On the other hand, increased dissatisfaction due to revenge may have been counterbalanced by a reduction in dissatisfaction due to high dissonance or, alternatively, by the thought that the consumer ought to have been more careful in selecting a merchant, both of which may have contributed to reduce dissatisfaction.

## DISCUSSION

A taxonomy that categorizes damages based upon type and source of damage provided meaningful results upon testing. The findings indicate that there are fundamental differences between types of damages with respect to consumer dissatisfaction. One's own real losses from which the seller has a concomitant gain are accorded the highest weight in determining dissatisfaction. Next come ones own real losses in which the seller does not gain. Finally, opportunity losses of the buyer contribute even less to dissatisfaction, and gains of the seller contribute the least to dissatisfaction. These results are invariant across levels of responsibility of the seller, but the irresponsibility of the seller itself is a significant contributor to dissatisfaction. Interaction effects may become significant when

comparing greater differences in injustice.

Conjoint analysis with respect to a dependent measure of dissatisfaction yielded a convenient and informative method for deriving weights for determinants of dissatisfaction. This may prove to be a robust method in the future for decomposing the sources or causes of dissatisfaction.

Regarding consumer welfare, it is important to understand the effects of different types of damages which predominate in the commercial world. This study offers a conceptual and methodological step in that direction. Moreover, it is important to influence the normative rules (the "ought") from a proper understanding of the descriptive "rules" (the "is"), an endeavor which is too infrequently undertaken directly (Kadane and Larkey 1983). This study is also a step in that direction.

Two general limitations include the following: First, parameter sensitivity exists; larger samples are needed for corroboration. Second, interaction terms were not significant due in part to individual level regressions with few degrees of freedom. More scenarios per person could shed light on interaction effects. Informal discussions with each of the respondents after their completion of the rating tasks indicated that rating 16 scenarios on dissatisfaction was somewhat of a difficult task and that a paired comparison method may be easier and quicker for respondents (See Green and Srinivasan 1978, 1990).

Future research can proceed in a number of useful directions. Some possibilities include research to determine other factors regarding when and how people "account"; studies to examine whether different levels of damages yields fundamentally different conclusions; and analysis to extend this study to other losses, other cultures, and other legal systems.

## REFERENCES

- Anderson, R. E. (1973), "Consumer Dissatisfaction: The Effect of Disconfirmed Expectancy on Perceived Product Performance," *Journal of Marketing Research*, X, (February), 38-44.
- Corfman, K. P., and D. R. Lehmann (1989), "The Importance of Other's Welfare: A Model and Application to the Bargaining Relationship," Unpublished Working Paper.
- Curren, M. T., and V. S. Folkes (1987), "Attributional Influences on Consumers' Desires to Communicate About Products," *Psychology & Marketing*, 4, (1), 32-45.
- Deighton, J. (1984), "The Interaction of Advertising and Evidence," *Journal of Consumer Research*, 11 (December), 763-770.
- Farnsworth, E. A. (1982), *Contracts*, Boston, Little, Brown & Company, Boston, MA.
- Farnsworth, E. A. (1985), "Your Loss or My Gain? The Dilemma of The Disgorgement Principle in Breach of Contract," 94, *Yale L.J.*, 1339.
- Folkes, V. S., S. Koletsky, and J. L. Graham (1987), "A Field Study of Causal Inferences and Consumer Reaction: The View From the Airport," *Journal of Consumer Research*, 13, (March), 534-539.
- Folkes, V. S. (1984), "Consumer Reactions to Product Failure: An Attributional Approach," *Journal of Consumer Research*, 10, (March), 398-409.
- Green, P. E. and V. Srinivasan (1990), "Conjoint Analysis in Marketing: New Developments With Implications for Research and Practice," *Journal of Marketing*, 54, 4, (October), 3-19.
- Green, P. E. and V. Srinivasan (1978), "Conjoint Analysis in Consumer Research: Issues and Outlook," *Journal of Consumer Research*, 5, (September), 104-123.
- Green, P. E. and Y. Wind (1975), "New Way to Measure Consumers' Judgments," *Harvard Business Review*, 53, (July-August), 107-117.
- Homans, G. C. (1974), *Social Behavior: Its Elementary Forms*, Rev. ed., New York, Harcourt Brace Jovanovich.
- Kadane, J. B. and P. D. Larkey (1983), "Confusion of "Is" and "Ought" in Game Theoretic Contexts," *Management Science*, 29, (December), 1365-1378.
- Kahneman, D. and A. Tversky (1979), "Prospect Theory: An Analysis of Decision Under Risk," *Econometrica*, 47, 2, (March), 263-291.
- Oliver, R. L. and J. E. Swan (1989), "Equity and disconfirmation perceptions as influences on merchant and product satisfaction," *Journal of Consumer Research*, 16, (December), 372-383.
- Oliver, R. L. and W. S. DeSarbo (1988), "Response Determinants in Satisfaction Judgments," *Journal of Consumer Research*, 14, (March), 495-507.
- O'Shaughnessy, J. (1991), *Explanation in Buyer Behavior: Central Concepts and Issues*, available from author.
- Pettit Jr., M. (1987), "Private Advantage and Public Power: Reexamining the Expectation and Reliance Interests in Contract Damages," 38, *Hastings L.J.* 417, (March).
- Slawson, W. D. (1990), "The Role of Reliance in Contract Damages," 76, *Cornell L. Rev.* 197, (November).
- Thaler, R. (1985), "Mental Accounting and Consumer Choice," *Marketing Science*, 4, (Summer), 199-214.
- Uniform Commercial Code (1978), American Law Institute and National Conference of Commissioners on Uniform State Laws.

## APPENDIX

(0 = least dissatisfying, 10 = most dissatisfying)

## Information Given to Respondents

A consumer entered into a written sales agreement with a computer retailer to purchase a \$1,500 computer package from the retailer (seller). After the agreement was signed, the seller was to order the parts from the particular manufacturers of the components, (memory boards, hard disk drive, high resolution ("VGA") video card, internal modem, etc.) and then assemble it and deliver it to the buyer. It turned out that when it actually came time for delivery of the computer, the seller could not or would not honor the agreement at that time or within a reasonable amount of time thereafter, and, thus the agreement was broken.

What follows are 16 different possible ways in which the story above could have occurred, some perhaps more dissatisfying than others, based upon costs, price, etc.

Depending on the scenario, the buyer may or may not have put a non refundable deposit down with the seller, and may or may not have hired a temporary secretary (a "temp") from an agency to do work on the computer for the week after the computer was to be delivered. Without the computer, the buyer did not need and could not use the temp. The temp agencies require advance orders and also require a \$150 deposit which is non refundable without two weeks' advance notice of cancellation. There was no advance warning to the buyer that the computer would not be delivered, so that in the scenarios in which the buyer had reserved a temp, (in reliance on the written agreement that the computer would be delivered), the buyer would be forced to lose the \$150 deposit to the agency.

Also, after the unhappy incident, the buyer bought an identical computer package within a short time from another seller and paid going prices - no special deal on this purchase.

## Example of a Scenario Presented to Respondents

The seller breaks the deal due to circumstances beyond the seller's control (an important part wasn't ready and wasn't shipped to the seller and will take too long to order again).

The buyer paid no deposit to the seller.

The buyer lost a \$150 deposit scheduling a temp.

If the seller had delivered, the agreed price for the computer would have been \$150 less than the typical price for such a system selling elsewhere. Remember, the buyer bought a replacement computer from another seller for the typical price (no deal of \$150 off).

Eventually, the seller sold the computer to someone else, after it was completed, for the same price as under the agreement with the buyer.

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