

Essay – Who sounds like a broken record? Addis v Gramophone!

The test enunciated in the early case of *Hadley v Baxendale* sets out how damages for breach of contracts are to be calculated:

“The measure of damages...is such loss as may fairly and reasonably be considered as arising according to the usual course of things or may reasonably be supposed to have been in the contemplation of the parties at the time of the making the contract as the probable result of the breach”

Later, the House of Lords in *Addis v Gramophone Co Ltd* (“*Addis*”) held that damages for breach of contract cannot include compensation for frustration, mental distress, injured feelings or annoyance occasioned by the breach.

However, it seems reasonable to suppose that a terminated employee may suffer injured feelings, anguish or mental distress if the manner of dismissal was oppressive or high-handed. In fact it is likely that they are contemplated as probable results of such a termination.

Brennan J in *Czarnikow Ltd v Koufos* stated that ‘trade and commerce would be seriously impeded’ if a contracting party were exposed to the ‘indefinite liability’ of the distress or mental anguish of the other party. The questions of remoteness and causation in employment cases reduce the scope for such a claim enormously. Also, it is the personal nature of the employment relationship which is the reason it should be distinguished from other contracts.

Under the Workplace Relations Act, compensation is available for the manner in which an employment contract is brought to an end. It is now appropriate that the High Court review *Addis* to bring the Common Law in line with the Workplace Relations Act. Otherwise those with access to the statutory scheme have an unfair advantage over those dismissed employees left to the vagrancies of the common law.

Until such a time when the High Court reviews the decision of *Addis* there are ways to avoid its application. Employment jurisprudence has developed a number of implied terms which apply to all contracts of employment regardless of the intentions of the parties. One such development is the mutual obligation of trust and confidence between the employer and employee. The employee owes the employer duties of fidelity and good faith. The employer agrees that it will not, without reasonable and proper cause conduct itself in a manner likely to destroy or seriously damage the relationship of confidence and trust between the employer and employee. A terminated employee can bring a claim for a breach of the implied term of trust and confidence, in which case *Addis* will not apply.