“To reach an outcome that allows a party engaged in wrongdoing to be punished is undeniably appealing, but sometimes sound reasons exist for resisting the urge.”

As a general matter, business parties are limited to contract remedies for a breach of contract and are not permitted to recover in tort. However, courts appear to be increasingly willing to give tort remedies to business parties, in some cases under theories arising from state statutes prohibiting unfair and deceptive trade practices. Permitting such remedies for breaches of contracts greatly expands businesses’ potential liability to one another arising out of their commercial transactions. This leads to uncertainty in business and may allow parties to avoid the specific obligations and limitations set forth in their contracts.

This article explains the distinction between tort and contract actions and remedies, and discusses three recent cases in which courts have blurred that important distinction. Finally, the article suggests that blurring the distinction and permitting contract actions to “don tort clothes,” while having appeal in some cases, should be resisted. Commerical parties should be limited to recovery for damages that were within the contemplation of the parties at the time they entered into the contract and should not be allowed to recover in tort for breaches of commercial contracts.

The Distinction between Tort and Contract Remedies

When business parties enter into a contract, they “agree upon the rules and regulations which will govern their relationship; the risks inherent in the agreement and the likelihood of its breach.” The parties create obligations to one another where none existed before. They voluntarily choose the party with whom they will contract and “define their respective obligations, rewards and risks.” Because parties freely enter into these relationships and are the masters of the terms of such relationships, courts have agreed that “it is appropriate to enforce only such obligations as each party voluntarily assumed, and to give him only such benefits as he expected to receive.” For these reasons, “contract damages are generally limited to those within the contemplation of the parties when the contract was entered into or at least reasonably foreseeable by them at that time.”

As the California Supreme Court explained, limiting damages for breach of contract to those within the contemplation of the parties “serves to encourage contractual relations and commercial activity by enabling parties to estimate in advance the financial risks of the enterprise.” This result is in line with the purpose for damages for a breach of contract, which is to enforce the intentions of the parties. On the other hand, tort damages are intended to compensate a victim for all injury incurred at the hand of the offending party. Additionally, courts have applied the economic loss doctrine to bar tort recovery for breach of contract actions. Under this doctrine, “[i]f the parties have entered into a contract, the obligations of the contract cannot be relied upon to establish a cause of action in tort for the recovery of purely economic damages.”

Despite the distinction between tort and contract actions and remedies, some courts have permitted tort actions arising from breaches of contract. Generally, courts require the nonbreaching party to demonstrate that the breach resulted in physical injury, that the parties enjoyed a special relationship that gave rise to obligations distinct from the contract, or that the contract was fraudulently induced. In such cases, the nonbreaching party must show that the other party breached a duty that was independent of the contract or committed some act that was intended to cause harm.

In addition, some courts have permitted businesses to seek relief under state statutes prohibiting unfair and deceptive trade practices. These courts are expanding the remedies available to businesses for breaches arising out of their commercial transactions. However, even when such remedies are available to business plaintiffs, courts nevertheless caution that a mere breach of contract is not sufficient to state a cause of action under the statutes. As one Illinois court explained, although businesses may be proper plaintiffs under the Illinois deceptive trade practices statute, the statute was not intended to cover all commercial transactions. Rather, a business plaintiff needs to demonstrate that the alleged conduct implicates consumer protection issues. The court further explained, “[I]f litigants could invoke the [Illinois] Act merely by alleging an intentional or fraudulent breach of a contract, common-law breach of contract actions would be supplemented in every case with an additional and redundant remedy under the Act.”

In determining whether a breaching party’s conduct rises to the level of a deceptive trade practice, courts often engage in

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Blurring the Distinction between Contract and Tort: Courts Permitting Business Plaintiffs to Recover Tort Damages for Breach of Contract

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somewhat arbitrary line drawing. In some states, such as Illinois, courts must determine whether the action implicates consumer protection concerns. In other states, such as Massachusetts, courts require business plaintiffs to demonstrate that the other party’s conduct reached a level of “rascality that would raise an eyebrow of a seasoned businessman familiar with the harsh customs of the commercial world.” Neither of these standards is easy to apply nor provides businesses with a guide to what behavior may offend the statutory provisions. However, such required showings demonstrate that even when businesses are permitted to bring actions under unfair and deceptive trade practices statutes, courts are holding businesses to higher standards and attempting to limit the availability of tort recovery for a mere breach of contract.

Three Recent Cases
Despite the limits courts have attempted to impose on the availability of tort remedies for breaches of contracts, such remedies appear to be increasingly available to business plaintiffs. Since November 2004, three courts have permitted business plaintiffs to recover tort damages for breaches of contracts. As described in detail below, in two of these cases, the courts concluded that the business plaintiffs properly sought recovery under the respective state’s unfair and deceptive trade practices statute, and in the other, the court concluded that the failure to perform an obligation under the contract amounted to fraud and permitted the plaintiff to recover purely economic loss. In all three cases, the courts permitted the business plaintiff to recover tort damages, including punitive damages, for what essentially amounted to breaches of contract.

Beacon Property Management, Inc. v. PNR, Inc.
In this case, PNR, Inc. was a restaurant owner that purchased an existing restaurant. Pursuant to the sale of the business, PNR was assigned the restaurant’s existing lease under which the landlord agreed to keep the building in good repair. PNR repeatedly requested maintenance—requests that were ignored by the landlord and the management company that the landlord hired. Finally, one of the walls in the restaurant collapsed, and PNR could not operate the restaurant for seven months. Eventually, PNR closed the restaurant.

PNR sued the corporate landlord, two of its investors, and the management company, alleging that the landlord’s failure to repair and maintain the building caused PNR’s business to fail. PNR sought recovery for violation of the Florida Deceptive and Unfair Trade Practices Act, fraud, negligent representation, tortious interference with contract, and wrongful eviction. The case proceeded to trial against one investor and the management company on all theories. PNR prevailed, and the jury returned a verdict awarding PNR $1.2 million in damages, including $500,000 in punitive damages, against one of the investors, and $540,000 in damages, including $140,000 in punitive damages, against the building manager.

Beacon I
Defendants appealed, and the Florida Court of Appeals reversed the trial court judgment (Beacon I). In Beacon I, the primary issue was whether PNR was entitled to relief under the Florida Deceptive and Unfair Trade Practices Act (Florida Act). Defendants argued that PNR should not be entitled to that relief because its claims did not involve consumer transactions. The Beacon I court observed that the statute was “designed to protect the consuming public and legitimate business enterprises from unfair methods of competition and unfair trade practices in any business.” The court explained that in light of such purposes, it would be consistent to apply the Florida Act to “nonconsumer transactions, at least where they involve practices of anticompetitive conduct affecting the consuming public.”

Nevertheless, the court determined that it was unnecessary to resolve the issue of whether the Florida Act applied to nonconsumer transactions because the appeal turned on whether a tenant should have a remedy against third parties for a duty that belongs only to the landlord. The court explained that the landlord’s failure to make repairs, which resulted in several building code violations and the collapse of the wall, certainly was a breach of the lease. However, such breach could only be charged against the landlord. Permitting PNR to recover under the Florida Act against third parties “would be to give the tenant a remedy against third parties for a duty that rests with the owner of the premises.”

More important, the court explained that deeming breaches of obligations in commercial leases as “unfair or deceptive trade practices” under the Florida Act would result in converting breach of contract claims into tort claims. The court explained that it did not believe that such a result was the intent of the legislature. Rather, breaches of a commercial lease were not the sort of “inherently unconscionable or deceptive” practices that the statute was designed to prohibit. Furthermore, the Beacon I court stated that the landlord’s actions with respect to only one tenant does not demonstrate a regular or systematic method of unfair competition or deceptive practices.

Beacon II
The Supreme Court of Florida quashed the Beacon I decision, explaining that the Beacon I court erred in concluding that the Florida Act did not apply to claims resulting from a single transaction or a single contract (Beacon II). Accordingly, the Beacon II court held that the Florida Act applies to actions that arise from unfair or deceptive acts, even when the acts involve “only a single party, a single transaction, or a single contract.”

Justice Wells dissented strongly to Beacon II, arguing that PNR’s claims amounted simply to a breach of a commercial lease. Justice Wells agreed with the Beacon I court’s conclusion that the Florida statute “is not intended to convert every lease breach into a claim under the Act.” Acknowledging that the majority explained that it did not intend by its decision to create a statutory claim for every breach of lease, Justice Wells
commented that lower courts will have difficulty in determining which breaches amount to a claim under the statute and which do not. Accordingly, as a practical matter, Justice Wells observed, the effect of the majority’s decision will be to convert every breach of lease into a claim under the Florida Act.40

Beacon III
The Florida Court of Appeals revisited the case on remand (Beacon III). Attempting to apply the Beacon II majority’s decision, the court concluded that the breach of commercial lease was a violation of the Florida Act. The Beacon III court first observed that in 1993, the Florida legislature expanded the definition of “consumer” to include business entities.41 As a result, the court concluded that the Florida Act is not limited to “purely consumer transactions,” but rather applies “to any act or practice occurring ‘in the conduct of any trade or commerce, even as between purely commercial interests.’”42 The court explained that PNR was a “consumer of leasing services,” and thus the claims related to a consumer transaction.

The Beacon III court further reasoned that the defendants’ failure to make repairs to the premises was the type of conduct that a jury could conclude violated the Florida Act, in that it was both deceptive and unfair.43 The court acknowledged that its decision had the effect of providing a statutory tort remedy for a breach of contract claim. The Beacon III court stated:

It may well be that our interpretation of the amended [Florida Act] has the effect of codifying contractual breaches that were formerly remediable only under the common law. The legislature is empowered, however, to do precisely that. It can turn common law claims into statutory claims, and in the process prescribe more or different remedies. In a sense, that is precisely what it appears to have been done with the broad remedial language of [the Florida Act]. If we are wrong in this interpretation, the legislature is just as empowered to alter the statute again to make a contrary purpose appear.44

In his dissent, Judge May agreed with and quoted extensively Justice Wells’s dissenting opinion in Beacon II. Judge May explained that PNR’s allegations against the defendants “state a cause of action for breach of a commercial lease, but do not rise to the level of a deceptive trade practice.”45 Accordingly, Judge May stated that the court should have reversed the judgment against defendants on all claims.46

Western Star Trucks, Inc. v. Big Iron Equipment Service, Inc.
In this case, defendant Western Star Trucks, Inc. was the manufacturer of commercial trucks.47 After Western Star closed its dealership in Fairbanks, Alaska, owners of Western Star trucks had no place to have their trucks serviced or from which to purchase truck parts. Western Star contacted the former service manager of its dealership in Fairbanks, who was then working for plaintiff, Big Iron Equipment Service, Inc.48 After a series of meetings between representatives of Western Star and Big Iron, the parties entered into an oral agreement, the terms of which the parties later disputed.49

Big Iron claimed that Western Star promised that it would be the new Western Star parts and service dealer for Alaska. In contrast, Western Star alleged that it agreed Big Iron would perform warranty service for Western Star truck owners and that Western Star would send Big Iron a dealership application.50 After Big Iron spent over $50,000 in reliance on the alleged oral agreement, submitted the dealership application, and performed warranty work for Western Star trucks, Western Star rejected Big Iron’s dealership application and granted the dealership to another company.51

Big Iron brought claims against Western Star for breach of contract, promissory estoppel, intentional or negligent misrepresentation, and violation of the Alaska Unfair Trade Practices and Consumer Protection Act (Alaska Act).52 After a bench trial, the trial court entered judgment in favor of Western Star on the breach of contract and promissory estoppel claims, but in favor of Big Iron on its negligent misrepresentation and Alaska Act claims. With respect to the Alaska Act claim, the court found that Western Star violated the Act’s provision that “prohibits representing that an agreement confers or involves rights, remedies or obligations which it does not confer or involve, or which are prohibited by law.”53 As a result of Western Star’s “violation” of the Alaska Act, the court awarded Big Iron not only its actual damages, but also added prejudgment interest, trebled that amount, and awarded Big Iron its attorneys’ fees.54

Alaska Supreme Court’s Decision
Western Star appealed to the Alaska Supreme Court arguing that the Alaska Act does not apply to a transaction between commercial parties. Rather, Western Star argued, the Alaska Act applies only to transactions involving consumer goods and services. Rejecting Western Star’s arguments, the Alaska Supreme Court concluded that the Alaska Act “applies to all unfair or deceptive acts in the conduct of trade or commerce.”55 The court explained that the Alaska Act does not distinguish between consumer and commercial transactions.

The court noted that while protecting consumers may have been the “dominant motive” underlying the Alaska Act, the Act “was not intended to be limited to consumer transactions.”56 Instead, the Alaska Act was also designed to protect “honest businessmen from the depredations of those persons employing unfair or deceptive trade practices.”57 Accordingly, the Court concluded that the Alaska Act applied to claims between businesses and affirmed the trial court’s judgment against Western Star.58

Robinson Helicopter Company v. Dana Corporation
The plaintiff, Robinson Helicopter Company, manufactured helicopters.59 Beginning in 1984, Robinson purchased sprag clutches, used in the manufacture of its helicopters, from defendant Dana Corporation.60 American manufacturers must make
aircraft in strict accordance with the design parameters set forth in the “type certificate” mandated by the Federal Aviation Administration. If the manufacturers want to change the parameters, they must first receive approval from the FAA. Robinson’s certificate prescribed that the sprang clutches to be used in the manufacture of the helicopters be ground to a particular level of hardness.

When Dana sold and delivered the sprang clutches to Robinson, Dana certified that the sprang clutches were manufactured in conformity with Robinson’s specifications. However, for approximately one year, contrary to the certification provided by Dana, the sprang clutches delivered by Dana did not meet Robinson’s specifications. In total during this period, Dana sold Robinson approximately 990 sprang clutches that did not meet Robinson’s specifications.

Beginning in early 1998, Robinson began to experience problems with the nonconforming sprang clutches. None of the failures of the clutches resulted in any helicopter accident. Nor did the failures cause any personal injury or property damages. Moreover, Robinson made no claim that Dana intentionally sought to deceive Robinson or that it had any fraudulent intent.

On November 30, 1998, Dana told Robinson that it had sold Robinson sprang clutches that did not meet Robinson’s specifications. Robinson reported the nonconformities to the FAA and other authorities, that ultimately required Robinson to recall and replace all nonconforming sprang clutches. Robinson’s recall and replacements cost it over $1.5 million.

Robinson sued Dana alleging claims for breach of contract, breach of warranty, and negligent and intentional misrepresentation. A jury returned a verdict in favor of Robinson, awarding it over $1.5 million in compensatory damages and $6 million in punitive damages. The jury found that Dana breached the contract and the warranties under the contract, but also that it made “false misrepresentations of fact and had knowingly misrepresented or concealed material facts with the intent to defraud.”

On appeal, the court of appeals affirmed the judgment on the claims of breach of contract and breach of warranty. The reviewing court, however, reversed the judgment on the misrepresentation claims, on the grounds that Robinson suffered only economic losses and thus, as a matter of law, could not recover in tort. Accordingly, the appellate court reversed the award of punitive damages.

California Supreme Court’s Majority Opinion
The California Supreme Court reversed the appellate court and affirmed the trial court, holding that the economic loss rule does not bar the intentional misrepresentation claim because it was distinct and independent of Dana’s breach of contract. The court explained that the economic loss doctrine limits a purchaser that suffers purely economic loss to a contractual remedy, unless the purchaser can show that it suffered harm above and beyond the breach of contract. In other words, as the Robinson court explained, “conduct amounting to a breach of contract becomes tortious only when it also violates a duty independent of the contract arising from principles of tort law.” Recovery for purely economic loss is available only when the breach of duty is entirely separate and distinct from the breach of contract.

The Robinson court reasoned that Dana’s provision of false certificates of conformity to Robinson constituted fraud, which was separate from Dana’s breach of contract and breach of warranty. Although the Robinson court recognized that the purpose of the economic loss doctrine is to “prevent the law of contract and the law of tort from dissolving one into the other,” the court nevertheless concluded that its holding was supported by California public policy. The court reasoned that because fraud involves an “extra measure of blameworthiness,” plaintiffs should be permitted to recover tort damages. Furthermore, the court explained that its holding forwards a legitimate and compelling state interest by discouraging fraudulent business practices while “encouraging a business climate free of fraud and deceptive practices.”

The court explained that although sophisticated business parties can be expected to understand and allocate risks, no business party expects that the other party will lie to it or defraud it. Thus, the court concluded that an affirmative misrepresentation on which a business plaintiff relies can provide the basis for recovery in tort for purely economic loss and support the award of punitive damages.

Justice Werdegar’s Dissenting Opinion
In the dissenting opinion, Justice Werdegar contended that the economic loss doctrine barred Robinson’s recovery in tort and the award of punitive damages. Accordingly, she explained, Robinson should have been limited to contract damages. Such a result would preserve “the valuable distinction between tort and contract remedies and avoid … the problems that would arise if every routine breach were susceptible to both tort and contract claims.”

Furthermore, Justice Werdegar argued that the majority’s decision resulted in awarding tort damages for a breach of contract. She noted that Robinson did not allege that Dana intentionally deceived Robinson when it changed its processes for manufacturing the sprang clutches. Moreover, the “misrepresentation” was Dana’s certification that it had complied with the contract specifications when in fact it had not.Basically, Dana provided contractually required certificates that it was not in breach, when in fact it was. Justice Werdegar explained that even if Dana had intentionally misrepresented its compliance, that conduct may amount to a “bad faith breach of contract, a breach of contract by fraudulent means, or a bad faith denial of breach,” none of which, before the majority’s opinion, provided a basis for an award of punitive damages. She explained that a commercial party’s motive for breaching a contract is irrelevant.

The purpose of limiting a commercial party to contract damages, and not permitting tort recovery or punitive damages, is “the value commercial parties place on predictable potential

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costs and the chilling effect tort exposure in routine breach cases would have on commercial enterprise.” Indeed, if a breach of contract could lead to tort liability, the potential consequences of a breach become “uncertain and unpredictable.” Consequently, “a business fearful of unfathomable tort exposure might lose the ability to respond flexibly to changing economic conditions or hesitate to enter into contracts at all in fast-moving aspects of commercial enterprise.”

Justice Werdegar argued that as a result of the majority’s opinion, whenever a contract requires a party to make ongoing statements regarding its compliance with the contract, the nonbreaching party can now bring a fraud claim. “Allowing a tort claim to be pleaded in every case where a breach is accompanied by representations about performance forces all parties, not just those engaged in malfeasance, to bargain in the shadow of potential tort liability.” As a result, plaintiffs now may “piggyback” a tort claim to every breach of contract action, when the breaching party failed to disclose its breach. Such a result makes it easier for every breach of contract claim to “don tort clothes.”

Analysis
In each of these three recent cases, the courts permitted a business plaintiff to recover tort damages for a breach of contract. Essentially, the plaintiffs claimed that the defendants breached a contract: in Beacon, it was the breach of a lease, in Western Star, the plaintiff claimed the breach of an alleged oral agreement, and in Robinson Helicopter, it was the breach of the contract provision that required the defendant to provide certification of compliance with the contract. Nevertheless, the courts in all three cases permitted the plaintiffs to convert the contract claims into tort claims and allowed the plaintiffs to recover damages in tort, including punitive damages. These decisions demonstrate courts’ increasing willingness to allow commercial parties to recover in tort for breach of contract and the blurring of the important distinction between tort and contract remedies.

Furthermore, the results in these cases will create difficulty for other courts that attempt to distinguish between a tort and contract action. The majority in Beacon II explained that it did not intend by its decision to convert every breach of contract action into an action under the Florida Act. However, the majority did not articulate a standard for courts to determine whether conduct states a claim under the Florida Act or is simply a breach of the parties’ contract.

Some courts have attempted to set forth parameters for such actions by business plaintiffs. In Massachusetts, for instance, a business plaintiff must show that the other party’s conduct reached a level of “rascality” that “raises the eyebrows” of businesspeople. Similarly, in Illinois, a business plaintiff must show that the conduct implicates consumer protection concerns. These standards, however, are difficult to apply and artful pleading may easily permit a plaintiff to bring a tort action for a breach of contract. For example, in Beacon III, in an attempt to bring the alleged conduct within the purview of the Florida Act, the court concluded that the plaintiff was a “consumer of leasing services.” Indeed, every lessee is a “consumer of leasing services.” As a result of the Beacon III decision, Florida lessees now have a statutory claim in which they can seek tort and punitive damages for the breach of a lease.

Statutes prohibiting unfair and deceptive trade practice were not intended to make it easier for businesses to sue one another. Nor were they intended to convert every breach of contract into a tort claim. Furthermore, the distinction between tort and contract claims remains an important distinction. The three recent cases discussed above obscure this distinction, which could have serious ramifications on business.

As Justice Werdegar observed, commercial parties place value on the predictability of costs resulting from their commercial transactions. Permitting business parties to recover tort damages for the breach of a commercial contract could have a “chilling effect” on business as parties will be less able to predict and estimate their potential exposure when entering into a commercial contract. In tort actions, punitive damages are often available. Moreover, many unfair and deceptive trade practice statutes permit plaintiffs to recover attorneys’ fees, punitive damages and/or double or treble damages.

Commercial parties expect to be able to allocate their risks and obligations. However, once they are opened up to tort liability and the potential for punitive or treble damages, parties lose the ability to accurately estimate their potential obligation and liability to the other commercial party. Additionally, once they have tort remedies available to them, business plaintiffs may be able to avoid the express terms of their contracts, e.g., limitations on liability or attorneys’ fee provisions, by pleading their breach of contract claims as tort claims. As a consequence, businesses could decline to enter into contracts.

To avoid the possible chilling effect, courts should preserve the distinction between tort and contract claims and decline plaintiffs’ invitations to expand tort and statutory remedies to commercial parties. Parties to commercial contracts negotiate for certain provisions and expressly determine their rights and obligations vis-à-vis each other. Business parties should be able to decide what obligations they will expressly assume and should not be exposed to the possibility of punitive damages when they enter into a contract. “Restricting parties to contract damages … promotes contract formation by limiting liability to the value of the promise.”

Conclusion
Despite the valuable distinction between tort and contract remedies, courts appear to be increasingly willing to allow business plaintiffs to recover in tort for breaches of commercial contracts. As shown by the three recent decisions analyzed above, courts are reaching these results under both statutory and common law theories. Such results are greatly expanding the potential liability of businesses engaged in commercial transactions, which could have a chilling impact on business. To preserve
commercial parties’ freedom to craft the terms of their relationships with their contracting partners, courts should avoid the temptation to punish a breaching party by providing a tort remedy to a plaintiff. Rather, courts should hold on to the distinction between tort and contract remedies and only allow the recovery of contract damages for a breach of contract. ■

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Endnotes

2. Id. at 1000 (Werdegar, J., dissenting).
4. See id.
5. Id.
6. Id.
8. Id.
9. See id.
10. See id.
12. See id.
15. See Lake County Grading, 654 N.E.2d at 1,115.
16. See id. at 1,116.
17. Id.
18. See id.; see also Clinton, supra note 13, at 77.
19. See Callahan, supra note 13, at 140.
21. Robinson Helicopter Co. v. Dana Corp., 34 Cal. 4th 979 (2004) (concluding that the failure to provide accurate certifications as required by the parties’ commercial contract amounted to fraud and the breach of a duty independent of the contract, thereby permitting the business plaintiff to recover in tort for purely economic loss).
27. See generally Fla. Stat. ch. 501 et seq.
29. Id.
30. Id.
31. Id.
32. See id. (“A breach of the covenant to maintain the premises in a commercial lease is not inherently unconscionable or deceptive, and it does not seem to involve ‘methods of competition’ or ‘trade practices’ affecting competition.”).
33. See id. at 568 (“Evidence that the landlord acted in a particular way with this tenant does not prove ‘a regular and systematic way of’ competition, or ‘a habitual or customary action or way of doing something.’”). In addition, the Beacon I court concluded that there was no evidence of fraud or negligent misrepresentation against the defendants. Id.
34. See Beacon Prop. Mgmt., Inc. v. PNR, Inc., 842 So. 2d 773, 773 (Fla. 2003) [hereinafter Beacon II]. “The district court’s conclusion that [the Florida Act’s] private right of action is only available to plaintiffs able to demonstrate multiple, violative acts against multiple parties or in multiple transactions runs contrary to the interpretation of the Act that has been applied in every appellate district in this State.” Id. at 776.
35. Id. at 777.
36. See id. at 777-78 (Wells, J., dissenting) (“This is a breach of contract case, and I agree with the [Beacon I] court that the [Florida Act] is not intended to convert every lease breach into a claim under the Act.”).
37. Id. at 778 (Wells, J., dissenting).
38. See id. at 777, n.2. In a footnote, the majority explained that it did not intend to “convert every breach of contract or breach of lease case into a claim under the [Florida Act].” Instead, the majority explained that the Florida Act only reached “conduct that is unfair or deceptive as judged by controlling case law.” Id.
39. See id. at 778 (Wells, J., dissenting).
41. Id. at *9 (emphasis added).
42. Id. at *10-*11.
43. See id. at *12.
44. Id.at *12-*13.
45. Id. at *16 (May, J., concurring in part and dissenting in part).
46. See id. (May, J., concurring in part and dissenting in part).
47. Western Star Trucks, 2004 Alaska LEXIS 143, at *2.
48. See id.
49. See id. at *2-*3.
50. See id.
51. See id. at *3.
52. Alaska Stat. § 45.50.471.
54. See id. at *4.
55. Id. at *7. The Western Star court apparently found instructive the fact that the alleged conduct appeared to fall within a specific category of conduct in the statute. Id.
56. Id. at *15-*16.
58. See id. at *20.
59. Robinson Helicopter, 34 Cal. 4th at 985.
60. Id.
61. Id.
62. Id. at 985-86.
63. Id.
64. Id. at 987.
65. Id. at 986.
66. Id.
67. Id.
68. Id. at 987.
69. Id.
70. Id. at 987-88.
71. See id. at 988.
72. Id.
73. See id. at 991.
74. See id. at 988. “Simply stated, the economic loss rule provides: Where a purchaser’s expectations in a sale are frustrated because the product he bought is not working properly, his remedy is said to be in contract alone, for he has suffered only economic losses.” Id. (quoting Neibarger v. Universal Cooperatives, Inc., 486 N.W.2d 612, 615 (Mich. 1992)) (quotations omitted).
75. Id. at 989-90 (quoting Erlich v. Menezes, 21 Cal. 4th 543, 551 (1999)).
76. See id. (quoting Erlich, 21 Cal. 4th at 552).
77. See id. at 991.
79. Id. at 992.
80. Id.
81. Id. at 992-93. “While parties, perhaps because of their technical expertise and sophistication, can be presumed to understand and allocate the risks relating to negligent product design or manufacture, those same parties cannot, and should not, be expected to anticipate fraud and dishonesty in every transaction.” Id. at 993 (quoting Touré et al., Bucking the “Trend”: The Uniform Commercial Code, the Economic Loss Doctrine, and Common Law Causes of Action for Fraud and Misrepresentation, 84 IOWA L. REV. 875, 909 (1999)) (quotations omitted).
82. Id. at 997-98.
83. Id. (Werdegar, J., dissenting).
84. Id. at 988 (Werdegar, J., dissenting).
85. See id. (Werdegar, J., dissenting).
86. See id. at 994-95 (Werdegar, J., dissenting). “As a matter of both statute and common law, a breach of commercial contract cannot be the basis for punitive damages.” Id. at 995 (Werdegar, J., dissenting) (citing Cal. Civ. Code § 3294(a); Applied Equip. Corp. v. Litton Saudi Arabia, Ltd., 869 P.2d 454, 460 (Cal. 1994); Foley v. Interactive Data Corp., 765 P.2d 373 (Cal. 1988)).
87. See id. (Werdegar, J., dissenting). “The imposition of tort remedies for ‘bad’ breaches of commercial contracts is a substantial deviation from the traditional approach which was blind to the motive for breach.” Harris v. Atlantic Richfield Co., 14 Cal. App. 4th 70, 82 (1993).
88. Robinson Helicopter, 34 Cal. 4th at 996 (Werdegar, J., dissenting).
89. Id. (Werdegar, J., dissenting).
90. Id. (Werdegar, J., dissenting).
91. See id. at 997 (Werdegar, J., dissenting).
92. See id. at 1000 (Werdegar, J., dissenting).
93. Id. (Werdegar, J., dissenting).
94. See id. at 991; Western Star Trucks, 2004 Alaska LEXIS 143, at *15-*20; Beacon III, 2004 Fla. App. LEXIS 17052, at *12-*13.
96. Beacon II, 842 So. 2d at 777 n.2.
97. See Callahan, supra note 13, at 140.
101. See Robinson Helicopter, 34 Cal. 4th at 996 (Werdegar, J., dissenting).
102. See, e.g., Western Star, 2004 Alaska LEXIS 143, at *4 (awarding treble damages for violation of Alaska Unfair Trade Practices and Consumer Protection Act); Beacon III, 2004 Fla. App. LEXIS 17052, at *4 (awarding punitive damages for violation of Florida Deceptive and Unfair Trade Practices Act); see also Callahan, supra note 13, at 139 (noting that the Massachusetts Consumer and Business Protection Act provides for recovery of double or treble damages).
103. See Robinson Helicopter, 34 Cal. 4th at 996-97 (Werdegar, J., dissenting).
104. See id. at 996 (Werdegar, J., dissenting) (quoting Atlantic Richfield Co., 14 Cal. App. 4th at 77).