

Photocopiable worksheet 6.2

Change the words in brackets so that they make sense in the sentences. You may need to make some words negative. Be careful: one word does not need to be changed.

- 1 At the time of (contract), parties to an (agree) often want to calculate the damages one or both would incur upon breach of contract by the other.
- 2 By stipulating such damages before a breach, the (injure) party can avoid the (substance) costs which often arise and the (difficult) of proving the amount of its loss.
- 3 Such clauses, when (reason) designed to compensate a party for its (injure) caused by a breach, are (enforce).
- 4 On occasion, a (contract) party may attempt to ensure that the other party will perform its promise by inserting a clause which imposes a (consider) penalty for (perform).
- 5 A penalty (provide) is not intended to compensate the injured party for the expected loss (occasion) by the breach.
- 6 A contractual penalty clause is intended as a (deter) against a breach by specifying damages which the parties know would probably be much higher than could otherwise (ordinary) be recovered by the (breach) party.
- 7 A contractual penalty for breach is (enforce) in many jurisdictions.
- 8 A court may require the (injure) party to prove its loss in accordance with general principles (apply) to damages for breach of contract.
- 9 (consequence), knowing the (distinct) between a provision for a penalty and for liquidated damages when drafting a damages clause may be critical to (enforce).
- 10 The parties intended to (quantity) the damages in advance of the (lose).
- 11 The amount (stipulate) in the provision is (reason) in that it is not greatly (proportion) to the presumed (injure) or loss.
- 12 Elements a) and c) are (appear) (contradict).
- 13 More recent decisions have given little or no (weigh) to the second element, i.e. the subjective (intend) of the parties.
- 14 Rather, they take all three elements into account, along with other facts, such as the (relate) (bargain) power of the parties, in determining the (reasonable) of the clause at issue.
- 15 (custom), courts look to the time of contract to decide the reasonableness of stipulated damages.
- 16 It would be difficult for the (breach) party to argue that the amount (forecast) in the liquidated damages clause was (reason).
- 17 The Uniform Commercial Code accepts a liquidated-damages clause if the amount stipulated was reasonable (consider) the actual loss.