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COLLEGE: LAW

COURSE TITLE; LAW OF CONTRACT II

ASSIGNMENT TITLE: BREACH OF CONTRACT

Discuss the following

1. Breach of contract

Breach of contract is a legal cause of action and a type of civil wrong, in which a binding agreement or bargained-for exchange is not honored by one or more of the parties to the contract by non-performance or interference with the other party's performance. Breach occurs when a party to a contract fails to fulfill its obligation(s), whether partially or wholly, as described in the contract, or communicates an intent to fail the obligation or otherwise appears not to be able to perform its obligation under the contract. Where there is breach of contract, the resulting damages will have to be paid by the party breaching the contract to the aggrieved party.

If a contract is rescinded, parties are legally allowed to undo the work unless doing so would directly charge the other party at that exact time.

It is important to bear in mind that contract law is not the same from country to country. Each country has its own independent, free standing law of contract. Therefore, it makes sense to examine the laws of the country to which the contract is governed before deciding how the law of contract (of that country) applies to any particular contractual relationship.

To determine whether or not a contract has been breached, a judge needs to examine the contract. To do this, they must examine: the existence of a contract, the requirements of the contract, and if any modifications were made to the contract. Only after this can a judge make a ruling on the existence and classifications of a breach. Additionally, for the contract to be breached and the judge to deem it worth of a breach, the plaintiff must prove that there was a breach in the first place, and that the plaintiff held up his side of the contract by completing everything required of him. Additionally, the plaintiff must notify the defendant of the breach prior to fling the lawsuit.

Ways of breaching contracts

A breach of contract may take place when a party to the contract:

1. fails to perform their obligations under the contract in whole or in part
2. behaves in a manner which shows an intention not to perform their obligations under contract in the future or
3. the contract becomes impossible to perform as a result of the defaulting party's own act.

**Classifications of breaches of contract**

1. breach of warranty;
2. breach of condition; or
3. breach of an innominate term, otherwise known as an intermediate term.

**Breach of warranty**

A breach of a warranty of a contract creates a right to damages for the loss suffered, which was caused by the breach. These "minor" breaches do not entitle the innocent party to terminate the contract. The innocent party cannot sue the party in default for specific performance: only damages. Injunctions (specific performance is a type of injunction) to restrain further breach of a warranty are likely to be refused on the basis that (1) injunctions are a discretionary remedy, and (2) damages are an adequate remedy in the circumstances of the case.

Suppose a homeowner hires a contractor to install new plumbing and insists that the pipes, which will ultimately be hidden behind the walls, must be red. The contractor instead uses blue pipes that function just as well. Although the contractor breached the literal terms of the contract, the homeowner cannot ask a court to order the contractor to replace the blue pipes with red pipes. The homeowner can only recover the amount of his or her actual damages. In this instance, this is the difference in value between red pipe and blue pipe. Since the color of a pipe does not affect its function, the difference in value is zero. Therefore, no damages have been incurred and the homeowner would receive nothing .

 in the case of ***Jacob & Youngs v. Kent*** the Plaintiff Jacob & Youngs, built a house for Defendant Kent for a price of $77,000, and sued to recover the balance due of $3,483.46. Defendant specified that all pipe in the house must be Reading pipe, but inadvertently, Plaintiff installed pipe that was not Reading pipe. When Defendant discovered this defect, he demanded that the work be redone, which would have required the demolition and reconstruction of substantial parts of the house, but Plaintiff refused.

Held. No. Equity and fairness dictate that one who unintentionally commits a trivial wrong will not be condemned to a fate so clearly out of proportion with the transgression. To permit Defendant to recover the cost of replacement of the pipe would be unduly oppressive. Instead, Defendant will be adequately compensated by recovering the difference in value of a home with the Reading pipe and the value of the home, as it exists, with a different kind of pipe.

**Breach of a condition**

Breach of a condition of a contract is known as a repudiatory breach. Again, a repudiatory breach entitles the innocent party at common law to (1) terminate the contract, and (2) claim damages. No other type of breach except a repudiatory breach is sufficiently serious to permit the innocent party to terminate the contract for breach.

**Types of breach**

1. **Material breach**

A material breach has been held to mean "a breach of contract which is more than trivial, but need not be repudiatory ... which is substantial. The breach must be a serious matter, rather than a matter of little consequence". A breach of contract will likely constitute a material breach if the term of the contract that has been breached is a condition of the contract. A variety of tests may be applied to terms of contracts to decide whether a term is a warranty or a condition of the contract.

In respect to the EPC Agreements Material breach is defined as "shall mean a breach by either Party of any of its obligations under this Agreement which has or is likely to have a Material Adverse Effect on the Project and which such Party shall have failed to cure."

1. **Fundamental breach**

While fundamental breach of contract was once the test for a serious breach of contract to justify termination, it is no longer. The test is that set out for repudiatory breach, above. The concept of Fundamental Breach as a free standing legal concept no longer has any legal force. it is now simply another term of a contract (when it is used) which needs to be construed like any other term of a contract.

A fundamental breach is usually read as a reference to a repudiatory breach. A term may be a condition in Australian law if it satisfies one test known as the test of essentiality. The test of essentiality requires that the promise (term) was of such importance to the promisee that he or she would not have entered into the contract unless he had been assured of strict or substantial performance of the promise and this ought to have been apparent to the promisor. This is an objective test of the parties' intention at the time of formation of the contract.

**3) Anticipatory breach**

Renunciatory breach (usually referred to as anticipatory breach or breach by anticipatory repudiation) is an unequivocal indication that the party will not perform when performance falls due, or a situation in which future non-performance is inevitable. An anticipatory breach gives the innocent party the option to immediately terminate the contract and sue for damages, or wait for the time of performance: if the party required to perform does not perform when required by the contract, the innocent party can terminate then.

If a party to announce their intention to comply with its contractual obligations if the innocent party for breach of the fact that they have their own claims before the violation is not obliged to wait:

In the case of

***Hochster v De la Tour (1853)***

Applicants for three months from first June 1852 agreed that the defendants Messenger. 11 May in the work on the defendant did not want that rejected his services and wrote the manuscript for compensation. Scored another service contract by the complainant, but not until 4 July start. The plaintiff sued for breach of contract on 22 May Employees of the contract due by 1 Begin in June, when the card is not a breach of contract claims to 22 days

Held: Before the injury occurred in the application until the parties of its intention not to perform the contract if the innocent party would you mind passing. They shall immediately or can choose their continued violation of this Agreement to wait.

However, a unique feature of anticipatory breach is that if an aggrieved party chooses not to accept a repudiation occurring before the time set for performance, not only will the contract continue on foot, but also there will be no right to damages unless and until an actual breach occurs

B. what are the remedies available for a breach of contract

THE REMEDIES AVAILABLE FOR A CONTRACT BREACH?

The remedies available for a contract breach include:

1. Monetary damages.

 The party who breached the contract can be held responsible for the losses caused by the breach. Both general or expectation damages and consequential damages can result from a breach of a contract. General or expectation damages refer to the loss directly caused by the breach. Consequential damages refer to losses that occurred because of the breach but that were an indirect cause. For example, if you contracted and paid for a machine to be delivered and it never came, the general losses would include the value of the money you paid for the machine. The consequential losses could include the loss of business caused by the fact you did not have the machine you needed to do your work.

1. Specific performance.

In some cases, the appropriate remedy for a breach of contract is to correct the breach by forcing the breaching party to complete the terms of the agreement. Specific performance is an appropriate remedy in situations where monetary damages could not possibly make the non-breaching party whole for the losses. For example, if there was a contract created for a buyer to purchase a very rare piece of art, the buyer could not simply find the art elsewhere. The only remedy that would help the buyer in this circumstance is for the court to require the sale to go through so the buyer got the unique one-of-a-kind painting that he contracted for.

1. Rescission.

Rescission allows the non-breaching party to essentially be released from performance obligations. Recession is a remedy for a breach of contract because it makes clear that the party is relieved of his duties due to the failure of the other party to perform.

1. Liquidation damages.

Sometimes, it is very difficult to determine how much a person was damaged by a breach of contract. To address this problem, some contracts contain liquidated damage clauses. Essentially, these clauses specify that the non-breaching party will be awarded a specific amount of money in the event a breach occurs. These clauses will be upheld as long as they are fair.