## **What is a Breach of Contract, and What are the Different Types of Breaches?**

A [contract](https://www.legalmatch.com/law-library/article/what-is-a-contract.html) is a legally binding promise made between two parties. Each party to a contract promises to perform a certain duty, or pay a certain amount for a specified item or service. The purpose of a contract being legally binding is so each party will have legal recourse in the event of a breach.

A breach of contract occurs when the promise of the contract is not kept, because one party has failed to fulfill their agreed upon obligations, according to the terms of the contract. Breaching can occur when one party fails to deliver in the appropriate time frame, does not meet the terms of the agreement, or fails perform at all. Furthermore, if one party fails to perform while the other party fulfills their obligations, the performing party is entitled to legal remedies for breach of contract.

## **Breach of Contract Case: An Example**

Let's assume that R. Runner contracts with Acme Anvils for the purchase of some of its products, for delivery by the following Monday evening. If Acme delivers the Anvils to Runner on the following Tuesday morning, its breach of the contract would likely be deemed immaterial, and R. Runner would likely not be entitled to money damages (unless he could show that he was somehow damaged by the late delivery).

However, assume now that the contract stated clearly and explicitly that "time is of the essence" and the anvils MUST be delivered on Monday. If Acme delivers after Monday, its breach of contract would likely be deemed "material," and R. Runner's damages would be presumed, making Acme's liability for the breach more severe, and likely relieving Runner of the duty to pay for the anvils under the contract.

There are four main types of contract breaches:

1. **Minor Breach:**This occurs when a party fails to perform a part of the contract, but does not violate the whole contract. To be considered a minor breach, the infraction must be so nonessential that all parties involved can otherwise fulfill any remaining contractual obligations. A minor breach is sometimes referred to as an impartial breach;
2. **Material Breach:**This is a breach that is so substantial, it seriously impairs the contract as a whole; additionally, the purpose of the agreement must be rendered completely defeated by the breach. This is sometimes referred to as a total breach. It allows for the performing party to disregard their contractual obligations, and to go to court in order to collect damages from the breaching party;
3. **Fundamental Breach:**A fundamental breach of contract is essentially the same as a material breach, in that the non-breaching party is allowed to terminate the contract and seek damages in the event of a breach. The difference is that a fundamental breach is considered to be much more egregious than a material breach; and
4. **Anticipatory Breach:**An anticipatory breach occurs when one party lets the other party know, either verbally or in writing, that they will not be able to fulfill the terms of the contract. The other party is then able to immediately claim a breach of contract and pursue a remedy, such as payment. Anticipatory breach may also be referred to as [anticipatory repudiation](https://www.legalmatch.com/law-library/article/anticipatory-breach-attorneys.html)**.**

When a breach of contract occurs or is alleged, one or both of the parties may wish to have the contract enforced on its terms, or may try to recover for any financial harm caused by the alleged breach. If a dispute over a contract arises and informal attempts at resolution fail, [the most common next step is a lawsuit](https://smallbusiness.findlaw.com/business-contracts-forms/top-10-reasons-to-avoid-breaching-a-contract.html). If the amount at issue is below a certain dollar figure (usually $3,000 to $7,500 depending on the state), the parties may be able to resolve the issue in small claims court. Courts and formal breach of contract lawsuits are [not the only options](https://hirealawyer.findlaw.com/do-you-need-a-lawyer/before-you-sue-10-things-to-think-about.html) for people and businesses involved in contract disputes. The parties can agree to have a mediator review a contract dispute or may agree to binding arbitration of a contract dispute.These out-of-court options are two methods of "[alternative dispute resolution](https://adr.findlaw.com/arbitration/arbitration-overview.html)" that can take place as alternatives to business litigation.

## **B) Remedies for a Breach of Contract**

When an individual or business breaches a contract, the other party to the agreement is entitled to relief (or a "remedy") under the law. The main remedies for a breach of contract are:

1. Damages,
2. Specific Performance
3. Cancellation and Restitution

### **Damages**

The payment of [damages](https://dictionary.findlaw.com/definition/damage.html), payment in one form or another is [the most common remedy for a breach of contract](https://smallbusiness.findlaw.com/business-contracts-forms/what-is-the-most-common-legal-remedy-for-breach-of-contract.html). There are many kinds of damages, including the following:

1. ***Compensatory damages:***aim to put the non-breaching party in the position that they would have been in if the breach had not occurred.
2. ***Punitive damages:***are payments that the breaching party must make, above and beyond the point that would fully compensate the non-breaching party. Punitive damages are meant to punish a wrongful party for particularly wrongful acts, and are rarely awarded in the business contracts setting.
3. ***Nominal damages:***are token damages (small amount of damages) awarded when a breach occurred, but no actual money loss to the non-breaching party was proven.
4. ***Liquidated damages:***are specific damages that were previously identified by the parties in the contract itself, in the event that the contract is breached. Liquidated damages should be a reasonable estimate of actual damages that might result from a breach.

### **Specific Performance**

If damages are inadequate as a legal remedy, the non-breaching party may seek an alternative remedy called**specific performance.** Specific performance is best described as the breaching party's court-ordered performance of duty under the contract.

Specific performance may be used as a remedy for breach of contract if the subject matter of the agreement is rare or unique, and damages would not suffice to place the non-breaching party in as good a position as they would have been in had the breach not occurred.

### **Cancellation and Restitution**

A non-breaching party may *cancel* the contract and decide to sue for *restitution* if the non-breaching party has given a benefit to the breaching party.

"[Restitution](https://dictionary.findlaw.com/definition/restitution.html)" as a contract remedy means that the non-breaching party is put back in the position it was in prior to the breach, while "cancellation" of the contract voids the contract and relieves all parties of any obligation under the agreement.