

## **BREACH OF CONTRACT**

A breach of contracts occurs when a party fails to perform or shows an intention not to perform one or more of the obligations lay upon him by the contract. Thus, a failure to perform the terms of a contract constitutes a breach. A breach which is serious enough to give the innocent party this option of treating the contract as discharged can occur in one of the two ways:

Either one party may show by express words or by implications from his conduct at some time before performance is due that he does not intend to observe his obligations under the contract (anticipatory breach), or

He may in fact breach a condition or otherwise breach the contract in such a way that it amounts to a substantial failure of consideration (actual fundamental)

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 If a contract is rescinded, parties are legally allowed to undo the work unless doing so would directly charge the other party at that exact time.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

What constitutes a breach of contract: 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 filing the lawsuit.

A breach of contract may take place when a party to the contract: fails to perform their obligations under the contract in whole or in part behaves in a manner which shows an intention not to perform their obligations under contract in the

future or

the contract becomes impossible to perform as a result of the defaulting party's own act.

These classifications only describe *how* a contract can be breached, not how serious the breach is. A judge will make a decision on whether a contract was breached based on the claims of both parties. The first type above is an *actual* breach of contract. The second two types are breaches as to the future performance of the contract, and technically known as *renunciatory* breaches. The defaulting party renounces the contract in advance of the time they are required to perform their obligations. Renunciatory breach is more commonly known as "anticipatory breach".

Classification of breach of contracts

The general law has three categories of breaches of contract. These are measures of the seriousness of the breach. In the absence of a contractual or statutory provision any breach of contract is categorized as a

breach of warranty;  
breach of condition; or  
breach of an innominate term,  
otherwise known as  
an *intermediate* term.

There is no "internal rating system" within each of these categories (such as "a serious breach of warranty". It's a breach of a warranty. It's not a minor breach of a condition. It's a breach of a condition). Any breach of contract is one or the other of a breach of warranty, condition or innominate term. In terms of priority of classification of these terms, a term of a contract is an innominate term unless it is clear that it is intended to be a condition or a warranty.

## TYPES OF BREACH

**FUNDAMENTAL BREACH:** Where a party fails to perform one of all his obligations on the date fixed for performance, the breach is called actual\fundamental breach. For an actual breach of term(s) of a contract to have legal consequence of discharging the contract, it should amount to a fundamental breach. The

breach should be so cardinal that it goes to the root of the contract. it should have the effect of depriving the injured party of achieving the main purpose for which he contracted. 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 promise 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.

If the contractor in the above example

had been instructed to use copper pipes, and instead used iron pipes that would not last as long as the copper pipes would have lasted, the homeowner can recover the cost of actually correcting the breach – taking out the iron pipes and replacing them with copper pipes.

In the case of **modern publications Ltd v academy press Ltd**, the plaintiff which owned monthly magazines contracted the printing of the magazines to the defendant. The agreement specified the measurements and quality expected of the print. The magazines which were eventually printed by the defendants were not of the specified size and the quality was substantially inferior to that specified in the contract. Despite these, the plaintiff accepted the magazines and distributed them for sale without protest. This affected their sale and profit negatively. The plaintiffs thereafter brought this action for breach of contract, the fact that the plaintiffs nevertheless took the benefit of the contract by taking delivery and subsequently selling the

magazines, meant that they had waived their right to sue for the breach. In rejecting the contention of the defendant, the court held that when one party is in breach of a condition or fundamental term of a contract which amounts to a fundamental breach, the other party is not compelled to accept the breach as a repudiation of the contract. He may waive and consider the contract as subsisting and alive if he so wishes and elect to sue for damages for the breach.

#### 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.



For example, A contracts with B on January 1 to sell 500 quintals of wheat and to deliver it on May 1. Subsequently, on April 15, A writes to B and says that he will not deliver the wheat. B may immediately consider the breach to have occurred and file a suit for damages for the scheduled performance, even though A has until May 1 to perform. 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.

Anticipatory breach may take two forms:

**Express repudiation:** Express repudiation arises where one party expressly informs the other party to the contract of his unwillingness to perform his obligations under the contract. This could be in writing or by words. Express anticipatory breach took place in the case of **Hochester v De la Tour**. Here, the defendant actually wrote to the

plaintiff stating that he was no longer going to perform his part of a contract under which he agreed to engage the plaintiff as a courier during a foreign tour commencing at a future date. The plaintiff's services were to start on June 1. On May 11, the defendant told the plaintiff he would not require his services. The plaintiff, before June 1 (the date of the commencement of the services) arrived, brought an action against the defendant. It was held that even though the date of performance was still nearly a month ahead he has the right to sue for anticipatory breach.

Implied repudiation: implied repudiation occurs where there is reasonable interference that the other party to the contract no longer intends to perform his own part of the contract. In this case, the innocent party is entitled to treat the contract as discharged, and to sue for damages. This may arise from the conduct and actions of the defaulting party, from which the other party can imply that performance of the contract is impossible. In omnium D'

Enterprises and Ors v Sutherland, the defendant who owned a steamship contracted to hire her to the plaintiff for a certain duration of time. Before the time stated for hire, the defendant sold the ship to a purchaser. In an action by the plaintiff for damages for breach of contract, it was held that the sale by the defendant amounted to a repudiation of the contract with the plaintiff, and the plaintiffs were entitled to assume that the contract has been discharged by the conduct of the defendant. Damages were also awarded for the breach of contracts.

## REMEDY AVAILABLE FOR BREACH OF CONTRACTS

In contract law, a "remedy" is a court-ordered resolution to one party's breach of contract. A breach of contract occurs when one party to a contract has not fulfilled his or her obligation under the agreement. The non-breaching party is also known as the "injured" party, and the purpose of remedies is to place the injured party in the position they would have otherwise been in had the contract been performed as it was agreed

upon. Five remedies for breach of contract include: "Award of Damages", "Restitution", "Rescission", "Reformation", and "Specific Performance".

## Compensatory Damages for Breach of Contract Explained

Award of damages is the most common remedy for breach of contract as one party seeks compensation for financial losses as a result of breach of contract. The party who is injured by the breach of contract is entitled to the benefit (consideration) of the agreement they entered, or the net gain they would've accrued had it not been for the breach. This type of remedy is known as "compensatory damages." During the court case, the injured party becomes the plaintiff. In the instance of a total breach, the plaintiff may recover damages in an amount that's equal to the sum or value they would have received had the contract been fully performed by the defendant. Sometimes, this includes lost profits from a business operation. If the breach is only partial and the defendant carried out a majority of

the contract, the plaintiff may seek damages in an amount equal to the cost of hiring someone else to complete the performance. If the portion of the uncompleted performance is quite small in terms of cost, however, the court may only award damages in an amount that's equal to the difference between the diminished value of the agreement as completed and the full value as stated in the contract.

Compensatory, or actual damages, cover the loss the non-breaching party incurred as a result of the breach. Punitive damages, known as exemplary damages, are awarded to punish or make an example of the wrongdoing of a party that acted willfully, maliciously or fraudulently. Punitive damages are awarded in addition to compensatory damages. However, punitive damages are rarely awarded in breach of contract cases. Punitive damages are most often used in tort cases in which personal harm was a result of the wrongdoing and actual damages are minimal.

Restitution in Breach of Contract

## Cases Explained

Restitution is remedy designed to restore the injured party to its state or position before the contract was created. Unlike an award of damages, parties seeking restitution may not demand compensation for lost profits or other financial losses caused by a breach. Instead, restitution is meant to return any money or property given to the defendant under the contract back to the plaintiff. Typically, a party will seek restitution when a contract they entered has been voided by courts because of the defendant's incompetence or incapacity. Contract law allows incompetent and incapacitated individuals to be relieved of their contractual obligations, but only if the plaintiff is not hindered by the dismissal. In either case, if the defendant received any money or property by means of the contract that is now voided, the plaintiff is to be restored of that money or property.

## Rescission in Breach of Contract Cases Explained

Rescission is a remedy used to terminate a contract when parties

entered into a contract by way of fraud, undue influence, coercion, or mistake. In the case of rescission, the contractual obligations of both parties are therefore terminated, and the contract will no longer exist.

### Reformation in Breach of Contract Cases Explained

Reformation is similar to rescission as it's a result of parties entering into a contract based on fraud, undue influence, coercion, or mistake, but rather than terminating the contract and the parties' obligations entirely, the court will change the substance of a contract to correct the inequities suffered as a result.

### Specific Performance of a Contract Explained

Specific performance is a remedy for breach of contract in which the court forces the breaching party to perform the services or deliver the goods the promised goods per the contract.

Specific Performance is only available when money damages are inadequate to compensate the plaintiff for a breach. This remedy is typically used when the goods or services are so unique that no other

remedy could suffice. A good example is an individual who's looking to buy a rare piece of art. He or she forms a contract with someone to obtain this piece of art. The buyer's offer becomes the price for the piece of art and the other party accepts by a promise of delivering the art in exchange for the agreed amount. If the other party joins in this contract, yet fails to deliver the art, the buyer can take the case to court as a breach of contract. The court could rule specific performance the remedy for breach of contract, as the buyer would not be able to get this rare piece of art elsewhere. The defendant would then be required by the court to deliver the goods – in this case, the art – as agreed upon in the contract.