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Assignment Title: Breach of Contract

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QUESTION

Reach of contract is committed when a party without lawful excuse fails or refuses to perform what is due from him under the contract or performs defectively or incapacitates himself from performing. (Treitel 2007, para 17-049)

Discuss the following:

Breach of contract

What are the remedies available for breach of contract.

**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[1].. 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[2].. Where there is breach of contract, the resulting damages will have to be paid by the party breaching the contract to the aggrieved party.

1.^ab "Breach of Contract — Judicial Education Center". jec.unm.edu. Retrieved 2020-04-10.

2.^ Murray, Full Bio Follow Linkedin Follow Twitter Jean; MBA; Ph.D.

If a contract is rescinded, parties are legally allowed to undo the work unless doing so would directly charge the other party at that exact time.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. In the case of *Hong Kong Fir Shipping Co Ltd v Kawasaki Kisen Kaisha Ltd [1961] EWCA*[3]where

Hong Kong Fir Shipping hired out their elderly ship, the "Hong Kong Fir", under a two-year time charter-party to Kawasaki Kisen Kaisha. It was to sail in ballast from Liverpool to collect a cargo at Newport News, Virginia, and then to proceed via Panama to Osaka. A term in the charterparty agreement required the ship to be seaworthy and to be "in every way fitted for ordinary cargo service." However the crew were both insufficient in number and incompetent to maintain her old-fashioned machinery; and the chief engineer was a drunkard. On the voyage from Liverpool to Osaka, the engines suffered several breakdowns, and was off-hire for a total of five weeks, undergoing repairs. On arrival at Osaka, a further fifteen weeks of repairs were needed before the ship was seaworthy again. By this time, barely seventeen months of the two-year time-charter remained. Once in Osaka, market freight rates fell, and Kawasaki terminated the contract citing Hong Kong's breach. Hong Kong responded that Kawasaki were now the party in breach for wrongfully repudiating the contract.

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

3. BS&N Ltd v Micado Shipping Ltd (The Seaflower (No 2) [2000] 2 All ER (Comm) 169

. 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.

Classifications of breaches of contract

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 ;[4]

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

**REMEDIES AVAILABLE FOR BREACH OF CONTRACT**

The Latin maxim ‘Ubi jus, ibi remedium’ denotes ‘where there is a right, there is a remedy

A contract, being a fountainhead of a correlative set of rights and obligations for the parties, would be of no value, if there were no remedies to enforce the rights arising thereunder.

The party committing breach of contract is called the ‘guilt party’ and the other party is called the ‘injured’ or ‘aggrieved’ party.

In case of breach of contract, the aggrieved party would have one or more, but not all, of the following remedies against the guilty party.

4.^Grand China Logistics Holding (Group) Co. Ltd v Spar Shipping AS (Rev 1) [2016] EWCA Civ 982". Retrieved 7 February 2019

1. Suit for Rescission

The breach of contract no doubt discharges the contract, but the aggrieved party may sometimes need to approach the court to grant him a formal rescission, i.e. cancellation, of the contract. This will enable him to be free from his own obligations under the contract

2. Suit for Damages

The word ‘damages’ means monetary compensation for loss suffered. Whenever a breach of contract takes place, the remedy of ‘damages’ is the one that comes to mind immediately as the consequence of breach[5]

A breach of contract may put the aggrieved party to some disadvantage or inconvenience or may cause a loss to him. The court would desire the guilty part to accept responsibility for any such loss of the aggrieved party and compensate him adequately.

The quantum of damages is determined by the magnitude of loss caused by breach

Types of Damages

When the aggrieved party claims damages as a consequence of breach, the court takes into account the provisions of law in this regard and the circumstances attached to the contract. The amount of damages would depend upon the type of loss caused to the aggrieved party by the breach.

The court would first identify the losses caused and then assess their monetary value.the Act lays down the basic guidelines for identifying the losses.

Keeping in view the provisions of the Act and the court judgments, the aggrieved party would be entitled to one of following types of damages, depending upon the circumstances of the case:[6]

5.^ Paterson, Jeannie; Robertson, Andrew; Duke, Arlen (2012). Principles of Contract Law (Fourth ed.). Sydney: Thomson Reuters (Professional) Australia Limited. p. 44

6. ^ Foran v Wight [1989] HCA 51, (1989) 168 CLR 385 at pp 416, 441-2, High Court (Australia).

a. General or ordinary damages.

b. Special damages.

c. Exemplary or vindictive damages. d. Nominal damages.

(a) General or ordinary damages: Such losses would be called the general or ordinary losses which can be seen as arising naturally and directly out of the breach in the usual course of the things. They would be the unavoidable and logical consequence of the breach. The damages for such losses are called general or ordinary damages. An aggrieved party’s right to damages applies most naturally for the direct or general losses. There can be no damages for indirect and remote losses.

(b) Special damages: Special damages would be the compensation for the special losses caused to the aggrieved party by the special circumstances attached to the contract.

At the time of making the contract, a part may place before the other party some information about the special circumstances affecting him and tell him that if the contract is not performed properly, he would suffer some particular types of losses because of those special circumstances. If the other party still proceeds to make the contract, it would imply that he has agreed to be responsible for the special losses that may be caused by an improper performance of his obligation. Compensation for such special losses is called special damages.

The two types of losses that have been put under two separate points above, the ordinary losses and the special losses, are in reality based on one common idea only. And that idea is that the level of knowledge of circumstances at the time of making the contract would determine what losses shall be compensated by the guilty party

(c) Exemplary or vindictive damages: Sometimes, the courts award damages for mental or emotional suffering also caused by the breach. Such damages are called exemplary or vindictive damages. These may be taken as an exception to the general principle that damages are awarded only for the financial loss caused by breach of contract.

In a case *Addies vs Gramophone Co. Ltd.2,*[7] the court stated that in three cases mental suffering and pain of the aggrieved party can also be taken into account:

(i) Unjustified dishonour of a cheque,

(ii) Breach of promise of marriage, and

(iii)Failure of vendor of real estate to make title.

(d) Nominal damages: If the breach of contract causes no loss to the aggrieved party, no damages need be awarded to him. However, in order to record the fact of breach by guilty party, the courts may award nominal or token damages, e.g. a compensation of Rs.10. They would be called nominal damages.

Rules Regarding Award of Damages

(i) Compensation not penalty: The fundamental purpose of awarding damages is to compensate the aggrieved party for any loss suffered and not to punish the guilty party for causing breach.[8]

(ii) Limited damages: The aim of the courts, in awarding damages, would be to place the aggrieved party, as far as money can do it, in the same position in which he would have been, had the contract been properly performed

(iii) Damages for attributable losses:

Damages are awarded for the losses which can be attributed to the breach.

7.^ Suisse Atlantique, Ibid

8.^Tramways Advertising Pty Ltd v Luna Park [1938] NSWStRp 37, (1938) 38 SR (NSW) 632, Supreme Court (NSW, Australia).

(iv) Mitigation of losses: The aggrieved party is expected to make sincere efforts to minimize the losses that are resulting out of breach of contract.

(v) Damages in case of contracts of sale of goods: The basic idea in this context is that in case a party breaks a contract for sale of goods, the aggrieved party must take a quick action to protect itself.

(Vi) Stipulation for liquidated damages or penalty: Sometime, the parties to contract may themselves stipulate an amount in the contract to be payable by the guilty party to the aggrieved party as damages for breach of contract. This stipulation of the amount may be by way of liquidated damages or by way of penalty.

(vii) Cost of suit: The breach of contract by a party forces the other to initiate legal action against the guilty party. This necessarily entails expenditure. This cost of suit can be recovered from the guilty party only at the discretion of the court.

3. Suit for quantum meruit

The term quantum meruit means ‘as much as earned’. It implies ‘a payment deserved by a person for the reason of actual work done’.[9]

When a party has done some work under a contract, and the other party repudiates the contract or somehow the full performance of the contract becomes impossible, then the party who has done the work can claim remuneration for the work under a suit for quantum meruit[10]

Likewise, where one party has expressly or impliedly requested another to render him a service without specifying any remuneration, but the circumstances of the request imply that the service is to be paid for, there is implied a promise to pay quantum meruit.

9.^ Suisse Atlantique, Ibid

10.^ Tramways Advertising Pty Ltd v Luna Park [1938] NSWStRp 37, (1938) 38 SR (NSW) 632, Supreme Court (NSW, Australia).

Even in the case of where the person who has done the work is the one who is guilty of breach of contract, he too is entitled to be paid quantum meruit. But there is an exception – such a contract must have involved work that was indivisible and it must not have been a contract for lumpsum remuneration

4. Suit for specific performance

In certain cases of breach of a contract, damages may not be an adequate remedy. Then the Court may direct the party in breach to carry out his promise according to the terms of the contract. This is a direction by the Court for specific performance of the contract at the suit of the party not in breach. But in general, Courts do not wish to compel a party to do that which he has already refused to do.

Chapter 2 of the Specific Relief Act, 1963 lays down detailed rules on the specific performance of Contracts.

Cases where specific performance may be ordered:

(i) Where there exists no standard for ascertaining the actual damage caused to the aggrieved party by the non- performance

(ii) Where monetary compensation will not be adequate relief. Example a contract for sale of a rare antique

(iii) Where plaintiff’s property is held by the defendant in the capacity of his agent or trustee

(iv) Where the act to be done is in performance of trust

Cases where specific performance will not be ordered:

(i) Where monetary compensation is adequate relief

(ii) Where contract is made by the agent or trustee in violation of his powers

(iii) Where the contract is of a personal nature, such as a contract to marry or a contract of service

(iv) Where the court cannot supervise the performance of promise as it involves performance of a continuous duty[11]

(v) Where the contract is in its nature revocable

(vi) Where the contract is made by a company in excess of its powers as laid down in its Memorandum of Association

5. Suit for injunction

‘Injunction’ is a court order or decree to a person asking him to refrain from doing a contemplated act or from continuing an ongoing act. Such an order of injunction becomes a remedy for the aggrieved party when the court orders the guilty party to refrain from doing precisely that which is causing the breach of contract.[12]

In a way, injunction is a mode of securing the specific performance of the negative terms of a contract. But for the performance of the positive terms of the contract, the aggrieved party may seek other remedies like damages.

11. ^Grand China, paragraph 98

12.^ America, Best Lawyers as one of the Best Lawyers in; of "Superb 10/10", has an AVVO legal rating (2019-09-05). "What Are the Remedies Available for a Contract Breach?". Brown & Charbonneau, LLP. Retrieved 2020-04-10.