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## What is Breach of Contract

A contract 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.

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 If a contract is rescinded, parties are legally allowed to undo the work unless doing so would directly charge the other party at that exact time.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

Among the most common causes for lawsuits in the U.S., breach of contract occurs in many ways. The law offers a variety of remedies for each such breach, designed to make the injured party whole. Court-ordered remedies for breach of contract cases are not meant to punish the breaching party, but to return the injured party to the position he would be in if the breach had not occurred.

#### Partial Breach

A partial breach, or failure to perform or provide some immaterial provision of the contract, may allow the aggrieved party to sue, though only for “actual damages.” For example:

A homeowner hires a contractor to put a pond in his backyard, showing the contractor the black liner he would like installed under the sand. The contractor instead installs a blue liner of the same design and thickness, which is totally hidden from view. The contractor may have breached the precise terms of the contract, but the homeowner cannot ask that the contractor be ordered to take out the pond and start over with the black liner.

The homeowner could ask that the contractor be ordered to refund the difference in price between the requested black liner and the installed blue liner. In this case, because the color of the liner has no effect on functionality, and the price was basically the same, the difference in value, or “actual damages,” is zero.

#### Material Breach of Contract

Failure of one party to perform his obligations under the contract in such a way that the value of the contract is destroyed, exposes that party to liability for breach of contract damages. For example, if the contractor in the above example had used thin plastic not intended for the rigors of maintaining a pond, which could not be expected to last as long as the pond liner, the homeowner might recover the actual cost to correct the material breach, which would include removing the pond and replacing the liner.

A material breach of contract may relieve the aggrieved party of his own obligations under the contract, and give him the right to sue for damages. Such a total breakdown of the material provisions of a contract may be referred to as a “fundamental” or “repudiatory” breach.

#### Anticipatory Breach of Contract

Anticipatory breach, also known as “anticipatory repudiation,” occurs when one party to a contract stops acting in accordance with the contract, leading the other party to believe he has no intention of fulfilling his part of the agreement. In this case, the breaching party may give such an impression by his actions, or failure to act, such as failing to produce an ordered item, refusing to accept payment, or somehow making it obvious that he cannot or will not fulfill the terms of the contract. An anticipatory breach of contract enables the non-breaching party to end the contract and sue for breach of contract damages without waiting for the actual breach to occur.

#### Specific Performance

In certain cases, an aggrieved party may not be made whole through the award of monetary damages. He may instead request the court to order “specific performance” of the terms of the contract. Specific performance may be any court-ordered action, forcing the breaching party to perform or provide exactly what was agreed to in the contract. Specific performance is most often ordered in a contract involving something for which a value is difficult to determine, such as land or an unusual or rare item of personal property.

#### Consequences of a Breach of Contract

The primary consequence for a breach of contract is that the side that commits the breach becomes liable for the damages caused by their failure to meet their obligations. Under contract law, the breaching party will be required to make the other part whole. The liability

will be different depending on if the breach was a material breach or a non-material breach.

The court will also look to the actions of the injured party when determining the appropriate amount of damages.

### Breach of Contract Elements

To be successful in a breach of contract lawsuit, there are certain breach of contract elements that must exist:

#### Existence of a Valid Contract

To claim breach of contract, there must be an actual, valid contract in place. It is not necessary for a contract to be put in writing, as oral contracts are enforceable by the court system. To prove the existence of a valid contract, however, three elements must be

established: 1. Offer – Some discussion and an agreement to the provision of goods or services in exchange for something of value must have been made. There must have been the intention to enter into an agreement or contract.

2. Acceptance – An agreement to the essential terms for the exchange of goods or services for something of value must be entered into. Written contracts make proving such terms easier, as they document specific terms to which the parties have agreed.

3. Consideration – Each party to an oral or written contract must have received something of value. In other words, in a valid contract, each party has something to gain. A promise by one party to provide a good or service without receiving anything in return looks a great deal like a gift, which is not enforceable.

### Example Breach of Contract Cases

Courts in the United States are virtually inundated with breach of contract cases. Small and large, the decisions in such cases shape the way American's do business every day:

Hochster v De la Tour (1853)

Applicants for three months from first June 1852 agreed that the defendant's Messenger. 11 May in the work on the defendant did not want that rejected his services and wrote the manuscript for compensation. Secured 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 June 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.

Among them immediately or to seek their own contracts before they are waiting for a breach of the law continue to enter into the innocent party to make a choice to make. This can be beneficial or harmful

### What is a Remedy in Contract Law?

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.

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

Others are; restitution, rescission.

**Damages** The payment of damages — payment in one form or another — is the most common remedy for a breach of contract. There are many kinds of damages, including the following:

#### 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 damages aim to put the non-breaching party in the position that they would have been in if the breach had not occurred.

Punitive Damages for Breach of 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. Others include;

1. 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.
2. 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.

“Damages recoverable by a party injured by a breach of contract are those that naturally flow from the breach and can reasonably be said to have been contemplated by the parties at the time the contract was entered into.” *Mnemonics, Inc. v. Max Davis Assocs., Inc.*, 808 So. 2d 1278, 1280 (Fla. 5th DCA 2002).



## Restitution in Breach of Contract Cases

Restitution is a 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.

Restitution may be available in cases of breach, to either party:

- \* where a contract is unenforceable (e.g., due to lack of consideration or writing);
- \* where a contract is voidable;
- \* where a duty is excused or discharged due to impracticability, frustration of purpose, non-occurrence of a condition, or disclaimer by a beneficiary.

The purpose of restitution, however, is to require the wrongdoer to restore that which he has received and thus tend to put the injured party in as good a position as he occupied before the contract was made; in this context the injured party may be said to have considered the

contract as ‘terminated’ or ‘ended.’” *Ocean Comm., Inc. v. Bubeck*, 956 So. 2d 1222, 1225 (Fla. 4th DCA 2007).

#### Rescission in Breach of Contract Cases

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.

In limited circumstances, a party can seek rescission or cancellation of the contract.

Rescission is an equitable remedy that is only available if there is no adequate remedy at law.

See *Cent. Fla. Antenna Serv., Inc. v. Crabtree*, 503 So. 2d 1351, 1353 (Fla. 5th DCA 1987)

(“Rescission should not be granted if damages for breach of contract or warranty are available.”).

#### Reformation in Breach of Contract Cases

Reformation is an equitable remedy that is applied when the written agreement does not correspond to the contract that was actually formed by the parties, as a result of fraud or mutual mistake in drafting the original document. Quasi-contractual relief for the reasonable value of services rendered is also available, although it applies only when there is no enforceable contract.

#### Specific Performance of a Contract

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.

Specific performance is not available if expectation damages are adequate to put the aggrieved party in as good a position as he would have been had the contract been fully performed. In the case of *Castigliano v. O'Connor*, 911 So. 2d 145, 148 (Fla. 3d DCA 2005) (“Specific performance shall only be granted when 1) the plaintiff is clearly entitled to it, 2) there is no adequate remedy at law, and 3) the judge believes that justice requires it.”).

### 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. Rescission terminates the contract, and the parties are restored to the position of never having entered into the contract in the first place.

"Restitution" 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.

The purpose of restitution, however, is to require the wrongdoer to restore that which he has received and thus tend to put the injured party in as good a position as he occupied before the contract was made; in this context the injured party may be said to have considered the contract as 'terminated' or 'ended.'" *Ocean Comm., Inc. v. Bubeck*, 956 So. 2d 1222, 1225 (Fla. 4th DCA 2007).

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