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Contract II

QUESTION

- 1] Discuss the following:
- a. Breach of contract
 - b. What are the remedies available for breach of contract.

ANSWER

1 A) "Breach of contract" is

a legal term that describes the violation of a contract or an agreement that occurs when one party fails to fulfill its promises according to the provisions of the agreement. Sometimes it involves interfering with the ability of another party to fulfill his duties. A contract can be breached in whole or in part. A breach of contract is a violation of any of the agreed-upon terms and conditions of a binding contract. The breach could be anything from a late payment to a more serious violation such as the failure to deliver a promised asset . Most contracts end when both parties have fulfilled their contractual obligations, but it's not uncommon for one party to fail to completely fulfill their end of the contract agreement . Breach of contract is the most common reason contract disputes are

brought to court for resolution. A contract is binding and will hold weight if taken to court. To successfully claim a breach of contract, it is imperative to be able to prove that the breach occurred.

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If a contract is rescinded, parties are legally allowed to undo the work unless doing so would directly charge the other party at that exact time. 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. A partial breach, or failure to perform or provide some immaterial provision of the contract, may allow the aggrieved party to sue.

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 as in the case of *Elderton v Emmens*

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.

Fundamental Breach of Contract

A fundamental breach of contract is generally known to occur when a previously

agreed upon contract is canceled entirely, due to the other party's actions or inactions,. While with most breaches of contract, the early termination could be considered a breach of contract, which is not the case with a fundamental breach and therefore, does not provide both parties the right to take legal recourse; that right exists only to the wronged party.

The determinant of what constitute a fundamental breach of contract must be a breach that goes to the root of the contract; for example the inability of a party to supply some drinks on a wedding day after several calls to him. This breach will also entitle the innocent party the right to terminate the contract-*RPM Investment Corp. v Lange*

1 B) The remedies available for a contract breach include:

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.

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.

Rescission : Rescission allows the non-breaching

party to essentially be released from performance obligations. Rescission 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.

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.

Punitive Damages : 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. 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

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.

These are some of the common remedies available for a contract breach.