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**COURSE TITLE: LAW OF CONTRACT II**

**QUESTION**

A breach 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:

1. Breach of contract
2. What are the remedies available for breach of contract?
3. A contract is a written or spoken agreement, especially one concerning employment, sales, or tenancy, which is intended to be enforceable by law. A contract is a legally binding agreement that recognizes and governs the rights and duties of the parties to the agreement. A contract is legally enforceable because it meets the requirements and approval of the law. An agreement typically involves the exchange of goods, services, money, or promises of any of those. In the event of breach of contract, the law awards the injured party access to legal remedies such as damages and cancellation.

Breach of contract is a [legal](https://en.wikipedia.org/wiki/Legal) [cause of action](https://en.wikipedia.org/wiki/Cause_of_action) and a type of [civil wrong](https://en.wikipedia.org/wiki/Civil_wrong), in which a [binding agreement](https://en.wikipedia.org/wiki/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 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 If a contract is rescinded, parties are legally allowed to undo the work unless doing so would directly charge the other party at that exact time.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.

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 renunciates the contract in advance of the time they are required to performs their obligations. Renunciatory breach is more commonly known as “anticipatory breach”. 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](https://en.wikipedia.org/wiki/Covenants%2C_conditions_and_restrictions) or a [warranty](https://en.wikipedia.org/wiki/Warranty).

Types of breach

1. **A breach of a warranty** of a contract creates a right to damages for the loss suffered, which was caused by the breach. These "minor" breaches do not entitle the innocent party to terminate the contract. The innocent party cannot sue the party in default for [specific performance](https://en.wikipedia.org/wiki/Specific_performance): only [damages](https://en.wikipedia.org/wiki/Damages). [Injunctions](https://en.wikipedia.org/wiki/Injunctions) (specific performance is a type of injunction) to restrain further breach of a warranty are likely to be refused on the basis that (1) injunctions are a discretionary remedy, and (2) damages are an adequate remedy in the circumstances of the case. Suppose a homeowner hires a contractor to install new plumbing and insists that the pipes, which will ultimately be hidden behind the walls, must be red. The contractor instead uses blue pipes that function just as well. Although the contractor breached the literal terms of the [contract](https://en.wikipedia.org/wiki/Contract), the homeowner cannot ask a court to order the contractor to replace the blue pipes with red pipes. The homeowner can only recover the amount of his or her actual damages. In this instance, this is the difference in value between red pipe and blue pipe. Since the color of a pipe does not affect its function, the difference in value is zero. Therefore, no damages have been incurred and the homeowner would receive nothing. In the case of [*Jacob & Youngs v. Kent*](https://en.wikipedia.org/wiki/Jacob_%26_Youngs_v._Kent)*, The Plaintiff built a house for Defendant for the price of $77,000 and sued to recover the balance due of $3,483.46. One of the specifications for construction was that all wrought iron pipe used must be Reading pipe. By the inadvertence of Plaintiff, not all pipe installed in the house was Reading pipe. When Defendant realized this, he had already begun to occupy the house. Nevertheless, he demanded that Plaintiff replace the pipe with Reading pipe. Doing so would have required Plaintiff to demolish substantial parts of the house and reconstruct it, which would have been a great expense to Plaintiff. He therefore refused and billed Defendant for the remaining amount due for the construction. Defendant refused to pay, and Plaintiff initiated this action.*

*The court held that no Equity and fairness dictate that one who unintentionally commits a trivial wrong will not be condemned to a fate so clearly out of proportion with the transgression. To permit Defendant to recover the cost of replacement of the pipe would be unduly oppressive. Instead, Defendant will be adequately compensated by recovering the difference in value of a home with the Reading pipe and the value of the home, as it exists, with a different kind of pipe.*

1. **Repudiatory breaches**

Conduct is repudiatory if it deprives the innocent party of substantially the whole of the benefit intended received as consideration for performance of its future obligations under the contract. Different forms of words are used by courts to express this central concept. The most prominent is whether the breach goes to the root of the contract. These forms of words are simply different ways of expressing the "substantially the whole benefit" test. Breach of a condition of a contract is known as a repudiatory breach. Again, a repudiatory breach entitles the innocent party at common law to (1) terminate the contract, and (2) claim damages. No other type of breach except a repudiatory breach is sufficiently serious to permit the innocent party to terminate the contract for breach. In the case of *Hochster v De la Tour (1853),* *Applicants for three months from first June 1852 agreed that the defendants Messenger. 11 May in the work on the defendant did not want that rejected his services and wrote the manuscript for compensation. Scored 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 Begin in June, when the card is not a breach of contract claims to 22 days.*

*The court held that 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.*

1. **Renunciatory breaches**

Conduct is renunciatory if shows an intention to commit a repudiatory breach. The conduct would lead a reasonable person to conclude that the party does not intend to perform its future obligations when they fell due.

Showing an intention to perform a contract in a manner which is inconsistent with the terms of the contract also shows an intention not to perform the contract. Whether such conduct is so severe so as to amount to a renunciatory breached depends upon whether the threatened difference in performance is repudiatory. An intention to perform connotes a willingness to perform, but willingness in this context does not mean a desire to perform despite an inability to do so. To say: "I would like to but I cannot" negatives intent just as much as "I will not.” Contracting parties must perform contracts in strict accordance with its terms: that is what was agreed in the first instance, when the contract was formed. To do otherwise is therefore a breach of contract.

In the event of a renunciatory breach, the innocent party may:

* choose to accept the breach at once and to terminate the contract, without waiting for the due date of performance, or
* Wait for the time for performance of the contract.

If the defaulting party does not perform when the time for performance arrives, the contract may be terminated. However, if the defaulting party does perform, the right to terminate is lost forever.

Conduct comprising a breach for performance of contractual obligations which have fallen due may be insufficient to be repudiation. However:

* It may nevertheless be conduct which is a renunciation because it would lead the reasonable observer to conclude that there was an intention not to perform in the future, and
* The past and threatened future breaches taken together would be repudiatory.

The reason why a defaulting party commits an actual breach is generally irrelevant to whether it constitutes a breach, or whether the breach is a repudiation (this is an incident of strict liability for the performance of contractual obligations). But the reason may be highly relevant to what such breach would lead the reasonable observer to conclude about the defaulting party's intentions in relation to future performance, and therefore to the issue of renunciation. Often the question whether conduct is a renunciation falls to be judged by reference to the defaulting party's intention which is objectively evinced both by past breaches and by other words and conduct.

Other cases include:

* *Taylor v Caldwell, The four grand concert hall in Surrey in the event will be held outside the plaintiff’s hired for the purpose. Significant costs and left the plaintiff in the effort to organize the event. However, a week before the first concert to take place during the music hall was destroyed by accident. Hall, demanding action for breach of contract costs and damages for the plaintiff failed to provide compensation*.  *The court held that For breach of contract the plaintiff failed to take action. Fire agreement as a means of performing this contract was frustrated that it was impossible.*
* *Condor v Baron Knights [1966], A 16 year old agreed by contract to play the drums for the defendant band for 7 nights per week for 5 years. The claimant suffered a mental breakdown and was told by his doctor that he should not perform more than 4 nights per week. The band dismissed him. He brought a claim for wrongful dismissal.* *The court held that the claimant’s action was unsuccessful as his medical condition made it impossible for him to perform his contractual obligations and the contract was thus frustrated.*

## Remedies for Breach of Contract

In contract law, a breach of contract gives rise to a [cause of action](https://hallellis.co.uk/cause-of-action/) where the innocent party has:

* a right to monetary compensation, that is, [**damages**](https://hallellis.co.uk/remedies-breach-contract/#_damages) for failures to perform the contract
* if it's serious enough, the right to [terminate the contract](https://hallellis.co.uk/remedies-breach-contract/#_termination)
* in some cases, may obtain [specific performance](https://hallellis.co.uk/remedies-breach-contract/#_specific-performance) of the contract, or an [injunction](https://hallellis.co.uk/remedies-breach-contract/#_injunctions) to restrain further breaches of contract.

Even then though, the [terms of a contract](https://hallellis.co.uk/remedies-breach-contract/#_in-contract) can seriously limit or expand the rights of an innocent party to damages and the other remedies which might be available.

When that happens, remedies that:

* would have been available are excluded, and
* Might not have been available are accessible to the innocent party.

The [consequences of a breach](https://hallellis.co.uk/breach-contract-meaning/#breach-consequences) and the [consequences of termination](https://hallellis.co.uk/blog/breach-contract-business-agreements/#consequences-termination) are quite different things. The consequences of a breach depends on the terms of contract itself and what the innocent party does when there is a breach of contract.

 The primary remedies for breach of contract are:

* [**Termination of the contract**](https://hallellis.co.uk/remedies-breach-contract/#_termination): Termination is itself a remedy for breach of contract.

When the defaulting party breaches the contract, the innocent party may have no intention of claiming damages, specific performance or any of the other remedies.

There's no compulsion or legal requirement to sue for damages.

Getting out of the contract itself is sometimes enough.

* [**Damages**](https://hallellis.co.uk/remedies-breach-contract/#_damages)**: The Money Remedy**: A money damage award includes a sum of money that is given as compensation for financial losses caused by a breach of contract. Parties injured by a breach are entitled to the benefit of the bargain they entered, or the net gain that would have accrued but for the breach. The type of breach governs the extent of damages that may be recovered.

If the breach is a total breach, a plaintiff can recover damages in an amount equal to the sum or value the plaintiff would have received had the contract been fully performed by the defendant, including lost profits. If the breach is only partial, the plaintiff may normally seek damages in an amount equal to the cost of hiring someone else to complete the performance contemplated by the contract. However, if the cost of completion is prohibitive and the portion of the unperformed contract is small, many courts will only award damages in an amount equal to the difference between the diminished value of the contract as performed and the full value contemplated by the contract. For example, if the plaintiff agreed to pay the defendant $200,000 to build a house, but the defendant only completed 90 percent of the work contemplated by the contract, a court might be inclined to award $20,000 in damages if it would cost the plaintiff twice as much to hire someone else to finish the last 10 percent. The same principles apply to damages sought for contracts that are fully performed, but in a defective manner. If the defect is significant, the plaintiff can recover the cost of repair. But if the defect is minor, the plaintiff may be limited to recovering the difference between the value of the good or service actually received and the value of the good or service contemplated by the contract.

* **Restitution**: is a remedy designed to restore the injured party to the position occupied prior to the formation of the contract. Parties seeking restitution may not request to be compensated for lost profits or other earnings caused by a breach. Instead, restitution aims at returning to the plaintiff any money or property given to the defendant under the contract. Plaintiffs typically seek restitution when contracts they have entered are voided by courts due to a defendant’s incompetence or incapacity. The law allows incompetent and incapacitated persons to disavow their contractual duties but generally only if the plaintiff is not made worse off by their disavowal. Parties that are induced to enter into contracts by mistake, fraud, undue influence, or duress may seek to have the contract set aside or have the terms of the contract rewritten to do justice in the case.
* **Rescission :** is the name for the remedy that terminates the contractual duties of both parties. 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:** is the name for the remedy that allows courts to change the substance of a contract to correct inequities that were suffered. Like contracts implied in law, however, courts are reluctant to rewrite contracts to reflect the parties’ actual agreement, especially when the contract as written contains a mistake that could have been rectified through pre-contract investigation. Thus, one court would not reform a contract that stipulated an incorrect amount of acreage being purchased, since the buyer could have ascertained the correct amount by obtaining a land survey before entering the contract. 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. In the case of Little Stillwater Holding Corp. v. Cold Brook Sand & Gravel Corp, the court held that like the *Court of Appeals stated in Backer Mgt. Corp. v Acme Quilting Co. (*[*46 N.Y.2d 211*](https://www.leagle.com/cite/46%20N.Y.2d%20211)*, 219 [1978]): "Reformation is not granted for the purpose of alleviating a hard or oppressive bargain, but rather to restate the intended terms of an agreement when the writing that memorializes that agreement is at variance with the intent of both parties \* \* \* Equity evolved the doctrine because an action at law afforded no relief against an instrument secured by fraud or as a result of mutual mistake \* \* \* [T]o overcome the heavy presumption that a deliberately prepared and executed written instrument manifested the true intention of the parties, evidence of a very high order is required \* \* \* And well that it is, for freedom to contract would not long survive courts' ready remaking of contracts that parties have agreed upon \* \* \* All the more so when a litigant seeks to invoke the power of the court, not merely to sever the contractual relationship between the parties, but, as here, to continue that relationship in a modified form. It follows that a petitioning party has to show in no uncertain terms, not only that mistake or fraud exists, but exactly what was really agreed upon between the parties (Williston, Contracts [3d ed], §§ 1548, 1597)".**Here it seems to the court that what the seller conveyed is what was contracted for and that the mutual mistake as to estimated acreage affords the plaintiff no relief.Motion for summary judgment or trial as to damages denied, and cross motion for dismissal of the complaint granted, without costs.*

* **Specific performance:** is an equitable remedy that compels one party to perform, as nearly as practicable, his or her duties specified by the contract. Specific performance is available only when money damages are inadequate to compensate the plaintiff for the breach. This ruling often happens when the subject matter of a contract is in dispute.

Every parcel of land by definition is unique, if for no other reason than its location. However, rare articles that are not necessarily one of a kind are still treated by the law as unique if it would be impossible for a judge or jury to accurately calculate the appropriate amount of damages to award the plaintiff in lieu of awarding him or her the unique article contemplated by the contract. Heirlooms and antiques are examples of such rare items for which specific performance is usually available as a remedy. However, specific performance may never be invoked to compel the performance of a personal service, since doing so would constitute slavery in violation of the Thirteenth Amendment to the U.S. Constitution. 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.

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