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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.

The resultant effects of this always make the injured party entitled to an action for damages against the guilty party and also in addition, where the guilty party has repudiated the contract or commits a fundamental breach, the injured party will as well has a right to rescind or terminate the contract.

The rescission right to be exercised above by the injured party is a consequence of the guilty party’s breach and thus entitles this party to treat himself as discharged from further liability under the contract and to the guilty party he remain liable for damages towards the innocent 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 If a contract is rescinded, parties are legally allowed to undo the work unless doing so would directly charge the other party at that exact time.

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*[[1]](#footnote-0)

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.[[2]](#footnote-1) The governing case as regards anticipatory breach is the case of *Holchester v De la Tour[[3]](#footnote-2)*

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[[4]](#footnote-3)*

Material and Partial breach of contract are also forms of contract breach that exist and occur in certain contractual situations.

Material Breach : is one that is significant enough to excuse the aggrieved or injured party from fulfilling their part of the contract.

Partial Breach is not as significant and does not normally excuse the aggrieved party from performing their duties.

1 B) When a party to contract has by action or implication repudiate or causes a fundamental breach of a contract, the other party will thus be discharged from the performance of all future obligations under the contract.

It is important to note that the injured party is obliged to exercise some rights where a breach of contract occurs; he may choose to treats the contract as still in force or treats the contract as discharged. Where he treat the contract as still subsisting, the status of the contract will still be maintained and both party is entitled to sue for both past and present breaches.

The remedies available for a contract breach include:

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. Recession 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.[[5]](#footnote-4)

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[[6]](#footnote-5)

Restitution : Restitution is remedy designed to restore the injured party to its state or position before the contract was created.as seen in *Ocean Comm. Inc. v. Bubeck,[[7]](#footnote-6)*

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.

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