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LAW OF CONTRACT

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If a contract is rescinded, parties are legally allowed to undo the work unless doing so would directly charge the other party at that exact time.

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.

Consider the term 'breach' synonymous with break, just like the broken word mentioned in the above scenario. Breach of contract can be defined as a broken contract, stemming from failure to fulfill any term of a contract without a justifiable, lawful excuse. A breach of contract might occur when a coworker refuses to complete her portion of a job; when an employee does something prohibited by his job contract; or even when a customer prevents the contractor from satisfying the obligation or finishing the project at hand.

In most cases, if you want to move forward with a breach of contract suit, it needs to meet the criteria set by the following four breaches:

* **Material breach** -failure to perform one's duties as set in the contract-is considered one of the most serious, and allows the injured business or individual to seek damages in court. A material breach of contract is a breach that strikes so deeply at the heart of the contract that it renders the agreement “irreparably broken” and defeats the purpose of making the contract in the first place. The breach must go to the very root of the agreement between the parties. If there is a material breach[[1]](#footnote-1), the other party can simply end the agreement and go to court to collect damages caused by the breach.

In deciding whether a breach is material, some relevant factors must be considered;

* Is the other party deprived of ‘The Heart’ of what it bargained for?
* Can the other party be compensated for the loss?
* What will the breaching party forfeit?
* What are the chances that the breaching party will fix things?
* Did the breaching party act in bad faith?
* Is the non-breaching party willing and able to perform?
* What does the contract say?

These factors are considered in *Hadley v. Baxendale*[[2]](#footnote-2) where the claimant, Hadley, owned a mill featuring a broken crankshaft. The claimant engaged Baxendale, the defendant, to transport the crankshaft to the location at which it would be repaired and then subsequently transport it back. The defendant then made an error causing the crankshaft to be returned to the claimant a week later than agreed, during which time the claimant’s mill was out of operation. The claimant contended that the defendant had displayed professional negligence and attempted to claim for the loss of profit resultant from the unexpected week-long closure. The defendant retorted that such an action was unreasonable as he had not known that the delayed return of the crankshaft would necessitate the mill’s closure and thus that the loss of profit failed to satisfy the test of remoteness.

The Court found for the defendant, viewing that a party could only successfully claim for losses stemming from breach of contract where the loss is reasonably viewed to have resulted naturally from the breach, or where the fact such losses would result from breach ought reasonably to have been contemplated of by the parties when the contract was formed. As Baxendale had not reasonably foreseen the consequences of delay and Hadley had not informed him of them, he was not liable for the mill’s lost profits.

* **Fundamental breach** of contract is essentially the same as a material breach, in that the non-breaching party is allowed to terminate the contract and seek damages in the event of a breach. The difference is that a fundamental breach is considered to be much more egregious than a material breach. A fundamental breach refers to one of the parties in the agreement not keeping their part of the deal by failing to complete a contractual term that was essential to the agreement so much so that another party could not complete their own responsibilities in the contract. We will consider the case below[[3]](#footnote-3)

*Photo Production Ltd v Securicor Transport Ltd* is an [English contract law](https://en.wikipedia.org/wiki/English_contract_law) case decided by the [House of Lords](https://en.wikipedia.org/wiki/Judicial_functions_of_the_House_of_Lords) on construction of a contract and the doctrine of [fundamental breach](https://en.wikipedia.org/wiki/Fundamental_breach). Photo Productions Ltd engaged [Securicor](https://en.wikipedia.org/wiki/Securicor) to guard their premises at night. A night-watchman, Mr. Musgrove, started a fire in a brazier at Photo Production's factory to keep himself warm. The fire spread accidentally and the Photo Productions plant was totally destroyed by fire, causing £648,000-worth of damage. When Photo Productions sued, Securicor argued that an exemption clause in the contract excused liability. The clause provided: "under no circumstances shall Securicor be responsible for any injurious act or default by any employee… unless such act or default could have been foreseen and avoided by the exercise of due diligence on the part of [Securicor]." Photo Productions argued that the clause could not apply under the doctrine of [fundamental breach](https://en.wikipedia.org/wiki/Fundamental_breach), that the breach of the contract went to the root of the contract, it invalidated the whole agreement and extinguished the exclusion clause. [Lord Denning MR](https://en.wikipedia.org/wiki/Lord_Denning_MR) held that the doctrine of fundamental breach did apply, and that Securicor was liable. He said if the breach was fundamental then the exclusion clause would be invalid, following his decision in [[4]](#footnote-4) a similar case.

* **Anticipatory breach**: is an unequivocal indication that the party will not perform when performance falls due, or a situation in which future non-performance is inevitable. An anticipatory breach gives the innocent party the option to immediately terminate the contract and sue for damages, or wait for the time of performance: if the party required to perform does not perform when required by the contract, the innocent party can terminate then. Anticipatory breach or breach by anticipatory allows one person to say the contract is broken when it becomes evident the other party will not execute his or her end of the contract within the allotted time. An anticipatory breach of contract is also referred to as anticipatory repudiation.

Parties claiming an anticipatory breach are obliged to make every effort to mitigate their own damages if they seek compensation in court. That could include halting payments to the party that committed the breach and immediately looking for ways to minimize the effects of breach. That might mean seeking a third party who could perform the duties outlined in the original contract.

**Requirements for an Anticipatory Breach**

The intent to break the contract must be an absolute refusal to fulfill the terms for it to qualify as an anticipatory breach. The expected breach cannot be based solely on the assumption that the other party will not meet its obligations. If anticipatory breach involves the sale of goods, the party anticipating the breach has the right to ask the other party to provide reassurance that the contract will be fulfilled. While awaiting assurance, payments and other duties can and should be stopped. If the other party does not offer the proper assurance within 30 days, the contract is officially breached. Section 2-609 UCC[[5]](#footnote-5)

The case of *Hochster v De la Tour[[6]](#footnote-6)* will be considered;

The claimant agreed to be a courier for the defendant for 3 months starting on 1st June 1852. On the 11th May the defendant wrote to the claimant stating he no longer wanted his services and refused to pay compensation. The claimant obtained a service contract elsewhere but this was not to start until 4th July. The claimant brought an action on 22nd May for breach of contract. The defendant argued that there was no breach of contract on 22nd May as the contract was not due  
to start until 4th July. It was held that where one party communicates their intention not to perform the contract, the innocent party need not wait until the breach has occurred before bringing their claim. They may sue immediately or they can choose to continue with the contract and wait for the breach to occur.

* **Minor Breach**: A minor breach of contract occurs when a party fails to perform a part of the contract, but does not violate the whole contract. To be considered a minor breach, the infraction must be so nonessential that all parties involved can otherwise fulfill any remaining contractual obligations. A minor breach is sometimes referred to as an impartial breach. This means that the breach is so insignificant that the remainder of the contract can still be completed in its entirety; it will not affect the overall purpose of the contract.

Even if an individual has suffered a minor breach of contract, he may have grounds for a lawsuit. However, this is limited to situations where you actually suffered damages as a result of the minor breach. Although damages will obviously be more limited.

Regardless of the type of contract breach, you need to establish a few facts to build a credible case should you take the breach to court, and this can get tricky-especially if the contract was verbal or implied. In most breach of contract cases, you must verify that:

* The contract existed.
* The contract was broken.
* You lost money.
* The defendant (person or business you're challenging) was responsible.

**Remedies to a contractual breach**

The types of legal remedies available for breach of contract depends largely on the severity of the breach. Generally, damages awarded are categorized into four groups:

**Compensatory damages**; pay money to reimburse costs and compensate for losses. Consequential and incidental damages are generally awarded if everyone involved was aware of potential losses in case of a breach when the contract was signed or accepted. Liquidated damages are agreed damages specified in the contract. This is money to get what they were promised by the terms of the contract; Compensatory damages are those that compensate the non-breaching party for their losses. This is the most common legal remedy, and a court can order the breaching party to pay the non-breaching party enough

**Punitive damages**, or money given as retribution, are for offensive behavior or actions from the defendant (rare in breach of contract cases). Punitive damages are generally awarded alongside compensatory damages. The purpose of punitive damages is to punish the breaching party when they have engaged in particularly egregious behavior in order to breach the contract, such as being intentionally negligent; or Attorney's fees are recoverable as damages in contract cases when expressly included in the contract or authorized by statute.

Sometimes there's more than money involved in breaches of contract. These cases also have common remedies, which include:

**Specific performance**, a court order for each person or business to follow through with the initial agreement. Specific performance is utilized as a legal remedy for breach of contract, and it requires the breaching party to perform their part of the contract. Specific performance is not always available.

**Rescission**, which is when the contract is canceled, any money returned, and the matter dropped as if it never happened.

The options for remedies are often included in the contract itself. Before considering legal action in a breach of contract case, it might be wise to carefully review the initial contractual agreement and look for any limitations or requirements to avoid unintentionally waiving contract remedies.

Breach of contract disputes are likely among the most common legal suits in today's courts because they can potentially impact any aspect of any small business. No matter whether you're dealing with contract fraud, nonpayment claims or even failure to comply with a non-disclosure agreement, it doesn't have to be an uphill battle. Knowing your rights, options and legal remedies can make dealing with breaches of contracts a little less painful. And remember: it's hard to get what you deserve if you don't create a quality business contract in the first place

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1. 1Total breach of contract [↑](#footnote-ref-1)
2. {1854} 9 Exch 341 [↑](#footnote-ref-2)
3. 1980 UKHL 2 [↑](#footnote-ref-3)
4. [*Harbutt's "Plasticine" Ltd v Wayne Tank and Pump Co Ltd*](https://en.wikipedia.org/wiki/Harbutt%27s_%22Plasticine%22_Ltd_v_Wayne_Tank_and_Pump_Co_Ltd)*.* [↑](#footnote-ref-4)
5. *Uniform Commercial Code.* [↑](#footnote-ref-5)
6. *(1853) 2 E & B 678* [↑](#footnote-ref-6)