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**ASSIGNMENT TITLE:** BREACH OF CONTRACT

**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:

a. 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 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. For example: A contract of employment is a legally binding agreement between you and your employer. A breach of contract then happens when either you or your employer breaks one of the terms, like if your employer doesn’t pay you or you don’t work for the agreed hours. 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 case of ***Venture Communications V Falcon Communications.***

The case of ***Doe Company V Roe Insurance Company***

The case of ***Bruening Rock V. Hawkeye International Trucks***

FACTS

***In Bruening Rock Products, Inc. v. Hawkeye International Trucks,*** No. 14-1215 (July 22, 2015), the plaintiff sought breach of contract damages from a truck company. The claim was simple. The plaintiff, which was a rock quarry operator, ordered four trucks from the defendant. The plaintiff required that the trucks have a gross vehicle weight rating of 74,000 pounds. This means that each truck would have the capacity to haul 74,000 pounds, including the weight of the truck. The plaintiff needed the trucks to haul from its underground mines.

At trial, the plaintiff testified that the trucks had failed to perform at this level. The wheel rims had cracked and the rims malfunctioned. The jury found that the defendant had breached its contract with the plaintiff and issued a verdict in the plaintiff’s favor in the amount of $1,167,904.85. The Trial court, however, granted the defendant’s motion for a directed verdict, finding that the plaintiff had failed to generate substantial evidence of a breach of a written contract term by the defendant. The plaintiff’s actual claim, the trial court found, may have been one for the breach of implied warranty. The trial court stated, however, that the statute of limitations would have already run on that claim.

According to Professor Trietel’s definition, it should be noted that in all cases the failure to provide the promised performance must be ‘without lawful excuse’. Thus where the contract has been frustrated, there is no liability for breach of contract because both parties have been provided with a ‘lawful excuse’ for their non-performance. Similarly, where one party the right to terminate performance of the contract, that party is not in breach of contract in refusing to continue with performance because he is given a ‘lawful excuse’ for his non-performance. The requisite elements that must be established to demonstrate the formation of a legally binding contract are: (1) Offer; (2) Acceptance; (3) Consideration; (4) Mutuality of obligation; (5) Competency and capacity; and in certain circumstances, (6) a written instrument.

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.

What Constitutes a Breach of Contract: 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 the 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.

Ways in which a Contract can be breached: 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
* The contact becomes impossible to perform as a result of the defaulting party’s own act.

Classifications of breaches of contract: 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 condition
* Breach of warranty &
* Breach of innominate term, otherwise known as an intermediate term.

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 unless it is clear that it is intended to be a condition or a warranty.

Any breach of contract – warranty, condition or innominate term – gives rise to a right in the hands of the innocent party to recover their damage suffered which caused by the breach of contract by the defaulting party.

CONTRACT

(b) What are the remedies available for breach of contract

The theory of “adequate causation” holds that a wrongdoer is liable for a loss if his default appreciably increased the objective possibility of loss of a kind that in fact occurred; on the other hand, he is under no liability if his default was, according to the ordinary course of things, quite indifferent with regard to the consequence which in fact occurred, and only became a condition of the occurrence of the loss as a result of unusual or intervening events. Where the breach is “fundamental” termination takes place without preliminary formal steps. A distinction is drawn between cases in which the defaulting party has not performed at all (e.g. the seller has failed to deliver on the agreed day) and those in which he has performed defectively (e.g. the seller has delivered late, or he has delivered non-conforming goods). In the former case, there is “ipso facto avoidance”. In the latter case, the contract may be avoided by a declaration of the aggrieved party; this is the Common Law position.

There are various remedies available for a contract of breach; the appropriate compensation or remedy depends upon the circumstances. The non-breaching party will need to demonstrate that the other party failed to perform in order to be entitled to any type of remedy. There are several remedies for breach of contract, such as award of damages, specific performance, rescission, and restitution. In courts of limited jurisdiction, the main remedy is an award of damages.

There are two general categories of damages that may be awarded if a breach of claim is proved. They are:

1. Compensatory Damages: also called ‘actual damages’ cover the loss the nonbreaching party incurred as a result of breach of contract. The amount awarded is intended to make good or replace the loss caused by the breach.

There are two kinds of compensatory damages that the nonbreaching party may be entitled to recover:

A. General Damages: General damages cover the loss directly and necessarily incurred by the breach of contract. General damages are the most common type of damages awarded for breaches of contract

Example: Company A delivered the wrong kind of furniture to Company B. After discovering the mistake later in the day, Company B insisted that Company A pick up the wrong furniture and deliver the right furniture. Company A refused to pick up the furniture and said that it could not supply the right furniture because it was not in stock. Company B successfully sued for breach of contract. The general damages for this breach could include:

-refund of any amount Company B had prepared for the furniture; plus

-reimbursement of any expense Company B incurred in sending the furniture back to Company A; plus

-payment for any increase in the cost of Company B incurred in buying the right furniture, or its nearest equivalent, from another seller.

B. Special Damages: Special damages (also called “consequential damages”) covers any loss incurred by the breach of contract because of special circumstances or conditions that are ordinarily predictable. These are actual losses caused by the breach, but not in a direct and immediate way. To obtain damages for this type of loss, the nonbreaching party must prove that the breaching party knew of the special circumstances or requirements at the time the contract was made.

Example: In the scenario above, if Company A knew that Company B needed the new furniture on a particular day because its old furniture was going to be carted away the night before, the damages for breach of contract could include all of the damages awarded in the scenario above, plus:

-payment for Company B’s expense in renting furniture until the right furniture arrived.

2. Punitive damages: also called ‘exemplary damages’ are awarded to punish or make an example of a wrongdoer who has acted wilfully, maliciously, or fraudulently. Unlike compensatory damages that are intended to cover actual loss, punitive damages are intended to punish the wrongdoer for egregious behavior and to deter others from acting in a similar manner. Punitive damages are awarded in addition to compensatory damages. Punitive damages are rarely awarded for breach of contract. They arise more often in tort cases, to punish deliberate or reckless misconduct that results in personal harm.

OTHERS ARE: Rescission & and restitution.