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**Breach of Contract**

A [contract](https://www.legalmatch.com/law-library/article/what-is-a-contract.html) 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 breach1.

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. 2When a party claims a breach of contract; the judge must answer to the following questions: Did a contract exist? If so, what did the contract require of each of the parties? Was the contract modified at any point? Did the claimed breach of contract occur? If so, was the breach material to the contract? Does the breaching party have a legal defense to enforcement of the contract?  What damages were caused by the breach?

1. Travis Peeler, ‘What is breach of contract’ (2018) <https://www.legalmatch.com> accessed May 6th, 2020
2. Judicial Educational Center, ‘Breach of Contract’(2020)<https://www.jec.unm.edu> accessed May 7, 2020

There are four main types of contract breaches:

1. **Minor Breach:**A [minor breach of contract](https://www.legalmatch.com/law-library/article/minor-breach-of-contract-lawyers.html) 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;
2. **Material Breach:**A [material breach of contract](https://www.legalmatch.com/law-library/article/material-breach-of-contract.html) is a breach that is so substantial, it seriously impairs the contract as a whole; additionally, the purpose of the agreement must be rendered completely defeated by the breach. This is sometimes referred to as a total breach. It allows for the performing party to disregard their contractual obligations, and to go to court in order to collect damages from the breaching party;
3. **Fundamental Breach:**A 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; and
4. **Anticipatory Breach:**An anticipatory breach occurs when one party lets the other party know, either verbally or in writing that they will not be able to fulfill the terms of the contract. The other party is then able to immediately claim a breach of contract and pursue a remedy, such as payment. Anticipatory breach may also be referred to as [anticipatory](https://www.legalmatch.com/law-library/article/anticipatory-breach-attorneys.html)  repudiation3.

3 Alobo Eni Eja: Law of Contract, Secondedition, 2016.

**Remedies available for breach of contract**

The types of legal remedies available for breach of contract depend largely on the severity of the breach. Some of the types are as follows;

1. **Damages:** Two types of damages are to be discussed for the purpose of this paper. They are;

## Compensatory Damages: [Compensatory damages](https://www.legalmatch.com/law-library/article/compensatory-damages-in-breach-of-contract.html) 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 money to get what they were promised by the terms of the contract. Damages for loss in a breach of contract claim are available as of right.

An innocent party may claim damages from the party in breaching respect of all breaches of contract. The damages may be nominal or substantial. Nominal damages are awarded where the innocent party has suffered no loss as a result of the other's breach and substantial damages are awarded as monetary compensation for loss suffered as a result of the other party's breach. For an innocent party to obtain substantial damages he must show that he has suffered loss as a result of the breach (remoteness) and the amount of his loss (measure). It is up to the party in breach to argue that the innocent party has failed to mitigate his loss. There are two kinds of compensatory damages that the non breaching party may be entitled to recover:  
  
i. 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.

ii. Special Damages.

 Special damages (also called “consequential damages”) cover any loss incurred by the breach of contract because of special circumstances or conditions that are not 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 non breaching party must prove that the breaching party knew of the special circumstances or requirements at the time the contract was made.

1. **Punitive damages** (also called “exemplary damages”) are awarded to punish or make an example of a wrongdoer who has acted willfully, 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 harm4.
2. **Specific Performance**: Specific performance is utilized as a [legal remedy](https://www.legalmatch.com/law-library/article/types-of-damages-available-for-breach-of-contract.html) for breach of contract, and it requires the breaching party to perform their part of the contract. Specific performance is not always available. This is an equitable remedy granted at the court's discretion.
3. Judicial Educational Center, ‘Breach of Contract’(2020)<https://www.jec.unm.edu> accessed May 7, 2020

Specific performance is a decree by the court to compel a party to perform his contractual obligations. It is usually only ordered where damages are not an adequate remedy (for example where the subject matter of the contract is unique for example, Chinese vases in Falcke v Gray ([1859] 4 Drew651) but not if a replacement of the subject matter could be obtained even after a long delay (Societe des IndustriesMetallurgiques SA v Bronx Engineering Co Ltd [1975] 1 Lloyds Rep465).

It is a general rule that specific performance will not be ordered if the contract requires performance or constant supervision over a period of time and the obligations in the contract are not clearly defined. However, a recent case has reversed this rule in relation to a tenant's repair covenants (Rainbow Estates Limited v Token hold Limited and another [1998] New Property Cases 33). The judge in this case concluded that the old law of refusing specific performance if it would involve constant supervision was no longer good or (at least) that there were exceptions. It may be that only in the most exceptional circumstances (such as in this case) specific performance will be available to the landlords; however the arguments advanced indicate that it should be available in other situations. Specific performance was ordered requiring tenants to spend£300,000 on repairs to the flats. Factors militating in favour of this remedy were that the landlord had no right of entry to repair in default of the tenant; that the lease had no forfeiture clause and that the building was listed so that repair as distinct from redevelopment was the most appropriate outcome.

Specific performance is often ordered in relation to building contracts because the contract deals with results rather than the carrying on of an activity over a period of time and it usually defines the work to be completed with certainty (Jeune v Queens Cross Properties Ltd [1973] 3 All ER 97). Specific performance is not available for contracts requiring personal services such as employment contracts because such an order would restrict an individual's freedom (Chappell v Times Newspapers Ltd [1975] 1 WLR 482). The court has broad discretion to award specific performance and in exercising this discretion it takes into account factors such as:

* Delay in asking for the order (Lazard Brothers & Co Ltd v Fairfield Properties co (Mayfair) Ltd [1977] 121 SJ793).
* Whether the person seeking performance is prepared to perform his side of the contract (Chappell v Times Newspapers Ltd [1975] 1 WLR 482).
* Whether the person against whom the order is sought would suffer hardship in performing (Patel v Ali [1984] 1 All ER978).
* The difference between the benefit the order would give to one party and the cost of performance to the other (Tito v Waddell (No 2) [1977] Ch 106).
* Whether any third party rights would be affected.
* Whether the contract lacks adequate consideration (the rule" equity will not assist a volunteer" applies so that specific performance will not be ordered if the contract is for nominal consideration even if it is under seal (Jeffrys v Jeffrys[1841] 1 Cr & Ph 138))5.

5 Samantha Cotton, PLC, ‘Remedies for breach of Contract’ https://www.uk.practical law.thomsonreuter.com accessed May 6, 2020.

## Injunction

Like specific performance, an injunction is an equitable remedy and therefore only granted at the discretion of the court. It is awarded in circumstances where damages would not be an adequate remedy to compensate the claimant because the claimant needs to restrain the defendant from starting or continuing a breach of a negative contractual undertaking (prohibitory injunction) or needs to compel performance of a positive contractual obligation (mandatory injunction).

In exercising its discretion the court will consider the same factors as above for specific performance and will use the balance of convenience test (weighing the benefit to the injured party and the detriment to the other party). An injunction will not be granted if its effect would be to compel a party to do something which he could not have been ordered to do by a decree of specific performance (Lumley v Wagner [1852] 1 DM & G604).

In urgent cases a plaintiff may be able to obtain an interim injunction to restrain an act. Special types of injunction may be granted to preserve property and assets pending trial.

1. **Restitution:**If the non-breaching party is able to prove that their loss is due directly to the actions of the breaching party, a judge may order [restitution](https://www.legalmatch.com/law-library/article/restitution-lawyers.html), which could include lost wages, medical bills, and property repair and/or replacement. 6This type of remedy is calculated based on the gains of the defendant, rather than the plaintiff’s losses. Restitution basically requires a defendant to forfeit gains that they have unlawfully obtained to the plaintiff. In contracts law, restitution is used the most. Restitution in contracts law is designed to restore the injured party or the party who suffered damages, to the position they were before the formation of the contract. Parties that want restitution cannot seek lost profits or earnings caused by the breach.

In order to obtain restitution, the plaintiff must include this claim in the initial complaint. Also, restitution will not be awarded if the amount cannot be calculated with certainty.

Restitution is commonly awarded for two main purposes:

1. To “make the victim” whole and restore them to their financial status before the offense occurred
2. To prevent the unjust enrichment of the defendant (i.e., prevent them from keeping unlawful gains) 7.

6 Graham Virgo: ‘The Principles of the law of restitution’ Second Edition, 2006.

7 Ki Akhbari, ‘What is Restitution?’ 2018 < <https://www.legalmatch.com>> accessed May 7, 2 020.