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What is Breach of Contract?

A contract is a legally binding promise or agreement 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.

Breach on one hand, is when one fails to obey a law, agreement or code of conduct, or do what was promised or agreed.

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. It is the failure to live up to the terms of a contract.[1] In the United Kingdom, breach of contract is defined in the Unfair Contract Terms Act[2] as: [i] non-performance, [ii] poor performance, [iii] part-performance, or [iv] performance which is substantially different from what was reasonably expected.

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

[1] Blacks Law Dictionary 2nd Ed.
[2] Unfair Contract Terms Act 1977

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. Where there is breach of contract, the resulting damages will have to be paid by the party breaching the contract to the aggrieved party.

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 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.

Ways of breaching contracts

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.

Types of Breaches:

There are four main types of breaches in relation to contract. More so, a breach of contract generally falls under one of two categories: an "actual breach" when one party refuses to fully perform the terms of the contract, or an "anticipatory breach" when a party states in advance that they will not be delivering on the terms of the contract.

1. **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. For example, you bring a suit to your tailor to be custom fit. The tailor promises (an oral contract) that he'll deliver the adjusted garment in time for your important presentation, but in fact, he delivers it a day later.

2. **Material Breach:** A material breach of Contract is a failure to perform an important or contractual obligation, where the purpose, value or benefit is frustrated or lost.[3] It 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. The breach must be a serious matter, rather than a matter of little consequence. It 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. A breach of contract will likely constitute a material breach if the term of the contract that has been breached is a condition of the contract. For example, that your firm contracts with

[3] The Law Dictionary & Blacks Law Dictionary 2nd Ed.

a vendor to deliver 400 copies of a bound manual for an auto industry conference. But when the boxes arrive at the conference site, they contain gardening brochures instead.

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.

4. **Anticipatory Breach:** An 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 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. If the party required to perform does not perform when required by the contract, the innocent party can terminate then. 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 repudiation. Where an anticipatory breach occurs, the other party can sue for breach right away and this can be seen in the case of *Frost v. Knight*[4] *or in the case of Hochster v. De La Tour*.[5] It is not necessary to wait until performance falls due.

Remedies to a breach of Contract.

When an individual or business breaches a contract, the other party to the agreement is entitled to relief (or a "remedy") under the law. The main remedies for a breach of contract are:

[4] (1872) l.R.7 Ex 111
[5] (1853) 2 E&B 678

1. Damages,
2. Specific Performance
3. Cancellation and Restitution

Damages

The payment for damages which is payment in one form or another, is the most common remedy for a breach of contract. There are many kinds of damages, including the following:

- **Compensatory damages**: are those damages 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. They aim to put the non-breaching party in the position that they would have been in if the breach had not occurred. Compensatory damages compensate the plaintiff for actual losses suffered as accurately as possible. They may be "expectation damages", "reliance damages" or "restitutionary damages". Expectation damages are awarded to put the party in as good of a position as the party would have been in had the contract been performed as promised. Reliance damages are usually awarded where no reasonably reliable estimate of expectation loss can be arrived at or at the option of the plaintiff. Reliance losses cover expense suffered in reliance to the promise. Examples where reliance damages have been awarded because profits are too speculative include the case *McRae v. Commonwealth Disposals Commission*[6] of which concerned a contract for the rights to salvage a ship.

[6] (1951) 84 CLR 377

- **Punitive damages**: 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. They 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.
- **Nominal damages**: these are token damages (small amount of damages) awarded when a breach occurred, but no actual money loss to the non-breaching party was proven. Thus, nominal damages will only normally be awarded when the defendants breach has caused no loss to the plaintiff, or where although he has suffered a loss, he is unable to prove any loss flowing from a breach of contract. The supreme court in *Obere v. Broad of Management, Eko hospital,*[7] that "nominal damage is a thenical phase meanine the plaintiff had negative anything like real damages…"
- **Liquidated damages**: these are specific damages that were previously identified by the parties in the contract itself, in the event that the contract is breached. Liquidated damages should be a reasonable estimate of actual damages that might result from a breach. Courts will enforce a liquidated damages provision as long as the actual amount of damages is difficult to ascertain (in which case proof of it is simply made at trial) and the sum is reasonable in light of the expected or actual harm. If the liquidated sum is unreasonably large, the excess is termed a penalty and is said to be against public policy and enforceable.[8] Liquidated damages clauses may be called "penalty clauses" in ordinary language, but the

[7] I LRN (1958) p. 246 at 250
[8] Section16.6.2 "Liquated Damages"

law distinguishes between liquidated damages (legitimate) and penalties (invalid). A test for determining which category a clause falls into was established by the English House of Lords in *Dunlop Pneumatic v. Tyre Co Ltd v. New Garage & Motor Co Ltd.*[9]

Specific Performance

Specific performance is a court ordered remedy that requires precise fulfillment of a legal or contractual obligation when monetary damages are inappropriate and inadequate as when a sale of land or a rare article is involved.[10] 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 especially for contracts involving personal relations such as employment like in the case of *Chapell v. Times Newspaper Ltd*[11]. If damages are inadequate as a legal remedy, the non-breaching party may seek an alternative remedy called specific performance. This principle is evident in the case of *Paye v. Gaji*[12] which is in relation to sale of land, where the court held that damages cannot be an adequate remedy and so the purchaser is entitled to have the contract specifically performed.

However, Specific performance is best described as the breaching party's court-ordered performance of duty under the contract. Specific performance may be used as a remedy for breach of contract if the subject matter of the agreement is rare or unique, and damages would not suffice to place the non-breaching party in as good a position as they would have been in had the breach not occurred.

[9] (1915) AC 79
[10] Blacks Law Dictionary 8th edn.p.1435
[11] (1975) 1 WLR 468
[12] (1996) 5 NWLR (pt.450) 589 at 605

Specific performance are sited in cases of contract for the sale or leasing of land, or sale of rare unique goods. In the case of *Ohaiaeri v. Yusuf*,[13] the Supreme Court declared that "an action for specific performance arises once a contract couple with circumstances which make it equitable to grant a decree of same". Similarity exists in the case of *Fakoya v. St.Paul's Church Shagamu.*[14]

Cancellation and 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, which could include lost wages, medical bills, and property repair and/or replacement. A non-breaching party may cancel the contract and decide to sue for restitution if the non-breaching party has given a benefit to the breaching party.

Nevertheless, Restitution as a contract remedy means either the restoration of a specific thing or the payment in money of the value of contractual performance rendered by the plaintiff. There is a confusion as to the purpose of restitutition. It is sometimes said that the purpose is to restore both parties to their pre-contract position that is, it means that the non-breaching party is put back in the position it was in prior to the breach, as in *Bollenback v. Continental Casuality Co*.[15] Some authorities say that the chief purpose is to restore the plaintiff to his pre-contract position. This position exists on *Acme Process Equip. Co v. United States*.[16] Others say that the purpose is prevent defendant's unjust enrichment. "cancellation" of the contract voids the contract and relieves all parties of any obligation under the agreement. The will be given the option to elect restitution as a

[13] (2009) 6 NWLR (pt.1137) 207 at 229
[14] (1966) 1 ALR Comm. 459
[15] 243 Or. 498, 414 P.2d 802 (1966)
[16] 385 U.S. 138 (1966)

remedy on if the defendant's breach is a total one discharging the plaintiff duty of further performance. As show in the case of *Neenan v. Otis Elevator*.[17]

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[17] 180 F. 997 (1910)