**LAW OF CONTRACT**

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**LEVEL; 200**

**BREACH OF CONTRACT**

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If a contract is rescinded, parties are legally allowed to undo the work unless doing so would directly charge the other party at that exact time.

**TERMS OF A CONTRACT**

There are four categories of terms:

* Fundamental Terms
* Condition
* Intermediate terms
* Warranties

**FUNDAMENTAL TERM**

A fundamental term is one in which if breached goes to the root of the contract and is equivalent to non-performance of the contract. The example provided by Lord Abinger in Chanter vs Hopkins is very relevant. He says that if a person asks to be supplied beans but is instead supplied peas, the contract has not been performed. The supply of peas instead of beans is a breach of a fundamental term.

**CONDITION**

A condition in the law of contract is a category of terms that is next in the order of importance to fundamental terms. The breach of a condition could cause a contract to be repudiated or cause the defaulting party to pay for damages.

In the case of Pickard vs Innes, the defendant offered the plaintiff a job on the condition that he collects permission from his present employers. The plaintiff didn’t get the permission and was thus not offered the job.

He sued for breach of contract. The court decided that the request for permission was a condition precedent which wasn’t fulfilled. Thus, the inability to fulfill such condition meant that the contract could be repudiated.

**INTERMEDIATE TERMS**

Intermediate terms are of recent history and are regarded as a hybrid between condition and warranty. The breach of an intermediate term could lead to the repudiation of a contract or to the payment of damages depending on the consequences of the breach.

**WARRANTIES**

These are terms the breach of which entitles the affected party to damages and not repudiation of the contract. The distinction between warranties, condition and intermediate terms are at times not so clear cut.

In the case of Bettini vs Gye, the plaintiff, a singer in the defendant’s opera promised to come 6 days before the opera. He however came two days before the opera and his contract was repudiated. In court, it was held that contract could not be repudiated, the defendant was only liable to damages. This can also be seen in Section 11[1] b SOGA.

**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.

These classifications only describe *how* a contract can be breached, not how serious the breach is. A judge will make a decision on whether a contract was breached based on the claims of both parties.

**REMEDIES FOR BREACH OF CONTRACT?**

Remedy in Contract Law;

In contract law, a “remedy” is a court-ordered resolution to one party’s breach of contract. A breach of contract occurs when one party to a contract has not fulfilled his or her obligation under the agreement. The non-breaching party is also known as the “injured” party, and the purpose of remedies is to place the injured party in the position they would have otherwise been in had the contract been performed as it.

There are five remedies remedies most commonly used for breach of contract cases. The remedies for breach of contract include:

1. Award of Damages
2. Restitution
3. Rescission
4. Reformation
5. Specific Performance.

**1.i AWARD OF DAMAGES**

Award of damages is the most common remedy for breach of contract as one party seeks compensation for financial losses as a result of breach of contract. The party who is injured by the breach of contract is entitled to the benefit (consideration) of the agreement they entered, or the net gain they would’ve accrued had it not been for the breach.  This type of remedy is known as “compensatory damages.”

During the court case, the injured party becomes the plaintiff. In the instance of a total breach, the plaintiff may recover damages in an amount that’s equal to the sum or value they would have received had the contract been fully performed by the defendant.  Sometimes, this includes lost profits from a business operation.

If the breach is only partial and the defendant carried out a majority of the contract, the plaintiff may seek damages in an amount equal to the cost of hiring someone else to complete the performance. If the portion of the uncompleted performance is quite small in terms of cost, however, the court may only award damages in an amount that’s equal to the difference between the diminished value of the agreement as completed and the full value as stated in the contract.

**ii PUNITIVE DAMAGES FOR BREACH OF CONTRACT**

Compensatory, or actual damages, cover the loss the non-breaching party incurred as a result of the breach. 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.

* **RESTITUTION**

Restitution is remedy designed to restore the injured party to its state or position before the contract was created. 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.

* **RESCISSION**

Rescission is a remedy used to terminate a contract when parties entered into a contract by way of fraud, undue influence, coercion, or mistake. In the case of rescission, the contractual obligations of both parties are therefore terminated, and the contract will no longer exist.

* **REFORMATION**

Reformation is similar to rescission as it’s a result of parties entering into a contract based on fraud, undue influence, coercion, or mistake, but rather than terminating the contract and the parties’ obligations entirely, the court will change the substance of a contract to correct the inequities suffered as a result.

* **SPECIFIC PERFORMANCE OF A CONTRACT**

Specific performance is a remedy for breach of contract in which the court forces the breaching party to perform the services or deliver the goods the promised goods per the contract.  Specific Performance is only available when money damages are inadequate to compensate the plaintiff for a breach.  This remedy is typically used when the goods or services are so unique that no other remedy could suffice.

A good example is an individual who’s looking to buy a rare piece of art. He or she forms a contract with someone to obtain this piece of art. The buyer’s offer becomes the price for the piece of art and the other party accepts by a promise of delivering the art in exchange for the agreed amount. If the other party joins in this contract, yet fails to deliver the art, the buyer can take the case to court as a breach of contract. The court could rule specific performance the remedy for breach of contract, as the buyer would not be able to get this rare piece of art elsewhere. The defendant would then be required by the court to deliver the goods, in this case, the art, as agreed upon in the contract.

REFERENCE;

* WIKIPEDIA
* DJET LAWYER
* O’Flaherty law