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**COURSE TITLE: LAW OF CONTRACT II**

1. **BREACH OF CONTRACT**

When any party to a contract, whether oral or written, fails to perform any of the contract’s terms, they may be found in breach of contract. While there are many ways to breach a contract, common failures include failure to deliver goods or services, failure to fully complete the job, failure to pay on time, or providing inferior goods or services. In other words, a breach of contract is a broken promise to do or provide something. To explore this concept, consider the following breach of contract definition.

Breach of contract is a [legal](https://en.m.wikipedia.org/wiki/Legal) [cause of action](https://en.m.wikipedia.org/wiki/Cause_of_action) and a type of [civil wrong](https://en.m.wikipedia.org/wiki/Civil_wrong), in which a [binding agreement](https://en.m.wikipedia.org/wiki/Binding_agreement) or bargained-for exchange is not honoured 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 fulfil 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If a contract is rescinded, parties are legally allowed to undo the work unless doing so would directly charge the other party at that exact time.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.

## **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 fling the lawsuit.

## **WAYS OF BREACHING A CONTRACT:**

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.

The first type above is an actual breach of contract. The second two types are breaches as to the future performance of the contract, and technically known as renunciatory breaches. The defaulting party renunciates the contract in advance of the time they are required to performs their obligations. Renunciatory breach is more commonly known as “anticipatory breach”

## **CLASSIFICATIONS OF BREACH 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 warranty;
* Breach of condition; or
* Breach of an innominate term, otherwise known as an intermediate term.

There is no “internal rating system” within each of these categories (such as “a serious breach of warranty”. It's a breach of a warranty. It's not a minor breach of a condition. It's a breach of a condition). 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 it is clear that it is intended to be a [condition](https://en.m.wikipedia.org/wiki/Covenants,_conditions_and_restrictions) or a [warranty](https://en.m.wikipedia.org/wiki/Warranty).

## **SOME BREACH OF CONTRACT CASE EXAMPLES**

Courts in the United States are virtually inundated with breach of contract cases. Small and large, the decisions in such cases shape the way American’s do business every day.

### **Revelations Perfume and Cosmetics Inc. v. Prince Rogers Nelson**

In 2008, the Revelations Perfume and Cosmetics Company sued the famous musician “Prince” and his music label, seeking $100,000 in damages for reneging on an agreement to help market their perfumes. The flamboyant pop star had promised to personally promote the company’s new perfume named after his 2006 album “3121,” and to allow his name and likeness to be used in the perfume’s packaging. Prince then refused to grant interviews related to the project, and refused to provide a current photograph for a press release.

In its breach of contract complaint, Revelations asked the court to award more than $3 million in lost profits, as well as [punitive damages](https://legaldictionary.net/punitive-damages/). The judge found no evidence, however, that the pop star acted with malicious intent, and ordered him to pay nearly $4 million for the cosmetics company’s out-of-pocket expenses. Revelations’ request for punitive and loss-of-profits damages was denied.

### **Macy’s v. Martha Stewart Living**

Macy’s department stores filed a breach of contract complaint against Martha Stewart Living Omnimedia for making an agreement with J.C. Penney for the creation of Martha Steward retail stores within their retain stores beginning February 2013. Prior to the deal, J.C. Penney had purchased a minority stake in Steward’s company for $38.5 million. The mini-retail stores were to carry Martha Stewart home goods, however Macy’s argued they had been granted an exclusive right to make and sell certain Martha Steward Living products in an agreement signed in 2006.

Macy’s asked the court to grand a [preliminary injunction](https://legaldictionary.net/preliminary-injunction/) to stop Steward from breaching the contract while the court considered the matter. Twelve years later, in June 2014, a New York judge ruled that J.C. Penney had indeed stepped over Macy’s contract with the domestic diva in its attempt to sell products bearing her name. While the J.C. Penney contract has been nullified, monetary breach of contract damages were not immediately decided, and may be limited to the legal fees and costs of the lawsuit, as the judge decided the case did not warrant punitive damages.

## **BREACH OF CONTRACT ELEMENTS**:

To be successful in a breach of contract lawsuit, there are certain breach of contract elements that must exist:

### **Existence of a Valid Contract**

To claim breach of contract, there must be an actual, valid contract in place. It is not necessary for a contract to be put in writing, as oral contracts are enforceable by the court system. To prove the existence of a valid contract, however, three elements must be established:

1. **Offer** – Some discussion and an agreement to the provision of goods or services in exchange for something of value must have been made. There must have been the intention to enter into an agreement or contract.
2. **Acceptance** – An agreement to the essential terms for the exchange of goods or services for something of value must be entered into. Written contracts make proving such terms easier, as they document specific terms to which the parties have agreed.
3. [Consideration](https://legaldictionary.net/consideration/) – Each party to an oral or written contract must have received something of value. In other words, in a valid contract, each party has something to gain. A promise by one party to provide a good or service without receiving anything in return looks a great deal like a gift, which is not enforceable
4. **REMEDIES AVAILABILE FOR THE BREACH OF CONTRACT**:

**There are a variety of remedies available for a contract 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. The Southern California Breach of Contract Lawyers at Brown & Charbonneau, LLP can provide legal representation in cases where one party failed to perform according to the terms of a contractual agreement.

**However** the remedies available for a contract breach include:

* **Monetary damages**. The party who breached the contract can be held responsible for the losses caused by the breach.  Both general or expectation damages and consequential damages can result from a breach of a contract.  General or expectation damages refer to the loss directly caused by the breach. Consequential damages refer to losses that occurred because of the breach but that were an indirect cause.  For example, if you contracted and paid for a machine to be delivered and it never came, the general losses would include the value of the money you paid for the machine. The consequential losses could include the loss of business caused by the fact you did not have the machine you needed to do your work.
* **Specific performance.**In some cases, the appropriate remedy for a breach of contract is to correct the breach by forcing the breaching party to complete the terms of the agreement. Specific performance is an appropriate remedy in situations where monetary damages could not possibly make the non-breaching party whole for the losses. For example, if there was a contract created for a buyer to purchase a very rare piece of art, the buyer could not simply find the art elsewhere. The only remedy that would help the buyer in this circumstance is for the court to require the sale to go through so the buyer got the unique one-of-a-kind painting that he contracted for.
* **Rescission.**Rescission allows the non-breaching party to essentially be released from performance obligations. Recession is a remedy for a breach of contract because it makes clear that the party is relieved of his duties due to the failure of the other party to perform.
* **Liquidation damages.**Sometimes, it is very difficult to determine how much a person was damaged by a breach of contract. To address this problem, some contracts contain liquidated damage clauses. Essentially, these clauses specify that the non-breaching party will be awarded a specific amount of money in the event a breach occurs. These clauses will be upheld as long as they are fair.

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