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Breach of Contract is a legal term that describes the violation of a contract or an agreement that occurs when one party fails to fulfill its promises according to the provisions of the agreement.

Sometimes it involves interfering with the ability of another party to fulfill his duties. A contract can be breached in whole or in part. A breach of contract occurs where a party fails to perform one or more of the obligations laid upon by the contract. Thus failure to perform the terms of a contract constitutes a breach.

If a contract is rescinded, parties are legally allowed to undo the work unless doing so would directly charge the other party at that exact time.

There are four main types of contract breaches:

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;

Material Breach: A material breach of contract 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;¹breach of contr

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

¹ https://en.m.wikipedia.org/wiki/Breach_of_contract

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

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 repudiation.²

A breach of contract occurs when one party in a binding agreement fails to deliver according to the terms of the agreement.

A breach of contract can happen in both a written and an oral contract.

The parties involved in a breach of contract may resolve the issue among themselves, or in a court of law.

A plaintiff—the person who brings a suit to court—who claims that there has been a breach of contract must first establish that a contract existed between the parties. The plaintiff also must demonstrate how the defendant—the one against whom a claim or charge is brought in a court—failed to meet the requirements of the contract.

The court will assess whether or not there was a legal reason for the breach. The defendant might claim that the contract was fraudulent because the plaintiff either misrepresented or concealed material facts. The defendant might claim that the contract was signed under duress from the plaintiff, who applied threats or used physical attacks to compel the defendant to sign the agreement. Or there might have been errors made by both the plaintiff and the defendant that contributed to the breach.

IS THE CONTRACT VALID?

The simplest way to prove that a contract exists is to have a written document that is signed by both parties. It's also possible to enforce an oral contract, though certain types of

² https://en.m.wikipedia.org/wiki/Breach_of_contract

agreements still would require a written contract to carry any legal weight. These kinds of contracts include the sale of goods for more than \$500, the sale or transfer of land, and contracts that remain in effect for more than one year after the date on which the parties sign the agreement.

Courts will review the responsibilities of each party of the contract to determine whether they have fulfilled their obligations. Courts also will examine the contract to see if it contains any modifications that could have triggered the alleged breach. Typically, the plaintiff must notify a defendant that they are in breach of contract before advancing to legal proceedings.³

When a breach of contract occurs or is alleged, one or both of the parties may wish to have the contract enforced on its terms, or may try to recover for any financial harm caused by the alleged breach.

If a dispute over a contract arises and informal attempts at resolution fail, the most common next step is a lawsuit. If the amount at issue is below a certain dollar figure (usually \$3,000 to \$7,500 depending on the state), the parties may be able to resolve the issue in small claims court.

Courts and formal breach of contract lawsuits are not the only options for people and businesses involved in contract disputes. The parties can agree to have a mediator review a contract dispute or may agree to binding arbitration of a contract dispute. These out-of-court options are two methods of "alternative dispute resolution" that can take place as alternatives to business litigation.⁴

Cutter v Powell [1795]

³ <https://www.thebalancesmb.com/breach-of-contract-398138>

⁴ <https://smallbusiness.findlaw.com/business-contracts-forms/breach-of-contract-and-lawsuits.html>

The applicant and his wife contracted to act as second officer on the ship, the 'Governor Parry' on a trip to Jamaica. The cruise can take up to eight weeks and he will be paid upon completion. A term which is, in the Treaty:

"Ten days after the 'Governor Parry,' my own ship master, coming in at Liverpool, I promise to Mr. T. Cutter pay the sum of thirty guineas, that he gave the proceeds, and continued his work as second mate in the said ship at the port of Liverpool. Kingston, 31 July 1793.

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 renegeing 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. 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.

Six-week cruise of the late husband of the plaintiff. The plaintiff sought a sum that claims six weeks represent the work done.

Held: The woman failed the action. Payment is made on condition that he worked on the ship in Liverpool, because he does not fulfill this condition, the widow is entitled to nothing.

REMEDIES OF BREACH OF 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 breach in 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.

The innocent party may only recover damages for loss suffered as a result of the breach provided it is not too remote. The aim of damages is to put him in the position he would have been in had the contract been properly performed.

The principles of remoteness are given in *Hadley v Baxendale* ([1854] 9 Exch. 341) and provide that the following losses are recoverable:

All loss which flows naturally from the breach.

All loss which was in the contemplation of the parties at the time the contract was made as a probable result of the breach.

If the loss does not fall within the above categories, then it will be too remote and will not be recoverable.

The rule in *Hadley v Baxendale* has been interpreted to mean that only loss which is within the reasonable contemplation of the parties may be recovered (*The Heron II* [1969] 1 AC 350).⁵

Money Damages⁶

⁵ [https://uk.practicallaw.thomsonreuters.com/7-101-0603?transitionType=Default&contextData=\(sc.Default\)](https://uk.practicallaw.thomsonreuters.com/7-101-0603?transitionType=Default&contextData=(sc.Default))

⁶ <https://www.legalmatch.com/law-library/article/ultimate-guide-to-remedies-for-breach-of-contract.html>

Money damages refer to the monetary payments which a breaching party has to make for violating the terms of contract. The type of breach determines the extent of the damages. If it is a total breach, then the plaintiff can recover the sum or value which the plaintiff would have received had the contract been fully performed by the defendant and this includes lost profits.

However, if it is a partial breach, the plaintiff can recover a sum which equals the amount necessary to hire someone else to complete that part of the contract. However, in some cases of partial breach, the cost of completion can be quite expensive and the portion of the contract which was unperformed may be small.

In these cases, a court may only award damages which are equal to the difference between the value of the contract as performed and the full value of the contract which was originally agreed to by the parties.

There are different types of money damages such as:

Compensatory Damages: This is meant to cover the loss incurred by the non-breaching party because of the breach of contract. The breaching party will have to pay an amount which replaces the loss incurred by the other party

Punitive Damages: This is rarely awarded for breach of contract cases. Unlike compensatory damages which are meant to cover the actual loss, punitive damages are awarded to punish the wrongdoer for egregious behavior and to deter others from committing similar acts.

Punitive damages are given in addition to compensatory damages.

Keep in mind that punitive damages are requested and it is up to the court to decide if they wish to award them and the amount.

The two types of compensatory damages are general and special damages. General damages cover the loss which was directly connected to the breach of contract and they are the most common type of damages which are awarded for breaches of contracts.

In contrast, special damages (also referred to as “consequential damages”) cover any loss which was incurred because of special circumstances or conditions which the breaching party knew about when the contract was made.

It is important to note that the non-breaching party has a duty to mitigate. This means that it has to do what is possible and reasonable to minimize or avoid the losses which were incurred because of the breach of contract.

Damages are not awarded for any loss which could have been avoided or substantially reduced if the non-breaching party took reasonable efforts to mitigate. In these cases, the damages will be reduced by the amount which could have been reasonably avoided.

Restitution

Restitution is a remedy which is used to restore the injured party to the position occupied before the contract. Under the principle of restitution, the defendant is supposed to give back any money or property received from the plaintiff under the contract and restitution is not used to compensate the plaintiff for lost profits or other earnings because of the breach of contract.

Restitution is typically used in cases where the contract is voided by the court because the defendant lacked the competence or capacity necessary to enter into a contract.

Rescission and Reformation

Sometimes, the contractual duties of both parties may be terminated by the court and when this happens, it is called rescission. This remedy is used in certain cases such as when the parties enter into a contract because of mistake, fraud, undue influence or duress and the only way to do justice is to terminate the contract.

However, sometimes the remedy of reformation may be used which is when a court reforms or changes a contract to correct any inequities. In these cases, instead of setting aside the entire contract, the terms of the contract may be rewritten to do justice.⁷

Specific Performance

Under specific performance, the breaching party has to perform their duties as specified by the contract and it is used when money damages are not adequate to compensate the plaintiff. Specific performance is used in cases which involve giving a piece of land or a valuable item to the plaintiff.

While the legal system frowns upon forcing individuals to do something against their will, if a person signed a contract selling the item but had the intent to defraud the other party, then the court can force them to sell the item. So long as the other party was willing to pay the contracted amount and was ready to do so.⁸

Injunction

An injunction is basically like a decree for specific performance but for a negative contract. The remedy of injunction is an equitable remedy which may be granted at the discretion of

⁷ <https://www.legalmatch.com/law-library/article/ultimate-guide-to-remedies-for-breach-of-contract.html>

⁸ <https://www.legalmatch.com/law-library/article/ultimate-guide-to-remedies-for-breach-of-contract.html>

the court. Its principle uses as a private law remedy is to restrain a wrongful act, such as the commission of a tort or the breach of a contract. Where a tract provides that one party was to refrain from doing a particular thing, an injunction may be granted against a breach of that negative stipulation.

An injunction is a court order restraining a person from doing a particular act.

So a court may grant an injunction to stop a party of a contract from doing something he promised not to do. In a prohibitory injunction, the court stops the commission of an act and in a mandatory injunction; it will stop the continuance of an act that is unlawful.

9