ABINYE-BROWN PRECIOUS .A.

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CONTRACT LAW

27/04/20

QUESTION

A breach of contract is committed when a party without lawful excuse fails or refuses to perform what is due from him under the contract or performs defectively or incapacitates himself from performing. (Treitel 2007, para 17-049)

Discuss the following:

a. Breach of contract
b. What are the remedies available for breach of contract.

BREACH OF A CONTRACT

[1]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.

[2]"**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.

[3]A breach of contract is a violation of any of the agreed-upon terms and conditions of a binding contract. The breach could be anything from a late payment to a more serious violation such as the failure to deliver a promised asset.

Most contracts end when both parties have fulfilled their contractual obligations, but it's not uncommon for one party to fail to completely fulfill their end of the contract agreement. Breach of contract is the most common reason contract disputes are brought to court for resolution.

A breach of contract is when one party breaks the terms of an agreement between two or more parties. This includes when an obligation that is stated in the contract is not completed on time—

[1] https://legaldictionary.net/breach-of-contract/
[2] https://www.thebalancesmb.com/breach-of-contract-398138
[3] https://www.investopedia.com/terms/b/breach-of-contract.asp

you are late with a rent payment, or when it is not fulfilled at all—a tenant vacates their apartment owing six-months' back rent.

Sometimes the process for dealing with a breach of contract is written in the original contract. For example, a contract may state that in the event of late payment, the offender must pay a $25 fee along with the missed payment. If the consequences for a specific violation are not included in the contract, then the parties involved may settle the situation among themselves, which could lead to a new contract, adjudication, or another type of resolution.

Revelations Perfume and Cosmetics Inc. v. Prince Rogers Nelson

Macy's v. Martha Stewart Living

GENERAL REQUIREMENTS

A breach of contract suit must meet four requirements before it will be upheld by a court.

- The contract must be valid. It must contain all essential contract elements by law. A contract isn't valid unless all these essential elements are present, so without them, there can be no lawsuit.
- The plaintiff or the party who's suing for breach of contract must show that the defendant did indeed breach the agreement's terms.
- The plaintiff must have done everything required of them in the contract.
- The plaintiff must have notified the defendant of the breach before proceeding with filing a lawsuit. A notification made in writing is better than a verbal notification because it offers more substantial proof.

TYPES OF BREACH OF CONTRACT

Breach of contract can be material, partial, or anticipatory.

A **material breach** is one that is significant enough to excuse the aggrieved or injured party from fulfilling their part of the contract. One may think of a contract breach as either minor or material. A "minor breach" happens when you don't receive an item or service by the due date. 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.

A **partial breach** is not as significant and does not normally excuse the aggrieved party from performing their duties. A "material breach" is when you receive something that is different from what was stated in the agreement. Say, for example, that your firm contracts with a vendor to deliver 200 copies of a bound manual for an auto industry conference. But when the boxes arrive at the conference site, they contain gardening brochures instead.

An **anticipatory breach** is one where the plaintiff suspects that the offending party might breach a contract by doing or failing to do something that shows their intention not to complete their duties. Anticipatory breaches can be very difficult to prove in court. Further, 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.

DEFENSES TO A BREACH OF CONTRACT LAWSUIT

As in all lawsuits, the defendant—the party being sued—has a legal right to offer a reason why the alleged breach is not really a breach of contract or why the breach should be excused. In legal terms, this is called a defense. Common defenses against a breach of contract include:

Fraud: This means "knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment." When a defendant presents this defense, they're saying that the contract isn't valid because the plaintiff failed to disclose something important or because they made a false statement about material or important fact. The defendant must establish that the fraud was deliberate.

Duress: This occurs when one person compels another to sign a contract through physical force or other threats. This, too, can invalidate a contract because both parties did not sign from their own free will, which is a standard contractual prerequisite.

Undue influence: This is similar to duress. It means that one party had a power advantage over the other and that they used that advantage to force the other to sign the contract.

Mistake: An error committed by the defendant can't invalidate a contract and take away a breach of contract case, but if the defendant can prove that *both* parties made a mistake about the subject matter, it might be enough to invalidate the contract and this would serve as a defense.

Statute of Limitations: Many types of cases have time limits imposed by law, deadlines by which a case must be brought and filed. A breach of contract case can be thrown out of court if the defendant can show that the statute of limitations has expired. The Statute of limitations case has a basis on time frames that are set by individual state law so they can vary. They average from three to six years for a written contract.

REMEDIES FOR BREACH OF CONTRACT

- **Monetary damages**.;[4]The plaintiff can be made whole in several ways if the other party is found to be in breach of a contract. In legal terms, this is called a remedy, and the most common remedy when one party is found to be in breach of a contract is a monetary payment. 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.

[4] https://www.bc-llp.com/what-are-the-remedies-available-for-a-contract-breach/

- **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.

CASE STUDY

Hadley V. baxendale

Kusfa V. United Bawo Construction and Co.

U.B.N V. Sparkling Breweries

Victoria Laudry v.Newman Industries

Robinson V. Harman

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