

Chapter I: Contracts

Termination Of Contracts :
Breach & Remedies

BREACH OF CONTRACTS

Breach Of Contracts

- A breach of contract is the **nonperformance of a contractual duty.**
- **Types Of Breach:**
 - 1. Material breach**
 - 2. Minor breach**
 - 3. Anticipatory breach**

Types Of Breach : 1. **Material**

- **Gives right to Discharge and damages**
 - If there is a material breach, then the **nonbreaching** party is **excused** from the performance of contractual duties and **can sue for damages** resulting from the breach.

Case

- Madame Poussard entered into a contract with Spiers to perform as an opera singer for three months. She became ill five days before the opening night and was not able to perform the first four nights(It was proved that her illness cannot prevent her from singing). Spiers then replaced her with another opera singer. **Is Madame Poussard in breach??**

Answer

- Madame Poussard was in material breach and Spiers were entitled to end the contract. She missed the opening night which was the most important performance as all the critics and publicity would be based on this night.

Types Of Breach : 2. **Minor**

➤ **Gives right to Damages only**

- If the breach is *minor* (not material), the **nonbreaching party's duty to perform** can sometimes be **suspended** until the breach has been remedied, but the duty to perform is **not entirely excused**.
- Once the **minor breach** has been **cured**, the **nonbreaching party must resume performance** of the contractual obligations.

Case

Bettini agreed by contract to perform as an opera singer for a three months period. He became ill and missed 6 days of rehearsals. The employer replaced him with another opera singer. **Is Bettini in breach??**

Answer

- Bettini was in minor breach of and therefore the employer was not entitled to end the contract. Missing the rehearsals did not go to the root of the contract.

Types Of Breach : 3. **Anticipatory**

- Gives right to Discharge and immediate legal action for Damages or waiting till breach occurrence.
- (= breach in advance of performance)
- **Before** either party to a contract has a **duty to perform** , **one of the parties** may **refuse** to carry out his or her contractual obligations.
- the nonbreaching party is permitted to bring an **action for damages immediately, even though** the scheduled time for **performance** under the contract may **still be in the future**.

Case

- Ahmed agreed to be a **courier** for Ben, **Business Man** for 3 months starting June 1st 2018. On May 11th Ben wrote to Ahmed stating he no longer wanted his services and refused to pay compensation. Ahmed obtained a service contract elsewhere but this was not to start until July 4th. Ahmed brought an action on May 22nd for breach of contract. Ben argued that there was no breach of contract on May 22nd as the contract was not due to start until 1st of June. **Advise Ben.**

Answer

- Where one party communicates its intention not to perform the contract, the innocent party doesn't need to wait until the breach has occurred before bringing their claim. They may sue immediately or they can choose to continue with the contract and wait for the breach to occur. I advise Ben not to claim for this argument and to pay Damages for the anticipatory breach of contract he had committed.

REMEDIES

Remedies

- **Concept:** A *remedy* is the **relief** provided for an innocent party when the other party has breached the contract , to **compensate the nonbreaching party for the loss of the bargain.**
- **Types:**
 1. **Remedy at law** (damages)
 2. **Equitable remedies** (rescission and restitution, specific performance , and reformation)
- Usually, a court will award an **equitable** remedy if the **remedy at law is inadequate.**

Remedy at law : Damages

Damages

- Damages compensate the nonbreaching party **for the loss of the bargain.**
- **Types:**
 1. compensatory
 2. Consequential
 3. Nominal
 4. Liquidated

1. Compensatory Damages

- to cover direct losses and costs

- **Measure**

An amount equal to the **difference** between the **contract price** and the **market price**.

- **Expenses** that are **caused directly by a breach** of contract—such as **those incurred to obtain performance from another** source—are known as **incidental damages**.

Case

- Wilcox contracts to perform certain services exclusively for Hernandez during the month of March for \$4,000. Hernandez cancels the contract and is in breach. Wilcox is able to find another job during the month of March but can earn only \$3,000 How much damages can be recovered by Wilcox? why?

Answer

- Wilcox can sue Hernandez for breach and recover \$1,000 as compensatory damages. Wilcox can also recover from Hernandez the amount that he spent to find the other job.

2. Consequential Damages

- to cover **indirect and foreseeable losses** (ex: loss of profits)
- **Flow from the consequences**, or results, of a breach.
- The Breach will cause the nonbreaching party to suffer an **additional loss**.

Case

- A fails to deliver goods to B, knowing that the buyer is planning to use or resell those goods immediately. B loses profits. Does B have right to Damages?

Answer

- a court may award consequential damages for the loss of profits from the planned resale . The buyer will also recover compensatory damages for the difference between the contract price and the market price of the goods.

3. Nominal Damages

- When **no** actual damage or **financial loss** results **from a breach** of contract.
- Awards of nominal damages are **often small**, such as one dollar, but they do **establish that the defendant acted wrongfully**.

Case

- Jackson contracts to buy potatoes from Stanley at fifty cents a pound. Stanley breaches the contract and does not deliver the potatoes. In the meantime, the price of potatoes has fallen. **Advise Jackson**

Answer

- Because Jackson sustained only a technical injury and suffered no monetary loss, he is likely to be awarded only nominal damages if he brings a suit for breach of contract.

4. Liquidated Damages

- **provision in a contract** specifies that a certain dollar **amount is to be paid** in the event of a ***future*** default or **breach** of contract.

Ex: a provision requiring a construction contractor to pay \$300 for every day he or she is late in completing the project is a liquidated damages provision.

Equitable Remedies

1. Rescission and Restitution

- **Rescission:** an **action to undo**, or **terminate**, a contract to **return** the contracting parties to the positions they occupied prior to the transaction
- **Restitution :** by **returning** goods, property, or funds previously conveyed.
 - If the **goods** or property have been **consumed**, **restitution** must be made in an **equivalent dollar amount**.

2. Specific Performance

- calls for the **performance** of the act promised in the **contract**.
- specific performance will be **granted** if the party's legal remedy (**monetary damages**) is **inadequate**.
- For this reason, contracts for the sale of goods give right for specific performance **only if the goods are unique**. For example: paintings , sculptures..
- **Courts refuse** to grant **specific performance** of **personal-service contracts** because to order a party to perform personal services against his or her will amounts to a type of involuntary servitude.

3. Reformation

- is an equitable remedy used when the parties have *imperfectly* expressed their **agreement** in writing.
- Reformation allows a **court to rewrite the contract** to reflect the **parties' true intentions**.