

Remedies for the breach of sales contracts

Commercial transactions class

Lecture 3.01

Introduction

Setting

- The UCC defines what constitutes a failure to perform (breach)
- The UCC provides remedies for the breach of sales contracts
- Remedies in the UCC resemble those of the common law
- Contract remedies are designed to place the nonbreaching party in the same position as if the contract had been performed

Objective

Today we examine breach of a contract and remedies available under the UCC. After the lecture, you should be able to answer the following questions:

1. What constitutes a breach of a sales contract?
2. What money damages are available for breach?
3. What is resale?
4. What is cover?
5. What is specific performance of the contract as a remedy?
6. What are liquidated damages?

The UCC shares remedies principles with the common law

Definition of a breach

- Breach exists when one party to a contract has failed to perform its obligations under a contract
- The UCC provides relief to the nonbreaching party who acted in good faith and sustained damages through no fault of their own
- Remedies are judicial actions that compensate an injured party in a civil lawsuit
 - Monetary damages, or
 - Equitable damages

The goal of contract remedies is to give the parties the benefit of the bargain they struck

- Contract law is meant to put the parties into the position they would have been in but for the breach
- Intent is not important in determining the remedies for breach
- Efficient breach theory states that a party should be allowed to breach a contract and pay damages, if doing so would be more economically efficient than performing under the contract

Duty of mitigation

- A nonbreaching party must attempt to limit its damages

- Both buyer and seller have a duty to mitigate in case of breach
 - A buyer must attempt to purchase substitute goods (cover)
 - A seller must attempt to resell the goods (resale)

Buyers' remedies: The UCC provides remedies when the seller breaches

If the seller refuses to deliver the goods, the buyer has remedies

- A seller's primary duty is to deliver conforming goods to the buyer
- Conforming goods are goods that match what was bargained for in the agreement
- Seller may breach contract by delivering nonconforming goods
 - Incorrect quantity
 - Incorrect specification

Seller may also breach the contract if it repudiates its performance

- Repudiation occurs if the buyer or the seller communicates in a way that is inconsistent with performance under the contract
 - (e.g., seller indicates it will be unable to deliver goods by the due date)
- The UCC treats a repudiation as a breach of contract even if the performance is not yet due

If the seller breaches a contract, the UCC gives the non-breaching buyer these remedies

- Cancellation of the contract
- Obtain cover
- Specific performance of the contract
- Rejection of nonconforming goods
- Revocation of acceptance of nonconforming goods
- Acceptance of nonconforming goods
- Sue for monetary damages

When the seller delivers nonconforming goods, the buyer has the following remedies

- The buyer may **reject** the goods, in whole or in part
- If the buyer discovers a nonconformity that substantially impairs the value, acceptance can be **revoked**
- A buyer or lessee may keep nonconforming goods and sue to recover damages

The measure of damages for nonconforming goods is

- the difference between the value of the goods as accepted and their value if they had been delivered as promised,
- plus incidental and consequential damages

Seller's remedies: The UCC provides remedies when the buyer breaches

The buyer's primary obligation is triggered when the seller delivers conforming goods

- Once the buyer has accepted the goods, the buyer must pay for them in accordance with the contract

- The buyer must provide adequate facilities to receive the goods

A buyer breaches the contract if it

- repudiates the contract before the seller delivers the goods,
- fails to make payment,
- wrongfully rejects conforming goods, or
- wrongfully revokes its acceptance of conforming goods

If the buyer breaches, the UCC provides the seller with remedies for breach

- Cancellation of the contract
- Withholding of delivery
- Resale of the goods
- Stop delivery
- Reclaim goods
- Specific performance of the contract (recovery of the contract price)
- Sue for monetary damages

If the goods are **in the possession of the seller** at the time of breach, the seller has the following rights

- The seller has the right to cancel the contract
- The seller has the right **to withhold delivery**
- The seller has the right to **resell or dispose** of the goods
- The buyer is responsible for the difference between the contract price and the resale price
 - Plus incidental damages

If the goods are in transit at the time of breach, the following rules apply

- If the buyer is insolvent, the seller can stop the carrier from delivering the goods
- If the buyer is not insolvent, the seller can stop delivery **ONLY** if it is a large shipment

If the goods are in the possession of the buyer, the seller has the following rights

- The seller may sue to recover the purchase price if the buyer has accepted the goods but refuses to pay for them
- The seller may have the right to sue to reclaim goods and then sue for difference between resale price and contract price

There are limitations on remedies

The parties may agree to **liquidated damages**

- Damages that the parties expressly define in the contract and agree will compensate the nonbreaching party
- Must be reasonable in amount
- A term fixing unreasonably large liquidated damages is void as a penalty

A court should enforce **an exclusive remedy** provided for in the contract

- Simply specifying a remedy in the sales or lease contract **does not make it an exclusive remedy**
- A contract can **limit or exclude consequential damages**
- There may be state statutory remedies in certain situations

Monetary damages

There are **THREE** components of monetary damages

- Compensatory damages
- Incidental damages
- Consequential damages

The calculation of damages is symmetrical for nonbreaching seller and nonbreaching buyer

- Monetary damages can be calculated based on a formula:
 - Calculate the difference between contract price and market price
 - Subtract possibility of avoidance of loss (mitigation)
 - Add incidental and consequential damages
- Mitigation consists of either **resale (seller)** or **cover (purchase of substitute goods) (buyer)**

Conclusion

What did we learn today?

- Seller's remedies: The UCC provides remedies for breach by the buyer
- Buyer's remedies: The UCC provides remedies for breach by the seller
- There are limitations on remedies