

A broker needed a certain rare coin to complete a set that he had contracted to assemble and sell to a collector. On February 1, the broker obtained such a coin from a hoarder in exchange for \$1,000 and a written promise to redeliver to the hoarder "no later than December 31 of this year" a comparable specimen of the same kind of coin. On February 2, the broker consummated the sale of the complete set to the collector.

On October 1, the market price of rare coins suddenly began a rapid, sustained rise. On October 15, the broker wrote the hoarder, "In view of the surprising market, it seems unfair that I should have to replace your coin within the next few weeks." On October 17, the hoarder responded in writing that she was treating the broker's repudiation as final and canceled the contract.

On November 15, the hoarder sued the broker for the market value of a comparable replacement-coin.

If the broker moves to dismiss the hoarder's complaint, which of the following is the broker's best argument in support of the motion?

- A. Even if the broker repudiated on October 15, the hoarder has no remedy because she failed to demand in writing that the broker retract his repudiation.
- B. Even if the broker repudiated on October 15, the hoarder's only action would be for specific performance because the coin is a unique chattel.
- C. The broker did not repudiate the contract on October 15 and may still perform no later than the contract deadline of December 31.
- D. Under the doctrine of impossibility, the broker is temporarily excused by the market conditions from timely performance of his coin-replacement obligation.

## Explanation:

The **doctrine of anticipatory repudiation** is applicable when a contracting party indicates an unwillingness to perform a promise *before* the time for **performance arises or elapses**. The repudiation must be **clear and unequivocal**, and it may be by **words or actions**. Upon repudiation, the nonrepudiating party may either treat the repudiation as a breach *or* ignore it and demand performance pursuant to the contract.

Here, the broker wrote the hoarder that "it *seems* unfair that I should have to replace your coin within the next few weeks." This statement did not clearly and unequivocally demonstrate the broker's intention not to perform pursuant to their contract. As a result, the broker's best argument supporting dismissal of the hoarder's breach-of-contract claim is that he did not repudiate the contract and may still perform no later than the contract deadline.\*

\*The broker's statement presents reasonable grounds for insecurity about his willingness to perform, so the hoarder has the right to make a written demand for assurances. The broker's failure to provide such assurances within 30 days would result in an anticipatory repudiation.

**(Choice A)** A repudiation may be retracted unless the nonrepudiating party has (1) canceled the contract, (2) materially changed position, or (3) indicated that he/she considers the repudiation final. But there is no requirement that the nonrepudiating party demand in writing that the repudiating party issue a retraction.

**(Choice B)** Specific performance is an available remedy when monetary damages would be inadequate because the property or chattel at issue is unique. But monetary damages would be adequate here since the parties contracted for a *comparable* specimen of the same kind of coin—not the exact same coin.

**(Choice D)** The doctrine of impossibility **discharges** a party's contractual duties when an unexpected and extraordinary event beyond the parties' control makes performance impossible. However, a change in market conditions is neither unexpected nor extraordinary. And the broker is able to perform since he can still purchase the coin, albeit at a higher price.

## Educational objective:

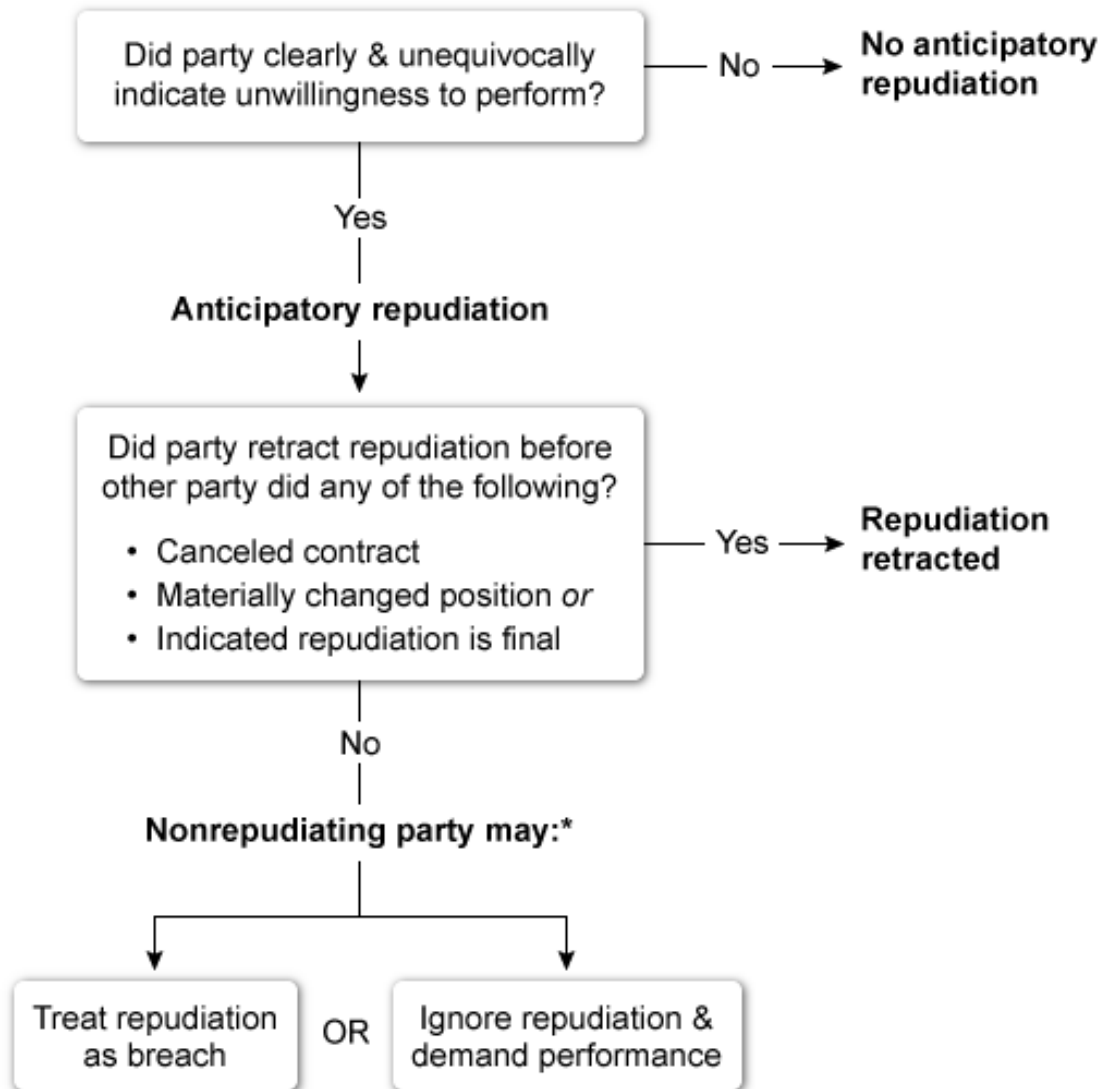
The doctrine of anticipatory repudiation applies when a party *clearly and unequivocally* repudiates (ie, indicates an unwillingness to perform) a promise before the time for performance arises or elapses. The nonrepudiating party may treat the repudiation as a breach *or* ignore it and demand performance pursuant to the contract.

## References

U.C.C. § 2-610 (Am. Law Inst. & Unif. Law Comm'n 2020) (anticipatory repudiation).

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## The doctrine of anticipatory repudiation



\*The nonrepudiating party may also suspend its performance if commercially reasonable