

On May 1, a seller and a buyer entered into a written contract, signed by both parties, for the sale of a tract of land for \$100,000. Delivery of the deed and payment of the purchase price were scheduled for July 1. On June 1, the buyer received a letter from the seller repudiating the contract. On June 5, the buyer bought a second tract of land at a higher price as a substitute for the first tract. On June 10, the seller communicated a retraction of the repudiation to the buyer.

The buyer did not tender the purchase price for the first tract on July 1 but subsequently sued the seller for breach of contract.

Will the buyer likely prevail?

- A. No, because the buyer's tender of the purchase price on July 1 was a constructive condition to the seller's duty to tender a conveyance.
- B. No, because the seller retracted the repudiation prior to the agreed time for performance.
- C. Yes, because the buyer bought the second tract as a substitute for the first tract prior to the seller's retraction.
- D. Yes, because the seller's repudiation was not retractable after it was communicated to the buyer.

Explanation:

A party's failure to perform his/her contractual duties at the time performance is due constitutes a breach. A breach can also occur *before* the time for performance is due under the doctrine of **anticipatory repudiation**. This doctrine applies when a party **clearly and unequivocally** repudiates (ie, indicates an **unwillingness to perform**) a promise. A **repudiation can be retracted** if the nonrepudiating party receives notice of the retraction **before**:

canceling the contract

materially changing position in reliance on the repudiation *or*

indicating that he/she considers the repudiation to be final **(Choice D)**.

But until the repudiation is retracted, the nonrepudiating party may (1) treat the repudiation as a breach or (2) ignore it and demand performance pursuant to the contract. The nonrepudiating party may also suspend its own performance if commercially reasonable.

Here, the seller anticipatorily repudiated the contract on June 1. The seller then attempted to retract the repudiation on June 10. However, the buyer had already materially changed position in reliance on the repudiation by purchasing a substitute tract of land on June 5 **(Choice B)**. As a result, the seller's retraction was ineffective. And since the seller's unretracted repudiation is a breach of contract, the buyer is likely to prevail.

(Choice A) In a contract for real property, the tender of the purchase price and the conveyance of the deed generally must occur simultaneously. However, the seller's repudiation allowed the buyer to suspend payment.

Educational objective:

A party who anticipatorily repudiates a contract may retract the repudiation if the nonrepudiating party is notified of the retraction before (1) canceling the contract, (2) materially changing position in reliance on the repudiation, or (3) indicating that he/she considers the repudiation to be final.

References

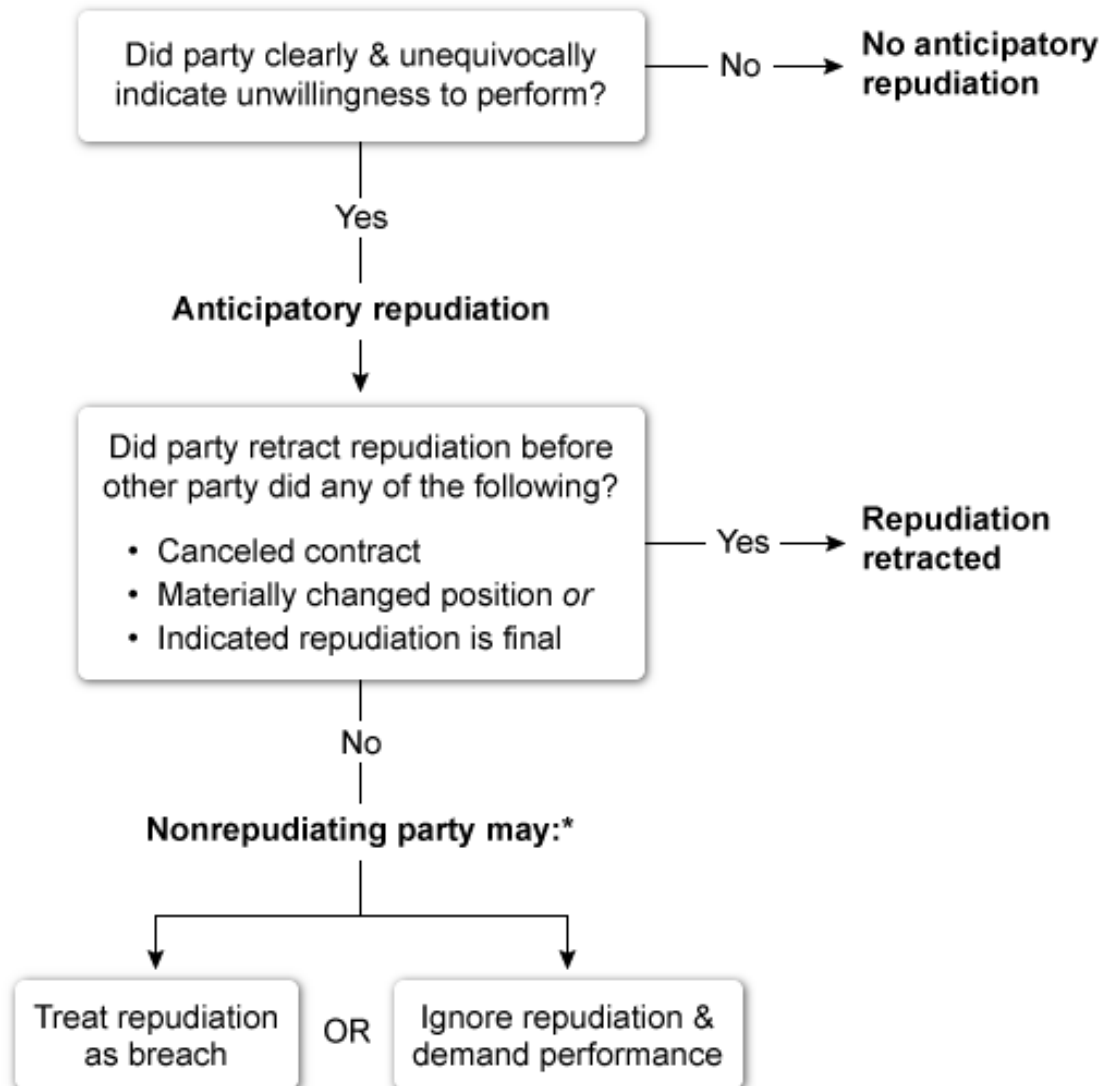
Restatement (Second) of Contracts § 253 (Am. Law Inst. 1981) (effect of an anticipatory repudiation).

Restatement (Second) of Contracts § 256 (Am. Law Inst. 1981) (retraction of repudiation).

Copyright © 2014 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.

The doctrine of anticipatory repudiation



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