

A buyer agreed in writing to purchase a car from a seller for \$15,000, with the price to be paid on a specified date at the seller's home. The contract provided, and both parties intended, that time was of the essence. Before the specified date, however, the seller sold the car to a third party for \$18,000. On the specified date, the buyer arrived at the seller's home prepared to tender payment. The seller was not there, so the buyer called the seller to ask where he was. The seller then told the buyer that he had sold the car to the third party.

If the buyer sues the seller for breach of contract, will the buyer be likely to prevail?

- A. No, because the buyer did not tender her performance on the specified date.
- B. No, because the contractual obligations were discharged on the ground of impossibility.
- C. Yes, because the seller anticipatorily repudiated the contract when he sold the car to the third party.
- D. Yes, because the seller did not inform the buyer of his repudiation.

Explanation:

A contract is breached when a party fails to perform contractual duties at the time performance is due. A breach can also occur before the time for performance arises or elapses under the **doctrine of anticipatory repudiation**. This doctrine applies when a party **clearly and unequivocally**, by **words or actions**, indicates an **unwillingness to perform**.^{*} Upon repudiation, the nonrepudiating party can suspend his/her own performance and either:

treat the repudiation as a breach and sue immediately or ignore the repudiation and demand performance pursuant to the contract.

Here, the seller clearly and unequivocally repudiated the contract with the buyer by selling the car to a third party. Since the buyer has the right to treat this anticipatory repudiation as a breach of contract, she will likely prevail in a suit against the seller.

^{*}If a party's words or actions provide reasonable grounds for insecurity about the party's performance, the other party may demand [adequate assurances](#).

(Choice A) The buyer arrived at the seller's home on the specified date to tender payment. However, since the seller had anticipatorily repudiated the contract, the buyer's duty to tender performance was discharged.

(Choice B) Performance is discharged due to impossibility when an unexpected and extraordinary event beyond the parties' control makes performance impossible. But since the seller's own actions made it impossible to sell the car, his contractual obligations were not discharged.

(Choice D) The seller did not need to inform the buyer of his repudiation because an anticipatory repudiation can be express or implied. It is express if the repudiating party informs the other of his/her intention not to perform and is implied if the repudiating party's actions prevent him/her from being able to perform (as seen here).

Educational objective:

Anticipatory repudiation occurs when a contracting party clearly and unequivocally, by words or actions, indicates that he/she will not perform. Upon repudiation, the nonrepudiating party can suspend his/her own performance and either (1) treat the repudiation as a breach and sue or (2) ignore it and demand performance.

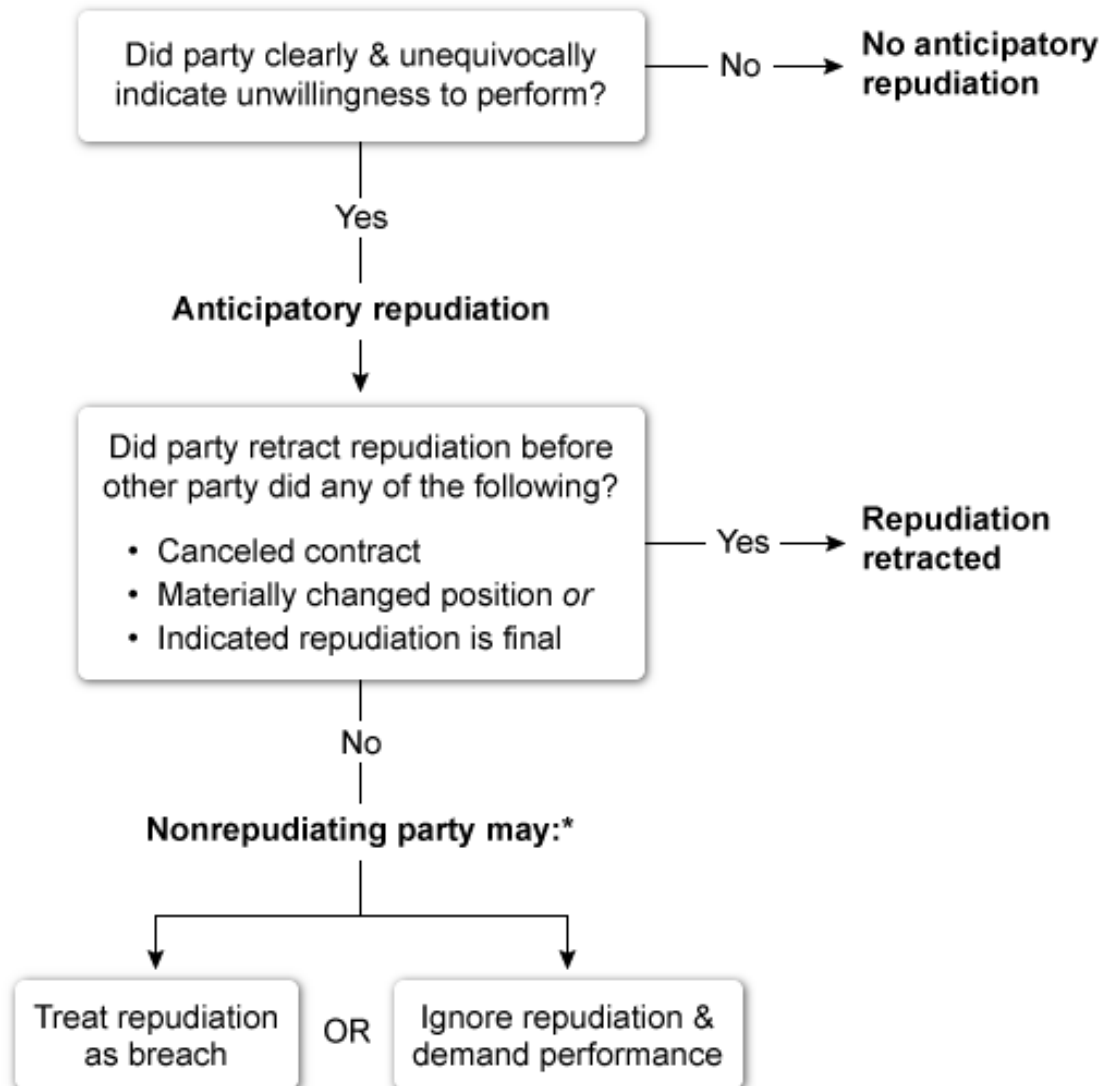
References

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