

On June 1, a seller and a buyer contracted in writing for the sale and purchase of the seller's cattle ranch (a large single tract), and to close the transaction on December 1. On October 1, the buyer told the seller, "I'm increasingly unhappy about our June 1 contract because of the current cattle market, and do not intend to buy your ranch unless I'm legally obligated to do so."

On October 15, the seller sued the buyer for breach of contract.

Is the seller likely to prevail?

- A. No, because the buyer's October 1 statement to the seller was neither a repudiation nor a present breach of the June 1 contract.
- B. No, because the parties contracted for the sale and conveyance of a single tract, and the seller cannot bring suit for breach of such a contract prior to the agreed closing date.
- C. Yes, because the buyer committed a total breach by anticipatory repudiation on October 1.
- D. Yes, because the buyer's October 1 statement created reasonable grounds for the seller's insecurity with respect to the buyer's performance.

## Explanation:

### Anticipatory repudiation

**Standard** Party's clear & unequivocal words or actions indicate unwillingness to perform

**Retraction** Party may retract repudiation unless nonrepudiating party:  
cancels contract  
materially changes position in reliance thereon *or*  
indicates repudiation is final

**Effect** Upon repudiation, nonrepudiating party may:\*  
treat repudiation as breach *or*  
ignore repudiation & demand performance

\*Nonrepudiating party may also suspend own performance

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 arises or elapses under the doctrine of **anticipatory repudiation**. This doctrine applies when a party **clearly and unequivocally**, by **words or acts**, indicates an **unwillingness to perform** his/her contractual duties. The nonrepudiating party may treat the repudiation as a breach or ignore it and demand performance pursuant to the contract.

Here, the buyer's October 1 statement was not a present breach of the contract since performance is not due until December 1. And though the buyer stated that she did "not intend to buy" the seller's ranch, that statement was not an anticipatory repudiation. That is because the statement included the *equivocal* phrase "unless I'm legally obligated to do so" (**Choice C**). Therefore, the seller is unlikely to prevail.

**(Choice B)** The doctrine of anticipatory repudiation allows a party to sue for breach of *any* contract before the time for performance is due—including contracts for the sale of a single tract of property before the closing date.

**(Choice D)** The buyer's statement created reasonable grounds for the seller's insecurity with respect to the buyer's performance. However, the seller's recourse in this situation is to demand [adequate assurances](#). If the buyer fails to provide such assurances, the buyer will be deemed to have anticipatorily repudiated the contract. The seller can then treat the repudiation as a breach.

### Educational objective:

The doctrine of anticipatory repudiation applies when a contracting party *clearly and unequivocally* indicates an unwillingness to perform. The nonrepudiating party may treat the repudiation as a breach or ignore it and demand performance pursuant to the contract.

### **References**

Restatement (Second) of Contracts § 250 (Am. Law Inst. 1981) (repudiation).

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

Copyright © 2002 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.