

A young lawyer asked her neighbor to lend her \$1,000. On September 15, the neighbor lent \$1,000 to the lawyer, which she agreed to repay in installments of \$100 plus accrued interest on the last day of each month beginning October 31. The lawyer did not pay the installments due on October 31, November 30, or December 31 and has informed the neighbor that she will be unable to make repayments in the foreseeable future.

On January 15, the neighbor is entitled to a judgment against the lawyer for which of the following amounts?

- A. Nothing, because if the neighbor sues before the entire amount is due, he will be splitting his cause of action.
- B. \$300 plus the accrued interest, because the lawyer's breach is only a partial breach.
- C. \$1,000 plus the accrued interest, because the failure to pay her debts as they come due indicates that the lawyer is insolvent and the neighbor is thereby entitled to accelerate payment of the debt.
- D. \$1,000 plus the accrued interest, because the lawyer's unexcused failure to pay three installments is a material breach.

## Explanation:

### Installment contracts

**Deliveries** Price for each installment generally due at time & place of each delivery  
Seller's damages for breach amount to missed payments  
Buyer's damages for breach amount to fair market value minus contract price for missed deliveries

**Payments** Creditor's damages for breach amount to missed payments

**Breach by nonperformance** coupled **with repudiation** of the contract typically gives rise to a claim for damages for **total breach**. This is true **unless**, at the time of the breach, the **only contractual obligation** that remains is for the **breaching party to make installment payments** of money. In that circumstance, the breaching party's failure to pay—whether or not coupled with a repudiation—gives rise to a claim for damages for **partial breach only**. This means that the nonbreaching party can recover the **missed payments**.

Here, the lawyer failed to pay the first three installments of \$100 plus accrued interest (breach by nonperformance) and informed the neighbor that she would be unable to make repayments in the foreseeable future (repudiation). However, the only contractual obligation remaining on either side was for the lawyer to make the rest of the installment payments. Therefore, the neighbor has a claim for damages for partial breach only, and he is entitled to a judgment against the lawyer for \$300 plus the accrued interest (missed payments).

**(Choice A)** After breach of an installment contract, the nonbreaching party can (1) wait until the end of the contract and sue for the total damages or (2) split the cause of action—ie, sue for partial breach immediately and reserve the right to sue again for later breaches.

**(Choice C)** Under the UCC, each party to a sale-of-goods contract gains certain rights when the other party becomes [insolvent](#). However, this does not apply to loan contracts, which are governed by common law.

**(Choice D)** A material breach occurs when the nonbreaching party fails to receive the substantial benefit of the contract. But failing to make a few payments of an installment loan is only a partial breach.

### Educational objective:

Breach by nonperformance coupled with repudiation typically gives rise to a claim for total breach. But where the only duty that remains at the time of breach is for the breaching party to pay installments, the failure to do so—whether or not coupled with a repudiation—gives rise to a claim for partial breach only.

**UCC** = Uniform Commercial Code.

**References**

Restatement (Second) of Contracts § 243 (Am. Law Inst. 1981) (effect of breach by nonperformance).

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