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Breach

In a perfect business world, agreements would be entered into, both sides would benefit and be pleased with the outcome, and no disputes would arise. But in the real business world, delays happen, financial problems can crop up, and other unexpected events can occur to hinder or even prevent a successful contract from being carried out. Following is a discussion of the legal concept of "breach of contract," and your options should such a breach occur.

What is a "Breach of Contract"?

A business contract creates certain obligations that are to be fulfilled by the people or companies who entered into the agreement. In the eyes of the law, a party's failure to fulfill an end of the bargain under a contract is known as a "breach" of the contract. Depending on the specifics of the contract, a breach can occur when a party fails to perform on time, does not perform in accordance with the terms of the agreement, or does not perform at all. Accordingly, a breach of contract will usually be categorized as either "material" or "immaterial" for purposes of determining the appropriate legal solution or "remedy" for the breach. [More on legal remedies for breach of contract can be found below.]

To illustrate how a breach of contract might happen in the real world, assume that R. Runner contracts with Acme Anvils for the purchase of some of its products, for delivery by the following Monday evening. If Acme delivers the Anvils to Runner on the following Tuesday morning, such a breach of the contract would likely be deemed immaterial, and R. Runner would likely not be entitled to money damages (unless he could show that he was somehow damaged by the late delivery). However, assume now that the contract stated clearly and explicitly that "time is of the essence" and the anvils MUST be delivered on Monday. If Acme delivers after Monday, its breach of contract would likely be deemed "material," and R. Runner's damages would be presumed, making Acme's liability for the breach more severe, and likely relieving Runner of the duty to pay for the anvils under the contract.

What Happens After a Contract is Breached?

When a breach of contract happens (or when a breach is alleged), one or both of the parties may wish to have the contract enforced on its terms, or may try to recover for any financial harm caused by the alleged breach.

If a dispute over a contract arises and informal attempts at resolution fail, the most common method used to resolve contract disputes and enforce contracts is through lawsuits and the court system. If the amount at issue is below a certain dollar figure (usually \$3,000 to \$7,500 depending on the state), the parties may be able to use "small claims" court to resolve the issue.

Courts and formal lawsuits are not the only option for people and businesses involved in contract disputes. The parties can agree to have a mediator review a contract dispute, or may agree to binding arbitration of a contract dispute. These out-of-court options are two methods of "alternative dispute resolution."

No matter what avenue is chosen to remedy a breach of contract, the non-breaching party will most likely be entitled to some kind of remedy under the law.

Remedies for a Breach of Contract

When an individual or business breaches a contract, the other party to the agreement is entitled to relief (or a "remedy") under the law. The main remedies for a breach of contract are (1) damages, (2) specific performance, (3) or cancellation and restitution.

Damages

The remedy that is most often used for a breach of contract is the remedy of *damages* -- payment in one form or another, made by the breaching party to the non-breaching party. There are many kinds of damages, and generally speaking damages may be very specific to the kind of breach that has occurred. Following are some guidelines on damages.

Compensatory damages aim to put the non-breaching party in the position that they had been if the breach had not occurred.

Punitive damages are payments that the breaching party must make, above and beyond the point that would fully compensate the non-breaching party. Punitive damages are meant to punish a wrongful party for particularly wrongful acts, and are rarely awarded in the business contracts setting.

Nominal damages are token damages awarded when a breach occurred, but no actual money loss to the non-breaching party was proven.

Liquidated damages are specific damages that were previously identified by the parties in the contract itself, in the event that the contract is breached. Liquidated damages should be a reasonable estimate of actual damages that might result from a breach.

Specific Performance. If damages are inadequate as a legal remedy, the non-breaching party may seek an alternative remedy called *specific performance*. Specific performance is best described as the breaching party's court-ordered performance of duty under the contract. Specific performance may be used as a remedy for breach of contract if the subject matter of the agreement is rare or unique, and damages would not suffice to place the non-breaching party in as good a position as they would have been had the breach not occurred.

Cancellation and Restitution. A non-breaching party may *cancel* the contract and sue for *restitution* if the non-breaching party has given a benefit to the breaching party. "Restitution" as a contract remedy means that the non-breaching party is put back in the position it was in prior to the breach, while "cancellation" of the contract voids the contract and relieves all parties of any obligation under the agreement.

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