

Breach of contract

[Law](#), [Contract Law](#)



A type of contract, a legally binding agreement between two parties to do a certain thing, in which one side has all the bargaining power and uses it to write the contract primarily to his or her advantage[1]. Breach of Contract Common Breaches of Contract When any contract is made an agreement is formed between parties to carry out a service and payment for that service. If one of the parties fails to carry out their side of the agreement then the party can be said to be in breach of contract.

Breach of contract can also occur if work carried out is defective or if one party makes the other aware that they will not be carrying out the agreed work. Breaches of contract can also include non payment for a service or not paying on time, failure to deliver services or goods, and being late with services without a reasonable excuse. Terms and conditions are a fundamental part of a legally binding contract and any broken terms can lead to breach of contract. Types of Breach of Contract The main types of breach of contract will be minor, material, fundamental, and anticipatory.

Minor breaches can be, for example, a builder who substitutes his own type of materials for specified materials. The substituted materials may work just as well as the specified but it can still be seen as a minor breach of contract.

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A fundamental breach would be one so serious that the contract has to be terminated. An anticipatory breach is one where one of the parties makes it

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known that they will not be carrying out agreed work, and the consequences can be termination of the contract and damages being sought in court. Damages for Breach of Contract Damages can be awarded to an innocent party if a law court upholds that a contract has been breached. Damages will be used to compensate the innocent party for their loss due to the breach. These damages are usually a remuneration that will reflect the loss.

For example, if an employer dismissed an employee unfairly then the employee could claim damages for loss of earnings under breach of contract. Damages can be awarded even if there has been no actual loss, the innocent party will then usually be awarded nominal damages. Proof of Breach If a dispute does occur due to breach of contract then the judge will need to decide that a legally binding contract does exist and that it has been breached. In some cases the contract may only be a verbal contract and there may be no actual written evidence that a contract was formed.

In such cases a judge will need to go over the terms and conditions of the contract and clarify what actually took place in practice. Entitlement to damages may be awarded if the innocent party can prove that a breach of contract took place. The innocent party must prove that there was a loss due to the breach and that the nature of the loss would lead to compensation. Remoteness of loss will also be taken into consideration by the courts and may include future loss that could reasonably occur from the contract being broken. Other Damages due to Breach of Contract

Other losses can include loss of profits, the cost of rectifying the breach and wasted expenditure. If disputes do end up in the law courts then the amount awarded may come down to how much documented proof the claimant has

regarding financial loss. This can include actual records and document proof of financial loss due to the breach. However, if there is little proof, damages can still be awarded, this will be down to the judge ascertaining all of the facts of the case and not relying solely on documented proof. Breaching a contract can be a serious offence and is a very common reason for lawsuits.

Anyone considering court action due to breach of contract should seek expert legal advice before proceeding. Court disputes are a lengthy and costly procedure and the legal costs should be weighed up against the likely damages awarded. A detailed view of the law of contracts shows that the main reason for this law is to enforce promises and agreements that have been made. If a broken contract is taken to the law courts then there will be certain criteria that a judge will look at before deciding whether or not the contract can be enforced. The Elements of a Contract

For any contract to be considered legally binding the elements of offer and acceptance must exist. The origin of a contract or agreement will begin with the offer. With the unconditional acceptance of the offer the contract will then be formed. But there are other contract elements that are required by the law, and if these are not present the courts may decide there is no contract. The Offer and Acceptance With an offer there must be a willingness from the accepting party to enter into the contract. In order to make the contract complete there must also be specific terms and conditions set out and accepted.

Once all terms and conditions have been offered and accepted, and no further negotiations intended then the contract can said to be complete or full. Consideration Another important element in the law of contracts is <https://assignbuster.com/breach-of-contract/>

consideration. A contract may not be deemed to be enforceable by law if there was no consideration included. This means that there must be mutual consideration on either side; one person promises to provide a service and the other pays in return. Related on Contracts And Agreements... • New Law on Proving Consumer Contracts • Legally Binding Contracts • Employment Contracts Explained • Common Law Marriage Contracts Remedies for Breach of Contract • Contracts and Risk [pic][pic]Intention The fourth element in a contract is intention. When parties make an agreement with no intention of the agreement becoming legally binding then it will not be judged to be a contract under the eyes of the law. In some cases, such as commercial contracts, there is an assumption that the contract is intended to be legally binding. If one of the parties does want to bring the matter to court and argue that there was never any intention of a binding contract then they will need to have some form of clear written evidence. The Terms and Conditions If a contract dispute is brought to the law courts then great emphasis will be placed on the terms and conditions of the contract. A contract cannot be said to be complete if the terms and conditions are not fully laid out. These conditions must not be vague or ambiguous. A contract will not usually be seen as legally binding if the terms and conditions are unclear. However, every court case is different, and a judge may at times try to clarify the terms and conditions of the disputed contract. Type of Contract In most cases it makes sense to take the precaution of formalising all agreements with a written contract.

But a contract may be upheld even if it is made verbally. There are certain circumstances where contracts must be made in writing, such as the sale of

property or tenancy agreements. If no written contract or statement does exist, and the contract dispute has reached the courts, then the judge may look at how services, promises, and exchanges were carried out in practice in order to make a decision. Contract Discharge A contract can come to end in one of four ways; breach, performance, agreement and frustration. Discharge by performance means that all the obligations of the contract have been accomplished by both parties.

Agreement of discharge can mean that both parties agree to end the contract or one party releases the other party from the agreement. Frustration means that events have occurred that made the completion of the contract impossible and the obligations of the contract could not be met. Breaching a Contract A breach of contract can occur if one party does not fulfil one or more of the specified terms and conditions. It can also occur if the work carried out is defective or if one party makes the other aware that they will not be carrying out the agreed work.

The law can then be brought to judge on this contract dispute and can award the innocent part damages. The law of contracts can be a complicated matter, and serious consideration should be given along with expert legal advice if the court process is to be considered. Financial damages may only be awarded if the innocent party can prove financial loss. Court costs and solicitors fees should be weighed up against the likelihood of any damages awarded before proceeding with court cases. ----- [1]

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