

Ethic of contracts essays examples

[Law](#), [Criminal Justice](#)



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It is an accepted fact today that written contracts are a mainstay in the American legal lifestyle. However, as easy as writing a contract, getting out of it is almost equally as easy. On June 30, for instance, Donald Trump sued Univision, a Hispanic broadcasting organization, for \$500 million when the latter cancelled ties with his Miss Universe Organization from 2015 through 2019 over a racist remark against Mexicans during a presidential candidacy (Broke, 2015). Is it valid for Univision to cancel the contract on the basis of racial discrimination, a point unrelated to the broadcasting of Miss Universe pageants in the United States? Or, is contract breach or cancellation valid in the first place?

Contract theory is an attempt to establish some norms in understanding contract law and in its application (Murphy, 2007). It allows certain lines of thoughts that can govern or guide the use of contract law not just in a legal contract but also in ethical human interactions outside the legal dimension through the ethics of promising. However, there appears to be a disconnect between the legal perspective of contract and the ethics of promising. Liam Murphy, for instance, noted in the practice of law how civilian lawyers

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perceive the idea of a contract as a promise as in the minimum misleading. In fact, the norm appears to be that contract has nothing to do with the ethics of promise, or at least in a sense that it requires an account of such promise.

Recently, I have seen a heap of contracts that are to be processed for cancellation, not only because one party need not take a loss in doing so, but that such party can no longer make any profit out of it. That brought us to the dilemma of breaking or not breaking a contract; or at least of cancelling or not cancelling it. This essay will explore the underlying ethical diversity in the concept of contract making and the promises, which often had been logically presumed to follow both in the consideration of fulfillment and of damages in the absence of such fulfillment of promise.

Breaking or not breaking a contract

There is a presumption of law that, within every contract, a covenant or promise of “good faith” and “fair deal” exists, requiring both party not to perform acts that will cause injury to the other in exchange to the benefits bestowed in the agreement (Diamond, 1981). Moreover, it is presumed that something is morally wrong when a person breaks a contract or fails to meet contractual obligations (Shavell, 2005). Thus, a breach of contract presupposes an action of bad faith, which is presumably designed to injure the other party, particularly in terms of not reaping the expected benefit prescribed and described in the contract. The fact, however, is that courts has still confined the application of this principle in insurance contracts, particularly in an insurance company’s unreasonable refusal to pay the insured the due insurance proceeds or settle third party claims, as provided

for in the contract.

Even if defined as intentional with gross financial self-interest as motivation, breach of contract (e. g. by bad faith) continues to be an accepted stable in the judicial system as far as the commercial law is concerned (Shavell, 2005; Diamond, 1981). Even clamors for moralism to the contrary failed to influence the courts' opinions in this area (Diamond, 1981). In fact, both the doctrine of commercial law and its commercial practice makes it clear at close scrutiny that current legal systems sanctions it and even encourages it.

Perhaps the most influential, and certainly the most controversial, theory in the economic analysis of contracts, the so-called " efficient breach" concept, illustrates this legal environment (Katz, 2011). This theory insists that a contracting party should, in the interest of better and more profitable efficiency, be encouraged to breach a contract and pay damages than performing at all. It is an economic decision to choose to pay a small penalty in favor of a larger economic benefit derived from opportunities that a current contract may constrict, limit, or deny.

Cancelling or not cancelling a contract

Breaking a contract and cancelling a contract are essentially similar with subtle differences. While breaking a contract involves an obvious violation of the contract with or without prior notice, contract cancellation is a common practice in the United States and around the world whether in trading (e. g. commodities) or in finance contracts (e. g. hedges). For instance, American consumers, particularly Texans, have the right to cancel a contract within three days from execution by virtue of the right of rescission law (Abbott,

2015).

Moreover, the International Financial Reporting Standards (IFRS) recognized the validity of the inclusion of a contract provision for the unilateral enforceable right to terminate the contract without penalty or for a cancellation option within a longer contract (e. g. three years) that will be available to both party at the end of each contract year (Tirumala & Muir, 2014). This recognition affirms a global trend that perceives pre-termination of contracts as valid commercial recourse amidst the growing transactional complexity of today's business environment. In fact, the " cancellation option" constitutes a contractual option that provides " substantial flexibility" for the buyers in international transactions, usually as a built-in option in these contracts (Muller, Souza, & Zubelli, 2010). It also gives the contract owner the right to purchase products (e. g. financial or commodity) without an obligation to buy.

The seeming trend away from the strict adherence to contractual obligation runs counter to the presumption of law in contract performance (Diamond, 1981). In fact, the cancellation option provides a legal basis to override this presumption of law in order to efficiently effect profitable transactions with damages providing a means to mitigate whatever economic damages or any form of notional injustice committed in the process. Its undeniable prevalence in the contemporary commercial and legal environment presupposes its eventual universal acceptance.

An ethical issue to resolve

The ethics of promise describes an underlying presumption of trust and loyalty in any contract created, or at least validly created under the contract

law (Murphy, 2007). The idea of breaching a written contract fundamentally violates deontological ethics, which insists that the beneficiary of a promise has a right to receive that promise or the promise be performed (Katz, 2011). Thus, breaching a contract wrongs the promised party. Business literature refers to this ethics-based mutual obligation in contracts as a “psychological contract” (Ahmed & Muchiri, 2013; O’Donohue & Nelson, 2009), which, it insists, has negative impacts on job satisfaction, organizational behavior, employee wellbeing, and intention to stay or leave. There are three main types of contract theories: legal moralism, corrective justice, and instrumentality. The legal moralism theory sees contract law as the enforcement of a moral obligation (or the promotion of virtue) arising from the creation of contract. The problem with this theory is application because even the contracting parties do not view contracts as involving any form of moralistic obligations. They simply view a contract as a legally binding agreement that demands compensatory damages when broken with no talks about the morality of the breach, the fulfillment, or the determination of rightful damages.

This brings the argument to the theory of corrective justice, which insists that breaking a contract involves a consequential penalty for damages needed to “correct” the injustice incurred in breaking the contract. A variant of corrective justice is the notion of the right to performance, which insists on the right of the promise to the performance of the promise (Murphy, 2007). It insists an ethics of promise rather than of monetary remedy as the norm of corrective justice. This means that the remedy to the breach of contract is no other than performance of the promise. However, common law

practice fails to support this argument, adopting compensatory damages instead as the default remedy to satisfy corrective justice.

Another variant is concept of reasonable detrimental reliance theory, which insists that compensation for detrimental reliance damages in the remediation of contract breach adequately satisfies corrective justice (Murphy, 2007). Unlike the earlier two theories, this theory does not adopt any ethical foundation, whether morality or the ethics of promise; thus, never presuming that any promise made in the contract had intentions to be kept.

Conversely, instrumentality theory (as a group of variant theories) neither aims the promotion of moral behavior or virtue (as opposed to legal moralism theory) nor the compensation from wrongful harms (as opposed to corrective justice theory). However, it does not preclude either moral behavior or remedy. It simply aims to obtain a broad social good in the creation of contract (Murphy, 2007). Thus, contracts are simply instruments for the common good of the society. Interestingly, this appears to be the common theory underlying the use of contracts even among lawyers today. Moreover, supporters of the efficient breach theory argues that the theory is not necessarily inconsistent with the deontological ethics because contracts normally have a provision or two that anticipates the practical need to cancel the contract when better conditions or options arise provided that any penalty of cancellation as provided must be settled by the breaching or cancelling party. Katz (2011) insisted that the ethical issues, facing the efficient breach theorists as far as those who oppose it are concerned, are actually of the aretaic nature; that is, the belief that failing to complete,

satisfy, or fulfill a contract is not virtuous, or at least not consistent with virtuous character. This brings the issue of contract fulfillment from the contractual loss of the cancelled party to the issue of essential virtuousness the way legal moralism and corrective justice theories appear to support. It is like using virtue ethics to decide over the profit-loss concerns of the contracting party, particularly that of the cancelled party under the assumption that the cancelling party 'profited' or gain advantage, though not necessarily over the cancelled party, from the act of breaching or cancelling the contract.

Another issue that virtue ethicists should settle first before proceeding in the argument against the efficient breach theory is whether or not efficiency is a virtue, or, at the minimum, not a vice (Katz, 2011). As far as commercial application is concerned, the moral question of virtue is never an issue and, if such is, efficiency can be easily labeled as a virtue.

Conclusion

In the contemporary commercial and legal environment, the notion of ethics underpinning contractual behaviors is in fact inconsequential in the decision making process of contracting parties. Legal moralism is essentially out of favor as contractual relationships dominantly follow instrumental theories and favor efficient breach theory and cancellation options. This is particularly true in prevailing commercial and legal principles underlying contracts; although, academics tend to continue the ethical argument in these non-academic transactions. While ethical discourses on contracts are important activities in pushing for ethical social behaviors, commercial and legal facts continued to refuse adoption in practice.

Perhaps, the time invites both scholars and practitioners to make a clear distinction over valid issues for discussions in the business and societal venues of opinion. For instance, in the commercial arena where economic benefits constitutes an essential part, principles must be within the valid context of commercial objectives and not mix it with ethical issues that are not relevant to the parties in contract. Apparently, the question is not about whether the ethics of promise is valuable or not. Instead, the question is whether it is contextually valid at all.

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