

Effects of breach of contract



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Effects of a Breach of Contract There are various types of contract with in the world of law such as civil law which deals with relations between individual citizens where as private law focuses on the relations between ordinary people on a day to day basis, both types of law include the law of contract. A contract is an agreement that is legally enforceable and therefore can be settled within a court of law, however how can we distinguish between a contract and any other form of non-legally enforced statement.

If I promised to wash someone's car yet I don't in fact wash the car can I be held to a contract? In this case I can not simply because a promise is not a contract although there is no rule stating that all contracts must be in writing in fact a contract can very easily be done verbally or by action of which are known as parole or simple contracts. A statement is only a statement when it holds all four elements these being 1. Offer 2. Acceptance 3. Intention to create legal relations 4.

Consideration. Within a contract there are also what are known as clauses which simply express what both parties to the contract have agreed to. An example of a clause would be a car dealer selling his old car and we'd agreed on the price of the car in the process the car dealer says he will fill the car with petrol and I agree to only buy the car as long as there is no more than 15, 000 miles on the dial and as long as the car had not been involved in any accidents.

When I receive the car the tank is empty however that statement was a representation rather than a term as it did not hold a great deal of importance, however I find out that in fact the car had been involved in a car crash and had more than 15, 000 on the dial and therefore the car dealer

has breached the contract, therefore legal action can be taken. It is key to note the four tests that are carried out to figure out whether something is a term or representation these are 1.

The importance of the statement 2. The time between making the statement and making the contract 3. An oral statement before a written contract 4. One party to the contract has special skills or knowledge. There are 3 types of terms 1. Conditions 2. Warranties 3. Innominate Terms. A condition is a basic but a fundamental part of the contract if breached the other party can end the contract, refuse to perform their part of the contract or continue with the contract but then sue for damages when completed.

A warranty on the other hand is not a vital part of a contract and if breached the other party must continue with the contract however they can then sue for damages at the end. An example of breaching a condition would be if a contract might specify that ABC Corp sells XYZ Corp 500 umbrellas for ? 5,000 on the condition that the umbrellas are inspected by XYZ Corp. for defects and their quality approved by the company. If the 500 umbrellas are inspected by XYZ Corp and found by that company to be defective, the contract becomes void.

ABC Corp is not required to deliver the umbrellas, and XYZ Corp is not required to pay for the umbrellas. An example of breaching a warranty would be if a warranty reads " this umbrella is guaranteed to not tear, rip or break for two years from the date of its purchase. " This is known as an express warranty, because it is very clearly stated. Another type of warranty is known as an implied warranty. Implied warranties are created by state law and essentially guarantee that a product will satisfy its intended purpose.

When a warranty on a contract for sale of goods is breached, the party protected by the warranty, or the party purchasing the goods, is entitled to damages. Those damages may be specifically stated in an express warranty. For example, a product may guarantee that a product will last seven years or the purchaser is entitled to her money back. An innominate term can be either a condition or a warranty depending upon how serious the breach of contract actually is in a court of law if they feel the breach was serious they will consider it as a condition whereas if the breach is less serious it will be classified as a warranty.

Within a contract there is also what is known as implied terms of which are not stated expressly by the parties involved but are still very much regarded as being a term within the contract. Three ways in which an implied term becomes a part of a contract are 1) Implied by statute an example would be the Sale of Goods Act 1979 so if a contract is made regarding food and quality isn't expressly mentioned within the contract then automatically the Sale of Goods Act 1979 applies therefore making the quality of goods mandatory.) Implied by custom an example of which would be if a farmer employs a worker within the agreed contract the farmer agrees to provide a place to live however within the contract itself it does not state which individual will pay for gas, electricity and the use of the telephone. If this case was then taken to court the worker could easily argue that although it was not stated in the contract that it is custom for the farmer to pay for the gas and electricity and that any calls made the worker would then pay for. 3) Implied by court in simple terms is the court changing a contract only if it makes good business sense to do.

Within a contract there are also exclusion clauses which are clauses that are written down stating if something was to go wrong that one party can avoid or at the very least limit liability for the breach of contract. For an exclusion clause to actually be properly included within a contract it first must be legal also the clause can not be added after the contract has been made as well as this if there is not an actually signed contract printed documents or sign posts that clearly indicate the terms can also be included within the contract so long as they are brought to the attention of both parties before making the contract.

An example would be taking a parking ticket from a ticket machine the individual is only bound by the terms brought to the individual's attention before taking the actual ticket, simply because a contract is only formed when you take the ticket itself. Therefore a car park owner can not rely upon an exclusion clause that may be printed on the back of the ticket as nothing was done before the ticket was collected to make the individual aware of any exclusion clauses.

If the car is then damaged whilst in the car park due to lack of security or care then the car parking company is liable despite the exclusion clause. [Thornton v Shoe Lane Parking Ltd. (1971)]. Innominate Terms The definition of an innominate term is a contractual term that may turn out to be either a condition which is vitally important to a contract or a warranty which has less importance within contract this is dependent upon the effects and damages towards the innocent party.

It was first established in the case of Hong Kong Fir Shipping v Kawasaki Kisen Kaisha and has been heavily criticised as it sacrifices certainty an

example of when an Innominate term has been used is Schuler were manufacturers of certain tools and Wickman were a sales company granted the sole right to sell certain tools manufactured by Schuler. A term of the contract between the parties was described in the contract as being a condition and provided that Wickman would send a sales person to each named company once a week to solicit sales.

This imposed an obligation to make 1, 400 visits in total. Wickman failed to make some of the visits and Schuler terminated the contract for breach of condition. Despite the fact the contract had expressly stated the term was a condition, the House of Lords held that it was only a warranty. [Schuler v Wickman Tools [1974] AC 235 House of Lords]. My own personal view is that there is a place for innominate terms in contract law, even though there are flaws it allows for a court of law to look into a contract that may be very much one sided to one party and level the playing fields.

Many terminations in a contract are used as a condition even though the stated terms are not vitally important and are simply there to have an edge over the other party involved. Therefore I strongly believe that a court being able to look over a contract and even the situation when one party is clearly taking full advantage of the other is a reasonable and sound procedure.

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