Contract Law: Contract Remedies and Consumer Protection

All contracts have to come to a close, or, in legal terms, be “discharged.” What happens when one, or both, of the parties to a contract fail to live up to their end of the deal? We have come up with laws that help protect the sanctity of a contract. The courts can impose remedies.

Remedies: methods of enforcing rights and preventing compensating violations (ranging from making sure contract gets fulfilled to award for monetary damages).

Rights and Obligations

Privity of Contract: only the parties to the contract can enforce the rights and obligations created by the contract

There are exceptions to the rule of privity. The two most common occur in cases involving insurance contracts and trusts.

*Example: In the case of a life insurance policy, the contract is between the insurance company (the insurer) and the individual purchasing the policy (insured). The insurer's obligation to pay only arises upon the death of the insured, at which time the company must pay the value of the policy to the beneficiary. If the rule of privity were strictly followed, then the beneficiary, as a stranger to the contract, would not be able to sue the insurance company if it failed to pay out the policy.*

Trust: an arrangement whereby one person gives property or money to another person (the trustee) who must look after it for a third party.

Assignment of Contract: the transfer of the rights and obligations of a contract to another party

*Example: In professional sports, when a player is traded from one team to another, the new team usually assumes the player's existing contract with respect to salary, benefits, and so on. The contract has been assigned, or transferred to the new team.*

Vicarious or Substitute Performance: a situation whereby some of the contractual obligations are performed by a third party.

*Example: In construction industry, a general contractor will take on a building job, and then subcontract tasks.*

Discharging a Contract

When a contract is discharged, or brought to an end, it means that the parties are no longer bound by any obligations within it.

Contracts can be discharged in four ways:

* by performance
* mutual agreement
* frustration
* and breach of contract
1. Discharge by Performance

A contract can be discharged when the parties involved complete their parts of the bargain satisfactorily.

*Example: Jake hires Matt to build a deck. The contract is discharged by performance when Matt has finished building the deck and Jake pays him.*

If one party refuses to perform their part of the contract, the other party is usually not obligated to complete their part of the bargain.

*Example: If Matt does not build the deck, Jake does not have to pay him.*

Substantial Performance – carrying out the essential elements of a contract

When substantial performance has occurred, the courts may treat the contract as if it is discharged, even though some of the minor details have not been fulfilled.

1. Discharge by Agreement

The parties to a contract may wish to end the contract even if all of its terms have not been completed.

Novation: agreement of the parties to substitute a new contract for an existing one; the old agreement is thereby canceled.

*Or, the parties might cancel or terminate the contract, which means that they agree to discontinue performance of the terms of the contract.*

1. Discharge by Frustration

Frustration: an event that makes performance of the contract impossible.

*Example: A band has signed a contract to perform at an outdoor concert, and a violent storm erupts on the night of the show making it impossible, the contract would be frustrated.*

Frustration may also occur because property is destroyed, one of the parties becomes ill or dies, or a change in the law makes the contract illegal. When frustration exists, the parties to the contract cannot sue for breach of contract.

A party cannot intentionally make performance impossible and then rely on the principle of frustration.

1. Discharge by Breach

Breach of Contract: failure by a party to perform obligations agreed to in the contract

*The effect of a breach is not a simple matter; for example, breach does not necessarily terminate a contract. In some cases, the party who has not received what was agreed to under the contract may be released from contractual obligation. In other cases, the party who has not breached the contract may have to continue to perform the obligations agreed to and can sue only for the damages that resulted from the breach.*

Specific Performance: the party breaching the contract is ordered by the court to perform its part of the agreement

Breach of Condition

The law distinguishes between terms in a contract that are more important and those that are less important.

Condition: A very important term of a contract

If a condition is not fulfilled, it amounts to a failure of consideration because one of the parties did not get what he or she bargained for.

Repudiation: words or conduct that indicate one of the parties will not honour its obligations under the contract

Breach of Warranty

If a minor term of the contract is not performed, a breach of warranty exists.

*Example: Suppose Madeline contracts to paint Elisha's dining room. One of the terms of the contract is that paint splatters will be removed from the windows after the painting is done. The job is done beautifully, but the paint splatters are not removed. Elisha is not relieved of her contractual obligation to pay Madeline. However, she can deduct the amount she pays someone else to remove the paint splatters from the money she owes Madeline.*

Exemption Clause: are terms in contracts stating that one of the parties will not be liable for certain specified things.

*Example: A parking lot that has a sign stating, “Manager not responsible for any loss, damage or injury to persons/vehicles or contents however caused. Use property at own risk.”*

Remedies for Breach of Contracts

Since a contract is a legally enforceable agreement, the parties involved are bound by the terms of the contract. If the contract is breached, the courts may become involved and impose a solution, or a remedy to help the injured party. Remedies may be in the form of damages, specific performance, or injunctions.

Damages: money awarded by the court for actual losses resulting from a breach of contract

*Example: If Steve agreed to paint Bill's tool shed and neglected to paint the trim, then Bill could sue for damages that would amount to the cost of having the job completed. One cannot sue to punish someone, only to recover your actual losses.*

Specific Performance: is often used in situations involving unique property, art, antiques, and other similar goods.

*Example: Heather agrees to sell her rare Wayne Gretzky rookie card to Steve. The next day Heather changes her mind and won't sell. Steve can sue for breach of contract. He may not want damages, and may have the court order Heather to sell him the card at their agreed upon price.*

Injunction: a court order requiring a party to perform, or prohibiting it from performing, a specified act.