

Breach of Contract

Existence of a contract, breach of the contract, and damages resulting from the breach. What could be simpler?

Actually, there are many pitfalls for the unwary in breach of contract cases.

First, a contract must be enforceable at law to provide the basis for a suit. Many contracts aren't. For example, a contract in contemplation of marriage (e.g., Harriet tells Harry she will give him title to her farm if he will marry her) is not enforceable in most jurisdictions today. Contracts for the sale of goods valued at more than \$500 cannot be enforced in most jurisdictions today unless committed to a writing that is signed by the defendant, and contracts for the performance of services that cannot be performed in the space of one year are only enforceable if committed to a writing signed by the defendant. So, the first pre-requisite is that the contract be enforceable at law.

Second, the breach must be committed without justification. For example, if Tom promises to deliver 75 bushels of apples to Bill on Tuesday for \$25, and Tom shows up a day late with the apples, Bill has no obligation to pay, and Tom has no cause of action for breach of contract. Tom breached first.

Finally, damages suffered must be a *direct* result of the breach. Consequential or incidental damages are ordinarily not recoverable. The most famous example is the case of Hadley v. Baxendale, an English case in the Court of Exchequer (1854), brought by a mill owner against a millwheel crankshaft repairman.

The learned judges wrote in their opinion, after reviewing the jury verdict against the mill owner Hadley, “We think that there ought to be a new trial in this case; but, in so doing, we deem it to be expedient and necessary to state explicitly the rule which the Judge, at the next trial, ought, in our opinion, to direct the jury to be governed by when they estimate the damages. It is, indeed, of the last importance that we should do this; for, if the jury are left without any definite rule to guide them, it will, in such cases as these, manifestly lead to the greatest injustice.”

The court’s instruction in law to the jury follows and should be noted carefully by all students of law and particularly those seeking damages for breach of contract. “Now we think the proper rule in such a case as the present is this: Where two parties have made a contract which one of them has broken, the damages which the other party ought to receive in respect of such breach of contract should be such as may fairly and reasonably be considered either arising naturally, i.e., according to the usual course of things, from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties, at the time they made the contract, as the probable result of the breach of it. Now, if the special circumstances under which the contract was actually made were communicated by the plaintiffs to the defendants, and thus known to both parties, the damages resulting from the breach of such a contract, which they would reasonably contemplate, would be the amount of injury which would ordinarily follow from a breach of contract under these special circumstances so known and communicated. But, on the other hand, if these special circumstances were wholly unknown to the party breaking the contract, he, at the most, could only be supposed to have had in his contemplation the amount of injury which would arise generally, and in

the great multitude of cases not affected by any special circumstances, from such a breach of contract. For, had the special circumstances been known, the parties might have specially provided for the breach of contract by special terms as to the damages in that case; and of this advantage it would be very unjust to deprive them.”

In other words, damages resulting from breach of contract cannot arise from more than the obligation agreed to by the breaching party. Baxendale didn't agree or consider that he'd be liable to Hadley for lost profits while the millwheel shaft was repaired. He only undertook to repair it as quickly as was reasonably within his power to do, and the court decided (in an opinion that continues to be honored by courts today) that damages for breach of contract should only be those contemplated by the parties, i.e., damages for which they agreed in their contract to be liable one to the other ... not consequential or incidental damages.

So, that being said, the essential elements in their barest form follow.

Elements

1. Existence of an enforceable contract.
2. Acts of the defendant that constitute his breach of the contract.
3. Damages to the plaintiff resulting from defendant's breach.

As stated at the beginning of this book, merely listing the elements in this form exposes the complaint to a motion to dismiss, because ...