



Defendant's Guide To Understanding Breach of Contract Lawsuits



*By Nowland Law
The Law Offices of Thomas F. Nowland
Business Litigation Attorneys*



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Table Of Contents

What is a Breach of Contract Lawsuit?

Which laws govern Breach of Contract disputes?

How much does a Breach of Contract Lawsuit Cost?

Top Contract Lawsuit Myths

Finding the Right Business Contract Lawyer for your Case.



What Is A Breach Of Contract Lawsuit?

John Lennon once said, "Life is what happens when you are busy making other plans." Yes, "life happens." We make plans that change, fail or are abandoned all the time. In our personal lives, this leads to disappointments. In our business lives, this leads to contract litigation.

When a company or individual has agreed to do or not do "something" via contract (verbal, written, or implied), failure to do so breaks that contract. Regardless of intent, or ability, the 'harmed party' can sue to recover 'damages' (money) they expected to have, had the contract been fulfilled.

We should point out that Contract Law and the study of contract breach is an enormous study with almost infinite depth. This book is a quick read summary, offering useful ideas to keep in mind as you move forward in dealing with a case. There are four core types of Contract Breach:



Minor Contract Breach

A Minor breach is technically a failure in the contract, but one that does not constitute a major damage.

Also called a 'partial breach', a minor breach is usually not as severe or 'important' than larger breaches.



Example 1: A hotel contracts with an interior decorator to re-design and re-decorate a hotel bar area. The hotel requests that there be a traditional crystal chandelier. Weeks later, during the walk-through of the finished redesign, it is revealed that the designer had purchased, delivered and installed a more modern metal and glass chandelier.

Example 2: Another common example is of the differing pipe grades. If a pipe contractor is contracted to install Grade A pipes, but instead installs Grade B pipes, this could be a minor breach.



However, minor breaches can be graduated to major or material breaches in court. In the example of the crystal chandelier, had the contract specifically stated they wanted a traditional crystal chandelier, which would classify as a major breach. The contract could have also stated that all purchases and decisions for the project would have to be submitted and approved by the hotel. Obviously if the contractor ordered the wrong chandelier and did not submit it for approval, this would be a major breach.

Breaches can also be graduated to Material Breaches.

Material Breaches

This level of breach is one in which the court can force the failing party to resolution. Resolution could mean:

1.) Compelling the failing party to perform and fulfil the contract.
- 2.) Financial damages.

Example: A flooring contractor was contracted to deliver an exotic Mountain Grade Jabota wood flooring, and the contractor delivered a sub-par, generic material, the flooring contractor may be forced to cover the costs of ripping up the inadequate wood product, purchase the contract-specified wood, and re-install it.

This being said, courts are reluctant to enforce these situations. Courts try to be sensitive to "Pricing In" a contract, or avoiding "Economic Waste".

"Specific Performance" tries to keep 'damages' fair. Let's say a contractor agrees to provide iron pipes, but instead installs PVC pipes. The cost of tearing down the walls, tearing down the pipes,

buying new iron pipes, replacing them, putting up the walls again, painting/decorating, and paying the lodging costs of the owner might be excessive punishment. Instead a judge might say, 'the house would have been worth \$10,000 more had the correct iron pipe been installed. Thus, we order the contractor to pay \$10,000 in damages."

Economic Waste Example: In the same scenario as above, it could be considered "Economic Waste" to pull out brand new PVC pipes to throw them away and replace them with Iron pipes.

As is common in law, there is a little bit of grey area. Law does not offer a flowchart for every possible situation. Therefore, general "tests" can be considered by judges. For Material Contract Breaches, these tests could be determining if the failure of performance is significant based on:

- (a) the extent to which the injured party will be deprived of the benefit which he reasonably expected;
- (b) the extent to which the injured party can be adequately compensated for the part of that benefit of which he will be deprived;
- (c) the extent to which the party failing to perform or to offer to perform will suffer forfeiture;
- (d) the likelihood that the party failing to perform or to offer to perform will cure his failure, taking account of all the circumstances including any reasonable assurances;
- (e) the extent to which the behavior of the party failing to perform or to offer to perform comports with standards of good faith and fair dealing.

-American Law Institute, Restatement (Second) of Contracts § 241 (1981)



In Our Business Lives,
[dissapointment] leads to
Contract Litigation.





Fundamental Contract Breaches

Fundamental (also known as repudiatory breaches) are breaches that are so significant that the “aggrieved” party is able to cancel the contract and the failing party is liable for damages.

For example, a food distribution company in Brazil harvests a type of catfish only known in Brazil. It is highly desired. Let’s say a fictional town in California throws a “Brazilian Catfish Festival”, which is centered around this certain kind of catfish. A United States sea-shipping company agrees to deliver the shipment of catfish to the Festival organizers by April 3rd, which is two days before the festival.

The Shipping company double-books its vessel and instead dedicates its vessel to another customer’s shipment. The shipping company decides the other customer’s shipment is worth more to them, and notifies the Festival organizers that they will not perform on the contract. The law could compel the shipping company to fulfill their duty, and/or pay for damages caused by not originally fulfilling the contract.

Anticipatory Contract Breach

Anticipatory Breaches are contract failures and breaches that occur before the actual date that any deliverables, goods or services are to be rendered.

For example, let’s say a construction contract signs a contract with a vehicle manufacturer to build its manufacturing plant. Mid-way through the contract, the construction company owner tells the vehicle manufacturer that he is having labor issues and will be unable to complete the job. The vehicle manufacturer can sue in order to require the construction company fulfill their end of the contract. Although the construction company may not have technically failed to perform yet, there was substantial reason to believe that the breach would have occurred.

In another example, let’s say an olive oil farmer contracts with olive oil buyer for a contract of 12 months. It stipulates that every two weeks, the farmer will deliver 10 barrels of olive oil. Four months into the contract, the farmer gives notice that there has been equipment failure that will prevent him from fulfilling the contract. The buyer



The buyer may want to cancel the contract so they can begin a contract with another provider. The farmer insists that the buyer give him more time to fix the equipment. Should the buyer want to walk away from the situation, they could move to terminate the contract based on anticipatory breach to save time and money.

Next Chapter... "Which Laws Govern Breach of Contract?"



Keep Scrolling



Which laws govern Contracts?

Because there is no comprehensive Federal Law that governs contracts, each state has its own laws on all matters of contract law. Below, you will learn about some of the national legal codes that cover Contract Law, and the body of law that handles contracts in California.

Uniform Commercial Code

The UCC is an ambitious effort by the American Law Institute and the National Conference of Commissioners on uniform State Laws that has been ongoing since 1942. The effort is to produce uniformity that is flexible enough to allow for state laws across complicated multi-state transactions.

Although many parts of a contract dispute might cross over into various parts of the Uniform Commercial Code, the specific area to look at is Article 2, "Sales". This covers Contract Formation and Contract Breach.

Federal Arbitration Act

This law provides enforceability to most arbitration agreements.

California Public Contract Code

This law deals with public contracts between a public entity and a private entity, or a public entity and a public entity. (For example, a city routinely holds bids and hires contractors to fulfil duties like street sweeping, animal removal, street repair, etc.)

Next: Controlling Costs

California Civil Code

The California Civil Code also provides specific guidelines on Contract Law.



How much does Contract Litigation Typically Cost?

Thankfully, we have a general answer to this question. The Court Statistics Project is a program between the National Center for State Courts and Conference of State Court Administrators. It keeps detailed statistics on cases across all fifty states, D.C., and Puerto Rico.

According to a 2013 Study by the Court Statistics Project titled, "Estimating the Cost of Civil Litigation", it gives a range of prices that are usually paid out, by estimating the amount of attorney and staff hours. These costs cover attorney fees and costs for issues like Case Initiation, Discovery, Settlement Negotiation, Pre-trial, Trial and Post-disposition.

The study estimated that the median cost of a contract case would be \$91,000. With any median number, that means you may realistically pay less than that, or more than that. \$125,000 contract cases are not unheard of.



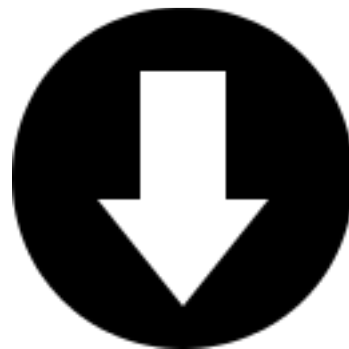


How do I control costs?

One should keep in mind the above estimates are for cases that are resolved by a judge, and do not include settlement figures (or damages, if a judge rules against you). It is typically more expensive to bring a case to resolution. Depending on a case, it is sometimes recommended to go into negotiations to resolve the case before the trial, for everyone's benefit.

You should speak with your lawyer about strategies to reduce cost. Nowland Law stands behind business owners and knows that our long-term success is dependent upon our client's success, so we strive to hold reasonable and fair compensation.

Our greatest strength is legal strategy founded on knowledge. Our goal in working with you would be to craft excellent strategies to help resolve this issue magnitudes quicker and cheaper than fighting out an expensive litigation.



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Top Contract Lawsuit Myths

Myth: Settling (or attempting to settle) admits wrong standing, defeat, or weakness.

Reality: Settling, or suggesting settling is the most common ways business disputes are resolved. Unfortunately, the cost to litigate is a huge consideration in whether to move forward with a dispute or not. A great example of businesses that settle lawsuits routinely, despite the fact that they feel they are in the right is the controversial trend of 'copyright trolling.'

Companies that exist just to hold patents will look for a company that has a technology or method they consider similar to their patent, even though the company has never built a product or sold it. Companies who consider the patent violation claim to be unfounded or even ridiculous will settle to avoid the cost of litigation.

Myth: There is only a valid contract if two or more parties have signed.

Reality: As we discussed above, there are multiple types of contracts that are entirely valid and enforceable despite the fact that the terms of the contract have never even been written down. These

are implied contracts, verbal contracts, and quasi-contracts.

Let's say a car breaks down in the middle of the road. A tow truck happens upon it and pulls over. The owner asks the tow truck driver if he could tow him to the nearest shop. A month later, the driver receives a bill. He refuses to pay, arguing that there was not a contract. The courts will uphold a fair market value benefit to the plaintiff, as it was implied there was a contract.

Myth: There is a cool-off period after I have signed a contract.

Reality: Unfortunately, there is no law that states you have 3 days, or some other period of time in which you can cancel a contract. (Some consumer cases are different in some states, such as the purchase of a personal vehicle.) Unless there is a provision in the contract that states there is a cool-off period, the contract goes into full effect and force the moment both parties agree to it.



How to Find the Right Contract Lawyer to Defend You

Finding a lawyer or Law Firm to represent your company in a contract dispute should be a high priority. Ultimately, it comes down to trust. Upon interviewing the various lawyers, which ones inspire trust that they are a competent guide? Which lawyer do you feel would be a competent representation that aims to represent your company as if their company was on the line? Additionally, look for a lawyer who is open and honest about your best interests.

A good lawyer will be as upfront about costs as possible. It is impossible to build an invoice at the start of a case. As the case unfolds and decisions need to be made, no one knows what the choices you will make. No one knows what choices the plaintiff will end up making... or the judge. All three parties have a hand in making the dispute end quickly, or dragging it out. Despite this open question mark, a good lawyer will not shy away in discussing specific ways to make sure fees are reasonable and appropriate.

A good contract litigation lawyer should be paid for the knowledge, skills, expenses and expertise, but the lawyer should also care about your overall

business goals. They should seek to keep their fees reasonable and fair.

A good breach of contract lawyer can advise you when it would be a good idea to settle, or if you should litigate at all. This shows they are putting your interests above theirs. A good contract lawyer will advise against aggressive litigation if you do not have a strong case, or if the plaintiff has a rock solid case.

Closing:

Contract Breaches, and ensuring a favorable outcome for you is such a high stakes matter. There are many areas to 'win' or 'lose' at every stage. Demands, Pre-Trial, Settlement & Negotiations, and so on.

Look for a law firm or attorney that has years of experience handling contract disputes, and can be a trusted defender of your interests.

The Law Offices of Thomas F. Nowland offers free and confidential consultations for new contract litigation via telephone at (949) 221 – 0005. We are open Monday – Friday from 9am to 5:30pm

Question About Your Case?

Nowland Law would love to hear it.

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