



TU 122 LAW IN EVERYDAY LIFE

Contract Law

Breach of Contract

Pananya Larbprasertporn



Basic Principles of Contract

Breach of Contract

When a contracting party fails to perform the contract without justification, he breaches the contract.

Main Remedies for Breach of Contract

- (1) Specific performance (Section 213)
- (2) Damages (Section 215)
- (3) Termination of contract (Section 387-389)

Additional Remedies for Breach of Contract

Default Interest (Section 224)



Remedies for the Breach

(1) Specific performance (การบังคับชำระหนี้โดยเฉพาะเจาะจง)

The creditor has the right to demand the debtor to perform in accordance with the nature of obligations (or in other words, the objects of the contract) (Section 213)



Remedies for the Breach

E.g. Promphon ordered a second-hand vintage dress from the 1960s in internet. It was promised that the dress would arrive within a week. Two weeks passed. Promphon can ask the court to order the seller to deliver her the dress.



Remedies for the Breach

Except that:

1. The obligation becomes impossible. (Sections 218 and 219)
2. The contract is terminated. (Section 391)
3. The creditor claims damages instead of (specific) performance. (Section 216)



Remedies for the Breach

Exceptions

1. The obligation becomes impossible.

- When the debtor is responsible → the debtor shall compensate the creditor for any damage arising from the non-performance. (Section 218)
- When the debtor is not responsible → the debtor is relieved from his obligation to perform. (Section 219)



Remedies for the Breach

E.g. The seller has already sold that vintage dress to another customer.

E.g. Unfortunately, the shop was burnt without the seller's fault. The dress was completely destroyed.



Remedies for the Breach

Exception

2. The contract is terminated.

- If one party has exercised his right to terminate the contract, each party is bound to restore the other to his former condition; but the rights of third persons cannot be impaired. (Section 391)



Remedies for the Breach

E.g. After Pongpak has turned 20, he wanted to propose to his loved one. So he went to the jewellery shop of Pawinee and chose one engagement ring. Pongpak agreed with Pawinee that he would give his old diamond family ring in exchange of the engagement ring. But he forgot to bring the ring with him. Pawinee told him to bring it in two weeks, but he could already have the engagement ring.



Remedies for the Breach

With the ring, he proposed.

However, after two weeks, Pongpak still did not give Pawinee his old family ring.

Pawinee exercised the right to end the contract.

Q: Can Pawinee demand Pongpak to give her his family ring?

Q: Will Pongpak's loved one needs to return the ring to Pawinee?



Remedies for the Breach

Exception

3. The creditor claims damages instead of (specific) performance.

- If by a reason of default, the performance becomes useless to the creditor, he may refuse to accept it and claim compensation for non-performance. (Section 216)



Remedies for Breach

E.g. Promphon ordered a dressmaker to make a dress for the BE prom. The dress was not delivered on time, so she needed to order another dress. Because the time was very limited, the new dressmaker charged her extra money.

After the prom, the first dressmaker sent her the dress. Promphon refused and demanded the first dressmaker to pay her the extra charge she paid to the second dressmaker.



Remedies for the Breach

(2) Damages

Section 215. “When the debtor does not perform the obligation in accordance with the true intent and purpose of the same, the creditor may claim compensation for any damages caused thereby.”

Two general rules:

1. Damages must be compensatory.
2. Damages must be monetary.



Remedies for the Breach

Scope of Damage

Section 222. “The claim of damages is for compensation for all such damage as usually arises from non performance. (***Normal damage***)

The creditor may demand compensation even for such damage as has arisen from special circumstances, if the party concerned foresaw or ought to have foreseen such circumstances.” (***Special damage***)



Exercises

Are the items below considered normal or special damage?

- The higher price which the creditor buyer had to pay for a new object and the expenses of the new purchase
- The rent for the period during which the debtor remained in the property after the lease expired



Exercises

Are the items below considered normal or special damage?

- The increased price of the materials used by the creditor for completing a building in the property
- The profits which the debtor earned from selling the object to a third party



Remedies for the Breach

(3) Interest (Monetary debt ONLY)

Section 224. “A money debt bears interest during default seven and half percent per annum. If the creditor can demand higher interest on any other legitimate ground, this shall continue to be paid.

Interest for default shall not be paid upon interest. (only on the capital หรือเงินต้น)

Proof of further damage is admissible.”



Remedies for the Breach

E.g. Thippayaporn sold her computer to Purich for THB 7,000. Having studied BBA, she got Purich to agree that if Purich failed to pay money on time, he would also need to pay interest at the rate of 15% per year.



Remedies for the Breach

(4) Termination of Contract

A contract may be terminated either by agreement or by law.

Termination by Law

Section 387 – Normal breach → A period of grace is required.

Section 388 – Time is of essence → A period of grace is not required.

Section 389 – Impossibility of performance due to the debtor's fault → A period of grace is not required.



Remedies for the Breach

Section 387 TCCC. If one part does not perform the obligation, the other party may fix a reasonable period and notify him to perform within that period. If he does not perform within that period, the other party may rescind the contract.



Remedies for the Breach

E.g. Theerathorn ordered a car. It was due on September 10, 2019. However, the car dealer failed to deliver the car on that day. Could Theerathorn end the contract immediately?



Remedies for the Breach

Section 388 TCCC. If the object of a contract according to its nature or to an intention declared by the parties can be accomplished only by performance at a fixed time or within a fixed period, and such time or period has passed without one of the parties having performed, the other party may rescind the contract without the notification mentioned in the foregoing section.



Remedies for the Breach

E.g. Promphon ordered a dressmaker to make a dress for the BE prom. The dress was not delivered on time.

Can Promphon cancel the contract?



Remedies for the Breach

Section 389 TCCC. If performance becomes wholly or partly impossible by a cause attributable to the debtor, the creditor may rescind the contract.



Remedies for the Breach

E.g. Wipawee sold her car to Porntawan. Before Wipawee gave the car to Porntawan, Wipawee parked the car outside the house and forgot to lock the car. The car was stolen.

Can Porntawan end the contract?



Remedies for the Breach

Section 391(1) TCCC. If one party has exercised his right of rescission, each party is bound to restore the other to his former condition; but the rights of third persons cannot be impaired.

Section 391(4) TCCC. The exercise of the right of recession does not affect a claim for damages.



Remedies for the Breach

E.g. Promphon ordered a dressmaker to make a dress for the BE prom. The dress was not delivered on time, so she needed to order another dress. Because the time was very limited, the new dressmaker charged her extra money.

After the prom, the first dressmaker sent her the dress. Promphon refused. She demanded the first dressmaker to give her money back and to pay her the extra charge she paid to the second dressmaker.