



TU 122 LAW IN EVERYDAY LIFE

# Contract Law (4)

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## Basic Principles of Contract

### Breach of Contract

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

### Remedies for Breach of the Contract

- (1) Specific performance (Section 213)
- (2) Damages (Section 215)
- (3) Interest (Section 224)
- (4) Termination of contract (Section 387-389)

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## Remedies for the Breach

### (1) Specific performance

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), *except* that:

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

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## 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)

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## 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)

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## 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)

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## 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.

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## 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**)

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## Exercises

### Are the items below considered normal or special damage?

- (1) the higher price which the creditor buyer had to pay for a new object and the expenses of the new purchase
- (2) the loss of profits the creditor may earn from an increase in land values
- (3) the rent for the period during which the debtor remained in the property after the lease expired
- (4) the increased price of the materials used by the creditor for completing a building in the property

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## Exercises

**Are the items below considered normal or special damage?**

- (5) expenses incurred after the breach (incidental loss)
- (6) the payment of deposit
- (7) the payment of stipulated penalty
- (8) the profits which the debtor earned from selling the object to a third party

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## 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.

Proof of further damage is admissible."

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## 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 ➡ Giving a period of grace before termination

**Section 388** – Time is of essence ➡ Instant termination

**Section 389** – Impossibility of performance due to the debtor's fault ➡ Instant termination

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