

Contracts – Contractual Duties

Rights (benefits that you receive under a K) vs. **Duties** (obligations created by a K)

Assignment (transfer of contractual rights) vs. **Delegation** (transfer of contractual duties)

Assignor – party that *assigns* (transfers) contractual rights to another

Assignee – party who *receives* these contractual rights

Obligor – party who owes a contractual duty (also known as the debtor)

Assigning Contractual Rights

- **Assignable Rights:** Can usually assign rights as long as performance will not be materially affected; Examples when assignment is OK: mortgages, student loans, car loans
- **Non-Assignable Rights:** May not assign rights if performance would be materially changed or if performance becomes substantially more difficult
 - Rights may NOT be transferred if: (1) Contract prohibits assignment or (2) Rights to personal services, skilled services or when personal trust is involved
- Assignee has all the contractual rights and duties that the assignor had (you no longer have any claim to those rights); if the obligor breaches then the *assignee* is the one who sues

Delegating Contractual Duties (similar to assignment rules)

- **Duties You Can Delegate:** Can usually delegate “routine” duties as long as performance will not be materially affected
- **Duties You Cannot Delegate:** May not delegate duties where performance requires unique personal skills or special qualification; or if contract specifically prohibits delegation
- Even though you delegate your contractual duties to someone else, you are still responsible for satisfactory performance (ex. general contractors & subcontractors)

Discharging a Contract (end of duties under contract) ... *usually* by complete performance

- **Complete** (or substantial) **Performance** (both parties complete duties under K – no breach)
- **Agreement** (both parties agree to a change in the contract)
 - Rescission (agree to return both parties to where they were before K)
 - Accord & Satisfaction (both parties agree to change K by substitution and carry it out)
 - Novation (accept a new/substitute party to perform duties of K)
- **Impossibility of Performance** (external factors stop performance – not lack of \$)
 - Destruction of Subject Matter (not by one of the parties)
 - Performance Declared Illegal (after contract made but before performance)
 - Death or Disability (if contract requires personal services from party)
- **Operation of Law**
 - Bankruptcy (obligation discharged by bankruptcy court)
 - Statute of Limitations (time expires under statute of limitations for performance)
 - Alteration of Contract (material; intentional; made by one party w/o other’s consent)
- **Tender of Performance** (one party offers – *in good faith* – to perform *exactly* as required under K, but is rejected – discharges their obligation under contract)
 - Legal Tender (money) for *exact* amount due

Breach of Contract (failure to provide complete performance ... default)

- **Major Breach** (discharges other party’s obligations and allows them to sue)
- **Minor Breach** (does NOT discharge other party’s obligations ... must still pay for work done)
- **Anticipatory Breach** (party tells you they will not perform ... can treat as immediate breach)

Contracts – Enforcement of Contracts

Remedies for a Major Breach

- **Rescission and Restitution** – canceling the contract and returning whatever was received; intended to place parties in the same legal position they were in before the contract
- **Damages** – the payment of money to compensate for injury; Types of damages include:
 - Compensatory Money Damages (actual damages)
 - Consequential Money Damages (foreseeable damages)
 - Liquidated Money Damages (agreed-upon damages in the contract)
 - Nominal Damages (small amount to recognize rights have been violated)
 - Punitive Damages (courts may award punitive damages to punish the breaching party – usually in situations of fraud, intentional tort, etc)
- **Specific Performance** – a court order commanding the breaching party to perform what was promised in contract; Specific performance only available if:
 - Money Damages Inadequate (must be unable to be compensated with \$)
 - Subject Matter Unique (rare items, real estate)
 - Ability to Supervise (court must be able to supervise the specific performance)
 - Clean Hands (party seeking specific performance must be blameless)
- **Injunction** – court may prohibit someone from benefiting from the breach (usually used for employment Ks ... can't force someone to work, but can stop them from working for others)
- **Waiver** – a party may voluntarily give up a contractual right ... by “waiving” it
 Sometimes an injured party intentionally gives up contractual rights ... he waives his rights
 - Pattern of Waivers (usually, one waiver does not mean that future breaches will be waived, but a pattern of waivers over time may!)
 - Form of Waiver (waivers can be either be express or implied from conduct)

Election of Remedies (an injured party MUST CHOOSE a remedy when suing); most of the remedies are mutually exclusive (cannot have more than one at a time)

Requirement to Mitigate Damages The injured party must usually take reasonable steps to minimize their damages ... they must try to *mitigate* damages
 - failure to mitigate (minimize) damages will eliminate or dramatically reduce available damages

