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Topics for Discussion


1. What is a breach of contract?
2. Minor verses a Material Breach
3. What constitutes as damages?
4. What are unfair and deceptive trade practice claims?
5. What happens if signatures are questionable on contract claims?

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Essential Elements for a Breach of Contract


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Essential Elements for a Breach of Contract

1. A valid contract exists;
2. A breach of the contract;
3. There is a proximate cause of the breach to the contract; and
4. Damages due to the breach


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Minor versus a Material Breach

- Is the breach at the "heart of the contract"? Fletcher v. Fletcher
- Even if there are a few details not kept in the contract, does the failure of those details render the goals of the contract fulfilled?
- Material breach is where the breach causes the non-breaching party to receive something substantially different from what the contract promised.
- "Substantially defeats the purpose of the contract or can be characterized as a substantial failure to perform" Long v. Long


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Minor verses a Material Breach


- In determining if the term is material, you may consider the following:
 - The subject matter and purpose of the contract;
 - What were the intentions of the parties?
 - What was the scope of performance reasonably expected by the parties?
 - Are there prior dealings between the parties?

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Anticipatory Repudiation


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Anticipatory Repudiation

- What does this mean?


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Anticipatory Repudiation

- A party to a contract could refuse to fulfill or discharge a contract obligation with respect to a performance that is not yet due by:
 - A communication of their intention not to perform the contract terms; or
 - Demonstrates a clear determination not to continue with the contract terms.
- The action must substantially impair or impact the value of the contract in it's entirety.


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Anticipatory Repudiation

- What is this and how can it help me?

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Adequate Assurances

- A party who has reason to believe that the other party is unwilling or unable to comply with the contract terms can ask the potential breaching party to provide "adequate assurances" that the contract obligations will be fulfilled.
- Request needs to be in writing;
- Reasonable time for the party to respond (typically 30 days)
- If no response, repudiation of the contract can be established.

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What are Damages?

- Damages in business cases could consist of:
 - Specific performance
 - Money damages: the direct, natural, and proximate result of the breach
 - Restitution
 - Rescission: cancellation of the contract and returns the parties to the pre-contractual status;
 - Liquidated damages: a sum which a party to the contract agrees to pay if they breach the contract;
 - Nominal damages: a small trivial sum awarded due to no actual loss or injury;
 - Punitive damages: not allowed for a breach of contract in business by itself.

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Questionable Signatures on Contracts

- Did you know the signatures were forged?
- Are the signatures notarized or witnessed?
- Using a handwriting expert.
- Question for the Court or jury.

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Questionable Signatures on Contracts


- Forged Signatures:
 - North Carolina considers nearly any form for forgery as a felony due to the element of fraud.
 - How did the signature show up on the contract?
 - Knowledge by the parties to the contract?
 - With consent?

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What are Unfair and Deceptive Trade Practices?


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Unfair & Deceptive Trade Practices

- N.C. Gen. Stat. § 75-1.1
 - Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are declared unlawful.
 - What is unfair and deceptive?
 - Unfair: "offends established public policy as well as when the practice is immoral, unethical, oppressive, unscrupulous, or substantially injurious to consumers"
 - Deceptive: "It has the capacity or tendency to deceive."


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Unfair & Deceptive Trade Practices

- North Carolina case law explains:
 - There must be some type of egregious or aggravating circumstances
 - A violation of this statute is unlikely to occur during the course of contractual performance
 - "A mere breach of contract, even if intentional, is not sufficiently unfair or deceptive to sustain" a cause for UDTP.
 - But an unfair & deceptive trade practice can arise out of a breach of contract if there are substantial aggravating circumstances

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Unfair & Deceptive Trade Practices

Examples of conduct that would be or have been considered unfair and deceptive

- Price gouging during an emergency or market disruption
- Builder representing he could build an improvement in a particular location and in a particular size when he knew it was impossible
- A car dealer informing potential buyers a car had not been in an accident when in fact the car had been in an accident
- Fraud or deception when it arises to immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers


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Unfair & Deceptive Trade Practices

- Other examples of conduct that would be or have been considered unfair and deceptive
- A contractor making a cancellable contract and then refusing to provide the homeowner with the forms required to cancel
- Misrepresentations by a seller to persuade a buyer to make a purchase


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Unfair & Deceptive Trade Practices

- To succeed on a UDTPA claim, a claimant must prove actual injury resulting from the wrongful conduct
- The damages must have been caused by the wrongful act

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Unfair & Deceptive Trade Practices

If a UDTPA claim is established, the claimant can recover:

- Attorneys' Fees
- Treble Damages (3 times the amount of the actual damages)

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Questions?


If you have any questions or comments, please let us know.

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