

Assignment, Delegation, and Breach of Contract

It is Monday evening. The Novak family is having dinner.

Jake: *Say, Dad, did Mr. Grillo try to make you pay for that antique printing press that went over the cliff with that delivery truck?*

Mr. Novak: *No, thank goodness.*

Jake: *Well, if he had tried to make you pay, I would have sued him.*

Juleanne: *Big talk. You'd never sue anybody.*

Jake: *And just how do you know that?*

Juleanne: *You could have sued Mr. Johnson for fraud when he sold you that crummy car of his.*

Jake: *I didn't have to sue him. He gave me my money back, and he took that crummy car off my hands.*

Juleanne: *You should have sued him anyway.*

Jake: *And ask the court to do what? Send him to jail?*

Jennifer: *Sure.*

Juleanne: *You can't send somebody to jail for breaking a contract. You can get money out of him, but you can't send him to jail. I learned that in business law.*

Jennifer: *That's not true. Tony's mother sued Mr. Takamura and forced him to sell her the house he'd promised to sell her.*

Juleanne: *That's different. A house is real property.*

Jarod: *What's a car? Unreal property?*

Mr. Novak: *All right. Let's not bicker about things. Especially tonight.*

Jarod: *Why not tonight?*

Juleanne: *Dad has some good news, don't you?*

Mr. Novak: *Yes, as a matter of fact I do.*

Jake: *That will be a change. Give us the news.*

Mr. Novak: *Do you remember my competition, the Eastern Print Shop?*

Jake: *Sure. Mr. Remec runs that outfit.*

Jennifer: *He tried to undercut your prices, didn't he?*

Mr. Novak: *That's right. Well, it seems he was a little too successful. He overextended himself and couldn't do the work. He transferred a lot of his jobs to me. I'll be very busy for months.*

Jennifer: *That's great.*

Mr. Novak: *There's more. Remember I was going to sue that life insurance company for not paying me on Uncle Leo's life insurance policy?*

Jarod: *I still don't know why Uncle Leo made you his beneficiary on that policy.*

Mr. Novak: *I was his favorite nephew.*

Jake: *You were his only nephew.*

Mr. Novak: *Well, that too. Anyway, the insurance company is dropping the lawsuit.*

Jake: *Does that mean we're rich?*

Mr. Novak: *Not exactly, but we'll be comfortable.*

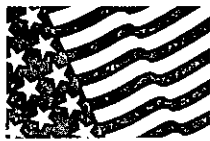
Jake: *Well, all's well that ends well.*

Mr. Novak: *Yes. I guess you could say that.*

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The Spirit of the Law

We saw in Chapter 10 that when people enter into contracts, they receive rights (benefits) and incur duties (detriments). In most cases, people retain the rights and carry out the duties themselves. Occasionally, however, people transfer their rights or their duties (or both) to someone else. With some exceptions, the law allows this to be done, if the parties have not agreed otherwise. There are also times when a party does not carry out the terms of a contract at all. When this happens and the other party to the contract suffers a loss, the law provides a remedy, that is, a legal means of correcting the wrong.

Legal Issues:

1. Can duties be transferred to others without the approval of the original party?
2. Can the beneficiary of a life insurance policy bring suit against the insurance company to enforce the rights granted under the policy?
3. Can someone who is not a party to a contract bring suit for breach of that contract?
4. Is a request for money damages the only remedy an injured party may seek in court for a breach of contract?
5. If a party to a contract does not suffer a loss resulting from a breach of contract, may that party still sue the breaching party?

Transfer of Rights

A party to a contract may legally transfer his or her rights under the contract if it does not state otherwise. The transfer of a right under a contract is called an **assignment**. The party who transfers the right is called the *assignor*. The party to whom the right is transferred is called the *assignee*. The assignee is a third person who is not a party to the original contract.

Example 1. Anthony Cuomo entered into a contract with Cathy Michaud to paint her house for \$1,800. Cuomo was pleased to get the contract because he owed \$1,800 to his landlord, David Brown. Before painting the house, Cuomo assigned the right to receive the money to Brown. When it came time to pay for the paint job, Michaud paid the \$1,800 to Brown rather than to Cuomo.

How Rights May Be Assigned

No consideration is necessary for an assignment to be valid. In most cases, the law does not specify the form in which a right may be assigned by one party to another. Usually the assignment should be in writing. An oral assignment might be legal, but it would be hard to prove.

Let's consider why it would be important for the assignment to be in writing. Suppose that the party to whom money is owed decides to assign the rights to the money. The party who owes the money is entitled to notice of the assignment. If that party is notified or shown the written assignment,

Reducing Legal Risks

Document assignments of contracts in writing; be sure the third party receives a copy. Keep in touch with any person to whom you delegate a duty; if that party fails to perform, you may be liable. Try to settle any breach of contract out of court.

then he or she is legally bound to pay the assignee only; payment to the assignor will not discharge the debt.

Example 2. Nathan Ecker, a landlord, assigned to Richard Taft a claim for \$700 rent due from one of Ecker's tenants. The tenant was notified of the assignment. Shortly thereafter, Ecker moved to another state. Taft has the right to receive the \$700 from the tenant.

What Rights May Be Assigned

Most rights may be assigned unless the assignment changes the obligations of the other party to the contract in an important way. In Example 1, when Cuomo assigned the right to receive the \$1,800 to Brown, Michaud's obligation (to pay out money) did not change. The assignment was valid. However, consider the following example:

Example 3. In Example 1, Michaud has the right to have her house painted. If she were to assign that right to some other homeowner, Cuomo's obligation would be materially changed. He would be required to paint a house other than the one he had planned to paint. Such an assignment would be void. Rights to receive personal services are usually not assignable.

An assignor can only assign the rights he or she has and nothing more. An assignee takes those rights subject to other people's defenses.

Example 4. Suppose, in Example 1, that when Cuomo assigned the right to receive the \$1,800 to Brown, Cuomo then did a very poor job of painting the house. Michaud could raise the defense of a poor paint job if she were sued by the assignee, who wanted to collect \$1,800.

Rights to the payment of money (wages, money owed on accounts, royalties on books) and rights to the delivery of goods are the most common types of rights that are assigned. After the assignment, the assignor no longer has an interest in the right that was assigned. This right now belongs exclusively to the assignee.

Generally, no special form is required when making an assignment. Any words that clearly indicate a person's intent are sufficient. This writing may be made on a separate paper, or it may be placed on the back of a written contract containing the rights to be assigned. Figure 14-1 on page 184 shows a sample assignment of rights to wages.

Transfer of Duties

Duties may at times be transferred to someone else. This transfer of a duty is called a **delegation**. A delegation should not be confused with an assignment. An assignment is a transfer of rights; a delegation is a transfer of duties. A party to a contract delegates another person to perform the obligation in his or her place.

Example 5. In the opening vignette, Mr. Remec, owner of the Eastern Print Shop, was in financial trouble. He had overextended himself and could not meet all of his printing contracts. He transferred his contract obligations to Mr. Novak, who was not a party to the original contract.

YOU
And The
LAW

Does your state have any laws that govern assignment of a contract? Are the laws different for certain contracts? What special laws pertain to contracts involving minors?

ASSIGNMENT

KNOW ALL MEN BY THESE PRESENTS:

That I, JOHN P. BENEY, residing at 1131 39th Street, New York, New York, in consideration of (\$1) paid by LYDIA A. BENIQUEZ, residing at 24379 Riverdale Parkway, New York, New York, (herein called "the Assignee"), hereby assign to the Assignee all my right, title, and interest in the monies due me from JOSEPH ORMOND, for work, labor, and services as a carpenter performed by me, between May 1, 19—, and May 31, 19—, which services were performed at the request of said JOSEPH ORMOND, and were of the agreed value of two thousand, two hundred dollars (\$2,200).

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 1st day of June, 19—.

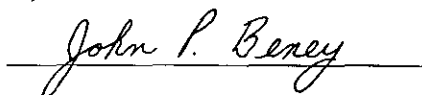




Figure 14-1 A party to a contract may assign his or her rights to another. In the assignment above, who is the assignor? The assignee?

While the performance of an obligation may be delegated, the responsibility for it may not. The delegating party continues to be liable for the terms of the contract. If the person having the work done and the person doing the work both understand the situation, it is perfectly all right to delegate the duty of doing the work to someone else. This is really a form of subcontracting and occurs many times in business contracts. It is quite common, for example, in building contracts.

Duties may not be delegated when (1) a party agrees to perform the service personally, (2) the contract calls for the exercise of personal skill and judgment, or (3) the contract itself prohibits delegation.

Example 6. Suppose, in Example 5, that Mr. Remec had told Mrs. Kolenich, one of his best customers, that he would personally do her printing for her. He could not then delegate the job to Mr. Novak.

Duties that require personal skill and judgment, such as the duties of teachers, writers, artists, or entertainers, cannot be delegated to others. Such persons are selected to perform their services because of the particular skill they have.

The offeror and the offeree may include in their contract an agreement that the contract may not be assigned or delegated. In this case, both parties are restrained.

Example 7. Herbert Ryan contracted to build a garage for Roberta McGovern. The contract said that Ryan would do the work himself and that he would not assign or delegate the contract to any outside third party. A contract of this type could, ordinarily, be assigned or delegated to another competent builder. The words of this particular contract would prevent any such action.

Novation

In answer to Legal Issue 1, one party to a contract does not need permission of the other party to assign his or her rights or to delegate his or her duties to a third person. If he or she does receive permission to do so, however, and the other party agrees to deal with the assignee, the resulting contract is called a novation. A **novation** is an agreement whereby an original party to a contract is replaced by a new party. The other terms of the new contract generally remain the same as those in the original contract. To be effective, the substitution requires the consent of the parties involved in the transaction.

Example 8. One of the jobs that Mr. Remec delegated to Mr. Novak was the printing of a book for Henrietta Gladstone. Mr. Remec also assigned the right to receive the money to Mr. Novak. Mr. Novak agreed to do the job, and Ms. Gladstone agreed to release Mr. Remec from all obligations and deal solely with Mr. Novak. This substitution of parties is a novation.

Third Parties

A contract is a binding agreement that establishes a relationship between the parties to the contract. This relationship between the parties is termed **privity of contract**. It determines who can sue whom over a question of performance required by a contract. Usually the parties to a contract have standing to sue.

Example 9. In the opening vignette, Jake threatens to sue Mr. Grillo for breach of contract if he tries to make Mr. Novak pay for the destroyed antique printing press. Jake will be unable to bring such a suit. He is not a party to the original contract between Mr. Grillo and Mr. Novak. The transaction is really of no concern to him. He might argue that he received some benefit under the contract because his father would gain possession of the antique press. However, this would be only an incidental benefit. Jake has no standing to bring suit.

In answer to Legal Issues 2 and 3, a third person may sometimes enforce a contract when it is made specifically for that person's benefit. A person who is not a party to a contract but who benefits from it is called a **third-party beneficiary**.

Example 10. In the opening vignette, we learn that Uncle Leo bought a life insurance policy, naming his nephew, Mr. Novak, as beneficiary. When Uncle Leo died, the insurance company refused to pay Mr. Novak, claiming that Uncle Leo had not disclosed to them that he had cancer. Mr. Novak claimed that his uncle did not know that he had the illness when he took out the policy. Mr. Novak was an intended beneficiary of the life insurance contract; he has standing to bring suit against the insurance company. Although he was not a party to the original contract, he is entitled to enforce the rights under it.

FYI

English common law was based on the premise that persons cannot have rights in a contract unless they are parties to that contract. Insurance contracts in which a third person, not a party to the contract, benefits from the contract, necessitated a change in this assumption.

LAW & Ethics

On Monday, Kelly agrees to paint Bill's car next Saturday. On Tuesday, Kelly takes another job that may keep her from painting Bill's car Saturday. What are Kelly's responsibilities to Bill? What are Bill's responsibilities to Kelly?

Breach of Contract

As you saw in Chapter 12, a breach of contract occurs when one of the parties fails to do what he or she agreed to do. When parties refuse to fulfill their obligations, either by failing to carry them out or by carrying them out in an incomplete or unsatisfactory manner, they are said to have breached the contract. Contracts are usually breached after the performance date.

Sometimes, however, parties to a contract notify the other party of their intention not to go through with the contract before the time for performance. This is called **anticipatory breach**. They have breached, or violated, the agreement *before* they were required to act. Formerly, the injured party had to wait to bring suit until the time for performance had arrived and passed. However, decisions in many states now permit the injured party to bring an action for damages immediately without waiting for the actual time for performance to arrive.

Example 11. You make a contract with a carpenter to build a game-room in the basement of your house. The carpenter is to begin work on June 20, but on January 9 she calls you and says that she will not do the job as agreed. You have the right to bring an action for damages against the carpenter anytime after January 9 for an anticipatory breach.

The principle of anticipatory breach does not apply to promises to pay money at some future date. Someone who refuses to pay money owed on a future date cannot be sued until after the payment is due.

Remedies of the Injured Party

When a contract is breached, the injured party has a choice of remedies, as indicated in Legal Issue 4. A **remedy** is a legal means of enforcing a right or correcting a wrong. The injured party may (1) accept the breach; (2) sue for money damages; or, on some occasions, (3) ask the court to order the other party to do what he or she agreed to do.

Acceptance of Breach

When one party breaches a contract, it is an excuse for the other party not to perform. The other party may, if desired, simply accept the breach and consider the contract discharged. As Legal Issue 5 suggests, this may often be the best choice, especially if no damages have been suffered. If suit were brought, the winner would receive only *nominal damages*. Such damages are a very small sum of money, such as one cent or one dollar, to recognize that there has been a breach of contract but no real loss suffered.

Money Damages

If the injured party has suffered a loss, he or she may sue for money damages that resulted from the breach of contract. **Damages** are payment recovered in court by a person who has suffered an injury. The money damages should, by law, place the injured party in the position he or she would have been in if the contract had been carried out. Figure 14-2 on page 187 summarizes the kinds of damages available. Let's take a close look at some selected categories of damages. Remember that to try to recover

Damages

Type	Description
Actual Damages	An amount of money awarded for damages directly attributable to another party's breach of contract or tort, for example, physician's fees when one party wrongly injures another, and financial losses resulting from failure to deliver goods already contracted for.
Compensatory Damages	An award of an amount of money that compensates a complainant for the injuries suffered and nothing more.
Consequential Damages	Damage, loss, or injury (such as loss of profits) that does not flow directly and immediately from the act of the party but only from some of the consequences or results of such act.
Incidental Damages	Reasonable expenses that indirectly result from a breach of contract. They include expenses such as those incurred in stopping delivery of goods, transporting goods, and caring for goods that have been rightfully rejected by a buyer.
Liquidated Damages	An amount of anticipated damages, agreed to by both parties and contained in a contract, to be the basis of any award in the event of a breach of the contract.
Nominal Damages	Damages awarded by a court when a successful plaintiff has proven a legal injury but no actual resulting damages; six cents by common law, usually \$1 today.
Punitive Damages	Damages in excess of losses suffered by the plaintiff awarded to the plaintiff as a measure of punishment for the defendant's wrongful acts. Also called <i>exemplary damages</i> , because they set an example of punishment awaiting other wrongdoers.
Speculative Damages	Damages not founded on fact but on the expectations that a party may have hoped for from a contract that has been breached; not allowed in any claim for money damages.

Figure 14-2 Suing for money damages is one remedy for breach of contract. To try to recover damages, what must the injured party do?

damages, the injured party must make tender—that is, must offer to do what he or she agreed to do under the contract.

Actual and Incidental Damages

In actions for breach of contract, the injured party is permitted to recover the *actual damages* caused by the other's failure of performance. For instance, the measure of damages for a buyer's breach of contract for the sale of land is the difference between the contract price of the land and its market value at the time of the breach. When a seller breaches a contract for the sale of goods, the measure of damages is the difference between the market price at the time of the breach and the contract price plus incidental

damages. *Incidental damages* are any reasonable expenses resulting from a breach that have been incurred by the buyer.

Example 12. Yukio Tanaka contracted with a bookstore to buy a set of encyclopedias at a price of \$1,500. The store failed to deliver the set of books according to the agreement. After investigation, Tanaka learned that the same set of books would cost \$1,800 at any other bookstore. Tanaka is entitled to sue for his actual damage, which is the difference between \$1,500 and \$1,800, or \$300, plus any expenses incurred in getting the books at the other bookstore (incidental damages).

Liquidated Damages

Damages agreed upon by the parties when they first enter into a contract are called *liquidated damages*. The parties may include in their contract a statement of agreed damages, in case either one breaches the contract. They agree beforehand that these will be the damages to be sought in the event of a suit. The law requires that liquidated damages be reasonable.

Example 13. The Young Supply Company ordered a machine for its new plant, which was being built in Sacramento. The machine was a vital link in the production of a new product. The Young Company had inserted in its contract with the seller the following terms: "The Young Company will be paid \$500 each day beyond the date agreed upon for delivery of said machine." Considering the profits that might be lost through delay in delivery, the liquidated damages provision would be considered reasonable and proper.

Specific Performance

Sometimes the remedy of money damages is not enough to repay an injured party for a breach of contract. On some occasions, the injured party may sue for **specific performance**. To obtain specific performance, the injured party asks the court to order the other party to do specifically what he or she agreed to do. This remedy can only be used, however, when money damages are not sufficient to give relief.

Example 14. Doreen Russell contracted to sell Betsy Keller a valuable book, the only one of its kind in existence. Russell then breached the contract and refused to sell. Money damages would not be adequate in this case because the book could not be purchased elsewhere. The court would order Russell to turn the book over to Keller for the agreed price.

As Example 14 illustrates, specific performance can be granted when the subject matter of the contract is rare or unique. It will not be ordered in the case of contracts involving common and available goods or easily obtained services.

This particular rule is especially important in real estate contracts. The law considers each parcel (separate piece) of real estate to be unlike any other parcel of real estate, if for no other reason than that the locations are different. For this reason, it is usually possible to sue for specific performance of an agreement to buy or sell real estate.

FYI

In 1947, Congress created the Federal Mediation and Conciliation Service to help resolve labor disputes between workers and their employers. The service may be called upon any time a labor dispute threatens to cause a substantial interruption of interstate commerce, such as during a prolonged strike or lock-out. The goal of the service is to prevent or minimize the interruption by bringing the parties together to collectively negotiate an alternative means of settling the dispute, such as mediation.

Example 15. In the opening vignette, Juleanne reveals that Tony's mother, Mrs. Cavaretta, sued Mr. Takamura when he tried to breach a contract for the sale of a house. However, Mrs. Cavaretta did not ask for money damages because money would not have compensated adequately for the loss. Rather, she asked for specific performance. The court ordered the sale because the house is considered real property, and is therefore subject to the remedy of specific performance.

Minimizing Damages

An injured party must take all reasonable steps to minimize the damages that might result from the other party's failure of performance. At all times, the injured party will be obliged to protect the other party from any unnecessary losses. This principle is known as **mitigation of damages**.

Example 16. Peter Lister contracted to deliver 1,000 baskets of tomatoes from his farm to a cannery. When he tried to deliver the tomatoes, the canner would not accept them. Lister would be obligated to try to sell the tomatoes to another buyer. Then he would be allowed to demand payment from the cannery for the difference between what he got for the produce and what the cannery had agreed to pay.

Resolving Disputes

Settlement Conference

People often resolve disputes in settlement conferences. A settlement conference is a proceeding in which an agreement is made or a transaction takes place, in private, without a judge or court proceeding. If a satisfactory compromise can be reached in a settlement conference, the case may not have to go through a full court procedure.

A settlement conference can be initiated at any stage of the dispute. It may take place before or after a complaint is officially filed, during a trial, or after a trial. The location for the conference varies, usually depending on when it takes place. It may take place in an attorney's office, in an attorney-client conference room in the court building, or in the judge's chambers.

Settlement conferences are initiated by different people, for different reasons. For instance, an attorney or a judge may believe

that the parties will settle their differences if given the opportunity. Or perhaps one of the disputing parties wants to avoid the risk, delay, and expense of a court proceeding.

If a case goes to trial and the court verdict does not differ significantly from the defendant's last settlement offer, the plaintiff may be required to pay the defendant's legal expenses. For example, consider Calvin Porter, a plaintiff who refuses a defendant's settlement conference offer of \$25,000 and is awarded \$27,500 in a court trial. This award is only 10 percent higher than the defendant's last offer. The judge orders Calvin to pay the defendant's court costs. This practice encourages plaintiffs to settle out of court.

1. When can a settlement conference be initiated?
2. Why might disputing parties want to compromise in a settlement conference?

14 Review



Summary

Carefully read the summary below before completing the chapter review.

1. The transfer of a right under a contract is an assignment. The party who transfers the right is the assignor. The party to whom the right is transferred is the assignee. The assignee is not a party to the original contract.
2. Duties may sometimes be transferred. The transfer of a duty is called a delegation. Duties may not be delegated when (a) a party agrees to perform the service personally, (b) the contract calls for personal skill and judgment, or (c) the contract itself prohibits delegation.
3. A novation is an agreement whereby an original party to a contract is replaced by a new party. The other terms of the new contract generally remain the same. The substitution requires the consent of all parties involved in the transaction.
4. Usually, only the parties to a contract have the right to sue to enforce that contract. However, a third-party beneficiary may enforce a contract that is made specifically for his or her benefit.
5. A breach of contract occurs when one of the parties fails to do what he or she agreed to do.
6. When a contract is breached, the injured party has a choice of remedies. A remedy is a legal means of enforcing a right or correcting a wrong. The injured party may (a) accept the breach, (b) sue for damages, or (c) ask the court to order the other party to comply.
7. The principle of mitigation of damages states that an injured party must try to minimize damages that might result from the other party's failure of performance.



Language of the Law

Choose the term from the list that best completes each sentence below. Then write the complete sentence on a separate sheet of paper.

- | | | |
|-------------------------|-----------------------|---------------------|
| anticipatory breach | specific performance | privity of contract |
| assignment | mitigation of damages | damages |
| third-party beneficiary | remedy | novation |
| delegation | | |

1. A person who has suffered an injury can recover _____ in court.
2. The relationship between the parties to a contract is termed _____.
3. A(n) _____ is a legal means of enforcing a right or correcting a wrong.
4. To obtain _____, the injured party asks the court to order the other party to comply with the contract's terms.

5. A(n) _____ is an agreement for replacing the original party to a contract with a new party.
6. According to the principle of _____, an injured party must try to minimize damages.
7. The transfer of a right under a contract is called a(n) _____.
8. A party's violation of an agreement before action is required is called _____.
9. The transfer of a duty is called a(n) _____.
10. A(n) _____ is a person who may enforce a contract made specifically for his or her benefit.



Questions for Review

Answer the following questions. Refer to the chapter for additional reinforcement.

1. How does an assignment differ from a delegation?
2. What rights may be assigned?
3. What duties may be delegated? When may duties not be delegated?
4. Who is a third-party beneficiary? When may a third-party beneficiary enforce a contract?
5. What is a breach of contract? Give an example.
6. What remedies are available to the injured party in a breach of contract?



Applying Critical Thinking Skills

Apply your understanding of the chapter concepts by answering the questions below.

1. What are some examples of contractual duties that could be delegated? Are there some circumstances in which these duties might *not* be delegated? If so, give examples of those circumstances.
2. If the duties of a contract are delegated, who is liable for making sure the contract terms are met? Why?
3. The parties to a contract often have special names to better identify how they relate to one another. For example, the parties to a contract by which one person agrees that another may occupy a place to live upon payment of money are called landlord and tenant, or lessor and lessee. The contract between them is known as a lease. What other names for contract relationships can you find?
4. How does a third-party beneficiary differ from a party to a novation?
5. How does a party recover for anticipatory breach of a contract?



Applying Writing Skills

Write an example of an assignment in which Jeremy Dillard's right to payment for Esther Holloway's yard work is assigned to Peter Foster to pay the balance of the debt Jeremy owes him. Use Figure 14-1 on page 184 as a guide.