Business Law: CIMA Year One

Non-Performance of the Contract

There are four main types of breach of contract:

- If a one party deliberately makes it impossible to complete the contract, for example damaging goods before delivery,
- If one party refuses to perform,
- If the goods delivered are damaged (unintentionally), or
- If a warranty is breached.

In the first three cases, the contract can be repudiated, or, if the contract has been affirmed, a claim can be made. In the fourth case, only damages can be claimed.

Non-Monetary Remedies

There are two remedies for breach of contract which do not involve monetary damages:

- Specific performance occurs when the courts force action on one party. This is normally used for the sale of goods, *especially land*, which cannot easily be sourced from elsewhere. It is not used very often for services, as it can be thought of as a form of slavery or forced labour.

Nutbrown v Thornton (1804) N had contracted to buy machinery from T, of a type which was not readily available elsewhere. T eventually refused to sell the machinery; the courts granted specific performance and forced T to sell.

- Injunction occurs when the courts stop one party from taking a specific action.

Warner Bros v Nelson (1937) N's contract held that she could only act and sing for W (and no other firm) during the period of her contract. The courts upheld an injunction preventing her from working for another studio.

Sales of Goods Remedies

If the seller has breached the contract, the buyer has two remedies:

- Repudiation (that is, obtaining a refund for any money paid), or
- Repudiation and damages for non-delivery or for breach

If the buyer has breached the contract, the seller has three remedies:

- Lien (the seller has a property right over any goods in their possession which have not been paid for),
- Price (where ownership has transferred, this makes the buyer pay but only the price of the goods), or
- Damages for non-acceptance

If the wronged party is suing for non-delivery or for non-acceptance, then the damages awarded will be the difference between the contract price and the market price. This is termed the Market Rule.

> Thompson v Robinson (Gunmakers) Ltd (1955)
> R bought a car from T, but later refused to accept it or pay for it. Had the contract been performed, T would have made £61 profit (the difference between the contract price and the price at which T had bought the car). T sued and was awarded £61 damages.

Quasi Contracts

Quasi contracts occur when, during the negotiation stage of a contract, one party starts performing in anticipation of the contract being made, only for the negotiation to break down. When this occurs, a claim can be made for the work already done.

> British Steel Corporation v Cleveland Bridge (1984)
> C sent B a letter of intent, which included a request to carry out works. B started to manufacture the steel needed for the contract. The proposed contract, however, had B liable for unlimited damages for delay. B would not accept this, so negotiations broke down. The courts held that B had assumed a liability that they would not have accepted if the negotiations had continued, and C knew of this action. Moreover, given that no agreement had been reached on a term which would have been a condition, no contract had been formed. Therefore B was entitled to recover the full value of work done on the basis of quantum meruit.

Damages for Breach

When calculating the damages to be awarded in case of breach of contract, a number of factors are taken into account.

Remoteness and causation: it must be true that the breach of contract has led directly to loss.

> Hadley v Baxendale (1854)
> H ordered a spare part for his mill, and this was to be delivered by B. B was very slow in delivering. H tried to sue for the loss caused by his mill laying idle while waiting for the replacement part. However, it was normal practice for a mill

> owner to have a spare part of this type, and B was not aware of the special circumstance. B had therefore not been given the opportunity to refuse the contract given these circumstances. H's action failed.

Two rules result from this: only direct and natural losses resulting from the breach may be claimed for, and if damages would be unusual, this must be made clear at the time the contract is agreed.

Measure: courts calculate damages based on expectation loss. That is, they look at how much money would have been expected to have been made if the contract had been performed as planned. More reliance is given on the expected profit if it is less speculative. For example, if a buyer has already been arranged for a good which is then delayed indefinitely, damages will be awarded based on the expected profit. However, profit may be too speculative.

> Anglia TV v Reid (1971)
> A were making a film for television, and before contracting R to be the leading man they expended £2,750 on a director and stage management. The contract was for R to play the part of the leading man. Later, R found that he was unable to come to England to make the film and he repudiated the contract. A were unable to find a substitute for the defendant. In consequence they accepted the repudiation, and abandoned the film. A sued R for breach of contract (R admitted liability) claiming as part of the damages the expenditure incurred before the contract was made. However, A did not sue for loss of profit, as it could not be estimated what such profit would be (even if it could be said that it would be greater than £2, 750).

Therefore, if the amount of profit to be made is too speculative, reliance loss may be awarded instead, looking at how much has been lost in anticipation.

Damages for distress can mainly only be awarded when the purpose of the contract is for peace of mind or for enjoyment and happiness. For example, if a surveyor claims a house is not in a flight path and it is, then the surveyor is liable for a claim of damages for distress. Suing for happiness is rare, but there exist cases where holidays have not been as described. (example?)

Mitigation: the claimant has a duty to minimise his loss, for example by buying the cheapest alternative. Damages will then be calculated as the loss of bargain.

Contributory negligence: if the innocent party has contributed to the loss, then damages can be reduced.

> Platform Homes Loans Ltd vs Oyston Shipways Ltd and Others (1997)
> P was asked for a loan for £1million, with the security of a house. O valued this house at £1.5million. The borrower defaulted and P claimed the house, which it then sold for only £435,000. P therefore sued O for £665,000. The courts found that the value of the house at the date of valuation was £1million. Therefore,

liability as capped at £500,000. Moreover, the courts found that P had not asked to find the value of the house when it had been purchased by the borrower two years earlier, and had not been sufficiently prudent with dealing with the borrower. Therefore, damages were reduced by 20%.

Liquidated damages clauses and penalty clauses: a clause may be inserted into a contract to encourage performance. If this clause is designed merely to recover monies that are lost (for example, rent that is lost through a builder being late), it is valid. If, however, the amount in the clause is unreasonable, it can be judged to be designed to merely terrorise the other party and is then void.

Limitation of Action

For losses involving personal injury, there is a time limit of three years on cases being brought forward. For all other cases, the time limit is six years.