

Contracts (Remedies for Breach of Contract) Law, 1970

Chapter One: General Provisions

1. (a) In this law -

"Breach" - Act or omission in contravention of a contract;

"Injured party" - The person entitled to performance of a contract which has been broken;

"Enforcement" - Whether by an order for the discharge of a monetary obligation, by some other mandatory order or by a restraining order, and includes enforcement by an order for the repair or removal of the consequences of a breach ;

"Damage" - Including a prevention of profit.

(b) Every reference in this law to a breach of contract will be taken to include the breach of any of its obligations.

Definitions

2. When a contract has been breached, the injured party is entitled to claim its enforcement or to rescind the contract, and in addition to or in lieu of one of the said remedies he is entitled to compensation, all as provided in this law.

Remedies for Injured Party

Chapter Two: Remedies

Article One: Enforcement of Contract

3. The injured party is entitled to enforcement of the contract, unless in any of the following cases:

- (1) It is impossible to perform the contract;
- (2) Enforcement of the contract consists of compelling the performance or acceptance of personal work or of a personal service;
- (3) Implementation of the enforcement order requires an unreasonable level of supervision on behalf of a court or an execution office;
- (4) Under the circumstances of the case, enforcement of the contract is unjust.

Right of Enforcement

4. The court may make enforcement of a contract conditional upon fulfillment of the injured party's obligations or upon assurance of their fulfillment or upon other conditions that necessarily result from the contract under the circumstances of the case.

Conditions of Enforcement

5. When an enforcement order is made in respect of an obligation to transfer the ownership of a property right and that transfer requires registration in a register kept under any Law, the registration will be made by virtue of the enforcement order and in accordance with its provisions, as if it were made on the application of the parties.

Enforcement in the Case of a Transaction that Requires Registration

Article Two: Rescission of Contract

6. For purposes of this article, "fundamental breach" – a breach about which it may be assumed that a reasonable person would not have entered into the contract had he foreseen the breach and its consequences, or a breach about which it is agreed in the contract to regard it as fundamental; a sweeping stipulation in a contract, which makes breaches fundamental without differentiating between them, is invalid, unless it was reasonable at the time the contract was concluded.

Definition

7. (a) The injured party is entitled to rescind the contract, if its breach was fundamental.

(b) When the breach of the contract is not fundamental, the

injured party may rescind the contract if he has first given the breaching party an extension of time for its performance, and the contract has not been performed within a reasonable time after the extension was given, unless, – under the circumstances of the case, rescission of the contract is unjust; the pleas that rescission of the contract is unjust will not be heard, unless the breaching party opposes the rescission within a reasonable time after notice of rescission has been given.

(c) When the contract can be divided into parts and one of the parts has been breached in a manner that gives cause for rescission of that part, the injured party is only entitled to rescind the part that has been breached; if the breach also constitutes a fundamental breach of the whole contract, the injured party is entitled to rescind the part which has been breached or the whole contract.

Right to Rescind

8. Rescission of a contract will be by notice by the injured party, within a reasonable time after he has learned of the breach, to the breaching party; however, in the case specified in section 7(b) and in every other case in which the injured party has given an extension of time for performance of the contract, notice or rescission will be given within a reasonable time after the extension has expired.

Rescission Procedure

9. (a) When a contract is rescinded, the breaching party will restore to the injured party what he has received thereunder or – if restitution is impossible or unreasonable or the injured party so chooses – pay him the value thereof; and the injured party will restore to the breaching party what he has received under the contract or – if restitution is impossible or unreasonable or the injured party so chooses – pay him the value thereof.

(b) When part of a contract is rescinded, the provisions of subsection (a) will apply to what the parties received under that part.

Restitution After Rescission

Article Three: Compensation

10. The injured party is entitled to compensation for the damage caused to him by the breach and its consequences and which the breaching party foresaw or should have foreseen, at the time the contract was made, as probable consequences of the breach.

Right to Compensation

11. (a) When an obligation to supply or receive any property or service has been broken and the contract is rescinded by reason of the breach, the injured party will – without proof of damage – be entitled to compensation in the amount of the difference between the consideration for the property or service under the contract and its value on the date of the contract's rescission.

(b) When an obligation to pay a sum of money has been broken, the injured party will – without proof of damage – be entitled to compensation in amount of the interest on the sum in arrears from the date of the breach to the date of payment, at the full rate under the Adjudication of Interest Law 1961, unless the court prescribes a different rate.

Compensation Without Proof of Damage

12. The provisions of section 11 will not derogate from the right of the injured party to compensation for damage proved under section 10; however, if the consideration in respect of the obligation that was breached was unreasonable or if there was no consideration at all, then the court may reduce the compensation to the amount provided in section 11.

Reservation of Rights

13. When the breach of contract has caused other than pecuniary damage, the court may award compensation for that damage at the rate it deems appropriate under the circumstances of the case.

Compensation for Non Pecuniary Damage

14. (a) The breaching party will not be liable to pay compensation under Sections 10, 12 and 13 for damage which the injured party could have prevented or mitigated by reasonable measures.

(b) When the injured party has incurred reasonable expenses or undertaken reasonable liabilities in order to prevent or mitigate damage, the breaching party shall indemnify him therefor, whether or not the damage was in fact prevented or mitigated; if the expenses or liabilities were unreasonable, the breaching party will indemnify the injured party to the extent reasonable under the circumstances of the case.

Mitigation of Damage

15. (a) If the parties agreed in advance on the rate of compensation (hereinafter: "agreed compensation"), compensation will be as agreed, without proof of damage; however, the court may reduce the compensation if it finds that it was set without any reasonable relation to the damage which could be foreseen, at the time the contract was made, as a probable consequence of the breach.

Liquidated Damages

(b) An agreement on agreed compensation will not, by itself, derogate from the right of the injured party to claim in its place compensation under sections

10 to 14, or from any other remedy for breach of contract.

(c) For the purposes of this article, sums which the breaching party paid to the injured party before the breach and which the parties agreed in advance should be forfeited to the injured party, are deemed to be agreed compensation.

16. In setting the amount of compensation, no sum which the injured party received, or is entitled to receive by reason of the breach of contract under a contract of insurance will be taken into account.

Compensation and Insurance

Chapter Three: Miscellaneous

17. When a party to a contract indicates his intention not to perform it, or when it appears from the circumstances that he will be unable or unwilling to perform it, the other party is entitled to the remedies under this law even before the time set for the performance of the contract; however, in making an enforcement order the court will not order that an obligation be carried out before the time set for its performance.

Anticipatory Breach

18. (a) Was the breach of a contract the result of circumstances which the breaching party was not aware of nor should have been aware of at the time the contract was concluded, or which he did not foresee nor should have foreseen and which he could not have avoided, and if the performance of the contract under these circumstances is impossible or fundamentally different from what was agreed between the parties, the breach will not give cause for enforcement of the contract or for compensation.

(b) In the cases specified in subsection (a), the court may – whether or not

the contract has been rescinded – require each party to restore to the other party what he has received under the contract, or, at the choice as provided in section 9, to pay him the value thereof, and to require the breaching party to indemnify the injured party for expenses reasonably incurred and liabilities reasonably undertaken by him for performance of the contract, all if and insofar as the court deems just under the circumstances of the case.

Exemption by Reason of Constraint or Frustration of Contract

19. If the injured party has, in consequence of the contract, received any property of the breaching party and he must return it, the injured party will have a lien on that property to the extent of the sums due him from the breaching party in consequence of the breach.

Lien

20. Mutual debts of the parties under this law may be set off.

Set off

21. (a) Notice under this law will be given in the manner determined by the parties, and in the absence of such determination by registered post or in some other manner customary under the circumstances of the case.

(b) An injured party, who has given notice as provided in subsection (a) and who has reason to believe that the notice reached its destination in time, may rely on it even if it was delayed or it has not arrived at all.

Notice

22. (a) This law will not derogate from the powers of the Court to grant a declaratory judgment, a provisional or permanent mandatory or restraining order, an interim decision or any other relief.

(b) The provisions of this law. will apply when no law that regulates labor relations or any other law contains special provisions on the matter in question.

Reservation of Laws

23. Articles 106 to 111 of the Ottoman Code of Civil Procedure of 2nd Reheb 1296 (June 21, 1879) are hereby repealed.

Repeal

24. In matters dealt with by this law, Article 46 of the Palestine Order in Council 11922-1947 will not apply.

Independence of Law

25. This law will come into effect on March 27, 1971; contracts made prior to this Law coming into effect will continue to be governed by the previous Law.

Commencement and Transitional Provisions

Golda Meir Yaacov S. Shapiro Shneur Zalman Shazar

Prime Minister Minister of Justice President of the State of Israel

Passed by the Knesset on the 17th Kislev, 5731 (15th December, 1970) and published in Sefer Ha-Chukkim No.610 of the 26th Kislev, 5731 (24th December, 1970), p. 16; the Bill and an Explanatory Note were published in Hatza'ot Chok No. 857 of 5729, p. 396.