

## Contract Disputes

A lot of disputes arise over the written terms of contract or a party's failure to perform as required. Beyond written or oral contracts there is an implied covenant that each party will act in good faith. However, parties usually interpret the terms of the written and oral agreements differently. These disputes are not always about good faith they could also be: failure to meet milestones, delinquency in making payments, not performing a service as required, or not delivering a conforming product. Contracts that can't be performed in 1 year and that involve the sale of land should be in writing. These disputes are controlled by a six year statute of limitations. A breach of contract can result in serious ramifications for a business, individual, or employee.

### Types of breaches:

1. Verbal/oral contract issues
2. Business to business agreements
3. Employee non-compete agreements
4. Partnership disputes
5. Breach of contract (failure to complete a job, standard of work was not met, not paying on time or in full, and failing to deliver goods or services)
6. Anticipatory breach of contract (in MA applies to commercial transactions, if you have reason to believe the other party has no intention of completing the job)

### Damages:

- a. Compensatory
- b. Nominal
- c. Punitive
- d. Liquidated

### Levels of breach:

- a. **Partial** → party fails to perform some of the material aspect of the contract (can only sue for actual damages)
- b. **Material** → provisions have been violated in such a way as to destroy the entire contract

Employment contract disputes can occur at any time from hiring an employee, job performance, to post termination disputes. Some contracts are invalid if they are not in writing. However, even if they are not in writing individuals still have rights that can be enforced. Employees generally have a dispute when it comes to compensation, while employers have a dispute when employee fails to perform their duties.

### BREACH OF CONTRACT:

Breach of contract occurs when one of the parties fails to perform their duties. The party who did not perform is liable to the other party. The terms of the contract, what constitutes a breach, and

remedies should be spelled out in the contract. Parties may be required to mitigate their damages. These disputes can be handled between the parties or may require arbitration to resolve the dispute.

**REMEDIES:**

- Money damages
- Termination
- Other specific remedies

**ARBITRATION AGREEMENTS:**

- Often are part of the contract
- Does not require going to court
- Saves money and time
- Kept private (does not become public record)
- Could be one sided (claims only brought by the employee)
- Generally valid

**CHANGES AND MODIFICATIONS:**

- The longer employee's duration with company the more likely there is a change of the terms of the contract
- May not be expressly agreed to in new contract
- Could be changed in pension plan or expectations

**NONCOMPETE + NONDISCLOSURE AGREEMENTS:**

- **Non-disclosure agreements** (NDAs) protect against sharing confidential material, trade secrets, intellectual property, etc.
- **Non-compete agreements** → (NCAs) one party agrees not to enter into a similar position or start a similar company/work with a competitor within a certain area

**EXAMPLES OF TERMINATION FOR CAUSE:**

- Willful conduct that is harmful to the company
- Intentional act of fraud, theft, or embezzlement
- Violation of other criminal laws