

Contractual Remedies

Draft Questionnaire

Instructions for Contributors

Please give a detailed answer for each of the following hypothetical cases. Cite applicable provisions in codes and statutes as well as pertinent court cases and scholarly writings. Please specify, if the outcome of a case depends on additional circumstances not mentioned in the case or if you make additional factual assumptions. Your answer should make it clear, whether the outcome of the case is based on general contract law or on provisions peculiar to the type of contract which is used in the hypothetical.

For all cases, it should be assumed that neither party concludes the contract for a purpose outside his or her trade or profession and that specific provisions for the protection of consumers do not apply. It should also be assumed that none of the contracts in the following cases is a cross-border transaction.

Case 1: A buys 5,000 cans of tuna from B at a price of € 2,500.00. A and B have not set a date for either delivery or payment. Can A enforce his claim for delivery,

- a) even if he is not ready to pay the purchase price before delivery?
- b) even if he has only paid € 500.00 before delivery?
- c) even if he has only paid € 2,000.00 before delivery?

Please specify in your answers if there are any additional requirements for the enforcement of A's claim: Would, for example, enforcement be conditional on proof that the judgment creditor had fulfilled his obligations?

Case 2: B is in the business of installing heating systems. A engages B to install a new heating system in his house. The price for the new heating system (including B's work) is € 3,000.00. No specific date has been set for either party's performance. Does A have a right to refuse the payment of the price or some part of it, if

- a) B refuses to start working before payment?

- b) B installs the heating system but fails to give A the necessary instructions on the use of the heating system although it was a term of the contract to give those instructions?

Case 3: A buys 5,000 cans of tuna from B at a price of € 2,500.00. The parties
5 have agreed that the tuna shall be delivered on 13 May and that the price is to be paid on delivery.

- a) Although there are sufficient supplies of tuna of the required quality available in the market, B fails to acquire the necessary quantity of tuna before May 13 and therefore does not deliver as promised. Can A force
10 B to actually deliver the tuna, even though she could easily get the tuna from another supplier?

- b) Does the situation in case a) change if the object of the sale is not canned tuna, but a special variety of smoked salmon which A cannot get from another source because she is unfamiliar with the salmon
15 market and does not have access to other suppliers of this specialty?

Case 4: On 20 March, B agrees with A, the owner of a garage, to display advertisements for A's garage on a wall belonging to B for three years. Under the terms of the contract, B has to start displaying the advertisement on 2 May of the same year. A has to pay for B's services in one lump sum at the end of
20 the agreed period.

- a) On March 21, A tells B that she does no longer want B to advertise for her, because she has found another home owner willing to display her advertisements at a lower price. However, B answers that he insists on performing the contract and displays the advertisement from 2 May as
25 stipulated in the contract. Had B not chosen to insist on his contract with A, he could easily have found another business owner willing to display an advertisement on B's wall. Does B have a claim for the entire agreed price after the advertisements have been displayed for three years – or even before that time has elapsed?
- b) Does the solution in the case under a) change if A tells B that she does
30 not want him to display the advertisements only on 3 May?

- c) Do the solutions in cases a) and b) respectively change if B cannot find another advertiser willing to display an ad on the wall?

Case 5: The local Bar Association (A) has engaged Professor B to give a lecture on “Recent Developments in the Law of Contract” on 10 July for a remuneration of € 300,-. On 2 May, Professor B calls and tells the representative of A that she wants to cancel the appointment because she wants to participate in an interesting conference in Torino on 10 July. The representative of A replies that A will insist on B’s contractual obligation. Does A have a remedy to force B actually to give the lecture?

10 **Case 6:** A buys 5,000 cans of tuna from B at a price of € 2,500.00. No specific date has been set for the performance of either side.

a) A pays the price shortly after the conclusion of the contract. B, however, fails to deliver the cans although there are sufficient supplies of tuna of the required quality available in the market. A wants to get back his money and also to end B’s obligation in order to be able to find a new supplier. Does A have a remedy to achieve this? Please specify what – if any – additional requirements need to be fulfilled: Does A have to give B additional time for performance? If so, does A have to declare to B that he does no longer want him to perform at the end of the additional time period?

b) Does the solution of case a) change if B delivers 500 cans of tuna but fails to come up with the remaining 4,500 cans?

c) B delivers the cans of tuna shortly after the conclusion of the contract, but A fails to pay. Is B able to get back the tuna and to end the mutual obligations (for delivery of the tuna and payment of the price) between A and B? What, if any, additional requirements must be met?

Case 7: A engages B, who runs a window cleaning operation, to clean the 1200 windows in a large office building she owns. It is agreed that B shall do the work in the week starting on 19 May and that A will pay for B’s services after the work has been done.

- a) Does A have a possibility to end B’s obligation to clean the windows (and his own obligation to pay) if B and his workers do not show up in

the week beginning on 19 May? As in case 6, please specify what additional requirements – if any – must be met?

- 5 b) Suppose A has a right to end the mutual obligations in case a). Will A lose that right at some point if she fails to exercise this right? Specifically, will A lose the right if B and his workers show up and offer to do the work before A has declared his intention to end the contractual relationship?
- 10 c) Does the solution in case a) change, if B's workers start the work on 19 May, but complete (i) just 1150 or (ii) even only 200 windows in the agreed time.

Case 8: A has bought a car from B. The purchase price was € 15,000.00 although the market value of the car at the time of the sale was € 16,000.00. A has been using the car for a few months. Therefore, the market value has decreased to € 15,500.00. Assume that B has a right to end the mutual obligations because A failed to pay the price and that B now exercises this right.

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- a) What are the effects of B's exercise of the right to end the contractual relationship? Does A have to return the car or does she have to pay money to B? How is the value of the car to be measured? Does A have to pay a compensation for the loss of value or for her use of the car?
- 20 b) Shortly before B exercised his right, A had to spend € 500.00 for adapting the car's air bag system to newly introduced government regulations. Without this, it would be illegal to continue using the car. Does A get any compensation for this expense?
- 25 c) Shortly before B exercised his right, A spent € 500.00 in order to provide the car with a particularly effective anti-corrosive paint. This has increased the car's value to € 16,500.00. Does A get any compensation for this expense?
- d) Shortly before B exercised his right, the car was destroyed in an accident. What are the monetary consequences in this case?
- 30 e) Does the solution in case d) change if the car was destroyed after B had already exercised his right?

Case 9: Restaurant owner A buys from B 100 bottles of Riesling wine. Shortly after delivery of the wine, B ends the mutual obligations because A has failed to pay for the wine. What are the effects of this,

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- a) if all the wine was already consumed by the guests in A's restaurant before B notified her of the exercise of his right?
 - b) if all the wine was consumed in A's restaurant after B had exercised his right?

Case 10: B contracts with A to build an office building on a plot of land owned by A. A promises to pay € 200,000.00 for B's work. This is relatively cheap given the amount of the work. According to the parties' agreement the price is to be paid upon completion of the work.

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- a) A specific date for the completion of B's work has not been set. B does not start working because she is busy with another building project. After two months have passed since the contract was made, A does not want to wait any longer and makes another contract for the erection of the house with C. C, however, charges € 220,000.00 for the work. What amount of damages can A recover from B? Are there additional requirements for the recovery of damages? Does A have to give B additional time for performance before he can ask for damages? Does he have expressly to exercise a right to end the mutual obligations arising from the contract?
 - b) Does the result in case a) change if A does not enter into a new contract with C, but decides to abandon the project after B does not perform? Or can A still claim the cost of having another contractor do the work, even though he does not actually plan to engage another contractor?
 - c) If A asked for damages in case b), can she later change her mind and ask for performance of the original contract or is the claim for performance irrevocably lost, once A has asked for damages and/or ended the contractual relationship?
 - d) A and B have agreed that the house shall be ready by 1 June. However, B works slower than she planned and the work is only done by 1 August. A had already rented the building to tenant D for the months of
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June and July. A loses D's rent payments of € 5,000.00/month. Can A recover this money from B? Are there any additional requirements?

Case 11: Restaurant owner A calls B and asks him to repair her refrigerator. B promises to come to A's restaurant early the next day. A agrees to pay him
5 € 50.00/hour once the work is done. The next day, B does not show up. Because the refrigerator is not working and no other electrician is available, 50 kg of prime beef (worth € 1,000.00), which were delivered to A the same morning, go bad. It was exceptional for A to store such a big amount of meat. On a normal day, she would only have 10-20 kg of meat (worth € 100.00 to
10 € 200.00) in the refrigerator.

- a) Can A recover the value of the meat from B? Does it make a difference, if A expressly told B that the repairs were urgent because she expected a particularly valuable shipment of beef?
- b) Does the result change if A could have called another electrician or if B
15 had reason to believe that A would have no trouble finding another electrician even though in the end no other electrician was available?

Case 12: A engages professional photographer B to take pictures at her wedding reception. A promises to pay € 1,500.00, which is a fair price for such services. However, a day before the wedding, B to her own surprise gets the
20 offer to step in for a colleague the following day and shoot photos at another wedding. Since she is offered € 3,000.00 for this job although the work is essentially the same, B accepts and does not show up at A's wedding. A is able to engage another photographer at short notice who charges € 2,000.00. What – if any – amount of money can A claim from B?

Case 13: Hotel owner A calls B and asks her to repair a window in one of the
25 hotel rooms. B promises to do the work before noon, but only shows up three days later, because she decided first to complete a job for X, who called later on the same day and is a very good customer whom B did not want to disappoint.

- a) The hotel room was booked by a guest for three nights, but the guest
30 does not show up, so the room is not really needed. A is not entitled to recover the rent from the guest who did not show up. Can he recover the € 300.00 the guest would have paid from B?

- b) The hotel room was booked by a guest. Since the room is unusable, A has to send away the guest. Because there was a reservation, A had already bought flowers to decorate the room. The flowers (worth € 50.00) are now useless. Can A recover the value of the flowers from B in addition or instead of any loss resulting from the fact that the guest who made the reservation cannot be accommodated?
- c) Because the window was broken and not fixed for three days, the walls are infested with mildew. This was foreseeable for both A and B. Can A recover the cost of removing the mildew from B?
- 10 **Case 14:** A buys from B 1,000 l of fuel oil in September. The agreed price is 1 €/l which corresponds to the market price. According to the contract, A has to pay upon delivery of the fuel. Although the oil is available in the market, B fails to deliver. When B has not delivered the oil on 1 October, A contacts B and asks her to deliver within four weeks. On 1 November, A asks B again to deliver the oil. At this point, the market price has risen to € 1,15/l. On 8 November, A tells B that he does no longer want the fuel oil and is now claiming damages. On that day, the oil price has reached € 1,30/l. What amount of damages – if any – can A claim? Does the situation change, if A tells B on 1 November that he demands delivery by 8 November?