

# Contract Law for Paralegals: Chapter 13

## Chapter 13

The screenshot shows a digital textbook window titled "Contract Law for Paralegals: Chapter 13". On the left is a navigation sidebar with buttons for "Chapter 13", "No Breach-Justification Response", "No Breach Under Article 12", "Restitution as Cause of Action?", "Chapter Review Answers", and "Chapter Quiz". The main content area displays the chapter title "CHAPTER 13" and the section title "The Defendant's No Breach-Justification Response to the Plaintiff's Allegation of Breach". The text in the main area reads: "Chapter 13 deals exclusively with the no breach-justification response. With this response, the defendant asserts that the other party breached by not performing first and that breach justified his or her nonperformance. Therefore, the contract has not been breached and the breach of contract cause of action should be dismissed. The no breach-justification response differs from the no breach-compliance response in that the no breach-justification response admits nonperformance, while the no breach-compliance response denies nonperformance. Both the no breach-excuse and the no breach-justification responses admit nonperformance. They do not, however, admit breach. The no breach-excuse

### ***Tab Text***

#### CHAPTER 13

#### **The Defendant's No Breach-Justification Response to the Plaintiff's Allegation of Breach**

Chapter 13 deals exclusively with the no breach-justification response. With this response, the defendant asserts that the other party breached by not performing first and that breach justified his or her nonperformance. Therefore, the contract has not been breached and the breach of contract cause of action should be dismissed. The no breach-justification response differs from the no breach-compliance response in that the no breach-justification response admits nonperformance, while the no breach-compliance response denies nonperformance.

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Both the no breach-excuse and the no breach-justification responses admit nonperformance.

They do not, however, admit breach. The no breach-excuse response bases nonperformance on a supervening event (act of God or governmental action) rather than on any action or inaction of the other party. The no breach-justification response justifies nonperformance because of the other party's prior breach. [Care must be taken because students often say "my breach was justified by your breach." Such a response would not preclude the plaintiff from seeking a remedy for breach of contract. What should be said is "My nonperformance was justified by your breach. Therefore, I am not a breaching party and there is no cause of action for breach of contract and no remedy for breach."]

Exhibit 13-1 (418) is an example of what the defendant's answer to the plaintiff's complaint would look like when the defendant is responding no breach-justification.

Exhibit 13-2 (419) illustrates the timeline for the no breach-justification response.

First the contract is formed. Next comes the time for the plaintiff's (not the defendant's) performance. The defendant alleges the plaintiff has not performed and, therefore, is in breach. Finally, the defendant has a duty to perform and does not perform.

The defendant asserts that his or her nonperformance was justified by the plaintiff's breach. Not every plaintiff's breach justifies the defendant's nonperformance. On those where the magnitude of the plaintiff's breach is such, will the plaintiff's breach justify the defendant's nonperformance?

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# No Breach-Justification Response

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## No Breach-Justification Response

### THE NO BREACH-JUSTIFICATION RESPONSE UNDER THE COMMON LAW (419)

The no breach-justification response requires:

1. Both the plaintiff and the defendant had duties to perform.
2. The plaintiff's performance was a condition precedent to the defendant's performance.
3. The plaintiff was in breach of his or her duty to perform.
4. The magnitude of the plaintiff's breach justified the defendant's nonperformance of his or her duty.

### The Plaintiff and the Defendant Have Duties to Perform (420)

The first step in the justification response is for the defendant to establish that the plaintiff has a duty to perform. Exhibit 13.3 (420) is a timeline showing the respective duties for the "no breach-justification" response. The contract recites the respective duties of the parties.

## **Tab Text**

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### **The Plaintiff and the Defendant Have Duties to Perform (420)**

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A written contract, regardless of whether the writing was required by the Statute of Frauds, makes for easier proof than does an oral contract. A contract that is only partially memorialized in a writing may present parol evidence rule problems. A myriad of other problems could arise when the defendant attempts to establish the plaintiff's duty to perform.

### **The Plaintiff's Performance Was a Condition Precedent to the Defendant's Performance (420)**

The second step in the justification response is for defendant to establish that the two performances are dependent, rather than independent. When the plaintiff's promise is independent from the defendant's promise, the nonperformance of one has no relationship to the nonperformance of the other and the plaintiff's breach could not justify the defendant's nonperformance. Both would be breach.

PARALEGAL EXERCISE 13.1 (420) concerns dependent/independent performances.

Clearly painting and paying are dependent. Before the 1770s, promises (and their subsequent performances) were presumed to be independent. Since that time the presumption has changed and promises (and their performances) are dependent unless the presumption is rebutted. If promises are independent and neither party performs, both are in breach and subject to a breach of contract action. With dependent promises, although both parties could still be in breach (i.e., if one nonperformance did not justify the other nonperformance), one party could be in breach while the other's nonperformance would not be a breach.

Once the performances are linked, the sequencing of the performances must be in a certain order for the no breach-justification response to be effective. The order of the performances is everything in the no breach-justification response. The plaintiff's nonperformance (which the defendant asserts is a breach) triggers the defendant's nonperformance. Because the justification response is a reaction type of defense, a party cannot react to a nonperformance if that nonperformance is not yet scheduled to occur.

Example 13-1 (420) illustrates a condition precedent.

PARALEGAL EXERCISE 13.2 (421) further explores the condition precedent. Is the duty to pay a tutor a condition precedent to the tutor tutoring or is the tutor tutoring a condition precedent to the duty to pay? If the contract provides for prepayment, then clearly paying would be a condition precedent to tutoring. If the contract is silent as to prepayment, should a reasonable person assume that tutoring is a condition precedent to paying?

The no breach-justification response could become a bit more complicated if more performances were sequenced on the timeline. For example, what if the

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plaintiff responds that his or her nonperformance was justified by the defendant's nonperformance.

The events on a timeline would be:

1. The contract is formed.
2. The defendant's performance is due-the defendant does not perform.
3. The plaintiff's performance is due-the plaintiff does not perform-the plaintiff claims his or her nonperformance (#3) was justified by the defendant's nonperformance (see #2), which was a breach.
4. The defendant's next performance is due-the defendant does not perform-the defendant claims his or her nonperformance (#4) was justified by the plaintiff's nonperformance (see #3), which was a breach.

### **The Plaintiff Was in Breach (421)**

The third step in the no breach-justification response requires the defendant to establish that the plaintiff did not perform his or her duty and thereby breached the contracts. The plaintiff's nonperformance must be a breach.

PARALEGAL EXERCISE 13.3 (421) explores whether Erica, the plaintiff, breached the contract when she refused to provide Ace, the painting contractor, with the paint. The road map would follow this outline:

Step 1 Choice of law-common laws.

Step 2 Contract formation-contract to paint Erica's apartment.

Step 3 Enforceability: the contract to paint was enforceable.

Step 4 Plaintiff's allegation of the defendant's breach-Erica alleges Ace breached the contract by not painting.

Step 5 Defendant's response to the Plaintiff's allegation of breach-No breach-justification-"My nonperformance (not painting) was justified by your breach (not supplying the paint)."

(1) Both the plaintiff (Erica) and the defendant (Ace) had duties to perform-Erica to supply the paint and Ace to paint.

(2) The plaintiff's performance was a condition precedent to the defendant's performance-Erica's performance (supplying the paint) was a condition precedent to Ace's performance (painting).

(3) The plaintiff was in breach of his or her duty to perform-Erica breached her duty since she did not supply the paint.

(4) The magnitude of the plaintiff's breach justified the defendant's nonperformance of his or her duty-was Erica's nonperformance (not supplying the paint) a material or an immaterial breach?

### **Entire and Divisible Performances (421)**

The plaintiff may successfully defend against a no breach-justification response by dividing or segmenting his or her performance in such a way as to not be in

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breach as it relates to the defendant's nonperformance. Some performances lend themselves to being segmented. At common law, these contracts are known as divisible or installment contracts. The contracts where the performance may not be segmented are known as entire contracts.

Example 13-2 (421) illustrates an entire contract. The transport of one elephant and the payment for that transport are one unit each.

Example 13-3 (421) illustrates a divisible or installment contract at common law.

Only one party's performance need be divisible. In this example, the payment is segmented-half when Flora is picked up and half when she is delivered. Transportation is not segmented.

Example 13-4 (422) also illustrates a divisible contract. The transport is segmented-Flora to be delivered in the fall, and Sally is to be delivered in the spring.

Payment is also segmented (in installments). The first payment is due when Flora is delivered, and the second is due when Sally is delivered.

If the plaintiff's performance is segmented, the plaintiff may successfully respond to the defendant's no breach-justification response by establishing that he or she was not in breach for the segment prior to the defendant's nonperformance. Without the no breach-justification response, the defendant's nonperformance will constitute a breach.

Example 13-5 (422) applies segmenting to the facts in Example 13-4. By the express terms of the contract, Ace's performance is divisible. Flora must be delivered in the fall, and Sally must be delivered in the spring. By segmenting its performance, Ace performs the first delivery and was not in breach, and therefore the Zoo must pay for that performance since it has a duty to pay after each delivery.

PARALEGAL EXERCISE 13.4 (422) asks students to use the road map that leads them to the entire/divisible issue of the no breach-justification response. This exercise involves the harvesting and delivering of 20 truckloads of trees-5 truckloads of oak, 5 of maple, and 10 of white pine. The Paul Bunyon Company harvests and delivers the truckloads of maple and pine only. The price for a truckload will depend on whether it is a truckload of oak, maple, or white pine. Juniper accepted the deliveries of maple and pine but refused to pay for them because it has not received the oak. Paul Bunyon Company sued Juniper for breach of contract.

1. Choice of law-common law-not a sale or lease of goods.
  2. Contract formation-the contract was for harvesting and delivering.
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3. Contract enforceable-no apparent problems.
4. Paul Bunyon would allege that Juniper breached the contract by not paying for the truckloads of maple and pine.
5. Juniper would answer with a no breach-justification response (my not paying for the truckloads of maple and pine was justified by your (Paul Bunyon's) not delivering the truckloads of oak).
  - a. Paul Bunyon had a duty to harvest and deliver truckloads of oak, maple, and pine. Juniper had a duty to pay for each truckload.
  - b. Harvesting and delivering by Paul Bunyon was a condition precedent to paying by Juniper.
  - c. Was Paul Bunyon in breach of its duty to harvest and deliver oak, maple, and pine?
    - 1) Was Paul Bunyon's performance entire or divisible? Could it be argued that Paul Bunyon's performance was divisible by tree type (i.e., oak, maple, pine)? Could it be argued that Paul Bunyon's performance was divisible by truckload since each truckload would have a distinct price?
    - 2) If Paul Bunyon's performance was divisible by tree type, then Paul Bunyon could assert that it did not breach the contract when it delivered the maple and pine, and therefore it should be paid for them. [If Juniper wanted to sue Paul Bunyon for breach of contract for not harvesting and delivering the oak, Paul Bunyon would be in breach unless it had an appropriate response.]

### **Waiver of a Breach (423)**

The defendant's no breach-justification response requires the defendant to establish that the plaintiff breached its duty that was a condition precedent to defendant's performance. Therefore, if the defendant waives the plaintiff's breach, the defendant's no breach-justification response can no longer be effective. There is no plaintiff's breach that is a condition precedent to defendant's performance.

In Example 13-6 (423), Albert may have waived Countryside's breach by accepting the work. [Could Example 13-6 be estoppel rather than waiver?]

PARALEGAL EXERCISE 13.5 (423) involves a construction contract and illustrates a waiver. The contract called for Vermont marble in the master bathroom. The contractor, however, used New Hampshire marble. One of the owners discovered the wrong marble before it was installed but did not take issue with its use until the time when the last payment was due.

The owners refused to make the last payment unless the contractor replaced the New Hampshire marble with Vermont marble. The contractor refused to make the change and sued the owners.

The Exercise asks students to follow the road map as it leads to the no breach-justification response.

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1. Choice of law-common law (not a sale or lease of goods).
2. Contract formation-construction contract.
3. The contract was enforceable.
4. Quality (the contractor) would allege that the McQuades (the owners) breached by not making the final payment.
5. The McQuades would respond no breach-justification. "Our not making the final payment was justified by your breach, installing New Hampshire rather than Vermont marble."
  - a. Both Quality and the McQuades had duties to perform under the contract. Quality had the duty to build according to architect's drawings. The McQuades had the duty to pay according to the payment schedule.
  - b. Quality's performance (completing the structure) was a condition precedent to the McQuades's performance (paying according to the payment schedule). The terms of the writing establishes the relationship between building and paying.
  - c. Was Quality in breach of its duty to use Vermont marble?
    - 1) If Quality was in breach, have the McQuades waived Quality's breach by not making an issue out of the stacks of New Hampshire marble?
    - 2) A McQuade waiver would negate Quality's breach so the McQuades's no breach-justification response fails. They could no longer successfully assert that their nonperformance (not paying the last payment) was justified by Quality's breach (using New Hampshire marble rather than Vermont marble) because Quality's breach would have been waived.

### **Estoppel (424)**

In addition to waiver, the defendant may be estopped from claiming that the plaintiff has breached the contract. Example 13-7 (424) describes a situation whereby one party watches the other party perform unsatisfactory work.

PARALEGAL EXERCISE 13.6 (424) illustrates estoppel. The analysis is the same as for Paralegal Exercise 13.5 (423) except change waiver to estoppel. Waiver is a unilateral act by the defendant. Estoppel requires a promise by the defendant and the plaintiff's reliance on that promise. In Paralegal Exercise 13.6, Susan McQuade gave the "OK" and Quality then installed the New Hampshire, rather than the Vermont, marble.

### **The Magnitude of the Plaintiff's Breach Justified the Defendant's Nonperformance (425)**

The defendant's response to the plaintiff's allegation of breach is "My nonperformance was justified by your breach." The key word is justified because not every plaintiff's breach will give the defendant the authority to respond in kind, that is, not performing.

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The plaintiff's breach must reach a certain threshold or magnitude (quantum). In a construction contract, the owner is not justified in withholding a final payment if the contractor has substantially performed the contract.

PARALEGAL EXERCISE 13.7 (425), a construction contract, could be analyzed using the road map.

1. Choice of law-common law (not a sale or lease of goods).
2. Contract formation-construction contract.
3. The contract was enforceable.
4. [Assume the Culvers did not make the final payment and Beautiful Homes (the contractor) brought a breach of contract action against the Culvers.] The Beautiful Homes (the contractor) would allege that the Culvers (the owners) breached by not making the final payment.
5. The Culvers would respond no breach-justification. "Our not making the final payment was justified by your breach, not completing the exterior painting."
  - a. Both Beautiful Homes and the Culvers had duties to perform under the contract. Beautiful Homes had the duty to build the house according to the plans. The Culvers had the duty to pay according to the payment schedule.
  - b. Beautiful Homes's performance (building) was a condition precedent to the Culvers's performance (paying according to the payment schedule). Assume a writing so the terms of the writing establishes the relationship between building and paying.
  - c. Was Beautiful Homes in breach of its duty to build the house?
  - d. Did Beautiful Homes substantially perform its duty to build the house?

In an employment contract, the employer may not use the employee's breach to withhold payment if the employee's breach was immaterial.

PARALEGAL EXERCISE 13.8 (426) explores the application of this rule.

1. Choice of law-common law (not a sale or lease of goods).
  2. Contract formation-employment contract.
  3. The contract was enforceable.
  4. In a suit Alvin (employee) vs. Modern Sign (employer), Alvin would allege that Modern Sign breached by not paying for the time worked plus any commissions earned.
  5. Modern Sign would respond no breach-justification. "Our not paying was justified by your breach, not giving two weeks notice."
    - a. Both Alvin and Modern Sign had duties to perform under the contract. Alvin had a duty to solicit orders and to give two weeks notice. Modern Sign had the duty to pay a monthly salary plus commissions.
    - b. Alvin's performance (soliciting and giving notice) were a condition precedent to Modern Sign's performance (paying a monthly salary plus commissions).
    - c. Was Alvin in breach of its duty to give notice?
-

d. Was Alvin's not giving notice an immaterial breach?

PARALEGAL EXERCISE 13.9 (426) requires an analysis of *American Outdoorsman, Inc. v. Pella Products, Inc.* (426).

1. American Outdoorsman sued Pella Products for breach of contract alleging that Pella failed to make payments for advertising under its contract with American.
  2. Pella's response to American Outdoorsman's allegation of breach was no breach-justification.
  3. Since Pella's response was no breach-justification, the following questions are of interest:
    - a. American had a duty to run Pella's clothing ads on its program, the American Outdoorsman, for three years on the Outdoor Channel and Pella had a duty to pay \$600 per week.
    - b. American's performance (showing the ads on the Outdoor Channel) was a condition precedent to Pella's duty to pay.
    - c. American breached its duty by changing networks.
    - d. Did the magnitude of American's breach (changing networks) justify Pella's nonperformance (not paying)? The trial court found that changing the networks was not a material breach of the contract. The opinion, under the heading Material Breach, lists significant factors in the Restatement (Second) of Contracts § 241 (1979) that could be considered when determining whether a breach is material (431).
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## No Breach Under Article 12

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### No Breach Under Article 12

#### THE NO BREACH-JUSTIFICATION RESPONSE UNDER ARTICLE 2 OF THE UCC (433)

If a contract involves a sale of goods, the no breach-justification response of Article 2 of the UCC, rather than the common law, applies. The seller's no breach-justification response is found in UCC § 2-703, while the buyer's no breach-justification response is found in UCC § 2-711(1).

**Seller's Response: "No Breach-Justification" (433)**  
UCC § 2-703 states that the seller may withhold delivery of the goods if the buyer breaches. UCC § 2-703 catalogs the buyer's breaches by:

- (1) repudiating with respect to a part or the whole.
- (2) failing to make a payment due on or before delivery.
- (3) wrongfully rejecting the goods.
- (4) wrongfully revoking acceptance of the goods.

In addition to withholding delivery of the goods, the seller may

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- (2) failing to make a payment due on or before delivery.
- (3) wrongfully rejecting the goods.
- (4) wrongfully revoking acceptance of the goods.

In addition to withholding delivery of the goods, the seller may take to the sword and sue the buyer for breach of contract. If, however, the seller withholds delivery and the buyer takes to the sword and sues the seller, the seller may use UCC § 2-703 to assert no breach-justification in response to the buyer's allegation of breach (withholding delivery of the goods was justified by buyer's breach as authorized by UCC § 2-703).

Example 13-8 (434) illustrates the seller's use of UCC § 2-703 in its no breach-justification response. Buyer sued the seller for failing to deliver and the seller defended by asserting that its nondelivery was justified under UCC § 2-703 for seller's failure to pay.

### **Buyer's Response: "No Breach-Justification" (435)**

UCC § 2-711(1) states that the buyer may cancel a contract for the sale of goods if the seller breaches. UCC § 2-711(1) catalogs the seller's breaches by:

- (1) repudiating before delivery.
- (2) failing to make delivery.
- (3) sending nonconforming goods.

In addition to canceling the contract, the buyer may take to the sword and sue the seller for breach of contract. If, however, the buyer cancels the contract, the seller may take to the sword and sue the buyer for breach of contract. The buyer may use UCC § 2-711(1) to assert no breach-justification in response to the seller's allegation of breach (canceling the contract was justified by seller's breach as authorized by UCC § 2-711(1)).

Example 13-9 (436) illustrates the buyer's use of UCC § 2-711(1) in its no breach-justification response. Seller sues the buyer for not paying and the buyer defends by asserting that its not paying was justified under UCC § 2-711(1) by the seller's breach (i.e., not delivering).

If, however, the seller sends the goods but they are nonconforming, what the buyer may do depends on whether the contract was entire or installment. Installment, under Article 2, has a special meaning. Whether a contract is an installment depends on the number of deliveries and not on the number of payments (see UCC 2-612(1)). If a contract is entire, UCC § 2-601, the perfect tender rule, applies. The buyer may reject all or a part of the goods delivered. Unwritten is that UCC § 2-601 is subject to UCC § 2-508 cure. Therefore, in some cases the buyer may not reject if the seller has a Code right to cure the nonconformity. Example 13-10 (436) illustrates UCC § 2-601.

If the contract is an installment contract, UCC §§ 2-612(2) and (3) come into play and the answer to whether the buyer may reject an installment becomes more complicated.

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Example 13-11 (437) illustrates UCC § 2-612.

Midwest Mobile Diagnostic Imaging, L.L.C. v. Dynamics Corporation of America (438) is an application of UCC § 2-612.

1. Choice of Law (UCC Article 2-sale of goods).
2. Contract formation (Midwest contracted to buy four trailers equipped with MRI scanners from E & W, a division of Dynamics).
3. Contract enforceable.
4. Midwest (buyer) sued E & W (seller) for breach of contract alleging that E & W delivered a nonconforming MRI unit, and therefore Midwest was entitled under UCC § 2-612 to cancel the contract and seek statutory and incidental damages.
5. E & W (Dynamics) (seller) responded that the MRI unit was not nonconforming; that Midwest wrongfully rejected E & W's tender of a cured trailer; that cure occurred within a reasonable time; and any nonconformity in the first trailer did not substantially impair the value of the contract as a whole. [The United States District Court for the Western District of Michigan and the 6th Circuit Court of Appeals rejected E & W's response (440-441).
6. Remedies-Midwest was awarded compensatory damages (return of its deposits on units one and four) and incidental damages under UCC § 2-715(1). The court discusses incidental damages in detail (441).

PARALEGAL EXERCISE 13.11 (441) asks students to reverse the parties, so instead of Midwest (buyer) suing E & W (seller), E & W (seller) sues Midwest (buyer) for breach of contract. Step 4 in the analysis would show the reversal of the parties along with the seller alleging that the buyer breached by rejecting the tender of deliver and canceling the contract. Step 5 would have Midwest (buyer) responding no breach-justification. "Our rejecting the tender and canceling the contract was justified by your breach. You tendered nonconforming goods and this nonconforming tender justified our rejecting the tender under UCC § 2-612(2) (substantially impaired the value of the installment and could not be cured) and our canceling the contract under UCC § 2-612(3) (substantially impaired the value of the whole contact)." Under the District Court and 6th Circuit's opinions, both courts would have accepted Midwest's contentions.

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## Restitution as Cause of Action?

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No Breach Under Article 12

**Restitution as Cause of Action?**

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### Restitution as Cause of Action?

#### RESTITUTION AS AN ACTION FOR THE BREACHING PLAINTIFF (442)

If the breaching party is the one who conferred the benefit on the other, the breaching party would not be able to maintain a cause of action for breach of contract if the party who received the benefit could successfully assert a no breach-justification response. The breaching party, however, may seek a restitution cause of action as developed in the Restatement (Second) of Contracts § 374 (442).

PARALEGAL EXERCISE 13.12 (442) illustrates the restitution action for the breaching party. A criminal defendant hired an attorney to defend him in an upcoming murder trial. Before the attorney could provide legal representation, his client committed suicide. The client's estate sued the attorney for return of the retainer.

If the suit were for breach of contract, the allegation of breach would be that the attorney did not provide legal representation.

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#### RESTITUTION AS AN ACTION FOR THE BREACHING PLAINTIFF (442)

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If the suit were for breach of contract, the allegation of breach would be that the attorney did not provide legal representation. The attorney could assert a no breach-justification response "My not providing legal services was justified by the

client's breach (not assisting in the preparation of the defense". [The attorney might also raise a no breach-compliance response in that the contract does not provide for the return of the retainer under these circumstances.]

If the suit were a restitution cause of action, a breach of contract action would need to be at least hypothetically unavailable. The estate could then assert Restatement (Second) of Contracts § 374-Restitution in Favor of Party in Breach.

# Chapter Review Answers

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## Chapter Review Answers

### TRUE/FALSE QUESTIONS

1. T
2. F
3. F
4. T
5. F
6. T
7. F
8. F
9. T
10. T
11. T
12. T
13. T
14. F

### FILL-IN-THE-BLANK QUESTIONS

## Tab Text

### TRUE/FALSE QUESTIONS

1. T
2. F
3. F
4. T
5. F
6. T
7. F
8. F
9. T
10. T
11. T
12. T
13. T
14. F



## FILL-IN-THE-BLANK QUESTIONS

1. Installment contract
2. No breach-justification
3. Entire contract
4. Perfect tender rule
5. Condition precedent

## MULTIPLE CHOICE QUESTION

1. a, c, & e
2. d
3. c
4. a
5. b

## SHORT ANSWER QUESTIONS

1. The four steps of the no breach -- justification response are:
    - (1) Both the plaintiff and the defendant had duties to perform.
    - (2) The plaintiff's performance was a condition precedent to the defendant's performance.
    - (3) The plaintiff was in breach of his or her duty to perform.
    - (4) The magnitude of the plaintiff's breach of his or her duty justified the defendant's nonperformance of his or her duty. The common law and Article 2 of the UCC have different articulations of the magnitude, depending on the situation.
  2. In a "no breach-compliance" response, the promisor claims that he or she is performing according to the terms of the contract. This performance may in fact be waiting for a condition precedent to occur. In a "no breach-justification" response, the promisor claims that although he or she is not performing according to the terms of the contract, performance is unnecessary because of the promisee's breach.
  3. In both the "no breach-excuse" response and the "no breach-justification" response, the promisor admits that he or she is not performing according to the terms of the contract. In the "no breach-excuse" response, the promisor's reason for not complying is the occurrence of an external
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event. In the “no breach-justification” response, the promisor’s reason for not complying is based on the conduct of the other contracting party.

4. Novak will prevail in Quality’s breach of contract action.

(1) Both Quality and Novak had duties to perform—Quality the duty to build and Novak the duty to pay.

(2) Quality’s performance (building) was a condition precedent to the Novak’s performance (paying).

(3) Quality was in breach of its duty to perform by leaving the job before work was completed.

(4) The magnitude of Quality’s breach of its duty (completion of one-third of the construction was less than substantial performance) justified Novak’s nonperformance of his duty to pay.

Novak’s “no breach-justification” response will prevail against Quality’s allegation that

Novak breached by not paying. Therefore, Quality cannot maintain its breach of contract cause of action.

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## Chapter Quiz

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Chapter Quiz

[Click Here to take a quiz based on this chapter.](#)

Chapter 13

No Breach-Justification Response

No Breach Under Article 12

Restitution as Cause of Action?

Chapter Review Answers

Chapter Quiz

### ***Tab Text***

[Click Here to take a quiz based on this chapter.](#)

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