

CONTRACTS

Class 13



ANTICIPATORY BREACH RULES

- If a party announces the intention to breach a contract (a "repudiation"), the other party may presume that the party will not perform and act accordingly.
- If this occurs after performance is due, it is a breach and the other party can sue for breach right away.
- If this occurs before the performance is due, the repudiating party can change his or her mind in the meantime and agree to complete the performance as originally planned; **UNLESS**
 - the other party has detrimentally relied on the repudiation (e.g., the other party made alternate arrangements to get the performance from another source).



ADEQUATE ASSURANCES RULE

- This is under U.C.C. § 2-609
- If a party has "reasonable grounds" for insecurity as to the other party's ability or willingness to perform, he or she can demand "adequate assurances" that the other party will perform as promised.
- In the meantime (before the assurances are received), the demanding party can suspend its own performance.
- If the assurances are not given within 30 days, it's considered a repudiation by the party who was supposed to give the assurances.



QUIZ TIME!



DEFENSE OF CHANGED CIRCUMSTANCES

- **Elements for all 3 defenses:**

- An unforeseen, changed circumstance that arose after the contract was executed
- that arose through the fault of neither party
- makes the performance impossible, impracticable or frustrates the purpose of the contract.



CHANGED CIRCUMSTANCE I

- **Impossibility** (old rule):

- A contract was excused if, and only if, performance was no longer possible
- Example:
 - the subject matter of the contract is destroyed.
 - the means by which performance was to take place no longer exists.
 - the subject matter of the contract of the method through which one side was to perform becomes illegal.



CHANGED CIRCUMSTANCE 2

- **Impracticability:**

- Through unforeseeable changed circumstances, it becomes financially impractical to complete the contract, even though it technically is still possible.
- This must be a very large added expense for this defense to work
- See *American Trading & Production Corp. v. Shell International Marine, Ltd.*, 453 F.2d 939 (2d Cir. 1972)

- **Frustration of Purpose:**

- This occurs when the entire fundamental purpose of the contract becomes moot or irrelevant after the contract is executed.

