

81 Time for Completion of Contracts.

The element of time is an important feature of all contracts. A contractor not completing his contract within the time specified is liable for whatever damages actually occur, if no stated sum is agreed upon.

In cases where no time is fixed for the completion of a contract it must be performed within a "reasonable time," according to the circumstances, which, if not mutually agreed upon, would be for the court or judge to determine.

82 The Penalty Clause in Contracts.

Where a definite time is fixed for the completion of the contract and a stated sum agreed upon by way of damages if not completed by such date, say "\$20 per day for each and every day thereafter, until completion," such agreement is enforceable, providing it is not nullified by some act of the owner himself. For instance, the contract is for the construction of a particular building, according to certain plans and specifications, using certain kinds of material; but during the course of erection some change is made, either by the request or consent of the owner of the building, in the substitution of some other kind of material in place of that agreed upon; or some change is made in the plan of some room, or hall, or stairs or chimney, no matter what: this makes a new contract. It is not the building the contractor bound himself under a penalty to complete by such date, and therefore he is released from the stipulated damages.

To prevent such changes from nullifying the penalty clause they must be embodied in an additional written agreement, signed by the contracting parties, in which it is definitely stated that the other parts of the original agreement, including the penalty clause, are to remain in force.

83 Cancelling Contracts.

In cases where a person has been induced through *fraud*, or *falsehood*, or *misrepresentation* of any kind, to enter into a contract to purchase land or any kind of personal property, he can repudiate the contract or bargain; and if he has paid money he can recover it. But he must act as soon as he discovers the fraud, and restore, or offer to restore, the property in the same condition it was in when he received it. The fraud or misrepresentation must be of a material nature and actually deceive.

A purchaser who would rescind a contract must be in a position to restore the property. If he treats the property as his own (more than to care for it), after discovering the fraud, he cannot afterwards return it and recover his money. If a portion of the goods were used before the discovery of the fraud, it would be for the court to determine the value of the portion used. There is no chance for a person to rescind a contract merely because he changes his mind.

84 Breach of Contract.

Breach of contract is a failure to do what was required or covenanted to do; or the doing of what was forbidden. The party willing to carry out the contract must tender the money, or goods, or service, as the case may be, and then if refused may sue for "specific performance," or for damages for breach of contract.

85 Remedies for Breach of Contract.

The law provides two classes of *remedies* for the enforcement of the rights