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**ANSWER**

1. **BREACH OF CONTRACT**

A breach of contract is committed when a party without lawful excuse fails or refuses to perform what is due from him under the contract or performs defectively or incapacitates himself from performing. (Treitel 2007, para 17- 049)

Breach of contract is a legal cause of action and a type of civil wrong, in which a binding agreement or bargained-for exchange is not honoured by one or more of the parties to the contract by non-performance or interference with the other party’s performance. Breach occurs when a party to a contract fails to fulfil its obligation(s), whether partially or wholly, as described in the contract, or communicates an intent to fail the obligation or otherwise appears not to be able to perform its obligation under the contract. Where there is breach of contract, the resulting damages will have to be paid by the party breaching the contract to the aggrieved party.

If a contract is rescinded, parties are legally allowed to undo the work unless doing so would directly charge the other party at that exact time.

It is important to bear in mind that contract law is not the same from country to country. Each country has its own independent, free standing law of contract. Therefore, it makes sense to examine the laws of the country to which the contract is governed before deciding how the law of contract (of that country) applies to any particular contractual relationship.

WHAT CONSTITUTES BREACH OF CONTRACT

To determine whether or not a contract has been breached, a judge needs to examine the contract. To do this, they must examine:

* The existence of a contract,
* The requirements of the contract,
* And if any modifications were made to the contract.

Only after this can a judge make a ruling on the existence and classifications of a breach. Additionally, for the contract to be breached and the judge to deem it worth of a breach,

* The plaintiff must prove that there was a breach in the first place, *(Savannah Bank of Nigeria Plc v Oladipo Opanubi).*
* And that the plaintiff held up his side of the contract by completing everything required of him.
* Additionally, the plaintiff must notify the defendant of the breach prior to filing the lawsuit.

WAYS OF BREACHING CONTRACTS

A breach of contract may take place when a party to the contract:

* Fails to perform their obligations under the contract in whole or in part
* Behaves in a manner which shows an intention not to perform their obligations under contract in the future or
* The contract becomes impossible to perform as a result of the defaulting party’s own act.

These classifications only describe how a contract can be breached, not how serious the breach is. A judge will make a decision on whether a contract was breached based on the claims of both parties.

The first type above is an *actual* breach of contract. The second two types are breaches as to the future performance of the contract, and technically known as *renunciatory* breaches. The defaulting party renunciates the contract in advance of the time they are required to perform their obligations. *Renunciatory* breach is more commonly known as “*anticipatory* breach”

CLASSIFICATIONS OF BREACHES OF CONTRACT

The general law has three categories of breaches of contract. These are measures of the seriousness of the breach. In the absence of a contractual or statutory provision any breach of contract is categorized as a;

* Breach of warranty;
* Breach of condition; or
* Breach of an innominate term, otherwise known as *intermediate* term.

There is no “internal rating system” within each of these categories (such as “a serious breach of warranty”. It’s a breach of a warranty. It’s not a minor breach of a condition. It’s a breach of a condition). Any breach of contract is one or the other of a breach of warranty, condition or innominate term.

In terms of priority of classification of these terms, a term of a contract is an innominate term unless it is clear that it is intended to be a condition or a warranty.

RIGHTS TO DAMAGES FOR BREACH

Any breach of contract – warranty, condition or innominate term – gives rise to a right in the hands of the innocent party to recover their damage suffered which caused by the breach of contract by the defaulting party. Damages is in the UK the only remedy available for a breach of a warranty. These damages can come in different forms such as an award of monetary damages, liquidation damages, specific performances, rescission and restitution.

Damages are classified as being compensatory or punitive. Compensatory damages are rewarded in an attempt to make up for the losses incurred by the breached party. These damages are most often awarded as payments. Punitive damages are given to “Punish or make an example of a wrongdoer who has acted wilfully, maliciously or fraudulently”. When punitive damages are awarded, which happens only in extreme cases, they are usually awarded along with compensatory damages.

RIGHTS TO TERMINATE FOR BREACH

A right to terminate a contract arises for:

1. *Breach of a condition* of the contract, no matter how trivial the breach of the condition may be;
2. *Repudiatory breach*, that is an actual breach of an innominate term, where the consequence of the breach is sufficiently serious to give rise to a right to terminate; or
3. *Renunciatory breach* (aka *anticipatory breach*), where the other party makes clear to the innocent party that it:
4. Is not going to perform the contract at all, or
5. Is going to commit a breach of a condition, or
6. Is going to commit a breach of an innominate term,

And the consequences will be such as to entitle the innocent party to treat the contract as at an end.

An innocent party is therefore entitled to elect to terminate a contract only for a breach of a *condition of the contract*, *repudiatory breach* or *renunciatory breach*. Nothing less.

To terminate a contract for *repudiatory breach*, the innocent party must tell the defaulting party. Many commercial contracts include clauses which set out a process whereby notice must be given and in what form. Consequently, where there is a written contract, care should be taken to check the contract terms and to ensure compliance notwithstanding that the other party may, on the face of it, have committed a clear and *repudiatory breach*. It is only when the defaulting party is told that a *repudiatory breach* has been “accepted” that the contract is terminated. If the defaulting party is not told the repudiatory breach has been accepted, the contract continues in force. An innocent party is not compelled to exercise their right to terminate, and accept a *repudiatory breach*. When they don’t the contract continues in force.

*REPUDIATORY BREACHES*

Conduct is *repudiatory* if it deprives the innocent party of substantially the whole of the benefit intended received as consideration for performance of its future obligations under the contract.

Different forms of words are used by courts to express this central concept. The most prominent is whether the breach goes to the root of the contract. These forms of words are simply different ways of expressing the “substantially the whole benefit” test.

*RENUNCIATORY BREACHES*

Conduct is *renunciatory* if it shows an intention to commit a *repudiatory* breach. The conduct would lead a reasonable person to conclude that the party does not intend to perform its future obligations when they fell due.

Showing an intention to perform a contract in a manner which is inconsistent with the terms of the contract also shows an intention not to perform the contract. Whether such conduct is so severe so as to amount to a *renunciatory* breached depends upon whether the threatened difference in performance is *repudiatory*. An intention to perform connotes a willingness to perform, but willingness in this context does not mean a desire to perform despite an inability to do so. To say; “I would like to but I cannot” negatives intent just as much as “I will not”. Contracting parties must perform contracts in strict accordance with its terms: that is what was agreed in the first instance, when the contract was formed. To do otherwise is therefore a breach of contract.

In the event of a *renunciatory* breach, the innocent party may:

* Choose to accept the breach at once and to terminate the contract, without waiting for the due date of performance, or
* Wait for the time for performance of the contract.

If the defaulting party does not perform when the time for performance arrives, the contract may be terminated. However, if the defaulting party does perform, the right to terminate is lost forever.

Conduct comprising a breach for performance of contractual obligations which have fallen due may be insufficient to be a *repudiation.* However:

* It may nevertheless be conduct which is a renunciation because it would lead the reasonable observer to conclude that there was an intention not to perform in the future, and
* The past and threatened future breaches taken together would be *repudiatory*.

The reason why a defaulting party commits an actual breach is a repudiation (this is an incident of strict liability for the performance of contractual obligations). But the reason may be highly relevant to what such breach would lead the reasonable observer to conclude about the defaulting party’s intentions in relation to future performance, and therefore to the issue of renunciation. Often the question whether conduct is a renunciation fails to be judged by reference to the defaulting party’s intention which is objectively evinced both by past breaches and by other words and conduct.

1. **WHAT ARE THE REMEDIES AVAILABLE FOR BREACH OF CONTRACT?**

There are a variety of remedies available for a contract breach. The appropriate compensation or remedy depends upon the circumstances. The non-breaching party will need to demonstrate that the other party failed to perform in order to be entitled to any type of remedy. The remedies include:

* **Monetary damages;**

The party who breached the contract can be held responsible for the losses caused by the breach. Both general or expectation damages and consequential damages can result from a breach of a contract. General or expectation damages refer to the loss directly caused by the breach.

Consequential damages refer to losses that occurred because of the breach but that were an indirect cause. For example, if you contracted and paid for a machine to be delivered and it never came, the general losses would include the value of the money you paid for the machine. The consequential losses could include the loss of business caused by the fact you did not have the machine you needed to do your work. *Adetoun Oladeji (Nig) Ltd v Nigerian Breweries Plc.*

* **Specific performance:**

In some cases, the appropriate remedy for a breach of contract is to correct the breach by forcing the breaching party to complete the terms of the agreement. Specific performance is an appropriate remedy in situations where monetary damages could not possibly make the non-breaching party whole for the losses. For example, if there was a contract created for a buyer to purchase a very rare piece of art, the buyer could not simply find the art elsewhere. The only remedy that would help the buyer in this circumstance is for the court to require the sale to go through so the buyer got the unique one-of-a-kind painting that he contracted for.

* **Rescission:**

Rescission allows the non-breaching party to essentially be released from performance obligations. Rescission is a remedy for a breach of contract because it makes clear that the party is relieved of his duties due to the failure of the other party to perform.

* **Liquidation damages:**

Sometimes, it is very difficult to determine how much a person was damaged by a breach of contract. To address this problem, some contracts contain liquidated damage clauses. Essentially, these clauses specify that the non-breaching party will be awarded a specific amount of money in the event a breach occurs. These clauses will be upheld as long as they are fair.

Some damages include; Compensatory damages (Actual damages) under this we have General damages and Special damages. We also have Punitive damages (Exemplary damages) *Wema Bank Plc v Alhaji Sola Oloko (CA/I/88/2009) (2014) NGCA 3.*

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