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a) A contract is a legally binding promise made between two parties. Each party to a contract promises to perform a certain duty, or pay a certain amount for a specified item or service. The purpose of a contract being legally binding is so each party will have legal recourse in the event of a breach. When any party to a contract, whether oral or written, fails to perform any of the contract's terms, they may be found in breach of contract. It is an unjustifiable failure to perform terms of a contract. A violation of contract through failure to perform, or through interference with the performance of the contractual obligations. A breach of contract is seen as a broken promise to do or provide something. 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. Lastly, we can say a breach of contract is a violation of any of the agreed-upon terms and conditions of a binding 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, 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 fling the lawsuit. The breach could be anything from a late payment to a more serious violation such as the failure to deliver a promised asset. It occurs when the promise of the contract is not kept, because one party has failed to fulfil their agreed upon obligations, according to

the terms of the contract. Breaching can occur when one party fails to deliver in the appropriate time frame, does not meet the terms of the agreement, or fails perform at all. Further, if one party fails to perform while the other party fulfils their obligations, the performing party is entitled to legal remedies for breach of contract.

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

(A) fails to perform their obligations under the contract in whole or in part

(B) behaves in a manner which shows an intention not to perform their obligations under contract in the future or

(C) 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 renunciate the contract in advance of the time they are required to performs their obligations. Renunciatory breach is more commonly known as “anticipatory breach”.

We have four main types of breach. And they are as follows:

Minor Breach: A minor breach of contract occurs when a party fails to perform a part of the contract, but does not violate the whole contract. To be considered a minor breach, the infraction must be so nonessential that all parties involved can otherwise fulfil any remaining contractual obligations. A minor breach is sometimes referred to as an impartial breach;

Material Breach: A material breach of contract is a breach that is so substantial, it seriously impairs the contract as a whole; additionally, the purpose of the agreement

must be rendered completely defeated by the breach. This is sometimes referred to as a total breach. It allows for the performing party to disregard their contractual obligations, and to go to court in order to collect damages from the breaching party;

Fundamental Breach: A fundamental breach of contract is essentially the same as a material breach, in that the non-breaching party is allowed to terminate the contract and seek damages in the event of a breach. The difference is that a fundamental breach is considered to be much more egregious than a material breach; and

Anticipatory Breach: An anticipatory breach occurs when one party lets the other party know, either verbally or in writing, that they will not be able to fulfil the terms of the contract. The other party is then able to immediately claim a breach of contract and pursue a remedy, such as payment. Anticipatory breach may also be referred to as anticipatory repudiation.

In the case of *Lumley v Wagner 1852*, Johanna Wagner (defendant) contracted to sing solely for Benjamin Lumley's (plaintiff) theatre for one season. Accordingly, Covent Garden, an opponent theatre, persuaded Wagner to break her agreement with Lumley and sing for that theatre instead. Lumley sued. The issue was 'May a court enforce a negative injunction on an individual, preventing her from accomplishing something she indirectly contracted not to do?' And it was held that 'Yes. Even where there is no satisfactory remedy at law, a court of equity will, for the most part, will not particularly implement a personal services contract.'

We can also go further and look at the the case of *Cutter v Powell [1795] EWHC KB 113*, the claimant's husband agreed by contract to act as a second mate on the ship the 'Governor Parry' on a return voyage to Jamaica. The voyage was to take eight weeks and he was to be paid on completion. A term in the contract stated: "Ten days after the ship 'Governor Parry,' myself master, arrives at Liverpool, I promise to pay to Mr. T.

Cutter the sum of thirty guineas, provided he proceeds, continues and does his duty as second mate in the said ship from hence to the port of Liverpool. Kingston, July 31st, 1793." Six weeks into the voyage the claimant's husband died. The claimant sought to claim a sum to represent the six weeks work undertaken. It was then held that the wife's action failed. Payment was on condition that he worked the ship to Liverpool, since he did not fulfil this condition the widow was entitled to nothing.

b) When an individual or business breaches a contract, the other party to the agreement is entitled to relief (or a "remedy") under the law. The main remedies for a breach of contract are:

- i. Damages: it's a trite law that where there is a wrong, there must be a remedy. Thus where a party to a contract establishes by evidence before the court that the other party has committed a breach of the contract, he is entitled to claim damages. The main object of awarding damages for breach of contract is to compensate the injured and put him back to the position he would have been in if the contract had been performed. In the case of *UMUDGE V SHELL BP PETROLEUM DEV. COMPANY OF NIG LTD 1975*, it was held that damages, after all, have been defined "as the pecuniary compensation which the law awards to a person for the injury he has sustained by reason of the act or default of another, whether that act or default is a breach of contract or a tort" or put shortly, "damages are the recompense given by process of law to a person for the wrong that another has done him." Also, in the case of *SOETAN & ANOR V OGUNWO 1975*, damages generally is money claimed by or ordered to be paid to a person as compensation for loss or injury. In other words, damages are

the sums of money which a person wronged is entitled to receive from the wrongdoer as compensation for the wrong.

There are many kinds of damages and some include:

Compensatory damages aim to put the non-breaching party in the position that they would have been in if the breach had not occurred.

Punitive damages are payments that the breaching party must make, above and beyond the point that would fully compensate the non-breaching party. Punitive damages are meant to punish a wrongful party for particularly wrongful acts, and are rarely awarded in the business contracts setting.

Nominal damages are token damages (small amount of damages) awarded when a breach occurred, but no actual money loss to the non-breaching party was proven. In the case of *BADMUS V ABEGUNDE 1999*, it was held that ‘as observed by Lord Halsbury, damages are not necessarily because they are small in amount. The term nominal damages is a technical one which negatives any real damage, and means nothing more than that illegal rights has been infringed in respect of which a man is entitled to judgements. But the term nominal damages does not mean small damages. The whole region of enquiry into damages is one of extreme difficulty, and you cannot lead down any fixed principle to AG as to the amount of compensation which order to be given.

Liquidated damages are specific damages that were previously identified by the parties in the contract itself, in the event that the contract is breached. Liquidated damages should be a reasonable estimate of actual damages that might result from a breach. *N.U.B. LTD V SAMBA PET.CO. LTD 2006*, it was held that liquidated damages is a sum which a party agrees to pay. That is to say the amount of damages has been ascertained.

- ii. Specific performance: If damages are inadequate as a legal remedy, the non-breaching party may seek an alternative remedy called specific performance. Specific performance is best described as the breaching party's court-ordered performance of duty under the contract. It is an equitable remedy requiring the exact performance of a contract in the specific form in which it was made or according to the precise terms agreed upon. It may be used as a remedy for breach of contract if the subject matter of the agreement is rare or unique, and damages would not suffice to place the non-breaching party in as good a position as they would have been in had the breach not occurred.

In the case of *Ibekwe v Nwosu 2011*, it was held that specific performance is the remedy of requiring the exact performance of a contract in the specific form in which it was made or according to the precise terms agreed upon. It is the actual accomplishments of the contract by party bound to fulfil it. The doctrine of specific performance is that where monetary damages would be an inadequate compensation for the breach of an agreement, the contractor or vendor will be compelled to perform specifically what he has agreed upon.

- iii. Cancellation and Restitution: A non-breaching party may cancel the contract and decide to sue for restitution if the non-breaching party has given a benefit to the breaching party. "Restitution" as a contract remedy means that the non-breaching party is put back in the position it was in prior to the breach, while "cancellation" of the contract voids the contract and relieves all parties of any obligation under the agreement.

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