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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 honored by one or more of the parties to the contract by non-performance or interference with the other party's performance. It is a legal term that describes the violation of a contract or an agreement that occurs when one party fails to fulfill its promises according to the provisions of the agreement. Sometimes it involves interfering with the ability of another party to fulfill his duties. A contract can be breached in whole or in part.

Most contracts end when both parties have fulfilled their contractual obligations, but it's not uncommon for one party to fail to completely fulfill their end of the contract agreement. Breach of contract is the most common reason contract disputes are brought to court for resolution. A breach of contract entitles the innocent party to sue for damages against the guilty party the breach occur as a result of repudiation of contract obligation or a fundamental breach, the innocent party, may, in addition from further liability to perform his own part of the obligation.

The innocent party can make a choice as he is not bound to treat the contract as discharge where the injured party repudiates or in breach of fundamental terms. He may choose to sue for damages instead and keep the contract alive in certain circumstances.

General Requirements

A breach of contract suit must meet four requirements before it will be upheld by a court.

* The contract must be valid. It must contain all essential contract elements by law. A contract isn't valid unless all these essential elements are present, so without them, there can be no lawsuit.
* The plaintiff or the party who's suing for breach of contract must show that the defendant did indeed breach the agreement's terms.
* The plaintiff must have done everything required of them in the contract.
* The plaintiff must have notified the defendant of the breach before proceeding with filing a lawsuit. A notification made in writing is better than a verbal notification because it offers more substantial proof.

The methods of breach can have a decisive effect on the right and liabilities of the innocent party. It is important to consider, where the contract is repudiated, or there is fundamental breach as some breaches entitle the innocent party to sue for damages, and more serious breaches entitles the innocent party, in addition to damages, to treat himself as discharged from the contract. Serious breaches are generally described as “repudiatory breaches” where the innocent party can make an election either to repudiate or affirm the contract.

In a deposit account, what constitutes a breach is the failure of a bank to pay money due to the deposit account on demand by the operator of the account. Thus in *Nigerian Merchant Bank Plc. V. Aiyedun investment Ltd. (1998) 2 NWLR (pt. 537) 221 CA*, the court held that such a breach will justify a claim for compensation. It does not matter if the compensation claimed is described as interest or damages. In *UBN Plc v. Jeric (Nig.) (1998) 2 NWLR (pt. 536) 63* it was held that in a contract on goods imported the respondent did not pay for the value of the goods and other expenses incurred by the appellant, the appellant did not breach any terms ot its agreement by withholding on to the goods. The appellant has to option than to hold on to the goods and this cannot be a breach of contract.

Breach of contract can be material, partial, or anticipatory.

A material breach is one that is significant enough to excuse the aggrieved or injured party from fulfilling their part of the contract.

A partial breach is not as significant and does not normally excuse the aggrieved party from performing their duties.

An anticipatory breach is one where the plaintiff suspects that the offending party might breach a contract by doing or failing to do something that shows their intention not to complete their duties. Anticipatory breaches can be very difficult to prove in court.

REPUDIATION

Repudiation occurs where there is a contract between two or more parties to be performed at a future date and one party declares an intention not to perform his own side. Repudiation is sometimes described as ‘anticipatory breach’ or renunciation, whatever ever language repudiation is described, a guilty party indicates by words or conduct that he is no longer interested in performing his own side of the contract, whenever the time for performance arrives. In anticipation of the breach, Coker J. once stated, ‘It is open to a party to a contract to sue the other party for breach of contract, if it is manifested by his conduct and his acts that the defaulting party had made himself unable to fulfill his part of the contract at the agreed time” *Solomon Nassar v. Oladipo Moses Suit: No LD/222/58 High Court of Lagos delivered Coker Jon May 20, 1960*.

In fact and in truth, repudiation is anticipatory, the innocent party prevents further damages by taking an action for breach of contract. As Lord Esther explained the meaning of anticipatory breach in *Johnstone v. Milling (186) 16 QBD 460 at 467*. Where one party assumes to renounce the contract, that is by anticipation refuses to perform, declares his intention then and there to rescind the contract, the innocent party, in most cases, adopts the renunciation, which is another word as repudiation, and bring the contract to an end. For other purposes involving a wrongful renunciation, he may wait for the arrival of the time when the course of action would arise. He must therefore elect the course recognized by law which he will pursue in anticipatory breach. The court, however, has formulated principles of law applicable when it involves anticipatory breach. Thus, in *Agufor v. Arab Ltd Suit No WN/205/69 delivered September 28, 1969 High Court of Western State Ibadan* (unreported), Somolu J clearly stated the principle of law as follows:

“It is an indisputable point of law that the breach of agreement entitles, the other party who is damnified by it to bring an action on it. Such a breach may take place before the time fixed for performance or of completing the performance of the contract has arrived. Where a promisor by his own act or default disables himself from performing his promise, the other party is entitled to treat the contract as at an end and to sue him for damages for the breach without waiting for the time fixed for performance and without further performing his own part of the contract.”

In the recent court decision the court, stated the effect of an unaccepted repudiation of contract. Thus, in *NEPA v. Isieveore (1997) 7 NWLR (pt. 511) 135*, the court stated an unacceptable repudiation of a contract is of no value to anybody, it confers no legal right of any kind. This is because repudiation by one party standing alone does terminate the contract. It takes two to end it by repudiation of the one side and acceptance of the repudiation on the other. Further the court stated, where there is a unilateral repudiation of a contract, this is treated as an offer by the guilty party to the innocent party of the termination of the contract. It is the acceptance to the offer by the innocent party which acts as a discharge of contract. It is open to innocent party to sue for damages since the acceptance of the repudiation, the contract comes to an end. There the innocent party refuses to accept the repudiation, the contract remains in existence. This proposition is founded on the elementary principles of the formulation of contract obligation. *Olaniyan v. University of Lagos (1985) 2 NWLR (pt. 9) 599.*

Repudiation may be expressed or implied or it may be words or by conduct. In the *Nigerian Supplies Manufacturing Broadcasting Corporation (1967) 1 All NLR 35*, a company leased certain property to the defendant for a term of 5 years at rent of N26, 000 with an option to renew for a further of 5years which was to be exercised by notice in writing two years before the determination the original term.

The Director-General of the Corporation wrote that the board had refused ratify the exercise of the option to renew and purported to withdraw to exercise of the option. The plaintiff issued write claiming a declaration that the option to renew had been validly exercised. On an appeal, the Supreme Court head that the action of the defendants by their letter was an attempted repudiation or renunciation of the contract which could be treated as an anticipation breach of contract or on the other hand, the plaintiff could have waited till the date of performance was passed and then sued.

Repudiation may be as a result of reasonable inference that the defend no longer intends to perform ts part of the contract. The plaintiff is entitled to treat the contract as discharged. In *Frost v. Knight (1872) LR 7 Exch. 117*; See also *Federal Commerce Navigation Co. Ltd. v. Molena Alpa Inc. (1979) AC 757*, K agreed to marry the plaintiff on the death of his father’s. He broke off the engagement during his father’s lifetime.

The court held that the plaintiff was entitled to sue for breach of contract. The promise has an inchoate right to the performance of the bargain, which becomes complete when the time of performance has arrived. In the meantime he has right to have contract as a subsisting and effective contract.

Refusal to perform may be conduct. In such a situation, the test is to ascertain whether the action or omission is such as to lead a reasonable person to conclude that he no longer intends to be bound by the provision of the contract. Where the repudiation does not go the root of the contract or have a profound effect so that the breach do not go to the root of the contract or have a profound effect so that the breach does not deprive the innocent party substantially of the whole benefit of the contract. He will only be entitled to claim damages but not to repudiate the contract. A party to the contract must be both ready and willing to perform but could not perform, he can be equated to a person who refuses to perform. He then has to repudiate the contract. In *Universal Cargo Carriers Corporation v. Cltati (1957) 2 QB 401 at 437*, Delvin J stated; “unwillingness and inability are always or often difficult to disentangle, and it is necessary to make attempt.”

In ability often lies at the root of unwillingness to perform. Willingness in this context does not mean cheerfulness, it means simply an intent to perform. If when the day comes for performance a party cannot perform, he is breach quite irrespective of how he became disabled. The inability which justifies an anticipatory breach can be of any different character.

Anticipatory breach is devised as a whip to be used for the chastisement of deliberate contract breakers, but from which the shiftless, the dilatory r the unfortunate are to be spared. It is not confined to any particular class of breach, deliberate or blame worthy or otherwise it covers all breaches that are bound to happen. In the case of *Tewogbade & Sons Ltd v. Funso Adeolu Suit No: 1164/80 High Court of Oyo State, Ibadan delivered June 25, 1981q Adeyemi J.* the defendant agreed to supply steel water tanks and pipe to the plaintiff. There is a condition in the agreement that the defendant must deliver within ten weeks of the signing of the agreement. The contract is N200,147.88, the plaintiff paid 50% N100,73,94k, the balance to paid on delivery. Eleven weeks after, the defendant informed the plaintiffs that he could not procure the material from London and purpose to procure in Nigeria for N561,599,48k. Three times the contract price the plaintiff rejected and demanded a refund. The plaintiffs brought an action for a refund and damages for breach of contract.

The defendants agreed that it is the plaintiffs who terminated the contract despite the fact that the defendant is willing to perform. Adeyemi J held that “the defendant by his words spoken or written and conduct repudiation the agreement by way of anticipatory breach and the plaintiff was obliged to choose to accept the repudiation and treat the contract as at end and immediately sue. The plaintiff has there accepted to opt for treating the contract as end and is covered by the law”

Similarly, in *Johnson Bekedermo v. Colgate Palmolive (Nig.) Ltd Suit No B/47/43 of High court of Midwest Benin, Delivered June 14th 1974 by Ogbobure J*., the plaintiff was a distributor of the company’s product on commission and they both entered into dealership agreement. The agreement required him into three months’ notice in writing to terminate the agreement. The plaintiff alleged that the defendant terminated the agreement without giving necessary notice and brought a claim for damages for breach of contract. The defendant rejected and averred that he had failed to make reasonable and regular payments for goods delivered and that this constituted non-compliance and thus discharges the defendants from their obligation. The judge in dismissing the claim considered the issue of repudiation. He said, if an essential condition of a contract is broken, the innocent party ordinarily has a right eight to treat himself as discharged and to recover damages for the particular breach. Turning to the principle applicable, the judge said, if in a contract for goods to be delivered or paid for or by installment, it is a question of fact whether failure to deliver one or more installments or pay for one or more deliveries constitutes repudiation. To determine the nature of the breach, the test is whether the breach is of such kind as to lead to the /inference that similar breaches will be committed with respect to subsequent installments. The court held that the condition by the plaintiff to pay cash for each delivery formed a substantial condition of the contract and failure to observe will enable the company to treat as a breach.

FUNDAMENTAL BREACH

Another circumstance in which a party to contract can treat himself as discharged for the breach of contract is where a party to the contract commits a fundamental breach. Lord Diplock *in Photo Productions Ltd. v. Securities Transport Ltd. (1980) AC 827*, defined a fundamental breach of contract as an event resulting from the failure of by one party to perform a primary obligation which has the effect of depriving the party of substantially the whole benefit of the contract which was the intention of the parties that he should obtain from the contract. Before 1966, it was the general belief that a party who is guilty of fundamental breach of contract could not avoid liability by reliance on an exemption clause inserted into the contract. The decision in Suisse *Antlantique case (1967) AC 361*, however, reversed the general opinion. Fundamental breach is a breach which goes to the root of the contract and has the effect of depriving the innocent party of achieving the main purpose of the contract.

In essence, the breach discharges the innocent party from further performance, and leads him to terminate the contract. A breach of essential term in a contract can lead to a fundamental breach. Since the breach of fundamental term is rather subjective in nature, the parties themselves must have regarded the fundamental term as of major importance when the contract was made.

The court is empowered to determine whether the term is major, minor or fundamentally important so as to constitute a breach. It is often observed that there is no difference between the breach of fundamental term and a breach of condition in contract. A condition is an important stipulation in the contract that goes to the root of the contract, the breach of which entitles the innocent party to a discharge or repudiation.

In essence a condition is a fundamental term of a contract which has the same effect as a breach of fundamental term. In the Sale of Goods Edict, it was stated that a breach if condition will gives rise to a claim for damages but as Sagay righty observed, the right to repudiate does not apply to fundamental breach of fundamental terms.

REMEDIES AVAILABLE FOR A BREACH OF CONTRACT

Damages

As you have seen, a party who has suffered a loss by breach of contract has a right to seek redress in the courts for, among other things, compensation by way of damages.

KINDS OF DAMAGES

1. Nominal: Any breach of contract gives the innocent party a right of action for damages. As already stated, the object of awarding damages is to compensate the injured party for the loss occasioned by the breach. If the injured party has not suffered any actual loss, although his legal rights has been infringed by the breach, he will only be awarded nominal damages, i.e., a small amount. Thus, in *Solomon v. Pickering and Co. Ltd (1926) 6 NLR 39* the defendant entered into a verbal agreement with the plaintiff in Calabar, in March 1922, whereby the defendants agreed to ship and sell palm oil in New York. The plaintiff then handed over to the defendants a bill of lading in respect of the consignment sometime in June 1922. The defendants unilaterally transferred the oil by ship to Liverpool in England where they sold it, without consulting the plaintiff. The plaintiff brought an action for damages, for the loss suffered by him as a result of wrongful sale of the palm oil in Liverpool instead of New York as stipulated under the contract. It was held that, the defendants nts were in breach of contract and so liable to pay the plaintiff only nominal damages, as the plaintiff could not establish special damages. It should be noted the amount payable in each case is at the discretion of the court.

2. Contemptuous: Sometime, particularly in actions for breach of promise of marriage, contemptuous damages (e.g., a kobo) may be awarded, vindicating the plaintiff but indicating that the action ought not have been brought.

3. Punitive or Exemplary: As we may recall, damages are compensatory’ but there are two recognized instances in which the court may award substantial damages called punitive or exemplary damages (i.e., damages in excess of the loss actually suffered), to the injured party. The first instance is also the case of breach of promise of marriage. Such exemplary damages may be awarded substantial damages taking such factors as period of courtship, the waning in attraction of the plaintiff, the prospects of marriage to mention a few, into consideration, see the case of *S.C.O.A Ltd. v. Ogana (1958) WRNLR 141*. Such damages are partly punitive and partly compensatory in character. The aim of punitive damages is to serve as a deterrent for such breach of contract. Secondly, exemplary damages are awarded in circumstances where a breach of contract gives rise to loss of reputation. This will surely be the case where a banking company unreasonably dishonours the cheque of a customer which in turn questions his credit-worthiness. If the customer is a trader, he will recover substantial damages without pleading and proving actual damages; and as a general rule, the smaller the amount of the cheque, the greater the damage to credit sustained. But a non-trader can recover nominal damages, unless he proves loss of credit or other special damages. See *Gibbons v. Westminster Bank Ltd. (1939) 2 KB 882.*

4. Ordinary damages: We have also ordinary or general which is the actual sum of money necessary to compensate the injured party for the sustained as a result of the breach. 5. Special damages: Finally, we have special damages is the amount of money that must be paid as compensation to the injured party for the loss sustained beyond ordinary or general damages, and which is not the type that would necessarily result from the particular breach, Such damages, which arise from circumstances peculiar to the case, is compensated if it can be shown that the party at fault had at the time of contracting, sufficient knowledge of such circumstances and nevertheless entered into the contract on that basis. As stated by *Lord McNaghten in Bolag v. Hutchinson (1905) AC 515, at p.525*.

‘General’ damages are such as the law will presume to be the direct, natural and probable consequence of the complained of. ‘Special’ damages, on the other hand, are such as the law will not infer the nature of the act. They do not follow in the ordinary course. They are exceptional in their character, and therefore they must be claimed specially and proved strictly. In cases of contract, special or exceptional damages cannot be claimed unless such damages are within the contemplation of the parties at the time of contract.

Liquidated Damages

Under the freedom of contract approach, it is quite common for the parties to a commercial arrangement to include clauses which give a genuine pre-estimate of the damages which are to be paid by one party to another in the event of breach. However, the philosophy of awarding damages in compensation, not punishment, leads in some cases to problems in predetermining the amount of damages. Thus, if there is a dispute which is litigated, the courts will not strike it down as a penalty if the amount stated is excessive. That said, it is a particularly useful device in construction contracts, where it may be easier to estimate the loss the injured party will suffer if, for some reason, work is delayed or stopped on site. And if the liquidated damages clause has been agreed on, the courts may enforce it even though it can be shown the actual loss is greater or smaller. In *Cellulose Acetate Silk Co Ltd v Widnes Foundry Ltd (1925)*, (1933) Widnes agreed to pay Cellulose Acetate £20 a week for each week they delayed in erecting the latter's factory, past the agreed-on completion date. Delay occurred for 30 weeks at a loss calculated at £195 a week, totaling £5,850. The Court held Widnes was only liable to pay £20 a week as agreed. In *Philips Hong Kong Ltd v Attorney-General of Hong Kong, (1993)*, a contract involving the construction of Route 5 from Tsuen Wan to Shatin, included a liquidated damages or 'agreed damages' clause. This calculated the amount Philips would have to pay on a daily basis if construction was delayed. When sued by the then Attorney-General, Philips argued that the liquidated damages clause was a penalty and not a genuine pre-estimate of the loss suffered. If the courts had considered that the so-called genuine pre-estimate of loss suffered was a penalty for non-performance, then it was probably not enforceable. This may sometimes occur where one sum can compensate for a series of possible breaches (where the progress is linked to certain key dates which may or may not have been met). The Privy Council did not rule that way in this case. Although a single lump sum was payable on the occurrence of certain events, and might well yield a sum to the injured party that was larger than his actual loss, the contract sum estimated was not excessive and was a genuine pre- estimate of the loss. In summary, the courts' dislike for penalty clauses is based on the theory that they are inserted into the contract in terrorem, that is, to frighten the potential defaulter. The law in this area can be complex and, in practical terms, great care needs to be taken in drafting liquidated damages clauses that, at the end of the day, might be interpreted as a penalty to the party in breach, rather than compensation to the innocent party.

Unliquidated Damages

No damages have been fixed in the contract, so the court decides the amount payable, subject of course to the Plaintiff proving his loss, as indeed he would have to do in a tort action. As you saw in the preceding paragraphs, the courts will not enforce a penalty, but will award damages on normal, contractual principles. Damages for Injured Feelings This is a complex area of the law, as its underlying foundation is predicated (based) on trying to place the injured party in the same position as if the contract had been performed. So where does that leave the potential Plaintiff in our tour example, in which he has suffered disappointment and perhaps physical discomfort or injured feelings? The early judicial view was that such compensation would not be awarded in cases involving, among other things, mere inconvenience, annoyance, disappointment and without any resulting real physical inconvenience; *Hobles v London & South Western Rowley Co (1875)*. This approach was based on policy considerations, in that the courts did not want to open the floodgates to damage claims in such circumstances. However, judicial thinking has advanced since then and does not necessarily disregard the fact that such feelings can arise from a breached contract. In *Jarvis v Swan Tours Ltd (1973)*, where Jarvis experienced disappointment, distress, upset and frustration resulting from glowing promises made by Swan Tours for his Swiss holiday package, Lord Denning and Davis L J acknowledged the difficulties in assessing damages in these types of claim and the inherent policy considerations, but noted that emotional distress has been satisfactorily awarded in tort claims.

This general approach was followed in *Jackson v Horizon Holidays, (1975)* Jackson and his family were hoping to get a holiday in Ceylon (Sri Lanka) in which everything was 'of the highest standard'. The advertised amenities — mini golf course, pool, beauty and hairdressing salons — did not materialise and the food was mediocre. Jackson obtained damages in contract for both himself and his family, on the basis he had contracted with Horizon Holidays for their benefit. Consequently, the damages awarded by the court of £1,100 could be deemed excessive. Criticism of this judgment has come from the House of Lords, See *Woodar v Wimpey, (1980).* As nominal damages for the family would have been more appropriate. In English contract law, if A (Jackson) contracts with B (Horizon Holidays) in return for B's promise to do something for C (Jackson's family) and B repudiates the contract, C has no enforceable claim and A is restricted to an action for nominal damages by reason of having suffered no loss. The Jackson award does not seem to follow this principle. However, the awarding of damages by the courts for mental stress remains generally only applicable to the Jarvis and Jackson leisure-type situations. In the Australian case of *Baltic shopping Co. v Dillon (The Michkail Lermontor) (1993)*, the appellate Court limited the award of similar damages only in contracts involving relaxation, pleasure, entertainment and so on, but not in commercial contracts generally.

Penalties

Sometimes, the parties to a contract provide, in the contract itself, that a specified sum shall be payable in the event of breach. In other words, parties to a contract may fix the sum payable to the injured party in the event of a breach being committed. Such sum may be either liquidated damages or a penalty. It will regarded as liquidated damages if, on a proper construction, such a provision may be said to represent a genuine pre-estimate of the damages likely to result from the breach, and it is valid. Thus, in *Dunlop v. New Garage Co. (1915) AC 79* Dunlop, motor tyre manufacturers, sold tyres at a reduced rate to the defendants (wholesale dealers), on the terms that no private customer should be supplied below certain listed prices. The defendants agreed to observe this undertaking and to pay ‘the sum of £5 as liquidated damages’ for every tyre sold in breach of the agreement and, when sued by Dunlop, for selling below the listed prices, it pleaded that the £5 per tyre was a penalty. It was held, by the House of Lords, that the sum was not a penalty and was therefore recoverable as it was intended as a genuine pre-estimate of the damage to Dunlop. It is necessary to note that in the case of liquidated damages, the plaintiff can recover the sum of specific in the contract, even if his actual loss is less than the amount specified. He will also recover the specified sum if his actual loss is more. But sometimes, a clause in a contract providing for a specified sum may be challenged on the ground that it is a penalty, that is, an amount fixed arbitrarily as a threat over the head of the defendant, to try to force him to perform the contract. Therefore, where such a provision is made in terrorem with the primary motive of securing the performance of the contract, it is bad law, for as stated above, it is a penalty. If the court holds that that clause is a penalty clause, it is disregarded, and the plaintiff cannot recover more than his actual loss. In other words, if the pre-estimate and measure damages in accordance with the principles discussed earlier. Thus, in *Udeozo and ors v. Incar (Nigeria) ltd. (1967) FNLR 90*, the parties fixed a pre-estimate of loss at £250. The court rejected this stipulation and proceeded to award £750 damages to the plaintiff. Whenever the specified sum is liquidated damages or a penalty depends on the intention of the parties. To discover that intention, certain guidelines assist the courts in testing the genuineness of the stipulated pre-estimate.

1. To decide whether a sum is a penalty or liquidated damages, regard is given to the circumstances prevailing at the time of the formation of the contract and not at the time of the action.

2. The fact that the specified sum is described as a ‘penalty’ or as ‘liquidated damages’ (or any similar expression) is relevant but not decisive, for the court may decide otherwise.

3. The sum fixed will be regarded as a penalty if it is clearly extravagant and incommensurate with the greatest amount of loss that could conceivably have been incurred. In other words, extravagant and unconscionable pre-estimates often indicate that the pre-estimate are penalties, as well as where the pre-estimate consists only in a payment of a sum of money, and sum stipulated is greater than the sum which ought to have been paid.

4. If the breach is of a promise to pay money by a certain date and the sum fixed is greater than the sum that should have been paid, the sum will be held to be a penalty. See *Kemble v. Farren (1829) 6 Bing. 141*

5. The sum will be presumed to be penalty when ‘a single lump sum is made payable by way of compensation on the occurrence of one or more or all several events, some of which may occasion serious damage and other but trifling damage.’ This presumption is however rebuttable.

6. Impossibility in estimating accurately the damage engendered by the breach does not make the sum fixed a penalty.

Equitable remedies

As you have gathered from the cases you have read thus far, the court may award damages to the injured party depending on the circumstances, apply more equitable considerations. These remedies are briefly outlined in the following reading. In addition to rescission, the other important remedies are specific performance, and the granting of an injunction or restraining order. The former is positive in that the defaulting party may be ordered by the court to complete the sale transaction upon which he intends to default (this remedy to the injured party would be in lieu of damages, if the court considers it equitable that the defaulting party be ordered to complete). This remedy is particularly common with real estate transactions because of the special place land occupies in our economy. *African Songs Ltd v Sunday Adeniyi*.

On the other hand, an injunction, again ordered by the court, is negative in that the Defendant will be obliged to refrain from some act or conduct which harms the legitimate interest of the Plaintiff. This relief is not easily obtained but it may however be granted quickly; for example, the Defendant opens a business using a name identical with a well established enterprise in which confusion arises as the result of two businesses conducting similar operations, with the latter suffering immediate financial loss. Often the court will grant an 'interim injunction' (temporary) pending the court allowing the Defendant to be heard, as it is possible to obtain an order on an ex parte basis (where the injured party alone requests the order).

Consequently, the Plaintiff under these circumstances will have to undertake to pay damages in the event that if and when both parties are heard, the court ultimately decides that granting the injunction was unjustified. Rectification is another equitable remedy whereby it can be proven that the written document does not adequately reflect a prior oral agreement which has been made. The court therefore effectively re-drafts the agreement to give effect to the true intent of the parties; for example, if it can be shown that the consideration had not been given when the document indicated that it had. Rectification as a remedy is a device that is an exception to the 2 parol evidence rule. The parol evidence rule, as you have learned, states generally that a [[1]](#footnote-1)contractual document will not be altered or varied by the admission of extrinsic oral evidence.

1. Sagay, Nigerian Law of Contract

   2 The NOUN: Law of Contract <https://nou.edu.ng/> accessed on 26 April 2020 [↑](#footnote-ref-1)