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ASSIGNMENT: Discuss the following a) **Breach of contract**

 Breach of contract is a legal cause of action and a type of civil wrong in which a binding agreement or contract is not honored 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 fails to fulfill his or her obligations whether partially or wholly as described in the contract, or communicates intent to fail the obligation or otherwise appears not to be able to perform his or her 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. It is a violation of any agreed upon terms and conditions of a binding contract. Breach of contract simply means an act of breaking the terms set out in a contract.

 A breach of contract entitles the injured or innocent party to an action for damages against the guilty party. However where the guilty party has repudiated the contract or has committed a fundamental breach, then the innocent party has a right to rescind or terminate the contract. This means that as a consequence of the guilty party’s breach, the innocent party is entitled to discharge himself from further liability to perform his yet unperformed obligations to the guilty party but the guilty party remains liable for damages towards the innocent party. It is important to note that the innocent party is not bound to treat the contract as discharged as a result of repudiation or fundamental breach by the other party. The innocent party has the discretion to keep the contract and hence his liability and that of the other party alive in certain circumstances.

 Repudiation of a contract occurs where one party renounces their obligations under a contract. It can be that they are unwilling or unable to perform their obligations under a contract. Repudiation is seen to be quite a serious matter and the court requires a clear indication that a party is unready or unwilling to perform the contract. Because it is often before an actual breach of a contract, it can be referred to as an **anticipatory breach**. In ***Solomon Nassar v Oladipo Moses[[1]](#footnote-1)***, Coker, J stated that “it is open to a party to a contract to sue the other party for breach of same even in anticipation of the time agreed upon for performance, if it is manifest by his that the defaulting party had made himself unable to fulfil his part of the contract at the agreed time”. Repudiation may be express or implied or be in words or by conduct. In the case of ***Hochester v De La Tour[[2]](#footnote-2)***, the defendant actually wrote to the plaintiff stating that he was no longer going to perform his part of the contract under which he agreed to employ the plaintiff as a courier during a foreign tour commencing at a future date. The plaintiff immediately sued for breach of contract even though the date of performance was still nearly a month ahead and he succeeded.

 Also the facts of ***Nigerian Supplies Manufacturing Co. Ltd v Nigerian Broadcasting Corporation[[3]](#footnote-3)*** represents a classic case of express anticipatory breach. The plaintiff’s company leased certain property to the defendant corporation for a term of five years at a rent 26 pounds a year, with an option to renew for a further term of five years which was to be exercised by notice in writing two years before the end of the original term. In October 1964, the third year, the director-general of the corporation wrote to the company exercising the option but on December 1964, he wrote again saying that the board of governors had refused to ratify the option. The plaintiff then issued a writ claiming that the option to renew had been validly exercised and for an injunction to stop the corporation from breaching the contract. It was held that the option had been validly exercised, but for other reasons the grant for injunction was refused. On appeal at the Supreme Court, the injunction was granted and the court held that the defendant’s action in December 1964 was an attempted repudiation of the contract.

 Repudiation could also be implicit or rather implied. Where there is reasonable inference that the defendant no longer intends to perform his part of the contract, the plaintiff is entitled to treat the contract as discharged and sue for breach. In ***Frost v Knight[[4]](#footnote-4)***, the defendant having agreed to marry the plaintiff on the death of his father, broke off the engagement during his father’s lifetime. It was held that the plaintiff was entitled to sue for breach of contract. Where the refusal to perform is by conduct, the test to ascertain whether the action of the defaulting party is such as to lead a reasonable person to conclude that he no longer intends to be bound by the provisions of the contract. When the repudiation does not have such a profound effect such as depriving the innocent of substantially the whole benefit that he was intended to enjoy under the contract, the latter will only be entitled to claim damages but not to treat himself as discharged. But where the defendant, though willing to perform is clearly incapable of doing so, except in a manner substantially inconsistent with his obligations, this will also constitute repudiation.

 Apart from repudiation, another way a party is entitled to treat himself as discharged from further obligations in the contract is where the other party, without expressly or implicitly repudiating the contract, commits a fundamental breach of contract. A fundamental breach refers to one of the parties in the agreement not keeping their part of the deal by failing to complete a contractual term that was essential to the agreement so much so that the innocent party could not perform their responsibilities in the contract. It must be a breach which goes to the root of the contract and has the effect of depriving the injured party of achieving the main purpose for which he contracted. A fundamental breach of contract is a breach by a contractually obligated party if it results in detriment such as substantially depriving them of things they're entitled to receive according to the contract. However, if the breaching party did not foresee these issues and a reasonable person in a similar situation would have been able to foresee a similar result, it may be determined that a fundamental breach of contract did not actually occur. One problem about basing discharge of a contract solely on the breach of a fundamental term is the rather subjective nature of that concept. It is said that for a term to be fundamental, the parties must have regarded it as being of major importance when the contract was made. Since parties do not normally specify this in advance, in the end, it is the court’s view of what is of major importance that prevails, hence, the parties’ presumed intention becomes what the judge thinks it ought to be.

b) **What are the remedies available for breach of contract?**

 The principles for the assessment of the quantum of damages for breach of contract have their roots in the rule set out in the 19th century English case of ***Hadley v Baxendale[[5]](#footnote-5)***. The principle of law enunciated in this case is that damages in respect of breach of contract should be such as:

* May fairly and reasonably arise naturally (i.e., according to the usual course of things from such breach of contract itself) or
* May reasonably be supposed to have been in the contemplation of both parties at the time they entered into the contract as the probable result of breach.

 The Nigerian Supreme Court has applied the doctrine in several cases as a means of restoring an innocent party claiming damages for breach to the position it would have been in had the breach not occurred. As a result, the assessment of damages is based purely on damages flowing naturally from the breach. Only in special circumstances will the equitable remedies of specific performance and injunction be granted by courts. The rule in *Hadley v Baxendale* has been divided into two parts, the first dealing with the normal damage that occurs in the usual course of things and the second with abnormal damages that arises because of special or exceptional circumstances. The facts of the case are that the plaintiffs were millers and the defendants were common carriers of goods. The plaintiff’s steam engine broke which made work on the mill come to a standstill. They had ordered a new shaft from an engineer in Greenwich and arranged with the defendants to carry the broken shaft from their mill to the engineer in Greenwich to be used by the latter as a model for the new shaft. The defendants not knowing that the plaintiffs had no spare shaft delayed the delivery of the broken shaft for several days, with resulting delay to the plaintiffs in getting their steam mill working. The plaintiffs claimed damages for breach of contract. The court had to decide whether the plaintiff’s damages should include loss of profits for the period of the defendant’s delay.

 Applying the rule laid down above to the facts of the case, the court noted that the only facts communicated by the plaintiffs were that the article to be carried was the broken shaft of their mill and they were millers. The plaintiffs did not inform the defendants and they were not aware that as a consequence of the shaft being broken, the mill was at a standstill. The state of the defendant’s knowledge was such that they could have thought the plaintiffs had a spare with which they were operating. It was therefore held that in the great multitude of cases of parties in a similar situation, the consequences arising in this case would not in all probability occur and the plaintiff’s special circumstances were never communicated to the defendants. Hence, the loss of profits could not reasonably be considered such a consequence of the breach of contract as could have been reasonably contemplated by both parties when they made the contract. The facts of this case placed it in the second branch of the rule and the decisive factor for establishing liability against the defendants, namely, knowledge of the plaintiff’s special circumstance was missing.

 A general rule with regard to the time of assessment is that damages should be assessed as at the time when the cause of action arose. But as was stated in ***Johnson v Agnew[[6]](#footnote-6)***, this is not an absolute rule and the court will fix any other appropriate day if the date of breach will cause injustice. Such a situation can occur (i) where the innocent party refuses to treat the breach as terminating the contract, (ii) where the plaintiff did not know until later that a breach had occurred. The aim of awarding damages is to place the injured party in the same situation as if the contract had been performed. In ***Solomon v Pickering & Co Ltd[[7]](#footnote-7)***, the plaintiff entered into a verbal agreement with the defendants in Calabar in March 1922 where the defendants agreed to sell in the market at New York, 49 casks of palm oil and 158 bags of cocoa. The plaintiff gave the defendant a bill of lading for the consignment sometime June 1922, the defendants unilaterally transferred those commodities by ship to Liverpool in England without consulting the plaintiffs. There they sold the palm oil for 620 pounds 4 shillings 9 pence and the cocoa for 275 pounds 3 shillings 2 pence. The plaintiff brought action claiming 419 pounds 15 shillings 1 penny as damages for the loss suffered as a direct result of the wrongful sale of the commodities. The first court struck out the suit on the ground that it was not alleged that there was a market price for the commodities in New York before shipment to Liverpool. The full court reversed the decision and held that the shipment of the goods to Liverpool constitutes a breach of contract as they should have received the prior instructions of the plaintiff before takings such steps.

 In certain circumstances the courts will order **specific performance** of the terms of a contract even after it’s breach. This generally only occurs in relation to contracts dealing with real property, for instance if you have agreed to sell an apartment and then breach the contract by not going through with the sale, the remedy that the courts order may be that you complete the sale. **Injunction** can be defined as an order of the court instructing a person to refrain from doing some act that has been the subject matter of the contract. Where a party has agreed not to do a thing and he does it, it is a breach of contract, so the aggrieved party may seek the protection of the court under certain circumstances and obtain an injunction.

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1. (unreported) High court, Lagos, Coker J, Suit No. LD/222/58 delivered on May 20, 1960 casebook, p.448 [↑](#footnote-ref-1)
2. (1853) 2 E. & B. 678. [↑](#footnote-ref-2)
3. (1967) 1 All N.L.R. 35. [↑](#footnote-ref-3)
4. (1872) L.R. 7 Exch. 111. [↑](#footnote-ref-4)
5. (1854) 9 Ex. 341, [1843-60] All E.R. 461 at p. 465 [↑](#footnote-ref-5)
6. [1980] A.C. 367 at p. 400 [↑](#footnote-ref-6)
7. (1926) 6 N.L.R. 39. [↑](#footnote-ref-7)