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MATRIC NO: 18/LAW01/131

LEVEL: 200 LEVEL

COURSE TITLE: LAW OF CONTRACT II

COURSE CODE: LPB 202

ASSIGNMENT TITLE: BREACH OF CONTRACT

QUESTION: 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.

Discuss the following:

- a. Breach of contract
- b. What are the remedies available for breach of contract.

A

A contract is a legally binding promise made between two parties. Each party to a contract promises to perform a certain duty. A contract is an agreement which the law will enforce or recognise as affecting the legal rights and duties of the parties. It can also be defined as a promise or set of promises the law will enforce.

Tobi JCA has defined a contract as an agreement between two or more parties which creates reciprocal legal obligations to do or not to do particular things. For a contract to be valid, there must be mutuality of purpose and intention. To ensure peace, order and security, and the smooth and efficient operation of commerce, industry and the economy, the law recognises the need for the satisfaction of reasonable and well-founded expectations created by promises and agreements.

The purpose of a contract being legally binding is so each party will have legal recourse in the event of a breach. 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.

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. This is to say, that a party to a contract has to have or give a lawful excuse as to why he will not be able to perform his obligations under the contract.

Breach occurs when a party to a contract fails to fulfil its obligations, 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 to by the party breaching the contract to the aggrieved party.

A breach of contract 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. 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.

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.

The types of contract breaches include:

The level of the type of breach of contract depends on the terms of the contract that is breached. The terms of a contract are; warranty, condition and innominate term.

1. **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. This is regarded as a breach of warranty. A minor breach is sometimes referred to as an impartial breach.

A breach of warranty of a contract creates a right to damages for the loss suffered, which was caused by the breach. These minor breaches do not entitle the innocent party to terminate the contract. The innocent party cannot sue the party in default for specific performance, only for damages.

2. Material breach: a material breach of contract is a breach that is so substantial, it seriously impairs the contract as a whole. It is regarded as a breach of a condition. The purpose of the agreement is rendered to be completely defeated by the breach. It is sometimes referred to as a total breach.

Breach of a condition of a contract is known as a repudiatory breach. It entitles the innocent party at common law to terminate the contract and claim damages. No other type of breach except a repudiatory breach is sufficiently serious to permit the innocent party terminate the contract for breach.

3. Fundamental breach: a fundamental breach of contract is essentially the same as a material breach, except that it is considered to be much more egregious than a material breach; and
4. 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.

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 the lawsuit.

## B

In law of contract, a remedy is a resolution ordered by a court to one party's breach of contract. As has already been stated, a breach of contract occurs when one party to a contract has not fulfilled his or her obligation under the contract. The non-breaching party is also known as the injured party, and the purpose of remedies is to place the injured party in the position they would have otherwise been if the obligations under the contract had been performed as it was agreed upon.

The remedies available to the innocent party includes:

1. Award of damages.
2. Restitution of contract.

3. Rescission of contract.
4. Reformation of contract.
5. Specific performance.

## AWARD OF DAMAGES

Award of damages is the most common remedy for breach of contract as one party seeks compensation for financial losses as a result of breach of contract. The party who is injured by the breach of contract is entitled to the benefit of the agreement they entered, or the net gain they would have accrued had it not been for the breach. This type of remedy is known as “compensatory damages.”

During the court case, the injured party becomes the plaintiff. In the instance of a total breach, the plaintiff may recover damages in an amount that is equal to the sum or value they would have received had the contract been fully performed by the defendant. Sometimes, this includes loss profits from a business operation.

If the breach is only partial and the defendant carried out a majority of the contract, the plaintiff may seek damages in an amount equal to the cost of hiring someone else to complete the performance. If the portion of the uncompleted performance is quite small in terms of cost, however, the court may only award damages in an amount that is equal to the difference between diminished value of the agreement as completed and the full value as stated in the contract.

Compensatory, or actual damages, cover the loss the non-breaching party incurred as a result of the breach. Punitive damages known as exemplary damages, are awarded to punish or make an example of the wrongdoing of a party that acted wilfully, maliciously or fraudulently. Punitive damages are awarded in addition to compensatory damages. However, punitive damages are rarely awarded in breach of contract cases. Punitive damages are most often used in tort cases in which personal harm was a result of the wrongdoing and actual damages are minimal.

## RESTITUTION

Restitution is a remedy designed to restore the injured party to its state or position before the contract was created. Unlike an award of damages, parties seeking restitution may not demand compensation for lost profits or other financial losses caused by a breach. Instead, restitution is meant to return any money or property given to the defendant under the contract back to the plaintiff.

Typically, a party will seek restitution when a contract they entered has been voided by courts because of the defendant’s incapacity or incompetence. Contract law allows incompetent and incapacitated individuals to be relieved of their contractual obligations, but only if the plaintiff is not hindered by the dismissal. In either case, if the defendant received any money

or property by means of the contract that is now voided, the plaintiff is to be restored of that money or property.

## RESCISSION

Rescission is a remedy used to terminate a contract when parties entered into a contract by way of fraud, undue influence, coercion, or mistake. In the case of rescission, the contractual obligations of both parties are therefore terminated, and the contract will no longer exist.

## REFORMATION

Reformation is similar to rescission as it is a result of parties entering into a contract based on fraud, undue influence, coercion, or mistake, but rather than terminating the contract and the parties' obligations entirely, the court will change the substance of the contract to correct inequities suffered as a result.

## SPECIFIC PERFORMANCE

Specific performance is a remedy for breach of contract in which the court forces the breaching party to perform the services or deliver the promised goods per the contract. Specific performance is only available when money damages are inadequate to compensate the plaintiff for a breach. This remedy is typically used when the goods or services are so unique that no other remedy could suffice.

A good example is an individual who is looking to buy a rare piece of art he or she forms a contract with someone to obtain this piece of art. The buyer's offer becomes the price for the piece of art and the other party accepts by a promise of delivering the art in exchange for the agreed amount. If the other party joins in this contract, yet fails to deliver the art, the buyer can take the case to court as a breach of contract. The court could rule specific performance the remedy for breach of contract, as the buyer would not be able to get this rare piece of art elsewhere. The defendant would then be required by the court to deliver the goods. In this case, the art, as agreed upon in the contract.

## BIBLIOGRAPHY

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