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**COURSE TITLE: LAW 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. (Treitel 2007, para 17-049)

1. **Breach of contract**

According to Wikipedia, a 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. A breach occurs when a party to a contract fails to fulfill 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. In simpler terms, a breach of contract is a violation of any of the agreed-upon terms and conditions of a binding contract. It is a situation where one party breaches the terms of an agreement between two or more parties. However, a breach of contract can happen in both a written and an oral contract; also the parties involved in a breach of contract may resolve the issue among themselves or in a court of law[[1]](#footnote-1). In order for a judge to determine whether or not a contract has been breached, he must examine the following:

1. The existence of a contract
2. The requirements of the contract
3. If any modifications were made to the contract.

Also, a plaintiff must prove that there was a breach in the first place and that he (the plaintiff) held up his side of the contract by completing everything required by him.

b) **Remedies for breach of contract**

1) **DAMAGES**: These are remedies in form of a monetary award to be paid to a claimant as compensation for injury or loss. To be recognized at law, the loss must involve damage to property, or mental or physical injury; pure economic loss is rarely recognized for the award of damages.

Damages is subject to the application of the rules of causation, remoteness and a duty to mitigate loss.

* **Causation**: This limits a person’s ability to recover damages to only those which were actually caused by the defendant’s breach and if the claimant cannot prove that the defendant’s breach caused the loss then action for breach of contract fails. *BANK OF CREDIT AND COMMERCE INTERNATIONAL VS. ALI[[2]](#footnote-2)*
* **Remoteness**: In the issue of remoteness of damages, when trying to consider a claim for damages, the court must first resolve the issue whether the defendant is liable for any damages at all, and if so the nature and extent of such damages or losses. Under the rules of remoteness of damages, in the case of *Hadley V. Baxendale[[3]](#footnote-3)*, a claimant may only recover losses which may reasonably be considered as arising naturally from the breach or those which may reasonably be supposed to be in the contemplation of the parties at the time the contract was made.
* **Duty to mitigate loss**: The claimant is under a duty to take reasonable steps to reduce their loss. As seen in the case of *British Westinghouse Electric and Manufacturing Co. V. Underground Electric Rys Co. of London[[4]](#footnote-4),* Lord Haldane said, “…the fundamental basis is thus compensation for pecuniary loss naturally flowing from the breach, but this first principle is qualified by the second, which imposes on a plaintiff the duty of taking all reasonable steps to mitigate the loss consequent on the breach and debars him from claiming any part of the damages which is due to his neglect to take such steps”

**TYPES OF DAMAGES**:

1. **Compensatory damages**: These are damages paid to directly compensate the non-breaching party for the value of what was not done or performed are compensatory damages.
2. **Liquidated damages/ Penalty Clauses**: Parties to a contract may legitimately agree the amount of damages to be paid in the event of a breach and provide for this in their contract terms. This provides certainty to each party so that they know exactly what they are liable to pay should they be unable to perform their obligations. Such a clause will be enforceable by the courts only in so far as it is a genuine pre-estimate of loss. If it is a genuine pre-estimate, it is known as a liquidated damages clause but if the amount specified in the contract is not a genuine pre-estimate but is aimed at deterring a breach of contract or punishing the party in breach, it is known as a penalty clause which is not enforceable. In the case of *Dunlop Pneumatic Tyre Co. Ltd V. New Garage and Motor Co. Ltd*[[5]](#footnote-5) , the court held that the clause was a liquidated damages clause not a penalty clause and Lord Dunedin also set out the differences between a liquidated damages clause and a penalty clause.
3. **Damages for non-pecuniary losses**: These are damages which are not readily quantified or valued in money, such as compensation for pain and suffering. It was previously believed that damages could not be awarded for injury to the plaintiff’s feelings, mental distress, annoyance or loss of reputation except in action for breach of promise to marry. However, a modern trend was illustrated by J*arvis V. Swan Tours Ltd*[[6]](#footnote-6) where the Court of Appeal unanimously held that, as a matter of principle and in a proper case, damages could be awarded for “mental distress and vexation” caused by a breach of contract. In this case, the plaintiff booked a two-week Christmas winter holiday in Switzerland which was offered by the defendants and described in their brochure in grand and superlative terms. The holiday turned out to be a grave disappointment to the plaintiff because of lack of the promised facilities and amenities. The plaintiff claimed to be entitled to compensation for inconvenience and loss of benefit. The County Court found the allegations established but awarded only 31.72 pounds damages. On the plaintiff’s appeal against the amount of damages, Lord Denning, held that damages could be awarded for mental distress as much as for physical inconvenience.
4. **Punitive damages**: This is a sum of money intended to punish the breaching party, and is usually reserved for cases in which something morally reprehensible happened, such as a manufacturer selling a retailer unsafe or substandard goods. They are also known as exemplary damages which are awarded to punish or make an example of the wrongdoing of a party who had acted willfully or fraudulently. They are awarded in addition to compensatory damages. They are rarely awarded in breach of contract cases but are most often used in tort cases in which personal harm was as a result of the wrongdoing and actual damages are minimal.
5. **Nominal damages**: In a situation where there has been a breach but the non-breaching party has really suffered no loss or cannot prove what his loss is, he is entitled to nominal damages.
6. **Exemplary Damages**: There are two scenarios for awarding exemplary damages and they include breach of a promise to marry because it causes injury to his/her feelings and wrongful dishonor of cheque by a banker because it causes loss of reputation and credibility.
7. **General and Special damages:** General damages are awarded to compensate for the direct effects of the accident where the claimant’s injuries can be clearly linked to the defendant’s action or behaviors and they include physical pain or suffering, mental pain and anguish and so on. Special damages are awarded to compensate for actual out-of-pocket expenses that a claimant has incurred as a direct result of the defendant’s action or behavior and they include short and long term medical expenses for example

2) **Specific performance**: This is an appropriate remedy in situations where monetary damages could not possibly make the non-breaching party whole for losses. This is a remedy for breach of contract in which the court forces the breaching party to perform the services or deliver the goods per the contract. It is only available when money damages are inadequate to compensate the plaintiff for a breach. This remedy is a discretionary one and the plaintiff is not entitled to it as a matter of right. This discretion however is exercised judiciously by the courts. The type of contract in which this remedy is most readily granted by courts is a contract in which a vendor refuses to convey land sold. In the case of *Paye V. Gaji[[7]](#footnote-7) ,* the vendor of a piece of family property wrongly refused to execute the conveyance of the property after the conclusion of the agreement and the payment of the purchase price by the buyer. Although the family representatives were prepared to refund the purchase price, the Court of Appeal rejected this and ordered specific performance of the agreement. According to Opene, J.C.A. although it is settled by law that specific performance being an equitable remedy should not be ordered where damages would be adequate to meet the justice of the case, it is not a rule of general application in all cases and in all circumstances. Specific performance will also be more readily granted in cases where damages are considered to be an inadequate remedy because of the difficulty of quantifying them, or because the plaintiff’s loss is difficult to prove. Examples include contracts to sell or buy annuity and a sale of debts proved in bankruptcy.

3) **Injunction**: An injunction is an order or decree by which one party to an action is required to do or refrain from doing a particular thing. They are either restrictive (preventive) or mandatory (128)[[8]](#footnote-8). It is a legal and equitable remedy in the form of a special court order that compels a party to do or refrain from .In the case of *Warner Bros. Pictures Inc. V. Nelson*[[9]](#footnote-9), a film actress signed an undertaking with the plaintiffs, her employers, not to act for any other organization. An injunction was issued to restrain her from committing a breach of this stipulation when she attempted to enter the employment of a third party. It is only in a situation in which the type of loss alleged by the plaintiff cannot be adequately compensated for by the award of damages, that the court will grant an injunction.. It is only where the type of loss alleged by an applicant of an interlocutory injunction cannot be adequately compensated for by an award of damages that an interlocutory injunction can be granted, pending the determination of the substantive suit.

4) **Quantum Meruit**: This literally translates to “as much is earned”. At times when one party of the contract is prevented from finishing his performance of the other party, he can claim quantum meruit. This could be the remuneration of the service he has provided or the value of the work he has already done. As seen in the case of *Warner & Warner V. F.H.A* [[10]](#footnote-10)where the respondent wrongfully terminated a building contract which was already partly completed, the Supreme Court held that the injured contractor had the option of either suing for damages where the measure of damages

is normally the loss of profits for the unfinished balance, plus the value of work done at contract prices, or ignoring the contract and claiming a reasonable price for work and labor done in quantum meruit. Quantum meruit will normally be chosen if a reasonable price is higher than contract prices.

5) **Restitution**: This is a remedy that is designated to restore the injured party to the position that they occupied prior to the formation of the contract. This simply means that when a court orders restitution as a remedy, they tell the individual who breached the contract to pay the plaintiff back. It can be said that a party will seek restitution when a contract they entered has been voided by courts because of the defendant’s incompetence or incapacity. Contract law allows these incompetent individuals to be relieved of their contractual obligations, but only if the plaintiff is not hindered by dismissal. In other words, if the defendant had 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

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2. (2001) UKHL 8 [↑](#footnote-ref-2)
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5. (1915) A.C. 79 [↑](#footnote-ref-5)
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7. (1996) 5 NWLR(Pt. 450) 589 at 605 [↑](#footnote-ref-7)
8. Osborn, A Concise Law Dictionary(5th edition) p. 169 [↑](#footnote-ref-8)
9. (1937) 1 K.B 209 [↑](#footnote-ref-9)
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