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## QUESTIONS

### (a) Breach of contract

First, what is a breach of contract? A breach of contract is a violation of any of the agreed-upon terms and conditions of a binding contract. This occurs when terms laid out by both bringing consensus ad idem (meeting of minds) is still violated or contradicted. This occurs in both a written and oral contract.

It can also be defined according to Aloba Eni Eja it is the act which occurs when a party without lawful excuse fails or refuses to perform what is due to him under the contract, performs defectively or incapacitates himself from performing. **Robinet Nigeria LTD v Shell Nigeria Gas Ltd** established the principles that contracts may be written, oral or implied. This means that the court intervention can be called upon during the event of breach of contracts.

A breach of contract is when one party breaks the terms of an agreement between two or more parties. This includes when an obligation that is stated in the contract is not completed on time example: you are late with a rent payment, when it is not fulfilled at all or a tenant vacates their apartment owing six-month back rent ( it is evidently illustrated that one party contradicts the term of agreement between the other party). A contract is binding and will hold weight if

taken to court. To successfully claim a breach of contract, it is imperative to be able to prove that the breach occurred.

## **TYPES OF BREACH OF CONTRACTS**

There are three types which includes a minor or material breach and an actual or anticipatory breach.

### **MINOR OR MATERIAL BREACH**

Minor breach occurs when one party substantially performs or meets the essential obligations of the contract, but does not meet a minor condition. The breaching of this minor condition does not significantly affect the contract's terms. All parties involved can otherwise fulfil any remaining contractual obligations in spite of the breach. A minor breach may also be known as a partial breach.

Although the breach may have been minor, the innocent party may still sue the breaching party for any damages caused by the failure to perform the minor detail. A minor breach requires all parties to complete their obligated performance of the contract. A party would not need to perform its part of the contract when a material breach occurs.

### **ACTUAL OR ANTICIPATORY BREACH**

An anticipatory breach of contract is an action that shows one party's intention to fail to fulfil its contractual obligations to another party. An anticipatory breach ends the counterparty's responsibility to perform its duties. Demonstrating the other party's intention to breach the contract gives the counterparty grounds for beginning legal action. An anticipatory breach is also referred to as an anticipatory repudiation.

An anticipatory breach occurs when a party demonstrates its intention to break a contract. However, vocal or written confirmation is not required, and failure to perform any obligation in a timely matter can result in a breach. By declaring an anticipatory breach, the counterparty may begin legal action immediately rather than waiting until the terms of a contract are actually broken.

## **REMEDIES OF BREACH OF CONTRACT**

### **Equitable Remedies**

Equitable remedies are those that are imposed when money damages would not adequately cure the non-breaching party. The following types of equitable remedies may be available in the given case:

#### **- Specific Performance**

Specific performance is an order by the court that requires the breaching party to carry out the contract as it was originally written. This type of remedy is rare. However, it may be ordered in certain circumstances. For example, specific performance may be imposed when the subject matter is unique, such as a famous painting or a specific piece of property. Courts are hesitant to order specific performance because it requires the on-going monitoring by the court of the contract. Seen in **Dr. L.O.C Abara v. Nwaeze Igbo and Ohiaeri v Yusuf**

#### **- Rescission**

Rescission of the contract is a remedy that allows the non-breaching party to cancel his or her responsibilities under the contract. This remedy might be available when the contract was based on fraud or a mistake by one or both of the parties. It is also available if both parties prefer to cancel the contract and return any money that had been advanced as part of the contract.

#### **- Reformation**

Reformation allows two parties to modify a contract so that it more accurately reflects what the parties intend. This remedy requires that the contract be valid. It may be available when one of the parties had a mistaken understanding about a material term of the contract.

#### **- Legal Remedies**

Legal remedies often take the form of monetary damages that are awarded to help make the innocent party whole. Some examples of legal remedies are discussed below.

## Compensatory Damages

Compensatory damages are those that are meant to compensate the non-breaching party for the breach. These include expectation damages and consequential damages. In **Beta Glass PLC v Epaco Holdings Ltd** defined damages as: “Pecuniary compensation obtainable by a successful party in an action for a wrong which is either of tort or of breach of contract. Expectation damages are those that give the non-breaching party the monetary funds that he or she would have received had the contract been performed. These damages are usually based on the contract itself or the fair market value of the subject matter of the contract.

The two main criteria for the award of damages was established by the rule in **Hadley v Baxendale**, namely,

(a) damages is awarded according to the normal damage that occurs in usual course of things, and

(b) damages awarded for abnormal damage that arises because of special or exceptional circumstances. For damages to be awarded under this branch, the decisive factor for establishing liability is the knowledge by the defaulting party of the special circumstances of the plaintiff.

For example, compensatory damages may be the amount necessary for the non-breaching party to purchase a substitute product that is equivalent to the one contracted for. This are illustrated in **A.S.E.A v Ekwenem**. If the contract was for a sale of goods, compensatory damages are usually the difference between the contract price and the market value of the goods.

These damages also consist of the expenses necessary to make the non-breaching party whole after the breach, such as advertising expenses to advertise the products that the breaching party failed to pay for. However, the non-breaching party generally has a duty to mitigate his or her losses.

Consequential damages are those damages that reimburse the innocent party for indirect costs that resulted from the breach. They often result from special circumstances that are involved in the contract that may not be ordinarily predictable. For example, an innocent party may ask to be reimbursed for the loss of business profits that derived from not having access to the necessary materials to produce a product for a third party.

In order for the innocent party to receive these damages, he or she must show that this loss was reasonably foreseeable to both parties when they wrote the contract and the loss was a direct result of the breach.

### **Liquidation Damages**

In some contracts, specific damages are pre-determined. These damages are called liquidated damages. They are typically part of contracts where it would be difficult to determine the actual amount that a party was damaged due to a breach, such as a breach of a contract not to compete. As illustrated in **Dunlop v New Garage Co**

### **Punitive Damages**

Punitive damages are meant to punish a guilty party in order to prevent that party or others from engaging in similar conduct in the future. However, punitive damages usually require a stronger intent than is necessary in standard breach of contract claims. For example, to be awarded punitive damages, a plaintiff may have to show that the breaching party acted in a malicious or fraudulent matter. Some states specifically prohibit plaintiffs from recovering punitive damages on breach of contract claims.

In conclusion, breach of contract in my understanding is the act of contradicting or acting to oppose to the agreed terms of a contract by one party to the other party (innocent party). The breach of contract can attract the intervention of court if need be. The Remedies to this breach exist to curb the effect of the damage given to the innocent party.

### **REFERENCES**

[www.wikipedia.com](http://www.wikipedia.com) (breach of contract)

Law of contract by Aloba Eni Eja (chapter 17 page 433 “ Remedies for Breach of Contract”)

[www.hg.org](http://www.hg.org) (remedies for a breach of contract)