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**ASSIGNMENT TITLE: BREACH OF CONTRACT**

**COURSE TITLE/CODE: LAW OF CONTRACT II (LPB 202)**

**QUESTION 1**

**BREACH OF CONTRACT**

A [contract](https://www.legalmatch.com/law-library/article/what-is-a-contract.html) is a legally binding promise made between two parties. Each party to a contract promises to perform a certain duty, or pay a certain amount for a specified item or service. The purpose of a contract being legally binding is so each party will have legal recourse in the event of a breach.

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. Breaching can occur when one party fails to deliver in the appropriate time frame, does not meet the terms of the agreement, or fails perform at all.

Further, if one party fails to perform while the other party fulfills their obligations, the performing party is entitled to legal remedies for breach of contract.

There are four main types of contract breaches:

1. **Minor Breach:** A [minor breach of contract](https://www.legalmatch.com/law-library/article/minor-breach-of-contract-lawyers.html) occurs when a party fails to perform a part of the contract, but does not violate the whole contract. To be considered a minor breach, the infraction must be so nonessential that all parties involved can otherwise fulfill any remaining contractual obligations. A minor breach is sometimes referred to as an impartial breach;
2. **Material Breach:** A [material breach of contract](https://www.legalmatch.com/law-library/article/material-breach-of-contract.html) is a breach that is so substantial, it seriously impairs the contract as a whole; additionally, the purpose of the agreement must be rendered completely defeated by the breach. This is sometimes referred to as a total breach. It allows for the performing party to disregard their contractual obligations, and to go to court in order to collect damages from the breaching party;
3. **Fundamental Breach:** A fundamental breach of contract is essentially the same as a material breach, in that the non-breaching party is allowed to terminate the contract and seek damages in the event of a breach. The difference is that a fundamental breach 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 fulfill 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](https://www.legalmatch.com/law-library/article/anticipatory-breach-attorneys.html).

**QUESTION 2**

**REMEDIES FOR BREACH OF CONTRACT**

A contract may be defined as an agreement enforceable by the law between two or more persons to do or abstain from doing some act or acts, their intention being to create legal relations and not merely to exchange mutual promises. Abiola Sees contract as simple an agreement made between two or more competent parties which the law will enforce. (Abiola, 2005)

Generally, at common law only a party to a contract or persons who are privy to a contract can sue and be sued on it. In other words, a stranger to a contract cannot sue or be sued on a contract even if it was made for his benefit or purported to give him a right to sue.

The types of legal remedies available for breach of contract depends largely on the severity of the breach. Generally, damages awarded are categorized into four groups:

* **Compensatory Damages:** [Compensatory damages](https://www.legalmatch.com/law-library/article/compensatory-damages-in-breach-of-contract.html) are those that compensate the non-breaching party for their losses. This is the most common legal remedy, and a court can order the breaching party to pay the non-breaching party enough money to get what they were promised by the terms of the contract;
* **Restitution:** If the non-breaching party is able to prove that their loss is due directly to the actions of the breaching party, a judge may order [restitution](https://www.legalmatch.com/law-library/article/restitution-lawyers.html), which could include lost wages, medical bills, and property repair and/or replacement;
* **Punitive Damages:** Punitive damages are generally awarded alongside compensatory damages. The purpose of [punitive damages](https://www.legalmatch.com/law-library/article/punitive-damages.html) is to punish the breaching party when they have engaged in particularly egregious behaviour in order to breach the contract, such as being intentionally negligent; or
* **Specific Performance:** Specific performance is utilized as a [legal remedy](https://www.legalmatch.com/law-library/article/types-of-damages-available-for-breach-of-contract.html) for breach of contract, and it requires the breaching party to perform their part of the contract. Specific performance is not always available.

If there has been a breach of contract, you should first thoroughly review the contract to see if any instructions regarding a breach were built into the contract. Mandatory arbitration or a liquidated damages clause are two examples of such instructions.

Second, you should let the other party know that there has been a breach. If you committed the breach, it is better to own up to it before it is found out, which could lead to more serious consequences. If the other party committed the breach, it is best to give them an opportunity to rectify the situation before taking legal action.

It is highly important that you maintain any documentation related to the contract. Carefully record every incident that occurs as a result of the contract. Doing so will make it easier to argue your side should the breach result in legal action.

**Damages for Breach of Contract**

In Nigeria, 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*** 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. 8 As it relates to claims for damages for breach of contract, the application of this principle eliminates the categorisation of heads of damages into special and general damages.

One of the issues recently presented before the Nigerian Supreme Court in ***British Airways v Atoyebi*** was whether the Court of Appeal was right to have awarded general damages in a case involving a breach of contract of carriage by air.

 ***British Airways v Atoyebi***

**Facts**

Atoyebi, a senior advocate of Nigeria was a first-class passenger on board a British Airways flight from London Heathrow to Lagos on May 8 2000. On arrival in Lagos, it emerged that one of his bags which had been tagged and checked in had not arrived with the flight. During one of several visits to British Airways' Lagos office at the airport between May 8 and 10 2000, Atoyebi was informed that the bag had been found at Heathrow and would be sent to Lagos. Atoyebi sent an associate with written authorisation to collect the bag at Heathrow, but British Airways refused to hand over the bag. On May 10 2000 Atoyebi travelled to London for the sole purpose of collecting the bag. Atoyebi was met on arrival in London by a British Airways employee who took him to a luggage storage room where Atoyebi found his bag intact.

Atoyebi sought compensation for the manner in which he was treated and the resultant losses he had incurred. British Airways offered to pay £508 in compensation. Dissatisfied with the offer, Atoyebi sued British Airways for each loss particularised as follows:

 one-way first-class ticket to Lagos on May 7 2000 - $1,500;

 two return club-class tickets to London on May 10 2000 - $3, 950;

 one night's stay at a London hotel - £225;

taxis for him and his associate - £115;

 telephone calls and faxes - £73; loss of professional time for travelling to the United Kingdom (based on his hourly rate of £150) - £6,600; and Damages for stress and inconvenience of travelling - £100,000.

The trial court granted all of Atoyebi's claims. British Airways' appeal was dismissed and the first instance judgment affirmed by unanimous decision of the Court of Appeal. British Airways appealed to the Supreme Court.

**issues**

British Airways argued that the Warsaw Convention 1929, incorporated into Nigerian law by the Carriage by Air (Colonies, Protectorates and Trusts Territories) Order 1953, applied exclusively to Atoyebi's cause of action. It contended that under the Carriage by Air Order, an air carrier's liability is limited to the Thresholds set out in Section 22(2) of the order. Thus, the grant of Atoyebi's claims under the common law principles of breach of contract led to an incorrect assessment of damages and the claims ought to have been dismissed.

Atoyebi contended that evidence put before the first-instance court showed that British Airways had clearly been negligent and/or guilty of wilful misconduct bordering on wanton or deliberate recklessness in the performance of its obligations. He argued that under Article 25 of the Carriage by Air Order, once wilful misconduct has been established, the provisions of the order which seeks to exclude or limit the carrier's liability do not apply.

Supreme Court of Nigeria decision

In a unanimous decision the Supreme Court allowed the appeal in part. The court agreed with Atoyebi and affirmed the lower courts' decisions that although the provisions of the Carriage by Air Order applied to his claims, there was clear evidence of wilful misconduct on the part of British Airways in the discharge of its duties. The lower courts were thus correct not to apply the provisions of the order which would limit its liability and to award all specific heads of claims as special damages under the common law as applicable to breach of contract.

However, the Supreme Court allowed the appeal with regard to the award of £100,000 as (general) damages for stress and inconvenience and set aside the award. The Supreme Court held that the rationale behind the compensatory theory of award of damages is to restore the injured party to the position in which it found itself prior to the breach. The court held that an award of £100,000, in addition to compensation for various specific items granted to Atoyebi, was manifestly too high and without any justifiable basis, and amounted to double compensation.

Atoyebi's argument that the court should have followed a similar case involving celebrity Victoria Beckham, who had been awarded £100, 000 for the loss of her luggage in the United Kingdom, was rejected on the basis that the facts were different. In Beckham's case, the luggage had been lost; in this case, delivery of the luggage was merely delayed. In any event, there was no evidence that Atoyebi had made any special declaration on the luggage, as Beckham had.

**Conclusion**

This proposes thesis shall critically reflect on the law in the different contexts of governed by contract law, and as already mentioned in the abstract above, a methodological and scientific approach as to the research question at hand would I embark on in achieving the results intended.

**Reference**

**Sagay; Nigerian law of contract**

**Jec.unm,edu**

**Legaldictionary.net**