NAME: LEAH OSHOKHAI ALEGHE

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Discuss the following (Area of Focus):

1. Breach of contract
2. What are the remedies available for breach of contract?

This essay below is aimed at deciphering the extensive concept of breach of contract. What it constitutes of, the types and remedies.

1. Breach of contract is a legal term that describes the violation of a contract or an agreement that occurs when one party fails to fulfill its promises according to the provisions of the agreement. Sometimes it involves interfering with the ability of another party to fulfill his duties. A contract can be breached in whole or in part. Most contracts end when both parties have fulfilled their contractual obligations, but it's not uncommon for one party to fail to completely fulfill their end of the contract agreement. Breach of contract is the most common reason contract disputes are brought to court for resolution. A contract is a legally binding promise made between two parties. According to the case of Hadley v Baxendale,[[1]](#footnote-1) a breaching party is liable for all losses that the contracting parties should have foreseen, but is not liable for any losses that the breaching party could not have foreseen on the information available to him. Each party to a contract promises to perform a certain duty, or pay a certain amount for a specified item or service. According to the Court of Appeal in the case of Robinet v Shell, a contract was said to be an agreement between two or more parties creating obligations that are enforceable at law. [[2]](#footnote-2)The purpose of a contract being legally binding is so each party will have legal recourse in the event of a breach. According to the case of Hong Kong Fir Shipping Co Ltd v Kawasaki Kisen Kaisha Ltd, Diplock LJ proposed that some terms could lead either to the right to terminate a contract as a remedy, or to the mere entitlement to damages (without a right to terminate). What mattered was not whether a particular contract term was called a "warranty" or a "condition", but how serious was the breach of the term. [[3]](#footnote-3)When any party to a contract, whether oral or written, fails to perform any of the contract’s terms, they may be found in breach of contract. While there are many ways to breach a contract, common failures include failure to deliver goods or services, failure to fully complete the job, failure to pay on time, or providing inferior goods or services. In other words, a breach of contract is a broken promise to do or provide something. Among the most common causes for lawsuits in the U.S., breach of contract occurs in many ways. The law offers a variety of remedies for each such breach, designed to make the injured party whole. Breach of contract often leads to expensive, stressful and time-consuming litigation in the courts. However, where breach of contract disputes are managed early by specialist Dispute Resolution lawyers, they can be brought to a timely and mutually agreeable conclusion with expert, sensitive negotiations. Court-ordered remedies for breach of contract cases are not meant to punish the breaching party, but to return the injured party to the position he would be in if the breach had not occurred. A breach of contract is a violation of any of the agreed-upon terms and conditions of a binding contract. The breach could be anything from a late payment to a more serious violation such as the failure to deliver a promised asset. 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 as seen in Krell v Henry. A breach of contract is a material non-compliance with the terms of a legally binding contract. Enforcement of contracts is a necessary part of any legally binding contract: each party expects to obtain the benefit of the deal agreed by the contract. If a party doesn't receive the benefit of the contract by reason of the other party's breach, the innocent party has a legal right to recover compensation for their loss in damages. Business agreements are the centrepiece of commerce. Without contracts, there is no business seen in the case of Hawkins v McGee. It pays to know how they work, and when they’re breached. A breach of contract occurs when the promise of the contract is not kept, because one party has failed to fulfill 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 also types of breach of contract which can help familiarize with the concept. A material breach occurs when one party receives significantly less benefit or a significantly different result than what was specified in a contract. Material breaches can include a failure to perform the obligations laid out within a contract or a failure to perform contracted obligations on time. When a material breach occurs, the other party may pursue damages related to the breach and both its direct and indirect consequences. Also sometimes called a Partial Breach of Contract or an Immaterial Breach of Contract, a Minor Breach of Contract refers to situations where the deliverable of the contract was ultimately received by the other party, but the party in breach failed to fulfill some part of their obligation. In such cases, the party that suffered the breach may only be able to pursue a legal remedy if they can prove that the breach resulted in financial losses. A late delivery, for example, may not have a remedy if the breached party cannot show that the delay resulted in financial consequences. A breach need not actually occur for the responsible party to be liable. In the case of an Anticipatory Breach, an actual breach has not yet occurred, but one of the parties has indicated that they will not fulfill their obligations under the contract. This can occur if the breaching party explicitly notifies the other party that they will not fulfill their obligations, but such a claim could also be based on actions that indicate one of the parties does not intend to or will not be able to deliver. An Actual Breach of Contract refers to a breach that has already occurred, meaning the breaching party has either refused to fulfill their obligations by the due date or they have performed their duties incompletely or improperly. When a breach does occur, there are several types of remedies the other party may pursue. These include compensatory damages to address direct economic losses stemming from the breach, and consequential losses, which are indirect losses that go beyond the value of the contract itself but are the result of the breach.
2. REMEDIES AVAILABLE FOR BREACH OF CONTRACT. According to Lord Denning in the case of Jarvis v Swans Tours Ltd, there is a remedy in damages for misrepresentation as well as for breach of warranty. [[4]](#footnote-4)
3. Monetary damages. The party who breached the contract can be held responsible for the losses caused by the breach. According to the House of Lords, in the case of C Czarnikow Ltd v Koufos or The Heron II [1969] 1 AC 350, The House of Lords held that the "remoteness" test, as a limit to liability, is, in contract, more restrictive than it is in tort[[5]](#footnote-5). Both general or expectation damages and consequential damages can result from a breach of a contract. General or expectation damages refer to the loss directly caused by the breach. Consequential damages refer to losses that occurred because of the breach but that were an indirect cause. For example, if you contracted and paid for a machine to be delivered and it never came, the general losses would include the value of the money you paid for the machine. The consequential losses could include the loss of business caused by the fact you did not have the machine you needed to do your work.
4. Specific performance. In some cases, the appropriate remedy for a breach of contract is to correct the breach by forcing the breaching party to complete the terms of the agreement. Specific performance is an appropriate remedy in situations where monetary damages could not possibly make the non-breaching party whole for the losses. For example, if there was a contract created for a buyer to purchase a very rare piece of art, the buyer could not simply find the art elsewhere. Specific performance is applied in breach of contract actions where monetary damages are inadequate. Specific performance is being a discretionary remedy, may not be granted where damages will provide an adequate remedy or where terms of the contract are uncertain or where there has been delay in bringing the action or where there was fraud. Suit for specific performance is by compelling the parties to perform exactly what they had agreed in the agreement. When this option is selected, the party that broke the contract is taken to court, with the plaintiff requesting that the court force the defendant to perform the specific contract terms that have not been performed or to refrain from engaging in some activity that is prohibited by the contract. The only remedy that would help the buyer in this circumstance is for the court to require the sale to go through so the buyer got the unique one-of-a-kind painting that he contracted for.
5. Rescission. Rescission allows the non-breaching party to essentially be released from performance obligations. Recession is a remedy for a breach of contract because it makes clear that the party is relieved of his duties due to the failure of the other party to perform.
6. Liquidation damages. Sometimes, it is very difficult to determine how much a person was damaged by a breach of contract. To address this problem, some contracts contain liquidated damage clauses. Essentially, these clauses specify that the non-breaching party will be awarded a specific amount of money in the event a breach occurs. Damages mean losses or costs incurred due to another’s wrongful act. Damages are granted to a party as compensation for the damage, loss or injury he or she has suffered through a breach of contract. The language of a contract will usually call for a specific penalty if the contract terms are not completed on an agreed-upon date. Both of the contract and tort law damages are the courts calculation of what it would cost to put the plaintiff back into the position he or she would have been in but for the fraud. This amount of value that has been lost is due to the breach of the contract in any of the contracts. Tort law damages are much more difficult to evaluate but generally are taken to represent the monetary value of what the plaintiff has lost in terms of damages of property, personal injuries, and quality of life. For example, a building contractor has agreed to complete the theme park beside Hard Rock hotel, penalties may be built into the contract itself if the job is not completed on time. The contractor may have offered the penalty option as an incentive to win the contract. Liquidated damages refer to these penalty payments. When a contract is breached, the liquidated damages could be imposed. Special damages are known as the out of pocket expenses that the defendant incurs as the effect of dealing with the injuries or property loss caused by the plaintiff. These damages normally include of repair costs, medical expenses, car rentals and loss of wages.

1. ***Hadley v Baxendale [1854] EWHC J70(1854) 156 ER 145, 9 ExCh 341, (1854) 23 LJ Ex 179, 18 Jur 358, [1843-60] All ER Rep 461***  [↑](#footnote-ref-1)
2. ***Robinet Nigeria LTD v. Shell Nigeria Gas LTD. (2013) JELR 39641 (CA).***  [↑](#footnote-ref-2)
3. ***Hong Kong Fir Shipping Co Ltd v Kawasaki Kisen Kaisha Ltd [1961] EWCA Civ 7*** [↑](#footnote-ref-3)
4. ***Jarvis v Swans Tours Ltd [1972] EWCA 8 [1973] QB 233; [1973] 1 All ER 71*** [↑](#footnote-ref-4)
5. ***C Czarnikow Ltd v Koufos or The Heron II [1969] 1 AC 350 [1967] 3 WLR 1491, [1967] 3 All ER 686, [1976] 2 Lloyd’s Rep 555*** [↑](#footnote-ref-5)