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**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)

Discuss the following:

* Breach of Contract
* What are the remedies available for breach of contract?

**Answer**

1. **Breach of Contract:**

To begin with, we have to grasp the concept of what a contract is. A contract is an agreement which is legally binding on the parties to it and which if broken may be enforced by action in court against the party that has broken it. *Carlill v Carbolic Smoke Ball Co (1892) EWCA Civ1.*

Thus, this brings us to **What is Breach of Contract?** **Breach of contract** is a legal cause of action and a type of civil wrong, in which a binding agreement or bargained 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. 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. Where there is breach of contract, the resulting damages will have to be paid by the party breaching the contract to the aggrieved party. If a contract is rescinded, parties are legally allowed to undo the work unless doing so would directly charge the other party at that exact time. It is important to bear in mind that contract law is not the same from country to country. Each country has its own independent, free standing law of contract. Therefore, it makes sense to examine the laws of the country to which the contract is governed before deciding how the law of contract (of that country) applies to any particular contractual relationship. We can see this in the cases of *Hadley v Baxendale (1854) EWHC J70, Taylor v Caldwell (1863) EWHC QB J1.*

What constitutes a Breach: 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, viewed in *Hong Kong Fir Shipping Co Ltd v Kawasaki Kisen Kaisha Ltd (1961) EWCA Civ7*. 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 filing the lawsuit. *Cutter v Powell (1795) 101 ER 573*

Actions or Inactions that lead to Breach of Contract

The following are ways to portray a breach in contract;

* If a party fails to perform their obligations under the contract in whole or in part. *Cutter v Powell (1795) 101 ER 573 supra.*
* If a party behaves in a manner which shows an intention not to perform their obligations under contract in the future.
* If the contract becomes impossible to perform as a result of the defaulting party's own act. *Bolton v Mahedeva (1972) 2 All ER 1322.*

Types of Breach of Contract.

There are four major types of Breach of Contract that are legally endorsed and known which are;

* Anticipatory Breach
* Fundamental Breach
* Material Breach
* Minor Breach

**Anticipatory Breach:** In a layman’s term, anticipatory breach is one in which the breaching party warns the other party that a breach will occur, either in writing or verbally. The non-breaching party can therefore immediately claim a breach of contract and seek compensation, monetary or otherwise, for damages.

In a much more exquisite view, it could be said to is when the non-breaching party realizes that the other party of the contract will fail to perform his or her part of the contract in the future and can terminate the contract and sue for damages before the breach happens. In the majority of cases involving the breach of a contract, the damages awarded to the non-breaching party is typically in the form of money. The concept of anticipatory breach was adhered to in the case proceeding of *Solomon Nassar v Oladipo Moses* where Coker J said, *“it is open to a party to a contract to sue the other party for breach of the same even in anticipation of the time agreed upon for performance, if it is manifest by his conduct and his acts that the defaulting party had made himself unable to fulfil his part of the contract at the agreed time”.*

The leading case for anticipatory breach is the case of *Hochster v De La Tour*. The case of *Johnstone v Milling (1886) 16 QBD 460* CD carries the same prominence on the concept of anticipatory breach.

**Fundamental Breach:** Basically, fundamental breach is a type of breach that allows for the non-breaching party to terminate the contract and seek compensation for damages. It can be said to be when the person that has had the contract breached against can sue the breaching party for damages incurred as well as terminate the contract if they wish to do so.

A better understanding of this is, one of the parties in the agreement not keeping their part of the deal by failing to complete a contractual term that was essential to the agreement so much that the other party could not complete their own responsibilities in the contract.

A fundamental breach of contract is generally known to transpire when a previously agreed upon contract is cancelled entirely, due to the other party’s actions or inactions in some cases. The determinant of what constitutes of a fundamental breach of contract must be a breach that goes to the root of the contract; for example, the inability of a party to supply some drinks on a wedding day after several calls to him. This breach will also entitle the innocent party the right to terminate the contract. The case of *Harbutt’s “Plasticine” Ltd v Wayne Tank and Pump Co Ltd (1970)* is an exemplary case on fundamental breach of contract.

**Material Breach:** This is a type of breach which refers to failure of performance under the contract which is significant enough to give the aggrieved party the right to sue for breach of contract. This can be seen in the case study of *Bolton v Mahedeva (1972) 2 All ER 1322 supra.*

**Minor Breach:** This is also referred to as partial breach or an immaterial breach of contract. It is less severe than a material breach and it gives the harmed party the right to sue for damages but does not usually excuse him from further performance. 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 doesn’t necessarily mean that everything is left incomplete. Minor breach of contract occurs when a party fails to complete a part of the contract but does not leave everything incomplete. For a breach to be considered “minor”, the part of the contract that was not kept is a part that is nonessential and the other obligations can be fulfilled with or without the minor aspect of the contract.

1. **What are the Remedies available for Breach of Contract?**

There are a variety of remedies available for a contract breach. The appropriate compensation or remedy depends upon the circumstances. The non-breaching party will need to demonstrate that the other party failed to perform in order to be entitled to any type of remedy.

The following are remedies or redresses available for a breach of contract;

1. **Monetary Damages:**

A person can claim damages for a breach of contract, the object of awarding damages is to put the injured party, so far as money can do it in the same position as if the contract had been performed as was held in *Universal Vulcanizing (Nig.) Ltd. v. Ijesha United Tradings and Transport Co. Ltd. and 6 others (1992) 9 NWLR (pt. 266).* Such damages may be nominal or substantial as the case may be. To be entitled to substantial damage, the plaintiff needs to show that he has suffered ‘loss’, that is harm or injury to his person or property. However, the plaintiff cannot recover damages for any loss which he could have avoided but which he has failed by act of omission or commission or through unreasonable action or inaction to avoid. The principles of causation of loss and the remoteness of loss (like in tort) are enunciated in *Hadley v Baxendale (1854) EWHC J70 supra.* Plaintiffs were haulers and the defendants were common carriers. The defendant delayed in carrying vital spare parts ordered by the plaintiffs thereby causing them great losses. It was held that the loss of profits by the plaintiffs could not reasonably be deemed to have been a natural consequence of breach of contract.

1. **Rescission:**

This is an equitable remedy available to an injured party for a breach of condition where there is a mistake or misrepresentation. Rescission terminates the contract. In *London Assurance v. Mansell (1879) 11 Ch. D 363,* where a man did not disclose the material facts on his life on a proposal form by concealing that he had been refused insurance by other companies, it was held that the company could rescind the contract. A similar case is *Dantata v. Mohammed (2000) 7 NWLR (Pt. 664) 176 S.C.*

1. **Specific Performance:**

This is also an equitable remedy. It is an order issued by the court, ordering a defendant to perform the promise he had made. The granting of the request for specific performance by the court is discretionary and is not available in the case of contract of personal service. The Court will grant an order of specific performance where an order of monetary compensation will not be a remedy to the injured party. In the case of *Fakoya v.**St. Paul’s Church (1966) 1 All N.L.R. 68.* Appellant sold land to the Respondent. He took the price but refused to execute the conveyance. The respondents sued for specific performance. It was granted. Another case is *Balogun v. Alli- Owe (2000) 3 NWLR (Pt. 649) 477 C.A.*

1. **Injunction:**

This is also an equitable remedy. It is an order by the court ordering a person not to do a certain act. It is used in restraining a person from committing a breach of contract. In *Akenzua II v. Benin Divisional Councils (1959) W.R.N.L.R 1,* Plaintiffs had sought damages, injunction or specific performance from defendant council withdrawing the concession given to him to exploit timber; it was held that since he offered no consideration, the remedies sought could not be granted. Also the case of *Gbadamosi v. AG Lagos state (2001) 6 NWLR (Pt. 709) 437 CA.*

1. **Quantum Meruit:**

This is a sort of part- performance in which a party claims “as much as he deserves” Quantum meruit is a claim where work done is in partial performance especially where the contract is severable or divisible or can be separated. In *Ekpe v. Mid- Western Nigerian Development Corporation (1967) NWLR 407,* the plaintiff sued for the payment of his salary for the period he worked for the defendant, it was held that even where a contract was void, the party who worked can sue on a quantum meruit (that is, for work done). Also *Cutter v. Powell (supra).*

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