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QUESTION 1- Discuss Breach of Contract.

**What is a breach of contract?**

In a layman’s terms, a breach of contract is an act of breaking the terms set out in a contract.

According to Wikipedia, 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. Breach occurs when a party to a contract fails to fulfill its obligations, 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 a breach of contract, the resulting damages will have to be paid by the party breaching the contract to the aggrieved party.[[1]](#footnote-1)

Breach of contract can also be defined as 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.[[2]](#footnote-2)

Breach of contract according to a legal dictionary is simply failing to perform a term of contract, written or oral, without legitimate legal excuse.[[3]](#footnote-3)

In most cases, a breach of contract can be defined as broken promise, stemming from someone's failure to fulfill any term of a contract without a legitimate, lawful excuse.[[4]](#footnote-4)

With the meaning of breach of contract being given, this paper will go further in looking at the ways a contract can be breached. Therefore, a breach may take place when a party to a contract does either of the below:

* Behaves in a manner which shows an intention not to perform their obligations under the contract in the future
* Or the contract becomes impossible to perform as a result of the defaulting party’s own act.
* When a party fails to perform their obligations under the contract in whole or part.

**CLASSIFICATIONS OF BREACH OF CONTRACT**

The general law has three categories of breaches of contract. These are measures of the seriousness of the breach. In the absence of a contractual or statutory provision any breach of contract is categorized as a:

* Breach of warranty;
* Breach of condition; or
* Breach of an innominate term, otherwise known as an *intermediate* term.

There is no “internal rating system” within each of these categories (such as “a serious breach of warranty”. It's a breach of a warranty. It's not a minor breach of a condition. It's a breach of a condition). Any breach of contract is one or the other of a breach of warranty, condition or innominate term.[[5]](#footnote-5)

**There are four types of contract breaches recognized by the law today:**

* Minor breach
* Material breach
* Fundamental breach
* Anticipatory breach**.**

A **minor or partial breach** is when the non-breaching party of the contract is not entitled to an order for performance of its obligations but only to collect the damages for which they are owed. For instance, if a homeowner hires a contractor to install new windows in a home and asks for wind resistant windows but the contractor uses windows that aren’t wind resistant the homeowner will ask the contractor for damages incurred. Since there is no difference in value between the two windows, the homeowner will not be awarded any damages. If there was a difference between the two windows then the homeowner would have been awarded damages that amount to the difference between the two windows.

A **material breach** is when there is a failure to perform a part of a contract that permits the other party of the contract to ask for damages because of the breach that has occurred. For example, if the contractor mentioned above uses windows that aren’t wind resistant and the windows break, the homeowner can collect damages for replacing the windows with the wind resistant ones. The following, as defined by the Restatement of Contracts, must be present to determine whether or not a material breach has occurred:

* The extent to which the injured party will be deprived of the benefit which he reasonably expected
* The extent to which the injured party can be adequately compensated for the part of that benefit of which he will be deprived
* The extent to which the party failing to perform or to offer to perform will suffer forfeiture
* The likelihood that the party failing to perform or to offer to perform will cure his failure, taking account of all the circumstances including any reasonable assurances
* The extent to which the behavior of the party failing to perform or to offer to perform comports with standards of good faith and fair dealing.

A **fundamental breach of a contract** is 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. In the recent decision in ***R.P.M. Investment Corp. v. Lange***,[[6]](#footnote-6) the Alberta Court of Queen’s Bench held that a party to a contract may terminate a contract on the basis of a “fundamental breach” of the contract, in addition to the right to terminate the contract for repudiation.

An **anticipatory breach of a contract** 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. In some instances, a judge can award an injunction or specific performance when monetary compensation for a breach of contract does not settle the breach effectively. Punitive damages are not awarded in a breach of contract in the United States but they may be awarded for other causes of action in a lawsuit.[[7]](#footnote-7)

This notion of anticipatory breach was well captured in the case of ***Solomon Nassar v Oladipo Moses****[[8]](#footnote-8)* where Coker, J, said emphatically thus:

*It is open to a party to a contract to sue the other party for breach of 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 fulfill his part of the contract at the agreed time.*

QUESTION 2.

What are the remedies available for breach of contract?

**What is a Remedy in Contract Law?**

In contract law, a “remedy” is a court-ordered resolution to one party’s breach of contract. A breach of contract occurs when one party to a contract has not fulfilled his or her obligation under the agreement. The non-breaching party is also known as the “injured” party, and the purpose of remedies is to place the injured party in the position they would have otherwise been in had the contract been performed as it was agreed upon. There are a handful of remedies available to the affected party. Damages are monetary rewards or remedies intended to make up for any loss experienced because of the breach of contract.[[9]](#footnote-9)

Compensatory damages are damages for a specific amount of money intended to compensate the non-breaching or innocent party for losses from the breach. There are two types of compensatory damages:

* **Expectation damages** might cover what you intended to get out of the contract, based on the contract itself or market value. For example, if your employer neglected to pay you for additional hours worked not covered by your regular salary, damages would be calculated based on the overtime policy outlined in your employment contract.
* **Consequential damages** are a little bit trickier to deal with, as they're intended to cover indirect damages. For example, if your cupcake bakery loses profits for a week because of an undelivered oven, you might be able to collect consequential damages. In this case, the damages must come specifically from the breach and be reasonably foreseeable for everyone entering the contract.
* **Punitive Damages for Breach of Contract**

Compensatory, or actual damages, cover the loss the non-breaching party incurred as a result of the breach. Punitive damages, known as exemplary damages, are awarded to punish or make an example of the wrongdoing of a party that acted willfully, maliciously or fraudulently. Punitive damages are awarded in addition to compensatory damages.  However, punitive damages are rarely awarded in breach of contract cases. Punitive damages are most often used in tort cases in which personal harm was a result of the wrongdoing and actual damages are minimal.

* **Restitution in Breach of Contract**

Restitution is remedy designed to restore the injured party to its state or position before the contract was created. Unlike an award of damages, parties seeking restitution may not demand compensation for lost profits or other financial losses caused by a breach. Instead, restitution is meant to return any money or property given to the defendant under the contract back to the plaintiff.

Typically, 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 incompetent and incapacitated individuals to be relieved of their contractual obligations, but only if the plaintiff is not hindered by the dismissal. In either case, if the defendant 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.

* **Rescission in Breach of Contract**

Rescission is a remedy used to terminate a contract when parties entered into a contract by way of fraud, undue influence, coercion, or mistake. In the case of rescission, the contractual obligations of both parties are therefore terminated, and the contract will no longer exist.

* **Reformation in Breach of Contract**

Reformation is similar to rescission as it’s a result of parties entering into a contract based on fraud, undue influence, coercion, or mistake, but rather than terminating the contract and the parties’ obligations entirely, the court will change the substance of a contract to correct the inequities suffered as a result.

* **Specific Performance of a Contract**

Specific performance is a remedy for breach of contract in which the court forces the breaching party to perform the services or deliver the goods the promised goods per the contract.  Specific Performance is only available when money damages are inadequate to compensate the plaintiff for a breach.  This remedy is typically used when the goods or services are so unique that no other remedy could suffice.

A good example is an individual who’s looking to buy a rare piece of art. He or she forms a contract with someone to obtain this piece of art. The buyer’s offer becomes the price for the piece of art and the other party accepts by a promise of delivering the art in exchange for the agreed amount. If the other party joins in this contract, yet fails to deliver the art, the buyer can take the case to court as a breach of contract. The court could rule specific performance the remedy for breach of contract, as the buyer would not be able to get this rare piece of art elsewhere. The defendant would then be required by the court to deliver the goods – in this case, the art – as agreed upon in the contract.

1. <https://en.wikipedia.org/wiki/Breach_of_contract> [↑](#footnote-ref-1)
2. <https://www.balancesmb.com/breach-of-contract-398138> [↑](#footnote-ref-2)
3. <https://legal-dictionary.thefreedictionary.com/breach+of+contract> [↑](#footnote-ref-3)
4. <https://www.rocketlawyer.com/article/crash-course:-four-types-of-contract-breaches.rl> [↑](#footnote-ref-4)
5. <https://en.wikipedia.org/wiki/Breach_of_contract> [↑](#footnote-ref-5)
6. 2017 Carswell Alta 770, 2017 ABQB 305, [↑](#footnote-ref-6)
7. <https://www.lawfirms.com/resources/business/types-contract-breaches.htm> [↑](#footnote-ref-7)
8. Unreported High Court Lagos state, Coker, J, Suit No. LD/222/58 delivered on May 20 1960, casebook, p. 448 [↑](#footnote-ref-8)
9. <https://www.oflaherty-law.com/learn-about-law/what-are-some-remedies-for-breach-of-contract> [↑](#footnote-ref-9)