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Course: Law of Contract IIQ

**Question 1**

Breach of a Contract

A breach of contract is committed when a party to the contract without lawful excuse fails, neglect or refuses to perform an obligation he undertook in the contract or either performs the obligation defectively or incapacitates himself from performing the contract. Where a breach of contract occurs, the innocent party is entitled to sue in an action for damages. Where the breach is fundamental, the innocent party may also repudiate the contract. When there is a concluded binding contract, there is liability if it is terminated without justification because that would amount to a breach of the contract. There is an implied term that an enforceable contract will not be brought to an end without just cause. In *Dantata v Mohammed[[1]](#footnote-1)*, the Supreme Court held that:

*1. Where one party has committed a serious breach of contract, the innocent party has the right to rescind the contract. In such circumstances, the contract is said to be rescinded de future.*

*2. In a case where it is alleged that a party has the right to rescind for breach of contract, it must be determined:*

* 1. *whether there has been a breach by the other party of a term of the contract or a mere misrepresentation;*
	2. *whether the breach is sufficiently so serious to justify rescission de future of the contract by the other party, as well as to claim for damages;*
	3. *Whether the other party has elected to affirm the contract.*

*3. when there is a serious breach of contract, one of the consequences is that the innocent party who has elected to rescind the contract de future is released from further obligations under the contract and, for the primary obligation of the defaulting party to perform, there is substituted by operation of law a secondary obligation to pay damages for the loss resulting from failure to perform the primary obligation. Therefore, notwithstanding the use of the words “null and void”, in relation to the contract, the respondent could properly rescind same having regards to the circumstances for the case.*

*4. The law recognizes the restitutionary remedies of an innocent party who has opted to rescind de future a contract by reason of the serious breach of the other party. Thus, a party who has wholly or in part performed his side of the contract and not received the agreed counter-performance in full may sometimes be entitled to restitution in respect of his own performance. Where this consists of payment of money, the payer will simply seek to get it back, where it consists of some other benefits he will claim recompense in respect of it. In other words, it is clear that where a contract is avoided for breach, the innocent party is entitled to restitution where there is total failure of consideration.*

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.

In conclusion, 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.[[2]](#footnote-2)

**Question 2**

Remedies for Breach of Contract

Where a party to a contract breaches the terms of the contract, it is only fair and just that the innocent party should be compensated for his loss. The law provides several remedies to the innocent party who has suffered loss as a result of the other parties’ breach of the terms of the contract. These remedies are:

1. Damages

Damages mean pecuniary compensation obtainable by a successful party in an action for a wrong which is either a tort or a breach of contract. The principle governing the award of damages was laid down by Parke, B in *Robinson v Harman*[[3]](#footnote-3), where he said:

*The rule of the common law is that where a party sustains a loss by reason of a breach of contract, he is so far as money can do it, to be placed in the same situation, with respect to damages, as if the contract has been performed.*

Once a breach of contract has been establishes, a trial court has the power to award damages upon a judicious estimation of the prevailing circumstances. The purpose of an award of damages is to compensate the plaintiff for damages, injury or loss suffered. The guiding principle is ***restitution in integrum***. That is a situation where a court is called upon to assess that a party which has been dignified by the act which is in issue must be put in the position in which he would have been if he had not suffered the damage for which he is being compensated.

The Supreme Court in *UBA Plc v BTL Ind. Lt [[4]](#footnote-4)* again examined the issue of damages for breach of contract. *In this case, demands from the respondent. The appellant, on the other hand, kept assuring the respondent that the money drawn from its account was with the Central Bank of Nigeria and would be remitted to the respondent’s overseas the respondent was engaged in the trade of importing goods on credit from its overseas suppliers. The respondent imported goods on credit from its overseas suppliers. The appellant were the bankers of the respondent. The goods were sent to the respondent through the appellant along with bill of exchange. The appellant collected the sum of N 8,541,557 by debiting the respondent’s account with the appellant bank. The appellant applied for foreign exchange from the Central Bank of Nigeria. The application was unsuccessful. Consequently, the Central Bank of Nigeria returned the money to the appellant. Meanwhile, the overseas suppliers of the respondent continued to make suppliers. This was the case until April 1994 when the respondent stumbled upon the Central Bank of Nigeria circular, which established that the money debited from its account had been returned to the appellant, and had been in the appellant’s custody despite its assurance that the money was with the Central Bank of Nigeria preparatory to its remittance to the respondent’s overseas supplier. The respondent was aggrieved and it filed a suit against the appellant claiming the following reliefs, loss of profits, and an order directing there appellant to pay the respondent the sum N 8,544,577 returned by the Central Bank of Nigeria with accrued interest to date. The Supreme Court (dismissing the appeal) held that, the essence of damages in breach of contract cases is based on* ***restitution in integrum****. In other words, where there is a breach of contract, the amount of damages to be paid to the party wronged by the breach is the amount of damages necessary to put the party wronged and aggrieved in the position he would have been had there been no breach.*

2. Specific Performance

Specific performance is a decree issued by the court which constrains a contracting party to do that which he has promised to do. It is a remedy for breach of contract provided by equity to meet those cases where the common law remedy of damages is inadequate. Thus, where a vendor or lessor of land refuses to carry out his contract, an order of specific performance may be granted requiring him to execute the necessary conveyance or lease, since one piece of land is not necessarily the same as another and damages may therefore not be an adequate remedy.

The equitable doctrine of specific performance is discretionary because the dominant principle has always been that equity will only grant specific performance if, under all the circumstances, it is just and equitable to do so. The remedy is available in a variety of contractual relationships. Whether or not it will be granted depends on the nature of the contract. Before the remedy of specific performance can be granted, there must be a valid contract. The court will not grant specific performance of the contract whose terms are inconclusive, uncertain or ambiguous. Also, a court will not decree specific performance of a contract that is void for illegality. Where no consideration is furnished, specific performance of the contract will not be granted.

A claim that a contract is rescinded is inconsistent with a claim for specific performance of the contract. A party cannot claim specific performance of a contract and at the same time claim that the contract has been determined by serious breach and restitution should be made. A court cannot decree specific performance until a contract is shown to exist, which contract would form the basis of the decree of specific performance.

3. Injunction

The remedy of injunction is an equitable remedy which may be granted at the discretion of the courts. Its principle use as a private law remedy is to restraint a wrongful acts, such as the commission of a tort or the breach of a contract. Where a contract provides that one party was to restrain from doing a particular thing, an injunction may be granted against a breach of that negative stipulation. For example, if in a contract of employment, the employee covenants that after leaving his employment, he will not take up employment with another rival firm; his negative stipulation can be enforced by an injunction.

In *Lumley v Wagner [[5]](#footnote-5)*, *the defendant covenanted that for three months she would sing at the plaintiff’s theatre on two nights a week and that she would not during the three months use her talents at any other theatre without the plaintiff’s written consent. The defendant later agreed to sing Covent Garden for a large sum of money, in breach of her covenant with the plaintiff. The court granted an injunction to restrain the defendant from breaching her agreement.* This case, however, has been criticized n relation to contracts of employment.

4. Quantum Meruit

Quantum meruit is a Latin word and means “as much as he has served”. It is the reasonable value of services, damages awarded in an amount considered reasonable to compensate a person who has rendered services in a quasi-contractual relationship. It is an equitable remedy to provide restitution for unjust enrichment. It is often pleaded as an alternative claim in a breach of contract case so that the plaintiff can recover some damages even if the contract is unenforceable.

The Court of Appeal in *Panar Ltd v Wagbara* [[6]](#footnote-6)held that *the doctrine of quantum meruit normally comes into play when for some reason a contract of service cannot be completed.*

# Bibliography

1. Atsegbua (2013) Law of Contract

2. Sagay (2007) Nigerian Law of Contract

1. (2000) 7 NWLR, part 664, p. 176 [↑](#footnote-ref-1)
2. www.investopedia.com [↑](#footnote-ref-2)
3. (1848) 1 Ex 850 [↑](#footnote-ref-3)
4. (2006) 19 NWLR, part 1013, p.61 [↑](#footnote-ref-4)
5. (1852) 1 D.M & G. 604 [↑](#footnote-ref-5)
6. (2002) 2 NWLR, part 644, p. 207 [↑](#footnote-ref-6)