**NAME:** Ikechukwu Obinna Stephen.k.

**MATRIC NUM:** 18/LAW01/120

**Assignment Title:** Breach of Contract **Course Title:** Law of Contract II

**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:

A. Breach of contract

B. What are the remedies available for breach of contract?

Abstract

A brief meaning to what a breach of contract has been given above which states that a breach of contract is basically when a party to a contract fails to perform or carry the duty he is supposed to perform according to the contract he agreed to enter. I now give a detailed explanation and discussion to what a breach of contract entails and the remedies available for breach of contract. all these will be done in the introduction and body below through the subsequent paragraphs.

Introduction

Before we discuss breach of contract, we must first of all know what a contract is and why it is legally binding. C[ontract](https://www.legalmatch.com/law-library/article/what-is-a-contract.html)s are agreements which the law will enforce or recognise as affecting the legal rights and duties of the parties. They are 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.

Body

Breach of contract

According to legal dictionary (law.com) breach of contract is failing to perform any term of a contract, written or oral, without a legitimate legal excuse. This may include not completing a job, not paying in full or on time, failure to deliver all the goods, substituting inferior or significantly different goods, not providing a bond when required, being late without excuse, or any act which shows the party will not complete the work ("anticipatory breach"). *Solomon Nassar v Oladipo Moses* this case states that it is open 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 fulfil his part of the contract at the agreed time. Other cases of an anticipatory breach include*; Johnstone v milling* when a party assumes to renounce the contract, that is, by anticipation refuses to perform it, he thereby, so far as he is concerned, declares his intention then and there to rescind the contract, *C.D. Ajufo v. Trans-Arab ltd.*

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.

What Constitutes a Breach of Contract?

A contract case usually comes before a judge because one or both parties claim that the contract was breached. A breach of contract is a failure, without legal excuse, to perform any promise that forms all or part of the contract. This includes failure to perform in a manner that meets the standards of the industry or the requirements of any express warranty or implied warranty, including the implied warranty of merchantability. When a party claims a breach of contract, the judge must answer to the following questions: -Did a contract exist? -If so, what did the contract require of each of the parties? - Was the contract modified at any point? -Did the claimed breach of contract occur? -If so, was the breach material to the contract? - Does the breaching party have a legal defence to enforcement of the contract? -What damages were caused by the breach?

Consequences of a Breach of Contract

The primary consequence for a breach of contract is that the side that commits the breach becomes liable for the damages caused by their failure to meet their obligations. Under contract law, the breaching party will be required to make the other part whole. The liability will be different depending on if the breach was a material breach or a non-material breach. The court will also look to the actions of the injured party when determining the appropriate amount of damages.

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 fulfil 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 fulfil 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). ***Hochster v De la Tour (1853)*** Applicants for three months from first June 1852 agreed that the defendants Messenger. 11 May in the work on the defendant did not want that rejected his services and wrote the manuscript for compensation. Scored another service contract by the complainant, but not until 4 July start. The plaintiff sued for breach of contract on 22 May Employees of the contract due by 1 Begin in June, when the card is not a breach of contract claims to 22 days Held:

Before the injury occurred in the application until the parties of its intention not to perform the contract if the innocent party would you mind passing. They shall immediately or can choose their continued violation of this Agreement to wait.

**Example Breach of Contract Cases**

***Revelations Perfume and Cosmetics Inc. v. Prince Rogers Nelson***

In 2008, the Revelations Perfume and Cosmetics company sued the famous musician “Prince” and his music label, seeking $100,000 in damages for reneging on an agreement to help market their perfumes. The flamboyant pop star had promised to personally promote the company’s new perfume named after his 2006 album “3121,” and to allow his name and likeness to be used in the perfume’s packaging. Prince then refused to grant interviews related to the project, and refused to provide a current photograph for a press release.

In its breach of contract complaint, Revelations asked the court to award more than $3 million in lost profits, as well as [punitive damages](https://legaldictionary.net/punitive-damages/). The judge found no evidence, however, that the pop star acted with malicious intent, and ordered him to pay nearly $4 million for the cosmetics company’s out-of-pocket expenses. Revelations’ request for punitive and loss-of-profits damages was denied.

***Macy’s v. Martha Stewart Living***

Macy’s department stores filed a breach of contract complaint against Martha Stewart Living Omni media for making an agreement with J.C. Penney for the creation of Martha Steward retail stores within their retain stores beginning February 2013. Prior to the deal, J.C. Penney had purchased a minority stake in Steward’s company for $38.5 million. The mini-retail stores were to carry Martha Stewart home goods, however Macy’s argued they had been granted an exclusive right to make and sell certain Martha Steward Living products in an agreement signed in 2006.

Macy’s asked the court to grand a [preliminary injunction](https://legaldictionary.net/preliminary-injunction/) to stop Steward from breaching the contract while the court considered the matter. Twelve years later, in June 2014, a New York judge ruled that J.C. Penney had indeed stepped over Macy’s contract with the domestic diva in its attempt to sell products bearing her name. While the J.C. Penney contract has been nullified, monetary breach of contract damages was not immediately decided, and may be limited to the legal fees and costs of the lawsuit, as the judge decided the case did not warrant punitive damages.

What are the remedies available for breach of contract?

The main remedies for a breach of contract are:

1. Damages, 2. Specific Performance, 3. Cancellation and Restitution

Damages

**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. **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. “Damages recoverable by a party injured by a breach of contract are those that naturally flow from the breach and can reasonably be said to have been contemplated by the parties at the time the contract was entered into.***” Mnemonics, Inc. v. Max Davis Assocs., Inc., 808 So. 2d 1278, 1280 (Fla. 5th DCA 2002).***

Specific performance

**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. It is a term that focus on quality in workplace based on contract. Labour force should keep the quality of performance because before offeree start to work or process for the offer or, Once the worker have not doing well in their work, it can be get declare by the boss it because they already sign for the contract and the work descriptions are already stated inside the statement. Specific performance is not available if expectation damages are adequate to put the aggrieved party in as good a position as he would have been had the contract been fully performed. In the case of **Castigliano *v. O’Connor, 911 So. 2d 145, 148 (Fla. 3d DCA 2005)*** (“Specific performance shall only be granted when 1) the plaintiff is clearly entitled to it, 2) there is no adequate remedy at law, and 3) the judge believes that justice requires it.”).

Cancellation and restitution

It is a term that to set dateline to return something, if over the dateline, it can be declare to the person who break the contract. Here is the example, if B party look for P constructor to build a new house, and P constructor promised to build the new house between 2month, and when come to the 3rd month, P constructor can’t finish to build up the new house that the B party want, B party can declare to P constructor that he had not completely his project. "Restitution" as a contract remedy means that the non-breaching party is put back in the position it was in prior to the breach, while "cancellation" of the contract voids the contract and relieves all parties of any obligation under the agreement.

The purpose of restitution, however, is to require the wrongdoer to restore that which he has received and thus tend to put the injured party in as good a position as he occupied before the contract was made; in this context the injured party may be said to have considered the contract as ‘terminated’ or ‘ended.***’” Ocean Comm., Inc. v. Bubeck, 956 So. 2d 1222, 1225 (Fla. 4th DCA 2007).***

Bibliography

<https://en.wikipedia.org/wiki/Breach_of_contract>

<https://www.legalmatch.com/law-library/article/breach-of-contract.html>

<http://jec.unm.edu/education/online-training/contract-law-tutorial/breach-of-contract>

[www.oflaherty-law.com](http://www.oflaherty-law.com)

<https://legaldictionary.net/breach-of-contract/>

<https://dictionary.law.com/Default.aspx?selected=93>

<https://tonalaw.com/business-litigation/resources/breach-of-contract-case-study/>

<https://www.lawteacher.net/free-law-essays/contract-law/case-study-of-breach-of-contract-contract-law-essay.php>