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1. [[1]](#footnote-1)One may ask, what is breach of contract? Breach of contract can be defined as a civil wrong or a legal cause of action in which a binding agreement or contract between two or more parties is not honoured by one party or more of the parties to the contract by non-performance or interference with the other party’s performance. [[2]](#footnote-2)It is also a violation of any of the agreed-upon term and condition of a binding contract, the breach of a contract could be a late payment or a more serious violation like failure to deliver a promised asset. Breach of contract is a failure without legal excuses to perform any promise that forms all or part of the contract. The only way a breach can occur is when a party to a contract fails to fulfil its obligations, whether it’s a partial or whole obligation as described in the contract, or not being able to perform its obligation under the contract. Also, if a contract is rescinded parties are legally allowed to undo the work unless doing so would directly charge the other party at the exact time.

In other not to make any legal mistakes one has to know what determines or constitutes a breach of contract. In order to determine a breach of contract the contract must be examined and there are various parts of the contract that needs to be examined by the judge. The things that needs to be examined are: the requirement of the contract, the existence of the contract and if any modifications were made due to the contract. After all this examination a judge can make a ruling on the existence and the classifications of a breach. For a contract to be considered breach and for a judge to deem a contract breached, 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. Also, the plaintiff must notify the defendant of the breach before filing the lawsuit.

There are various ways which a breach of contract can take place or rather actions done by a party to a contract to indicate that one has breached a contract. A breach of contract takes place when;

**. A party to a contract fails to perform their obligation under the contract in whole or part**

**. A party to a contract behaves in a manner which shows an intention not to perform their obligations under the contract in the future**

**. A contract becomes impossible to perform as a result of the defaulting party’s own act.**

It is also important to understand that there three categories of breach of contract which measures the seriousness of the breach. These categories are; breach of warranty, breach of condition or breach of an innominate term/ intermediate term.

1. Before exploring the remedies for breach of contract one must know the meaning of remedy in contract law. Now the question to ask is, what is remedy in contract law? In contract law, a “remedy” is a court ordered resolution to one’s party of breach. There are various remedies for a breach of contract and they are;

**. Damages**

**. Specific performance and injunction**

**. Restitution**

**. Rescission**

**Damages**

[[3]](#footnote-3)At the instance a party to a contract establishes to the establishment of the court that the other party has committed a breach, the most common claim is that of damages and it is the most readily granted type of remedy and only in social circumstances will the equitable remedies for specific performance and injunction be granted by the court. Damages are considered a legal remedy The rule and basis for the common law remedy of damages was laid down by Parke.B in [[4]](#footnote-4)*Robinson v. Harman* and the rule states that “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 had been performed”. However since a non-qualified application of such a wide principle would prove too harsh, it was progressively qualified and limited in several ways, until the modern rule was finally crystallised in the judgement of Alderson, B. in [[5]](#footnote-5)*Hadley v. Baxendale.* The rule in this case has been divided into two parts or branches, the first dealing with the normal damage that occurs in the usual course of things and the second with abnormal damage that arises because of special or exceptional circumstances. Whenever a court has to consider a claim for damages, a court must first resolve the issue whether the defendant is liable for any damage at all, and if so the nature and extent of such damages or loss. This is known as the issue of remoteness of damages, it is only after having determined the nature and extent of damages, that the court can quantify them in terms of money, the question of remoteness of damages in contract was given consideration by the house of lords in [[6]](#footnote-6)*Koufos v. C. Czarnikow Ltd.*

. Damages can be in various forms. Damages can be in form of expectation, expectation damages compensate the injured party for the benefit he would have received had the contract not been breached, minus any amount he would have spent in performance of the contract, such damages must be proven with certainty and may be measured by the contract price, loss in value, or lost profits. Another form of damages is consequential/special damages. Special damages emanate from the circumstances of the case and are not deemed to be within the contemplation of the breaching party unless he was made aware of such specific facts and circumstances. If a party seeks consequential damage he must prove that the damages were foreseeable at the time the contract as formed. Special damages do not always result from the breach of contract complained of, or which the law does not imply as a result of that injury. It’s important to know that special damages are damages that do not follow by implication of law merely upon proof of the breach, this was established in [[7]](#footnote-7)*land title of central Fla, LLC v. Jimenez.* The last form of damages this writer will talk about is stipulated damages/liquidated damages. Stipulated means something that is fixed. At the moment a contract is formed, the parties may agree to a fixed sum of money for damages in case there is a breach. If stipulated damages reflect an honest effort to anticipate the harm caused by a breach it will be enforced. On the other hand, if they represent a trial to punish the party that breached the contract like the case of unreasonably large damages it will be deemed invalid.

**. Specific performance and injunction**

Specific performance is a decree in which the court directs the defendant to perform or abide to the contract which he has made in accordance with its terms. The remedy of specific performance is a discretionary one and the plaintiff is not entitled to it as a matter of right. Specific performance will not be granted where it will be impossible to carry out. The discretion of specific performance is exercised by the courts and the court will consider if the granting of the decree will be just and equitable under all the circumstances of the case. The type of contract in which specific performance is normally granted by courts is a contract in which the vendor refuses to convey land sold or a valuable item to the plaintiff. [[8]](#footnote-8)Specific performance is only available when money damages are inadequate to compensate the plaintiff for a breach, this remedy is mostly used when the goods are so special that no other remedy can be used or can be good enough.

[[9]](#footnote-9)It is considered appropriate to decree specific performance when the dispute is over a family heirloom or a piece of art. Most times, antiques are considered to be unique enough for specific performance to be a fair remedy. It is important to know that a specific performance cannot be ordered in the case of personal services.

[[10]](#footnote-10)Although the legal system frowns upon forcing individuals to do something against their will, in cases where a person signed a contract selling the item but had the intent to defraud the other party, then the court can force them to sell the item as long as the other party was willing to pay the contracted amount and was ready to do so.

Injunction is a decree for specific performance but for a negative contract. It is a court order restraun8ng a person from doing a particular act. A court may grant an injunction to stop a party from doing something he promised not to do. Injunction can come in types; prohibitory injunction and mandatory injunction. In a prohibitory injunction the court stops the commission of an act and in a mandatory injunction, it will stop the continuance of an act that is unlawful.

**. Restitution**

Restitution is a remedy which is sued to restore the injured party to the position occupied before the contract. The goal of restitution is for situations to be as though the contract never happened. Under the principle of restitution, the defendant is supposed to refund any money or property received from the plaintiff under the contract. It is also important to note that restitution is not used to compensate the plaintiff for lost profits or other earnings because of the breach of contract.

According to Ocean Comm in [[11]](#footnote-11)*Inc. v. Bubeck* “the purpose of damages is to put the injured party in as good as a position as he would have occupied had the contract been fully performed. In this context the injured party is considered to be “affirming the contract. The purpose of restitution is to require the wrongdoer to restore that which he has received and thus tend to put the injured party in as good as a position a she occupied before the contract was made; in this context the injured party may have said to have considered the contract as terminated or ended.

Restitution may be available to the defendant in various cases of breach and they are

1. Where the contract cannot be enforced due to lack of consideration or writing.
2. Where a contract is voidable for instance where a duty is excused or discharged d8ueto frustration of purpose, impartibility, non-occurrence of a condition or a disclaimer by a beneficiary.

Normally, a party seeks restitution when a contract they entered has been voided by courts because of the defendant’s incompetence or incapacity.

**. Rescission**

Rescission is when the contractual duties of both parties is terminated by the court. This remedy is used to terminate a contract when parties entered into a contract by fraud, undue influence, coercion or mistake. Rescission is an equitable remedy that is only available when there is no remedy at law. Rescission is granted because the court attempts to restore the parties to the status quo, in [[12]](#footnote-12)*Royal v. Parado* it was said that “where restoration to the status quo is impossible, however a court may still grant rescission, provided the equities between the parties can be balanced.

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