NAME: ABDULSALM DERINSOLA

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COURSE: LAW OF CONTRACT

ASSIGNMENT

Discuss the following:

1. Breach of contract

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 If a contract is rescinded, parties are legally allowed to undo the work unless doing so would directly charge

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.

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.

Fundamental breach of contract was once the test for a serious breach of contract to justify termination, it is no longer. The test is that set out for repudiator breach, above. The concept of Fundamental Breach as a free standing legal concept no longer has any legal force.[[1]](#footnote-1) it is now simply another term of a contract (when it is used) which needs to be construed like any other term of a contract.

**Breach of Contract Case: An Example[[2]](#footnote-2)**

Let's assume that R. Runner contracts with Acme Anvils for the purchase of some of its products, for delivery by the following Monday evening. If Acme delivers the Anvils to Runner on the following Tuesday morning, its breach of the contract would likely be deemed immaterial, and R. Runner would likely not be entitled to money damages (unless he could show that he was somehow damaged by the late delivery).

However, assume now that the contract stated clearly and explicitly that "time is of the essence" and the anvils MUST be delivered on Monday. If Acme delivers after Monday, its breach of contract would likely be deemed "material," and R. Runner's damages would be presumed, making Acme's liability for the breach more severe, and likely relieving Runner of the duty to pay for the anvils under the contract.

**What constitutes a breach of contract**

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.[[3]](#footnote-3) Only after this can a judge make a ruling on the existence and classifications of a breach. 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.[[4]](#footnote-4)

**Ways of breaching contracts**

A breach of contract may take place when a party to the contract:

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

These classifications only describe *how* a contract can be breached, not how serious the breach is. A judge will make a decision on whether a contract was breached based on the claims of both parties.

The first type above is an *actual* breach of contract. The second two types are breaches as to the future performance of the contract, and technically known as *renunciatory* breaches. The defaulting party renunciates the contract in advance of the time they are required to performs their obligations. Renunciatory breach is more commonly known as “anticipatory breach”.

**Classifications of breaches 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

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.

In terms of priority of classification of these terms, a term of a contract is an innominate term unless it is clear that it is intended to be a condition or a warranty.

When a breach of contract occurs or is alleged, one or both of the parties may wish to have the contract enforced on its terms, or may try to recover for any financial harm caused by the alleged breach.

If a dispute over a contract arises and informal attempts at resolution fail, the most common next step is a lawsuit. If the amount at issue is below a certain dollar figure (usually $3,000 to $7,500 depending on the state), the parties may be able to resolve the issue in small claims court.

Courts and formal breach of contract lawsuits are not the only options for people and businesses involved in contract disputes. The parties can agree to have a mediator review a contract dispute or may agree to binding arbitration of a contract dispute. These out-of-court options are two methods of "alternative dispute resolution" that can take place as alternatives to business litigation.

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

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 some remedies available for breach of contract:

**Damages[[5]](#footnote-5)**

The payment of damages — payment in one form or another — is the most common remedy for a breach of contract.

During the court case, the injured party becomes the plaintiff. In the instance of a total breach, the plaintiff may recover damages in an amount that’s equal to the sum or value they would have received had the contract been fully performed by the defendant.  Sometimes, this includes lost profits from a business operation.

If the breach is only partial and the defendant carried out a majority of the contract, the plaintiff may seek damages in an amount equal to the cost of hiring someone else to complete the performance. If the portion of the uncompleted performance is quite small in terms of cost, however, the court may only award damages in an amount that’s equal to the difference between the diminished value of the agreement as completed and the full value as stated in the contract.

**Restitution**

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**

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.

**Specific Performance**

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.

Specific performance may be used as a remedy for breach of contract if the subject matter of the agreement is rare or unique, and damages would not suffice to place the non-breaching party in as good a position as they would have been in had the breach not occurred.

**Reformation**

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.

1. Photo production ltd v Securicor Transport Ltd (1980) AC 827, per Lord Wilberforce @ p. 843; Lord Reid in Suisse Atlantique (1967) 1 AC 361 @ 406 [↑](#footnote-ref-1)
2. By FindLaw Staff | Reviewed by Kellie Pantekoek, Esq. | Last updated April 23, 2020 <https://smallbusiness.findlaw.com/business-contracts-forms/breach-of-contract-and-lawsuits.html> date accessed 05 May 2020 [↑](#footnote-ref-2)
3. <<http://jec.unm.edu/education/online-training/contract-law-tutorial/breach-of-contract>> date accessed 05 May 2020 [↑](#footnote-ref-3)
4. <<https://www.thebalancesmb.com/breach-of-contract-398138>> [↑](#footnote-ref-4)
5. <<https://www.oflaherty-law.com/learn-about-law/what-are-some-remedies-for-breach-of-contract>> date accessed 06 May 2020 [↑](#footnote-ref-5)