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LAW OF CONTRACT II (LPB202)

QUESTION 1

 1Breach of contract is a legal cause of action which occurs when a party to a contract fails to fulfil its obligation whether partially or wholly as prescribed in the contract, or communicates an intent to fail the obligation or otherwise appears not to be able to perform it obligation under the contract. In other words, 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

 Simply put, is a legal term that describes the violation of a contract or an agreement that occurs when one involves interfering with the ability of another party to fulfil his duties.

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1, sagay .I. Nigerian Law of Contract; spectrum books limited, 2000

A contract can bebreached in whole or in part. Further, if one party fails to perform while the other party fulfils their obligations, the performing party is entitled to legal remedies for breach of contract.

**2GENERAL REQUIREMENTS**

A breach of contract suit must meet four requirements before it will be upheld by a court.

 The contract must be valid. To claim breach of contract, there must be an actual, valid contract in place.

Offer – Some discussion and an agreement to the provision of goods or services in exchange for something of value must have been made.

Acceptance – An agreement to the essential terms for the exchange of goods or services for something of value must be entered into.

The plaintiff or the party who's suing for breach of contract must show that the defendant did indeed breach the agreement's terms.

The plaintiff must have done everything required of them in the contract.

The plaintiff must have notified the defendant of the breach before proceeding with filing a lawsuit.

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2, [www.lexinexis.com](http://www.lexinexis.com)

**TYPES OF BREACH OF CONTRACT**

1. Fundamental Breach: A fundamental breach of contract is generally known to occur when a previously agreed upon contract is canceled entirely, due to the other party’s actions (or, inactions, in some cases). While with most breaches of contract, the early termination could be considered a breach of contract, which is not the case with a fundamental breach and therefore, does not provide both parties the right to take legal recourse; that right exists only to the wronged party. 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

2. 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. Anticipatory breaches can be very difficult to prove in court.

Coker J. once stated, 3 ‘It is open to a party to a contract to sue the other party for breach of contract, if it is manifested 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” Solomon 4***Nassar v. Oladipo*** Moses1 delivered Coker Jon May 20, 1960

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3, coker J 1964,

4, somolu J 1987

3. Minor Breach:5 A minor breach of contract 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 fulfill any remaining contractual obligations. A minor breach is sometimes referred to as an impartial breach.

4. Material Breach: 6A material breach of contract is a breach that is so substantial, itseriously impairs the contract as a whole; additionally, the purpose of the agreement must be rendered completely defeated by the breach. 7This 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

**QUESTION 2**

**REMEDIES FOR BREACH OF CONTRACT**

The leading case of 8***Hadley v Baxendale (1854)*** laid the common law foundation for the assessment of damages arising from a contractual breach

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 5, Suit: No LD/222/58 High Court of Lagos

6,(186) 16 QBD 460 at 467

7,Suit No WN/205/69 delivered September 28, 1969 High Court of Western State Ibadan (unreported),

 8,7 NWLR (pt. 511) 135

Furthermore, Hadley may well have had a spare shaft, as is common practice in the business. Hadley's action failed and Baxendale was not liable for the loss of profit. The principle arising from that decision is now the basis for the concept of remoteness in damages, which lays down two categories of compensation which can be recovered, and which are often described as the 'first' and 'second' limbs of the 9***Hadley v Baxendale rule****.*

 **DAMAGES**

10Damages are amounts of money that compensate the victim for any actual loss he suffered. Punitive damages involve extra money a court might tack on as a form of punishment if the breach of contract was particularly egregious and intentional.

1. Losses which arise in the normal course of things and are a natural consequence of the breach;

 2. Losses which arise as the result of special circumstances (not being natural consequences) which were either known to the parties or may reasonably be supposed to have been in the contemplation of the parties when the contract was made.

It is important to note that the non-breaching party has a duty to mitigate. This means that it has to do what is possible and reasonable to minimize or avoid the losses which were incurred because of the breach of contract.

9 1854 EWHC J70, 156 ER 145, 9ExCh 341

10Yakubu JA international contract,

**SPECIFIC PERFORMANCE**

In certain cases, an aggrieved party may not be made whole through the award of monetary damages. He may instead request the court to order “specific performance” of the terms of the contract. Specific performance may be any court-ordered action, forcing the breaching party to perform or provide exactly what was agreed to in the contract. Specific performance is most

 often ordered in a contract involving something for which a value is difficult to determine, such as land or an unusual or rare item of personal property. Under specific performance, the breaching party has to perform their duties as specified by the contract and it is used when money damages are not adequate to compensate the plaintiff. Specific performance is used in cases which involve giving a piece of land or a valuable item to the plaintiff.

 in the case of *11****Lumley v Wagner*** [1852] [EWHC (Ch) J96](http://www.bailii.org/ew/cases/EWHC/Ch/1852/J96.html) [Mlle](https://en.wikipedia.org/wiki/Miss) [Johanna Wagner](https://en.wikipedia.org/wiki/Johanna_Wagner) was engaged by [Benjamin Lumley](https://en.wikipedia.org/wiki/Benjamin_Lumley) to sing exclusively at [Her Majesty’s Theatre](https://en.wikipedia.org/wiki/Her_Majesty%E2%80%99s_Theatre) on [Haymarket](https://en.wikipedia.org/wiki/Haymarket_%28London%29) from 1 April 1852 for 3 months, two nights a week. [Frederick Gye](https://en.wikipedia.org/wiki/Frederick_Gye), who ran [Covent Garden Theatre](https://en.wikipedia.org/wiki/Covent_Garden_Theatre), offered her more money to break her contract with Mr Lumley and sing for him.The Court of Chancery, held the injunction did not constitute indirect specific performance of Wagner’s obligation to sing. So an order could be granted that prohibited Mlle Wagner from performing further other than at Her Majesty's Theatre.

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11, [1852] EWHC (CH) J96, 64 ER 1209.

**RESTITUTION AND REFORMATION**; Restitution is a remedy which is used to restore the injured party to the position occupied before the contract. Under the principle of restitution, the defendant is supposed to give back any money or property received from the plaintiff under the contract and restitution is not used to compensate the plaintiff for lost profits or other earnings because of the breach of contract. Restitution is typically used in cases where the contract is voided by the court because the defendant lacked the competence or capacity necessary to enter into a contract.

 In the case of 12 ***Lampleigh v Braithwait*** [1615] [EWHC KB J 17](http://www.bailii.org/ew/cases/EWHC/KB/1615/J17.html) Braithwait killed a man called Patrick Mahume unlawfully. He asked Lampleigh to ride to the King and petition for a pardon. Lampleigh was successful and, delighted, Braithwait promised £100 to Lampleigh; but he never paid up and Lampleigh sued. Braithwait said that because the service had been performed in the past, there was no good consideration at the time for the promise, regardless of the fact that Lampleigh was successful in securing a pardon. 13The Court of the King's Bench held that there was an implied understanding (i.e. implied assumpsit, or "assumption" of obligation) that a fee would be paid. Where a past benefit was conferred at the beneficiary's request, and where a reward would reasonably be expected, the promisor would be bound by his promise.

**RESCISSION;** The right of rescission is an equitable and exists in a number of circumstances. By way of illustration, we mention three of those circumstances: First, the right is available to a party injured by breach of a fundamental term in a contract.

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12,(1854) 9 Ex. 341.

13, (1856) 26 L.J. Ex. 20 8 (1939) 1 KB 194

 Secondly, it is available to a party injured by the misrepresentation of the other party. Thirdly, it is available where a contract is vitiated by mistake. The effect of rescission in the case of misrepresentation and mistake is to terminate the contract ab initio as if it never existed. As stated by Lord Atkinson, in ***14Abram Steamship Co. v. Westville Steamship Co.*** . Such rescission terminates the contract, puts the parties in status quo ante and restores things, as between them, to the position in which they stood before the contract was entered into. On the other hand, rescission in the case of breach of a condition only terminates the contractor from the moment of rescission.

**INJUCTION;** An injunction is an equitable remedy and applicable under discretionary ground. It is not subject to the same restrictions that apply to a claim for specific performance. An injunction is appropriate where the contract is negative in nature or where the contract contains a negative stipulation. An injunction is an order by which one party to an agreement is required to do or refrain from doing a particular thing. An injunction is restrictive/preventive or mandatory/compulsive. However, such an order is subject to a balance of convenience ‘Test and may be refused if the prejudice suffered heavily outweighs the advantage that will be demised from such restoration.15 ***Kennaway v. Thompson*** 11An injunction will not be granted where it will compel or indirectly the defendant to do an act which he could not have been ordered to do by specific performance.

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14, [1923] UKHL 625 (06 JULY 1923)

15, [1981] 3 ALL ER 329