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BREACH OF CONTRACT IN ENGLISH LAW

A Breach of Contract could be defined as an act which occurs when party without lawful excuse are fails or refuses to perform what is due under the contract, perform defectively or incapacitates himself from performing[[1]](#footnote-1). Regardless it is worth noting that breach of contract does not automatically bring a contract to an end, a breach of contract gives to the innocent party the right to claim damages and it may give him additional right to terminate further performance of the contract. *The Mihalis Angelos [[2]](#footnote-2)*

In other circumstances, one contracting party may inform the other party before the fixed time for performance under the contract, that he will not perform his obligations under the contract, of which an anticipatory breach of contract occurs thus entitling the innocent party to terminate further performance of the contract immediately. In *Hochster v. De La Tour[[3]](#footnote-3)* where the defendant agreed to employ the claimant to act as his courier for three months from the 1st of June of which the defendant subsequently wrote to the claimant informing him that his services would no longer be required, of which the Court held the claimant could commence his action for damages at the date he chose to do so (22nd of May), he did not have to wait until the 1st of June when performance was due.

DAMAGES FOR BREACH OF CONTRACT IN THE ENGLISH LAW

As regards to breach of contract, the main aim in English Contract Law is to compensate the claimant for the loss which he has suffered as a result of the defendant’s breach of contract. The damages are explained below:

1) EXPECTATION INTEREST

This could be argued by seeking to protect the claimant’s expectation interest as identified in *Ruxley Electronics and Construction Limited v. Forsyth[[4]](#footnote-4)* where the claimants agreed to construct a swimming pool for the defendant, of which in breach of contract the claimants having built the pool to a depth of six feet when the depth should have been seven foot six inches, Lord Mustill held as the loss which the defendant suffered, of which he has suffered was the disappointment which he has experienced in not getting the swimming pool of the correct specifications and that loss was best reflected in award of 2500 pounds for loss of amenity. However, as regards to the other question of whether the defendant was entitled to recover the cost of cure damages, it was held that it was not reasonable for the defendant to recover cost of cure damages due to the fact with due regard to the reasonableness of the course of action pursued by the defendant when seeking to assess the loss which he has suffered, the cost of carrying out the work was out of all proportion to the benefit which the defendant would obtain by its performance

2) RESTITUTION INTEREST

As regards to the award for damages for breach of contract, provided a claimant can establish that the defendant was enriched, and that the enrichment was at the claimant’s expense of which it would be unjust that the defendant retain the benefit without recompensing the claimant, then a restitutionary remedy may be available in these circumstances so as to seek to protect restitution interest rather than his expectation interest

Thus, as established in the House of Lords decision in *A-G v. Blake[[5]](#footnote-5)* where the Attorney General sought to recover the profits made by the spy, George Blake, from his breach of contract in writing an autobiography, and including within its information which he had given an undertaking to the crown that he would not divulge, the House of Lords held that the crown was entitled to recover profits made by Blake from his breach of contract, and furthermore, that they were entitled to recover the whole of that profit

3) RELIANCE INTREST

As regards to the award for damages, the claimant may wish to claim the protection of his reliance interest so that he is put in the position which he would have been if he had not entered into a contract with the defendant. For instance, the clamant may have wasted expenditure in the performance of the contract prior to its termination and may wish to simply recover that expenditure. In *Anglia Television Limited v. Reed [[6]](#footnote-6)* the claimants engaged the defendant to star in a film which they were making. At the last moment the defendant repudiated the contract and the claimants had to abandon the film because they were unable to find a replacement for the actor. Lord Denning held that whilst the claimants claimed for their loss of expenditure, they were not limited to expenditure incurred before the contract was concluded provided that it was within the reasonable contemplation of the parties that it would likely to be incurred as a result of the defendant’s breach

BREACH OF CONTRACT UNDER THE NIGERIAN LAW

Defining Contract under the Nigerian Law:

A Contract may be defined as an agreement which the Law will enforce or recognize as affecting the legal rights and duties of the parties. A contract can also be defined as a promise or set of promises that the law will enforce[[7]](#footnote-7). Tobi J.C.A has defined a contract as an agreement between two or more parties which creates reciprocal legal obligations to do or not to do a particular thing. For a contract to be valid, “there must be mutuality of purpose and intention”[[8]](#footnote-8).

Generally, at Common Law only a party to a contract or persons who are privy to a contract can sue and be sued on it. In other words, a stranger to a contract cannot sue or be sued on a contract even if it was made for his benefit or purported to give him a right to sue. 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[[9]](#footnote-9)

REMEDIES FOR BREACH OF CONTRACT UNDER THE NIGERIAN LAW

The legal maxim *ubi ius, ubi remedia* denotes “where there is a right there is a remedy”. So in the case of breach of contract, the aggrieved party would have one or more remedies against the guilty party

1) AWARD FOR DAMAGES

Once a party to a contract establishes to the satisfaction of the court that the other party has committed a breach of contract, the most common claim is that for damages, and certainly it is the most readily granted type by the Courts

The underlying basis for the Common Law remedy of damages was laid down by Parke B. in *Robinson v Harman[[10]](#footnote-10)* as follows:

“The rule at Common Law is that where a party sustains a loss by reason of 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”

The principles for the assessment of the quantum for damages for breach of contract have their roots in the rule set out in the 19th Century English case of *Hadley v. Baxendale[[11]](#footnote-11)* the principle of law enunciated in this case is that damages in respect of breach of contract should be such as:

a) May fairly and reasonably arise naturally (i.e. according to the usual course of things from such breach of contract itself)

b) May reasonably be supposed to have been in the contemplation of both parties at the time they entered into the contract, as the probable result of breach

The Nigerian Supreme Court has applied the doctrine in several cases as means of restoring an innocent party claiming damages for breach to the position it would have been in has the breach not occurred. As a result, the assessment of damages is based purely on damages flowing naturally from the breach[[12]](#footnote-12). As it relates to claims for damages for breach of contract, the application of this principle eliminates the categorization of heads of damages into special and general damages[[13]](#footnote-13).

2) SPECIFIC PERFROMANCE

A decree of specific performance is one by which the court directs the defendant to perform the contract which he has made in accordance with is terms. It is a relief in equity and is one of the earliest examples of the maxim that equity acts *in personam.* At common law, the only relief available for breach of contract was damages, and in many cases, this prove adequate and the best remedy. However in some cases, for instance, a contract to convey land or to sell an antique or a famous painting, the remedy for damages proved inadequate. In such situations, the Courts of equity decreed specific performance. As Kay, L. J. declared in *Ryan v Mutual Tontine Association[[14]](#footnote-14):* This remedy by specific performance was invented and has been cautiously applied, in order to meet cases where the ordinary remedy by action in damages is not an adequate compensation for breach of contract. The jurisdiction to compel specific performance has always been treated as discretionary and confined within the well-known rules

3) RESCISSION

In contract law, rescission refers to undoing or unmaking of a contract between two parties. The breach of contract no doubt discharges the contract, but the aggrieved party may sometimes need to approach the court to grant him formal rescission i.e. cancellation of the contract. This will enable him to be free from his own obligations under the contract. The basic reasons for rescission are: mutual mistake, innocent or fraudulent misrepresentation, lack of capacity to contract, duress, undue influence, impossibility to perform a contract not contemplated by the parties. A party can rescind from a contract because breach of a breach by another party, but the breach must be so substantial that it defeats the purpose of the contract. In *Car and Universal Credit v. Caldwell[[15]](#footnote-15)* it was held that Mr. Caldwell had successfully rescinded the contract since he took all the necessary steps to demonstrate that he no longer wished to be bound by the contract

4) RESTITUTION

Restitution was used in the earlier Common Law to denote the return or restoration of a specific thing or condition. In modern legal usage, its meaning has frequently been extended to include not only the restoration or giving back of something to its rightful owner and returning to the status quo but also compensation, indemnification, reimbursement or reparation for benefits derived from, or loss or injury caused to another[[16]](#footnote-16). Restitution may either be a legal remedy or an equitable remedy depending on the basis for the plaintiff’s claim and the nature of the underlying remedies sought.

5) REFROMATION

In this type of equitable remedy, the parties may ask the court to permit them to rewrite or correct a particular portion of the contract so that it better expresses the original intentions and fits the needs of the parties. For example, if the parties were mistaken as to what one of the terms in the contract meant, such as the delivery date or a definition of a certain word in the contract, then the parties may be able to “reform” the contract in order to remedy the issue. Essentially reformation is used when a party is trying to make a portion of the contents and intentions of the original contract clearer. Reformation cannot be used to mislead or alter the conditions of the contract in such a way that it hurts or deceives the other party.

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1. Treitel 2007, paragraph 17-49 [↑](#footnote-ref-1)
2. (1971) 1 QB 164,200,204 [↑](#footnote-ref-2)
3. (1853) 1 E &B 678 [↑](#footnote-ref-3)
4. (1996) AC 344 [↑](#footnote-ref-4)
5. (2001) 1 AC 268 [↑](#footnote-ref-5)
6. (1972) 1 QB 60 [↑](#footnote-ref-6)
7. Treitel, The Law of Contract (5th Edition 1979) p. 1 [↑](#footnote-ref-7)
8. Orient Bank (Nig.) Plc v. Bilante International Ltd. (1997) 8 NWLR (pt. 515) 37 at 76 [↑](#footnote-ref-8)
9. Treitel 2007, paragraph 17-49 [↑](#footnote-ref-9)
10. (1848) 1 Ex 850 at p. 855; (1843-60) All E.R. 383 at p. 385 [↑](#footnote-ref-10)
11. (1845) Exch 341 [↑](#footnote-ref-11)
12. Stephen Okongwu v. NNPC (1989) 4 NWLR (pt. 115) 296 @306h-307a [↑](#footnote-ref-12)
13. GKF Investment Nigeria Ltd v NITEL PLC (2009) 15 NWLR (pt. 1164) 344 @384 C-E [↑](#footnote-ref-13)
14. (1893) 1 Ch 116 a p. 126 [↑](#footnote-ref-14)
15. (1964) 2 WLR 600 [↑](#footnote-ref-15)
16. American Jurisprudence 2d edition notes [↑](#footnote-ref-16)