**JAJA PRINCESS-MAGGIE**  **18/LAW01/128 LAW OF CONTRACT II**

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:

1. **Breach of contract**

A contract is a 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.

A breach of contract occurs when the promise of the contract is not kept, because one party has failed to fulfill 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 to perform at all.[[1]](#footnote-0)

Further, if one party fails to perform while the other party fulfills their obligations, the performing party is entitled to legal remedies for breach of contract.

There are four main types of contract breaches:

1. Minor Breach: 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;
2. Material Breach: A material breach of contract 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 fulfill 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.

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

The types of legal remedies available for breach of contract depends largely on the severity of the breach. Remedies range from **damages** to **reputation** to **rescinding the contract**, **seeking specific performance** or **an injunction** , **obtaining some sort of restitution**. Damage is of course the common law remedy. Damages are there to compensate the injured party and not to punish the breaching party. There are possibilities of damages a court can award.[[2]](#footnote-1)

* Compensatory damages/ monetary damages:

These are damages to compensate the party for their loss. This is done to put the plaintiff in the same position as if the contract had been performed. In ***Addis v Gramophone[[3]](#footnote-2)***, it is a House of Lords case. The claimant was employed as a manager by the defendant and the defendant in breach of the contract dispensed with the claimants services and got a new manager to replace him. Now, the claimant action which was brought for breach of contract, he claimed that the level of damages should reflect the circumstances in which it was brought for breach of contract, he claimed that the level of damages should reflect the circumstances in which he was dismissed. He added that the way he was dismissed impacted in his ability to find subsequent suitable employment. The court held that contract law seeks to put the party in the position they would have been in had the contract been performed. He was therefore limited to claim in wages and loss of commission which would have been his during the contractual period and indeed for the period where the defendant was to have given him notice. The court said that there was no right to exemplary damages or damages to reputation in contract claims.There are categories of compensation damages;

* **Expectation (Actual) Damages**: These are the damages that the party can demonstrate that they actually suffered, the expectation of profits that they expected to reap from the transaction or the actual losses they can show they suffered directly from the breach. In ***McRae v Commonwealth Disposals Commission[[4]](#footnote-3)****,* The Commonwealth Disposals Commission sold McRae a shipwreck of a tanker on the "Jourmand Reef", near Samaria supposedly containing oil. The McRae brothers went to Samaria and found no tanker, and that there was no such place as the Jourmand Reef. It later became clear that the Commission officer had made a 'reckless and irresponsible' mistake in thinking that they had a tanker to sell (the Court found that they had relied on mere gossip). The McRae brothers incurred considerable expense in fitting out a salvage operation. The McRae brothers commenced an action claiming damages against the Commission. First they claimed damages for breach of contract to sell a tanker at the location specified. Second, they claimed damages for fraudulent misrepresentation that there was a tanker. Third, they claimed damages for a negligent failure to disclose that there was no tanker at the place specified after the fact became known to the Commissioner. CDC argued there was no liability for breach of contract because it was void given the subject matter did not exist. The defendants argued that they had no liability to pay damages for breach of contract, as it was void by common mistake that the oil tanker did not exist. The issue in this **case** was whether the complainant could recover damages and if the contract could be void by a common mistake[[5]](#footnote-4). In the case of ***Anglia Television Ltd v Reed[[6]](#footnote-5),* Lord Denning MR** held that expenditure incurred before could be claimed, so long as it was within the contemplation of the parties. Here Reed would have known of considerable expense. It is true that, if the defendant had never entered into the contract, he would not be liable, and the expenditure would have been incurred by the plaintiff without redress; but, the defendant having made his contract and broken it, it does not lie in his mouth to say he is not liable, when it was because of his breach that the expenditure has been wasted.
* **Consequential damages:**  These are damages that naturally flow from breach of a contract. They might not have been necessarily foreseeable to the parties in the contract but the damages are caused by breach and flow from the breach eventually even though they were not foreseen. These damages may be extreme because most times they weren’t contemplated by the parties. In **Ruxley Electronics and Construction v Forsyth[[7]](#footnote-6)**, The defendant (the owner) contracted with the two plaintiff companies, R and L (the builders), to build a swimming pool in his garden and a building to enclose it for a total price of £70,178·4374. The contract expressly provided that the maximum depth of the pool should be 7 ft 6 in. After the work had been completed, the owner discovered that the maximum depth was only 6 ft 9 in and that at the point where people would dive into the pool the depth was only 6 ft. The owner paid various sums on account and after certain agreed credits the balance of the price due for the construction of the pool and the enclosure amounted to £39,072. The builders claimed the balance of the contract price and the owner counterclaimed for breach of contract. Although it was accepted that the failure to provide the required depth was a breach of contract, the trial judge found that the shortfall in depth had not decreased the value of the pool and gave judgment for R in the sum of £3,903 and for L in the sum of £36,874 but awarded the owner £2,500 general damages for loss of amenity on his counterclaim. The owner appealed, contending that the judge should have awarded damages in respect of the breach or deducted a sum from the contract price to reflect the cost of reconstructing the swimming pool to conform to the original contractual specification and that by itself the award of general damages was too low if he received no other compensation for the breach.

It was held that, in assessing damages for breach of contract for defective building works, if the court took the view that it would be unreasonable for the plaintiff to insist on reinstatement because the expense of the work involved would be out of all proportion to the benefit to be obtained, then the plaintiff was confined to the difference in value*.* ***The principle is that the primary purpose of damages is to place the injured party in the position they would have been had the contract been performed. [[8]](#footnote-7)***

* **Liquidated Damages:** Liquidated damages are damages whose amount the parties designate during the formation of a contract for the injured party to collect as compensation upon a specific breach (e.g., late performance). This is when you have a provision in the contract that states the amount of damages that would arise or that a party would suffer in the event of a breach by the other party. This is common when it would be difficult to determine the actual damages suffered by the parties into a compensatory damage amount. The parties put that provision in the contract and say *‘in the event of a breach we would suffer this amount of damages’[[9]](#footnote-8).*

The **key** thing here is that it cannot be a punishment to the party. It can’t be just to harm the party for the breach. Example: suppose Joey agrees to lease a storefront to Monica, from which Monica intends to sell jewellery. If Joey breaches the contract by refusing to lease the storefront at the appointed time, it will be difficult to determine what profits Monica will have lost because the success of newly created small businesses is highly uncertain. This, therefore, would be an appropriate circumstance for Monica to insist upon a liquidated damages clause in case Joey fails to perform. The liquidated damages clause has to be representative of the actual compensatory amount suffered by the party that didn’t cause the breach[[10]](#footnote-9). That is, when one party breaches and the liquidation clause suffered by one party have to accurately and closely represent the actual damages suffered by that party. In the case of ***Mobil Oil (Nigeria) Limited v Abraham Akinfosile[[11]](#footnote-10)***, the supreme court clearly demonstrated how damages should be assessed and measured in a case of a breach of employment. The plaintiff was appointed as a dealer on December 11 1961. Thereafter he was put in charge of one of the defendants filling stations. The agreement provides that the contract could be terminated by 30days notice in writing given by any day of the month by either of the parties to the other. Six months after the agreement took effect, the defendant terminated the agreement without notice, on the grounds that the plaintiff had contrary to the terms of the agreement been buying petroleum products from other oil companies. The plaintiff denied this and brought a claim for breach of contract against the defendants. The damages claimed included 1,500 pounds for wrongful termination of the agreement and special damages for some items of furniture which the plaintiff claimed he had bought for the station, the cost of petrol attendants’ uniforms and outstanding debts owed by customers. The court of first instance awarded 600 pounds as general damages to the plaintiff but dismissed the claims of special damages as not proven. The defendants appealed to the Supreme court, contending that they could only be liable for the payment of an amount earned by the plaintiff for one month at the station. The supreme court **held** that it was manifest from the agreement that either party could terminate if for no cause whatsoever on giving thirty days’ notice.

* Nominal Damages:

What really happens when a party breaches a contract and really there are very little or hardly any actual damages suffered by the non-breaching party. In that case, the court may find that damages to award but they award/ designate normal damages. This is an insignificant amount that simply represents damages to signify that there was actually a breach but there is no discernible amount lost by the other party but we (the court) award damages that is a nominal amount[[12]](#footnote-11). It often supports torts damages. There are various types of damages in power that a court has.

**OTHER REMEDIES**

* Specific Performance; court orders compliance with the contract
* Recission; undo contract as if it never existed.
* Restitution; pay for value of goods or services received. It is the return of damages which was transferred by the plaintiff to the defendant. This is available where there has been a total fails of consideration.

Now on top of damages, the court has lots of equitable power to make sure that the breach of contract is not so one sided or unfair to non-breaching party so the court could rescind the contract, that ius, make it as if the contract never existed and put the parties back in a position they were prior to the agreement to force/order one party to refund the value transferred or to provide payment for the commensory value of services that they received. That is restitution, to pay someone the value of services they’ve received. The court has a lot of authority in this regard to do what is fair or right, to not unjustly compensate or detriment one party at the extent of the other[[13]](#footnote-12).

**REFERENCES**

* I.E Sagay, Law of Contract (Spectrums books limited 1985)
* David Jaroszewki
* Law Teacher.net
* Legal match.com
* [https://doylesconstructionlawyers.com](https://doylesconstructionlawyers.com/)
* The Business Professor
* Law Sessions
1. <https://www.legalmatch.com/> [↑](#footnote-ref-0)
2. The Business Professor ‘Breach, Damages and Remedies in Contract’ (2014) <<https://thebusinessprofessor.com/home>> accessed 1 May 2020 [↑](#footnote-ref-1)
3. [1909] A C 488 [↑](#footnote-ref-2)
4. [1951] H C A 79 [↑](#footnote-ref-3)
5. -- [↑](#footnote-ref-4)
6. [1972] Q B 60 [↑](#footnote-ref-5)
7. [1995] 3 ALLER 268 [↑](#footnote-ref-6)
8. -- [↑](#footnote-ref-7)
9. The Business Professor, ‘Breach, Damages and Remedies in Contract’ (2014) [↑](#footnote-ref-8)
10. <https://www.legalmatch.com/> [↑](#footnote-ref-9)
11. [1969] NWLR 217 [↑](#footnote-ref-10)
12. I.E Sagay, Law of Contract (Spectrums books limited 1985) [↑](#footnote-ref-11)
13. Law sessions 'Contract Law Remedies for Breach’ (2012) <<http://www.lawsessions.com>> accessed 1 May 2020 [↑](#footnote-ref-12)