**NAME: ADEMOLA ANOINTING OLUWAFUNMILOLA**

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A. **BREACH OF CONTRACT**

By way of introduction, a breach of contract occurs where one party fails to fulfill or does not intend to fulfill his obligations under the contract. Breach of contract starts when a party fails to perform his obligation, either totally or by refusing to perform at all or partially.

Breach of contract is a legal term that describes the violation of a contract or an agreement that occurs when one party fails to fulfill its promises according to the provisions of the agreement. Sometimes it involves interfering with the ability of another party to fulfill his duties. A contract can be breached in whole or in part. The consequence of a breach of a contract entitles the injured or innocent party to an action for damages against the guilty party and the right to rescind or terminate the contract. The methods of breach can have a decisive effect on the right and liabilities of the innocent party. It is important to consider, where the contract is repudiated, or there is fundamental breach as some breaches entitle the innocent party to sue for damages, and more serious breaches entitles the innocent party, in addition to damages, to treat himself as discharged from the contract. In the case of ***Nigerian Merchant Bank Plc. V. Aiyedun*** ***Investment Ltd*[[1]](#footnote-2)**, in a deposit account, what constitutes a breach is the failure of a bank to pay money due to the deposit account on demand by the operator of the account. Also, in ***Hochster v De La Tour***, here the defendant agreed to employ the claimant to act as his courier for three months from the 1stof June of which the defendant subsequently wrote to the claimant informing him that his services would no longer be required. The claimant immediately sued for breach of contract. The court held the claimant could commence his action for damages. **The Sales of Goods ACT (1893**) provides for actions that can be undertaken by either buyer or seller if there is a breach of the contract of sale by any of the parties. **Section 49(1) Sales of Goods Act provides “w**here under a contract of sale, the property in the goods has been transferred to the buyer but he refuses to pay the price, the seller can maintain an action for the price against the buyer”. If according to the contract of sale, the price of the goods is to be paid on a particular day irrespective of whether the goods are to be delivered or not, if that date elapses and the buyer hasn’t paid, the seller can bring an action for the price whether or not property in the goods has passed to the buyer[[2]](#footnote-3).

For a lawsuit or action to brought on breach of contract, the [contract must be valid](https://www.thebalancesmb.com/what-is-a-legal-contract-462462), the [plaintiff](https://www.thebalancesmb.com/what-is-a-plaintiff-in-a-lawsuit-398411) 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 and notified the defendant of the breach before proceeding with filing a lawsuit.

In conclusion, breach of contract action is brought by the innocent party in order to safeguard his rights, obtain redress and obtain justice by the court.

B. **REMEDIES AVAILABLE FOR BREACH OF CONTRACT**

By way of introduction, remedies for breach of contract are reliefs, redress granted to the innocent or injured party in a contract in order to establish, protect and recover his rights so that justice can be done. The common law claim for an injured or innocent party in a breach of contract is damages while the equity claim is specific performance, injunctions and Quantum meruit.

**Damages**

Under the common law approach, once a party to a contract breaches the contract, the innocent or injured party is entitled to damages. The common law remedy of damages was laid down in the case of ***Robinson v. Harman*** by Parke, B:

“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”.

The unqualified application of such a wide principle would prove harsh, it was progressively qualified and limited in several ways until the modern rule was finally criticized in the case of ***Hadley v. Baxendale[[3]](#footnote-4)***. The facts of the case were the plaintiffs were millers in Gloucestershire and the defendants were common carriers of goods. The crankshaft of the plaintiffs’ steam engine was broken with the result that work on the mill had come to a stand-still. They had ordered a new shaft from an engineer in Greenwich and arranged with the defendants to carry the broken shaft from their mill in Gloucester to the engineer in Greenwich to be used by the latter as a model for the new shaft. The defendants did not know that the plaintiff had no spare shaft and that the mill could not operate until the new shaft was installed. The defendants delayed the delivery of the broken shaft to the engineer for several days, with resulting delay to the plaintiffs in getting their steam mill working. The plaintiffs then claimed damages for breach of contract. The court in deciding whether the plaintiff’s damages should include loss of profits for the period of the defendants’ delay held that the defendants were not liable; for no information was given to them that a delay in the delivery of the shaft would entail loss of profits of the mill. The principle of law enunciated in this case is that damages in respect of breach of contract may be fairly and reasonably arise naturally (i.e., according to the usual course of things from such breach of contract itself) or 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. So in order words, the rule in has been divided into two parts which are; the first dealing with the normal damage that occurs in usual course of things and the second the abnormal damage that arises because of special or exceptional circumstances. The case of ***Hadley v. Baxendale*** placed it in the second branch of the rule.

In considering the claim for damages the 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. This is known as the remoteness of damages[[4]](#footnote-5).

Damages under the Sales of Goods ACT (1893)

In a contract for sales of goods, the Sales of Goods Act (1893) provides for actions that can be undertaken by either buyer or seller if there is a breach of the contract of sale by any of the parties. The **actions available to the Seller** in case of a breach of contract are an action for the price and damages for non-acceptance. **Action for the Price** is a situation in which the seller asks the court to force the buyer to pay the price agreed upon by both parties in the contract of sale. Where the property in the contract has been transferred to the buyer but he refuses to pay the price, the seller can maintain an action for the price against the buyer[[5]](#footnote-6). **Damages for non- acceptance** are actions used when the buyer refuses to take acceptance for the goods and the seller suffers losses as a result of this[[6]](#footnote-7). The measure of damages is the estimated natural loss that results from the buyer’s breach of the contract[[7]](#footnote-8).

The actions available to the buyer in case of the breach of a contract of sale are damages for non-delivery, specific performance and remedy for a breach of warranty. **Damages for non-delivery** action are applied when the seller neglects or wrongfully refuses to deliver the goods to the buyer. The measurement of damages is the estimated loss resulting naturally from the seller’s breach of the contract[[8]](#footnote-9). If there is no stipulated time for delivery, the relevant time would be the time when the seller refused to deliver the goods[[9]](#footnote-10). **Specific performance** is used to order a defaulting party to do his own part of the contract. In an action for breach of contract concerning specific or ascertained goods, the court may, on the application of the plaintiff, order that the defendant specifically performs the contract, without him having the option of retaining the goods on the payment of damages[[10]](#footnote-11). In r**emedy for a breach of Warranty**, where there is a breach of a warranty or the buyer elects, or is compelled to treat the breach of a condition as a breach of warranty, such breach would not entitle him to reject the goods. He can however set the breach of warranty in diminution or extinction of the price. Also buyers are entitled to recover money paid if what the money was paid in consideration for has failed.

In Measurement of damage, the general rule with regard to the time of assessment is that damages should be assessed at the time when the course of action arose that is the date of the breach[[11]](#footnote-12). This rule is not an absolute one and the court will fix any other appropriate day if the date of breach will work injustice. The court will not follow the rule where: The innocent party refuses to treat the breach as terminating the contract and the plaintiff did not know until later that a breach has occurred.

In Damages for Non- Pecuniary losses, Although damages for a breach of contract are based on financial loss, there are certain circumstances that damages can be recovered for non pecuniary losses if they were within the contemplation of the parties as not unlikely to result from the breach. It was formerly believed that damages could not be awarded for injury to the plaintiff’s feelings[[12]](#footnote-13), mental distress[[13]](#footnote-14), annoyance or loss of reputation. However in the case of ***Hobbs v. London & South Western Railway Co[[14]](#footnote-15)***, which was decided contrary, according to the learned judge: “When a man has paid for and properly expects an invigorating and amusing holiday, and through no fault of his, returns home dejected because his expectations have been largely unfulfilled, in my judgment it would be quite wrong to say that this disappointment must find no reflection in the damages to be awarded”.

Exemplary damages are damages awarded against the defendant as punishment, so that assessment goes beyond mere compensation to the plaintiff[[15]](#footnote-16). Exemplary damages is awarded in cases of provocative arbitrary and unconstitutional acts, defendants conduct has been calculated by him to make profit which might well exceed the compensation payable to the plaintiff and expressly authorized by statute.

**Specific performance**

Specific performance is a relief in equity and is one of the earliest examples of the maxim that equity acts *personam* where a decree of the court directs the defendant to perform the contract which he has made in accordance with its terms. At the common law, the only relief available for breach of contract was damages but there were certain cases for instance involving a contract to convey land or sell an antique, famous painting the remedy for damage proved inadequate[[16]](#footnote-17). However, the remedy of specific performance is a discretionary one and the plaintiff is not entitled to it as a matter of right. It will therefore not be granted where it will be impossible to carry out or where it would create hardship. In ***Taylor v. H.B. Russel***, the court refused to grant specific performance for a contract for the sale of land because at the time the land had been sold to someone else, who had in turn sold it to another person and the buyers were not aware of their earlier agreement. In refusing the application, the court observed. But in the case of ***Paye v. Gaji***, the vendor of a piece of family property wrongly refused to execute the conveyance of the property after the conclusion of the agreement and payment of the purchase price by the buyer. Although, the family representatives were prepared to refund the purchase price, the Court of Appeal rejected this and ordered specific performance of the agreement.

**Injunction**

An injunction is an equitable remedy and applicable under discretionary ground in which an order, given to a party to an agreement is required to do or refrain from doing a particular thing. Injunction 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 restrictive/preventive or mandatory/compulsive. In the case of ***Kennaway v. Thompson*[[17]](#footnote-18)**, an 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. For instance, in a contract of service, an employee cannot be restrained from committing a breach of his positive obligation to work for this would amount to enforcing a contract of service. Contract commonly enforced by an injunction are contracts in restraint of trade. An injunction may put so much economic pressure on the employee as to force him to perform the positive part of the contract. Thus in ***Warner Bros Pictures Inc. v. Nelson***, a film actress signed undertaking with the plaintiffs, her employees, not to act for any other organizations. She was restrained by an injunction from breaking her undertaking.

**Quantum Meruit**

This means ‘as much as he has earned’. It is an equity relief in which claim arises where there is an agreement for services or for supply of goods and no price or remuneration has been fixed for the goods or work done. The claim is contractual in nature and it implies the payment of a reasonable sum. In ***Warner & Warner International v. F.H.A***[[18]](#footnote-19), the court held that a claim on quantum meruit means that no specific sums can be claimed or proved. If they can, then each item stands or fails on the basis of evidence. In ***Ekpe v. Midwestern Nigerian Development Corporation***, the appellant, a daily paid worker applied to be put on a permanent staff. He was given a form to fill and filled from and submitted six months after, he was neither a permanent member nor paid any salary. He brought a claim for the payment of salary for 6 months. The Court of Appeal held that where work has actually been done by one party under a void contract, the party who did the work can sue on quantum meruit to recover his remuneration for the work/done provided he did the work in good faith and without the knowledge that the contract was void.

In conclusion, the remedies for a breach of contract under common law and equity have been examined.

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1. (1998) 2 NWLR (pt. 537) 221 CA [↑](#footnote-ref-2)
2. **Section 49(2) Sales of Goods Act**  [↑](#footnote-ref-3)
3. (1854) 9 Ex. 341 [↑](#footnote-ref-4)
4. ***Koufos v. Czarnikow Ltd*** [↑](#footnote-ref-5)
5. **Section 49(1) Sales of Goods Act** [↑](#footnote-ref-6)
6. **Section 50(1) Sales of Goods Act** [↑](#footnote-ref-7)
7. **Section 50(2) of Sales of Goods Act** [↑](#footnote-ref-8)
8. **Section 51(2) Sales of Goods Act** [↑](#footnote-ref-9)
9. **Section 51(3) Sales of Goods Act** [↑](#footnote-ref-10)
10. **Section 52** **Sales of Goods Act** [↑](#footnote-ref-11)
11. ***Johnson v. Agnew*** (1980) AC 367 at p. 400 [↑](#footnote-ref-12)
12. *Groom v. Crocker*(1939) 1 KB 194 [↑](#footnote-ref-13)
13. *Hamlin v. Great Northern Railways* [↑](#footnote-ref-14)
14. (1875) LR 10 QB 111, at pp 122-124 [↑](#footnote-ref-15)
15. *Rookes v. Barnard* [↑](#footnote-ref-16)
16. *Ryan v. Mutual Tontine Association* [↑](#footnote-ref-17)
17. (1981) QB 88 [↑](#footnote-ref-18)
18. (1993) 6 NWLR (pt. 298) 148 SC [↑](#footnote-ref-19)