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QUESTION

1] Discuss the following:

Breach of contract

What are the remedies available for breach of contract.

1] a) 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 perform at all.

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 If a contract is rescinded, parties are legally allowed to undo the work unless doing so would directly charge the other party at that exact time. There are four (4) forms in which a breach (of contract) can be said to exist, they are :

- **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;

- **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;

•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

•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. Anticipatory breach may also be referred to as “anticipatory repudiation”. The notion of anticipatory breach was well captured in the case of *Solomon Nassar v Oladipo Moses*¹ where Coker, J, said emphatically thus:

“It is open to a party to a contract to sue the other party for breach of same even in anticipation of the time agreed upon for performance, if it is manifest 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”. Lord Campbell emphasizing on the legal concept of anticipatory breach referred to the case of *Planche v Colburn*²

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.

Among the most common causes for lawsuits in the U.S., breach of contract occurs in many ways. The law offers a variety of remedies for each such breach, designed to make the injured

¹Unreported High Court Lagos state, Coker, J, Suit No. LD/222/58 delivered on May 20 1960, casebook, p. 448
² 8, Bing.

party whole. Court-ordered remedies for breach of contract cases are not meant to punish the breaching party, but to return the injured party to the position he would be in if the breach had not occurred.

1] b)

The options for remedies are often included in the contract itself. Before considering legal action in a breach of contract case, it might be wise to carefully review the initial contractual agreement and look for any limitations or requirements to avoid unintentionally waiving contract remedies.

The types of legal remedies available for breach of contract depends largely on the severity of the breach. Generally, damages awarded are categorized into four groups:

Compensatory Damages

Compensatory damages are those that compensate the non-breaching party for their losses. This is the most common legal remedy, and a court can order the breaching party to pay the non-breaching party enough money to get what they were promised by the terms of the contract.

Award of damages is the most common remedy for breach of contract as one party seeks compensation for financial losses as a result of breach of contract. The party who is injured by the breach of contract is entitled to the benefit (consideration) of the agreement they entered, or the net gain they would've accrued had it not been for the breach.

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. Compensatory damages aim to put the non-breaching party in the position that they would have been in if the breach had not occurred.

Cancellation and Restitution

A non-breaching party may cancel the contract and decide to sue for restitution if the non-breaching party has given a benefit to the breaching party. Rescission terminates the contract, and the parties are restored to the position of never having entered into the contract in the first place.

"Restitution" as a contract remedy means that the non-breaching party is put back in the position it was in prior to the breach, while "cancellation" of the contract voids the contract and relieves all parties of any obligation under the agreement.

The purpose of restitution, however, is to require the wrongdoer to restore that which he has received and thus tend to put the injured party in as good a position as he occupied before the contract was made; in this context the injured party may be said to have considered the contract as 'terminated' or 'ended.'" *Ocean Comm.Inc. v. Bubeck*³

³956 So. 2d 1222, 1225 (Fla. 4th DCA 2007).

If the non-breaching party is able to prove that their loss is due directly to the actions of the breaching party, a judge may order restitution, which could include lost wages, medical bills, and property repair and/or replacement;

Punitive Damages

Punitive damages are generally awarded alongside compensatory damages. The purpose of punitive damages is to punish the breaching party when they have engaged in particularly egregious behavior in order to breach the contract, such as being intentionally negligent.

Punitive damages, known as exemplary damages, are awarded to punish or make an example of the wrongdoing of a party that acted willfully, maliciously or fraudulently. Punitive damages are awarded in addition to compensatory damages. However, punitive damages are rarely awarded in breach of contract cases. Punitive damages are most often used in tort cases in which personal harm was a result of the wrongdoing and actual damages are minimal. Punitive damages are payments that the breaching party must make, above and beyond the point that would fully compensate the non-breaching party. Punitive damages are meant to punish a wrongful party for particularly wrongful acts, and are rarely awarded in the business contracts setting.

Specific Performance

An equitable remedy in which the court compels a party to a contract to perform duties agreed to in the contract. Specific performance is not always available. It 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.

•Injunction

An injunction is an equitable remedy applicable under discretionary ground. It is applicable 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- *Macy's vs Mary Stewart Living*. However such an order (injunction) is subject to a balance of convenience; it may be refused if the prejudice suffered heavily outweighs the advantage that will be demised from such restoration-*Kennaway v Thompson*⁴. An injunction may put an amount of pressure on a contracting party to force him to perform the positive part of the contract.

Bibliography

- Law dictionary, www.googlesearch.com
- Wikipedia, www.findlaw.com
- <https://www.legalmatch.com/law-library/article/breach-of-contract.html>

⁴(1981) QB 88