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QUESTION

DISSCUS THE FOLLOWING:

1. BREACH OF CONTRACT
2. WHAT ARE THE REMEDIES AVAILABLE FOR BREACH OF CONTRACT?

A contract can be defined as an agreement which the law will enforce or recognize as affecting the legal rights of a party. A contract can also be defined as a promise or a set of promises the law will enforce. A contract is a legally enforceable agreement between two or more parties where each assumes a legal obligation that must be completed. There are several types of contracts some of which are as follows: Express and Implied contracts, an express contract has terms that are stated expressly, or openly, in either writing or orally, at the time of contract formation. Implied contracts, on the other hand, have terms that must be inferred by actions, facts, and circumstances that would indicate a mutual intent to form a contract. Such contracts may be as binding as express contracts, despite their lack of formal agreement, although if a court perceives doubts in minds of the parties as to whether or not a contract existed, it may choose not to enforce such a contract.

Unilateral contracts involve only one party promising to take an action or provide something of value. These are also known as one-sided contracts, and a common example of them is when a reward is offered for something being found: the party to whom the reward is offered is under no obligation to find the lost item, but if they do find it, the offering party is under contract to provide the reward. Bilateral contracts, on the other hand, involve both parties agreeing to exchange items or services of value. These are also known as two-sided contracts, and are the kind of contract that is most commonly encountered.

A Breach of contract is a legal cause of action and a type of civil wrong, in which a binding agreement or bargained-for exchange is not honored by one or more of the parties to the contract by non-performance or interference with the other party's performance. Breach occurs when a party to a contract fails to fulfill its obligation(s), whether partially or wholly, as described in the contract, or communicates an intent to fail the obligation or otherwise appears not to be able to perform its obligation under the contract. 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 If a contract is rescinded, parties are legally allowed to undo the work unless doing so would directly charge the other party at that exact time.

A contract case usually comes before a judge because one or both parties claim that the contract was breached. A breach of contract is a failure, without legal excuse, to perform any promise that forms all or part of the contract. This includes failure to perform in a manner that meets the standards of the industry or the requirements of any express warranty or implied warranty, including the implied warranty of merchant ability. When a party claims a breach of contract, the judge must answer to the following questions:

1. Did a contract exist?

2. If so, what did the contract require of each of the parties?

3. Was the contract modified at any point?

4. Did the claimed breach of contract occur?

5. If so, was the breach material to the contract?

6. Does the breaching party have a legal defense to enforcement of the contract?

7. What damages were caused by the breach?

A breach of contract can be material or minor. The parties’ obligations and remedies depend on which type of breach occurred.

A breach is material if, as a result of the breaching party’s failure to perform some aspect of the contract, the other party receives something substantially different from what the contract specified. For example, if the contract specifies the sale of a box of tennis balls and the buyer receives a box of footballs, the breach is material. When a breach is material, the nonbreaching party is no longer required to perform under the contract and has the immediate right to all remedies for breach of the entire contract.

Factors that the courts consider in determining materiality include;

1. The amount of benefit received by the nonbreaching party;

2. Whether the nonbreaching party can be adequately compensated for the damages;

3. The extent of performance by the breaching party;

4. Hardship to the breaching party;

5. Negligent or willful behavior of the breaching party; and

6. The likelihood that the breaching party will perform the remainder of the contract.

A breach is minor if, even though the breaching party failed to perform some aspect of the contract, the other party still receives the item or service specified in the contract. For example, unless the contract specifically provides that “time is of the essence” (i.e. deadlines are firm) or gives a specific delivery date of goods, a reasonable delay by one of the parties may be considered only a minor breach of the contract. When a breach is minor, the nonbreaching party is still required to perform under the contract, but may recover damages resulting from the breach. For example, when a seller’s delay in delivering goods is a minor breach of contract, the buyer must still pay for the goods but may recover any damages caused by the delay.

2. There are a variety of remedies available for a contract breach. The appropriate compensation or remedy depends upon the circumstances. The non-breaching party will need to demonstrate that the other party failed to perform in order to be entitled to any type of remedy.

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. The underlying basis for the common law remedy for damages was laid down by Parke .B in  *Robinson v. Harman* in which he stated “ The rule of 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 .” However since the application of such a principle has proven to be too harsh on the party who breached by making him liable for unforeseen circumstances it was limited in various ways until the modern judgement of Alderson .B in *Hadley V Baxendale* where the rule was divided into two branches , the first dealing with damages that occur in a normal course and damages that arise due to exceptional situations .

The principles applicable to the assessment of damages for breach of contract where also explained by Karibi-Whyte in the *Ijebu-Ode L.G V Adedeji Balogun & co* where the court had no difficulty holding the bank guilty of breach of contract.

Whenever faced with a claim of damages the court must first resolve the issue so as to determine whether the defendant is liable for any damages and if so the nature and extent of those damages. This is known as the issue of remoteness of damages. The question of remoteness of damages was given great consideration by the House of Lords in *Koufus V* *C. Czarnikow Ltd.*

In some cases, the appropriate remedy for a breach of contract is to correct the breach by forcing the breaching party to complete the terms of the agreement. Specific performance is an appropriate remedy in situations where monetary damages could not possibly make the non-breaching party whole for the losses. For example, if there was a contract created for a buyer to purchase a very rare piece of art, the buyer could not simply find the art elsewhere. The only remedy that would help the buyer in this circumstance is for the court to require the sale to go through so the buyer got the unique one-of-a-kind painting that he contracted for. This example can be seen in the case of *Ryan v. Mutual Tontine Association* in which the court considered the issue of specific performance and whether or not the tenants of a building could seek specific performance for the lessor of the building to provide a full time porter as in accordance with the terms of the lease. The court held that having considered the wording of the agreement between the parties and the facts, the court could not grant an injunction to prevent the cook from continuing the breach, or order specific performance for him to carry this out. On this basis, the court allowed the appeal from the lessee and reversed the earlier decision of the trial judge.

Rescission allows the non-breaching party to essentially be released from performance obligations. Recession is a remedy for a breach of contract because it makes clear that the party is relieved of his duties due to the failure of the other party to perform.

Sometimes, it is very difficult to determine how much a person was damaged by a breach of contract. To address this problem, some contracts contain liquidated damage clauses. Essentially, these clauses specify that the non-breaching party will be awarded a specific amount of money in the event a breach occurs. These clauses will be upheld as long as they are fair.

Another example is Quantum Meruit. This is a sort of part performance in which a party claims “as much as he deserves” Quantum Meruit is claim where work is done in partial performance especially where the contract is severable or can be separated. in Ekpe V Mid -Western Nigerian Development Corporation where the plaintiff sued for the payment of his salary for the period, he worked for the defendant it was held that where a contract is void the party who worked can sue on a quantum meriut.

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