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**COURSE CODE:** LPB 202

**COURSE TITLE:** LAW OF CONTRACT II

**LEVEL:** 200

**BREACH OF CONTRACT**

A breach of contract occurs where one party fails to fulfill or does not intend to fulfill his obligations under the contract. A breach of contract entitles the innocent party to sue for damages against the guilty party the breach occur as a result of repudiation of contract obligation or a fundamental breach, the innocent party, may, in addition from further liability to perform his own part of the obligation. Breach of contract occurs when one party to the contract fails to discharge his obligations under the contract or does something that contradicts the contract. Breach of contract may also occur if one party makes it impossible for the other to discharge his obligation and duties as per the contract. Parties may terminate a contract if a court finds that the breach is material such that it caused damages and loss to the affected party.The innocent party can make a choice as he is not bound to treat the contract as discharge where the injured party repudiates or in breach of fundamental terms. He may choose to sue for damages instead and keep the contract alive in certain circumstances. The general law has three categories of breaches of contract. These are measures of the seriousness of the breach. In the absence of a contractual or statutory provision any breach of contract is categorized as a **breach each of warranty; breach of condition; or breach of an innominate term**, otherwise known as an *intermediate* term. There is no “internal rating system” within each of these categories (such as “a serious breach of warranty”. It's a breach of a warranty. It's not a minor breach of a condition. It's a breach of a condition). Any breach of contract is one or the other of a breach of warranty, condition or innominate term. In terms of priority of classification of these terms, a term of a contract is an innominate term unless it is clear that it is intended to be a [**condition**](https://en.wikipedia.org/wiki/Covenants,_conditions_and_restrictions) **or a** [**warranty**](https://en.wikipedia.org/wiki/Warranty)**.** Repudiation occurs where there is a contract between two or more parties to be performed at a future date and one party declares an intention not to perform his own side. Repudiation is sometimes described as **‘anticipatory breach’ or renunciation**, whatever ever language repudiation is described, a guilty party indicates by words or conduct that he is no longer interested in performing his own side of the contract, whenever the time for performance arrives.

Another circumstance in which a party to contract can treat himself as discharged for the breach of contract is where a party to the contract commits a fundamental breach. Lord Diplock in [[1]](#footnote-2)*Photo Productions Ltd. v. Securities Transport Ltd. (1980) AC 827*, defined a fundamental breach of contract as an event resulting from the failure of by one party to perform a primary obligation which has the effect of depriving the party of substantially the whole benefit of the contract which was the intention of the parties that he should obtain from the contract. Before 1966, it was the general belief that a party who is guilty of fundamental breach of contract could not avoid liability by reliance on an exemption clause inserted into the contract. The decision in [[2]](#footnote-3)*Suisse Antlantique case (1967) AC 361*, however, reversed the general opinion. Fundamental breach is a breach which goes to the root of the contract and has the effect of depriving the innocent party of achieving the main purpose of the contract. In essence, the breach discharges the innocent party from further performance, and lead him to terminate the contract. The effect of repudiation of contract or a fundamental is that such a party is discharged from the performance of all future obligations.

**REMEDIES FOR BREACH OF CONTRACT**

When a contract is broken, the injured party may have several courses of action open to him, namely:

1. To refuse further performance of the contract, i.e., rescission
2. To bring an action for damages
3. To sue on quantum meruit
4. To sue for specific performance
5. To sue for an injunction.

**RESCISSION**: The right of rescission is an equitable and exists in a number of circumstances. By way of illustration, we mention three of those circumstances: First, the right is available to a party injured by breach of a fundamental term in a contract, e.g. a condition. Secondly, it is available to a party injured by the misrepresentation of the other party. Thirdly, it is available where a contract is vitiated by mistake. The effect of rescission in the case of misrepresentation and mistake is to terminate the contract ab initio as if it never existed. As stated by Lord Atkinson, in [[3]](#footnote-4)*Abram Steamship Co. v. Westville Steamship Co. (1923) A.C 773, at p.781.* Such rescission terminates the contract, puts the parties in status quo ante and restores things, as between them, to the position in which they stood before the contract was entered into. On the other hand, rescission in the case of breach of a condition only terminates the contractor from the moment of rescission. Rights and obligations that have already matured are therefore not affected. If follows, therefore, that whereas the right of rescission for misrepresentation and mistake is lost if restitution in integrum (full restoration) is no longer possible between the parties, no question of restoration arises in the case of rescission on grounds of breach. However, if in the latter case, the rescinding party is able to make restoration, the court will, in the interest of justice, require him to do so. Thus, where a buyer of goods rightfully rejects the goods for breach of a condition as to quality, the ownership of goods vests ( or revests) in the seller. Furthermore, where the seller of goods rescinds the contract because of the buyer’s default, he must, without prejudice to his right to damages, return any part of the purchase price that has been paid before the rescission of the contract. On a total breach of a contract or a breach of a fundamental term in a contract (i.e., on a breach of a condition) the injured party may, if he so wishes, treat the breach as entitling him to rescind the contract. If he opts for his right, then: He is absolved from further liability on the contract, He may, in the event of a total failure of consideration, recover any money paid by him, He may institute an action for damages against the offending party, By treating the contract as rescinded he makes himself liable to restore any benefit he has received, for example, if he has agreed to sell goods and has received all or part of the price, he must return it, unless it is a term of the contract that he need not do so, If the injured party claims damages from the party who has broken the contract, he must give credit in his calculation of damages for the purchase price (or any other benefit) received by him, A deposit paid by the purchaser need not be repaid if the sale goes off by the purchaser’s default, but a sum give in part payment of the price is returnable, If the breach has only been a breach of warranty, the injured party must perform his part, although he has a right of action for damages. However, it is necessary to note that the right to rescission, whether it arises from breach, mistake or misrepresentation, will be lost if the innocent party has affirmed the contract, i.e., if he opted to treat it as subsisting, and also if an innocent third party has acquired the goods in good faith and for value.

**DAMAGES**: Whenever a party to a contract is in breach of it, the other party has a right of action for damages. Therefore, an action for damages is the one remedy which is available in every breach of contract. The object of awarding damages for breach of contract id to put the injured party, so far as money can do it, in the same position as if the contract had been performed. In other words, the aim of damages is to compensate the innocent party to the contract and place him in the position that he would have been had contract been performed. Action for damages is a common law remedy. In the award or assessment of damages, the court may ensure that the loss was occasioned by the breach and that it was not too remote. The leading case of [[4]](#footnote-5)*Hadley v Baxendale (1854)* laid the common law foundation for the assessment of damages arising from a contractual breach. Hadley was a mill operator who contracted with Baxendale to have the latter deliver a broken mill shaft to the manufacturer for repair. The term of the contract was that Baxendale was to transport the shaft the next day. He delayed several days, so Hadley's mill remained closed for a longer period of time. Hadley claimed damages for the profit the mill would have made had it been delivered on time. The only information Baxendale received was related to carrying the shaft on the Plaintiff's behalf. He had not been told that the mill would be closed until the shaft was returned. Furthermore, Hadley may well have had a spare shaft, as is common practice in the business (do you recall trade usage: see earlier?). Hadley's action failed and Baxendale was not liable for the loss of profit. The principle arising from that decision is now the basis for the concept of remoteness in damages, which lays down two categories of compensation which can be recovered, and which are often described as the 'first' and 'second' limbs of the Hadley v Baxendale rule:

1. Losses which arise in the normal course of things and are a natural consequence of the breach
2. Losses which arise as the result of special circumstances (not being natural consequences) which were either known to the parties or may reasonably be supposed to have been in the contemplation of the parties when the contract was made.

Applying the above principles to the case, the court found on the facts that the only way Hadley could succeed in his claim for damages was to show that Baxendale would reasonably foresee that the mill would be closed because there was no shaft, and that some special circumstances had been made known to him. He failed on both points. Hence the claim was too remote. In [[5]](#footnote-6)*Victoria Laundry (Windson) Ltd v Newman Industries Ltd [1949]* the Defendant was installing a new boiler in the Plaintiff's laundry and that installation was needed as soon as possible; but the Plaintiff gave the engineers no further information. Due to faulty work by the Defendant's sub-contractors, completion was delayed for 20 weeks and the Plaintiff sued for what was clearly breach of contract. This issue was quantum: how much? The Plaintiff claimed damages in excess of the lost revenue resulting from the closure of the laundry, and this amount was based on the fact that the new boiler was 'state-of-theart' at the time, and would have been more profitable than the old model it replaced. On the basis of *Hadley v Baxendale*, the court rejected the claim for additional profits arising from the new dyeing process as they were not foreseeable, and not a natural consequence (the first 'limb').

The general rule of measure of damages is that the plaintiff recovers his actual loss in respect of damages which is not too remote. Therefore, subject to the question of remoteness of damages, the injured party is entitled to recover such sums as will, so far as money can do so, put him in the same financial position as if the breach had not occurred. However, in an action for damages for breach of contract two questions often arise. First, the question as to which type of damage must be accorded monetary compensation (i.e., question of remoteness of damage). Secondly, the question as to what sum must be paid as damages (i.e., question of measure of damages).

**QUANTUM MERUIT**: Quantum Meruit means ‘as much as he has earned’. A claim for a quantum meruit 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 [[6]](#footnote-7)*Warner & Warner International v. F.H.A (1993) 6 NWLR (pt. 298) 148 SC*, the court held that a claim on quantum meruit means that no specific sums can be claimed or proved. If they can, then each items stands on fails on the basis of evidence. In [[7]](#footnote-8)Ekpe *v.Midwestern Nigerian Development Corporation (1967) NMLR 407* 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 [[8]](#footnote-9)*Kuku v. Permaroof Contractors Ltd. (1969) NCLR 334* the plaintiff agreed to do certain building work stated, the defendant repudiated the contract and before the plaintiff knew, he has caused some work to be done and sued to recover for the work done. Taylor C.J. held that where one party to a contract has repudiated a contract, or disabled himself from performing it, the other party may treat it as at an end and if he has performed his part of the contract wholly or in part, he has a right to sue on quantum meruit for what he has done. Where the price to a contract is not fixed the employed can sue on a quantum meruit to recover what he has earned, that is the reasonable amount to be paid for this service.

**SPECIFIC PERFORMANCE:** Specific performance is a decree, which is ordered by the court, which directs a contracting party to perform the contract which he has promised to do. It is an equitable relief and alternative remedy to damages in appropriate cases. It is an example of equity acts in personam which is granted at the discretion of the court. It is not granted as of right, but granted judiciously by the court. The court considers in all the cases, whether specific performance will create hardship for the party. Thus in [[9]](#footnote-10)*Taylor v. H. B. Russet (1947) 12 WACA 1799*, 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. Specific performance is a decree, which is ordered by the court, which directs a contracting party to perform the contract which he has promised to do. It is an equitable relief and alternative remedy to damages in appropriate cases. In the Supreme *Court decision of [[10]](#footnote-11)Incar (Nig.) Plc. V. Bolex Ent (Nig.) (2001) 12 NWLR (pt.728) 646* on the nature of contract enforceable by specific performance, the court restated that only a valid contract, which has given right to a legal or equitable interest is capable of being enforced by an order of specific performance.

**INJUNCTION**: An injunction is an equitable remedy and applicable under discretionary ground. It 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 an order by which one party to an agreement is required to do or refrain from doing a particular thing. An injunction is restrictive/preventive or mandatory/compulsive. However, such an order is subject to a balance of convenience ‘Test and may be refused if the prejudice suffered heavily outweighs the advantage that will be demised from such restoration. [[11]](#footnote-12)*Kennaway v. Thompson (1981) QB 88.* 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 [[12]](#footnote-13)*Warner Bros Pictures Inc. v. Nelson(1937) 1 KB 209*, 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. Similarly, in [[13]](#footnote-14)*African Songs Ltd. v. Sunday Adeniyi Suit No: LD/1300/174* delivered on Jan. 14, 1974 (unreported), a musician who undertook to perform and record solely for the plaintiff company was restrained from recording for himself or for any other company for the remaining period of the contract. The plaintiff also sought an injunction to restrain the distribution of gramophone records and an order that they should be withdraw from the public. Dosumu J. held that since the records had already been distributed all over the country, nothing could be done about it.

1. *Photo Productions Ltd. v. Securities Transport Ltd. (1980) AC 827* [↑](#footnote-ref-2)
2. *Suisse Antlantique case (1967) AC 361* [↑](#footnote-ref-3)
3. *Abram Steamship Co. v. Westville Steamship Co. (1923) A.C 773, at p.781.* [↑](#footnote-ref-4)
4. *Hadley v Baxendale (1854)* [↑](#footnote-ref-5)
5. *Victoria Laundry (Windson) Ltd v Newman Industries Ltd [1949]* [↑](#footnote-ref-6)
6. *Warner & Warner International v. F.H.A (1993) 6 NWLR (pt. 298) 148 SC* [↑](#footnote-ref-7)
7. Ekpe *v.Midwestern Nigerian Development Corporation (1967) NMLR 407* [↑](#footnote-ref-8)
8. *Kuku v. Permaroof Contractors Ltd. (1969) NCLR 334* [↑](#footnote-ref-9)
9. *Taylor v. H. B. Russet (1947) 12 WACA 1799* [↑](#footnote-ref-10)
10. *Incar (Nig.) Plc. V. Bolex Ent (Nig.) (2001) 12 NWLR (pt.728) 646* [↑](#footnote-ref-11)
11. *Kennaway v. Thompson (1981) QB 88.* [↑](#footnote-ref-12)
12. *Warner Bros Pictures Inc. v. Nelson(1937) 1 KB 209* [↑](#footnote-ref-13)
13. *African Songs Ltd. v. Sunday Adeniyi Suit No: LD/1300/174*

    *OLUSEGUN YEROKUN, Modern Law of Contract, 2nd ed., Nigerian Revenue Project Publishers (2004) I.E. SAGAY, Nigerian Law of Contract, 2nd ed., Spectrum Law Publishing (2001) TREITEL, G.H The law of Contract, 7th ed, London: Sweet and Maxwell (2007)* [↑](#footnote-ref-14)