18/LAW01/181

1. **Discuss breach of contract**

A breach of contract is a legal term that describes the violation of a contract or an agreement that occurs when one party fails to fulfil its promises according to the provisions of the agreement. A breach of contract is also simply when a party to a contract, whether oral or written, fails to perform any of the contracts terms. While there are many ways to breach a contract, common failures include failure to deliver goods or services, failure to fully complete the job, failure to pay on time, or providing inferior goods or services. And so, a breach of contract is a broken promise to do or provide something. A contract can be breached in whole or in part. Breach of contract is the most common reason contract disputes are brought to court for resolution.

In **Photo Productions Ltd v Securicor Transport Ltd[[1]](#footnote-2)***,* Lord Diplock defined a fundamental breach of contract as an event resulting from the failure by one party to perform a primary obligation which has the effect of depriving the other party of substantially the whole benefit which it was the intention of the parties that he should obtain from the contract. Until the decision of the House of Lords in **Suisse Atlantique****v Rotterdamsche Kolen[[2]](#footnote-3)**, it was generally believed that a party guilty of a fundamental breach of contract could not avoid liability by reliance on an exemption clause inserted into the contract for his benefit.

A breach of contract suit must meet four requirements before it will be upheld by a court.

**\*The contract must be valid**; this means that there must be a contract in placethat can be validated in court. However, it's not a requirementfor the contract to be in writing. Oral contracts can just as easilybe held up in court.It must contain all essential contractelements by law. There are three things that need to beestablished to prove that a valid contract is in place: A contractual offer which includes discussions regarding the agreement to provide services or goods in exchange for something of value, acceptance of the terms of the agreement which refers to the act of agreeing to terms associated with the exchange outlined in the agreement, considerations which refers to products, services or some other things of value that each party involved has received or intends to receive as a result of the contract have been received. A contract isn't valid unless all these essentialelements are present, so without them, there can be no lawsuit.

\*The plaintiff or the party who's suing for breach of contract mustshow that the defendant did indeed breach the agreement's terms.

\*The plaintiff must have done everything required of them in thecontract.

\*The plaintiff must have notified the defendant of the breachbefore proceeding with filing a lawsuit. A notification made inwriting is better than a verbal notification because it offers moresubstantial proof.

**Types of breach of contract;**

Breach of contract can be material, partial, or anticipatory or specific performance.

**Material Breach of Contract**

A material breach is one that is significant enough to excuse theaggrieved or injured party from fulfilling their part of the contract. Failure of one party to perform his obligations under the contract in such a way that the value of the contract is destroyed exposes that party to liability for breach of contract damages. A material breach of contract may relieve the aggrieved party of his own obligations under the contract, and give him the right to sue for damages. Such a total breakdown of the material provisions of a contract may be referred to as a “fundamental” or “repudiatory” breach.

**Partial Breach**

A partial breach is not as significant and does not normally excuse the aggrieved party form performing their duties. A partial breach, or failure to perform or provide some immaterial provision of the contract, may allow the aggrieved party to sue, though only for “actual damages.” Sometimes a party will fail to uphold a portion of the contract, but most of the contract can still be fulfilled. A partial breach is also sometimes referred to as an **immaterial breach**. This type of breach occurs when one party to the contract fails to fulfill a contract term and that term is negligible. 'Negligible' means that the contract term is small or unimportant. A partial breach will be minimal enough that it won't cause the entire contract to fail.

Most of the time, a partial breach will be remedied by a payment, or a credit, to the party who was wronged. For example, A woman asked for roses to be delivered for her wedding, she pays the full amount, the roses are delivered but on checking the roses after the delivery man left, she sees that a dozen of the roses are wilted for her to use, she calls the delivery person, they argue back and forth and eventually she sues to court for breach of contract, the court agrees and they order the seller of the roses to refund the money for one dozen roses. The remedy is a cash payment and they pay.

The rose seller only breached a portion of the contract and they fulfilled your order for the majority of the contract. This is a partial breach, and she was compensated with a right to damages, or payment, for only the portion of the contract that was breached.

**Anticipatory Breach of Contract**

Anticipatory breach, also known as “anticipatory repudiation,” occurs when one party to a contract stops acting in accordance with the contract, leading the other party to believe he has no intention of fulfilling his part of the agreement. An anticipatory breach is also one where the plaintiff suspects thatthe offending party might breach a contract by doing or failingto do something that shows their intention not to complete theirduties. Anticipatory breaches can be very difficult to prove in court. In this case, the breaching party may give such an impression by his actions, or failure to act, such as failing to produce an ordered item, refusing to accept payment, or somehow making it obvious that he cannot or will not fulfill the terms of the contract. An anticipatory breach of contract enables the non-breaching party to end the contract and sue for breach of contract damages without waiting for the actual breach to occur.

For example:

Hannah deals in antique brass musical instruments. Early in May, she agreed to sell an antique flugelhorn to Zunis for $2000 on May 15. On May 14, Zunis told Hannah that he is no longer willing to purchase the flugelhorn because he has settled on a different wedding gift for his daughter. Zunis has breached the contract through express repudiation.

Alternatively, if Hannah had admitted to Zunis that she could not sell the flugelhorn because she had mangled it by accident, Hanny would have breached the contract through her actions. Finally, if Hannah had sold the antique instrument to another party for $4,000, she would have breached the contract through the transfer of assets.

**Specific Performance**

In certain cases, an aggrieved party may not be made whole through the award of monetary damages. He may instead request the court to order “specific performance” of the terms of the contract. Specific performance 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.

 The case **Macy’s v. Martha Stewart Living** [[3]](#footnote-4)is a very popular case of breach of contract. The fact of the case goes thus;

Macy’s department stores filed a breach of contract complaint against Martha Stewart Living Omnimedia for making an agreement with J.C. Penney for the creation of Martha Steward retail stores within their retain stores beginning February 2013. Prior to the deal, J.C. Penney had purchased a minority stake in Steward’s company for $38.5 million. The mini-retail stores were to carry Martha Stewart home goods, however Macy’s argued they had been granted an exclusive right to make and sell certain Martha Steward Living products in an agreement signed in 2006.

Macy’s asked the court to grand a preliminary injunction to stop Steward from breaching the contract while the court considered the matter. Twelve years later, in June 2014, a New York judge ruled that J.C. Penney had indeed stepped over Macy’s contract with the domestic diva in its attempt to sell products bearing her name. While the J.C. Penney contract has been nullified, monetary breach of contract damages were not immediately decided, and may be limited to the legal fees and costs of the lawsuit, as the judge decided the case did not warrant punitive damages.

**Defenses to a Breach of Contract Lawsuit**

As in all lawsuits, the defendant—the party being sued—has a legal right to offer a reason why the alleged breach is not really a breach of contract or why the breach should be excused. In legal terms, this is called a defense. Common defenses against a breach of contract include:

**Duress:**This occurs when one person compels another to sign a contract through physical force or other threats. This, too, can invalidate a contract because both parties did not sign from their own free will, which is a standard contractual prerequisite.

**Fraud:**This means​"knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment." When a defendant presents this defense, they're saying that the contract isn't valid because the plaintiff failed to disclose something important or because they made a false statement about material or important fact. The defendant must establish that the fraud was deliberate.

**Mistake:**Anerror committed by the defendant can't invalidate a contract and take away a breach of contract case, but if the defendant can prove that *both* parties made a mistake about the subject matter, it might be enough to invalidate the contract and this would serve as a defense.

**Statute of Limitations:**Many types of cases have time limits imposed by law, deadlines by which a case must be brought and filed. A breach of contract case can be thrown out of court if the defendant can show that the statute of limitations has expired. The Statute of limitations case has a basis on time frames that are set by individual state law so they can vary. They average from three to six years for a written contract.

**Undue influence:**This is similar to duress. It means that one party had a power advantage over the other and that they used that advantage to force the other to sign the contract.

**Remedies available for breach of contract**.

A remedy is a court-ordered resolution to one party’s breach of contract. A breach of contract occurs when one party to a contract has not fulfilled his or her obligation under the agreement. The non-breaching party is known as the injured party, and the purpose of a remedy is to place the injured party in the position they would have otherwise been in if the contract has been performed as it was agreed upon. The remedies include;

**Damages**; What Damages Can Be Awarded?

There are two general categories of damages that can be awarded if a breach of contract claim is proved and they include;

\* Punitive Damages*.* Punitive damages are awarded to punish or make an example of a wrongdoer who has acted willfully, maliciously or fraudulently. Unlike compensatory damages that are intended to cover actual loss, punitive damages are intended to punish the wrongdoer for egregious behavior and to deter others from acting in a similar manner. Punitive damages are awarded in addition to compensatory damages.

Punitive damages are rarely awarded for breach of contract. They arise more often in tort cases, to punish deliberate or reckless misconduct that results in personal harm.

\*Compensatory Damages. Compensatory damages cover the loss the non breaching party incurred as a result of the breach of contract. The amount awarded is intended to make good or replace the loss caused by the breach.

There are two kinds of compensatory damages that the non breaching party may be entitled to recover:

a) General Damages*.* General damages cover the loss directly and necessarily incurred by the breach of contract. General damages are the most common type of damages awarded for breaches of contract.

b) Special Damages. Special damages (also called “consequential damages”) cover any loss incurred by the breach of contract because of special circumstances or conditions that are not ordinarily predictable. These are actual losses caused by the breach, but not in a direct and immediate way. To obtain damages for this type of loss, the non breaching party must prove that the breaching party knew of the special circumstances or requirements at the time the contract was made.

**How are Compensatory Damages Calculated?**

The calculation of compensatory damages depends on the type of contract that was breached and the type of loss that was incurred. Some general guidelines are:

a) *Standard Measure:* The standard measure of damages is an amount that would allow the non breaching party to buy a substitute for the benefit that would have been received if the contract had been performed. In cases where the cost of the substitute is speculative, the non breaching party may recover damages in the amount of the cost incurred in performing that party’s obligations under the contract.

b) *Contracts for the Sale of Goods:*The damages are measured by the difference between the contract price and the market price when the seller provides the goods, or when the buyer learns of the breach

**Are There Any Limitations on the Award of Compensatory Damages?**

An important limitation on the award of damages is the duty to mitigate. The non breaching party is obligated to mitigate, or minimize, the amount of damages to the extent reasonable. Damages cannot be recovered for losses that could have been reasonably avoided or substantially ameliorated after the breach occurred. The non breaching party’s failure to use reasonable diligence in mitigating the damages means that any award of damages will be reduced by the amount that could have been reasonably avoided.

\***Rescission**; Rescission is a remedy used to terminate a contract when parties entered into a contract by way of fraud, undue influence, coercion, or mistake. In the case of rescission, the contractual obligations of both parties are therefore terminated, and the contract will no longer exist..

\***Restitution**; Restitution is remedy designed to restore the injured party to its state or position before the contract was created. Unlike an award of damages, parties seeking restitution may not demand compensation for lost profits or other financial losses caused by a breach. Instead, restitution is meant to return any money or property given to the defendant under the contract back to the plaintiff.

\***Specific Performance**; Specific performance is a remedy for breach of contract in which the court forces the breaching party to perform the services or deliver the goods the promised goods per the contract.  Specific Performance is only available when money damages are inadequate to compensate the plaintiff for a breach.  This remedy is typically used when the goods or services are so unique that no other remedy could suffice.

\* **Reformation**; Reformation is similar to rescission as it’s a result of parties entering into a contract based on fraud, undue influence, coercion, or mistake, but rather than terminating the contract and the parties’ obligations entirely, the court will change the substance of a contract to correct the inequities suffered as a result.

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1. [1980] UKHL 2 [↑](#footnote-ref-2)
2. [1967] 1 AC 361 [↑](#footnote-ref-3)
3. [2015] NY slip Op 01728 [↑](#footnote-ref-4)