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**MATRICULATION NUMBER:** 18/LAW01/112

1. A breach of contract is committed when a party without lawful excuse fails or refuses to perform what is due from him under the contract or performs defectively or incapacitates himself from performing. (Treitel 2007, para 17-049)

 Discuss the following:

1. Breach of contract

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 is a violation of contract through failure to perform, or through interference with the performance of the contractual obligations. It 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. 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.[[1]](#footnote-1)

To claim breach of contract, there must be an actual, valid contract in place. To prove the existence of a valid contract, however, offer, acceptance and consideration must be established in the formation of the contract.

In addition, an agreement written to cover the provision of goods or services that occurred in the past is a not valid contract. A contract must be entered into before the exchange takes place, to show there was an agreement, or “meeting of the minds.”

The main types of breach of contract are[[2]](#footnote-2):

1. Minor Breach: A [minor breach of contract](https://www.legalmatch.com/law-library/article/minor-breach-of-contract-lawyers.html) 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.
2. Material Breach: A [material breach of contract](https://www.legalmatch.com/law-library/article/material-breach-of-contract.html) is a breach that is so substantial, it seriously impairs the value of the contract as a whole; additionally, the purpose of the agreement is rendered completely defeated by the breach. It allows for the performing party to disregard their contractual obligations, and to go to court in order to sue for damages from the breaching party.
3. Fundamental Breach: A fundamental breach of contract is essentially the same as 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 severe than a material breach. For example, if you failed to perform the main obligation of the contract, this would be a fundamental breach of contract, even if you upheld more minor obligations.[[3]](#footnote-3)
4. 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 his own part 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](https://www.legalmatch.com/law-library/article/anticipatory-breach-attorneys.html).

2. What are the remedies available for breach of contract?

In contract law, a “remedy” is a court-ordered resolution to one party’s breach of contract. The purpose of remedies is to place the injured party in the position they would have otherwise been in had the contract been performed as it was agreed upon. The underlying basis for the common law remedy of damages was laid down by Parke, B. in *Robinson v Harman,* that *[[4]](#footnote-4)*

The rule of the common law is that where a party sustains a loss by reason of a breach of a 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.[[5]](#footnote-5)

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. Apart from the remedies that the court awards to the injured party, it can also order the breaching party to pay the legal fees and expenses of the aggrieved party. Remedies that can be awarded for a breach of contract include[[6]](#footnote-6):

**Compensatory Damages**

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.  This type of remedy is known as “compensatory damages.”  The amount of money awarded is based on the loss, injury, or harm proven by the plaintiff.

Monetary damages

The party who breached the contract can be held responsible for the losses caused by the breach.  Both general or expectation damages and consequential damages can result from a breach of a contract.  General or expectation damages refer to the loss directly caused by the breach. Consequential damages refer to losses that occurred because of the breach but that were an indirect cause.  For example, if you contracted and paid for a machine to be delivered and it never came, the general losses would include the value of the money you paid for the machine. The consequential losses could include the loss of business caused by the fact you did not have the machine needed to do your work.

## **Punitive Damages**

Punitive damages, known as exemplary damages, is the money awarded to the injured party that is above and beyond their actual damages. It is usually awarded to punish or make an example of the wrongdoing of a party that acted, maliciously or fraudulently or behaved in some other egregious behavior in order to breach the contract, such as being intentionally negligent. 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.

## **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.

Typically, a party will seek restitution when a contract they entered has been voided by courts because of the defendant’s incompetence or incapacity. Contract law allows incompetent and incapacitated individuals to be relieved of their contractual obligations, but only if the plaintiff is not hindered by the dismissal. In either case, if the defendant received any money or property by means of the contract that is now voided, the plaintiff is to be restored of that money or property.

## **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.

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.

## **Reformation**[[7]](#footnote-7)

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.

## **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 promised per the contract. In certain cases, an aggrieved party may not be made whole through the award of monetary damages. He may instead request the court to complete the terms of the agreement and order “[specific performance](https://legaldictionary.net/specific-performance/)” of the terms of 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. It can also be 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.

Liquidation damages

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.

Injunction

An injunction is an order of the court by which one party to an action is required to do or refrain from doing a particular thing. Injunctions are either preventive that is, restrictive; or mandatory also known as compulsive injunctions.

Restrictive injunction is a court order which inhibits a party from doing something. In the case of *African Songs v Sunday Adeniyi,[[8]](#footnote-8)* a musician who undertook to perform and record solely for the plaintiff company was restrained for the remaining period of the contract from recording for himself or for any other company. A mandatory injunction on the other hand, is restorative in its effect in that it compels a party to undo what it has already done. In the case of *African Songs v Sunday Adeniyi* (SUPRA), the plaintiff also sought for an injunction, besides the preventive injunction he had already sought, to restrain the distribution of gramophone records already containing music recorded by the defendant and that they should be withdrawn from the public. Dosumu J. held that nothing could be done about it since they had already been distributed all over the country.

**Bibliography**

Sagay I.E., *Nigerian Law of Contract* ( Spectrum Books Limited 2000)

1. 1‘Breach of Contract – Definition, Meaning, Examples and cases’<[legaldictionary.net](https://legaldictionary.net/breach-of-contract/)>accessed 2 May 2020 [↑](#footnote-ref-1)
2. ## ‘What is a Breach of Contract, and What are the Different Types of Breaches?’<<https://www.legalmatch.com/law-library/article/breach-of-contract.html>>accessed on the 3 May 2020

   [↑](#footnote-ref-2)
3. ‘The Four Types of Breach of Contract’<https://roberteckardlaw.com>accessed 3 May 2020 [↑](#footnote-ref-3)
4. [1848] 1 Ex. 850 at 855; [184- 60] ALL ER 383 at 385 [↑](#footnote-ref-4)
5. IE Sagay, *Nigerian Law of Contract* ( Spectrum Books Limited 2000) [↑](#footnote-ref-5)
6. # Gregory Brown, ‘What Are The Remedies Available For A Contract Breach?’<<https://www.bc-llp.com>>accessed on 4 May 2020

   [↑](#footnote-ref-6)
7. ## Kevin O'Flaherty ‘**What is a Remedy in Contract Law?’<https://www.oflaherty-law.com>accessed on 4 May 2020**

   [↑](#footnote-ref-7)
8. (Unreported) High Court of Lagos State, Dosumu, J., Suit No. LD/1300/74 delivered on February 14, 1975. *Casebook*, 361 [↑](#footnote-ref-8)