NAME: ORIOLOWO-NIYI ADEBOLA

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QUESTIONS: Discuss the following: a) Breach of contract b) Remedies for breach of contract.

**a) Breach of contract:** Breach of contract occurs when a party to a contract fails to fulfill its obligations, whether partially or wholly, as described in the contract, or communicates an intent to fail the obligation or otherwise appears to not be able to perform its obligation under the contract.[[1]](#footnote-1) A contract is breached when a party, without lawful excuse, fails or refuses to perform the obligations due or terms of a contract There are generally three categories of breaches of contract namely: breach of warranty, breach of condition and breach of an innominate term. The effect of each breach is determined by the seriousness attached to the breached term (that is, the warranty, condition or innominate term).

**b) Remedies for breach of contract:** A party who has suffered a loss by breach of contract has the right to seek redress in the courts for compensation by way of damages, or specific performance, injunction or *quantum meruit,* depending on the circumstances of the breach. This brings us to the remedies available to the injured party in the event of a breach of contract and these are:

a) Damages (general and special damages, exemplary damages, nominal damages, liquidated damages), b) Specific Performance, c) Injunction, d) *Quantum Meruit*

This will be discussed in detail below:

a) **Damages:** The most common claim frequently sought by an injured party to a breach of contract, is damages. The main purpose for awarding damages for breach of contract is to put the injured party, as far as money can do it, in the same position as if the contract had been performed. Usually, the injured party is not expected to get more in damages than the loss he actually suffered. Where he suffered no loss, he may still maintain his action because there has been a breach, but he will only get nominal damages, that is, a small amount.

The modern rule regarding damages was laid down in the case of *Hadley v Baxendale[[2]](#footnote-2)*. Two main criteria for the award of damages were established in this case namely: (a) damages are awarded according to the normal damage that occurs in the usual course of things, and (b) damages are awarded for abnormal damage that arises because of special or exception circumstances. In this case, the plaintiff were millers and the defendants were carriers of goods. The crankshaft of the plaintiff’s steam engine was broken and they had ordered a new shaft from an engineer and arranged with the defendants to carry their broken shaft from their mill to the engineer to be used as a model for the new shaft. The defendants did not know that the mill could not operate until the new shaft was installed. The defendants delayed the delivery of the broken shaft to the engineer for several days resulting in delay to the plaintiffs in getting their steam mill working. The plaintiffs claimed damages for breach of contract. The court had to decide whether the plaintiffs’ damages should include profit lost for the period of the defendants’ delay.

Applying the rule laid down above to the facts of the case, the court noted that only the facts communicated by the plaintiffs to the defendants were that the article to be carried was the broken shaft of their mill and that, they, the plaintiffs were millers. The plaintiffs did not inform the defendants that due to the broken shaft, work at their mill had come to a standstill therefore the defendants could not have contemplated that an unreasonable delay in delivery their shaft will result to a loss in profit. Thus, the loss of profits could not reasonably be considered as a consequence of breach of contract as could have been fairly or reasonably contemplated by both parties when they made the contract.

The rule regarding damages was further elaborated and clarified in the case of *Victoria Laundry v Newman Industries[[3]](#footnote-3)*. In this case, the plaintiffs were launderers and dryers. They decided to extend their business and, in doing this, purchased a large boiler from the defendants. The defendants were informed that the plaintiffs needed the boiler for immediate use but they were given no further information. The defendants were not aware that the new boiler was to function as a substitute for a smaller boiler already in operation. The defendants damaged the boiler while loading it for delivery and it took five months (20 weeks) to repair and deliver it. The plaintiffs then claimed damages in excess of the lost profit (16 pounds a week), resulting from the number of excess customers they could have gotten as a result of the capacity of the new boiler, and 262 pounds a week which they would have earned under a lucrative dyeing contract with the Ministry of Supply. The court rejected the claim for additional profits arising from the new dyeing process as they were not foreseeable, and not a natural consequence. Furthermore, there were no unnatural consequences pointed out by the plaintiff to the defendant at the time the contract was entered into. It was held therefore that normal business profits lost during the period of delay were recoverable, but not the profits the plaintiff might have received as a result of the period of delay were recoverable, but not the profits the plaintiffs may have received as a result of the increased efficiency of the new boiler.

Therefore, the case added another rule regarding damages which is: losses will also be foreseeable and recoverable when the party in breach actually possesses knowledge of the special circumstances outside the ordinary course of business (the profit-making attributes of the new boiler) which would be liable to cause more loss.

**Types of Damages**

1) General and special damages:General damages are the actual sum of money necessary to compensate the injured party for the damages sustained as a result of the breach. While special damages are the amount paid as compensation to the injured party for the loss sustained beyond general damages, and which is not the type that would necessarily result from the particular breach.

2) Exemplary Damages:Damages are usually awarded to compensate the injured party to the extent of the loss suffered However, there are recognized instances in which the court will award punitive damages in excess of the loss actually suffered. These are called exemplary damages which are damages on an increased scale over and above general damages, awarded in aggravated circumstances.

3) Nominal Damages:In certain situations, the injured party may not have suffered any actual loss occasioned by the breach although his legal right has been infringed by the breach. The violation of his right, on its own, will entitle the injured party to nominal damages which is usually a small amount.

**\*Liquidated Damages:** Some contracts contain liquidated damages clause. These clauses specify that the non-breaching party will be awarded a specific amount of money in the event that a reach occurs. The court will uphold this clause if it is fair.

**b) Specific Performance**: Specific performance is a remedy devised by the Courts of Equity in England in a system of law administered by the Courts of Chancery, as against the law administered by common law courts. This remedy was awarded where the payment of money did not afford adequate remedy. What is specific performance? A decree of specific performance is one by which the court directs the defendant to perform the contract according to its terms. In some cases, the appropriate remedy for a breach is for the court to correct such breach by forcing the breaching party to complete the terms of the contract. Therefore, the remedy of specific performance, in the event of a breach, enforces the terms of the contract as reached by the parties.

At common law, a victim of breach of contract is only entitled to damages. However, in some cases, damages may be inappropriate and inadequate. This is the reason why equity intervened by way of a decree of specific performance. As an equitable remedy, specific performance is not granted as of right, but at the discretion of the court. The court will exercise this discretionary power where monetary compensation is inadequate.

What are then the conditions or requirements needed for the court to grant an order for specific performance? The main basis for granting this remedy is that the party seeking it cannot obtain an adequate remedy by the common law judgement. Furthermore, in the case of *Dr. I.O.C. v Nwaeze Igbo*[[4]](#footnote-4),the Court of Appeal considered the factors to be considered by the court in granting or refusing a claim for specific performance. The court stressed the fact that specific performance is an equitable remedy granted on the basis of the existence a valid, subsisting and enforceable contract, as well as circumstances that will make it equitable to make the order. Hence, the court will not decree specific performance if the contract suffers from some defects or if damages can adequately restore the aggrieved party.

Also, specific performance is very appropriate in the case of contracts for the sale/ and leasing of land and in contracts for the sale of rare or unique goods. This is because a substantial equivalent will involve difficulty, delay and inconvenience. In *Ohiaeri v Yusuf*[[5]](#footnote-5),The Supreme Court stated that “…A contract for the sale of land attracts a greater justification of specific performance because as opposed to other types of contracts, the land may have a special and peculiar value to the purchaser.” In the case of *Paye v Gaji*[[6]](#footnote-6)**,** the vendor of a piece of family land refused to execute conveyance of the land after the conclusion of agreement and payment of purchase price by the purchaser. The Court of Appeal granted an order of specific performance even though the owners of the land were prepared to refund the purchase price. The court was of the view that in a breach of contract for sale of land, damages cannot be an equitable remedy and the purchaser is entitled to have the contract specifically performed.

The Nigerian Legal System confines the remedy of specific performance in case of personal contracts, particularly where performance if that promise can only be rendered by the promisor personally. This can be in form of promises to render services of a personal nature or employment or where the personal cooperation of the promisor is needed or where the performance is of an exclusively personal character.

Furthermore, for a decree of specific performance to be granted, the plaintiff must show that he has discharged his obligations under the contract. He cannot succeed if there is a failure on his part to discharge the obligations under the contract[[7]](#footnote-7). It is important to note that where the contract is concerned with other commodities (apart from land and rare goods), the grant of specific performance will depend on the particular circumstances of the case.

**c) Injunction:** This is an equitable remedy which prohibits a party from a particular act. In terms of breach of contract, an injunction is useful because it can be used to restrain a party from committing a breach or an action that might constitute a breach of contract. The difference between an injunction and specific performance is that the former is used to order a party to do something while the latter is used to order a party **not** to do something. However, an injunction is another way by which a court can order specific performance.

Where the injunction sought is restrictive or prohibitive, the court will be more easily disposed to granting it. Hence, where a party to a contract undertakes not to do something, the court can prohibit him from doing same. In the case of *Warner Bros. Pictures v Nelson[[8]](#footnote-8),*an actress signed a contract with her employers not to act for other organization. When it became obvious that she might breach this undertaking, the employers sought to restrain her. The court issued an injunction to restrain her from committing this breach. As such, if a contract contains a negative stipulation, an injunction may be granted to enforce such stipulation.

However, where the aim of the party is to enforce a specifically positive stipulation the court will refuse to grant the injunction. In *Lumley v Gye[[9]](#footnote-9)****,*** the defendant contracted to sing for the plaintiff’s theatre for a period of three months and also not to sing anywhere else. It was held that the court could grant an injunction to restrain her from breaking her contract (that is, singing for another theatre group) but would not issue an injunction to compel her performance of her obligation to sing for the plaintiff.

An injunction may also be mandatory and restorative in that it may be used to order a party to a contract to undo what he has already done in breach of contract. The court rarely grants an injunction which has a restorative rather than prohibitive consequences. Injunction is commonly issued to arrest infringement of copyrights and trademarks.

***e) Quantum Meruit:*** This is a claim made where a contract makes no express or implied provision for renumeration. In certain circumstances, a plaintiff may render services without having fixed the renumeration payable. If the situation is such that the law will imply a promise to pay a reasonable renumeration for the services rendered, the plaintiff may, upon successful competition of the job, sue for payment. Therefore, Quantum Meriut is based on the fact that something has been done and the doer is entitled to be paid so much as he deserves.

In*Warner & Warner v Federal Housing Authority*[[10]](#footnote-10),the appellant was awarded 9 building contracts and it commenced construction which reached advanced stage. The respondent wrongly terminated the contract. The Supreme court held that the innocent contractor had the option of either suing for damages or maintaining a claim for a reasonable price for work and labor done in *quantum meruit.*

In conclusion, damages are awarded to an injured party to put the injured party, as far as money can do it, in the same position as if the contract had been performed. While a decree of specific performance is a remedy that requires precise fulfillment of a legal or contractual obligation where monetary damages are inappropriate or inadequate. An injunction, on the other hand, is useful in restraining or preventing a party from committing a breach of contract. *Quantum Meruit* is an equitable remedy which awards a party a reasonable sum of money to be paid for services rendered for work done when the amount due is not stipulated in the contract.

**Bibliography**

1) Alobo, Eni Eja. *Law of Contract.* Ikeja, Lagos: Princeton & Associates Publishing Company, 2016.

2) Sagay, I. E. *Nigerian Law of Contract.* Ibadan: Spectrum Books Limited, 2000.

3) https://en.m.wikipedia.org/wiki/Breach\_of\_contract accessed on 04/05/2020.

4) <https://www.bc-llp.com/what-are-the-remedies-available-for-a-contract-breach/> accessed on 04/05/2020.

5) Law of Contract II note, National Open University of Nigeria.

1. <https://en.m.wikipedia.org/wiki/Breach_of_contract> [↑](#footnote-ref-1)
2. (1854) 9 Ex 341{1843-60} ALL E R. 461 [↑](#footnote-ref-2)
3. (1949) 2 K B. 528 [↑](#footnote-ref-3)
4. (2013) LPELR-21246 (CA) [↑](#footnote-ref-4)
5. (2009) 6 NWLR (Pt 1137) 207 at 229 [↑](#footnote-ref-5)
6. (1996) 5 NWLR (Pt 450) 589 at 605 [↑](#footnote-ref-6)
7. Australian Hardwoods Property Ltd v Commissioner for Railway [↑](#footnote-ref-7)
8. (1937) 1 KB 209 [↑](#footnote-ref-8)
9. (1853) 2 E & B 216 [↑](#footnote-ref-9)
10. (1993) 7 SCNJ at 22; (1993) 5 NWLR (Pt 289) 148 [↑](#footnote-ref-10)