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1. A breach of contract occurs where a party fails to perform or shows an intention not to perform one or more of the obligations lay upon him by the contract. Thus, failure to perform the terms of a contract constitutes a breach.

A party can either breach a contract by expressing in words or by his conducts that he does not intend to observe his obligation under the contract or when a party breach any condition of the contract in such a way that it results to failure of consideration. The first instance is known as anticipatory breach while the second is actual fundamental breach.

In *Photo production Ltd v. Securicor Transport Ltd.* 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.

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

The contract must be valid. It must contain all essential contract elements by the law. A contract isn't valid unless all these essential elements are present, so without them, there cannot be a lawsuit.

The plaintiff or the party who is suing for a breach of contract must show that the defendant did indeed breach the agreements terms.

The plaintiff must have done everything required of them in the contract.

The plaintiff must have notified the defendant of the breach of contract before proceeding with filing for a lawsuit.

**Anticipatory Breach**

This is where the party before the fixed day of the contract to be executed shows no intention of performing the contract. It therefore occurs after the agreement but before the stated date for the performance agreed by both parties. This breach is also known as *repudiation or renunciation*.

The innocent party shouldn’t have to wait for the date to elapse, as soon as the party notice any withdrawal from the contract the innocent party can end the contract and sue for damages. The party presents the repudiation to the innocent party and the innocent party does not make any form of acceptance within a reasonable time then the contract Is still open for the benefit and at the risk of both parties.

*Avery v. Bowen,* B agreed to load A's ship within 45 days, but before the period elapsed B told A that he won't be able to load the ship. A didn’t treat the matter as important so before the 45 days had elapsed war broke out so it will be illegal for B to load A's ship. This case provided B with a great defense as he warned A but A chose to ignore the warning therefore A can't sue for damages.

Where the innocent party accepts the breach, he may there and then commence proceedings for the breach of contract. In other words, law gives the victim of anticipatory breach the power to immediately start a claim for breach of contract, if he so desires.

In *Nigeria Advertising and Publicity Ltd v. Nigerian Airways Ltd,* the defendant awarded the plaintiff of an advertising company a contract for three years. When the contract has not yet elapsed the defendant without a reasonable justification called off the contract. The plaintiff immediately sued for a breach in contract and it was ruled in favor of the plaintiff.

**Partial Breach**

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

For example, a homeowner hires a contractor to put a pond in his backyard, showing the contractor the black liner her would like installed under the sand. The contractor instead installs a blue liner of the same design and thickness, which is totally hidden from view. The contractor may have breached the contract, but the homeowner cannot ask that the contractor be ordered to take out the pond and start over with the black liner, instead the homeowner could ask for a refund in the different prices between the blue and black liner.

In this case, because the liner has no effect on functionality and the price was basically the same, the difference in value or actual damages is zero.

**Actual Fundamental Breach**

Where a party actually fails to perform one or all his obligation on the date fixed for performance, the breach is called actual breach. For an actual breach of a term of a contract to have the legal consequence of discharging the contract, it should amount to a fundamental breach.

The fundamental breach should go to the roots of the contract, so that the injured party is entitled to repudiate or claim damages.

Any fundamental breach does not bring the contract to a complete stop, it solely depends on the injured party if he decided to treat the contract as still in force and *status quo ante* is maintained. All parties are entitled to their rights and obligations but the innocent party is however entitled to claim for damages.

In *Modern Publications Ltd v. Academy Press Ltd,*  the plaintiff which owned monthly magazines contracted the printing of the magazines to the defendant. The agreement specified the measurements and quality expected of the print. The magazines which were eventually printed by the defendants were not of the specified size and the quality was substantially inferior to that specified in the contract. Despite these, the plaintiff accepted the magazines and distributed them for sale without protest. This affected their sale and profit negatively. The plaintiffs thereafter brought this action for breach of contract. The defendant contended that although there had been a breach of contract, the fact that the plaintiff nevertheless took the benefit of the contract by taking delivery and subsequently selling the magazines, meant that they waived their rights to sue for a breach.

The court held that that when one party breach a fundamental term in a contract, the innocent party can choose to accept or repudiate the contract. He may decide to still go ahead in the contract but can also sue for damages for the breach.

A guilty party can also insist that the innocent party should continue and complete his performance. If he continued performance of the contract, after the breach, is dependent upon the co-operation of the defaulting party, and the latter refuses to co-operate, the innocent party can seek specific performance of the contract. An order of specific performance may also be sought if the defaulting party refuses to perform outstanding obligations under the contract.

In *Hasham v Zenab,* the defendant contracted to sell a piece of land to the plaintiff. The contract was evidence in writing and for performance to be completed on a specified date. After the signing of the contract, the defendant repudiated the contract. The plaintiff elected to affirm the contract and kept It alive and therefore brought an action for specific performance. The court granted the relief sought by the plaintiff and accordingly ordered the defendant to specifically perform the contract as and when due. If the innocent party is capable of performing his obligations independent of the defaulting party, and he affirms the contract after the breach, he may perform his obligations and sue for the amount owned to him.

Where the innocent party exercises the option of treating the contract as discharged, it brings the contract to an end in the case of *White & Cartel v. McGregor and in Staunton v Richardson.*

1. Remedies available for breach of contract includes:

**Damages**

The main purpose of 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 has been performed. The innocent party is not expected to get more in damages than the loss which he actually suffered. Therefore where he has suffered no loss he may still maintain his action because there has been a breach, but he will get only nominal damages i.e. small amount.

*Ecobank Nigeria Plc v Elder Dominic Ekperikpe,* the court of appeal made the following striking submission regarding damages

i) the object of damages in breach of contract is to put the claimant in the position he would have been in

if the contract has been satisfactorily performed. And in order to enable judicious assessment, the

particulars and evidence in support of awards are required.

ii) The general rule for measuring damages for breach of contract is that the party in breach is liable in

damages in the mount which flows directly and naturally.

In an action for award of damages for breach of contract, the court must first and foremost satisfy itself that there was indeed a contract. Having satisfied itself of the existence of a contract, the court will then consider the issues of damages *Hadley v Baxendale.*

Having resolved the question of which loss or damage should be accorded monetary compensation, the next question to be considered by the court is how much compensation is to be paid. Generally, damages for breach of contract are based on financial loss. But as will be seen *infra,* in certain exceptional circumstances damages maybe recovered from the defendant for non-pecuniary losses if they were within the contemplation of the parties as likely to result from the breach. The problems of measuring the damages are easily determined and assessed if the damages are liquidated.

**An Order of Specific Performance**

Specific performance is a remedy contrived by the court of equity administered by the court of chancery. It is one by which the court directs the defendant to perform the contract according to its terms. This is a directive by the court compelling the defendant to perform the contract. At the common law court, victims of breach of contract is only entitled to damages but then the court of equity came and introduced the order of specific performance which was seen to be reasonable contradicting damages which was seen as inadequate and inappropriate. A specific performance is appropriate for the contract on sales of land or leasing of land. Damages is seen to be inappropriate for contracts like that. In *Ohiaeri v Yusuf,* the supreme court stated that an action for specific performance arises once there exist a contract couple with circumstances which make it equitable to grant a decree of same and that a sale of land is unique contracts we should be treated with the specific performance as the land may hold value to the individual.

In *Paye v Gaji,* 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 assignor of the piece of land refused to execute the conveyance of the property after the conclusion of the agreement and the payment of the purchase price by the assignee. According to the court, in a breach of contract of sale of land, damages cannot be an adequate remedy and the purchaser is entitled to have the contract specifically performed.

The Nigerian legal system confine the remedy of specific performance in case of personal contracts, particularly so where performance of that promise can only be rendered by the promisor personally.

**Quantum Meruit**

This is a Latin phrase which means as the thing is worth. It is thus a claim made where a contract makes no express or implied provision for remuneration. A plaintiff may rendered services without having fixed the remuneration payable. If the situation is such that the law will imply a promise to pay a reasonable remuneration for the services rendered, the plaintiff may on completion of the job successfully sue for payment. Quantum Meruit is based on the fact that something has been done and the doer is entitled to be paid so much as he deserves. It is a reasonable value of service awarded in an amount considered reasonable to compensate a person who has rendered service for which no specific amount was specified.

Where a party to a contract is unable to fulfil the entire obligation or is prevented by the other party from completely discharging his obligations under a contract, he may have a claim in *quantum meruit.* In *Warner & Warner v Federal Housing Authority*, the appellant was awarded 9 building contract and it commenced construction which reached advantage stage. The respondent wrongly terminated the building contract. The Supreme Court held that the innocent contractor had the option of either suing for damages or maintaining a claim for reasonable price for work and labour done in *quantum meruit.s*