**NIHINLOLA DEBORAH AYOMIDE**

**18/LAW01/149**

**LAW OF CONTRACT II**

**LPB 202**

**QUESTION 1**

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 occurs when the promise of the contract is not kept, because one party has failed to fulfil 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. Further, if one party fails to perform while the other party fulfils their obligations, the performing party is entitled to legal remedies for breach of contract. The case of *Dantata v. Mohammed[[1]](#footnote-1)* presents a classic illustration of discharge by breach. In that case, the respondent Mohammed had an undeveloped plot of land in Ikoyi Lagos and the appellant had a developed plot of land in Kano. The two parties agreed to exchange their properties. The respondent fulfilled his own part of the agreement and transferred possession of the land at Ikoyi land to the appellant. The appellant quickly sold the land to a third party and refused to fulfil his own part of the agreement. The respondent then brought this action for a declaration, inter alia, that in view of the fundamental breach of the contract, he was entitled to obtain a rescission of the contract, recover possession of his land plus substantial damages and the court ruled in favour of the respondent.

**Types of contract breach[[2]](#footnote-2)**

1. Minor Breach: A minor breach of contract 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 is a breach that is so substantial, it seriously impairs the contract as whole; additionally, the purpose of the agreement must be rendered completely defeated by the breach. This is sometimes referred to as a total breach. It allows for the performing party to disregard their contractual obligations, and to go to court in order to collect damages from the breaching party;
3. Fundamental Breach: A fundamental breach of contract is essentially the same as a 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 egregious than a material breach; and
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 fulfil the terms 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.

**REPUDIATION**

Where there is a contract between two parties to be performed at a future date and one party declares his intention not to perform his own side of it, this act is known as renunciation or repudiation. It is also popularly referred to as “anticipatory breach” although this last term has often been described as misleading on the ground that a contract cannot be capable of breach before the time for its performance has arrived.[[3]](#footnote-3) However what is important is that the term is understood to mean that the guilty party has shown either by words or conduct that he has no intention of performing his own part of the contract whenever the time of performance arrives. As stated by Coker J. in *Solomon Nassar v. Oladipo Moses*:[[4]](#footnote-4)

*It is open to a party to a contract to sue the other party for breach of the same even in the anticipation of the time agreed upon for performance, if it is manifest by his conducts and his acts that the defaulting party had made himself unable to fulfil his part of the contract at the agreed time.*

The true meaning and effect of an anticipatory breach were stated by Lord Esher M.R in *Johnstone v. Milling[[5]](#footnote-5)*

Such repudiation may be expressed or implied, or be in words or by conduct. In *Hochester v. De la Tour*,[[6]](#footnote-6) the defendant actually wrote to the plaintiff stating that he was no longer going to perform his part of the contract where he agreed to employ the plaintiff as a courier during a foreign tour commencing at a future date. The plaintiff immediately sued for breach of contract and he succeeded. Another case of anticipatory breach expressed in writing is the case of *Nigerian Supplies Manufacturing Co. Ltd v. Nigeria Broadcasting Corporation*[[7]](#footnote-7). On the other hand repudiation may be implicit. Where there is reasonable inference that the defendant no longer intends to perform his own part of the contract, the plaintiff is entitled to treat the contract as discharged and to sue for breach. In *Frost v. Knight*,[[8]](#footnote-8) the defendant having agreed to marry the plaintiff on the death of his father, broke off the engagement during the father’s lifetime. It was held that the plaintiff was immediately entitled to sue for breach of contract. Refusal to perform by conduct can be seen in the case of *Merry Steel and Iron co v. Naylor Benzon & Co.[[9]](#footnote-9)*

**FUNDAMENTAL BREACH**

Apart from repudiation the second circumstance in which a party is entitled to treat himself as discharged from further obligations in the contract is where the co-contractor without expressly or implicitly repudiating the contract, commits a fundamental breach of contract. The problem of determining what constitutes a fundamental breach of contract. It must be a breach which goes to the root of the contract; a breach which has the effect of depriving the injured party of achieving the main purpose for which he contracted. The breach of a fundamental term gives the innocent party right to terminate the contract. In the case of *Best (Nig) Ltd v. Blackwood Hodge (Nig) Ltd* [[10]](#footnote-10) it was stated that the failure of the appellant to pay fully for the property, subject matter of the contract was held to be a breach of the contract.

One problem about basing the discharge of a contract solely on the breach of a fundamental term is the rather subjective nature of the concept. It is said that for a term to be fundamental, the parties must have regarded it as being of major importance when the contract was made *Bentsen v Taylor & Sons & Co[[11]](#footnote-11)*. But since the parties will not normally specify this in advance, in the end it is the court’s view of what is of major importance that prevails. Thus the parties presumed intention becomes what the judge thinks it ought to be. It should be noted that a breach of condition also entitles the injured party to repudiate the contract. This it will be recalled is the main distinguishing feature between the consequences of a breach of condition and a breach of warranty

**QUESTION 2**

1. **Damages**

Once a party to a contract establishes to the satisfaction of the court that the other party has committed a breach of contract, the most common claim is that for damages and certainly it is the most readily granted type of remedy by courts. The underlying basis for the common law remedy of damages was laid down by Parke B. in *Robinson v. Harman[[12]](#footnote-12)*. However, since an unqualified application of such wide principle would prove too harsh on a contract breaker in making him liable for a chain of unforeseen and fortuitous circumstance, it was progressively qualified and limited in several ways until the modern rule was finally crystallised in the judgment delivered by Alderson B in *Hadley v. Baxendale.[[13]](#footnote-13)* The rule in *Hadley v Baxendale* has been divided into two parts. The first deals with the normal damage that occurs in the usual course of things while the second deals with the abnormal damage that arises because of special or exceptional circumstances.

Further elaboration and clarification of the rule in *Hadley v. Baxendale* was given by Asquith L.J in *Victoria Laundry v. Newman Industries[[14]](#footnote-14)* which came up in 1949, almost a hundred years later. The plaintiffs in this case were launderers and dryers. They decided in view of great demand to extend their business and with this end in view, purchased a large boiler from the defendants. The defendants knew at the time of the contract that the plaintiffs were laundry men and dryers and that they required the boiler for the purpose of their business. They were also informed by the plaintiffs that they needed the boiler for immediate use, but the defendants did not know at the time the contract was made exactly how the plaintiffs intended on using the boiler. They were not aware that they intended to use i as a substitute for a smaller boiler which was already in operation. The defendants damaged the boiler when loading it for delivery to the plaintiff and it took them five months to repair and deliver it. The plaintiff claimed damages for loss of profits. The judge decided to state the applicable principles which had emerged from the authorities as a whole including *Hadley v Baxendale* and applying these principles, the court held that reasonable persons in the position of the defendants must be taken to foresee without any express information that a laundry which at a time when there was an acute shortage of laundry facilities, was paying 2000 pounds for a plant and intending to put the plant into immediate use would suffer a loss if ther was a five month delay in delivering the plant. This was a loss within the first branch of the rule in *Hadley v. Baxendale*. The defendants were therefore liable in respect for the first claim relating to loss of profits the plaintiffs would have earned from an increase in the numver of customers.

Regarding the claims for the special dyeing contracts, these came within the second branch of the rule in *Hadley v. Baxendale.* It had to be established that the defendants were aware of the special dyeing contracts; these were not liable for that loss or profit. It was not one that arose from the normal course of events. In conclusion, the court held that the absence of knowledge of the lucrative dyeing contract did not however preclude the plaintiffs from recovering some general sum for loss of business in respect of dyeing contracts to be reasonably expected, just as in the case of the laundering contracts.

In *kusfa v. United Bawo Constuction Co[[15]](#footnote-15)* the respondent who had earlier awarded a building contract to the appellant, wrongly terminated it. The trial court not only awarded damages amounting to the unpaid work done by the appellant but also general damages of ten thousand naira for the hardship caused the appellant by the breach of contract. The court of appeal rejected this head of damages and the appellant appealed to the Supreme Court.

Whenever it has to consider a claim for damages a court must first resolve the isuue whether the defendant is liable for any damages at all and if so the nature and the extent of such damage or loss. This is known as the issue of remoteness of damages. It is only after having determined the nature and extent of damages that the court can quantify them in terms of money. Damages will not be awarded for a loss that is too remote as a consequence of the breach.

1. Specific performance and injunction

A decree to specific performance is one by which the court directs a defendant to perform the contract which he has made in accordance with its terms. It is a relief in equity and is one of the earliest examples of the maxim that equity acts *in personam*. At common law, the only relief available for breach of contract was damages and in many cases this proved adequate and indeed the best remedy. Thus, in most contracts for the sale of goods, money compensation remains the most suitable remedy for breach. However, in some cases, for instance, a contract to convey land or to sell an antique or a famous painting the remedy of damages proved inadequate. In such situations the courts of equity decreed specific performance. As Kay L.J. declared in *Ryan v. Mutual Tontine Association[[16]](#footnote-16)*:

This remedy by specific performance was invented and has been cautiously applied in order to meet cases where the ordinary remedy by action in damages is not an adequate compensation for breach of contract. The jurisdiction to compel specific performance has always been treated as discretionary and confined within well known rules.

Thus, the basis for granting the remedy is that the party seeking it cannot obtain an adequate remedy by the common law judgement for damages. The court considers in each case whether damages would in fact be an actual compensation and if not whether specific performances “will do more and complete justice that award of damages”.

The type of contract in which the remedy of specific performance is most readily granted by courts is a contract in which a vendor refuses to convey the land sold. A mere award of damages in such cases will defeat the just and reasonable expectation of the parties or at least of the purchaser. Even where the purchaser has bought the land in order to resell it, specific performance may be available to him. A vendor is also entitled to specific performance.

1. **Extinction of remedies**

A right of action for breach of contract and tort may be extinguished by the effluxion of time in accordance with the provisions of the limitation Act of the Federal Government and the various limitation laws of the various states of Nigeria. These statutes are basically the same in substance. By these laws a right of action in contract is extinguished six years from the date on which the cause of action accrued. A cause of action becomes statue barred if in respect of it, proceedings cannot be brought because the period laid down by the limitation law or act has elapsed.

The basis of limitation of action laws is the public policy that there should be an end to litigation and that stale demands should be suppressed for it would be unjust to a person to allow claims to be made upon him after a long period during which he may have lost the evidence formally available to him, necessary to rebut the claim.

1. (2002) 3 WRN 32 [↑](#footnote-ref-1)
2. https://www.legalmatch.com [↑](#footnote-ref-2)
3. Cheshire and Fifoot [↑](#footnote-ref-3)
4. (unreported) High court, Lagos, Coker J. Suit No, LD/222/58 delivered on May 20, 1960, Casebook, p. 448 [↑](#footnote-ref-4)
5. (1886) 16 Q.B.D. 460 at 467 [↑](#footnote-ref-5)
6. (1853) 2 E & B 678 [↑](#footnote-ref-6)
7. (1967) 1 All N.L.R. 35 [↑](#footnote-ref-7)
8. (1872) L.R. 7 Exch. 111 [↑](#footnote-ref-8)
9. (1884) 9 A.C. 434 [↑](#footnote-ref-9)
10. (2011) 15 WRN 1 [↑](#footnote-ref-10)
11. (1893) 2 Q.B 274 at p. 281 [↑](#footnote-ref-11)
12. (1848) 1 EX. 850 at p. 855 [1843-60] AAL ER 383 at p 385 [↑](#footnote-ref-12)
13. (1854) 9 EX. 341; [1843-60] ALL ER 461 at p. 465 [↑](#footnote-ref-13)
14. (1949) 2 K.B. 528. 104. [↑](#footnote-ref-14)
15. (1994) 4 NWLR (Pt. 336) 1. [↑](#footnote-ref-15)
16. (1893) 1 Ch 116 at p. 126 [↑](#footnote-ref-16)