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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).

**Question 1a.**

Breach of contract.

According to Sagay, *Nigeria law of contract[[1]](#footnote-1):* **’** When a party to a contract, whether oral or written, fails to perform any of the contract’s terms, they may be found in breach of contract[[2]](#footnote-2). While there are many ways to contract, common failures including failure to deliver goods or services, failure to fully complete the job, failure to pay on time, or providing inferior goods or services. In other words, a breach of contract is a broken promise to do or provide something. To explore this concept, consider the following breach of contract definition.

1. An unjustifiable failure to perform terms of a contract.[[3]](#footnote-3)
2. A violation of contract through failure to perform, or through interference with the performance of the contractual obligations. Among the most common causes for lawsuits in the world, breach of contract occurs in many ways, for each such breach, designed to make the injured party whole. Court ordered remedies for breach of contract cases are not meant to punish the breach party, but to return the injured party to the position he would be in if breach had not occurred. the goods and this cannot be a breach of contract. ***In Nigeria bank plc v Aiyedun investment ltd. A[[4]](#footnote-4).*** *the court held that such a breach will justify a claim for compensation. It does not matter if the compensation claimed is described as interest or damages****. In UBN PLC v. Jeric Nigeria 3[[5]](#footnote-5).*** *It was held that in a contract on goods imported the respondent did not pay for the value of the goods and other expenses incurred by the appellant, the appellant did not breach any terms of its agreement by withholding on to the goods. The appellant has to option than to hold on to.*

TYPES OF CONTRACT BREACHES.

**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.” ***Cutter v Powell***

*The applicant and his wife contracted to act as second officer on the ship, the ‘Governor Parry’ on a trip to Jamaica. The cruise can take up to eight weeks and he will be paid upon completion. A term which is, in the Treaty:*

*“Ten days after the ‘Governor Parry,” my own ship master, coming in at Liverpool, I promise to Mr. T. Cutter pay the sum of thirty guineas, that he gave the proceeds, and continued his work as second mate in the said ship at the port of Liverpool. Kingston, 31 [[6]](#footnote-6)[[7]](#footnote-7)July 1793. ” Six-week cruise of the late husband of the plaintiff. The plaintiff sought a sum that claims six weeks represent the work done.*

*Held: The woman failed the action. Payment is made on condition that he worked on the ship in Liverpool, because he does not fulfill this condition, the widow is entitled to nothing.* The harshness of this rule has been mitigated by the creation of various exceptions:

**Material Breach of 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. For example, if the contractor in the above example had used thin plastic not intended for the rigors of maintaining a pond, which could not be expected to last as long as the pond liner, the homeowner might recover the actual cost to correct the material breach, which would include removing the pond and replacing the liner***. Sumpter v Hedges*** *The claimant agreed to build two houses and stables for the defendant. It was agreed that £565 would be payable on completion. The claimant commenced performance and then ran out of money and was unable to complete. He had performed just over half of the contract. The defendant completed the work himself. The claimant sought to recover £333 representing the value of the work he had completed. He argued that in completing the work himself, the defendant had thereby accepted partial performance and prevented the claimant from completing the contract.*

*Held: The claimant’s action failed. The court held that the defendant had no choice but to accept partial performance as he was left with a half completed house on his land.*

**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. 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. ***Hochster v De la Tour )[[8]](#footnote-8)****Applicants for three months from first June 1852 agreed that the defendants Messenger. 11 May in the work on the defendant did not want that rejected his services and wrote the manuscript for compensation. Scored another service contract by the complainant, but not until 4 July start. The plaintiff sued for breach of contract on 22 May Employees of the contract due by 1 Begin in June, when the card is not a breach of contract claims to 22 days. Held: Before the injury occurred in the application until the parties of its intention not to perform the contract if the innocent party would you mind passing. They shall immediately or can choose their continued violation of this Agreement to wait.*

*Among them immediately or to seek their own contracts before they are waiting for a breach of the law continue to enter into the innocent party to make a choice to make. This can be beneficial or harmful:[[9]](#footnote-9)*

**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.

**Filing a Breach of Contract Complaint**

A party to a contract dispute who feels the other party is in breach of the contract, should provide a breach of contract letter to the breaching party that he will be taking action for breach of contract. This is the first, formal step to resolving the issue. Sending a dated breach of contract letter outlining the problem puts the other party on notice they need to do something to comply with their part of the agreement.

If it becomes necessary to file a lawsuit, providing a copy of the letter, and all correspondence with the opposing party, to the court helps prove the case. While many people choose to file their breach of contract complaint in Small Claims Court, those involved in high-value contract disputes should consult an attorney experienced in contract cases. Awarded is based on the proven loss, injury, or harm proven by the plaintiff Partial.

**Question 1b.**

**What is a Remedy in Contract Law?**

In contract law, 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[[10]](#footnote-10). The non-breaching party is also known as the “injured” party, and 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.

**REMEDIES AVAILABLE FOR BREACH OF CONTRACT ARE AS FOLLOWS:**

**Compensatory Damages for Breach of Contract.**

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.”

During the court case, the injured party becomes the plaintiff. In the instance of a total breach, the plaintiff may recover damages in an amount that’s equal to the sum or value they would have received had the contract been fully performed by the defendant. Sometimes, this includes lost profits from a business operation***. Victoria Laundry (Windsor) Ltd v Newman Industries Ltd )[[11]](#footnote-11)***

*The plaintiffs were launderers and dyers, who needed to buy a large boiler in order to expand their existing business and take on a very well-paid Government contract. They contracted to buy such a boiler, second-hand, from the defendants, making it clear that it was needed for immediate use. As the defendants dismantled the boiler in preparation for delivery, it was damaged, and so the delivery was considerably later than agreed. The launderers claimed loss of profits under two heads: £16 per week for the loss of ‘normal’ profits, which represented the additional ordinary work they could have taken on with the extra boiler; and £262 per week for the loss of a lucrative dyeing contract with the Government. Evidence was given that although the defendants knew the plaintiffs wanted the boiler working as soon as possible, they did not know about the Government contract, or the fact that it was so much more lucrative than the laundry’s other work. As a result, the Court of Appeal held that they were liable for the £16 per week, but not for the £262. The court stated that a defendant should only be liable for such losses as were ‘reasonably foreseeable’ as arising from the breach.*

**Punitive Damages for Breach of Contract Explained**

Compensatory, or actual damages, cover the loss the non-breaching party incurred as a result of the breach. Punitive damages, known as exemplary damages, are awarded to punish or make an example of the wrongdoing of a party that acted willfully, maliciously or fraudulently. 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. ***Macy’s v. Martha Stewart Living(supra).[[12]](#footnote-12)***

**Restitution in Breach of Contract.**

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.

**Rescission in Breach of Contract.**

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. The effect of rescission in the case of misrepresentation and mistake is to terminate the ab initio as if it never existed. As stated by lord Atkinson, ***in Abram Steamship co. v Westville Steamship co. [[13]](#footnote-13)***

***Such rescission terminates the contract, puts the parties in status quo ante and restores things, as between them, to the position in which they stood before the contract was entered.***

**Reformation in Breach of Contract.**

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 of a Contract.**

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

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6. [↑](#footnote-ref-6)
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