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Breach of contract is a legal cause of action and a type of civil wrong, in which an agreement or bargained-for exchange is not honored by one or more of the parties to the contract by non-performance or interference with the other party's performance.

To determine whether or not a contract has been breached, a judge needs to examine the contract. To do this, they must examine: ***the existence of a contract, the requirements of the contract, and if any modifications were made to the contract.*** ***the plaintiff must prove that there was a breach in the first place, and that the plaintiff held up his side of the contract by completing everything required of him. Additionally, the plaintiff must notify the defendant of the breach*** ***prior to filing the lawsuit.***

A breach of contract entitles the injured or innocent party to an action for damages against the guilty party. Additionally, where the guilty party has repudiated the contract or has committed a fundamental breach, the innocent party has the right to rescind or terminate the contract.

A breach which is serious enough to give the innocent party this option of treating the contract as discharged can occur in one of two ways:

1. **Anticipatory breach/ Repudiation 2. Fundamental breach**

**ANTICIPATORY BREACH/REPUDIATION**

Repudiation also known as anticipatory breach, is when one party in a contract indicates that he or she will not perform this or her contractual obligations. Words or actions can both show that the party will fail to hold up his or her end of the contract as promised. This enables the aggrieved party to claim a breach of contract. In this event, this party can seek damages, suspend his or her part of the contract, or demand reassurance of performance. Anticipatory breach is one that occurs after the agreement but before the date of the performance laid down by the parties.

**Situations that** **Constitutes an Anticipatory Breach of Contract**

**A.**Any action that makes it impossible for a party to hold up his or her contractual obligations.**B.**The transfer of property from one of the parties to a third party. **. C** refusal to follow through on a contract, whether written, vocalized, or implied.

**Anticipatory breach may take one of the two forms:**

**a.** **EXPRESS REPUDIATION**: express repudiation arises where one party expressly informs the other party to the contract of his unwillingness to perform his obligation under the contract. This could be in writing or by words. This will be better illustrated using case laws. Thus, in the case of ***Hochester v. De la Tour[[1]](#footnote-1)*** the defendant actually wrote to the plaintiff stating that he was no longer going to perform his part of the contract under which 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. It was held that even though the date of performance was still nearly a month ahead he had the right to sue for anticipatory breach. The action succeeded.

b. **Implied repudiation**: repudiation can be as a result of reasonable interference that the other party to the contract no longer intends to perform his part of the contract. In this case, the innocent party is entitled to treat the contract as discharged, and to sue for damages.In the case of ***Frost v. knight***[[2]](#footnote-2). K agreed to marry the plaintiff on the death of his father. He broke off the engagement during his father’s lifetime. The court held that the plaintiff was entitled to sue for breach of contract.

**FUNDAMENTAL BREACH**

Where a party actually fails to perform one or all of his obligations on the date fixed for performance, the breach is called actual breach. For an actual breach of a term[s] of a contract to have the legal consequence of discharging the contract, it should amount to a fundamental breach. The breach should be so cardinal that it goes to the root of the contract. It should have the effect of depriving the injured party of achieving the main purpose for which he contracted. A breach of fundamental term or condition entitles the injured party to repudiate the contract. However, in situations in which ***section 11[1] [c] of the sales of Goods act 1893*** is applicable , a breach of condition will only give rise to claim for damages , and the right to repudiate will be lost.

**For a breach of contract to amount to a fundamental breach, it must entitle the innocent party to:** 1. Treat himself as discharged from further obligations in the contract which should have the consequence of ending the contract. 2. Claim damages for breach of contract

The Supreme Court in ***Udom v. E. Michette & sons Ltd[[3]](#footnote-3)*** emphasized that: *A breach of fundamental term or condition which invariably will occasion a fundamental breach does not automatically bring the contract to an end. Where the innocent party treat the contract as sill in force, the* ***status quo ante*** *is maintained and the contract remains in being for the future on both sides. The party remains subject to all their rights and obligations. The innocent party will however be entitled to claim damages for the breach.*

If the innocent party elects to continue with the contract despite the breach, it means that the guilty party can also insist that the innocent party should continue and complete his performance. If the 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.

If the innocent party is a capable of performing the contract independent of the defaulting party, and he affirms the contract after the breach, he may perform his obligation and sue for the amount owed to him. Thus, in the case of ***White v. McGregor*** the Court held that the plaintiff was entitled to ignore The defendant breach, elect to treat the contract as subsisting and then insist on payment.

Where there is a fundamental breach of the contract, the innocent party can refuse to continue with the contract and can treat himself as discharged. In the case of ***Staunton v. Richardson***[[4]](#footnote-4), the court held that ‘*a victim of fundamental breach has the right to refuse to continue the contract and thus treat himself as discharged,’*

**REMEDIES AVAILABLE FOR BREACH OF CONTRACT**

**1. SPECIFIC PERFORMANCE:** Specific performanceis a court-ordered remedy that requires precise fulfillment of a legal or contractual obligation when monetary damages are inadequate. It’s a relief in equity and it’s one of the earliest examples of the maxim that equity acts ***in personam***. The remedy of specific performance is a discretionary one and the plaintiff is not entitled to it as a matter of right. The discretion is exercised judiciously by the court.

**SITUATIONS WHICH READILY ATTRACT SPECIFIC PERFORMANCE**

**a.** contract in which a vendor refuses to convey land sold. A mere award of damages will defeat the just expectation of the parties, or at least the purchaser.In the case of ***paye v. Gaji***[[5]](#footnote-5), the vendor of a piece of family property wrongly refuse to execute the conveyance of the property after the conclusion of the agreement and payment of the purchase price by the buyer, the court of appeal rejected this and ordered specific performance of the agreement.

**b**. Specific performance will also be more readily granted in cases where damages are considered to be an inadequate remedy because of the difficulty of quantifying them, or because the plaintiff loss is difficult to prove. In the case of ***Beswick v. Beswick***, the House of Lords granted specific performance in a situation where the award of damages would have been merely nominal and it would therefore have been unjust to award damages.

**CONTRACTS NOT SPECIFICALLY ENFORCEABLE**.

There are certain contracts to which the doctrine of specific performance does not apply:

1. Contract of personal service. According to ***Jessel, M.R, in the case of Rigby v. Conol[[6]](#footnote-6)*** ‘*the courts have never dreamt of enforcing agreements strictly personal in nature, whether they are agreements of hiring and services, being the common relation of master and servant, or whether they are agreements for the purpose of pleasure, scientific pursuit, or for the purpose of charity or philanthropy’*. However, specific performance can be ordered if the contract of service is on with a statutory flavor as seen in the case of ***Illodibia v.N.C.C Ltd.***

***2.*** Another situation in which the court would not grant an order of specific performance is one in which mutuality is not possible. However, there are exceptions, a contract for the sale of land can be enforced against a party who has signed memorandum by one who has not and against whom the contract could not, therefore, be enforced**. 3.** The court will not enforce a contract that require the constant supervision of the court e.g. contract to build or keep a building in repair.

In addition, a plaintiff in an action for specific performance of an agreement cannot succeed if there is failure on his part to discharge his obligation under the said agreement. Thus, in the case of ***Best [Nig] Ltd v. Blackwood Hodge [Nig] Ltd[[7]](#footnote-7)*** The learned trial dismissed the case the case upon a finding that the appellant’s failure to pay the consent fee was in breach of the material condition of the contract to assign the property.

**2. QUANTUM MERUIT:** This is a Latin phrase meaning ***‘as much as he has earned’.*** It’s a claim made where a contract makes no express or implied provision for remuneration. Quantum meruit is based on the fact that something has been done and the doer is entitled to be paid so much as he has earned. It is used as an equitable remedy to provide restitution for unjust enrichment. It’s often used so that the plaintiff can recover even if the contract is unenforceable.

Where a party 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.* Thus, in the case of ***Warner& Waner v. F.H.A***., where the respondent wrongfully terminated a building contract which was already partly completed, the Supreme Court held that the injured contractor had the option of either suing for damages or ignoring the contract and claiming a reasonable price for work and labor done in *quantum meruit.*

*Quantum meruit* will normally be granted where there is where there is an existing contract between the parties. If there is no contract a claim for *quantum meruit* cannot arise or be sustained. Accordingly, In the case of ***Olaopa v. Obafemi Awolowo University***[[8]](#footnote-8), the S.C held that there could be no *quantum meruit* in the absence of contract between the parties.

Where work has been done by one party under avoid contract the party who did not do the work can sue on a ***quantum meruit*** to recover his remuneration for the work done, provided he did the work in good faith and without knowledge of the voidness. Thus, in the case of ***Craven-Ellis Ltd. V.Canons Ltd.[[9]](#footnote-9),*** the court held that the fact that the plaintiff had actually done work under a contract which was void did not disentitle him from recovering in *quantum meruit*, for the services had been performed and the company had benefitted from it.

**3. INJUNCTION: An** injunction is an order or decree by which one party to an action is required to do or refrain from doing a particular thing. Injunctions are either restrictive [preventory] or mandatory [compulsive]. Injunction might have the same effect as specific performance: In order words, 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. Therefore, where a party to a contract undertakes not to do something, the court can prohibit him from doing same. Thus, in the case of ***Warner Bros. Pictures Inc. v. Nelson***[[10]](#footnote-10) ***, a*** film actress signed an undertaking with the plaintiffs, her employers, not to act for any organization. An injunction was issued to restrain her from committing a breach of this stipulation when she attempted to enter the employment of a third party.

Where the injunction is mandatory, it is restorative in its effect and not merely preventive. It directs the defendant to undo what he has already done in breach of the contract. In the case of ***African Songs Ltd v. Adeniyi***, a musician who undertook to perform only for the plaintiff company, was restrained for the remaining period of the contract for recording for himself or another company.

Injunction will not be granted in circumstances in which specific performance would be refused. Specific performance is not usually ordered for contract of personal services. Thus, a court would not grant an injunction in the case of such a contract to enforce negative covenant if the effect of doing so would be to drive the other party to specifically perform the contract.

Injunction is commonly issued to arrest the infringement of copy rights and trademarks. It’s also important to note that it is only in situations in which the type of loss alleged by the plaintiff cannot be adequately compensated for by the award of damages, that the court would grant injunction. This principle was upheld in the case of ***Union Beverage Ltd. V. Pepsi Cola Ltd.***

**4. DAMAGES:** The main purpose for awarding damages for breach of contract was laid down in the case of ***Robinson v. Harman***[[11]](#footnote-11) ***‘****is to put the injured party, as far as money can do it, in the same position as if the contract had not been performed’*. The injured party is not expected to get more in damages than the loss 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 only nominal damages i.e. small amount.

However, since the unqualified application of such a wide principle would prove too harsh ‘on a contract breaker in making him liable for a chain of unforeseen circumstances’, it was progressively limited in several ways, until the modern rule was finally crystalized in the case of ***Hadley v. Baxendale.***[[12]](#footnote-12)***By Alderson, B.*** Two main criteria for the award of damages was established by the rule in ***Hadley v. Baxendale.* 1**. Damages is awarded according to the normal damage that occurs in the usual course of things**. 2.** Damages awarded for abnormal damage that arises because of special circumstances. For damages to be awarded under this branch, the decisive factor for establishing liability is the knowledge by the defaulting party of the special circumstances of the plaintiffs.

The Supreme Court articulated the principle guiding the award of damages in the case of ***G.K.F.I. [Nig. Ltd. V. NITEL Plc***[[13]](#footnote-13) when it stated that ‘award *of damages is at the discretion of the judge. Such discretion must be exercised with a considerable degree of circumspection’.*

**Remoteness of damages:** the rule that applies here was laid down in the case of ***Hadley v. Baxendale[[14]](#footnote-14)*** is that only the type of damages that arises naturally as a result of the breach or which can reasonably be said to be in the contemplation of either of both parties at the time of the contract must be compensated for.

**Measurement of damages**: the general rule as stated in the case of ***Johnson v. Agnew [1980] A.C.367 at p.400*** is that damages should be assessed at the date when the breach occurred or any appropriate day if the date of breach will work injustice.

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5. [1966]5 NWLR pt.[450] 589 at 605 [↑](#footnote-ref-5)
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