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*COURSE: LAW OF CONTRACT*

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*Breach of contract*

When any 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. While there are many ways to breach a contract, common failures include 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.

An unjustifiable failure to perform terms of a contract

A violation of contract through failure to perform, or through interference with the performance of the contractual obligations. In addition

In *Photo Productions 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. Until the decision of the House of Lords in the *Suisse Atlantique case* in the 1966, it was generally believed that a party guilty of a fundamental breach of contract could not avoid liability by relience on an exemption clause inserted into the contract for his benefit.

General Requirements

* A breach of contract suit must meet four requirements before it will be upheld by a court.
* The contract must be valid.
* The plaintiff or the party who's suing for breach of contract must show that the defendant did indeed breach the agreement's terms.
* The plaintiff must have done everything required of them in the contract.
* The plaintiff must have notified the defendant of the breach before proceeding with filing a lawsuit.

There are three things that need to be established to prove that a valid contract is in place:

* A contractual offer
* Acceptance of the terms of the agreement
* Considerations have been received

In examples of breach of contract cases, an offer includes discussions regarding the agreement to provide services or goods in exchange for something of value. It is also necessary to demonstrate an intention to enter into the agreement with one another. Acceptance refers to the act of agreeing to the terms associated with the exchange outlined in the agreement. While it's not necessary for a contract to be in writing for it to be held up in court, it is usually easier to prove that the agreement has been accepted due to the fact that a legal document exists which specifies the terms each party has agreed to.

Consideration refers to products, services, or some other thing of value that each involved party has received (or intended to receive) as a result of the contract. If one party promises to provide something without getting anything back in return, however, it tends to look like a gift. This is important to note because gifts cannot be enforced as considerations and this may prevent the ability to successfully pursue legal action for a breach of contract.

Additionally, past agreements that were written to cover the provision of services or goods are not considered to be a valid contract. The contract needs to be agreed upon before an exchange happens for it to hold up in court. A breach of contract happens when the terms of a contract are not adhered to. It is important to note that not every term of the contract will be taken literally. For legal action to be warranted, a breach of contract must actually decrease the overall value of the agreement. This is what is known as a "material breach of contract."

There are a number of forms a breach of contract might take, such as:Breach of contract can be material, partial, or anticipatory and type of breach.

* A material breach is one that is significant enough to excuse the aggrieved or injured party from fulfilling their part of the contract.
* A partial breach is not as significant and does not normally excuse the aggrieved party from performing their duties.
* An anticipatory breach is one where the plaintiff suspects that the offending party might breach a contract by doing or failing to do something that shows their intention not to complete their duties. Anticipatory breaches can be very difficult to prove in court.

**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.

A material breach of contract may relieve the aggrieved party of his own obligations under the contract, and give him the right to sue for damages. Such a total breakdown of the material provisions of a contract may be referred to as a “fundamental” or “repudiatory” breach.

**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 precise terms of the contract, but the homeowner cannot ask that the contractor be ordered to take out the pond and start over with the black liner.

The homeowner could ask that the contractor be ordered to refund the difference in price between the requested black liner and the installed blue liner. In this case, because the color of the liner has no affect on functionality, and the price was basically the same, the difference in value, or “actual damages,” is zero.

**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. An anticipatory breach of contract enables the non-breaching party to end the contract and sue for breach of contract damages without waiting for the actual breach to occur. For example:

Jane agrees to sell her antique sewing machine to Amanda, and the two agree on the purchase price of $1,000, the sale to occur on May 1st. On April 25th, Amanda tells Jane that she cannot come up with the money on time. Following this communication, Jane can reasonably assume that Amanda is in anticipatory breach. This enables Jane to sell the sewing machine to someone else, or potentially file a lawsuit against Amanda for breach of contract.

*Some cases involving breach of contract*

*Revelations Perfume and Cosmetics Inc. v. Prince Rogers Nelson*

In 2008, the Revelations Perfume and Cosmetics company sued the famous musician “Prince” and his music label, seeking $100,000 in damages for reneging on an agreement to help market their perfumes. The flamboyant pop star had promised to personally promote the company’s new perfume named after his 2006 album “3121,” and to allow his name and likeness to be used in the perfume’s packaging. Prince then refused to grant interviews related to the project, and refused to provide a current photograph for a press release.

In its breach of contract complaint, Revelations asked the court to award more than $3 million in lost profits, as well as punitive damages. The judge found no evidence, however, that the pop star acted with malicious intent, and ordered him to pay nearly $4 million for the cosmetics company’s out-of-pocket expenses. Revelations’ request for punitive and loss-of-profits damages was denied.

*Macy’s v. Martha Stewart Living*

Macy’s department stores filed a breach of contract complaint against Martha Stewart Living Omnimedia for making an agreement with J.C. Penney for the creation of Martha Steward retail stores within their retain stores beginning February 2013. Prior to the deal, J.C. Penney had purchased a minority stake in Steward’s company for $38.5 million. The mini-retail stores were to carry Martha Stewart home goods, however Macy’s argued they had been granted an exclusive right to make and sell certain Martha Steward Living products in an agreement signed in 2006.

Macy’s asked the court to grand a preliminary injunction to stop Steward from breaching the contract while the court considered the matter. Twelve years later, in June 2014, a New York judge ruled that J.C. Penney had indeed stepped over Macy’s contract with the domestic diva in its attempt to sell products bearing her name. While the J.C. Penney contract has been nullified, monetary breach of contract damages were not immediately decided, and may be limited to the legal fees and costs of the lawsuit, as the judge decided the case did not warrant punitive damages.

Remedies available for breach of contract.

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. 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. The remedies are;

***Damages***

What Damages Can Be Awarded?

There are two general categories of damages that may be awarded if a breach of contract claim is proved. They are:

1. Compensatory Damages. Compensatory damages cover the loss the non breaching party incurred as a result of the breach of contract. The amount awarded is intended to make good or replace the loss caused by the breach.

There are two kinds of compensatory damages that the non breaching party may be entitled to recover:

1. *General Damages.* General damages cover the loss directly and necessarily incurred by the breach of contract. General damages are the most common type of damages awarded for breaches of contract.
2. *Special Damages*. Special damages (also called “consequential damages”) cover any loss incurred by the breach of contract because of special circumstances or conditions that are not ordinarily predictable. These are actual losses caused by the breach, but not in a direct and immediate way. To obtain damages for this type of loss, the non breaching party must prove that the breaching party knew of the special circumstances or requirements at the time the contract was made.

2. *Punitive Damages.* Punitive damages are awarded to punish or make an example of a wrongdoer who has acted willfully, maliciously or fraudulently. Unlike compensatory damages that are intended to cover actual loss, punitive damages are intended to punish the wrongdoer for egregious behavior and to deter others from acting in a similar manner. Punitive damages are awarded in addition to compensatory damages.

Punitive damages are rarely awarded for breach of contract. They arise more often in tort cases, to punish deliberate or reckless misconduct that results in personal harm.

How are Compensatory Damages Calculated?

The calculation of compensatory damages depends on the type of contract that was breached and the type of loss that was incurred. Some general guidelines are:

1. *Standard Measure:* The standard measure of damages is an amount that would allow the non breaching party to buy a substitute for the benefit that would have been received if the contract had been performed. In cases where the cost of the substitute is speculative, the non breaching party may recover damages in the amount of the cost incurred in performing that party’s obligations under the contract.
2. *Contracts for the Sale of Goods:* The damages are measured by the difference between the contract price and the market price when the seller provides the goods, or when the buyer learns of the breach.

*Are There Any Limitations on the Award of Compensatory Damages?*

An important limitation on the award of damages is the duty to mitigate. The non breaching party is obligated to mitigate, or minimize, the amount of damages to the extent reasonable. Damages cannot be recovered for losses that could have been reasonably avoided or substantially ameliorated after the breach occurred. The nonbreaching party’s failure to use reasonable diligence in mitigating the damages means that any award of damages will be reduced by the amount that could have been reasonably avoided.

* ***Restitution***

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.

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* ***Rescission***

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.

* ***Reformation***

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***

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 suffice.

Reference

Sagay;Nigerian law of contract

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