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**COURSE TITLE: LAW OF CONTRACT II**

QUESTION

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)

**Discuss the following:**

Breach of contract

What are the remedies available for breach of contract?

**BREACH OF CONTRACT**

A [contract](https://www.legalmatch.com/law-library/article/what-is-a-contract.html) 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 fulfill 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 fulfills their obligations, the performing party is entitled to legal remedies for breach of contract.

There are four main types of contract breaches:

1. **Minor Breach:** A [minor breach of contract](https://www.legalmatch.com/law-library/article/minor-breach-of-contract-lawyers.html) 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
2. fulfill any remaining contractual obligations. A minor breach is sometimes referred to as an impartial breach;
3. **Material Breach:** A [material breach of contract](https://www.legalmatch.com/law-library/article/material-breach-of-contract.html) is a breach that is so substantial, it seriously impairs the contract as a 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;
4. **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
5. **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 fulfill 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](https://www.legalmatch.com/law-library/article/anticipatory-breach-attorneys.html).

 Breach of contract cannot just magically happen suddenly, there would have been certain actions that would lead to that breach. A contract is said to be breached when the following occurs:

1. Where one party performs defectively, differently from the agreement or not at all. In the case of ***Pilbrow v. Pearless de Rougement & co****.[[1]](#footnote-1)* the appellant sued the respondent, a firm of solicitors, because he was dissatisfied with their legal services due to the fact that he telephoned them to make an appointment which was later arranged by an employee of the firm who was not a Solicitor. The Court of Appeal held that it accepted as a matter of fact that the standard of legal services had been provided by a solicitor but ruled that there had been a contract no just only to provide legal services but to provide legal services with a Solicitor. The firm did not perform that at all. Since no legal services were provided by a Solicitor, they had no right to payment.
2. Where one party indicates in advance that they will not be performing as agreed. This is also known as anticipatory breach. In the case of ***Frost v. Knight****[[2]](#footnote-2)* the defendant had promised to marry the plaintiff once his father had died. He later broke off the engagement while his father was still alive and when his ex-fiancée sued him for breach of promise, he argued that she had no claim as the time of performance has not yet arrived. The Court rejected the Defendant’s argument and ruled in Favour of the Plaintiff.

**REMEDIES AVAILABLE FOR BREACH OF CONTRACT**

* **Monetary damages.**

The party who breached the contract can be held responsible for the losses caused by the breach.  Both general or expectation damages and consequential damages can result from a breach of a contract.  General or expectation damages refer to the loss directly caused by the breach. Consequential damages refer to losses that occurred because of the breach but that were an indirect cause.  For example, if you contracted and paid for a machine to be delivered and it never came, the general losses would include the value of the money you paid for the machine. The consequential losses could include the loss of business caused by the fact you did not have the machine you needed to do your work.

* Specific performance

This is an equitable remedy granted at the Court’s discretion. It is a decree by a Court to compel a party to perform his contractual obligations. It is only usually ordered where damages is not an adequate remedy (where the subject matter of the contract is unique, for example Chinese vases in ***Falcke v. Gray***[[3]](#footnote-3) but not if the subject could be replaced even after a long delay[[4]](#footnote-4).

It is a general rule that specific performance will not be ordered if the contract requires performance or constant supervision over a period of time and the obligations in the contract are not clearly defined. For example, in the case of Co-op insurance v. Argyll Stores[[5]](#footnote-5) the House of Lords refused specific performance of a covenant to keep a shop open during normal business hours on the grounds that enforcement of a covenant to carry on a business would require constant supervision of the Court with the Court resorting to criminal punishment for contempt of court if the order was not adhered to. However, the case of ***Rainbow Estate Limited v. Tokenhold Limited and anor*.[[6]](#footnote-6)**reversed the rule in relation to a tenant’s repair covenant.

Specific performance is also ordered in relation to building contracts because the contract deals with results rather than the carrying on of an activity over a period of time and it usually defines the work to be completed with certainty.

Specific performance is not available for contracts requiring personal services such as employment contracts because such an order would restrict an individual’s freedom

* **Liquidation damages.**

Sometimes, it is very difficult to determine how much a person was damaged by a breach of contract. To address this problem, some contracts contain liquidated damage clauses. Essentially, these clauses specify that the non-breaching party will be awarded a specific amount of money in the event a breach occurs. These clauses will be upheld as long as they are fair.

* **Rescission.**

Rescission allows the non-breaching party to essentially be released from performance obligations. Recession is a remedy for a breach of contract because it makes clear that the party is relieved of his duties due to the failure of the other party to perform. However, sometimes the remedy of reformation may be used which is when a court reforms or changes a contract to correct any inequities. In these cases, instead of setting aside the entire contract, the terms of the contract may be rewritten to do justice. Rescission allows the non-breaching party to essentially be released from performance obligations. Recession is a remedy for a breach of contract because it makes clear that the party is relieved of his duties due to the failure of the other party to perform

* + Injunction

An injunction is another way by which a Court can order specific performance. Like specific performance, it is an equitable remedy and is only granted at the discretion of the Court. It is awarded in circumstances where damages would not be an adequate remedy to compensate the claimant because he needs to restrain the defendant from starting or continuing breach of negative contractual undertaking (prohibitory injunction) or needs to compel performance of a positive contractual obligation (mandatory injunction).

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* Travis Peeler, ‘What is a breach of contract, and What are the different types of breaches?’ (2018) <<https://www.legalmatch.com/law-library/article/breach-of-contract.html>> accessed May, 2020.
* Unreported cases of High Court of Lagos State.

 *Reynolds Construction Company Ltd v Rockonoh Properties Company*

1. [1980] A.C. 827

 [1853] 2 E & B 678

 [1967] 1 All NLR 35

 supra [↑](#footnote-ref-1)
2. [↑](#footnote-ref-2)
3. [1859] 4 Drew 651 [↑](#footnote-ref-3)
4. Societe de Industries Mettalurgiques SA v. Bronx Engineering Co. ltd. [1975] 1 Lloyds Rep. 465 [↑](#footnote-ref-4)
5. [↑](#footnote-ref-5)
6. [↑](#footnote-ref-6)