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1) **Discuss Breach of Contract**

Answer: 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 to 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.

There are four main types of contract breaches:

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 fulfil any remaining contractual obligations. A minor breach is sometimes referred to as an impartial breach; Even if you have suffered a minor breach of

contract, you may have grounds for a lawsuit.

However, this is limited to situations where you actually suffered damages as a result of the minor breach. However, damages will obviously be more limited with minor breaches than with material breaches. For example, if there was a difference in price between a substituted material under the contract this could be considered damages.

It would be best to attempt settlement of this matter before expending costs related to court fees. Also look at the contract itself to see if it lays out steps for settling a dispute, like going to mediation or arbitration before filing a lawsuit. The terms of the contract will usually

govern any dispute that arises.

However, keep in mind that just because a minor breach occurred, that does not mean you cannot complete your obligations under the contract. Non-performance is only permitted for material breaches.

Material Breach: A material breach of contract 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; Contracts

cover a broad variety of topics. As such, a material breach of contract can arise in many different areas of everyday life. One example may occur when someone is purchasing a house. If the buyer completes all of the necessary paperwork, pays the seller at the closing, but the seller suddenly decides not to sell or refuses to give up the deed and keys to the house, then this would be considered a material breach of contract. Alternatively, if the seller goes through all of the steps to sell their house and then the buyer refuses to pay, then this could also be considered a material breach of contract. Another example of a material breach is when a buyer is purchasing a rare item from a seller. If the

buyer pays for the item, but the seller does not give or ship it to them and instead hands it over to someone else, then this would be considered a material breach of contract. Much like the house example, this scenario can also be reversed where the buyer never pays the seller after receiving the item.

Finally, material breaches can also happen in business settings like when two parties contract for services. A common scenario is when two companies enter into a contract that involves one of them shipping or supplying goods to the other. Similar to the buyer purchasing a rare item, the parties here may also cause a material breach of their contract if the receiver fails to make payments for the

goods or the shipper fails to deliver the proper goods to the buyer. Material breaches often require a court's intervention before it can be resolved. This is because the remedies for a material breach of contract typically go beyond monetary damages, and call for an equitable remedy.

If you are the one responsible for causing the material breach, then you should try to minimize the damage as much as possible by either performing your side of the bargain, asking the other party if there is another way you can make up for your mistake, or supplying an alternative remedy. It is important that you document every way in which you tried to make up for your error. You

should also contact a contract attorney to ensure that there was an actual breach and so that you are protected in the event your matter goes to court. On the other hand, if you are the non-breaching party, then you should reach out to the other party to figure out if they can fulfil their side of the bargain. If they cannot, then be sure to document all evidence that you completed your promise and save anything that shows they did not hold up their end. If there is no way to fix the issue, then you should contact a contract lawyer to initiate a lawsuit where you can either sue to compel the breaching party to perform their half of the contract or seek other damages to recover what you have lost.

In most cases, however, there is usually a clause located in the parties' contract for how to handle a breach. If there is one available in your particular contract, then it will most likely dictate how the entire issue is settled. One final thing to note is that when you are the person who breaches a contract, the contract is not discharged until a court deems it so. This means you are responsible for any damages you have caused due to the breach and may be forced to perform your side of the bargain regardless. In other words, a breach does not necessarily mean that the contract is cancelled, so be prepared to be compelled to fulfil it. Obviously, there are exceptions to this rule depending on the

circumstances involved.

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.

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. The courts have recognized at least three different types of anticipatory repudiation in contract law, which includes:

- When a party tells the other party to the contract that they will not be performing their side of the bargain before their contract obligation is even due. Their refusal must typically be made in a definitive and clear manner, so that the other party is on explicit notice. If their statement of refusal is not clear or comes off as ambiguous, however, then it might not be considered anticipatory repudiation.
- If the party commits an action that makes it impossible for the other party to perform their obligation

owed under the contract, then it may be considered anticipatory repudiation.

- An action for anticipatory repudiation may also exist when the subject matter of the contract or transaction is no longer available.

- o For example, if a house was supposed to be sold as part of the terms under a contract transaction, but was then transferred or sold to another party that was not a party to the original contract. This would be a clear indication that when the contract due date arrives, the party selling the house would not be able to perform their original promise to that first party.

An anticipatory breach typically occurs when one party notices that the other party has stopped following

the terms of their contract. For instance, an employee may stop showing up for work. This can lead their employer to believe that they do not intend to fulfil their side of the employment contract. Thus, the employer can anticipate repudiation of the employment contract and sue for damages, or alternatively, replace that employee. In an anticipatory breach situation, the non-breaching party will be allowed to sue the breaching party for damages, even though the non-breaching party is technically the one putting an end to the parties' contract. The specific damages that the non-breaching party can receive will depend on the circumstances surrounding

the breach. Typically, the damages for an action based on anticipatory repudiation usually involve an award for monetary damages.

In addition, the judge may also decide to award the non-breaching party an injunction or equitable remedy, such as specific performance, which would compel the breaching party to fulfil their side of the bargain. Lastly, it is also possible for the party who repudiated the contract to retract their repudiation and perform instead. There are two requirements that must be satisfied, however, before the breaching party can retract their repudiation. First, the retraction must occur before the contract performance date has passed, and second, the non-

breaching party must not have made a material change in their position already based on their reliance on the breaching party's actions demonstrating anticipatory repudiation.

Although it is not required by the law, courts generally prefer that the non-breaching party wait a reasonable amount of time before suing for breach of contract due to an anticipatory repudiation scenario. The length of time that a court considers to be "reasonable" typically varies from state to state since it is based on the separate statutes enacted by each state. Also, an anticipatory breach action may be withdrawn in certain circumstances if the non-breaching party changes their

mind to sue. This could be for a variety of reasons, such as if the breaching party decided to finally perform and the non-breaching party found the performance sufficient enough not to sue. Again, these reasons can vary for a number of reasons, such as the preferences of the individual parties, the state law involved, the terms of the parties' contract, and the facts pertaining to a specific case.

The following example helps illustrate the differences between breaches: Suppose you hire a painter to paint your house with a specific shade of grey paint by a specific brand. If the painter never shows up to paint your house, this may be considered a material breach of contract. However,

if the painter uses a different brand of grey paint that is identical to the paint you chose because the specific brand was not available, this would likely be a minor breach of contract. Lastly, if the painter calls you up and clearly tells you that they refuse to perform the work under the contract, this would likely be considered an anticipatory breach.

2) What are the remedies available for breach of contract

Answer: The types of legal remedies available for breach of contract depends largely on the severity of the breach. Generally, damages awarded are categorized into four groups:

Compensatory

Damages: Compensatory

damages are those that compensate the non-breaching party for their losses. This is the most common legal remedy, and a court can order the breaching party to pay the non-breaching party enough money to get what they were promised by the terms of the contract; The term "compensatory damages" involves two types of damages awards: General damages and Specific damages. General damages usually cover losses that are directly related to the subject matter of the contract, such as failing to meet a number of shipments. Specific damages compensate the plaintiff for losses related to the breach, but not resulting directly from the breach, such as damage

to a business' reputation. In most contract lawsuits, the plaintiff must specifically state that they are requesting compensatory damages when they file the claim. This is especially true for special damages, since those involve losses that are not addressed in the contract. Failing to request compensatory damages can make the party ineligible for monetary damages.

Some of the other requirements for proving compensatory damages include:

- **Causation:** The defendant's breach must have caused the plaintiff's economic losses. These may either be directly caused (as in general damages) or indirectly caused (special damages)

- **Foreseeability:** The losses must be foreseeable at the time of contract formation. If the losses were not foreseeable, a compensatory damages award will not be issued

- **Calculable:** The losses must be capable of being calculated into specific monetary amounts. This is usually done using fair market values at the time of contract formation. Losses that cannot be quantified or reduced to dollar amounts will not be considered

- **Unavoidable:** The losses must have been unavoidable. If the non-breaching party could have prevented the losses but failed to do so, it will disqualify them from receiving compensatory damages. This

is known as "the doctrine of avoidable consequences"

In order to prove each of these requirements, it may be necessary for the non-breaching party to provide additional evidence in support of their claims. For example, the victim of the breach may need to provide evidence that the parties engaged in discussion regarding the risks involved with the contract. The victim might then submit transcripts or records of negotiations showing that the parties discussed potential losses. This would help prove the element of "foreseeability" mentioned above.

Compensatory damages may not always be awarded in every case. State statutes

might limit the amount of compensation that a plaintiff can receive in a contract claim. Also, it is common for the parties to waive their rights to compensatory damages in a provision in the contract. If compensatory damages are unavailable for whatever reason, there still may be other remedies available. For example, it may be possible to request for certain equitable remedies (such as an injunction ordering the defendant to perform their contractual duties).

Restitution: If the non-breaching party is able to prove that their loss is due directly to the actions of the breaching party, a judge may order restitution, which could include lost wages, medical

bills, and property repair and/or replacement; if you incurred out of pocket expenses as a result of the other party's breach of contract you may be entitled to restitution. Expenses could have been incurred as a result of preparing for the contract or in anticipation of the contract and then the other party failed to go through with the contract. Expenses can also be incurred when the other party fails to perform the contract.

- For example, a home contractor that takes your money to renovate your home and then fails to perform or damages the renovation is a breach. Any out of pocket expenses incurred to fix the damage or to complete the job may be a form of

restitution.

These are the general requirements to successfully receive a restitution order.

1. In both civil and criminal cases, the defendant must be found liable or guilty before restitution will be ordered. The exception to this requirement is if the defendant and plaintiff or state reach an agreement for the defendant to reimburse the person instead of pursuing the case.

2. Once the defendant is found liable or guilty of the violation then the plaintiff or victim needs to prove the specific value lost; guesses of value lost are not sufficient.

This value must also be proven to a certainty; not just the victim's or plaintiff's belief in the property's or service's value.

a. Sometimes it is required to use an expert witness to demonstrate the loss. For example, if a defendant's conduct caused a small business owner to lose business, then it may be required to have a professional evaluator or economist evaluate the case to determine the actual dollar amount lost to the plaintiff.

3. The restitution requested must reflect out of pocket expenses only. If you could not work as a result of an injury sustained by the defendant's actions you may be compensated for that lost income.

a. However, if your employer allowed you to use sick or vacation leave and you continued to receive pay while you were absent on injury, it is

unlikely you will get restitution for using that sick or vacation leave.

b. Likewise, if you have medical insurance and your insurance covered your medical bills for your injury, then the defendant will not likely be responsible for reimbursing you for the medical bills the insurance company paid on your behalf.

4. You must show sufficient and accurate documentation of your expenses. If your case involves an injury or property damage, it is important to bring all receipts and bills to court to prove your out of pocket expenses.

a. Additionally, you need to include the amount you are seeking in compensation when you file a civil lawsuit and you need to inform the

state prosecutor of such expenses as early as possible. Documentation includes receipts for replacement property or to make repairs.

b. If you are unable to pay for any replacement property or the cost of repair for property damage, get a professional estimate from a reputable service and bring the official estimate to court. If you have medical bills that you cannot pay, you should bring the bills you received from all providers to court.

Punitive Damages: Punitive damages are generally awarded alongside compensatory damages. The purpose of punitive damages is to punish the breaching party when they have engaged in particularly egregious behaviour in order

to breach the contract, such as being intentionally negligent;

Specific

Performance: Specific performance is utilized as a legal remedy for breach of contract, and it requires the breaching party to perform their part of the contract.

Specific performance is not always available.

Quantum Meruit

The Latin phrase "quantum meruit" refers to monetary damages that are awarded to a party for any performance prior to the other party's breach of contract. For example, if painters begin painting a house and complete the first three rooms, but the homeowner decides that she does not want the painters to finish

painting the rest of the house, the court could order the homeowner to pay for the work that was completed.

Remedies in Equity

“Remedies in equity” refer to when the court orders a party to do something, rather than pay monetary damages. This could take many different form, from cancelling the contract and releasing the parties from their responsibilities under the agreement, to specific performance

Contract rescission cancels the contract, which allows the parties to form a new contract that better suits the needs and desires of both parties.

With **contract reformation**, the contract is rewritten (either in part or in whole) so that the intentions of both

parties to the agreement are better expressed and represented.

Of course, these equitable remedies do have their limits. Specific performance, for example, is not always available. If it becomes impossible for the contract to be completed, the contract can't order a party to do the impossible.

If there has been a breach of contract, you should first thoroughly review the contract to see if any instructions regarding a breach were built into the contract. Mandatory arbitration or a liquidated damages clause are two examples of such instructions. Second, you should let the other party know that there has been a breach. If you

committed the breach, it is better to own up to it before it is found out, which could lead to more serious consequences. If the other party committed the breach, it is best to give them an opportunity to rectify the situation before taking legal action. It is highly important that you maintain any documentation related to the contract. Carefully record every incident that occurs as a result of the contract. Doing so will make it easier to argue your side should the breach result in legal action.

References

Nigerian Law of Contract by Sagay

Lawpavilionpersonal.com

Lawnigeria.com

Nigerialii.org

