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ASSIGNMENT ANSWERS

a. 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 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. These classifications only describe *how* a contract can be breached, not how serious the breach is. A judge will make a decision on whether a contract was breached based on the claims of both parties. Therefore, the forms of breaches of contract are: Defective Performance, Delayed Performance, Complete non-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. [[1]](#footnote-2) Only after this can a judge make a ruling on the existence and classifications of a breach. Additionally, for the contract to be breached and the judge to deem it worth of a breach, 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 fling the lawsuit. *[[2]](#footnote-3)*

In a deposit account, what constitutes a breach is the failure of a bank to pay money due to the deposit account on demand by the operator of the account. Thus in *Nigerian Merchant Bank Plc. V. Aiyedun investment Ltd. (1998) 2 NWLR (pt. 537) 221 CA[[3]](#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 (Nig.) (o1998) 2 NWLR (pt. 536) 63[[4]](#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 ot its agreement by withholding on to the goods. The appellant has to option than to hold on to the goods and this cannot be a breach of contract.

The general law has three categories of breaches of contract. These are measures of the seriousness of the breach. In the absence of a contractual or statutory provision any breach of contract is categorized as a:

* breach of warranty;
* breach of condition; or
* breach of an innominate term, otherwise known as an *intermediate* term

There are four main types of contract breaches:

1. **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 fulfill any remaining contractual obligations. A minor breach is sometimes referred to as an impartial breach;
2. **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;
3. **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
4. **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.

REMEDIES FOR BREACH OF CONTRACT

When a contract is broken, the injured party may have several courses of action open to him, namely:

1. To refuse further performance of the contract, i.e., rescission

2. To bring an action for damages

3. To sue on quantum meruit

4. To sue for specific performance

5. To sue for an injunction.

RESCISSION The right of rescission is an equitable and exists in a number of circumstances. By way of illustration, we mention three of those circumstances: First, the right is available to a party injured by breach of a fundamental term in a contract, e.g. a condition. Secondly, it is available to a party injured by the misrepresentation of the other party. Thirdly, it is available where a contract is vitiated by mistake. The effect of rescission in the case of misrepresentation and mistake is to terminate the contract ab initio as if it never existed. As stated by Lord Atkinson, in Abram Steamship Co. v. Westville Steamship Co. (1923) A.C 773, at p.781.[[5]](#footnote-6) 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 into. On the other hand, rescission in the case of breach of a condition only terminates the contractor from the moment of rescission. Rights and obligations that have already matured are therefore not affected. If follows, therefore, that whereas the right of rescission for misrepresentation and mistake is lost if restitution in integrum (full restoration) is no longer possible between the parties, no question of restoration arises in the case of rescission on grounds of breach. However, if in the latter case, the rescinding party is able to make restoration, the court will, in the interest of justice, require him to do so. Thus, where a buyer of goods rightfully rejects the goods for breach of a condition as to quality, the ownership of goods vests ( or revests) in the seller. Furthermore, where the seller of goods rescinds the contract because of the buyer’s default, he must, without prejudice to his right to damages, return any part of the purchase price that has been paid before the rescission of the contract.

DAMAGES : Whenever a party to a contract is in breach of it, the other party has a right of action for damages. Therefore, an action for damages is the one remedy which is available in every breach of contract. The object of awarding damages for breach of contract is to put the injured party, so far as money can do it, in the same position as if the contract had been performed. In other words, the aim of damages is to compensate the innocent party to the contract and place him in the position that he would have been had contract been performed. Action for damages is a common law remedy. In the award or assessment of damages, the court may ensure that the loss was occasioned by the breach and that it was not too remote. There are 2 general categories of damages that may be awarded is a breach of contract claim is proved. They are: Compensatory Damages: Compensatory damages (also called “actual 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: 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.  
B. 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.  
Example: In the scenario above, if Company A knew that Company B needed the new furniture on a particular day because its old furniture was going to be carted away the night before, the damages for breach of contract could include all of the damages awarded in the scenario above, plus:  
• payment for Company B’s expense in renting furniture until the right furniture arrived.

2. Punitive Damages. Punitive damages (also called “exemplary 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.

SPECIFIC PERFORMANCE AND INJUNCTION: Specific performance is a decree, which is ordered by the court, which directs a contracting party to perform the contract which he has promised to do. It is an equitable relief and alternative remedy to damages in appropriate cases. It is an example of equity acts in personam which is granted at the discretion of the court. It is not granted as of right, but granted judiciously by the court. The court considers in all the cases, whether specific performance will create hardship for the party. Thus in *Taylor v. H. B. Russet (1947) 12 WACA 1799[[6]](#footnote-7),* the court refused to grant specific performance for a contract for the sale of land because at the time the land had been sold to someone else, who had in turn sold it to another person and the buyers were not aware of their earlier agreement. In refusing the application, the court observed some factors , That the title to the property had passed and it would be impossible for him to carry out the order b. To grant specific performance would result in fostering two or more further actions. c. The doctrine of specific, performance is an equitable relief. It will not be granted where it will cause hardship to third parties unless it is shown that the third parties were aware of the evidence of the contract. d. That the person seeking to enforce a contract must show that all conditions precedent have been fulfilled and the party is ready and willing to perform all the terms which ought to be performed.

In the Supreme Court decision of *Incar (Nig.) Plc. V. Bolex Ent (Nig.) (2001) 12 NWLR (pt.728) 646[[7]](#footnote-8)* on the nature of contract enforceable by specific performance, the court restated that only a valid contract, which has given right to a legal or equitable interest is capable of being enforced by an order of specific performance.

INJUNCTION: An injunction is an equitable remedy and applicable under discretionary ground. It is not subject to the same restrictions that apply to a claim for specific performance. An injunction is appropriate where the contract is negative in nature or where the contract contains a negative stipulation. An injunction is an order by which one party to an agreement is required to do or refrain from doing a particular thing. An injunction is restrictive/preventive or mandatory/compulsive. However, such an order is subject to a balance of convenience Test and may be refused if the prejudice suffered heavily outweighs the advantage that will be demised from such restoration. *Kennaway v. Thompson (1981) QB 88[[8]](#footnote-9).* An injunction will not be granted where it will compel or indirectly the defendant to do an act which he could not have been ordered to do by specific performance. An injunction may put so much economic pressure on the employee as to force him to perform the positive part of the contract. Thus in *Warner Bros Pictures Inc. v. Nelson(1937) 1 KB 209[[9]](#footnote-10)*, a film actress signed undertaking with the plaintiffs, her employees, not to act for any other organizations. She was restrained by an injunction from breaking her undertaking. Similarly, *in African Songs Ltd. v. Sunday Adeniyi Suit No: LD/1300/174 delivered on Jan. 14, 1974[[10]](#footnote-11)* .

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