NAME: Iyapo Demilade Solomon

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COURSE TITLE: LAW OF CONTRACT II

 QUESTION

 Discuss the following:

1. Breach of contract
2. What are the remedies available for breach of contract?

 BREACH OF CONTRACT

 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 perform at all. Case of *Poussard v Spiers (1875) LR 1 QBD 410* ,

 The Claimant (Poussard) was an opera singer. She was contracted by the defendant to perform in that capacity for a duration of three months. This was to subject to certain conditions, such as a salary of £11 per week, a start of “on or about” the 14th of November and an option to re-engage the Claimant’s services for another three months for a salary not exceeding 14 pounds per week.

Issues[[1]](#footnote-1)

The issue in this case was whether failing to turn up to the first day of performance amounted to a breach of a condition of the contract.

Held

It was held that failure to turn up did amount to a breach of a condition of the contract as this went to its very root and that Spiers were therefore free to rescind the contract

 *Case of Adams v Lindsell (1818) 1 B & Ald 681*

Adams v Lindsell therefore has three consequences in English law. Firstly, a posted acceptance prevails over a previously posted withdrawal of the offer which had not yet reached the offeree when the acceptance was posted. Secondly, acceptance takes effect on posting even where it never reaches the offeror or only does so after delay. Finally, the contract is taken to have been made at the time of posting so as to take priority over another contract made after the original acceptance was posted.

**Classifications of breaches 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 is no “internal rating system” within each of these categories (such as “a serious breach of warranty”. It's a breach of a warranty. It's not a minor breach of a condition. It's a breach of a condition). Any breach of contract is one or the other of a breach of warranty, condition or innominate term. In terms of priority of classification of these terms, a term of a contract is an innominate term unless it is clear that it is intended to be a condition or a warranty. Under breach of condition there are cases like

 Case of *Hyde v Wrench (1840) 49 ER 132*

Facts:The defendant, Mr Wrench, offered to sell the farm he owned to the complainant, Mr Hyde. He offered to sell the property for £1,200, but this was declined by Mr Hyde. The defendant decided to write to the complainant with another offer; this time to sell the farm to him for £1,000. He made it clear that this would be his final offer regarding the property. In response, Mr Hyde offered £950 for the farm in his letter. This was refused by Mr Wrench and he confirmed this with the[[2]](#footnote-2) complainant. Mr Hyde then agreed to buy the farm for £1,000, which was the sum that had previously been offered. However, Mr Wrench refused to sell his farm.

Issues

The complainant brought an action for specific performance, claiming that as Mr Wrench refused to sell the farm, this was a breach of contract. The issue in this case was whether there was a valid contract between the parties and if a counter offer was made in discussions, whether the original offer would still remain open.

Held

The court dismissed the claims and held that there was no binding contract for the farm between Mr Hyde and Mr Wrench. It was stated that when a counter offer is made, this supersedes and destroys the original offer. This original offer is no longer available or on the table. In this case, when Mr Hyde offered £950, he cancelled the £1,000 offer and could not back track and accept.

 Case of *Hong Kong Fir Shipping Ltd v Kisen Kaisha Ltd (1962) EWCA CiV 7* the Court held that in order to construe whether a contractual clause constitutes a condition precedent, the breach of which permits repudiation, or an innominate term, the breach of which permits damages, depends on a holistic assessment of the contract’s surrounding circumstances in determining the intention of the parties in their treatment of the clause. Secondly, the Court held that an innocent party cannot treat the contract as repudiated due to delays, however significant, if the breach falls short of a frustration of the contract rendering performance impossible.

 **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 fulfil 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. 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. *Photo Production Ltd v Securicor Transport Ltd [1980] AC 827* The House of Lords held that the doctrine of fundamental breach was not relevant here, and that the case was a matter of construction of the contract. The exclusion clause did on the facts, cover the damage in question and therefore Securicor were not liable for the damage.

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 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**.

 **Breach of Contract Elements**

 Existence of a Valid Contract

To claim breach of contract, there must be an actual, valid contract in place. To prove the existence of a valid contract, however, three elements must be established:

• Offer – There must have been the intention to enter into an agreement or contract and exchange of goods and services.

• Acceptance – An agreement to the essential terms for the exchange of goods or services for something of value must be entered into. *Felthouse* *v* *Bindley* – (*1862)* It was held that there was no contract for the horse between the complainant and his nephew. There had not been an acceptance of the offer; silence did not amount to acceptance and an obligation cannot be imposed by another. Any acceptance of an offer must be communicated clearly. Although the nephew had intended to sell the horse to the complainant and showed this interest, there was no contract of sale. Thus, the nephew’s failure to respond to the complainant did not amount to an acceptance of his offer.

• Consideration – in a valid contract, each party has something to gain. A contract must be entered into before the exchange takes place, to show there was an agreement, or “meeting of the minds.

 **What can be Done about a Breach of Contract?**

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.[[3]](#footnote-3)

Case of *Co-operative Insurance Society Ltd v Argyll Stores (Holdings) Ltd [1997] 2 WLR 898.* Also In the Case of ***Macy’s v. Martha Stewart Living[[4]](#footnote-4)*** also  ***Case of Cutter v Powell [1795]***

  ***Case of Ritchie v Atkinson (1808)*** it was held that The contract could be divided into separate parts as the parties had agreed a price per ton. The claimant was thus entitled to payment for the amount carried although the defendant was entitled to damages for non-performance in relation to the amount not carried. 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.

 As conclusion, when both of the parties had signed a contract, it is encouraging that both of the parties not to breach the contract. This is because when breaching the contract, it not only brings in monetary problem, but also will losing of confidence when signing a contract. When establishing a contract, it is encouraging to set up the contract in a writing document. Besides that, after him or her setting up the contract, it is also necessary that both of the parties to read through the contract carefully. After had sign the contract, it is also encouraging to keep a copies of the contract document.

 QUESTION 1B.

 REMEDIES AVAILABLE FOR A BREACH OF CONTRACT

There are a variety of remedies available for a contract breach. The appropriate compensation or remedy depends upon the circumstances. The remedies available for a contract breach include:

* Damages: According to **Section 74, Contract Act** had stated that when one of the parties has encountered losses or injury due to the breach of contract, damages are granted to him or her as compensation. Besides that, penalty is often applied to the contract as if the term and condition of the contract are not reached on the date that has been set 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.
* Specific performance. Under the Specific Relief Act, the specific performance might be applied to the contract and the compensation of monetary is inadequate. In some cases, the appropriate remedy for a breach of contract is to correct the breach by forcing the breaching party to complete the terms of the agreement. Specific performance is an appropriate remedy in situations where monetary damages could not possibly make the non-breaching party whole for the losses. For example, if there was a contract created for a buyer to purchase a very rare piece of art, the buyer could not simply find the art elsewhere.
* Injunction: In this option, injunction can be said as a remedy that is equitable that the court requires the party to do something or the other way, to stop him or her from doing something. There are three types of injunction which is interlocutory injunction, mandatory injunction and also prohibitory injunction. For prohibitory injunction, it can be defining as to stop something or some action from being done. When the two parties had sign a contract, and one of the parties decided to sign the same contract with others, the other parties can request the court to apply the prohibitory injunction to the parties [[5]](#footnote-5)that want to sign the other contract.
1. A contract is a binding agreement between parties so when there is no agreement a breach of contract can occur. Like in the Case of  *Poussard v Spiers ( 1875) LR 1 QBD 410*

*Breach of contract is classified into three, they are: breach of warranty, breach of condition, breach of an innominate term.* [↑](#footnote-ref-1)
2. *Case of Hong Kong Fir Shipping Ltd v Kisen Kaisha Ltd (1962) EWCA Civ 7*

*Case of Hyde v Wrench (1840)*  [↑](#footnote-ref-2)
3. There are types of breach of contract: minor breach, material breach, fundamental breach, anticipatory breach.

Before there’s a breach of contract there must be an already existing contract. For it to be breached, one of this elements must have been breached and they are, offer, acceptance and consideration. [↑](#footnote-ref-3)
4. Case of Macy’s v. Martha Stewart Living

*Case of Cutter v Powell [1795]*

 *Case of Ritchie v Atkinson (1808)*

*Case of Cooperative Insurance Society Ltd v Argyll Stores(Holdings) ltd ( 1997) 2 WLR 898*  [↑](#footnote-ref-4)
5. There are remedies available for a breach of contract and they are, damages, specific performance, injunction. Others may include recession.

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