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**MATRIC NO: 18/LAW01/094**

**COURSE CODE: LPB 202**

**COURSE TITLE: LAW OF CONTRACT**

**BREACH OF CONTRACT**

Breach of contract is a legal cause of action and a type of civil wrong, in which a binding agreement or bargained-for exchange is not honored by one or more of the parties to the contract by non-performance or interference with the other party's performance. Breach occurs when a party to a contract fails to fulfill its obligation(s), whether partially or wholly, as described in the contract, or communicates an intent to fail the obligation or otherwise appears not to be able to perform its obligation under the contract. Where there is breach of contract, the resulting damages will have to be paid by the party breaching the contract to the aggrieved party. 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. This also refers to failing to perform any term of a contract, written or oral, without a legitimate legal excuse. For a contract to be determined as breached, a judge must first examine; the existence of a contract, the requirements of the contract, and if any modifications were made to the contract. Once this is deemed evident of breach it then falls on the plaintiff to 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. There are four major types of breach recognized by law today. They are;

1. **Minor Breach:** This is when the non-breaching party of the contract is not entitled to an order for performance of its obligations but only to collect the damages for which they are owed.
2. **Material Breach:** This is when there is a failure to perform a part of a contract that permits the other party of the contract to ask for damages because of the breach that has occurred. A breach of contract will likely constitute a material breach if the term of the contract that has been breached is a condition of the contract. In order to determine whether failure of performance is material, the following circumstance are required to be taken into account;

* The extent to which the aggrieved party has been deprived of what he expected
* The extent to which the aggrieved party can adequately be compensated for the benefit he expected to receive
* The extent to which the party failing to perform or to offer to perform will suffer forfeiture
* The extent to which the party failing to perform or to offer to perform comports with the standards of good faith and fair dealing

1. **Fundamental Breach:** Thisis when the person that has had the contract breached against can sue the breaching party for damages incurred as well as terminate the contract if they wish to do so.
2. **Anticipatory Breach:** This is an unequivocal indication that the party will not perform when performance falls due, or a situation in which future non-performance is inevitable. It also refers to when the non-breaching party realizes that the other party of the contract will fail to perform his or her part of the contract in the future and can terminate the contract and sue for damages before the breach happens. Anticipatory breach may also be referred to as anticipatory repudiation.

**REMEDIES TO BREACH OF CONTRACT**

There are a variety of remedies available for a contract breach. The appropriate compensation or remedy depends upon the circumstances. The non-breaching party will need to demonstrate that the other party failed to perform in order to be entitled to any type of remedy. There are several remedies for breach of contract, such as award of damages, specific performance, rescission, and restitution. In courts of limited jurisdiction, the main remedy is an award of damages. Damages as defined by the Supreme Court *in Beta Glass PLC v Epaco Holdings Ltd* are “pecuniary compensation obtainable by a successful party in an action for wrong which is either of tort or 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:** Specific performance is a remedy contrived in England by courts of Equity in a system of law administered by the court of chancery as against that administered by common law court. It is an equitable remedy in which a court order requires one party to perform a specific act in order to complete performance of the contract.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. The only remedy that would help the buyer in this circumstance is for the court to require the sale to go through so the buyer got the unique one-of-a-kind painting that he contracted for. The court of Appeal in *Dr. I.O.C. Abara v. Nwaeze Igbo*, gave main facts on factors to be considered by the court in granting or refusing a claim for specific performance. In some unique and defined circumstances, the court of equity will invoke fairness order specific performance such as seen in the case of *Paye v Gaji (1966) 5 NWLR (pt 450) 589 at 605 .*
* **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.
* **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.
* **Cancellation and Restitution**: A non-breaching party may cancel the contract and decide to sue for restitution if the non-breaching party has given a benefit to the breaching party."Restitution" as a contract remedy means that the non-breaching party is put back in the position it was in prior to the breach, while "cancellation" of the contract voids the contract and relieves all parties of any obligation under the agreement

**REFERENCES**

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