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1. **BREACH OF CONTRACT**

A breach of contract starts when a party fails to perform his obligation, either totally or by refusing to perform at all or partially. Discharge of contract by breach can be repudiation either express or implied can may be fundamental breach. However, in certain fundamental breach discharge can follow automatically, for instance, where a carrier in breach of its obligation loses or destroyed the goods entrusted to him, in such a case, the owner of the goods have no real alternative but to treat the breach as discharge the contract and sue for breach but where this not so the innocent party has a choice.

A breach of contract occurs where one party fails to fulfil or does not intend to fulfil his obligations under the contract. A breach of contract entitles the innocent party to sue for damages against the guilty party the breach occurs as a result of repudiation of contract obligation or a fundamental breach, the innocent party, may, in addition from further liability to perform his own part of the obligation. The innocent party can make a choice as he is not bound to treat the contract as discharge where the injured party repudiates or in breach of fundamental terms. He may choose to sue for damages instead and keep the contract alive in certain circumstances. The methods of breach can have a decisive effect on the right and liabilities of the innocent party. It is important to consider, where the contract is repudiated, or there is fundamental breach as some breaches entitle the innocent party to sue for damages, and more serious breaches entitles the innocent party, in addition to damages, to treat himself as discharged from the contract. Serious breaches are generally described as “repudiatory breaches” where the innocent party can make an election either to repudiate or affirm the contract. 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*[[1]](#footnote-1)., 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.)*[[2]](#footnote-2) 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 of 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. Repudiation otherwise known as anticipatory breach occurs before an actual breach of contract.

**REPUDIATION**

Repudiation occurs where there is a contract between two or more parties to be

performed at a future date and one party declares an intention not to perform his own

side. Repudiation is sometimes described as ‘anticipatory breach’ or renunciation,

whatever ever language repudiation is described, a guilty party indicates by words or

conduct that he is no longer interested in performing his own side of the contract, whenever the time for performance arrives. In anticipation of the breach, Coker J. once

stated,

“It is open to a party to a contract to sue the other party for breach of contract,

if it is manifested by his conduct and his acts that the defaulting party had made

himself unable to fulfill his part of the contract at the agreed time” Solomon

Nassar v. Oladipo Moses Suit: No LD/222/58 High Court of Lagos delivered

Coker Jon May 20, 1960.”

In fact and in truth, repudiation is anticipatory, the innocent party prevents further

damages by taking an action for breach of contract. As Lord Esther explained the

meaning of anticipatory breach in Johnstone v. Milling[[3]](#footnote-3). Where

one party assumes to renounce the contract, that is by anticipation refuses to perform,

declares his intention then and there to rescind the contract, the innocent party, in most

cases, adopts the renunciation, which is another word as repudiation, and bring the

contract to an end. Fr other purposes involving a wrongful renunciation, he may wait for

the arrival of the time when the course of action would arise. He must therefore elect the

course recognized by law which he will pursue in anticipatory breach. The court,

however, has formulated principles of law applicable when it involves anticipatory

breach. Thus, in Agufor v. Arab Ltd Suit No WN/205/69 delivered September 28, 1969

High Court of Western State Ibadan (unreported), Somolu J clearly stated the principle of

law as follows:

“It is an indisputable pointof law that the breach of agreement entitles, the

other party who is damnified by it to bring an action on it. Such a breach may

take place before the time fixed for performance or of completing the

performance of the contract has arrived. Where a promisor by his own act or

default disables himself from performing his promise, the other party is entitled

to treat the contract as at an end and to sue him for damages for the breach

without waiting for the time fixed for performance and without further

performing his own part of the contract.”

In the recent court decision, the court, stated the effect of an unaccepted repudiation of

contract. Thus, in NEPA v. Isieveore[[4]](#footnote-4) ,the court stated an

unacceptable repudiation of a contract is of no value to anybody, it confers no legal right

of any kind. This is because repudiation by one party standing alone does terminate the

contract. It takes two to end it by repudiation of the one side and acceptance of the

repudiation on the other. Further the court stated, where there is a unilateral repudiation

of a contract, this is treated as an offer by the guilty party to the innocent party of the

termination of the contract. It is the acceptance to the offer by the innocent party which

acts as a discharge of contract. It is open to innocent party to sue for damages since the

acceptance of the repudiation, the contract comes to an end. There the innocent party

refuses to accept the repudiation, the contract remains in existence. This proposition is

founded on the elementary principles of the formulation of contract obligation. Olaniyan

v. University of Lagos[[5]](#footnote-5).

Repudiation may be expressed or implied or it may be words or by conduct. In the

Nigerian Supplies Manufacturing Broadcasting Corporation[[6]](#footnote-6), a

company leased certain property to the defendant for a term of 5 years at rent of N26, 000

with an option to renew for a further of 5years which was to be exercised by notice in

writing two years before the determination the original term. The Director-General of the Corporation wrote that the board had refused ratify the

exercise of the option to renew and purported to withdraw to exercise of the option. The

plaintiff issued write claiming a declaration that the option to renew had been validly

exercised. On an appeal, the Supreme Court head that the action of the defendants by

their letter was an attempted repudiation or renunciation of the contract which could be

treated as an anticipation breach of contract or on the other hand, the plaintiff could have

waited till the date of performance was passed and then sued.

1. **REMEDIES FOR BREACH OF CONTRACT**

The five types of remedies for breach of contract are:

1. Money damages

2. Restitution

3. Rescission

4. Reformation

1. Specific Performance

**Money Damages**

Money damages refer to the monetary payments which a breaching party has to make for violating the terms of contract. The type of breach determines the extent of the damages. If it is a total breach, then the plaintiff can recover the sum or value which the plaintiff would have received had the contract been fully performed by the defendant and this includes lost profits.

However, if it is a partial breach, the plaintiff can recover a sum which equals the amount necessary to hire someone else to complete that part of the contract. However, in some cases of partial breach, the cost of completion can be quite expensive and the portion of the contract which was unperformed may be small.

In these cases, a court may only award damages which are equal to the difference between the value of the contract as performed and the full value of the contract which was originally agreed to by the parties.

There are different types of money damages such as:

1.Compensatory Damages: This is meant to cover the loss incurred by the non-breaching party because of the breach of contract. The breaching party will have to pay an amount which replaces the loss incurred by the other party

2.Punitive Damages: This is rarely awarded for breach of contract cases. Unlike compensatory damages which are meant to cover the actual loss, punitive damages are awarded to punish the wrongdoer for egregious behavior and to deter others from committing similar acts. Punitive damages are given in addition to compensatory damages.

Keep in mind that punitive damages are requested and it is up to the court to decide if they wish to award them and the amount.

**The two types of compensatory damages are general and special damages**. General damages cover the loss which was directly connected to the breach of contract and they are the most common type of damages which are awarded for breaches of contracts.

In contrast, special damages (also referred to as “consequential damages”) cover any loss which was incurred because of special circumstances or conditions which the breaching party knew about when the contract was made.

It is important to note that the non-breaching party has a duty to mitigate. This means that it has to do what is possible and reasonable to minimize or avoid the losses which were incurred because of the breach of contract.

Damages are not awarded for any loss which could have been avoided or substantially reduced if the non-breaching party took reasonable efforts to mitigate. In these cases, the damages will be reduced by the amount which could have been reasonably avoided.

**What is Restitution?**

Restitution is a remedy which is used to restore the injured party to the position occupied before the contract. Under the principle of restitution, the defendant is supposed to give back any money or property received from the plaintiff under the contract and restitution is not used to compensate the plaintiff for lost profits or other earnings because of the breach of contract.

Restitution is typically used in cases where the contract is voided by the court because the defendant lacked the competence or capacity necessary to enter into a contract.

**What is Rescission and Reformation?**

Sometimes, the contractual duties of both parties may be terminated by the court and when this happens, it is called rescission. This remedy is used in certain cases such as when the parties enter into a contract because of mistake, fraud, undue influence or duress and the only way to do justice is to terminate the contract.

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.

**What is Specific Performance?**

Under specific performance, the breaching party has to perform their duties as specified by the contract and it is used when money damages are not adequate to compensate the plaintiff. Specific performance is used in cases which involve giving a piece of land or a valuable item to the plaintiff. While the legal system frowns upon forcing individuals to do something against their will, if a person signed a contract selling the item but had the intent to defraud the other party, then the court can force them to sell the item. So long as the other party was willing to pay the contracted amount and was ready to do so.

1. (1998) 2 NWLR (pt. 537) 221 CA [↑](#footnote-ref-1)
2. (1998) 2 NWLR (pt. 536) 63 [↑](#footnote-ref-2)
3. (186) 16 QBD 460 at 467 [↑](#footnote-ref-3)
4. (1997) 7 NWLR (pt. 511) 135 [↑](#footnote-ref-4)
5. (1985) 2 NWLR (pt. 9) 599 [↑](#footnote-ref-5)
6. (1967) 1 All NLR 35 [↑](#footnote-ref-6)