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Answers

a. **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 term or service. The sole purpose of a contract being legally binding is so each party will have a legal recourse in the event of a breach.

**What is a Breach of Contract?**

A breach of Contract is an act of breaking the terms set out in a contract. It is an illegal cause of action and a civil wrong in which a binding agreement or bargained for exchange is not honored by one or more parties to a contract by non- performance or interference with the other parties performance. A breach which is serious enough to give the innocent party the option of treating the contract as discharged can occur in one of the two ways:

a. **Anticipatory breach:** this is where one party decides to show by express words or by implications from his conduct at some time before performance is due that he does not want to observe his obligations under the contract. This occurs after the agreement but before the date set out to carry out such part of the contract. Thus breach is known as repudiation or renunciation. One is to ascertain in anticipatory breach whether the innocent party accepts the repudiation or not. The innocent party may accept the breach and immediately commence proceedings for breach of contract and also within a reasonable time indicates that he accepts the repudiation which then opens the contract for the benefit and risk of both parties. In the case of ***Avery v Bowden***, if Avery had treated the information by Bowden as a repudiation if the contract, he would have been entitled to a remedy for breach of contract, but his decision to neglect the anticipatory breach provided Bowden with a good defense for his decision to not carry out his obligations to the contract. Also in ***Panchaud Frere’s*** case, it was held that a victim to an anticipatory breach could still take the contract to be alive till the date when performance is due and then take an action against the breaching party.

A party decision to rescind his part of a contract does not leave the contract repudiated. The innocent party may also wish to put to contract to an end and request for damages.

Anticipatory breach may take one of these two forms:

Express repudiation and implied repudiation

**Express repudiation:** this occurs where a party expressly informs the other party of his intention to not perform his own obligation to the contract. This can be done expressly in writing or words. Express repudiation took place in the case of ***Hochester v De la Tour,*** here the defendant told the plaintiff on May 11 in writing that he was no longer going to perform his obligations to the contract under which he agreed to engage the plaintiff as his courier during a foreign tour on June 1. The plaintiff took action against the defendant for breach of contract before the exact date for performance of his obligation. It was held that he had the right to sue for anticipatory breach even before the supposed date for performance of obligation.

**Implied repudiation**: this occurs when a party to a contract is reasonably able to infer that a party no longer intends to perform his own obligations to the contract. In the case of ***Frost v Knight,*** Mr Knight promised miss Frost that when his father died, he would marry her. While Mr knight’s father was still alive, he broke off the engagement. Miss Frost sued him. It was held that Miss Frost was entitled to sue for breach taking Mr Knight’s conduct as one who was no longer interested in performing his obligations to the contract.

B. **Actual fundamental breach:** when a party fails to perform his obligations to a contract on the fixed date, it is referred to as actual breach. For s breach to be termed a fundamental breach, it has to go to the roots of the contract.

Fundamental breach: a party may in fact breach a condition or the contract in such a way that it amounts to substantial failure of the consideration.

When a breach of contract occurs or is alleged, one or both of the parties may wish to have the contract enforced on its terms or try to recover for any financial harm caused by the alleged breach.

If one party fails to perform his obligations while the other party fulfills their obligation, the performing party is entitled to legal remedies for breach of contract. The breach of a fundamental term of a contract entitled the injured party to repudiate the contract and sue for damages or continue the contract and claim damages. It should be noted that fundamental breach of contract does not automatically repudiate the contract. As established by the Supreme Court in ***Udom v E. Michette and Sons Ltd***, it stared that:

An innocent party is not ordinarily bound to repudiate the contract as discharged. He may at his option, elect to treat the contract as a continuing contract or so to say that the breach by the other party has discharged his liability. If he chooses the former course, he can still sue for damages for any loss sustained as a result of the breach. But the contract, with all its terms and conditions remains alive for the benefit of the wrongdoer as well as himself. Each party is entitled to hold the other to his bargain and to continue to tender due performance on his part.

Similarly in ***White and Cartel v McGregor*** the defendant a garage owner contracted with a firm supplying lamp post litter- bins to display an advertisement for his garage on the bins. When the time for the renewal of the contract arrived, the sales manager renewed it for three years as contracted. The defendant attempted to cancel the contract the next day but the plaintiff refused. The plaintiff displayed the advert and sued for the advertising fee.

The court held that the plaintiff was entitled to ignore the defendant’s breach of contract, elect to treat the contract as subsisting and then insist on payment.

b. There are five types of remedies for breach of contract. These five legal remedies includes:

1. Money damages

2. Restitution

3. Rescission

4. Reformation; and

5. Specific performance

1. **Money damages**

This is a type of remedy in which monetary payments are being made to the innocent party to a contract by the breaching party. The type of remedy to be awarded depends on the type of breach of contract. If it a fundamental breach, the plaintiff can recover the total sum of money he would have gotten initially if the contract was not breached but fully performed by the defendant. If it’s a partial breach, the plaintiff may recover the sum of money which equals the amount necessary to complete that part of the contract. In some cases of partial breach, the cost of completion can be quite expensive and the portion of contract which was not performed may be small. There are different types of money damages which includes:

a. **Compensatory damages:** this is meant to cover the loss incurred by the non-breaching party because of the breach of the contract. The breaching party will have to pay the amount which replaces the loss incurred by the other party. There are two types of compensatory dance which includes:

ai. General damages: this covers the loss which are directly connected to the breach of contract.

aii. Special damages: this covers any loss which was incurred because of special circumstances or conditions which the breaching party knew about when the contract was made.

b. **Punitive damages:** this type of money damage is rare. It is awarded to punish a wrongdoer or the breaching party for such behavior and to also prevent other people from breaching contracts too. This is normally given in addition to compensatory damages. Punitive damages are being requested by innocent parties and it is at the discretion of the court to perform such request.

2. **Restitution**

This form of remedy restores the plaintiff ( injured party) back to his position before the contract was made. The defendant is to give back any money or property received from the plaintiff under the contract. It can’t be used to compensate the plaintiff of his loss.

It is normally used when the contract is being declared ab initio by the court due to the defendant’s incompetency or incapacity to enter into such contract. It is calculated on the gains of the defendant, rather than the plaintiffs losses. Restitution is commonly awarded for two main purposes:

I. To make the victim whole and restore them to their initial financial status before the offense occurred.

II. To prevent the unjust enrichment of the defendant

Restitution applies in situations where one person has benefited from the other persons loss. For example, in a contract law suit, non breaching party may canceled the contract and bring suit for restitution of the non breaching party has given a benefit to the breaching party to their detriment as a result of attempting to fulfill the obligations of the contract. In criminal cases, one of the penalties that may be imposed is requiring of the defendant to reimburse the value of stolen goods to the victim or pay the victim for the harm caused, such as giving money to the victim to cover hospital bills in the event of criminal battery. This is known as Criminal Restitution.

3. **Rescission**

When the contractual duties of both parties are terminated by the court, it is referred to as rescission. This occurs when parties enter into a contract due to fraud, mistakes, duress or undue influence.

Rescission is a remedy made available when the underlying basis for making a contract is fundamentally tainted.  Some conduct on behalf of a contracting party undermines the very reason that the other party made the contract in the first place. The contract can be rescinded, at the option of the affected party.

For legal purposes, it’s treated as though it was never made. It never took place.

The outcome of rescission is:

I. whatever was done by the parties by making the contract is reversed.

ii. the parties are put back in the position they would have been in, as if the the contract never even been made. That's the status quo ante.

iii. it's treated as "non-existing".

The transaction established by the contract is brought to an end with retrospective effect.

When the right to rescind is available and properly exercised, it is said that the contract has been "rescinded".

There cases where rescission was available even where contracts have been fully performed. In the case of ***Erlanger v New Sombrero Phosphate Co***, **The House of Lords unanimously held that promoters of a company stand in a fiduciary relationship to investors, meaning they have a duty of disclosure. Further, they held, by majority ([Lord Cairns LC](/wiki/Lord_Cairns_LC" \o "Lord Cairns LC) dissenting), that the contract could be rescinded, and that rescission was not barred by laches.**

4. **Reformation**

This is used when the court changes the contract to correct any inequities. So instead of setting aside a contract, the contract may be rewritten to do justice.

**When certain contract issues occur, the parties may ask the court to permit them to rewrite or correct a particular portion of the contract so that it better expresses the original intentions and fits the needs of the parties. For example, if the parties were mistaken as to what one of the terms in the contract meant, such as the delivery date or a definition of a certain word in the contract, then the parties may be able to “reform” the contract in order to remedy the issue.**

**Essentially, reformation is used when the party is trying to make a portion of the contents and intentions of the original contract clearer. Reformation cannot be used to mislead or alter the conditions of the contract in such a way that it hurts or deceives the other party.**

5. **Specific performance**

The breaching party performs certain duties as obliged initially in the contract. This form of remedy ensues when money damages are not enough to compensate the plaintiff on his loss. While the legal system frowns at forcing someone to do something against his will, if a person entered into a contract with the intent of defrauding the other party, then the court can force them to carry out their own obligation in the contract.

Reference

Restitution Damages.<https://www.legalmatch.com>accessed 5 April 2020

Rescission: contract law remedy (bars, misrepresentation, mistake and fraud)

<https://hallellis.co.uk>

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