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**COURSE; LAW OF CONTRACT II**

A breach of contract is committed when a party without lawful excuses fails or refuses to perform what is due from him under the contract or performs defectively or incapacitates himself from performing. (Trietel 2007 para 17-049)

Discuss the following;

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

ANSWERS

BREACH OF CONTRACT.

A contract is a written or spoken agreement, especially one concerning employment, sales or tenancy, that is intended to be enforceable by law.[[1]](#footnote-0) Contract in the simplest definition is a promise enforceable by law[[2]](#footnote-1). a contract can also be defined as a legal agreement involving two parties and such agreement can be upheld by the court and non-compliance with the terms of this contract is referred to as breach of contract.

Breach of contract can be defined as 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 parties to the contract by non-performance or interference with the other party’s performance. A breach of contract will occur if any of the terms of the contract are not met[[3]](#footnote-2). Minor breach, Material breach, Fundamental breach,Anticipatory breach are all types of breach of contract;

Minor breach; this occurs when a party fails to perform a part of the contract but does not violate the whole contract[[4]](#footnote-3)

Material breach occurs when the purpose of the contract is rendered completely defeated by the breach[[5]](#footnote-4) and when such breach occur the aggrieved party is also relieved of the duty of further performance under the contract.

Fundamental Breach; this type of breach is the almost the same thing as the material breach and the non-breaching party is still allowed to terminate the contract and seek damages in event of this breach. The only differences with the material breach is that the fundamental breach is much too egregious( shocking) than material breach[[6]](#footnote-5)

Anticipatory Breach( also known as Anticipatory Repudiation) occurs when one party lets the other party know, either verbally or in writing that they would not be able to fulfill the terms of the contract.[[7]](#footnote-6) and at such, the non-breaching party can immediately claim breach of contract and pursue a remedy.

In event of a breach, the following steps should be taken;

1. Read the contract and check if they are instructions to what \you should do if a breach occurs
2. Let the breaching party know that a breach has occurred so they can verify
3. Discuss the situation with the breaching party if a settlement is possible. If it is not and the matter needs to be taken in at the law court, contact a lawyer immediately

REMEDIES FOR THE BREACH OF CONTRACT.

1. **Award of damages;**

Award for damages are granted to the plaintiff for contractual damage, loss, injury or loss that he may have suffered from the breach of contract. The has the aim to as far as money can go, put the plaintiff in the position as he would have been in if the contract took place. An innocent party against whom breach of contract occurs may also exercise the right to sue and claim damages for breach of contract.[[8]](#footnote-7)

There are different types of damages and they include

1. Compensatory Damages
2. Incidental Damages
3. Nominal Damages
4. Liquidated Damages
5. Unliquidated Damages
6. Punitive Damages
7. Compensatory Damages; this are damages paid directly to the non-breaching party for the value of what was not done or performed.[[9]](#footnote-8) There are two types of compensatory damages;
* Expectance Damages; are damages which are intended to cover what the non-breaching party has expected go get from the contract. Since they are based on market value or on the contract itself, the calculation for this damage is usually straight forward
* Consequential; are damages intended to reimburse the non-breaching party for the indirect injuries, damages and losses he has incurred from the breach of contract. Lose of profits due to the late delivery of a machine are example of indirect breach. In *LIEBECK V. MC DONALD'S RESTAURANT*, Stella Lieback spilled her coffee on herself and laptop sustaining third degree burns on both legs. The extent of the burns needed skin grafts. When MC DONALD'S refused to pay for her medical bill, she took the matter to court and in the court, it came to notice that MC DONALD'S knows their coffee when spilled could cause this kind of burns as in their Operations Manual, they are specifically asked to keep the coffee between 180 and 190 Fahrenheit and at such Liebeck was awarded $200,000 as compensatory damages.[[10]](#footnote-9) Consequential damages will not be allowed if those damages will not be allowed if those are not foreseeable[[11]](#footnote-10)
1. Incidental Damages; in addition to compensatory damages, the non-breaching party may recover incidental damages which includes the different expenditures that the non-breaching party may have incurred in other to minimize the damages and loss that flows from the breach of contract. But in other to acquire this in terms of goods and services substitution, the plaintiff may need to pay to locate another supplier or source of work.[[12]](#footnote-11)
2. Nominal Damages; are damages awarded when the injured non-breaching party does not actually incur a monetary loss or the economic loss which he has incurred cannot actually be calculated but the court wants the show that the winning party was right. They might be awarded in tort cases that cross over with breach of contract case but are rarely awarded as in a breach of contract one party usually incurs loss. For it to be awarded, the non-breaching party will have to still prove the elements of a breach of contract.
3. Liquidated Damages; Precisely because damages are sometimes difficult to asses, the parties themselves may specify how much should be paid in the event of the breach, the court would have to enforce a liquidated damages provision as long as;
* The actual amount of of damages is difficult to ascertain
* The sum is reasonable as to the expected or actual harm.

If the sum is unreasonably high, the court will term the excess a penalty and it is said to be against the public policy and it is unenforceable[[13]](#footnote-12)

1. Unliquidated Damages; arise ion order to compensate the innocent party for the loss he suffered due to the defendants breach. Under this damages, the amount to be paid by the breaching party is not foreseen and therefore cannot be calculated.
2. Punitive Damages; (also known as Exemplary Damages) are damages intended to punish the guilty party and prevent him form committing any further breaches. It is awarded for the purpose of punishing the defendant in a civil action, where criminal sanctions concerning the course unavailable[[14]](#footnote-13)
3. **Restitution**;

This is designed to put the non-breaching party in a situation as if the contract never took place. Under the principle of restitution, the defendant is supposed to return to the plaintiff any money or property he has received from the contract and this remedy is usually used in cases where the contract is voided by the court based on the defendants incompetence or lack of capacity.[[15]](#footnote-14)

1. **Specific performance**;

Will mandate the breaching party to to complete the work he was to perform but this will only occur in a situation where it is not possible to remedy the situation with typical monetary compensation. While the legal system frowns upon forcing individuals to do something against their will, if a person signs a contract stating that they would sell a particular good but have the intention of defrauding the other party and not selling the goods, the court may mandate him to sell the goods and go through with the terms of the contract he has entered. It can however terminate the contract, then the remedy lies in damages for breach of contract. In the case of *NIGERIA TELECOMMUNICATIONS PLC. V. I.A. OCHOLI [2001]*. The Court of Appeal Jos Division appellant court was of the view that specific performance in contract of service against the master is not tenable as such, they set the orders of the lower trials high court. This is in compliance with the cardinal principle of common law which is also well rated in Nigerian Law that the remedy in such circumstances lies in damages for breach, where the same is proved.[[16]](#footnote-15) This position has been reaffirmed by the Supreme Court in the case of *OLARENWAJU V. AFRIBANK NIGERIA PLC [2001]* ;here the appellant who was deputy manager with the respondent bank was dismissed from service after being issued with the written query and subsequent suspension. He sought an order of specific performance of contract of service. His claim for the specific performance was granted by the trial high court but on appeal. The Supreme Court and the Court of Appeal reechoed the position of our laws as they have clarified that specific performance in contract of service are untenable by the servant against the master.[[17]](#footnote-16)

1. **Quantum Meruit**;

This is a form of remedy awarded to the non-breaching party with the aim of compensating the plaintiff to the extent of service rendered before the breach or to qualify the extent of contractual performance. It affords reasonable remunerations for part performance and non completion of the contract which is not the fault of the plaintiff/non breaching party

Damages in circumstances of breach of contract are usually determined in the following situations

1. Fairly or reasonably expected to arise naturally that is, according to the usual way of things from the breach itself
2. Reasonably supposed to have been in contemplation of the parties involved in a contract when the contract was made as the probable results of the breach of the contract

*WANER & WANER*, the respondent wrongfully terminated a contract that was partly completed, the Supreme Court held that the injured contractor had the opinion of either suing for damages which will grant him the profits for the unfinished balance and the value of the work-done or ignoring the contract and claiming a reasonable price for work and labour done in quantum merits[[18]](#footnote-17). Quantum meruits will normally be chosen if a reasonable price is higher than the contract price. In the case of *BERNARDY V. HARDING*, Alderson B declared that where a party has refused to preform, pr he has rendered himself incapable from performing his part of the contract, he places the power of either suing for the breach of the contract or rescinding the contract and suing on a quantum meruit for the work actually done in the hands of the other party.[[19]](#footnote-18)

1. **INJUNCTION**;

This is a form of equitable remedy available to the innocent party to prevent or restrain the party from breaching the contract or to enable the court to compel the other party to refrain from doing a specific act which would result into breach of the contract. In the case of *AFRICAN SONGS LTD. V. SUNDAY ADENIYI*, a musician who undertook to perform and record was restrained for the remaining part of the contract from recording for himself or any other company[[20]](#footnote-19). Also, in the case of *WANER BROS. PICTURES INC. V. NELSON*; a film actress signed an undertaking with the plaintiff and her employers not to act for any other organization. An injunction was issued to prevent her from committing a breach of this contract when she attempted to enter the employment of the third party.[[21]](#footnote-20)

Where the injunction is mandatory, it is not merely preventive but restorative in its effect. It directs the defendant to undo what he has done in a breach of contract but it should be noted that this type of injunction is very rarely granted.

1. Oxford Dictionary [↑](#footnote-ref-0)
2. Britannica [↑](#footnote-ref-1)
3. Legal Match [↑](#footnote-ref-2)
4. What is a Breach of Contract, and What are the Different Types of Breaches? [www.legalmatch.com](http://www.legalmatch,cm) para 4 [↑](#footnote-ref-3)
5. What is a Breach of Contract, and What are the Different Types of Breaches? [www.legalmatch.com](http://www.legalmatch,cm) para 5 [↑](#footnote-ref-4)
6. What is a Breach of Contract, and What are the Different Types of Breaches? [www.legalmatch.com](http://www.legalmatch,cm) para 6 [↑](#footnote-ref-5)
7. What is a Breach of Contract, and What are the Different Types of Breaches? [www.legalmatch.com](http://www.legalmatch,cm) para 7 [↑](#footnote-ref-6)
8. Fundamentals of Law of Contract. Kingsley N. Ogbaegbe Esq. [↑](#footnote-ref-7)
9. [www.courses.lumenlearning.com](http://www.courses.lumenlearning.com) para 4 [↑](#footnote-ref-8)
10. *LIEBECK V. MC DONALD'S RESTAURANT* [↑](#footnote-ref-9)
11. Section 16.5 “Limitations on Contract Remedies” [↑](#footnote-ref-10)
12. [www.courses.lumenlearning.com](http://www.courses.lumenlearning.com) para 7 [↑](#footnote-ref-11)
13. [www.courses.lumenlearning.com](http://www.courses.lumenlearning.com) para 10 [↑](#footnote-ref-12)
14. [www.courses.lumenlearning.com](http://www.courses.lumenlearning.com) para 11 [↑](#footnote-ref-13)
15. [www.lagalmatch.com](http://www.lagalmatch.com) para 12-13 [↑](#footnote-ref-14)
16. *NIGERIA TELECOMMUNICATIONS PLC. V. I.A. OCHOLI [2001]* [↑](#footnote-ref-15)
17. *OLARENWAJU V. AFRIBANK NIGERIA PLC [2001]* [↑](#footnote-ref-16)
18. *WANER & WANER* [↑](#footnote-ref-17)
19. *BERNARDY V. HARDING* [↑](#footnote-ref-18)
20. *AFRICAN SONGS LTD. V. SUNDAY ADENIYI* [↑](#footnote-ref-19)
21. *WANER BROS. PICTURES INC. V. NELSON* [↑](#footnote-ref-20)