**Name:** Akubuiro Chidiebere

**Level**: 200 level

**Matric no**: 18/law01/031

**Course code/ Title**: LPI 202/Law of Contract anticipatory

**Assignmen**t

**Discuss;**

1. **Breach of contract**

 [[1]](#footnote-1) Breach of contract" is a legal term that describes the violation of a contract or an agreement that occurs when one party fails to fulfill its promises according to the provisions of the agreement. Sometimes it involves interfering with the ability of another party to fulfill his duties. A contract can be breached in whole or in part. Most contracts end when both parties have fulfilled their contractual obligations, but it's not uncommon for one party to fail to completely fulfill their end of the [contract agreement](https://www.thebalancesmb.com/basics-of-business-contracts-and-agreements-397811). Breach of contract is the most common reason contract disputes are brought to court for resolution.

A breach of contract suit must meet four requirements before it will be upheld by a court.

* The [contract must be valid](https://www.thebalancesmb.com/what-is-a-legal-contract-462462). It must contain all essential contract elements by law. A contract isn't valid unless all these essential elements are present, so without them, there can be no lawsuit.
* The [plaintiff](https://www.thebalancesmb.com/what-is-a-plaintiff-in-a-lawsuit-398411) or the party who's suing for breach of contract must show that the defendant did indeed breach the agreement's terms.
* The plaintiff must have done everything required of them in the contract.
* The plaintiff must have notified the defendant of the breach before proceeding with filing a lawsuit. A notification made in writing is better than a verbal notification because it offers more substantial proof.

 [[2]](#footnote-2)A breach of contract occurs in a situation where a party fails to perform precisely and exactly his obligations under the contract. This can take various forms for example, the failure to supply goods or perform a service as agreed. It can be either actual or anticipatory.

* **Actual Breach**: It occurs where one party refuses to form his side of the bargain on the due date or performs incompletely. You can see the case of [[3]](#footnote-3)*Poussard* ***v*** *Spiers* and [[4]](#footnote-4)*Bettini* ***v*** *Gye*.
* **Anticipatory Breach**: It occurs where one party announces in advance of the due date for performance that he intends not to perform his side of the bargain. The innocent party may sue for damages immediately the breach is announced. See the case of [[5]](#footnote-5)*Hochster* ***v*** *De La Tour.*
* **A** **partial breach**is not as significant and does not normally excuse the aggrieved party from performing their duties.

**Effect of Breach of Contract**

1. A breach of contract, no matter what form it may take, always entitles theinnocent party to maintain an action for damages, but the rule established by along line of authorities is that the right of a party to treat a contract as discharged arises only in three situations. The breaches which give the innocent party the option of terminating the contract are:
* **Renunciation**: Renunciation occurs where a party refuses to perform his obligations under the contract. It may be either express or implied. [[6]](#footnote-6)*Hochster* ***v*** *De La Tour* is a case law example of express renunciation. Renunciation is implied where the reasonable inference from the defendant’s conduct is that he no longer intends to perform his side of the contract. See the case of [[7]](#footnote-7)*Omnium D’Enterprises* ***v*** *Sutherland*.
1. **Breach of Condition**: The second repudiatory breach occurs where the party in default has committed a breach of condition. In [[8]](#footnote-8)*Poussard* ***v*** *Spiers*, the employer had a right to terminate the soprano’s employment when she failed to arrive for performances.
2. **Fundamental Breach:** The third repudiatory breach is where the party in breach has committed a serious (or fundamental) breach of an innominate term or totally fails to perform the contract. A repudiatory breach does not automatically bring the contract to an end. The innocent party has two options: He may treat the contract as discharged and bring an action for damages for breach of contract immediately. This was seen in *Hochster* ***v*** *De La Tour*. He may elect to treat the contract as still valid, complete his side of the bargain and then sue for payment by the other side. See the case of [[9]](#footnote-9)*White and Carter Ltd* ***v*** *McGregor*.

 [[10]](#footnote-10)As in all lawsuits, the defendant—the party being sued—has a legal right to offer a reason why the alleged breach is not really a breach of contract or why the breach should be excused. In legal terms, this is called a defense. Common defenses against a breach of contract include: **Fraud, Duress, Undue influence Mistake, Statute of Limitations.**

1. **Remedies for Breach of Contract**

[[11]](#footnote-11)The plaintiff can be made whole in several ways if the other party is found to be in breach of a contract. In legal terms, this is called a remedy, and the most common remedy when one party is found to be in breach of a contract is a **monetary payment**. Some other common remedies for a loss resulting from a breach of contract include **damages** and **injunctions**.

**[[12]](#footnote-12)Damages** are amounts of money that compensate the victim for any actual loss he suffered. Punitive damages involve extra money a court might tack on as a form of punishment if the breach of contract was particularly egregious and intentional. Damages are the basic remedy available for a breach of contract. It is an adequate remedy. It is a common law remedy that can be claimed as of right by the innocent party. The object of damages is usually to put the injured party into the same financial position he would have been in had the contract been properly performed

The major remedy available at common law for breach of contract is an award of damages. This is a monetary sum fixed by the court to compensate the injured party. In other to recover substantial damages, the innocent party must show that he has suffered actual loss. If there is no actual loss, he will only be entitled to nominal damages in recognition of the fact that he has a valid cause of action. In making an award of damages, the court has to consider;

**[[13]](#footnote-13)Remoteness of loss**- for what consequences of the breach is the defendant legally responsible? The rule governing remoteness of loss in contract was established in [[14]](#footnote-14)*Hadley* ***v*** *Baxendale*. The court established the principle that where one party is in breach of contract, the other should receive damages which can fairly and reasonably be considered to arise naturally from the breach of contract itself or which may reasonably be assumed to have been within the contemplation of the parties at the time they made the contract as being the probable result of a breach. There are two types of loss which damages may be recovered; **what arises naturally** and **what the parties could foresee when the contract was made as the likely result of breach**. The rule in *Hadley* ***v*** *Baxendale* was made as a result of the first limb, the party in breach is deemed to expect the normal consequences of the breach whether he expects it or not. Under the second limb of the rule, the party in breach can only be held liable for abnormal consequences where he has actual knowledge that the abnormal consequences might follow or where he reasonably ought to know that the abnormal consequences might follow. See [[15]](#footnote-15)*Victoria Laundry* ***v*** *Newman Industries*

**Measure of damages***:* in assessing the amount of damages payable, the courts use the following principles:

* The amount of damages is to compensate the claimant for his loss not to punish the defendant.
* Damages are compensatory- not restitutionary.

The most usual basis of compensatory damages is to put the innocent party into the same financial position he would have been in had the contract been properly performed. This is sometimes called the ‘expectation loss’ basis. In [[16]](#footnote-16)*Victoria Laundry* ***v*** *Newman Industries*, for example, Victoria Laundry were claiming for the profits they would have made had the boiler been installed on the contractually agreed date.

Liquidated damages clauses and penalty clauses

If a contract includes a provision that, on a breach of contract, damages of a certain amount or calculable at a certain rate will be payable, the courts will normally accept the relevant figure as a measure of damages. Such clauses are called **liquidated damages clauses**. The courts will uphold a liquidated damages clause even if that means that the injured party receives less (or more as the case may be) than his actual loss arising on the breach. This is because the clause setting out the damages constitutes one of the agreed contractual terms-[[17]](#footnote-17)*Cellulose Acetate Silk Co Ltd* ***v*** *Widnes* Foundry Ltd. However, a court will ignore a figure for damages put in a contract if it is classed as a **penalty clause**-that is, a sum which is not a genuine pre-estimate of the expected loss on breach. This could be the case where:

* The prescribed sum is extravagant in comparison with the maximum loss that could follow from a breach.
* The contract provides for payment of a certain sum but a larger sum is stipulated to be payable on a breach,
* The same sum is fixed as being payable for several breaches which would be likely to cause varying amounts of damages. The above cases would be regarded as penalties, even though the clause might be described in the contract as a liquidated damage of clause. The court will not enforce payment of a penalty, and if the contract is broken only the actual loss suffered may be recovered ([[18]](#footnote-18)*Ford Motor Co (England) Ltd* ***v*** *Armstrong*)

**Equitable Remedy**

Sometimes damages are not an adequate remedy and this is where the equitable remedies (such as specific performance and injunction) may be awarded.

[**Injunction**](https://www.thebalancesmb.com/what-is-an-injunction-how-does-an-injunctive-relief-work-398299) is an order by the court that requires the guilty party to stop doing whatever action is causing damage to the other. It is divided into two categories: **Prohibitory** and **Mandatory** injunctions. It is an equitable remedy and the court exercises its discretion according to the same principles as specific performance. See cases; [[19]](#footnote-19)*Page One Records Ltd* ***v*** *Britton* and [[20]](#footnote-20)*Warner Brothers* ***v*** *Nelson*

**Special performance**: it is an equitable remedy like injunction. It is an order of the court requiring performance of a positive contractual obligation. There are circumstances where it is not available, see [[21]](#footnote-21)*Ryan* ***v*** *Mutual Tontine Association.* The court will only grant specific performance where it would be just and equitable to do so*.*   A court might also order the rescission-the cancellation of the contract.

1. <https://www.thebalancesmb.com/> [↑](#footnote-ref-1)
2. <https://www.academia.edu/> [↑](#footnote-ref-2)
3. *Poussard v Spiers* [↑](#footnote-ref-3)
4. Bettini v Gye [↑](#footnote-ref-4)
5. Hochester v De La Tour [↑](#footnote-ref-5)
6. *Hochster* ***v*** *De La Tour*  [↑](#footnote-ref-6)
7. *Omnium D’Enterprises* ***v*** *Sutherland* [↑](#footnote-ref-7)
8. *Poussard* ***v*** *Spiers* [↑](#footnote-ref-8)
9. *White and Carter Ltd* ***v*** *McGregor* [↑](#footnote-ref-9)
10. <https://www.thebalancesmb.com/> [↑](#footnote-ref-10)
11. <https://www.thebalancesmb.com/> [↑](#footnote-ref-11)
12. <https://www.academia.edu/> [↑](#footnote-ref-12)
13. <https://www.academia.edu/> [↑](#footnote-ref-13)
14. *Hadley* ***v*** *Baxendale* [↑](#footnote-ref-14)
15. *Victoria Laundry* ***v*** *Newman Industries* [↑](#footnote-ref-15)
16. *Victoria Laundry* ***v*** *Newman* [↑](#footnote-ref-16)
17. *Cellulose Acetate Silk Co Ltd* ***v*** *Widnes* Foundry Ltd [↑](#footnote-ref-17)
18. *Ford Motor Co (England) Ltd* ***v*** *Armstrong* [↑](#footnote-ref-18)
19. *Page One Records Ltd* ***v*** *Britton* [↑](#footnote-ref-19)
20. *Warner Brothers* ***v*** *Nelson Warner Brothers* ***v*** *Nelson* [↑](#footnote-ref-20)
21. *Ryan* ***v*** *Mutual Tontine Association* [↑](#footnote-ref-21)