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QUESTION: A breach of contract is committed when a party without lawful excuse fails or refuses to perform what is due from him the contract or performs defectively or incapacitates himself from performing.

Discuss the following

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 item or service. The purpose of a contract being legally binding is so each party will have legal recourse in the event of a breach. A contract can either be in written or oral form An oral contract is a contract in which the terms are agreed upon verbally, whereas a written contract is a written document. Generally, oral contracts are enforceable and legally binding; however, not every type of contract can be enforceable when they are oral as opposed to written.

A breach of contract occurs when’s party fails to perform one or more of the obligations lay upon him by 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. Further, if one party fails to perform while the other party fulfills their obligations, the performing party is entitled to legal remedies for breach of contract. **WEMA BANK PLC V. ALHAJI SOLA OLOKO (CA/I/88/2009)[2014] NGCA 3 (27 FEBRUARY 2014)**

There are 4 types of breach of contract

There are four main types of contract breaches:

**Minor Breach**: A minor breach of contract occurs when a party fails to perform a part of the contract, but does not violate the whole contract. To be considered a minor breach, the infraction must be so nonessential that all parties involved can otherwise fulfill any remaining contractual obligations. A minor breach is sometimes referred to as an impartial breach

**Material Breach**: A material breach of contract is a breach that is so substantial, it seriously impairs the contract as a whole; additionally, the purpose of the agreement must be rendered completely defeated by the breach. This is sometimes referred to as a total breach. It allows for the performing party to disregard their contractual obligations, and to go to court in order to collect damages from the breaching party;

**Fundamental Breach**: A fundamental breach of contract is essentially the same as a material breach, in that the non-breaching party is allowed to terminate the contract and seek damages in the event of a breach. The difference is that a fundamental breach is considered to be much more egregious than a material breach.

**Anticipatory Breach**: An anticipatory breach occurs when one party before the date fixed for performance manifest or shows an intention not the perform the contract lets the other party know. The other party is then able to immediately claim a breach of contract and pursue a remedy, such as payment. In **PanchaudFreres S.A. V Establishment General Grain Co,** it was held that a victim of anticipatory breach need not to sue at once. He may continue to view the contract as still alive until the date when performance is due before taking action. Doing this the innocent party should me ready to bear the disadvantage of this option as the party at fault can take advantage of any supervening circumstances which would justify him in declining to complete his obligation under the contract. Anticipatory breach can also be referred to as anticipatory repudiation.

B: Remedies for breach of contract

What are the Remedies for Breach of Contract?

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.

**Robinet Nigeria limited v Shell Nigeria Gas Limited,** the court of appeal related the principles of contract stating that contract may be in writing, oral or implied. It is stated that when there is contract, the court if called upon, will intervene to protect the contractual rights of the parties. when a contract is breached, the injured party haw several remedies available to him against the defaulting party.

1. **Damages**

Money damages refer to the monetary payments which a breaching party has to make for violating the terms of contract. the main purpose of awarding damages for breach of contract is to put the injured party, i.e, innocent party, as far as money can do it, in the same position as if the contract had been performed, see **Ecobank Nigeria Plc v Elder Dominic Eperikpe**; the Supreme Court in **Beta Glass PLC v Epaco Holdings Ltd** defined damages as:

Pecuniary compensation obtainable by a successful party in an action for wrong which is either of tort or breach of 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.

Damages for breach of contract are subject to the principles of remoteness, causation and mitigation

**Remoteness**

The term remoteness refers to the legal test of causation which is used when determining the types of loss caused by a breach of contract or duty which may be compensated by a damages award. Legal causation is different from factual causation which raises the question whether the damage resulted from the breach of contract or duty. The rule as to which damage is to be compensated for and the damage which is too remote was laid down in the case of **Hadley v Baxendale.**

1. A victim of breach of contract is entitled to such damages as may fairly as reasonably be considered to have risen naturally from the breach
2. A victim of breach of contract is entitled to such damages as may reasonably be supposed to have been in contemplation of the parties at the time they made the contract.

**Measurement of damages**

The next question to be considered by the court is how much compensation should be paid. The court will have to qualify the loss and translate the loss by giving it monetary value. The problems of remoteness and measure of damages are easily determined and assessed if the damages are liquidated. The Sale of Goods Act 1893, in section 50 and 51, provides the legislative guide on the basis for the measurement of damages in the case of failure to accept delivery or the effect delivery by the buyers and sellers respectively. **W.L. Thompson Ltd v Robinson (Gun maker) Ltd.**

In some circumstances damages can be awarded to injured party for non pecuniary losses. Where a breach of contract occasions substantially physically inconvenience, agony, melancholy, pain and suffering, and these non pecuniary losses were within the contemplation of the parties as likely to result from the breach, the injured party may recover damages for the loss.

Lord Denning, M.R, in **Jarvis and swan tours Ltd,** stated and explained the modern position of the law.

The principle that damages may be recovered for non pecuniary loss, was perspicuously reaffirmed by Akpata,J., **Prince Edison Eweka v Midwest Newspaper Corporation.**

**Mitigation of Damages**

A party who is a victim of breach of contract is obligated under the law to mitigate his damages. The law imposes a duty on an injured party to take all reasonable steps to mitigate the loss that may be occasioned by the breach. The injured party is expected and must endeavor to minimize the loss flowing from the breach otherwise he cannot recover any part of the loss which the defendant can prove to resulted from the plaintiff’s failure to mitigate. **Economic Export Ltd v JimohOdutola(1959) WRNLR 239.**

Lord Haldane captured and analyzed this principle of mitigation of damages in **British Westinghouse Electric and manufacturing co.v Undergroudelectric Rys co. Of London.**

**Penalty and liquidated Damages**

Liquidated damages are damages which the parties to a contract have agreed in advance as payable in the event of a breach. This is usually done my parties by providing in the contract itself that a specified sum shall be payable, in the event of breach. For the distinction between liquidated damages and a penalty is not always easy to apply. The courts have made the task simpler by laying down certain guiding principles. **Dunlop Pneumatic Tyres Co. Ltd v New Garage and Motors Co. Ltd (1915) A.C. 79**

There are different types of money damages such as:

A)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.

There are two kinds of compensatory damages that the non breaching party may be entitled to recover:

In G.K.F.I. (Nig) Ltd v Nitel plc, the Supreme Court drew a distinction between general damages and special damages.

1)General damages: the are the sum of money necessary to. Compensate the injured party for the damages sustained as a result of the breach. General damages are the most common type of damages awarded for breaches of contract.

2)Special Damages. Special damages (also called “consequential damages”) cover any loss incurred by the breach of contract because of special circumstances or conditions that are not ordinarily predictable. See **Arisons Trading & Engr co Ltd v Military Governor Orin state & Ors**, To obtain damages for this type of loss, the non breaching party must prove that the breaching party knew of the special circumstances or requirements at the time the contract was made, **G.K.F.I. (Nig) Ltd v Nitel Plc**.

B)Punitive Damages. Punitive damages (also called “exemplary damages”) are awarded to punish or make an example of a wrongdoer who has acted fraudulently. Unlike compensatory damages that are intended to cover actual loss, punitive damages are intended to punish the wrongdoer for egregious behavior and to deter others from acting in a similar manner. punitive damages are requested and it is up to the court to decide if they wish to award them and the amount. **Usov Iketubosin(1957) WRN LR 187.**

**2)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.

Orders for specific performance come about after two parties have contracted with one another but one party has failed or refuses to perform as agreed in the contract. The functional value of specific performance is that it gives to a promisee what he is entitled under his contract and constrains the promisor to do what he has promised to do by compelling him to perform his obligation. The court of appeal in **Dr. I.O.C. Abarav. Nwaeze Igbo**, gave main fact on factors to be considered by the court in granting or refusing a claim for specific performance. Specific performance is particularly appropriate in the case of contract for the sale and leasing of land or contract for sale of rare or unique goods. **Ohiaeri v. Yusuf (2009) 6 NWLR (pt.1137) 207 at 229**

. In some unique and defined circumstances, the court of equity will invoke fairness order specific performance, **Paye v Gaji(1966) 5 NWLR (pt 450) 589 at 605 .**

**3)Restitution**

Quantum meruit

This Latin phrase means so much as the thing is worth. It is based on the fact that something has been done and the doer is entitled to be paid as much as he deserves. It is an equitable remedy to provide restitution for unjust enrichment. When a party to a contract is unable to fulfill the entire obligations or is prevented by the other party from completely discharging his obligation under a contract he may claim in quantum meruit, **Warner & Warner v Federal Housing Authority.**

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.

In **Olaopa v Obafemi Awolowo University,** the Supreme Court held that there could be no quantum meruit in the absence of a contract between the parties, express or implied.

**4)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. 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.

REFERENCE

WWW. WIKIPEDIA

LAW OF CONTRACT BY SAGAY