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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 under the contract or performs defectively or incapacitates himself from performing. (Treitel 2007, para 17-049)

Discuss the following:

- a. Breach of contract
- b. What are the remedies available for breach of contract?

A. What is a breach of contract?

Before I talk about what a breach of contract is I would like to discuss what a contract is. 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. A contract is legally binding so that each party will have legal recourse in the event of a breach.

A breach of contract occurs when the promise of the contract is not kept, because one party has failed to fulfill their agreed upon obligations, according to the terms of 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. 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. To successfully claim a breach of contract, it is imperative to be able to prove that the breach occurred. A breach of contract can happen in both a written and an oral contract.

Types of Breaches of Contract

A contract breach may either be a minor or material breach. A "minor breach" happens when you don't receive an item or service by the due date. For example, you bring a suit to your tailor to be custom fit. The tailor promises (an oral contract) that

he'll deliver the adjusted garment in time for your important presentation, but in fact, he delivers it a day later.

A "material breach" is when you receive something that is different from what was stated in the agreement. Say, for example, that your firm contracts with a vendor to deliver 200 copies of a bound manual for an auto industry conference. But when the boxes arrive at the conference site, they contain gardening brochures instead.

Further, a breach of contract generally falls under one of two categories: an "actual breach"—when one party refuses to fully perform the terms of the contract, or an "anticipatory breach"—when a party states in advance that they will not be delivering on the terms of the contract.

B. Remedies for a breach of contract:

There are a variety of remedies available for a breach of contract. The appropriate compensation or remedy depends upon the circumstances. The aggrieved party will need to demonstrate that the other party failed to perform or meet certain requirements in order to be entitled to any type of remedy. Below I shall discuss on the various remedies applicable for a breach of contract.

- Award of Damages:

An innocent party against whom a breach of contract occurs may exercise the right to sue claiming damages for breach of contract. The party who breached the contract can be held responsible for the losses caused by the breach. Both general or expectation damages and consequential damages can result from a breach of a contract. General or expectation damages refer to the loss directly caused by the breach. Consequential damages refer to losses that occurred because of the breach but that were an indirect cause. For example, if you contracted and paid for a machine to be delivered and it never came, the general losses would include the value of the money you paid for the machine. The consequential losses could include the loss of business caused by the fact you did not have the machine you needed to do your work. Under "award of damages", there are several sub-divisions of the remedy:

- a. Punitive Damages for Breach of Contract:

Compensatory, or actual damages, cover the loss the non-breaching party incurred as a result of the breach. Punitive damages, known as exemplary damages, are awarded to punish or make an example of the wrongdoing of a party that acted willfully, maliciously or fraudulently. Punitive damages are awarded in addition to compensatory damages. However, punitive damages are rarely awarded in breach of contract cases. Punitive damages are most often used in tort cases in which personal harm was a result of the wrongdoing and actual damages are minimal.

b. Compensatory Damages for Breach of Contract:

Award of damages is the most common remedy for breach of contract as one party seeks compensation for financial losses as a result of breach of contract. The party who is injured by the breach of contract is entitled to the benefit (consideration) of the agreement they entered, or the net gain they would've accrued had it not been for the breach. This type of remedy is known as "compensatory damages."

During the court case, the injured party becomes the plaintiff. In the instance of a total breach, the plaintiff may recover damages in an amount that's equal to the sum or value they would have received had the contract been fully performed by the defendant. Sometimes, this includes lost profits from a business operation.

If the breach is only partial and the defendant carried out a majority of the contract, the plaintiff may seek damages in an amount equal to the cost of hiring someone else to complete the performance. If the portion of the uncompleted performance is quite small in terms of cost, however, the court may only award damages in an amount that's equal to the difference between the diminished value of the agreement as completed and the full value as stated in the contract.

- Restitution:

Restitution is remedy designed to restore the injured party to its state or position before the contract was created. Unlike an award of damages, parties seeking restitution may not demand compensation for lost profits or other financial losses caused by a breach. Instead, restitution is meant to return any money or property given to the defendant under the contract back to the plaintiff.

Typically, a party will seek restitution when a contract they entered has been voided by courts because of the defendant's incompetence or incapacity. Contract law allows incompetent and incapacitated individuals to be relieved of their contractual obligations, but only if the plaintiff is not hindered by the dismissal. In either case, if the defendant received any money or property by means of the contract that is now voided, the plaintiff is to be restored of that money or property.

- Rescission:

Rescission allows the non-breaching party to essentially be released from performance obligations. Rescission 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. Rescission is a remedy used to terminate a contract when parties

entered into a contract by way of fraud, undue influence, coercion, or mistake. In the case of rescission, the contractual obligations of both parties are therefore terminated, and the contract will no longer exist.

- Reformation:

Reformation is similar to rescission as it's a result of parties entering into a contract based on fraud, undue influence, coercion, or mistake, but rather than terminating the contract and the parties' obligations entirely, the court will change the substance of a contract to correct the inequities suffered as a result. Reformation is a specific type of remedy where the court allows the parties to rewrite a portion of the contract so that it reflects the parties' original intentions more closely.

Contract reformation is a type of equitable remedy, meaning that the parties are required to take some sort of action in order to correct the discrepancy. Contract reformation is available in cases involving mistake (usually only for mutual mistakes or unilateral mistakes where the non-mistaken party wasn't aware of the mistake) or misrepresentation. For misrepresentation cases, reformation can be a remedy for both intentional conduct as well as unintentional misrepresentation.

- Injunction:

This is another form of equitable remedy available to an innocent party which is to prevent or restrain party from breaching a contract or to enable court compel a party to refrain from doing a specific act which amount to or result in breach of contract. In the case of *Warner Bros. Pictures INC V Nelson*, an actress signed an undertaking which the plaintiff, her employers, not to act for any other organization. An injunction was issued to restrain her from committing a breach of this stipulation when she attempted to enter the employment of a third party. The case of ¹*Adiatu Ladunni V Oludoyin Adekunle Kukoyi* is another case providing insight on the system of injunction.

On the other hand, where the injunction is mandatory, it is restorative in its effect and nor merely preventive. It directs the defendant to undo what he has already done in a breach of contract. For example, he may be compelled to demolish a building which he has erected in contravention of the contract. It should, however, be stated that this type of injunction is very rarely granted.

- Specific Performance:

¹ http://www.lawpavilionpersonal.com/latestlawreport_ca.jsp?suite=olabisi@9thfloor&pk=52565

In some cases, the appropriate remedy for a breach of contract is to correct the breach by forcing the breaching party to complete the terms of the agreement. Specific performance is an appropriate remedy in situations where monetary damages could not possibly make the non-breaching party whole for the losses. For example, if there was a contract created for a buyer to purchase a very rare piece of art, the buyer could not simply find the art elsewhere.²The only remedy that would help the buyer in this circumstance is for the court to require the sale to go through so the buyer got the unique one-of-a-kind painting that he contracted for. A plaintiff relying on this remedy must show good faith in the sense that he has dealt fairly and equitably in the contract with the defaulting party.

³In the case of **Nigeria Telecommunications PLC V. I.A. Ocholi [2001] F.W.L.R. (pt7) p.254 act 289**. The plaintiff now respondent was employed by the defendant now appellant as an assistant technical officer and received several promotions until he was accused of illegal transfer of telephone lines for which accusation he received and answered query. Subsequently and within 24 hours of received of his promotion, the plaintiff was served a letter terminating his appointment on the grounds that his services were no longer needed. The plaintiff sued successfully at the trial court but upon appeal to 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, set aside the orders of the lower trial high court. This is in compliance with the cardinal principal of common law which is also well rated in Nigerian Law that the remedy in such circumstances lies in damages for breach where same is proved.

(I really don't know how to use referencing, I apologize for my sloppy work)

² <https://www.bc-llp.com>

³ F.W.L.R 2001 p.254 act 289