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**ASSIGNMENT:**

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:

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

**BREACH OF CONTRACT**

1. 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 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.

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.

It is also 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 of the parties to the contract by non-performance or interference with the other party's performance. Breach occurs when a party to a contract fails to fulfill its obligation(s), whether partially or wholly, as described in the contract, or communicates an intent to fail the obligation or otherwise appears not to be able to perform its obligation under the contract.

1. **REMEDIES TO A BREACH OF CONTRACT**

As earlier discussed, a breach of action could be defined to be an act which occurs when a party without lawful excuse fails or refuses to perform what is due from under the contract, performs defectively or incapacitates himself from performing.

**ROBINET NIGERIA LTD v SHELL NIGERIA GAS LTD[[1]](#footnote-1)**

The court of Appeal evaluated the related principle of contract by stating that, it’s an established principle of law that contracts may be in writing and signed by the parties.

It can also be implied by the conduct of the parties. According to the court, it is the law that where there’s a contract, the court if called upon will intervene to protect the contractual rights of the parties. The judicially approved function of the court is to interpret the agreement, enforce oit6’s terms and provide remedies if there’s a breach.

When contract is breached, the injured party has several available remedies;

1. Damages
2. Injunction
3. Specific performance
4. Rescission etc

**DAMAGES**

The course frequently adopted by an injured party to a breach of contract is to bring an action for damages. The main aim of awarding damages is to put the injured party i.e the innocent party, as afar as money can do;, in the same position as if the contract had been performed. The injured party is not expected to get more in damages than the loss which he actually suffered. Therefore, where he has suffered no loss he may still maintain his action because there is a breach,but he will only get nominal damage.

In **ECOBANK NIG. PLC v ELDER EKPERIKPE DOMINIC**[[2]](#footnote-2)

The court of Appeal made the following striking submission regarding damages, namely that

1. The object of damage in breach of contract is to put the claimant in the position he would have been in if the contract had been satisfactorily performed.
2. The general rule for measuring damages for breach of contract is that the party in breach is liable in damages in the amount which flows directly and naturally from his failure to keep his own part of the contract.

The Supreme Court in **BETAGLASS PLC v EPACO HOLDINGS LTD**[[3]](#footnote-3) defines damages as

“*pecuniary compensation obtainable by a successful party in an action for a wrong, which is either of tort or of breach of contract*.” Two main criteria for the award of damages was established in **HADLEY v BAXANDALE**, namely (a)Damages is awarded according to the normal damages that occurs in the usual course of things, and (b) damages awarded for abnormal; damage that arises because of special circumstances . For damages to be awarded under this branch, the decisive factor for establishing liability is the knowledge by the defaulting party of the special circumstances of the plaintiff.

Generally, damages are awarded for loss that would be reasonable considered as a consequence of breach such that could have been fairly or reasonably contemplated by both parties. The Supreme Court in **IJEBU-ODE LG v ADEDEJI BALOGUN & CO**[[4]](#footnote-4) upheld the judgement of the court of appeal and noted that: the respondent would have made a profit of 20% from the contract. Thus, this amount {20%} was the loss sustained as a consequence of the breach and it must have been in contemplation of the parties at the same time of the contract. This would put the injured party at the position he would have been in if there had not been any breach. Therefore, assessment of damages is calculated on the loss sustained by the injured party which loss was either in contemplation of the contract or is an unavoidable consequence of the breach.

Further, the court held that special damages are damages of the type that do not flow in ordinary course; they’re exceptional in character and therefore must be claimed specially and proved strictly. Elaborating further**, MUHAMMED, JSC** Said:

*“not only must special damages be specifically pleaded, they must be strictly proved by the plaintiff* …………”

**ORDER TO SPECIFIC PERFORMANCES**

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 courts.

A decree of Specific Performance is one by which the courts directs the defendant to perform the contact accordingly to it’s terms , which requires precise fulfillment of a legal or contractual obligation when monetary damages are in appropriate or inadequate[[5]](#footnote-5).

In essence, Specific performance is an order directed to a defendant personally, requiring him to perform the contract else suffer consequences in the nature of the contempt. It is the process by which the promisee receives the performance of the promise guaranteed him.

**INJUNCTION**

Originating from a Latin word *injungere*, meaning to attach, join or impose.

In a general sense, every order of a court, Commandings, forbiddings is an **Injunction**, but in it’s accepted legal sense, An injunction is a judicial process or mandate operating in “*personam*” by which upon certain established principles of equity, a party is required to do, or restrained from doing a particular thing[[6]](#footnote-6) .

A writ framed according to circumstances of the case, commanding an act which the court regards as essential to justice or refraining an act which it esteems contrary to equity or good conscience.

Where the injunction sought is restrictive or prohibitive, the court will be easily disposed to granting it . Therefore, where a party to a contract undertakes not to do something, the court can prohibit him from doing same. In**WARNER BROS. PICTURES INC v NELSON**[[7]](#footnote-7) “A film actress signed a contract with her employee not to act for any other organization, when it became obvious that she might breach this undertaking, the employers sought to restrain her. An injunction was issued to restrain her from committing a breach of the undertaking.

By contrast, the court will refuse to grant an injunction if it’s aim is to enforce specifically, a positive stipulation. Thus in the case of **LUMLEY v GYE**[[8]](#footnote-8) - *The defendant contracted to sing for the plaintiff’s theatre for a period of three months and would not sing elsewhere. It was held that: the courts could grant an injunction to restrain her from breaking her contract {i.e singing for another theatre group} but would not issue an injunction to compel her performance of her obligations to sing for the plaintiff.*

**RESICISSION**

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.

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.

**BIBLIOGRAPHY/REFERENCES**

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1. (2010) LPELR 22144 (CA) [↑](#footnote-ref-1)
2. 2013 LPELR – 20327 (CA) [↑](#footnote-ref-2)
3. (2011) 4 NWLR (pt 1237) 223 [↑](#footnote-ref-3)
4. {1991} 1 NWLR Pt 166 @ 158 [↑](#footnote-ref-4)
5. Black’s law dictionary 8th edition Pg 1435 [↑](#footnote-ref-5)
6. Supra Pg 800 [↑](#footnote-ref-6)
7. {1937} 1 KB 209 [↑](#footnote-ref-7)
8. {1853} 2 E & R 216 [↑](#footnote-ref-8)