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ASSIGNMENT QUESTIONS

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?

**ANSWERS**

a) 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. 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. 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 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.

The general law has three categories of breaches of contract which are: breach of warranty, breach of condition, and a breach of innominate terms.

The facts of *Nigerian supplies manufacturing co ltd v Nigerian broadcasting corporation* represents a classic case of express anticipatory breach.

b) Remedies for a 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. Because specific performance and rescission are equitable remedies that do not fall within the jurisdiction of the magistrate courts.

**DAMAGES**

There are two general categories of damages that may be awarded if a breach of contract claim is proved. They are:

1. Compensatory Damages. Compensatory damages (also called “actual damages”) cover the loss the non-breaching party incurred as a result of the breach of contract. The amount awarded is intended to make good or replace the loss caused by the breach.

There are different kinds of compensatory damages that the nonbreaching party may be entitled to recover:

a). General Damages. General damages cover the loss directly and necessarily incurred by the breach of contract. General damages are the most common type of damages awarded for breaches of contract.

Example: Company A delivered the wrong kind of furniture to Company B. After discovering the mistake later in the day, Company B insisted that Company A pick up the wrong furniture and deliver the right furniture. Company A refused to pick up the furniture and said that it could not supply the right furniture because it was not in stock. Company B successfully sued for breach of contract. The general damages for this breach could include:

• Refund of any amount Company B had prepaid for the furniture; plus

• reimbursement of any expense Company B incurred in sending the furniture back to Company A; plus

• Payment for any increase in the cost Company B incurred in buying the right furniture, or its nearest equivalent, from another seller.

b). 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. These are actual losses caused by the breach, but not in a direct and immediate way. 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.

Example: In the scenario above, if Company A knew that Company B needed the new furniture on a particular day because its old furniture was going to be carted away the night before, the damages for breach of contract could include all of the damages awarded in the scenario above, plus:

• Payment for Company B’s expense in renting furniture until the right furniture arrived.

2. Punitive Damages. Punitive damages (also called “exemplary damages”) are awarded to punish or make an example of a wrongdoer who has acted willfully, maliciously or 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 awarded in addition to compensatory damages.

Punitive damages are rarely awarded for breach of contract. They arise more often in tort cases, to punish deliberate or reckless misconduct that results in personal harm.

3. Nominal damages: are token damages (small amount of damages) awarded when a breach occurred, but no actual money loss to the non-breaching party was proven.

4. Liquidated damages: are specific damages that were previously identified by the parties in the contract itself, in the event that the contract is breached. Liquidated damages should be a reasonable estimate of actual damages that might result from a breach.

**INJUNCTION**

If a contract contains an express negative stipulation obliging one of the parties not to act inconsistently with the positive contract, an injunction may be granted against a breach of that negative stipulation. An injunction is an order or decree by which one party to an action is required to do or refrain from doing a particular thing, injunctions are either restrictive (preventive) or mandatory (compulsive) 9

In the case of *warner bros pictures v nelson10,* a film actress signed an undertaking with the plaintiffs, 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.[[1]](#footnote-1)

Also in *African songs ltd v Sunday adeniyi11*, a musician who undertook to perform and record solely for the plaintiff company, was restrained for the remaining period of the contract from recording for himself or for any other company.

On the other hand, where the injunction is mandatory, it is restorative in its effect and not merely preventive. It directs the defendant to undo what he has already done in 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 rarely granted.

The court will not grant specific performance to compel an unwilling party to remain in a contract for personal service. [[2]](#footnote-2) However, the court will be prepared to grant an injunction restraining the servant from performing a similar service for anyone else, provided that this does not force him into a position where he will either have to remain in his master’s service unwillingly or remain idle or starve.

Regarding the effect of an injunction on the defendant, especially whether it will in effect force her into specific performance of the contract, the court stated that true to the principle that specific performance of a contract of personal service will never be ordered, it would not grant an injunction in the case of a contract to enforce negative covenants if the effect of doing so would either be to drive the defendant either to starvation or to specific performance of the positive convenants12.

By contrast, in *page one records ltd v britton13*, a case in which the manager of a group of musicians sought an injunction to restrain them from engaging another manager, after dispensing with his services in breach of their contract, the court refused the relief sought on the ground that the defendants would be compelled to continue to employ the plaintiff as their manager and agents.

**CONTRACTS NOT SPECIFICALLY ENFORCEABLE**

Specific performance is a remedy for breach of contract in which the court forces the breaching party to perform the services or deliver the goods the promised goods per the contract. Specific Performance is only available when money damages are inadequate to compensate the plaintiff for a breach. This remedy is typically used when the goods or services are so unique that no other remedy could suffice. A good example is an individual who’s looking to buy a rare piece of art. He or she forms a contract with someone to obtain this piece of art. The buyer’s offer becomes the price for the piece of art and the other party accepts by a promise of delivering the art in exchange for the agreed amount. If the other party joins in this contract, yet fails to deliver the art, the buyer can take the case to court as a breach of contract. The court could rule specific performance the remedy for breach of contract, as the buyer would not be able to get this rare piece of art elsewhere. The defendant would then be required by the court to deliver the goods – in this case, the art – as agreed upon in the contract. There are certain contracts to which the doctrine of specific performance does not apply. It has been long established, for examples, that a contract of personal service will not be specifically enforced at the suit of either party. It would be undesirable and indeed impossible in most cases to compel an unwilling party to remain in close personal relations with another.

The principle is well[[3]](#footnote-3)summarized in this passage from the judgment of jessel, M.R in *Rigby v conol14*. ‘The courts have never dreamt of enforcing agreements strictly personal in their nature, whether they are agreements strictly personal in their nature, whether they are agreements of hiring and service. Being the common relation of master and servant, or whether they are agreement for the purpose of pleasure, or for specific pursuits, or for the purpose of charity or philanthropy.

Thus, in *chukwu v NITEL15*, where the appellant, whose appointment had been terminated by the respondent in the process of reorganization. Sued the respondent claiming inter alia reinstatement and arrears of salary for the period between the act of termination and judgment of the court, the court of appeal refused to order reinstatement which would have amounted to an order of the specific performance of a contract of employment. Relying on the Supreme Court’s decision in *ondo state university v folayan 16.* orah held that the traditional common law rule which is applicable to this country is that the courts will not grant specific performance in respect of a breach of a contract of service.

In *IIodibia v NCC LTD17*, the appellant who was formerly the general manager of the respondent company, was suspended from the service of the respondent. The appellant instituted a suit in court in which he sought a declaration, inter alia, that he was still the general manager of the respondent and was entitled to all the rights pertaining to that office, including salaries, allowances, benefits, etc.

The Supreme Court held that a [[4]](#footnote-4) court will not make an order of specific performance of a contract of personal service unless it is one with a statutory flavor. This contract not being one with statutory flavor, the application was refused.

It should however be noted that the modern relationship of employer and employee is often much less personal that the old relationship of master and servants. Indeed, an employee of the government or of a university or some other large organization in the private sector, has no personal relationship at all with its employer. The latter, who are either the public service commission, or the university governing council or board of directors, have no personal contact or even awareness of the vast majority of their employees. Thus, the rules on non-enforceability of specific performance do not apply to such relationships, and there are signs that the courts are prepared to qualify the old principle in recognition of modern developments18

Another situation in which the courts will not order specific performance is one in which mutuality is not possible. Thus, if the court would not have been able to grant specific performance at the suit of the defendant, it would not grant it at the suit of the plaintiff. Thus, an infant cannot maintain specific performance because it is not maintainable against him.

REFERENCES

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* [www.legalmatch.com](http://www.legalmatch.com)
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1. 8 (1994) 4 NWLR (pt 336) 1

   9 C H Giles and co ltd v morris (1972) and olaniyan v university of lagos

   10 (1937) 1 k.b 209 [↑](#footnote-ref-1)
2. 11 a case previously mentioned

   12 rely a bell burglar and fire alarm ltd v eisler (1962)

   13 (1967) 2 All E.R 822 at p. 833 [↑](#footnote-ref-2)
3. 14 (1880) 14 Ch D 482 at p. 487

   15 (1996) 2 NWLR (pt 430) 290

   16 (1994) 7 NWLR (pt 354) 1 at p. 10 [↑](#footnote-ref-3)
4. 17 (1997) 7 NWLR (pt512) 174 at 198

   18 olaniyan v university of lagos [↑](#footnote-ref-4)