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1. BREACH OF CONTRACT

A contract is a promise or an agreement made between two or more parties. One of the core elements of a contract is that it is legally binding on all parties. The purpose of a contract being legally binding is so each party will have legal recourse in the event of a breach. In this section of this paper, we shall be discussing breach of contract in its entirety; definition, types and cases.

DEFINITION

Typically, 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[[1]](#footnote-1). Breaching can occur in several cases some of which are; when one party fails to deliver in the appropriate time frame, does not meet the terms of the agreement, or fails to perform at all.

TYPES OF BREACH

There are four main types of contract breaches viz;

* Minor Breach: This 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 non-essential that all parties involved can otherwise fulfill any remaining contractual obligations. A minor breach is sometimes referred to as an impartial breach. This can also be referred to as partial breach.
* Material Breach: Here, the breach is so substantial that 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: This takes place when one party makes the other party aware either verbally or in writing that they will not be able to fulfill the terms of the contract. The other party is then able to immediately claim a breach of contract and pursue a remedy such as payment. It is also known as anticipatory repudiation.

If there has been a breach of contract, one must first thoroughly review the contract to see if any instructions regarding the breach were built into the contract such as exclusion clauses of course, with the help of a qualified contract legal practitioner.

REMEDIES FOR BREACH OF CONTRACT

It is trite law that where there is a wrong, there must be a remedy. Thus, where a party to a contract establishes by evidence before the court that the other party has committed a breach of the contract, he is entitled to claim damages. The main object of awarding damages for breach of contract is to compensate the injured party *Umudge & Anor V. Shell Bp Petroleum Dev. Company Of Nig. Ltd*[[2]](#footnote-2) and put him back in the position he would have been if the contract had been performed. **Only in special circumstances will the equitable remedies of specific performance and injunction be granted by the court[[3]](#footnote-3).**

The underlying basis for the common law remedy of damages was laid down by *Parke B. In Robinson V. Harman*[[4]](#footnote-4). It was however argued, that this wide principle was too harsh thus, a modern rule was crystallised in the classic passage from the judgement of *Alderson B. In Hadley V. Baxendale*[[5]](#footnote-5).

Remoteness of Damages

Whenever it has to consider a claim for damages, a court must first resolve the issue whether the defendant is liable for any damage at all and if so, the nature and extent of such damages or losses. This is referred to as issue of remoteness of damages. It is after determining the nature and extent of the damages that the court will quantify them in terms of money. The question of remoteness of damages was given detailed consideration by the House of Lords in the popular case of *The Heron Ii*[[6]](#footnote-6).

Measurement of Damages

The measure of damages is the loss directly flowing naturally from the breach and incurred in direct consequence of the breach and not one arising out of conjectures and speculations of a party *Nma V Marine Management Associates Inc. & Anor*.[[7]](#footnote-7). The general rule with regards to the time of assessment is that damages should be assessed as at the time when the cause of the action arose i.e. the date of the breach[[8]](#footnote-8). However, this rule is not absolute as the court can decide to change the date for different reasons such as where the innocent party refuses to treat the breach as a termination of the contract and where the plaintiff did not know until later that a breach had occurred.

Damages for Pecuniary and Non-Pecuniary Losses

The principle of law which relates to claim for pecuniary loss is that of *restitutio in integrum[[9]](#footnote-9)* which means the party to be damnified is entitled to such sum of money as would put him in as good a position as if the contract has not been breached.

So far as actual or prospective pecuniary loss is concerned, the amount of compensation can be assessed with a degree of accuracy which will go towards putting the injured person in the same position as he would have been in had he not sustained the wrong.

On the other hand, the principle relating to non-pecuniary loss is that of fair and reasonable compensation. Non-pecuniary losses are difficult to estimate *Ibok V Spring Bank Plc*[[10]](#footnote-10).

Mitigation of Damages

A plaintiff who suffered injury or loss arising from breach of contract by the other party is entitled to claim damages as we already know, However, such plaintiff is under a duty which is imposed by the law to take all reasonable steps to mitigate the loss caused by the breach of contract. The plaintiff must act reasonably to mitigate his loss. Therefore, where the plaintiff failed to take reasonable steps to mitigate his loss, he cannot recover damages for such loss arising from breach of contract. *Payzu Ltd. V. Saunders*[[11]](#footnote-11).

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