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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:

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

## QUESTION ONE

Discuss 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.

Breach of contract is 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.

### *Hochster v De la Tour (1853)*

Court Held:

Before the injury occurred in the application until the parties of its intention not to perform the contract if the innocent party would you mind passing. They shall immediately or can choose their continued violation of this Agreement to wait.

Among them immediately or to seek their own contracts before they are waiting for a breach of the law continue to enter into the innocent party to make a choice to make. This can be beneficial or harmful.

### *Doe Corporation v. Roe Corporation*

*WEMA BANK PLC .V. ALHAJI SOLA OLOKO CA/1/88/2009.*

### *Cutter v Powell [1795].*

Further, if one party fails to perform while the other party fulfill their obligations, the performing party is entitled to legal remedies for breach of contract. A contract is binding and will hold weight if taken to court. To successfully claim a breach of contract, it is imperative to be able to prove that the breach occurred. There are four main types of contract breaches:

Minor breach

Material breach

Fundamental breach

Anticipatory breach.

**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; and

Anticipatory Breach: An anticipatory breach occurs when one party lets the other party know, 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. Anticipatory breach may also be referred to as anticipatory repudiation.

## QUESTION TWO

Remedies available for the breach of contracts

What is a Remedy in Contract Law?

In contract law, a “remedy” is a court-ordered resolution to one party’s breach of contract. A breach of contract occurs when one party to a contract has not fulfilled his or her obligation under the agreement. The non-breaching party is also known as the “injured” party, and the purpose of remedies is to place the injured party in the position they would have otherwise been in had the contract been performed as it was agreed upon.

When a promise or agreement is broken by any of the parties we call it a breach of contract. So when either of the parties does not keep their end of the agreement or does not fulfill their obligation as per the terms of the contract, it is a breach of contract. There are a few remedies for breach of contract available to the wronged party.

**Specific performance.** *Dobson v. Winton and Robbins Ltd., [1959] S.C.R. 775.*

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. The 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.

**Monetary damages.** 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.

**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.

- 1. 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.
- 2. Injunction:** In this option, injunction can be said as a remedy that is equitable that the court requires the party to do something or the other way, to stop him or her from doing something. There are three types of injunction which is interlocutory injunction, mandatory injunction and also prohibitory injunction. The meaning of interlocutory injunction can be say as to maintain the status quo of something in a pending suit. In

the other word, interlocutory injunction means to stop the action from being done.

Interlocutory injunction is applied in before the starting of something or stops something for being continued.

In conclusion, when both of the parties sign into a contract, it is encourage that both of the parties not to breach the contract. This is because when breaching the contract, it not only brings in monetary problem, but also will losing of confidence when signing a contract. So it is necessary that to take a careful consideration and decision before signing a contract with others. When establishing a contract, it is encourage for the person that wanted to have cooperation with other to set up the contract in a writing document. Besides that, after him or her setting up the contract, it is also necessary that both of the parties to read through the contract carefully. This is because to prevent that one of the parties are not satisfied with the term and condition in the contract after the agreement. After had sign the contract, it is also encourage to keep a copies of the contract document. Not only that, it is need to state the time deadliness for the performance in the contract. These methods can be help in preventing from one of the parties breaching a contract.

Refrence:

[Www.legalbatch.com](http://www.legalbatch.com)

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