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COURSE: LAW OF CONTRACT

DEPARTMENT: LAW

ASSIGNMENT: EXPLAIN BREACH OF CONTRACT AND REMEDIES OF 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. 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.

A breach of contract is a violation of any of the agreed upon terms and conditions of a binding contract. The breach could be anything from a late payment to a more serious violation such as the failure to deliver a promised asset. 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.

A breach of contract is when one party breaks the terms of an agreement between two or more parties. This includes when an obligation that is stated in the contract is not completed on time(you are late with a rent payment, or when it is not fulfilled at all) sometimes the process for dealing with a breach of contract is written in the original contract is written in the original contract. For example, a contract may state that in the event of late payment, the offender must pay a sum along with the missed payment. If the consequences for a specific violation are not included in the contract, then the parties involved may settle the situation among themselves, which could lead to a new contract, adjudication or another type of resolution. A breach of contract occurs when one party in a binding agreement fails to deliver according to the terms of the agreement. A breach of contract can happen in both a written and oral contract. The parties involved in a breach of contract may resolve the issue among themselves, or in a court of law. There are different types of contract breaches, including a minor or material breach and an actual or anticipatory breach in a court of law. There are different types of contract breaches, including a minor or material breach and an actual or anticipatory 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 partys performance or interference with the other party’s performance. Where there is a contract, the resulting damages will have to be paid by the party breaching the contract to the aggrieved party. If a contract is rescinded, parties are legally allowed to undo the work unless doing so would directly charge the other party at that time. When any party to a contract, whether oral or written fails to perform any of the contracts terms, they may be found in breach of contract. While there are many ways to breach a contract, common failures include failure to deliver goods or services, failure to fully complete the job , failure to pay on time, or providing inferior goods or services. In other words, a breach of contract is a broken promise to do or provide something. Let’s assume that **R. Runner** contracts with **Acme anvils** for the purchase of some of its products, for delivery by the following Monday evening. If **Acme** delivers the anvils to runners on the following Tuesday morning, its breach of the contract would likely be deemed immaterial, and R . Runner would likely not be entitled to money damages( unless he could show that he was somehow damaged by the late delivery). However, assume now that the contract stated clearly and explicitly that time is of the essence and the anvils must be delivered on Monday, its breach of contract would likely be deemed material and **R runner’s** damages would be presumed. Making **Acmes** liability for the breach more severe, and likely relieving runner of the duty to pay for the anvils under the contract.

There are four main types of contract breaches:

1. **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.
2. **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.
3. **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.
4. **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 types of legal remedies available for breach of contract depends largely on the severity of the breach. Generally, damages awarded are categorized into four groups:

1. **Compensatory damages**: compensatory damages are those that compensate the non breaching party for their losses. This is the most common legal remedy, and a court can order the breaching party enough to get what they were promised by the terms of the contract.
2. **Restitution**: If the non breaching party is able to prove that their loss is due directly to the actions of the breaching party, a judge may order restitution which could include lost wages, medical Bill, and property repair and replacement.
3. **Punitive damages**: punitive damages are generally awarded alongside compensatory damages. The purpose of punitive damages is to punish the breaching party when they have engaged in particularly egregious behavior in damages . The purpose of punitive damages is to punish the breaching party when they have engaged in particularly egregious behavior in order to breach the contract, such as being intentionally negligent.
4. **Specific performances:** specific performance is utilized as a legal remedy for breach of contract, and it requires the breaching party to perform their part of the contract. Specific performance is not always available. If there has been a breach of contract, you should first thoroughly review the contract to see if any instructions regarding a breach were built into the contract. Mandatory arbitration or a liquidated damages clause are two examples of such instructions. Second you should let the other party know that there has been a breach. If you committed the breach, it is better to own up to it before it is found out, which could lead to more serious consequences. If the other party committed the breach, it is best to give them an opportunity to rectify the situation before taking legal action.

The case of ***Revelations perfume & cosmetics inc. V. Prince Rogers Nelson*** in 2008, the Revelations perfume and cosmetics company sued the famous musician “ prince" and his music label seeking $100,000 in damages for reneging on an agreement to help market their perfumes. The flamboyant pop star had promised to personally promote the company’s new perfume named after his 2006 album “3121” and to allow his name and likeness to be used in the perfumes packaging. Prince then refused to grant interviews related to the project, and refused to provide a current photograph for a press release. In its breach of contract complaint, Revelations asked the court to award more than $3 million in lost profits, as well as punitive damages. The judge found no evidence, however, that the pop star acted with malicious intent, and ordered him to pay nearly $4 million for the cosmetics.

Also the case of ***Macy’s V. Martha Stewart living*** Macy’s department stores filed a breach of contract complaint against Martha Stewart living omnimedia for making an agreement with J.C Penney for the creation of Martha Steward retail stores within their retain stores beginning February 2013. Prior to the deal, J.C Penney had purchased a minority stake in stewards company for $38.5 million. The mini retail stores were to carry Martha Stewart home goods, however Macy’s argued they had been granted an exclusive right to make and sell certain Martha Steward living products in an agreement signed in 2006. Macy’s asked the court to grand a preliminary injunction to stop steward from breaching the contract while the court considered the matter. Twelve years later, in June 2014, a New York judge ruled that J. C penney had indeed stepped over Macy’s contract with the domestic diva in its attempt to sell products bearing her name. While the J.C penney contract has been nullified, monetary breach of contract damages were not immediately decided, and may be limited to the legal fees and costs of the lawsuit, as the judge decided the case did not warrant punitive damages.

To be successful in a breach of contract lawsuit, the aggrieved party must prove that they have suffered some type of loss or damages as a result of the breach. Actual damages or loss may be in the form of money lost, time lost, loss of opportunity, or a host of other losses.

**FILING A BREACH OF CONTRACT COMPLAINT**

A party to a contract dispute who feels the other party Is in breach of the contract, should provide a breach of contract. Should provide a breach of contract letter to the breaching party that he will be taking action for breach of contract. This is the first, formal step to resolving the issue. Sending a dated breach of contract letter outlining the problem puts the other party on notice they need to do something to comply with their parts of the agreement. If it becomes necessary to file a lawsuit, providing a copy of the letter, and all correspondence with the opposing party, to the court helps prove the case. While many people choose to file their breach of contract complaint in small claims court, those involved in high value contract disputes should consult an attorney experienced in contract cases. The case of ***Ritchie v Atkinson(1808)*** by contract the claimant agreed to carry a cargo of specified quantity of hemp and iron. The price agreed was $5 per ton for the hemp and 5 shillings per ton of iron. The claimant only carried part of the agreed quantity. The defendant argued the contract had not been fully performed and therefore no payment was due. The court held: the contract could be divided into separate parts as the parties had not agreed a price per ton. The claimant was thus entitled to payment for the amount carried although the defendant was entitled to damages for non performance in relation to the amount not carried. Also the case of ***Cutter v Powell*** the harshness of this rule has been mitigated by the creation of various exceptions

2. **REMEDIES OF BREACH OF CONTRACT**

**The** party committing breach of contract is called the ‘guilt party’ and the other party is called the injured or aggrieved party. In case of breach of contract, the aggrieved party would have one or more, but not all, of the following remedies against the guilty party.

The remedies are:

1. Suit for rescission
2. Suit for damages
3. Suit for quantum meruit
4. Suit for specific performance
5. Suit for injunction
   1. **Suit for rescission:** The breach of contract no doubt discharges the contract, but the aggrieved party may sometimes need to approach the court to grant him a formal rescission, i.e cancellation of the contract . This will enable him to be free from his own obligations under the contract.
   2. **Suit for damages:** The word damages means monetary compensation for loss suffered whenever a breach of contract takes place, the remedy of damages is the one that comes to mind immediately as the consequence of breach. A breach of contract may put the aggrieved party to some disadvantage or inconvenience or may cause a loss to him. The court would desire the guilty party to accept responsibility for any such loss of the aggrieved party and compensate him adequately. The quantum of damages Is determined by the magnitude of loss caused by breach. The rule in ***Hadley v. Baxendale*** has been divided into two parts or branches, the first dealing with the **normal damage** that occurs in the usual course of things and the second with **abnormal damage** that arises because of special or exceptional circumstances.

**Types of damages**

**\_ Remoteness of damages:** Wheneverit 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 known as the issue of remoteness of damages, and it is in fact the main issue in the cases discussed. The question of remoteness of damages in contract was given detailed consideration by the house of lords in ***Koufos v. C. Czarnikow Ltd,*** known as the Heron II. The respondents chartered the appellants ship on October 15, 1960, to proceed from piraeus to constanza and there take on a consignment of the respondents sugar and carry it to Basrah or at jeddah. The court of appeal held that the parana laid down no such rule and applying the rule in ***Hadley v. Baxendale explained in Victoria v. Newman Industries Ltd*** held that the loss due to the fall in market price was not too remote to be recoverable as damages.

**measurement of damages:** The general rule with regard to the time of assessment is that damages should be assessed as at time when the cause of action arose, namely the date of the breach. Stated in ***Johnson v. Agnew,*** this is not an absolute rule, and the court will fix any other appropriate day if the date of breach will work Injustice. In ***Chaplin v. Hicks***, where a theatrical manager wrongfully deprived a young lady of the chance of obtaining employment as an actress by not giving her a reasonable opportunity to be interviewed for the post, substantial damages were awarded by the plaintiff despite the impossibility of accurately estimating her loss. Forty nine other applicants had been interviewed for five jobs and so her chances of being employed had been one in ten.

**\_ Damages for Non\_ pecuniary losses:** Although damages for breach of contract are based on financial loss, in certain circumstances, damages may be recovered from the defendant for non pecuniary losses if they were within the contemplation of the parties as not unlikely to result from the breach. In ***Hamlin v. Great northern Railways,*** it was held that damages could not be awarded for mental distress and vexation suffered by a plaintiff on account of breach of contract. Also in  ***Groom v. Crocker*** Wherethe plaintiff was awarded 1000 pounds damages by a jury for injury to his reputation or feelings as a result of a breach of contract by the defendant, it was held on appeal that no damages could be recovered for such non financial or non material damages arising out of a breach of contract and the damages awarded by the jury were reduced to 40 shillings.

**\_ mitigation of damages:** The law imposes an obligation on all parties to take reasonable steps to mitigate the losses caused by a breach of contract. The plaintiff cannot therefore recover loss which he could have avoided by taking reasonable steps. The position of the person who fails to take reasonable steps to mitigate his losses is similar to that of a plaintiff whose damages are reduced because of contributory negligence. Similarly in ***Obasuyi v. Business ventures Ltd,*** the appellants trailer collided with the respondents in circumstances which indicated that the appellants driver was at fault. The driver was prosecuted and found guilty, nevertheless, the appellant refused to commence repairs of the vehicle unless the respondent successfully brought a civil action confirming the liability of the appellants driver. The respondent had to bring this action which resulted in the appellants driver liability being confirmed and damages awarded for loss of use at the rate of two thousand naira a day for the 438 days since the accident occurred. Which came to 878,000 naira. In his appeal, the appellant argued that the respondent could have mitigated his losses by hiring another trailer whilst his own was lying unused. This view was rejected by the court of Appeal. In the first place, there was no evidence that the respondent could have hired a trailer at less than the 2,000 naira per day that he was claiming. In this case, it was the appellant who had failed in his duty to minimize his loss when he insisted until his driver was found liable both in criminal law and in tort, he would not repair the vehicle. The appellant, therefore, had himself to blame for increasing his damages unnecessarily. This similar case also happened in ***Momodu v. University of Benin.***

**\_ penalty and liquidated damages:**

**\_ General & special damages :** One unique feature of contract cases decided in Nigerian courts, is the proclivity of counsel, for classifying damages into special and general categories. The tendency is that where the losses claimed are for specific items with clear or known monetary values, these are referred to as special damages. If for example, the plaintiff is bringing a claim for damages against a motor dealer in respect of a lorry bought by him which has turned out to be full of defects, the claims will contain items, all these will be treated as special by the court. In ***Mobil oil Ltd. V. Abraham Akinfosile*** the plaintiff prtrol dealer who was suing the defendants of his dealership designated the some items as special damages, the trial judge found none of the items in the claim for special damages proved and thereupon dismissed those claims.

**\_ Exemplary damages:** Exemplary damages are damages awarded against the defendant as a punishment, so that the assessment goes beyond mere compensation to the plaintiff. The right is more widely applied in the law of tort, the court of appeal explained what Constitutes exemplary damages and when they should be awarded for tortious conduct in ***Alele Williams v. Sagay.*** In ***Uso v. Iketubosin,*** the plaintiff was engaged to the defendant for 10 years after which the defendant suddenly terminated the engagement without justification. The court awarded damages of 600 pounds to the plaintiff for breach of promise of marriage which, in 1957, was a very large sum of money indeed. The reasons for what amounted to exemplary damages, was that the plaintiff was already over thirty years in age and through she was still personable, her attractions are waning. She was tied to this man during the years when her prospect of marriage were greatest. It may well be as that as a result of his conduct she will remain unmarried.

**\_ Nominal damages:** Whenever a party has committed a breach of contract, the injured party is entitled to nominal damages, even though he has suffered no actual damage. The violation of his right will entitle the plaintiff to nominal damages without proof of any loss incurred by him as a consequence of the breach. In ***Nigerian Advertising and publicity Ltd. V. Nigeria Airways Ltd,*** the plaintiffs were unable to establish any loss suffered by them as a consequence of the defendants admitted breach of contract.

**Suit for quantum meruit**: The term quantum meruit means as much as earned. It Implies a payment deserved by a person for the reason of actual work done. When a party has done some work under a contract, and the other party repudiates the contract or somehow the full performance of the contract becomes impossible. Then the party who has done the work can claim remuneration for the work under a suit for quantum meruit. Likewise, where one party has expressly or impliedly requested another to render him a service without specifying any remuneration, but the circumstances of the request imply that the service is to be paid for, there is implied a promise to pay quantum meruit. Even in the case of where the person has done the work is the one who is guilty of breach of contract, he too is entitled to be paid quantum meruit. But there is an exception\_ such a contract must have involved work that was indivisible and it must not have been a contract for lump sum remuneration. In ***Warner & Warner V. F.H.A.*** where the respondent wrongfully terminated a building contract which was already partly completed, the supreme court held that the injured contractor had the option of either suing for damages where the measure of damages is normally the loss of profits for the unfinished balance, plus the value of work done at contract prices, or ignoring the contract and claiming a reasonable price for work and labor done in Quantum meruit. This will normally be chosen if reasonable price is higher than contract prices. As Alderson, declared in ***Bernady v. Harding,***  where one party has absolutely refused to perform, or has rendered himself incapable of performing his part of the contract, he puts it in the power of the other party either to sue for breach of it, or rescind the contract and sue on a quantum meruit for the work actually done

* 1. **Suit for specific performance:** In certain cases of breach of a contract, damages may not be an adequate remedy. Then the court may direct the party in breach to carry out his promise according to the terms of the contract . This is a direction by the court for specific performance of the contract at the suit of the party not in breach. But in general, courts do not wish to compel a party to do that which he has already refused to do. **Chapter 2 of the specific relief Act, 1963** lays down detailed rules on the specific performance of contracts. Cases where specific performance may be ordered: when there exists no standard for ascertaining the actual damage caused to the aggrieved party by the non performance. Where monetary compensation will not be adequate relief. Example a contract for sale of a rare antique. Where plaintiff’s property is held by the defendant in the capacity of his agent or trustee. Where the act to be done is in performance of trust. Cases where specific performance will not be ordered: where monetary compensation is adequate relief, where contract is made by the agent or trustee in violation of his powers, where the contract is of a personal nature, such as a contract to marry or a contract to of service, where the court cannot supervise the performance of promise as it involves performance of a continuous duty, where the contract is made by a company in excess of its powers as laid down in its Memorandum of association, where the contract is in its nature revocable. In ***Taylor v. H.B. Russel,*** the west African court of Appeal refused to grant specific performance with regard to a contract for the sale of a piece of land because by the time the action was brought the defendant had sold the land to someone else, who had in turn sold it to a fourth person. Both buyers not only gave value, but were not aware of the earlier agreement between the plaintiff and the defendants. In ***Coker v. Ajewole,*** the appellant who had promised to advance the sum of 1,175 pounds to the respondent for the purpose of erecting shops on the respondents land, after which the shops would be rented to the appellant, advanced only 800 pounds and left the remaining 375 pounds outstanding for so long that the respondent was forced to borrow that sum from someone else in order to complete the building of the shops. He then rented the shops to the second person. The appellant brought an action for specific performance. Her claims were rejected by both the High court and the Supreme court, holding that the failure of the appellant to perform her own part of the contract which was a condition precedent was fatal to her claim for specific performance. The supreme court added that where a plaintiff in such an action has been guilty of delay in performing his own part of the agreement, the delay may also bar his claim to specific performance in three circumstances:

**\_** where time was in equity of the essence of the agreement

\_ if although time was not originally of the essence of the contract it was subsequently made so by agreement, Express or implied

\_ if by his conduct, the delay on the part of the plaintiff was such as may be regarded as evidence of the abandonment of the contract.

* 1. **Suit for injunction:** Injunction is a court order to decree to a person asking him to refrain from doing a contemplated act or from continuing an ongoing act. Such an order of injunction becomes a remedy for the aggrieved party when the court orders the guilty party to refrain from doing precisely that which is causing the breach of contract. In a way, injunction is a mode of securing the specific performance of the negative terms of a contract. But for the performance of the positive terms of the contract, the aggrieved party may seek other remedies like damages. Injunctions are either restrictive or mandatory. In ***Warner bros. Pictures Inc. V. Nelson,*** 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. Also as looked on earlier in ***African songs Ltd. V. Sunday Adeniyi,*** 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. As stated earlier, the courts will not grant specific performance to compel an unwilling party to remain in a contract for personal service. 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 masters service unwillingly or remain idle or starve. By contrast, in ***Page one Records Ltd. V. Britton,*** 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 agent. [[1]](#footnote-1)

1. (Mercantile law, supreme court, Lagos, LD/212 (1853)2E, & B. Delivered on May 20, 1960, casebook p.448 High court of the FCT, delivered on march 12 1987.no 1/205/69 [↑](#footnote-ref-1)