**NAME: FAYINMINU ABIMBOLA OLUWATAMILORE**

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**COLLEGE: COLLEGE OF LAW**

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**ASSIGNMENT TITLE: BREACH OF CONTRACT**

**QUESTION**

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**

**CONTENTS**

1. **Definition of breach of contract**
2. **What constitutes breach of contract**
3. **Types/classifications of breach of contract**
4. **Remedies available for breach of contract**
5. **Other Case law on breach of contract**

This manuscript has as its prime focus, the legal subject matter of **‘Breach of Contract’**. This work aims to delve into the topic of Breach of contract comprehensively by giving definitions, types, examples, case laws and also remedies that are available for breach of contract.

**DEFINITION OF BREACH OF CONTRACT**

The basis of contract law/ law of contract are contracts. On the word of the Court of Appeal in the case of ***Robinet Nigeria Limited v Shell Nigeria Gas Limited[[1]](#footnote-2),*** a contract was held to be an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law. This means that the parties to a contract make promises to each other to either perform a certain duty, or pay a certain amount for a specified item or service. This to say that when either of the parties do not perform their obligations as stated in their promise, they have broken their promise and hence, a breach of contract has ensued.

A breach of contract can be defined as an act which occurs when a party without lawful excuse fails refuses to perform what is due from him under the contract, performs defectively or incapacitates himself from performing. In simpler terms, a breach of contract is an unjustifiable failure to perform terms of a contract. [[2]](#footnote-3)

**Breach of contract** is a [legal](https://en.wikipedia.org/wiki/Legal) [cause of action](https://en.wikipedia.org/wiki/Cause_of_action) and a type of [civil wrong](https://en.wikipedia.org/wiki/Civil_wrong), in which a [binding agreement](https://en.wikipedia.org/wiki/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. Where there is breach of contract, the resulting damages will have to be paid by the party breaching the contract to the aggrieved party[[3]](#footnote-4).

Breach of contract can occur in all manner of forms.

**For example**, **Company A** enters into a contract with **Company B**. The contract is such that Company A will pay Company B monthly payments to carry out a domestic cleaning service at their company. For the first 3 months, the contract is carried out properly. In the 4th month, Company A pays Company B half of the agreed sum of money. In the 5th month, Company A does not pay Company B at all. In this hypothetical example, it is clear to see that a breach of contract has ensued. Company A has not fulfilled his obligations and promises to Company B that were made in the contract and has such broken his promise and breached the contract.

**WHAT CONSTITUTES A BREACH OF CONTRACT**

A contract has to be first of all analyzed in order to determine whether a breach of contract has truly ensued. It is only after the thorough examination and analyzation of a contract by a judge can a breach of contract truly be ruled and determined. In a bid to analyze a contract some particular things must be weighed up. These things include; the valid existence of a contract, the requirements and conditions of the contract and modifications if any to the contract. Also, for the contract to be breached and the judge to deem it worth of a breach, the plaintiff must prove that there was a breach in the first place, and that the plaintiff held up his side of the contract by completing everything required of him.

**TYPES OF BREACH OF CONTRACT**

The law genrally recognizes four types of breach of contract and they are:

#### Material Breach of Contract:

A material breach is one of the general classifications of breach of contract. This type of breach of contract is said to happen when one party receives a significantly less benefit or a significantly different result than what was specified in a contract. Material breaches can include a failure to perform the obligations laid out within a contract or a failure to perform contracted obligations on time. When a material breach occurs, the other party may pursue damages related to the breach and both its direct and indirect consequences.

1. **Minor Breach of Contract**:

This can also be known as a partial breach of contract or an immaterial breach of contract. Minor Breach of Contract refers to situations where the deliverable of the contract was ultimately received by the other party, but the party in breach failed to fulfill some part of their obligation[[4]](#footnote-5). In such cases, the party that suffered the breach may only be able to pursue a legal remedy if they can prove that the breach resulted in financial losses. A late delivery, for example, may not have a remedy if the breached party cannot show that the delay resulted in financial consequences.

1. **Anticipatory Breach of contract:**

## A breach need not actually occur for the responsible party to be liable. In the case of an Anticipatory Breach, an actual breach has not yet occurred, but one of the parties has indicated that they will not fulfill their obligations under the contract. This can occur if the breaching party explicitly notifies the other party that they will not fulfill their obligations, but such a claim could also be based on actions that indicate one of the parties does not intend to or will not be able to deliver

## 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.

**REMEDIES AVAILABLE FOR BREACH OF CONTRACT**

A legal remedy is the means with which a [court of law](https://en.wikipedia.org/wiki/Court_of_law), usually in the exercise of [civil law](https://en.wikipedia.org/wiki/Civil_law_%28common_law%29) jurisdiction, enforces a [right](https://en.wikipedia.org/wiki/Right), imposes a [penalty](https://en.wikipedia.org/wiki/Sentence_%28law%29), or makes another [court order](https://en.wikipedia.org/wiki/Court_order) to impose its will in order to compensate for the harm of a wrongful act inflicted upon an individual. The type of remedy meted out in to an innocent party in the event of a breach of contract largely depends on the gravity of the breach.

Some of the remedies available for breach of contract include:

1. Damages: Damages was held in ***Adamu v. Gulak[[5]](#footnote-6)*** to be a sort of pecuniary compensation, of indemnity recoverable in the courts by an person who suffered a loss, detriment or injury, to be it to his person, property or right through the unlawlful or wrongful act or omission or negligence of another. There are two general categories of damages that may be awarded if a breach of contract claim is proved. They are:
2. 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 two kinds of compensatory damages that the non breaching party may be entitled to recover:
* General Damage:  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.

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.
1. 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.
2. **Specific performance:**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.
3. **Rescission:**Rescission allows the non-breaching party to essentially be released from performance obligations. Recession 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.
4. **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.

**OTHER CASE LAW ON BREACH OF CONTRACT**

* *Revelations Perfume and Cosmetics Inc. v. Prince Rogers Nelson[[6]](#footnote-7)*

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 perfume’s 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](https://legaldictionary.net/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 company’s out-of-pocket expenses. Revelations’ request for punitive and loss-of-profits damages was denied.

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