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**BREACH OF CONTRACT**

First of all let’s discuss what a contract is. A contract is an agreement between private parties which is enforceable by law. A contract is defined as an agreement which the law will enforce or recognise as affecting the legal rights and duties of the parties.[[1]](#footnote-1)

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.[[2]](#footnote-2)

**What is breach of contract?**

According to Wikipedia “**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 honoured 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 fulfil 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.”[[3]](#footnote-3)

Basically a breach of contract is failing to perform any term of a contract, written or oral, without a legitimate legal excuse. This may include not completing a job, not paying in full or on time, failure to deliver all the goods, substituting inferior or significantly different goods, not providing a bond when required, being late without excuse, or any act which shows the party will not complete the work.[[4]](#footnote-4)

In simple terms, a breach of contract has occurred when either of the parties do not fulfil their end of the contract. In the case *Ahmed & Ors v CBN[[5]](#footnote-5) where* the court brought out instances in which a contract will be discharged for a breach of contract as, *“(i) Non-performance (ii) By performing the contract not in accordance with its terms or (iii) By wrongful repudiation of the contract”*.

**WHAT CONSTITUTES A BREACH OF CONTRACT?**

To determine whether or not a contract has been breached, a judge needs to examine the contract. To do this, they must examine: the existence of a contract, the requirements of the contract, and if any modifications were made to the contract. Only after this can a judge make a ruling on the existence and classifications of a breach. Additionally, 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. Additionally, the plaintiff must notify the defendant of the breach prior to filing the lawsuit.

**TYPES OF BREACH OF CONTRACT**

**Material Breach of Contract**

A material breach occurs when one party receives 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. This can be seen in the case of *Monarch Steamship v Karlshamms***[[6]](#footnote-6)** where Karlshamms Oljiefabriker (KO) entered a contract in April 1939 with Monarch Steamship Co (MSC) to transport beans to a specific port. Delays occurred owing to the unseaworthiness of the vessel, and it did not reach the designated port prior to the outbreak of World War Two. The British Admiralty prohibited the ship from continuing, and KO claimed for breach of contract.

**Minor Breach of Contract**

Also sometimes called a Partial Breach of Contract or an Immaterial Breach of Contract, a 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. 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. **For instance**, if a homeowner hires a contractor to install new windows in a home and asks for wind resistant windows but the contractor uses windows that aren’t wind resistant the homeowner will ask the contractor for damages incurred. Since there is no difference in value between the two windows, the homeowner will not be awarded any damages. If there was a difference between the two windows then the homeowner would have been awarded damages that amount to the difference between the two windows.

**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 of a Contract**

This is when the person that has had the contract breached against can sue the breaching party for damages incurred as well as terminate the contract if they wish to do so

**REMEDIES FOR BREACH OF CONTRACT**

**Suit for Specific Performance**

Specific performance is applied in breach of contract actions where monetary damages are inadequate. Specific performance is being a discretionary remedy, may not be granted where damages will provide an adequate remedy or where terms of the contract are uncertain or where there has been delay in bringing the action or where there was fraud. Suit for specific performance is by compelling the parties to perform exactly what they had agreed in the agreement.

When this option is selected, the party that broke the contract is taken to court, with the plaintiff requesting that the court force the defendant to perform the specific contract terms that have not been performed or to refrain from engaging in some activity that is prohibited by the contract. In the case of ***Nutbrown v Thornton[[7]](#footnote-7)*** Specific performance of the contract was granted. Whilst an award of damages would ordinarily be given for non-delivery of goods, damages would be inadequate to compensate the claimant because he would not be able to buy the machines elsewhere.

**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. This is seen in the case of *McRae* ***v*** *Commonwealth Disposals Commission***[[8]](#footnote-8)** where it was held that the complainant was entitled for damages from the defendant. The contract was not null and void because of a common mistake. A contract did exist between the complainant and the defendant and since this oil tanker did not exist, this was a breach of contract. Thus, the complainant was entitled to damages for breach of contract and for the purchase price amount of the oil tanker, as well as the expenses paid out for the salvage operation.

**Injunction**

An injunction which is an equitable remedy may be interlocutory, or mandatory. It may even be prohibitory or restraining in nature. An interlocutory injunction is used to maintain the status quo of the subject matter in a pending suit whilst a mandatory injunction is a court order requiring something to be done. A prohibitory injunction stops something from being done. This is seen in the case of *Warner Bros v Nelson***[[9]](#footnote-9)** where the court found that the contract was not meant to force the defendant to specific performance but that an injunction would enforce the contract to perform and therefore specific performance was not an appropriate remedy. This was also the case for damages as they could not be appropriate quantified under the circumstances. On this basis, an injunction, with a time limit was applied to prevent Nelson from carrying out the other contract.

***Rescission***

Rescission is a remedy used to terminate a contract when parties entered into a contract by way of fraud, undue influence, coercion, or mistake. In the case of rescission, the contractual obligations of both parties are therefore terminated, and the contract will no longer exist.

**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. This is seen in the case *Trustees of Ampleforth Abbey v Turner & Townsend***[[10]](#footnote-10)** where It was held that the defendant did owe a duty of care to the claimant and had failed in that duty by failing to exert sufficient pressure on the contractor to finalise the contract. The breach caused loss because if there was no breach the claimant would have taken steps to ensure that it was entitled to liquidate damages and there was a real possibility that the contractor would have agreed to those terms.

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1. SAGAY: NIGERIAN LAW OF CONTRACT [↑](#footnote-ref-1)
2. (Treitel 2007, para 17-049) [↑](#footnote-ref-2)
3. See https://en.wikipedia.org/wiki/Breach\_of\_contract [↑](#footnote-ref-3)
4. The People's Law Dictionary by Gerald and Kathleen Hill [↑](#footnote-ref-4)
5. Ahmed v CBN (2012) JELR 57396 (SC) [↑](#footnote-ref-5)
6. Monarch Steamship Co Ltd v Karlshamms Oljefabriker [1949] AC 196 [↑](#footnote-ref-6)
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10. Trustees of Ampleforth Abbey Trust v Turner & Townsend Management Ltd [2012] EWHC 2137 [↑](#footnote-ref-10)