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**BREACH OF CONTRACT**

The below extract will give a distinct evaluation on what a breach of contract entails. It will also explore the remedies available for a breach of contract. Before we dive into what a breach of contract is, one must know what a “contact” actually is.

A contract is a legally binding promise between two parties. According to the *Oxford Advanced Learner’s Dictionary* it is, ***“an official written agreement”***. The contract is made each party promises to perform a certain duty, pay a certain amount for a specified item or service. This is because both parties must lose southing to gain (consideration). The purpose of a contract being legally binding is to ensure each party will have legal recourse in the event of a breach i.e. a legal backing to ensure they both carry out their end of the bargain. [[1]](#footnote-1)

***What is a Breach of Contract?***

A breach of contract means that the party in breach has acted contrary to the terms of the contract. This might either be by non-performance or in performance of the terms of the contract. This is seen in the case of *Ahmed & Ors v CBN[[2]](#footnote-2) 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”*. A party has not met their part of the bargain. It occurs when a promise in a contract has not been kept. A party could have failed to fulfil their agreed upon obligations according to the terms of the contract. Breaching can occur when a party fails to deliver in the appropriate time frame, does not meet the terms of the agreement, or fails perform at all.

If a party fails to perform their duties in a contract and the other party has reached their end of the bargain according to the terms, that other party has the legal right to remedies for breach of contract.

***Types of Contract Breaches***

***Minor Breach:***

This is also referred to as a partial breach. This occurs when a party fails to perform a part of a contract that does not violate the entire contract. To be considered a minor breach, the infraction must be so nonessential that all parties involved can otherwise fulfil any remaining contractual obligations. The injured party of the contract is not entitled to an order for performance of its obligations but only to collect the damages for which they are owed.

For example;

* Ralph Loren orders one hundred pounds of silk cloth from Textiles, Inc. to be delivered to him on April 1st. Textiles, Inc. delivers the cloth on April 2nd. This will most likely be considered a minor breach.
* 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 are not 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.

***Material Breach:***

This type of breach is very substantial. It impairs the contract as a whole. It renders the whole agreement defeated. It can also be called total breach. The injured party on the breach may got to court to request for damages.

For example;

* Ralph Loren orders one hundred pounds of silk cloth from Textiles, Inc. telling them that the cloth must be delivered to him on April 1st because he has a fashion show on April 4th and his seamstresses need three full days to turn the cloth into the clothes that will be features at the show. Textiles, Inc. delivers the cloth on April 2nd. In this case, the delay will be considered a material breach because the time of delivery was bargained for importance.

The following, as defined by the Restatement of Contracts, must be present to determine whether or not a material breach has occurred:

\* The extent to which the injured party will be deprived of the benefit which he reasonably expected

\* The extent to which the injured party can be adequately compensated for the part of that benefit of which he will be deprived

\* The extent to which the party failing to perform or to offer to perform will suffer forfeiture

\* The likelihood that the party failing to perform or to offer to perform will cure his failure, taking account of all the circumstances including any reasonable assurances

\* The extent to which the behaviour of the party failing to perform or to offer to perform comports with standards of good faith and fair dealing.[[3]](#footnote-3)

***Fundamental Breach:***

This is almost the same as a material breach. The injured party can terminate the contract and seek damages. A fundamental breach however is more egregious.

***Anticipatory Breach:*** Here, one party lets the other party know of the breach either verbally or by writing that they cannot meet the terms of the contract. The non-breaching party realizes that the other party of the contract will fail to perform his or her part of the contract in the future and can terminate the contract and sue for damages before the breach happens. The injured party can claim it and

Then pursue a remedy immediately which is usually payment. It is also called anticipatory repudiation. **REMEDIES OF BREACH OF CONTRACT *Award of Damages***

It is a trite of law that where there is a wrong there must be a remedy for it when an injured party in a contract is able to establish that there is a breach of a contract by the other party. That party is entitled to damages.

***Forms of Damages***

i) Liquidated Damages; Where satires in a contract fix the amount payable on default of one of them or event of breach as part of the contract it is called liquidated damages. So the parties by their agreement may fix the sum payable in case of any breach. This is seen in the case of *Koumoulis v. Leventis Motors Limited[[4]](#footnote-4)* where the respondent, Automobile Engineers and Merchants recruited and hired the appellant from Cyprus. His employment was regulated by an Agreement of Service. The appellant was to serve them in their company in Apapa as a Spare Parts Manger for two years with a salary of 1500 pounds and an additional sum of 100 pounds per annum as consideration for his acceptance. Clause 6 of the Agreement of Service fore said in case of any breech that the appellant agreed to pay 1000 pounds described as liquidated damages in clause 8. The appellant resigned before the two years and the respondent brought an action against him. The court held “where a simple sum is agreed to be paid as liquidated damages on the breach of a number of stipulations of caring importance ….provided it is a fair pre-estimate…will be regarded as liquidated damages and not a penalty”.

ii) General Damages; these are implied by law in every breach of a legal right. The court considered it the direct natural consequence. Here, damages paid unavoidable consequence of a contractual breech. This is seen in the case of *Ijegbu-ode Local Government v Adedeji Balogun*.[[5]](#footnote-5)

iii) Special Damages; these are damages incurred on special or peculiar losses. This is seen in the case of *Arab Construction ltd & Anor v Isaac*.[[6]](#footnote-6)

iv) Nominal Damages; these are damages incurred on a breach of contract that does not result to the actual damage of the other part. This is seen in the case of *Badmus v Abegunde*.[[7]](#footnote-7)

v) Exemplary Damages; these are punitive in nature. They are incurred where the defendant’s conduct is sufficient outrageous to merit punishment. It disclose malice, fraud etc. This is seen in the case of *NMA v Marine Management Associates Inc & Anor.[[8]](#footnote-8)*

***Special Performance***

This order demands the specific performance of the contract according to the term agreed upon. Specific Performance is only available when money damages are inadequate to compensate the plaintiff for a breach.  This remedy is typically used when the goods or services are so unique that no other remedy could suffice. This is seen in the case of *Odogwu v Amzaranda[[9]](#footnote-9)* where the respondent agreed to buy the appellants house for N900, 000.00. The respondent said he could not pay all the money but agreed to pay installmentally. The respondent then paid a sum of N105, 000.00 and N62, 000.00. He stopped payment and the appellant was still leaving in the house for sale. The respondent brought an action again him for order of specific performance. The court held that the order will not be granted because specific performance is an equitable relief given to defendant to do what he has agreed to do and the respondent had not completed his own part of the bargain. ***Restitution***

This remedy is designed to restore the injured party to its state or position before the contract was created. Unlike an award of damages, parties seeking restitution may not demand compensation for lost profits or other financial losses caused by a breach. Instead, restitution is meant to return any money or property given to the defendant under the contract back to the plaintiff.

Typically, a party will seek restitution when a contract they entered has been voided by courts because of the defendant’s incompetence or incapacity. Contract law allows incompetent and incapacitated individuals to be relieved of their contractual obligations, but only if the plaintiff is not hindered by the dismissal. In either case, if the defendant received any money or property by means of the contract that is now voided, the plaintiff is to be restored of that money or property.

***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.

***Reformation***

Reformation is similar to rescission as it’s a result of parties entering into a contract based on fraud, undue influence, coercion, or mistake, but rather than terminating the contract and the parties’ obligations entirely, the court will change the substance of a contract to correct the inequities suffered as a result.

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