

MATRIC NO: 18/LAW01/055

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COURSE TITLE: LPB 202

1. A breach of contract is committed when a party without lawful excuse fails or refuse to perform what is due from him under 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.

Answer:

- a. Breach of contract:

What is a contract?

Contract is a legally binding agreements that recognizes and governs the rights and duties of the parties to the agreement this seen in *Sparkling v UBN [2001] 34 W.R.N PG. 3*. A contract is usually enforceable because it meets the requirement and approval of law. There are two main ways which a contract is formed oral contract and written contract. The difference between the two is that oral contracts are formed where the terms of the agreement are done verbally, whereas a written contract is made when the terms of the contract are contained in a written document.

Existence of a Valid Contract

To claim breach of contract, there must be an actual, valid contract in place. It is not necessary for a contract to be put in writing, as oral contracts are enforceable by the court system. To prove the existence of a valid contract, however, three elements must be established:

1. **Offer** – Some discussion and an agreement to the provision of goods or services in exchange for something of value must have been made per Adekeye, J.C.A. (P. 148) lines , 30-35. There must have been the intention to enter into an agreement or contract.
2. **Acceptance** – An agreement to the essential terms for the exchange of goods or services for something of value must be entered into see in case Okubule v Oyegbola [1990] 4 NWLR(Pt. 147) pg. 723 SC. Written contracts make proving such terms easier, as they document specific terms to which the parties have agreed.
3. **Consideration** – Each party to an oral or written contract must have received something of value. In other words, in a valid contract, each party has something to gain see in cases *Peters v Jackson [2001]49 WRN 118 CA*, *Bulet Int v Balogun [2001] 48 WRN 173 CA*. A promise by one party to provide a good or service without receiving anything in return looks a great deal like a gift, which is not enforceable.

In addition you will find these elements in the case of *Akamu v Olugbode [2001] 13 W.R.N Inter-alia 2-4 pg. 134* it was held that “*The elements of a valid contract are offer, acceptance consideration and an intention to enter into legal intentions.*”

Breach of contract

Breach of contract is a legal cause of action and a sort of common wrong, in which an official understanding or expected trade isn't regarded by at least one of the parties to the agreement by non-execution or obstruction with the other party's performance see in case *Akanmu v Olugbode [2001] 13 W.R.N Inter-alia pg. 135* where the court held “A breach occurs where there is failure, without legal excuse to perform any promise which forms the whole or part of contract. It is an unequivocal distinct and absolute refusal to perform an agreement”. Breach happens when an individual/party involved with an agreement neglects to satisfy its obligation(s), regardless of whether somewhat or entirely, as depicted in the agreement, or conveys a goal to fail to live up to the commitment or in any case shows up not to have the option to play out its commitment under the agreement. Where there is penetrate of agreement, the subsequent harms should be paid by the party breaking the agreement to the abused party.

On the off chance that a contract is cancelled, parties are lawfully permitted to fix the work except if doing so would straightforwardly charge the other party at that specific time.

It is essential to hold up under at the top of the priority list that agreement law isn't the equivalent from nation to nation. Every nation has its own autonomous, detached law of agreement. Along these lines, it bodes well to look at the laws of the nation to which the

agreement is administered under the watchful eye of choosing how the law of agreement (of that nation) applies to a specific legally binding relationship.

There are four main types of breaches:

1. **Fundamental breach:** This essentially occurs whereby the entire contract is cancelled due to the action or in some cases inaction of a party without a lawful excuse which results in the termination of a contract. This is cited in *RPM Investment Corp v Lange*
2. **Minor breach:** This occurs when a party does not perform of a contract but it is not essential enough to violate the contract. The other parties involved must still be able to perform their obligation to be considered non essential.
3. **Material breach:** This is when an action or performance results in a breach that is so substantial that it impairs the contract and it can affect the agreements purpose of the contract it terminates the contract as a whole. This is sometimes considered as a total breach.
4. **Anticipatory breach:** This is when a contract is made to be made at a later date and a party express his intention to go against the contract is declared under the contract. The other party can immediately take the other party to court to pay for damages and is known as anticipatory repudiation. This is cited in *Hochster v De la Tour*(1853) Applicants for three months from first June 1852 agreed that the defendants Messenger. 11 May in the work on the defendant did not want that rejected his services and wrote the manuscript for compensation. Scored another service contract by the complainant, but not until 4 July start. The plaintiff sued for

breach of contract on 22 May Employees of the contract due by 1 Begin in June,
when the card is not a breach of contract claims to 22 days

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:

5.

Remedies available for a breach of contract:

- **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.

- **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. Further explained *in Incar v Bolex [2001] 28WRN 116 SC* . 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.
- **Rescission.** Rescission allows the non-breaching party to essentially be released from performance obligations see in case Akron v Ilife [2001] 46 W.R.N 156 SC. 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.
- **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.