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COURSE: LAW OF CONTRACT

### ANSWERS

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 party's performance. Breach of contract can also be said to mean a legal term that describes the violation of a contract or agreement that occurs when one party fails to fulfill its promise according to the provisions of the agreement, it sometimes involves interfering with the ability of another party to fulfill his duties.

Contract mostly ends when both parties have fulfilled their contract obligations, but failure of one party not to fulfill their obligation/ agreement is not common, which can be seen in the case of *Macy's v Martha Stewart Living*.<sup>1</sup>

General requirement for a breach of contract,

A breach of contract suit must meet four requirements before it is upheld by a court and this requirements are;

1) The plaintiff must do everything required if them in the contract

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<sup>1</sup> 2015 NY Slip Op 01728

2) The party suing for breach of contract must show that the defendant did indeed the agreement terms.

3) The contract must be valid, it must therefore contain all essential contract events by the law, it isn't valid unless all these essential elements are present, without them they can be no lawsuit

4) The plaintiff must have notified the defendant of the breach of contract before filing the lawsuit.

### Types of Breaches

We have various types of breach of contract which are;

a) **Material:** this is a failure to perform the contract and it strikes deeply at the heart of the contract that it renders the agreement irreparably broken and defeats the purpose of making the contract in the first place, a material breach of contract is substantial, it seriously impairs the contract as a whole, additionally, the purpose of the agreement must be rendered completely defeated by the breach, it's rendered to as a total breach of contract.

b) **Minor:** this is referred to as when a party fails to perform a term of the contract, but the breach is so insignificant and it's not important that the remainder of the contract can still be completed in its entirety. A minor breach doesn't affect the overall purpose of the contract.

c) **Fundamental:** this refers to when one of the party in the agreement is not keeping their part of the deal by failing to complete a contractual term that was essential to the agreement so much so to that another party could not complete their own responsibilities in the contract

d) **Partial:** it's not as significant and does not normally excuse the aggrieved party from performing their duties

e) **Anticipatory**: this is a breach of contract of an action that shows one's party's intention to fail to fulfill its contractual obligations to another party

### Remedies if a breach of contract

They are several types of damage which include

a) Nominal damage: this is usually awarded when there is no real harm done as a breach of contract because the amount of damages are very small and might be considered more of a symbolic victory, or a matter of principle, or when the court concludes that the defendant is in breach but the plaintiff has suffered no quantifiable loss and may be sought to obtain legal record of who was at fault and it includes small amount of money

b) Liquidated damages: they are normally used in real estate contracts, here an estimate of loss agreed to in the contract, so that the court avoids calculating compensatory damages and the parties have greater certainty, liquidated damages can also be called penalty clauses in ordinary language but the law differentiates it liquidated damages and penalties, liquidated damages are legitimate while penalties are invalid

c) General or consequential damages: general damages naturally flow from a breach of contract which consequential damages that aren't naturally from a breach of contract but are naturally supposed by parties at the time of contract information, in general damages when someone rents a house to live in for like 2 years but when the person gets to the house it's not there to mean that he or she was duped getting there meets an empty land, therefore in general damage would be the cost of renting a different house while in consequential damage it would be the lost business if that person was unable to get to the addresses the supposed rented house

d) Punitive or exemplary damage: they are used to punish the party at fault but even though such damages aren't primarily intended to compensate, nevertheless the claimant receives the award. Exemplary damages are not recognized in some jurisdiction eg in the UK exemplary damages are not available for breach of contract but are possible for frauds.

e) Compensatory damages: here money is awarded to a plaintiff to compensate for damages, injury or another incurred loss. Compensatory damages are awarded in civil court cases where loss has occurred as a result of the negligence or unlawful conduct of another party. Specific performances

This is an order of a court which requires a party to perform a particular/ specific act, usually gesture is stated in the contract. It is an alternative to awarding damages and is classed an equitable remedy commonly used in form of injunctive relief concerning confidential information or real property, it is also an equitable remedy in the law of contract whereby a court issues an order requiring a party to perform specific act such as to complete the performance of a contract. For example when a party defaults on its contractual obligations and is ordered by the court to fulfill said obligations.

## REFERENCE

Nigerian law of contract by SAGAY

[www.Wikipedia.com](http://www.Wikipedia.com)

[www.legalmatch.com](http://www.legalmatch.com)

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