Name: Dodo Peno Paul

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Law of Contract

**Law of Contract**

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.
3. Breach of contract

**Breach of contract** is a [legal](https://en.wikipedia.org/wiki/Legal" \o "Legal) [cause of action](https://en.wikipedia.org/wiki/Cause_of_action" \o "Cause of action) and a type of [civil wrong](https://en.wikipedia.org/wiki/Civil_wrong" \o "Civil wrong), in which a [binding agreement](https://en.wikipedia.org/wiki/Binding_agreement" \o "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.

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 fling the lawsuit.

A business contract contains certain obligations that are to be fulfilled by parties the parties who enter into the agreement. Legally, one party’s failure to fulfil any of its contractual obligations is known as a breach of contract. Depending on the specifics, a breach can occur when a party fails to perform on time or does not perform in accordance with the terms of the agreement or does not perform at all. A breach of contract is usually categorized as either a material breach or an immaterial breach. This is for the purpose of determining the appropriate legal solution or remedy for the breach.

Let's assume that R. Runner contracts with Acme Anvils for the purchase of some of its products, for delivery by the following Monday evening. If Acme delivers the Anvils to Runner on the following Tuesday morning, its breach of the contract would likely be deemed immaterial, and R. Runner would likely not be entitled to money damages (unless he could show that he was somehow damaged by the late delivery).

However, assume now that the contract stated clearly and explicitly that "time is of the essence" and the anvils MUST be delivered on Monday. If Acme delivers after Monday, its breach of contract would likely be deemed "material," and R. Runner's damages would be presumed, making Acme's liability for the breach more severe, and likely relieving Runner of the duty to pay for the anvils under the contract.

Remedies For A Breach Of Contract

Once a party to a contract establishes to the satisfaction of the court that the other party has committed a breach of contract, the most common claim is that for damages, and certainly it is the most readily granted type of remedy by by courts. As we shall see later, only in special circumstances will the equitable remedies of specific performance and injunction be granted by courts.

1. Injunction
2. Damages
3. Recession
4. Specific performance
5. Injunction: An injunction is an equitable remedy and applicable under discretionary ground. It is not subject to the same restrictions that apply to a claim for specific performance. An injunction is appropriate where the contract is negative in nature or where the contract contains a negative stipulation. An injunction is an order by which one party to an agreement is required to do or refrain from doing a particular thing. An injunction is restrictive/preventive or mandatory/compulsive.

this is an equitable remedy. It is an order from the court telling a person to stopcommitting a wrong. It is for restraining a person from committing a breach of contract. In *Akenzua II v. Benin Divisional Councils*,[[1]](#footnote-0) the plaintiff had sought damages, injunction or specific performance from the defendant council for withdrawing the concession given him to exploit timber. It was held that since he offered no consideration, the remedies brought could not be granted. Injunctions may be prohibitive or mandatory. It is prohibitive where it is sought to stop the doing or repetition of some acts. Injunction becomes mandatory where it compels the performance of an act.

1. Prohibitive injunctions: such an injunction will be granted to enforce a negative stipulation in contract. This means that the defendant will be ordered not to break the stipulation. Prohibitive injunctions may be particularly important where a breach of a contract of employment is involved. However, the effect of granting the injunction must not be to compel a party to perform the contract as this would be tantamount to granting a decree of specific performance of a contract for personal service.
2. Mandatory injunctions: a mandatory injunction orders the defendant to take positive steps to put right what he has done wrong in breach of contract. Such an order is a drastic measure and will be awarded only where vitally necessary. Whether it should be granted or not is subject to a ‘balance of convenience’ test and it may be refused if the prejudice suffered by the defendant in having to restore the original position heavily outweighs the advantage to be derived by the plaintiff from such restoration. A mandatory injunction was granted in *Wakeham v Wood*[[2]](#footnote-1) where the defendant, in breach of a restrictive covenant, erected a building so as to block the plaintiff’s sea view. The court granted a mandatory injunction because the defendant had committed the breach deliberately with full knowledge of the plaintiff’s rights and damages would not have been an adequate remedy.
3. Damages: An injunction is an equitable remedy and applicable under discretionary ground. It is not subject to the same restrictions that apply to a claim for specific performance. An injunction is appropriate where the contract is negative in nature or where the contract contains a negative stipulation. An injunction is an order by which one party to an agreement is required to do or refrain from doing a particular thing. An injunction is restrictive/preventive or mandatory/compulsive.

The leading case of *Hadley v Baxendale* **(1854)** laid the common law foundation for the assessment of damages arising from a contractual breach. Hadley was a mill operator who contracted with Baxendale to have the latter deliver a broken mill shaft to the manufacturer for repair. The term of the contract was that Baxendale was to transport the shaft the next day. He delayed several days, so Hadley's mill remained closed for a longer. The underlying basis for common law remedy of damages was laid down by Parke, B. in *Robinson v. Harman*.[[3]](#footnote-2) He said: “the rule of the common law is that where a party sustains a loss by reason of a breach of contract, he is, so far as money can do it, to be placed in the same situation, with respect to damages as if the contract had been performed”. An innocent / injured party to a contract can claim damages for a breach of contract. The main objective for awarding damages is to put such injured party so far as money can do in a stable position as if the contract had been performed. This position was held in *Univeral Vulcanising (Nig.) Ltd. v Ijesha United Trading and Transport Co. Ltd. and six others*.[[4]](#footnote-3) Such damages could be nominal or substantial as the case may be. Damages are usually awarded to compensate the plaintiff for loss. To be entitled to substantial damage, the plaintiff needs to show that he has suffered a loss from the breach. That is, by reason of the breach of contract, he has suffered harm / injury to his person or property.

REMOTENESS OF DAMAGES

A breach of contract may result in far more consequences than could have been anticipated. It is not possible or practicable to award damages to every consequence. And so, the first task of the court is to determine what kind of damage will be paid for. This is the issue of remoteness of damage. Remoteness of damage poses the question: ‘for what kind of damage is the plaintiff entitled to recover compensation?’ The principle of causation of loss and the remoteness of loss [like in tort] are articulated in *Hadley v. Baxendale.*[[5]](#footnote-4) The plaintiffs were millers in Gloucester. The crankshaft of the steam engine which worked their mill came to a halt. The plaintiffs gave the shaft to the defendant, a carrier, to take to the manufacturer in Greenwich as a pattern for a new one. The defendant agreed to deliver the following day, but in fact took one week and the mill was idle unnecessarily. The plaintiffs sued for compensation for loss of the profit during the delay. On the facts, it was held that the plaintiff failed for two reasons. First, in the usual course of things, no one would have expected the mill to have become idle; the defendant was entitled to assume that the mill owner had a spare crankshaft. Second, the defendant had no knowledge of any special circumstances. He wasn’t informed that there was no spare part. The action failed because the loss was too remote. In delivering the judgement, the court formulated a rule. The rule may be summarised in the following terms:

1. An injured party is entitled to such damages as may fairly and reasonably be considered to have arisen naturally from the breach; or
2. The injured party is entitled to such damages as may reasonably be supposed to have been in contemplation of the parties at the time they made the contract.

MEASURE OF DAMAGES

Having decided which consequences should be paid for, the net question to consider is: ‘how much?’ this is the problem of measure of damages. The question posed here is: ‘on what principle must damage be quantified in monetary terms?’ This is usually a much difficult problem for the courts. However, no matter the difficulty, the courts are not to be deterred from making an award of damages. The problem of remoteness and measure of damages are easily determined if the damages are liquidated. Liquidated damages are specific damages that were previously identified by the parties in the contract itself in the event that the contract is breached. Liquidated damages should be a reasonable estimate of actual damages that may result from a breach. Where damages are not liquidated, they are said to be un-liquidated. Un-liquidated damages are damages which have not previously been assessed or provided for in the contract.

1. Rescission: The right of rescission is an equitable and exists in a number of circumstances. By way of illustration, we mention three of those circumstances: First, the right is available to a party injured by breach of a fundamental term in a contract, e.g. a condition. Secondly, it is available to a party injured by the misrepresentation of the other party. Thirdly, it is available where a contract is vitiated by mistake. this is also an equitable remedy available to an injured party for a breach of condition or where there is a mistake or misrepresentation. Rescission terminates the contract. It amounts to setting aside of a contract by one party if the contract has been induced by misrepresentation. In *London Assurance v Mansel*,[[6]](#footnote-5) where a man did not disclose the material facts on his life on a proposal form by concealing that he had been refused insurance by other companies, it was held that the company could rescind the contract. The right to rescind is also available as a remedy for breach of contract, where the injured party can treat the contract as discharged.

Specific Performance this is also an equitable remedy. It is an order issued by the court, ordering a defendant to perform the promise he had made under the contract. The granting of the request of specific performance by the court is discretionary and is not available in the case of contract of personal service. The court will grant an order of specific performance where an order of monetary compensation will not be a remedy to an injured party. In the case of *Fakoya v St. Paul’s Church*,[[7]](#footnote-6) the appellant sold land to the respondent. He took the price but refused to execute the conveyance. The respondent sued for specific performance and it was granted. Under the common law, a breach of contract obligations is compensated through the payment of damages. Specific enforcement of contractual obligation was not available at common law except under equity. In equity too, the enforcement of contractual obligation are subject to many restrictions, based on the character of the remedy. One restriction is where the contract calls for personal performance. Other restrictions are impracticability to perform specifically or the form of relief which does not lend itself to specific performance or the form of relief may be unnecessary and undesirable.

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* <http://jec.unm.edu/education/online-training/contract-law-tutorial/remedies-for-breach-of-contract>

1. (1959) W.R.N.L.R. 1 [↑](#footnote-ref-0)
2. (1982) 43 P & CR 40 [↑](#footnote-ref-1)
3. (1848) 1 Ex. 850 at p. 855; [1843-60] All E.R. 383 at p. 385 [↑](#footnote-ref-2)
4. (1992) 9 NWLR (pt 266 at 388) [↑](#footnote-ref-3)
5. (1854) 9 Ex. 341; [1843-60] All E.R. 461 at p. 465 [↑](#footnote-ref-4)
6. (1879) 11 Ch.D. 363 [↑](#footnote-ref-5)
7. (1966) 1 All N.L.R. 68. [↑](#footnote-ref-6)