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Abstract

This paper refers to a breach of contract which means failure to keep the promises or agreements of a contract and as a result of that breach, the one party suffers damage. First of all, this paper highlights the correlation between breach and remedy. The aim of this term paper is to explore an idea of remedies for breach of contract. This paper also looked into different types of suits, a plaintiff can file. It is just as important for the innocent party to show that it has suffered a loss as a result of the breach, and to prove what that loss is, or to establish that it should be entitled to remedy. The cost of suit for damages is in the discretion of the court. In addition to it, this paper will also discuss multiple cases relevant to the breach of contract.

¹A breach of contract is also in a contract. Breach of Contract is the existence of agreement where there is a failure to keep the promises or agreement or failure to live up to his or her responsibilities of a contract. The whole contract or part of the contract may be breached. It is also a legal cause of action and a type of civil wrong, in which a binding agreement or bargain 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. Where there is breach of contract, the resulting damages will have to be paid by the party breaching the contract to the aggrieved party.

If a contract is rescinded, parties are legally allowed to undo the work unless doing so would directly charge the other party at that exact time.

It is important to bear in mind that contract law is not the same from country to country. Each country has its own independent, free standing law of contract. Therefore, it makes sense to examine the laws of the country to which the contract is governed before deciding how the law of contract (of that country) applies to any particular contractual relationship.

People enter into contracts for mutual advantage because each has something the other party wants. It may be something as simple as buying a product for money, or something more complicated such as an employment contract with a no-compete clause. Accordingly, a breach of contract will usually be categorized as either a "**material breach**" or an "**immaterial breach**" for purposes of determining the appropriate legal solution or "remedy" for the breach.

For example;

Let's assume that Adele Chinonso contracts with Coca-Cola company for the purchase of some of its products, for delivery on Friday evening. If Coca-Cola delivers the products to Adele on Saturday morning, its breach of the contract would likely be deemed immaterial, and Adele Chinonso 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 products MUST be delivered on Friday. If Coca-Cola delivers after Friday, its breach of contract would likely be deemed "material," and Adele's damages would be presumed, making Coca-Cola's liability for the breach more severe, and likely relieving Adele of the duty to pay for the products under the contract.

The case of *INTERNATIONAL MESSENGERS NIGERIA LTD V. PEGOFOR INDUSTRIES LTD* illustrates and explains further what a breach of contract is.

ⁱⁱThe general law has three categories of breaches of contract. These are measures of the seriousness of the breach. In the absence of a contractual or statutory provision any breach of contract is categorized as a:

- breach of warranty;
- breach of condition; or
- breach of an innominate term, otherwise known as an *intermediate* term.

There is no "internal rating system" within each of these categories (such as "a serious breach of warranty"). It's a breach of a warranty. It's not a minor breach of a condition. It's a breach of a condition). Any breach of contract is one or the other of a breach of warranty, condition or innominate term.

In terms of priority of classification of these terms, a term of a contract is an innominate term unless it is clear that it is intended to be a condition or a warranty.

iii Remedies for a Breach of Contract

When an individual or business breaches a contract, the other party to the agreement is entitled to relief (or a "remedy") under the law. The main remedies for a breach of contract are:

- Damages,
- Specific Performance
- Cancellation and Restitution

Damages

The payment of damages, payment in one form or another, is the most common remedy for a breach of contract. See the case of *Smith, Hogg & Co v. Black Sea Insurance*. See also

Pilkington v. Wood There are many kinds of damages, including the following:

1. **Compensatory damages** aim to put the non-breaching party in the position that they would have been in if the breach had not occurred. 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.

2. **Punitive damages** are payments that the breaching party must make, above and beyond the point that would fully compensate the non-breaching party. Punitive damages are meant to punish a wrongful party for particularly wrongful acts, and are rarely awarded in the business contracts setting. *CHIARA v. DERNAGO*, see also *CARDOZA v. CITY OF NEW YORK*
3. **Nominal damages** are token damages (small amount of damages) awarded when a breach occurred, but no actual money loss to the non-breaching party was proven.
4. **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 might result from a breach.

Specific Performance

If damages are inadequate as a legal remedy, the non-breaching party may seek an alternative remedy called specific performance. Specific performance is best described as the breaching party's court-ordered performance of duty under the contract.

Specific performance may be used as a remedy for breach of contract if the subject matter of the agreement is rare or unique, and damages would not suffice to place the non-breaching party in as good a position as they would have been in had the breach not occurred. 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. The case of *Dobson v. Winton and Robbins Ltd.* gives an illustration on what specific performance is

Cancellation and Restitution

A non-breaching party may cancel the contract and decide to sue for restitution if the non-breaching party has given a benefit to the breaching party.

"Restitution" as a contract remedy means that the non-breaching party is put back in the position it was in prior to the breach, while "cancellation" of the contract voids the contract and relieves all parties of any obligation under the agreement. See the case of *BUFFALO BUILDERS SUPPLY CO. V. REEB*

ⁱ Breach of Contract — Judicial Education Centre". jec.unm.edu. Retrieved 2020-04-10.

ⁱⁱ Grand China Logistics Holding (Group) Co. Ltd v Spar Shipping AS (Rev 1) [2016] EWCA Civ 982". Retrieved 7 February 2019.

ⁱⁱⁱ Remedies for Breach of Contract — Judicial Education Centre". jec.unm.edu. Retrieved 2020-04-10.