

MATRICULATION NUMBER: 18/LAW01/163

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LEVEL: 200 LEVEL.

COLLEGE: LAW.

COURSE TITLE: LAW OF CONTRACT II

COURSE CODE: LPB 202

QUESTION: 1) A breach in contract is committed when a party without lawful excuse fails or refuses to perform what is due from him under the contract ot 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?

SOLUTION:

BREACH OF CONTRACT

A contract is an agreement between private parties creating mutual obligations enforceable by law.  The basic elements required for the agreement to be a legally enforceable contract are: [mutual assent](https://www.law.cornell.edu/wex/mutual_assent), expressed by a valid [offer and acceptance](https://www.law.cornell.edu/ucc/2/2-206); adequate consideration; [capacity](https://www.law.cornell.edu/wex/capacity); and [legality](https://www.law.cornell.edu/wex/legality).  In some states, element of consideration can be satisfied by a valid substitute.  Possible remedies for [breach of contract](https://www.law.cornell.edu/wex/breach_of_contract) include [general damages](https://www.law.cornell.edu/wex/general_damages), [consequential damages](https://www.law.cornell.edu/wex/consequential_damages), [reliance damages](https://www.law.cornell.edu/wex/reliance_damages), and [specific performance](https://www.law.cornell.edu/wex/specific_performance). Since there’s been an introduction to what a contract is, the next thing this legal writer would discuss what in deed a breach of contract is in law.

Breach of a contract is failing to perform any term of contract, written or oral, without a legitimate legal excuse. This may include not completing a job, not giving the payment in full or on time, failure to deliver all the goods contracted for, subsistingS the goods for inferior goods. Being late for no reason or any act that shows that a party would not complete his tasks. Breach of a contract is one of the common causes of law suits for damages and have the court order for “specific performance”

The resultant effects of this always make the injured party entitled to an action for damages against the guilty party and also in addition, where the guilty party has repudiated the contract or commits a fundamental breach, the injured party will as well has a right to rescind or terminate the contract.

An example of a case with the breach of contract is *Carllil .v. Cabolic smoke ball co*[[1]](#footnote-1). *The Carbolic Smoke Ball Co. made a product called the "smoke ball" and claimed it to be a cure for*[*influenza*](https://en.wikipedia.org/wiki/Influenza)*and a number of other diseases. (The*[*1889–1890 flu pandemic*](https://en.wikipedia.org/wiki/1889%E2%80%931890_flu_pandemic)*was estimated to have killed 1 million people.) The smoke ball was a rubber ball with a tube attached. It was filled with*[*carbolic acid*](https://en.wikipedia.org/wiki/Phenol)*(or phenol). The tube would be inserted into a user's nose and squeezed at the bottom to release the [vapours](https://en.wikipedia.org/wiki/Vapour%22%20%5Co%20%22Vapour). The nose would run, ostensibly flushing out viral infections.*

*The Company published advertisements in the*[*Pall Mall Gazette*](https://en.wikipedia.org/wiki/Pall_Mall_Gazette)*and other newspapers on November 13, 1891, claiming that it would pay £100 (equivalent to £11,000 in 2019) to anyone who got sick with influenza after using its product according to the instructions provided with it.*

*£100*[*[1]*](https://en.wikipedia.org/wiki/Carlill_v_Carbolic_Smoke_Ball_Co#cite_note-1)*reward will be paid by the Carbolic Smoke Ball Company to any person who contracts the increasing epidemic influenza colds, or any disease caused by taking cold, after having used the ball three times daily for two weeks, according to the printed directions supplied with each ball.*

*£1000 is deposited with the Alliance Bank,*[*Regent Street*](https://en.wikipedia.org/wiki/Regent_Street)*, showing our sincerity in the matter.*

*During the last epidemic of influenza many thousand carbolic smoke balls were sold as preventives against this disease, and in no ascertained case was the disease contracted by those using the carbolic smoke ball.*

*One carbolic smoke ball will last a family several months, making it the cheapest remedy in the world at the price, 10s. post free. The ball can be refilled at a cost of 5s. Address: “Carbolic Smoke Ball Company”, 27, Princes Street,*[*Hanover Square, London*](https://en.wikipedia.org/wiki/Hanover_Square%2C_London)*.*

*Mrs. Louisa Elizabeth Carlill saw the advertisement, bought one of the balls and used it three times daily for nearly two months until she contracted the flu on 17 January 1892. She claimed £100 from the Carbolic Smoke Ball Company. They ignored two letters from her husband, a*[*solicitor*](https://en.wikipedia.org/wiki/Solicitor)*. On a third request for her reward, they replied with an anonymous letter that if it is used properly the company had complete confidence in the smoke ball's efficacy, but "to protect themselves against all fraudulent claims", they would need her to come to their office to use the ball each day and be checked by the secretary. Mrs. Carlill brought a claim to court. The barristers representing her argued that the advertisement and her reliance on it was a contract between the company and her, so the company ought to pay. The company argued it was not a serious contract.*

*Of course the smoke ball*

*The Court of Appeal held the essential elements of a contract were all present, including*[*offer and acceptance*](https://en.wikipedia.org/wiki/Offer_and_acceptance)*,*[*consideration*](https://en.wikipedia.org/wiki/Consideration)*and an*[*intention to create legal relations*](https://en.wikipedia.org/wiki/Intention_to_create_legal_relations)*.*

*0f course the case was not taken to the court for there to be a determination of whether there was a breach of contract, you’ll find out that there was a breach of the contract due to the fact that the carbolic smoke ball co. did not initially perform their duties in accordance to the contract that was made, in fact they didn’t perform at all.*

**Example of breach of contract**

**Misrepresentation of Assets Being Used As Collateral**

This usually happens when a party in the contract is dishonest with the property that they are using about the property, is as collateral. An example of this is when a party of the contract uses a particular property, and exaggerated the price of the property.

**Failure to provide service**

This is another very important type of breach of contract, this is because it is one of the rampant ways in which the individuals that are committed to a contract breach a contract, and it is a very hard to get to know how he individuals would react, they usually run away after doing that

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1. **What are the remedies available for breach of contract?**

Due to the fact that there is so many contracts and business around the world, and of course the court has come to the decision on different remedies**.** The remedies include the following**;**

1. **Penalty or liquidated damages**

For a liquidated damages clause to be valid the specified sum must be a genuine pre-estimate of the anticipated loss which the claimant would be likely to suffer in the event of a breach of the obligation in question. If the loss is difficult to quantify "best guess" procedure should be operated, keeping a record of the calculations underlying any elements of the determined figure. Provided the selected figure is not vastly in excess of the greatest loss which could be suffered, the clause is likely to be enforceable. The essence of a penalty is that the money specified is *in terrorem* of the defaulting party, in other words, it is intended to apply undue force to the other party to perform his side of the contract.

The use of the words "penalty" or "liquidated damages" are not conclusive. It is necessary to examine whether the amount specified is in fact a penalty or liquidated damages. It is for the party in breach to show that the sum is a penalty (*Robphone Facilities Ltd v Blank[[2]](#footnote-2) )*

There is no public policy issue in relation to the upper limit of damages to which parties can contract to be liable. The Unfair Contract Terms Act 1977 will in certain circumstances impose a test of reasonableness in relation to exclusion clauses (which purport to limit or exclude liability) but this is unlikely to apply to a genuine liquidated damages clause. If the clause specifies a sum which is more than a genuine pre-estimate (and therefore a penalty) the clause will be unenforceable. The courts will not benefit the party claiming damages by imposing a lower substitute figure.

1. **Mitigation**

An innocent party cannot recover for loss that he could have avoided by taking reasonable steps. This is sometimes expressed as the duty to mitigate. This does not apply to actions for the price of goods delivered. Such an action is an action for an agreed sum and not an action for damages.

Although there is no duty to mitigate before actual breach occurs the innocent party should not aggravate his loss. It is for the defendant to prove that the plaintiff has failed to mitigate his loss (Pilkington v Wood *[[3]](#footnote-3)*[1953] Ch 770).

1. **Remoteness of loss**

The innocent party may only recover damages for loss suffered as a result of the breach provided it is not too remote. The aim of damages is to put him in the position he would have been had the contract been properly performed.

1. **Damages**

Unlike the equitable remedies of specific performance and injunction (see "Specific performance" and "Injunctions “below) damages for loss in a breach of contract claim are available as of right.

An innocent party may claim damages from the party in breach in respect of all breaches of contract. The damages may be nominal or substantial. Nominal damages are awarded where the innocent party has suffered no loss as a result of the other’s breach and substantial damages are awarded as monetary compensation for loss suffered as a result of the other party’s breach.

For an innocent party to obtain substantial damages he must show that he has suffered loss as a result of the breach (remoteness) and the amount of his loss (measure). It is up to the party in breach to argue that the innocent party has failed to mitigate his loss.

In conclusion of course there are other methods in which individuals breach contracts in which they have entered into legally, some individuals even breach the contract without with the idea in their minds that they could prove that the contract is otherwise not effective. The few remedies for the breach of a contract earlier mentioned are just based on the few judgments made by the court.

**REFERENCES**

1. Samantha Cotton, PLC, “Remedies for breach of contract” (1999) 1(10) <<https://uk.practicallaw.thomsonreuters.com/>> last accessed on 4th of May 2020
2. Yash Pahwa ‘Example of cases on breach of contract’ (2018) <<https://www.cronuslaw.com/breach-of-contract-examples/>> last accessed on 4th of May 2020.
3. Creative commons attribution ‘ carlill .v. Carbolic Smoke Ball Co.’ (2020) 1(1)

 < <https://en.wikipedia.org/wiki/Carlill_v_Carbolic_Smoke_Ball_Co>> last accessed 5th of May 2020.

1. [1892] 2 QB 484 (QBD) [↑](#footnote-ref-1)
2. *[1966] 3 All ER128*). [↑](#footnote-ref-2)
3. [1953] Ch 770 [↑](#footnote-ref-3)