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**COURSE TITLE: LAW OF CONTRACT**

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**ANSWERS**

**WHAT IS A CONTRACT?**

A contract is an agreement or promise made between two or more parties that the courts will enforce. In some cases, the agreements and promises made in a contract are not kept by a party or more parties. Therefore, this situation called breach of contract which means failure to keep the promises or agreements of a contract.

**WHAT IS BREACH OF CONTRACT?**

A breach of contract is a legal cause of action which occurs when a party to a contract fails to fulfill its obligation(s), whether partially or wholly, as described in the contract, or communicates intent to fail the obligation or otherwise appears not to be able to perform its obligation under the contract.

Breach of contract is a legal cause of action in which a binding agreement is not honored by one or another more of the parties.

**TYPES OF BREACH**

1. **Anticipatory breach**

Where there a contract exist between two parties which is slated to be performed at a future date and one party clearly declares his intention not to perform his own obligation under the contract is popularly referred to as anticipatory breach.

1. **Fundamental breach**

A fundamental breach of contract is generally known to occur when a previously agreed upon contract is canceled entirely, due to the other party’s actions (or, inactions, in some cases).

**REMEDIES FOR BREACH OF CONTRACT**

The consequences can be significant if a contract terms are broken and the contract is enforceable. The plaintiff can pursue a variety of options when it is clear that the other party has breached a contract. Some of the remedies that may be sought include suit for specific performance, damages and injunction.

A warranty has been earlier defined in ***S.11 (1) (b) of the SOGA*** as a stipulation in a contract the breach of which would not give rise to a repudiation of the contract but only an action for damages. According to the provision of ***S.53(1) of the Sales of Goods Act,*** where there is a breach of a warranty or the buyer elects, or is compelled to treat the breach of a condition as a breach of warranty, such breach would not entitle him to reject the goods. He can however set the breach of warranty in diminution or extinction of the price***; S.53 (1) (a).***

The measure of damages for a breach of warranty is the estimated loss that results directly and naturally from the breach of such warranty; ***S.53 (2)***. In a situation of a breach of warranty as to quality, such loss is prima facie the difference between the value of the goods at the time they were delivered and the value they would have been had they answered to the warranty; ***S.53(3)***. Also, the fact that the seller sets up the breach of warranty in diminution or extinction for the price does not stop him from applying for further damages if he has suffered additional loss; ***S.53(4).***

Finally, it is provided under ***S.54 of the Sales of Goods Act*** that nothing in the act would affect the right of the buyer or seller to recover special damages or interests where they are entitled to such under the law. Also, they are entitled to recover money paid if what the money was paid in consideration for has failed.

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**Suit for specific performance**

Specific performance is applied in breach of contract actions where monetary damages are inadequate. Specific performance is being a discretionary remedy, may not be granted where damages will provide an adequate remedy or where terms of the contract are uncertain or where there has been delay in bringing the action or where there was fraud. Suit for specific performance is by compelling the parties to perform exactly what they had agreed in the agreement. ***Little Stillwater Holding Corp. v. Cold Brook Sand & Gravel Corp., 151 Misc. 2d 457, 573 N.Y.S.2d 382 (N.Y. Co. Ct. 1991).***

When this option is selected, the party that broke the contract is taken to court, with the plaintiff requesting that the court force the defendant to perform the specific contract terms that have not been performed or to refrain from engaging in some activity that is prohibited by the contract. **Rescission**

Rescission of the contract is a remedy that allows the non-breaching party to cancel his or her responsibilities.

**Reformation**

Reformation allows two parties to modify a contract so that it more accurately reflects what the parties intend. This remedy requires that the contract be valid. It may be available when one of the parties had a mistaken understanding about a material term of the contract.

**Legal Remedies**

Legal remedies often take the form of monetary damages that are awarded to help make the innocent party whole. Some examples of legal remedies are discussed below.

**Compensatory Damages**

Compensatory damages are those that are meant to compensate the non-breaching party for the breach. These include expectation damages and consequential damages. Expectation damages are those that give the non-breaching party the monetary funds that he or she would have received had the contract been performed. These damages are usually based on the contract itself or the fair market value of the subject matter of the contract.

**Consequential Damages**

Consequential damages are those damages that reimburse the innocent party for indirect costs that resulted from the breach. They often result from special circumstances that are involved in the contract that may not be ordinarily predictable. For example, an innocent party may ask to be reimbursed for the loss of business profits that derived from not having access to the necessary materials to produce a product for a third party.

In order for the innocent party to receive these damages, he or she must show that this loss was reasonably foreseeable to both parties when they wrote the contract and the loss was a direct result of the breach.

**Liquidated damages**

Damages mean losses or costs incurred due to another’s wrongful act. Damages are granted to a party as compensation for the damage, loss or injury he or she has suffered through a breach of contract. The language of a contract will usually call for a specific penalty if the contract terms are not completed on an agreed-upon date. Both of the contract and tort law damages are the courts calculation of what it would cost to put the plaintiff back into the position he or she would have been in but for the fraud. This amount of value that has been lost is due to the breach of the contract in any of the contracts. Tort law damages are much more difficult to evaluate but generally are taken to represent the monetary value of what the plaintiff has lost in terms of damages of property, personal injuries, and quality of life. ***Hadley v Baxendale (1854) EWHC156 ER145, 9EXCH341,***

Special damages are known as the out of pocket expenses that the defendant incurs as the effect of dealing with the injuries or property loss caused by the plaintiff. These damages normally include of repair costs, medical expenses, car rentals and loss of wages.

**Punitive Damages**

Punitive damages are meant to punish a guilty party in order to prevent that party or others from engaging in similar conduct in the future. However, punitive damages usually require a stronger intent than is necessary in standard breach of contract claims. For example, to be awarded punitive damages, a plaintiff may have to show that the breaching party acted in a malicious or fraudulent matter. Some states specifically prohibit plaintiffs from recovering punitive damages on breach of contract claims.

**Injunction**

An injunction which is an equitable remedy may be interlocutory, or mandatory. It may even be prohibitory or restraining in nature. An interlocutory injunction is used to maintain the status quo of the subject matter in a pending suit whilst a mandatory injunction is a court order requiring something to be done. A prohibitory injunction stops something from being done.

**SOURCES**

**Sales of Goods Act 1893**

**Conclusion**

A contract is an agreement or promise made between two or more parties that the courts will enforce. In some cases, the agreements and promises made in a contract are not kept by a party or more parties. Therefore, this situation called breach of contract which means failure to keep the promises or agreements of a contract. Breach of contract is a legal cause of action in which a binding agreement is not honored by one or another more of the parties. There can be a variety of reasons for breaching a contract and the consequences of such a breach can be very serious, even if the breach was unavoidable.

When a breach of contract happens, the parties who involved should find out the remedies and consequences of breaching an enforceable contract. There are main three remedies which are suit for specific performance, liquidated damages and injunction. The first remedy is suit for specific performance which means compelling the parties to perform exactly what they had agreed in the agreement. While the second remedy is liquidated damages which means call for a specific penalty if the contract terms are not completed on an agreed-upon date, such as penalty payments or repair costs, medical expenses, car rentals and loss of wages. The third remedy is injunction which means stop something from being done. These three main remedies are important when we are dealing with the breach of contract.