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LAW OF CONTRACT

ASSIGNMENT

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 incapacities himself from performing (Treitel 2007, para 17049)

Discuss the following

1. Breach of contract
2. What are the remedies available for breach of contract

**a.) 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 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.

If a contract is rescinded, parties are legally allowed to undo the work unless doing so would directly charge the other party at that exact time.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

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.[1]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 filing the lawsuit. [2]

A breach of contract may take place when a party to the contract:

* Fails to perform their obligations under the contract in whole or in part
* Behaves in a manner which shows an intention not to perform their obligations under contract in the future or
* The contract becomes impossible to perform as a result of the defaulting party's own act.

These classifications only describe how a contract can be breached, not how serious the breach is. A judge will make a decision on whether a contract was breached based on the claims of both parties. [1]

The first type above is an actual breach of contract. The second two types are breaches as to the future performance of the contract, and technically known as renunciatory breaches. The defaulting party renunciates the contract in advance of the time they are required to performs their obligations. Renunciatory breach is more commonly known as “anticipatory breach”.

Where there is a contract to be performed between two parties at a future date, and one party declares his intention not to perform his own side of it, this act is known as “renunciation” or “repudiation”. It is also popularly referred to as “anticipatory breach”, although, this last term has often been described as misleading on the ground that a contract cannot be capable of breach before the time for its performance has arrived. However, what is important is that this term is understood to mean that the guilty party has shown either by words or conduct that he has no intention of performing his own part of the contract whenever the time of performance arrives. As stated by **Coker, J., (as he then was) in Solomon Nassar v. Oladipo Moses: [3]**

“It is open to a party to a contract to sue the other party for breach of same even

in anticipation on the time agreed upon for performance, if it is manifest by his

conducts and his acts that the defaulting party had made himself unable to fulfill

his part of the contract at the agreed time.”

The true meaning and effect of an anticipatory breach were stated **by Lord Esher, M.R., in Johnstone v. Milling thus: [4]**

“When one party assumes to renounce the contract, that is, by anticipation

refuses to perform it, he thereby, so far as he is concerned, declares his

intention there and then to rescind the contract. Such a renunciation does

not of course amount to a rescission of the contract, because one party to

it by himself cannot rescind it, but by unlawfully making such a renunciation

of the contract he entitles the other party to bring an action in respect of

such wrongful rescission. The other party may adopt such renunciation of the

contract by so acting upon it as in effect to declare that he too treats the contract

as an end, except for the purpose of bringing an action upon it for the damages

sustained by him in consequence of such renunciation. He cannot, however,

himself proceed with the contract on the footing that it still exists for other purposes,

and treat such renunciation as an immediate breach. If he adopts the renunciation,

contract is at an end except for the purposes of the action for such wrongful

renunciation; if he does not wish to do so, he must wait for the arrival of the time

when in the ordinary course a cause of action on the contract would arise.

He must elect which course he will pursue. Such appears to me to be the only

Doctrine recognized by law with regards to anticipatory breach of contract”.

In **C.D. Ajufo v. Trans-Arab Ltd.,** [5] a case that did not involve anticipatory breach as such, Solomolu, C.J., framed the principles of law applicable in cases of breach of contract thus:

“it is an indisputable point of law, that the breach of an agreement entitles the

other party who is damnified by it to bring an action on it. Such breach may

take place before the time fixed for performance or of completing the

performance of the contract has arrived. Thus, where a promisor by his own

act or default disables himself from performing his promise, the other party

is entitled to treat the contract as at an end and to sue him for damages for a

breach of it without waiting for the time fixed for performance, and without

Further performing his part of the contract”.

Such repudiation may be express or implied, or be in words or by conduct. Thus**, in Hochester v. De la Tour**,[6] The defendant actually wrote to the plaintiff stating that he was no longer going to perform his part of a contract under which he agreed to employ the plaintiff as a courier during a foreign tour commencing at a future date. The plaintiff immediately sued for breach of contract even though the date of performance was still nearly a month ahead and he succeeded.

Apart from repudiation or renunciation, the second circumstance in which a party is entitled to treat himself as discharged from further obligations in the contract is where the co-contractor, without expressly or implicitly repudiating the contract, commits a fundamental breach of contract. It must be a breach which goes to the root of the contract; a breach which has the effect of depriving the injured party of achieving the main purpose for which he contracted.

The breach of a fundamental term (as against a fundamental breach) will also give rise to the innocent party’s right to terminate the contract. The tendency, however, is that with a few exceptions, [22] a breach of a fundamental term will itself be a fundamental breach.[23]

One problem about basing the discharge of a contract solely on the breach of a fundamental term is the rather subjective nature of that concept. It is said that for a term to be fundamental, the parties must have regarded it as being of major importance when the contract was made. [24] But since the parties will not normally specify this in advance, in the end it is the Court’s view of what is of major importance that prevails. Thus the parties’ presumed intention becomes what the Judge thinks it ought to be.

It should be noted that a breach of condition also entitles the injured party to repudiate the contract. This, it will be recalled, is the main distinguishing feature between the consequences of a breach of condition and a breach of warranty. Thus, as far as the right to terminate for breach is concerned, there is no distinction between a breach of a fundamental term and a breach of a condition. However in situations or circumstances in which **Section 11(1) (c) of the sale of Goods Act 1893** is applicable, a breach of condition will only give rise to claim for damages, and the right to repudiate will be lost. This restriction on the right to repudiate does not apply to fundamental breaches or breaches of fundamental terms. When as a consequence of repudiation or fundamental breach by one party, the other party is said to be entitled to treat himself as discharged from the contract, what is really meant is that such a party is discharged from the performance of all future obligations. The contract, as such, is not rescinded ab initio, but only discharged as regards obligations that were not already due to be performed at the time of discharge. As was stated by the House of Lords in **Photo production Ltd. V Securicor Transport Ltd**.,[27] where the innocent party elects to terminate the contract, i.e., to put an end to all primary obligations of both parties remaining unperformed:

(a) there is substituted by implication of law for the primary obligations in default

Which remains unperformed, a secondary obligation to pay money compensation

To the other party for the loss sustained by him in consequence of their

Non-performance in the future and (b) the unperformed primary obligations of that

Other party are discharged. [28]

Where, however, the innocent party elects to treat the contract as still subsisting, i.e., rejects the repudiation, then the obligation of the parties are kept alive until the last obligations are due tobe performed. The consequences of discharge differ in each case, depending on whether the innocent party elects to terminate the contract, or keep it alive.

**REFERENCES**

[1] "Breach of Contract — Judicial Education Center". Jec.unm.edu. Retrieved 2020-04-10.

[2.] Murray, Full Bio Follow LinkedIn Follow Twitter Jean; MBA; Ph.D.; Writer, Is an Experienced Business; law, teacher She has written for The Balance on U. S. business; Murray, taxes since 2008 Read The Balance's editorial policies Jean. "What Is a Breach of Contract Lawsuit?” The Balance Small Business. Retrieved 2020-04-12.

[3] (Unreported) High Court, Lagos, Coker, J, suit no. LD/222/58 delivered on May 20, 1960. Casebook, p. 448.

[4] (1886) 16 QBD 460 at 467

[6] (1853) 2E&B.678

[22] See cases like Harbutt’s “plasticine” Ltd. v Wayne Tank and pump co. [1970] 1 QB .447 in which the breach of a relatively minor term had a devastating effect. (See pp. 188-189, above).

[23] See for example, Alexander v. Railway Executive [1951]2KB. 882; Karsales (Harrow) Ltd v. Wallis [1956]

[24] See Bowen LJ. In Bentsen v. Taylor &sons & co. [1893]2QB.274 AT P. 281. Sagay

[27] [1980] AC 827; [1978]1 WLR 856

[28] Per Lock Diplock, at p. 849. See also Johnson v. Agnew [1980] AC. 367, particularly Lord Wilberforce’s speech at p. 373 sagay.

b.) What are the remedies available for breach of contract?

When one of the parties that had break the terms and condition that had been agreed by two parties in the contract, breaching of a contract is happened. By this, the other party can voice out to pursue for remedies in order to cover the losses that is faced by him or her. These remedies are:

1. **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 in the position he or she would have been in but for the fraud.The underlying basis for the common law remedy of damages was laid down by Parke, B., in **Robinson v. Harman** as follows:

“The rule of the common law is that when 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.”

However, since an unqualified application of such a wide principle would prove too harsh “on a contract breaker in making him liable for a chain of unforeseen and fortuitous circumstances,” it was progressively qualified and limited in several ways, until the modern rule was finally crystallised in the judgement of Alderson, B., in **Hadley v. Baxendale.[3]**

The rule in Hadley v. Baxendale has been divided into two parts or branches, the first dealing with the normal damage that occurs in the usual course of things and the second with abnormal damage that arises because of special or exceptional circumstances.[5]

For breach of contract cases, there are several different types of monetary remedies:

* Compensatory damages: This is the most common breach of contract remedy. When compensatory damages are awarded, a court orders the person that breached the contract to pay the other person enough money to get what they were promised in the contract elsewhere.

For example, suppose you hire and pay someone to clean your house for 30,000 Naira, but he is unable to do it. You search for a new cleaning service, and the cheapest one you find will clean your house for 45,000 Naira. If this cost is found to be reasonable, your first cleaner will have to pay you 45,000 Naira in compensatory damages, allowing you to get your house professionally cleaned as the contract intended.

* Restitution: When a court orders restitution, they tell the person that breached the contract to pay the other person back. In the example above, the court will order the first cleaner to pay you back 30,000 Naira, since that what you paid him to clean your house.
* Punitive damages: This is a sum of money intended to punish the breaching party, and is usually reserved for cases in which something morally reprehensible happened, such as a manufacturer deliberately selling a retailer unsafe or substandard goods.
* Nominal damages: A court awards nominal damages when there has been a breach of contract but no party to the contract suffered any harm.
* Liquidated damages: These are damages that the parties agree to pay in the event the contract is breached.
* Quantum Meruit: A court can award one party payment for what they desrve for any work that he performed before the other party breached the contract. For example, if the cleaner in the example above had cleaned half the house, and then you decided that you didn’t want him to finish, he can demand 15,000 Naira as quantum meruit. Translated from Latin, the term means “as much as he deserve”.

1. **Specific performance:** A decree of specific performances is one by which the court directs the defendant to perform the contract which he has made in accordance with its terms. It is a relief in equity and is one of the earliest examples of the maxim that equity acts in “personam”. At common law, the only relief for breach of contract was damages, and in many cases this proved adequate and indeed the best remedy. Thus, in most contracts for the sale of goods, money compensation remains the most suitable remedy for a breach.

However, in some cases, for instance in a contract to convey land or to sell an antique, or a famous painting, the remedy of damages proved inadequate. In such situations the court of equity decreed specific performance. This was evident in Kay, L.J’s declaration in **Ryan v. Mutual Tontine Association**.

It is a general rule that specific performance will not be ordered if the contract requires performance or constant supervision over a period of time and the obligations in the contract are not clearly defined. For example, specific performance of a covenant to keep a shop open during normal business hours was refused by the House of Lords in **Co-opinsurance v. Argyll Stores [1997]3 ALL ER 297** on the grounds that enforcement of a covenant to carry on a business will require constant supervision of the courts with the court resorting to criminal punishment for contempt of court if the order was not complied with. However, a recent case has reversed this rule in relation to a tenants repair covenants **(Rainbow Estates Ltd v. Tokenhold Ltd and another[1998])** The Judge in this case concluded that the old law of refusing specific performance if it would involve constant supervision was no longer good or (at least) that there were exceptions. It may be that only in the most exceptional circumstance (such as in this case) specific performance will be available to the landlords; however the arguments advanced indicate that it should be available in other situations.

Specific performance is often ordered in relation to building contracts because the contract deals with results rather than the carrying on of an activity over a period of time and it usually defines the work to be completed with certainty **(Jeune v. Queens Cross Properties Ltd [1975] 3 ALL ER 97).**

Specific performance is not available for contracts requiring personal services such as employment contracts because such an order would restrict an individual’s freedom **(Chappell v. Times Newspapers Ltd [1975] 1WLR 482).**

1. **Injunction:** Like specific performance, an injunction is an equitable remedy and therefore only granted at the discretion of the court. It is awarded in circumstances where damages would not be an adequate remedy to compensate the claimant because the claimant needs to restrain the defendant from starting or continuing a breach of a negative contractual undertaking (prohibitory injunction) or needs to compel performance of a positive contractual obligation (mandatory injunction).

In a way, injunction is a mode of securing the specific performance of the negative terms of a contract. But for the performance of the positive terms of the contract, the aggrieved party may seek other remedies like damages. Injunctions are either restrictive or mandatory. In **Warner bros pictures Inc. v. Nelson**, a film actress signed an undertaking with the plaintiffs, her employers not to act for any other organization. An injunction was issued to restrain her from committing a breach of this stipulation when she attempted to enter the employment of a third party. Also as looked on earlier in **African songs Ltd. V. Sunday Adeniyi**, a musician who undertook to perform and record solely for the plaintiff company, was restrained for the remaining period of the contract from recording for himself or for any other company. As stated earlier, the courts will not grant specific performance to compel an unwilling party to remain in a contract for personal service. However, the court will be prepared to grant an injunction restraining the servant from performing a similar service for anyone else, provided that this does not force him into a position where he will either have to remain in his master’s service unwillingly or remain idle or starve. By contrast, in the case of **Page one records Ltd. V. Britton,** the manager of a group of musicians sought an injunction to restrain them from engaging another manager, after dispensing with his services in breach of their contract, the court refused the relief sought on the ground that the defendants would be compelled to continue to employ the plaintiff as their manager. [1]

**REFERENCES**

[1] (Mercantile law, supreme court, Lagos, LD/212 (1853)2E, & B. Delivered on May 20, 1960, casebook p.448 High court of the FCT, delivered on March 12 1987. No 1/205/69.

[3] (1854) 9 EX .341[1843-60] ALL ER 461 at p.465.

[5] See Victoria Laundry v. Newman Industries Coulson &co [1949]2KB 528 at p. 537, per Asquith LJ; Koufos VC. Czarnikow Ltd. (The Heron II) [1969]1 AC 350 at p.409 per Lord Hodson; Cheshire and Fifoot, op.cit p.540

# Bibliography

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UK.PRACTICALLAW.THOMSONREUTERS.COM