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**COURSE TITLE:** Law of contract

**QUESTION**

Discuss the following:

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

**ANSWER**

**A.**

A [contract](https://www.legalmatch.com/law-library/article/what-is-a-contract.html) is a legally binding promise made between two parties. Each party to a contract promises to perform a certain duty, or pay a certain amount for a specified item or service. The purpose of a contract being legally binding is so each party will have legal recourse in the event of a breach.

A breach of contract occurs when the promise of the contract is not kept, because one party has failed to fulfil their agreed upon obligations, according to the terms of the contract. Breaching can occur when one party fails to deliver in the appropriate time frame, does not meet the terms of the agreement, or fails perform at all.

Further, if one party fails to perform while the other party fulfils their obligations, the performing party is entitled to legal remedies for breach of contract.

## Breach of contract is a [legal](https://en.wikipedia.org/wiki/Legal) [cause of action](https://en.wikipedia.org/wiki/Cause_of_action) and a type of [civil wrong](https://en.wikipedia.org/wiki/Civil_wrong), in which a [binding agreement](https://en.wikipedia.org/wiki/Binding_agreement) or bargained-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 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. It is pertinent to know what constitutes a breach of contract. 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 [[1]](#footnote-2)of him. Additionally, the plaintiff must notify the defendant of the breach prior to fling the lawsuit.

B.

The types of legal remedies available for breach of contract depend largely on the severity of the breach. The party committing breach of contract is called ‘***a guilty party***’ and the other is called ‘***an aggrieved party***’. The word ‘***damages***’ means monetary compensation for loss suffered. Whenever a breach of contract takes place, the remedy of damages is the one that comes to mind immediately as the consequence to the breach. A breach of contract may put the aggrieved party to some inconvenience or disadvantage or may cause some loss to him. The court would desire the guilty party to accept responsibility for any such loss of the aggrieved party and compensate him adequately. The quantum of damages is determined by the magnitude of loss caused by the breach. There are types of damages which can be awarded to an aggrieved party.

1. **Compensatory Damages:** [Compensatory damages](https://www.legalmatch.com/law-library/article/compensatory-damages-in-breach-of-contract.html) are those that compensate the non-breaching party for their losses. This is the most common legal remedy, and a court can order the breaching party to pay the non-breaching party enough money to get what they were promised by the terms of the contract;
2. **Punitive Damages:** Punitive damages are generally awarded alongside compensatory damages. The purpose of [punitive damages](https://www.legalmatch.com/law-library/article/punitive-damages.html) is to punish the breaching party when they have engaged in particularly egregious behaviour in order to breach the contract, such as being intentionally negligent; or
3. **Nominal damages:** if the breach of contract causes no loss to the aggrieved party, no damages need to be awarded to him. However, in order to record the fact of breach by guilty party, the court may award nominal or token damages.

**Specific Performance:** Specific performance is utilized as a [legal remedy](https://www.legalmatch.com/law-library/article/types-of-damages-available-for-breach-of-contract.html) for breach of contract, and it requires the breaching party to perform their part of the contract. Specific performance is not always available. 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 [[2]](#footnote-3)[[3]](#footnote-4)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.

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.

**Injunction:** In this option, injunction can be said as a remedy that is equitable that the court requires the party to do something or the other way, to stop him or her from doing something. There are three types of injunction which is interlocutory injunction, mandatory injunction and also prohibitory injunction. The meaning of interlocutory injunction can be say as to maintain the status quo of something in a pending suit. In the other word, interlocutory injunction means to stop the action from being done. Interlocutory injunction is applied in before the starting of something or stops something for being continued. For example, when there is two people are fighting for the ownership of a hotel, interlocutory injunction is applied to this case. While for mandatory injunction, it means that the court enforce something or some action to be done. In other word, when one of the parties refuse to do the promises that had stated in the contract, the other parties can request the court to apply the mandatory injunction on the parties to finish the action. For example, when a contractor refuses to finish building the hotel new property on the date given, the hotel can request the court to apply the mandatory injunction to the contractor to finish the work. For prohibitory injunction, it can be define as to stop something or some action from being done. When the two parties had sign a contract, and one of the parties decided to sign the same contract with others, the other parties can request the court to apply the prohibitory injunction to the parties that want to sign the other contract.

**Rescission: The breach of contract no doubt discharges the contract, but the aggrieved party may sometimes need to approach the court to grant him a formal rescission, i.e. cancellation, of the contract. This will enable the party to be free from obligations under the contract.** Rescission allows the non-breaching party to essentially be released from performance obligations. Recession is a remedy for a breach of contract because it makes clear that the party is relieved of his duties due to the failure of the other party to perform.[[4]](#footnote-5)

1. Mid Essex Hospital Services NHS Trust v Compass Group UK and Ireland Ltd (t/a Medirest) [2013] EWCA Civ 200, paragraph 126.

   [**^**](https://en.wikipedia.org/wiki/Breach_of_contract#cite_ref-13)Photo Production Ltd v Securicor Transport Ltd [1980] AC 827, per Lord Wilberforce at p. 843; Lord Reid in Suisse Atlantique [1967] 1 AC 361 at 406 [↑](#footnote-ref-2)
2. [*"Breach of Contract — Judicial Education Center"*](http://jec.unm.edu/education/online-training/contract-law-tutorial/breach-of-contract)*. jec.unm.edu. Retrieved 2020-04-10.*

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3. [↑](#footnote-ref-4)
4. 3 The Law of contract by David Sagay

   en.wikipedia.org

   lawteacher.com

   peteranswers.com

   smallbusiness.findlaw.com [↑](#footnote-ref-5)