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**200 LEVEL**

**1.**

From time immemorial, prior to inevitable mundane transactions between humans in this social world, the concept of contract has been. It involves the agreement between two or more persons to indulge in any service whatsoever provided there is an element of offer, consideration, and consensus adidem and must be **binding** at the instance of acceptance. In this present world of increased civilisation, domestic/social engagement and advanced technology, contractual proceedings have permeated the globe from the littlest negotiations between a common retailer and a consumer to international agreements between two or more nations.

Although, a contract, in its nature, is to be binding on both parties until the agreed obligations are met, there are factors that could lead to the termination of a supposed contract.

In this regard, this writer shall dwell specifically on breach of a contract.

A breach of contract is a violation of any of the agreed-upon terms and conditions of a binding contract. The breach could be anything from a late payment to a more serious violation such as the [failure to deliver](https://www.investopedia.com/terms/f/failuretodeliver.asp) a promised [asset](https://www.investopedia.com/ask/answers/12/what-is-an-asset.asp). Breach of contract is a legal term that describes the violation of a contract or an agreement that occurs when one party fails to fulfil its promises according to the provisions of the agreement. Sometimes it involves interfering with the ability of another party to fulfil his duties. A contract can be breached in whole or in part.[[1]](#footnote-1)

When a breach is committed, there is a sense of deviancy, non-compliancy, disruption or alteration in a previously agreed and established deal; hence, 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 incapacitates himself from performing[[2]](#footnote-2). Such breach gives right to the aggrieved party to an action for damages against the guilty party. A breach of contract may entitle the injured party to claim damages, the agreed sum, specific performance or an injunction. Breach may also give the injured party the right to “terminate” the contract.

When considering breaches, one would consider the concepts of **anticipatory breach**, which is said to occur when a party renounces the contract or disables himself from performing it before the performance is due. In the case of ***Hochster v De la Tour* (1853)**, the claimant agreed to be a courier for the defendant for 3 months starting on 1st June 1852. On the 11th May the defendant wrote to the claimant stating he no longer wanted his services and refused to pay compensation. The claimant obtained a service contract elsewhere, but this was not to start until 4th July. The claimant brought an action on 22nd May for breach of contract. The defendant argued that there was no breach of contract on 22nd May as the contract was not due to start until 1st of June. It was held that where one party communicates their intention not to perform the contract, the innocent party need not wait until the breach has occurred before bringing their claim. They may sue immediately, or they can choose to continue with the contract and wait for the breach to occur.

Parties claiming an anticipatory breach are obliged to make every effort to mitigate their own damages if they wish to seek compensation in court. That could include halting payments to the party that committed the breach and immediately looking for ways to minimize the effects of the breach. That might mean seeking a third party who could perform the duties outlined in the original contract.

In addition to the forms of breaches, there is **material breach**, which is one that is significant enough to excuse the aggrieved or injured party from fulfilling their part of the contract, and **partial breach, which**is not as significant and does not normally excuse the aggrieved party from performing their duties.[[3]](#footnote-3)

There is also the **Fundamental breach**, which refers to one of the parties in the agreement not keeping their part of the deal by failing to complete a contractual term that was essential to the agreement so much so that another party could not complete their own responsibilities in the contract. Because this type of breach is so critical to the contract being carried out, it is often grounds for the aggrieved party to cancel the contract entirely.

In ***[Karsales v Wallis](https://en.wikipedia.org/wiki/Karsales_(Harrow)_Ltd._v._Wallis)***, a buyer inspected a car dealer's used Buick car and agreed to buy it. The car was later delivered at night and had been towed. When the buyer inspected the car in the morning, it would not work and it was clear it had been involved in an accident, and there were other changes: its tires had been replaced by old ones, body parts were missing, and the engine's cylinder head was detached, revealing burnt valves. This was a serious breach, but the dealer sought to rely on a clause in the contract: "No condition or warranty that the vehicle is roadworthy or as to its age, condition or fitness for any purpose is given by the owner or implied herein."

Although the clause was clear and well drafted, the Court of Appeal declared that a "car" was a "vehicle capable of self-propulsion", and accordingly this Buick was not a proper car. Following ***Glynn v Margetson*** and using its "main purpose" concept, the court held that the dealer was "in breach of a fundamental obligation" and so could not rely on any exclusion clause.

This decision was clearly fair to the buyer, and ***Karsales v Wallis*** soon became the leading case on "fundamental breach". As a matter of law, under the doctrine of fundamental breach of contract, exclusion clauses were deemed not to be available to a party in fundamental breach of the contract. However, all was not well, as businesspeople felt alarmed that an agreed contract term could be set aside by a court; there seemed to be no "certainty".

There are several reasons as to why such a breach is made; they include:

* Failure or refusal to perform- failure to comply with an agreed obligation amounts for a breach of contract. It is however crucial to consider whether performance is a promise or a condition, because there are instances where a party might make a promise to the other party provided that the other party does something in return, meanwhile, the second party has offered no promises in return, in this regard, a breach is not committed if the second party doesn’t comply or fails to complete the mentioned duty.

It is equally expedient to consider whether a party is under any obligation whatsoever, for it is possible for a contract to contain a promise by one party, but fail to make clear exactly what has been promised in return by the other. In an English case of ***Churchward v R***, a contractor a contractor agreed with the Admiralty that he would for 11 years carry from Dover to Calais such mail as he should from time to time be asked to carry by the Admiralty or the Postmaster-General. He was not given any mail to carry and claimed damages.

One reason why his claim failed was that **the agreement did not oblige the Admiralty to employ him**: it only obliged him to carry mail if the Admiralty asked him to do so. The agreement thus resembled a tender by the contractor and amounted to no more than an offer, which might be accepted by the Admiralty from time to time. A document which in terms imposes an obligation on only one party may, indeed, by implication also oblige the other to do something which is not expressly stated.

The court held that: “Where there is an engagement to manufacture some article [for a customer] a corresponding engagement on the other party is implied to take it, otherwise it would be impossible that the party bestowing his services could claim any remuneration.”

* Defective performance- this factor rotates around self- contradiction. This means that a person who promises to do one thing does not perform if he does another. Such action amounts to breach, but the effects of such a breach often differ from those of complete failure or refusal to perform.
* Incapacitating oneself- A person may break a contract by incapacitating himself from performing it. Thus a seller commits a breach of contract for the sale of a specific thing if he sells it to a third party. For example, a seller of generic goods does not put himself in breach merely by telling the buyer that he will make delivery from a source which does not exist.

He is normally entitled and bound to deliver from another source, and is in breach only if he fails or refuses to do so.

On the forth going, it is crucial to add that there is no breach in contract when non- performance of a contract is justified by some legal excuse. Thus, there are guidelines to prevent committing breach in a contract. Such are:

* Excuse provided by express provision- Excuses for non-performance may be provide by the contract itself, which may contain “exceptions” absolving a party from his duty to perform if he is prevented from doing so by specified circumstances, such as strikes or similar delays. Failure to perform, if brought about by such events, is not a breach at all. The function of the “exception” is not to exclude liability for an assumed breach but rather to define the scope of the contracting party’s obligations.
* Excuse must exist at the time performance is due- A party relying on an excuse for non-performance must show that the excuse existed at the time of his refusal to perform: it is not enough for him to show that it arose or would (if the other party had not discharged the contract on account of the refusal) have arisen at some later time.
* The ***Panchaud Frères case***- One controversial case goes further in holding that a buyer who failed to specify a defect in existence at the time of rejection could not later rely on it, even though the defect was one which the seller could not have cured and even though the seller did not in any way change his position in consequence of the buyer’s original failure to specify it. This is the Panchaud Frères case, where maize was sold under a contract which provided for shipment to be made in “June/July”. The goods were shipped in August and the buyers could have rejected them on this ground. But they paid against documents which would, if carefully examined, have revealed the fact of late shipment; and when the goods arrived the buyers rejected them for defects of quality. This was a bad ground as the goods were sound when shipped and the sellers were not responsible for their subsequent deterioration. The buyers claimed their money back, and, three years after their rejection of the goods, they relied for the first time on the fact of late shipment.

Their claim failed, no doubt because the court was impressed by the possibly harsh consequences of allowing the buyers at such a late stage to rely on an originally unstated excuse for non-performance. To allow the buyers to do this would, it was said, be inconsistent with a “requirement of fair conduct.” But the vagueness of this requirement makes it virtually impossible to tell which cases will be governed by it and which by the general rule that a party can rely on an originally unstated excuse for non-performance. Hence other attempts have been made to explain the Panchaud Frères case. One suggestion is that the case was one of waiver (in the sense of election); but this was rejected in the case itself on the ground that the buyers did not know of the late shipment when they accepted the documents.

Another view is that the buyers’ conduct gave rise to an estoppel or equitable estoppel. These doctrines, however, operate only if two requirements are satisfied: an unequivocal representation made by one party and reliance on it by the other.

In one later case the argument based on estoppel accordingly failed on the ground that no such representation had been made; and in the Panchaud Frères case, even if the inference of a representation could be drawn from the buyers’ acceptance of the documents, it is hard to see in what way the sellers had relied on that representation. They certainly lost no chance of curing the defect in their tender, for when that tender was made such a cure was no longer possible. Probably the safest explanation of the case is that the buyers had lost their right to reject by acceptance when they paid against documents which disclosed the fact of late shipment.

It follows that the buyers could have relied on the fact of late shipment if they had rejected the documents, even though they had, at the time of such rejection, given an inadequate reason, or none at all.

Proceeding, there are instances where defence can be made by persons accused of causing a breach of contract. As in all lawsuits, the defendant—the party being sued—has a legal right to offer a reason why the alleged breach is not really a breach of contract or why the breach should be excused. In legal terms, this is called a defence. Common defences against a breach of contract include:

**Fraud:**This means “knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment." When a defendant presents this defence, they're saying that the contract isn't valid because the plaintiff failed to disclose party had a power advantage over the other and that they used that advantage to force the other to sign the contract. Something important or because they made a false statement about material or important fact. The defendant must establish that the fraud was deliberate.[[4]](#footnote-4)

**Duress:**This occurs when one person compels another to sign a contract through physical force or other threats. This, too, can invalidate a contract because both parties did not sign from their own free will, which is a standard contractual prerequisite.

**Undue influence:**This is similar to duress. It means that one had a power advantage over the other and that they used that advantage to force the other to sign the contract.

**Mistake:**Anerror committed by the defendant can't invalidate a contract and take away a breach of contract case, but if the defendant can prove that both parties made a mistake about the subject matter, it might be enough to invalidate the contract and this would serve as a defence.

**Statute of Limitations:**Many types of cases have time limits imposed by law, deadlines by which a case must be brought and filed. A breach of contract case can be thrown out of court if the defendant can show that the statute of limitations has expired. The Statute of limitations case has a basis on time frames that are set by individual state law so they can vary. They average from three to six years for a written contract.

In conclusion, it should be stated that where the guilty party has repudiated the contract or has a right to rescind or terminate the contract. Rescission in this sense connotes that as a consequence of the guilty party’s breach, the innocent party is entitled to treat himself as discharged from further liability to perform his yet unperformed obligation. In the same vein, the guilty party is discharged of his remaining duties but remains liable for damages towards the innocent party.[[5]](#footnote-5)

**2.**

In law, there is a distinction between criminal and civil quagmires; for instance, in the cause of justice dispensation, the judge or body of judges gives out judgement to an accused/ guilty person. In criminal cases, such judgements range from mere fines to death as the case may be. Conversely, since civil cases dwells on relations between persons or states, the judgement is mostly aimed at providing necessary condolences, remedies, and employing all manner of pacifying mechanisms to the aggrieved party. In contract, it is expedient to decipher that the court has an **objective** nature; hence, it is aimed at upholding a bargain rather than setting aside a case. The court is interested in marinating transactions rather than hurriedly setting aside a case.

However, there are exceptions as there certain cases where continuation can simply not be- breach of contract for example. Once a contract has been breached, the other party has the right to discharge and redeem himself from whatsoever performance to be done and can also seek an action of damages.

On this note, this writer shall enumerate the various remedies for breach of contract.

In contract law, a “remedy” is a court-ordered resolution to one party’s breach of contract. A breach of contract occurs when one party to a contract has not fulfilled his or her obligation under the agreement. The non-breaching party is also known as the “injured” party, and the purpose of remedies is to place the injured party in the position they would have otherwise been in had the contract been performed as it was agreed upon. **There are a variety of remedies available for a contract breach; there are a variety of remedies available for a contract breach**. The appropriate compensation or remedy depends upon the circumstances. The non-breaching party will need to demonstrate that the other party failed to perform in order to be entitled to any type of remedy.

The most common claim is that for **Damages**. Award of damages is the most common remedy for breach of contract as one party seeks compensation for financial losses as a result of breach of contract. The party who is injured by the breach of contract is entitled to the benefit (consideration) of the agreement they entered, or the net gain they would’ve accrued had it not been for the breach.  This type of remedy is known as “**compensatory damages**.” [[6]](#footnote-6)

During the court case, the injured party becomes the plaintiff. In the instance of a total breach, the plaintiff may recover damages in an amount that’s equal to the sum or value they would have received had the contract been fully performed by the defendant.  Sometimes, this includes lost profits from a business operation.

If the breach is only partial and the defendant carried out a majority of the contract, the plaintiff may seek damages in an amount equal to the cost of hiring someone else to complete the performance. If the portion of the uncompleted performance is quite small in terms of cost, however, the court may only award damages in an amount that’s equal to the difference between the diminished value of the agreement as completed and the full value as stated in the contract.

On the fourth going, another form of damages is **Punitive damages**. This damage, known as **exemplary damages**, are awarded to punish or make an example of the wrongdoing of a party that acted wilfully, maliciously or fraudulently. Punitive damages are awarded in addition to compensatory damages.  However, punitive damages are rarely awarded in breach of contract cases. Punitive damages are most often used in tort cases in which personal harm was a result of the wrongdoing and actual damages are minimal.

The underlying basis for the common law remedy of damages was laid down by Parke, B., in ***Robinson v. Harman[[7]](#footnote-7)***, where he stated that in common law, where 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. This was the origin of monetary damages, upon which criticisms were rendered prior to its harshness.

This led to the modification of this precedent by Alderson, B., in ***Hadley v. Baxendale[[8]](#footnote-8)*** where it was held that “ where two parties have made a contract which one of them has broken the damages which the other party ought to receive in respect of such a breach of contract should be such as may fairly and reasonable be considered as either arising naturally or such as may reasonably be supposed to have been in the contemplation of both parties at the time they made the contract as the probable result of the breach of it...the damages resulting from the breach of such a contract which they would reasonably contemplate would be the amount of injury which would ordinarily follow from a breach of contract, he, at the most could only be supposed to have had in his contemplation the amount of injury which would arise generally, and in the great multitude of cases not affected by an special circumstances, from such a breach of contract.”

In the above rule in ***Hadley v. Baxendale***, the first branch deals with normal damage that occurs in the usual course of things and the second with the normal damage that occurs in the usual course of things and the second deals with abnormal damage that arises because of special or exceptional circumstances.

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[[9]](#footnote-9).

Furthermore, another available remedy for breach of contract is **Specific performance.**In some cases, the appropriate remedy for a breach of contract is to correct the breach by forcing the breaching party to complete the terms of the agreement. Specific performance is an appropriate remedy in situations where monetary damages could not possibly make the non-breaching party whole for the losses. 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. Specific performance is a remedy for breach of contract in which the court forces the breaching party to perform the services or deliver the goods the promised goods per the contract.  Specific Performance is only available when money damages are inadequate to compensate the plaintiff for a breach.  This remedy is typically used when the goods or services are so unique that no other remedy could suffice.

A good example is an individual who’s looking to buy a rare piece of art. He or she forms a contract with someone to obtain this piece of art. The buyer’s offer becomes the price for the piece of art and the other party accepts by a promise of delivering the art in exchange for the agreed amount. If the other party joins in this contract, yet fails to deliver the art, the buyer can take the case to court as a breach of contract. The court could rule specific performance the remedy for breach of contract, as the buyer would not be able to get this rare piece of art elsewhere. The defendant would then be required by the court to deliver the goods – in this case, the art – as agreed upon in the contract.

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.* In most contracts such as land conveying, antique sale, among others, special performance remains the most suitable remedy for a breach. Hence, Kay, L.J., declared specific performance in the case of ***Ryan v. Mutual Tontine Association[[10]](#footnote-10)*** to be the following:

“This remedy by specific performance was invented, and has been cautiously applied, in order to meet the ordinary remedy by action in damages is not an adequate compensation for breach of contract. The jurisdiction to compel specific performance has always been treated as discretionary, and confined within well-known rules.”

However, it is important to note that the remedy of specific performance is a discretionary one and the plaintiff is not entitled to it as a matter of right. This discretion is one exercised judiciously by the courts. In all cases, the courts will consider if the granting of the decree will be just and equitable under all circumstances of the case. It will therefore not be granted where it will be impossible to carry out, or where it will create hardship. In such cases, only damages will be awarded.

Moving on, yet another remedy available for breach of contract is **Injunction**. An injunction is an order or decree by which one party to an action is required to do or refrain from doing a particular thing. Injunctions are either restrictive or mandatory.[[11]](#footnote-11) An injunction is another way by which a court can order specific performance. Where a party to a contract undertakes not to do something, a court order prohibiting him from doing that thing is a **negative** way of enforcing the contract.

In ***Warner Bros. Pictures Inc. v. Nelson****,* a film actress signed an undertaking with the plaintiffs, her employers, not to act for any other organisation. 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.

In addition, in **African Songs Ltd. v. Sunday Adeniyi[[12]](#footnote-12)**, 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.

Conversely, where the injunction is mandatory, it is restorative in its effect and not merely preventive. It directs the defendant to undo what he has already done in breach of contract. This is why in the ***African Songs*** case, the plaintiff, part from seeking an injunction to restrain the defendant from performing or recording music for anyone else, also sought an injunction to restrain the distribution of gramophone records already containing music recorded by the defendant in breach of contract, and an order that they should be withdrawn from the public. Dosunmu, J., relying on ***Holt v. Holt***, held on this point that since these had already been distributed all over the country, nothing could be done about it.

Furthermore, another remedy is **Rescission.**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. Rescission is a remedy used to terminate a contract when parties entered into a contract by way of fraud, undue influence, coercion, or mistake. In the case of rescission, the contractual obligations of both parties are therefore terminated, and the contract will no longer exist.

In addition to the already given remedies, one could also include **Reformation.** Reformation is similar to rescission as it’s a result of parties entering into a contract based on fraud, undue influence, coercion, or mistake, but rather than terminating the contract and the parties’ obligations entirely, the court will change the substance of a contract to correct the inequities suffered as a result.

In conclusion, a contract is a legally binding agreement that is enforced by the full weight of the court. In the event that either party to a contractual agreement fails to perform according to the terms of the contract, the other party may take legal action. The party who fails to perform is referred to as the breaching party.  A civil lawsuit for breach of contract may be filed to obtain a remedy for the breach.

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