

Question 1:

1.1 What forms of breach of contract can be considered anticipatory breach?

Repudiation and prevention of performance.

1.2 Provide reasons for your answer to question 1.1.

They can be committed prior to the stipulated time for performance.

1.3 Explain why *mora debitoris* and *mora creditoris* are sometimes referred to as forms of "negative malperformance".

There is a delay in the time of the performance.

Mora debitoris and *mora creditoris* are grouped under forms of negative malperformance as they both entail situations in which parties to a contract fail to perform in a way that enables proper performance of contractual obligations. (but should emphasize element of failure to perform by a specific time *mora*.)

1.4 What are the remedies for breach of contract aimed at?

They are aimed at the fulfilment or rescission of the contract.

1.5 Explain the role of fault when it comes to breach of contract?

Parties by an act or omission fails to fulfil their obligations.

Then you would mention the relevant case law (case of *Administrator Natal v Edouard* it was stated in obiter that fault is not a requirement for a breach of contract but it is unclear whether this is the law and it is open to dispute) and explain why intent or negligence is required. It would also be good to consider why there is no provision made for an innocent breach of contract and what would happen if a party innocently failed to comply with their contractual obligations.

In *Administrator Natal v Edouard*, Appeal court stated obiter that 'fault is not a requirement for claim for damages based on breach of contract', also in *Scoin Trading*. Open to debate. If party guarantees performance, absence of fault no excuse. But where inability to perform due to factors beyond control does afford defence for breach.

Best answer= There must be fault (either intent or negligence) for a debtor's conduct (or someone acting on behalf of the debtor) to constitute a breach of contract. There are sometimes grounds of legal justification that could excuse the debtor's actions where there is a perceived breach, these are:

- If the debtor is reasonably ignorant of the nature of performance or if performance was due
- If the creditor's actions cause the delay on the part of the debtor
- If the debtor's performance was impossible

The onus is on the debtor to prove one of these grounds for justification.

A potential spanner in the works, however, is that in *Administrator Natal v Edouard*, the Appeal Court stated obiter that 'fault is not a requirement for a claim for damages based upon a breach of contract', and the court also stuck to this principle in *Scoin Trading (Pty) Ltd v Bernstein NO*. Thus, the requirement of fault for a valid breach of contract is open to question.

Contract Law Qa

Arturo Cuomo



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