

Breach of Contract and its Remedies; Theory and Practice with Special References to Nepalese law

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Abstract

This research provides a thorough examination of breach of contract concepts and remedies, focusing on their application within Nepal's legal framework. It begins with a comprehensive overview of contract fundamentals and various breach types—minor, material, anticipatory, and actual—clarifying their legal implications. Legal remedies such as compensatory damages, consequential damages, specific performance, injunctions, rescission, and liquidated damages are detailed, emphasizing their legal basis and practical implications. Principal challenges in enforcing contract law in Nepal are identified, with integration of international guidelines from UNIDROIT Principles, CISG, and PECL providing a global perspective. The Nepalese Civil Code 2074 and earlier contract acts are referenced for historical context, while international case law examples illustrate their impact on Nepal's legal system. Notable Nepalese judicial decisions underscore the Supreme Court's role in interpreting and enforcing contract law, striving to align practices with international standards. Employing doctrinal research methods, the article highlights the progressive evolution of contract breach remedies in Nepal. Despite existing gaps, the judiciary actively addresses shortcomings to enhance legal consistency and align practices globally. This evolving landscape reflects Nepal's commitment to justice and a reliable legal environment for domestic and international commerce. The analysis enriches understanding of theoretical foundations and practical applications of Nepalese contract law, particularly concerning breach of contract and associated remedies.

Keywords: Breach of contract, contractual obligation, performance, remedies for damages, practical enforceability

Introduction

The evolution of contract law is deeply intertwined with the philosophical foundations of societal organization, as articulated by seminal thinkers such as John Locke, Thomas Hobbes, and Jean-Jacques Rousseau. These philosophers, through their social contract theories, posited that the formation of societies and governments was based on implicit agreements among individuals to ensure mutual protection and the establishment of order. These social

contract ideas have had a significant impact on the evolution of modern contract law, which forms the foundation of legal systems and is essential to upholding agreements, ensuring justice, and preserving social peace. The legal framework for upholding commitments and promises changed in parallel with society's transition from a state of nature to structured communities, considering the shifting nature of interpersonal relationships and societal demands. A breach of contract occurs when a party fails to fulfill an obligation, either by non-performing or failing to comply with the contract's requirements. English law applies the same remedial regime to all forms, and a new obligation arises by operation of law, requiring the party to pay damages (Sir Jack Beatson, Andrew Burrows, John Cartwright, 2010).

The contractual obligation to perform stays the same in most cases, but there are situations where a breach not only gives rise to a right of action for damages but also gives the innocent party the option to decide not to perform under the contract going further and to release both parties from their obligations i.e., to terminate the contract (Photo Production Ltd. V. Securicor Transport Ltd., 1980) When any party breaches a contract or contractual obligation certain remedies are given for the breach of contract for the sake of the innocent party. These remedies fall under three heads (Burrows, 2004).

- Every breach of contract entitles the injured party to damages. Damages are primarily concerned to compensate the injured party for the loss he/she has suffered.
- In certain circumstances the injured party may obtain the enforcement of the promise by an order for specific performance of the contract, an injunction to restrain its breach or for the payment of the sum due under the contract.
- In certain circumstances the parties to a contract that has been broken may be entitled to the return of money paid or restitution of the value of services rendered or goods transferred. These are restitutionary remedies for the independent cause of action of unjust enrichment. They are not remedies for the breach of contract. Exceptionally an injured party may be granted an award reflecting the gain made by the contract-breaker from the breach of contract. This is a restitutionary remedy for the breach of contract.

Breach of Contract

To 'breach' means 'to break a rule or an agreement'. 'Breach of Contract' means failing to do something as accordance to the contract. A breach of contract occurs in the realm of contract law when one party fails to perform as promised in the terms and conditions of a contract. This failure to fulfill obligations can lead to legal consequences, such as breach of contract lawsuits. Some of them are discussed below:

Minor Breach

A minor breach of contract occurs when the main outputs of a contract are mainly completed but not to the standard stated in the contract. This might happen when a good or

service is replaced with an alternative, or when something is provided slightly later than expected under the contract terms. To seek remedies, parties must demonstrate that the breach was damaging to them, often resulting in a financial loss.

Material Breach

A material breach of contract occurs when a party's terms are breached, resulting in a significantly different outcome than the original contract. This can result in less value than promised, affecting other commercial transactions. The court's interpretation of the breach is frequently left to the parties. If proven, a party may sue the counterparty for any direct and indirect losses caused by the breach.

Anticipatory Breach of Contract

An anticipatory breach occurs when a party expresses their intention to breach the contract's terms, even before the actual breach has occurred. This can be intentional or due to physical incapacity or implied by actions without explicit notification. The breach becomes actual once the due date for certain obligations has passed.

Actual Breach of Contract

An actual breach of contract is the failure to perform contractual commitments after the due date or to meet a sufficient standard. These breaches can be substantial or trivial, and the innocent party may have a variety of options based on the business's repercussions.

Repudiatory Breach of Contract

A repudiatory breach of contract is the most severe type, affecting the contract's purpose and execution. It typically leads to the complete dissolution of the contract, unlike minor breaches. However, parties can still affirm the existing contract, as they have the option to cancel the contract in the event of a repudiatory violation.

Remedies for the Breach of Contract

When one party breaks a contract, the other party who suffers a loss gets remedies. These remedies usually involve compensation to make up for any damage, loss, or harm caused by the breach. Here's a simplified explanation of some common remedies:

- i. Compensatory Damages.** This is financial compensation awarded to the non-breaching party to cover the losses directly resulting from the breach. The goal is to put the injured party in the position they would have been in if the contract had been fulfilled.
- ii. Consequential Damages.** These damages cover indirect losses that occur as a consequence of the breach. They go beyond immediate losses and include things like lost profits.
- iii. Specific Performance.** This remedy involves a court order requiring the breaching party to perform their contractual obligations. It is usually applied when monetary compensation is inadequate, such as in contracts involving unique goods or properties.

iv. Injunctions. An injunction can either require a party to do something or stop them from doing something. For example, a court might order a company to stop using a trade secret that it obtained through a breach of contract.

v. Rescission. This remedy allows the non-breaching party to cancel the contract entirely. It aims to restore both parties to their positions before the contract was made, essentially treating the contract as if it never existed. When a party breaches a contract, the other party may go to the court to treat the contract as rescinded and refuse further performance (Kalika, 2020) .

vi. Liquidated Damages. These are pre-agreed amounts specified in the contract that the breaching party must pay in the event of a breach. They are used when actual damages are difficult to quantify.

Enforceability is the basic feature of a contract. It implies that if a party breaks the contract, it will have to face the consequences as laid down in law (Dhungana, Law of Contract, 2079) Understanding the mechanisms and remedies for breach of contract is crucial for the effective enforcement of contractual obligations. The detailed exploration of legal provisions, case laws, and practical applications provides a robust framework for addressing breaches and ensuring justice. By examining these aspects within the context of various legal systems, such as those in Nepal and India, we gain valuable insights into both the commonalities and unique features of contract law. This comprehensive understanding not only aids legal professionals in navigating complex contractual disputes but also contributes to the development of more equitable and effective legal standards in the region.

Statement of Problems

Contracts form the cornerstone of both commercial and personal transactions, serving to ensure that parties involved adhere to their mutual obligations and expectations. However, breaches of contract are unfortunately prevalent, leading to disputes that can significantly disrupt business operations and personal relationships. The issue of breach of contract and the remedies available for such breaches is a multifaceted area of law, requiring an intricate understanding of both theoretical principles and practical applications.

In Nepal, the legal framework governing contracts is shaped by a blend of traditional practices and modern legal developments. Despite this comprehensive legal foundation, there is often a significant gap between the theoretical remedies provided by law and their actual enforcement in the judicial system. This disparity can lead to inconsistent judicial outcomes, prolonged litigation processes, and diminished trust in contractual agreements. Several factors contribute to this gap, including geographic location, economic status, legal literacy, and systemic inefficiencies.

In remote and rural areas of Nepal, access to legal institutions and services is often severely limited. Individuals living in these regions may face considerable challenges in

seeking legal redress due to the physical distance from courts and legal professionals. The financial burden associated with pursuing legal action can be prohibitive, especially for those with lower economic status. Legal processes, including fees for lawyers, court costs, and related expenses, can be substantial and may deter poorer citizens from seeking justice.

Moreover, there is a widespread lack of legal awareness among the general population. Many people in Nepal may not be fully aware of their legal rights or the remedies available to them. This gap in legal education can prevent individuals from effectively utilizing the legal system to address grievances, thereby exacerbating the disparity between theoretical and practical remedies.

The judicial system in Nepal is also often overburdened with a high volume of cases, resulting in significant delays and backlogs. This can lead to long wait times for case resolution, which impedes timely justice and remedies for those affected by breaches of contract. Additionally, in some communities, traditional dispute resolution mechanisms are preferred over formal legal processes. These traditional methods may not always align with theoretical legal remedies and can further complicate the enforcement of legal principles.

Addressing these challenges is crucial for improving the effectiveness of legal remedies, ensuring procedural fairness, and enhancing the protection of victims within Nepal's legal system. Efforts to bridge the gap between theoretical and practical remedies must focus on increasing legal literacy, reducing economic barriers to legal action, and improving the efficiency of the judicial system. Only through a comprehensive approach that considers these diverse factors can the legal system in Nepal hope to provide more consistent and equitable outcomes for those affected by breaches of contract.

Research Questions

- Are the theoretical underpinnings of breach of contract in western legal traditions aligned with those in Nepalese law, or do they differ?
- Is the current legal framework addressing breaches of contract in Nepal effective?
- Are factors such as geographic location, economic status, and legal literacy impacting the ability of parties to seek and obtain remedies in Nepal?
- Is there a gap between the theoretical remedies provided by law and their practical enforcement in Nepal?

Objective of the Study

This research aims to explore the theory and practice of breach of contract and its remedies, with a special focus on Nepalese law. It has examined the types of breaches, the legal remedies available, and the effectiveness of these remedies in practice. By analyzing Nepalese legal precedents, statutory provisions, and real-world case studies, this research seeks to highlight the challenges and propose solutions to improve the handling of contract breaches in Nepal.

Ultimately, the goal is to provide a comprehensive understanding of how breach of contract is addressed within Nepal's legal system and suggest ways to enhance the efficacy of legal remedies. The study focuses on:

- To explore whether the theoretical underpinnings of breach of contract in Western legal traditions are aligned with those in Nepalese law.
- To determine the effectiveness of the current legal framework addressing breaches of contract in Nepal.
- To assess whether factors such as geographic location, economic status, and legal literacy are impacting the ability of parties to seek and obtain remedies in Nepal.
- To examine whether there is a gap between the theoretical remedies provided by law and their practical enforcement in Nepal.

Literature Review

Damages for breach of contract are given to compensate for loss suffered by the innocent party and not to punish the contract-breaker (*Rookes v Barnard*, 1964). Punitive or exemplary damages have no place in the law of contract (*Broome v Cassel & Co. Ltd.*, 1972). Contractual damages can not be used to punish, however outrageous the defendant's conduct (*Malik v Bank of Credit & Commerce International*, 1998).

Difficulty in assessing damages does not disentitle a claimant from having an attempt made to assess them, unless they depend on entirely speculative possibilities which has been describe by House of Lords in 1876 (*Simpson v London and North Western Railway Company*, 1876) and this principle remains same in UK that has been applied in numerous cases.

While discussing on breach of contract and remedies on damages, the date for assessment of damages becomes always debatable. But through the case of (*Dodd Properties (Kent) v Canterbury City Council*, 1980) this debate was permanently abolished. Moreover, in recent days more flexible approach to address this issue has been adopted, in which the later date or assessment has been taken so as to enable compensation to be more accurately calculated which is called subject to not infringing the mitigation principle.

Contractual damages may be recovered for substantial physical inconvenience or discomfort arising from a breach. For example, where a family were transported by a railway company to the wrong station, with the result that they had to walk several miles home on drizzling wet night (*Hobbs v L & SW Ry*, 1875) and where a man with his wife and child, was forced to live for two years in discomfort with his wife's parents owing to the failure of a solicitor to take any effective steps to obtain possession of a house (*Bailey v Bullock*, 1950) and damages for the physical inconvenience were recovered.

The object of an award of damages for breach of contract is to place the claimant, so far as money can do it, in the same situation, with respect to damages, as if the contract had

been performed (Robinson v Harman, 1848). If the contract is broken by the other party, the damages will be assessed by reference to the claimant's 'performance' or 'expectation' loss, consisting of what would have been received had the contract been duly performed (Fuller, L.L., Perdue, W.R and Jr.). Mitigation is one of the options to compensate in the breach of contract in damaged who suffered loss due to the breach by a party.

A person who has suffered loss from a breach of contract must take any reasonable steps that are available to mitigate the extent of damage caused by the breach (Bridge, 1989). The innocent party cannot claim to be compensated by the party in default for loss which is really due to not to the breach but to its own failure to behave reasonably after the breach (British Westinghouse Electric Company Ltd. v Underground Electric Rys Co. of London Ltd. , 1912).

The court will not, in general, compel the performance of contracts which involve personal service as in the case of Rigby in England (Rigby v Connol, 1880) where Rigby wanted a court order to stop his expulsion from a union that only allowed union members to work there. The union had a rule that if a member's son worked at a place that hired non-union workers, the member would be fined £5 and lose all union benefits until the fine was paid. Rigby broke this rule and was kicked out of the union. Court held that a union member's right is founded on property, and because the member had disclosed no proprietary interest in the union in his statement of claim, he could not succeed.

Materials and Methods

This study employs a doctrinal research methodology, utilizing an analytical research design to explore the subject matter comprehensively. Data and information have been meticulously compiled from both primary and secondary sources to support the research.

Primary sources for this study include pertinent legislation, policy documents, and publications from government bodies and relevant authorities, all of which have been obtained directly from the respective entities. Secondary sources encompass a wide range of materials, including scholarly books, academic journals, bulletins, newspapers, as well as both published and unpublished documents. These secondary materials have been sourced from various libraries, research institutions, and digital platforms. The integration of these diverse data sets facilitates a robust and nuanced analysis of the research topic.

Results and Discussion

Remedies for breach of contract typically include compensatory damages, specific performance, and restitution. The aim is often to place the non-breaching party in the position they would have been in had the contract been performed. Providing remedies for breach of

contract is crucial for the injured party as it ensures they receive compensation for losses incurred due to the breach, restoring them as closely as possible to their original position.

Remedies uphold the contractual promise, reinforcing the reliability and predictability essential in commercial transactions. They deter potential breaches by emphasizing accountability, thus maintaining trust and stability in business relationships. Effective remedies also facilitate efficient dispute resolution, reducing the time and costs associated with prolonged litigation, and ultimately supporting a fair and functional economic environment. Addressing breaches of contract in Nepal necessitates a comprehensive approach that includes both a strong legal framework and effective enforcement mechanisms. The Supreme Court of Nepal's efforts to align theoretical and practical aspects of contract law are vital for enhancing legal certainty and fairness. Providing remedies for breaches is essential to restore the injured party, uphold the contractual promise, and maintain trust in business relationships.

By fostering fair business practices and emphasizing accurate loss documentation, Nepal can improve its contractual enforcement and support a stable economic environment. These findings highlight the need for continuous legal reforms and judicial vigilance to ensure that the remedies for breach of contract effectively serve the interests of justice and economic development.

Domestic and International Legal Assessment

The evolution of contract law worldwide has profoundly influenced the development and application of domestic laws in Nepal, driving a significant transformation towards modernization and harmonization with international standards. Historically, global contract law traces its roots to Roman law, which established sophisticated principles that informed the medieval period's customary practices.

As legal systems evolved, the English common law and civil law traditions emerged, emphasizing case law and codified statutes, respectively. These traditions laid the groundwork for modern contract law, which now includes frameworks like the UNIDROIT Principles and the CISG, aimed at standardizing international commerce. The CISG is one of the most significant international treaties governing international commercial contracts, specifically for the sale of goods.

It establishes a uniform legal framework for the formation, performance, breach of contract and its remedies, etc. The UNIDROIT Principles are a set of guidelines and rules intended to harmonize international commercial contract law. There are some other international instruments such as Principles of European contract act (PECL), Hague Principles on Choice of Law in International Commercial Contracts, International Chamber of Commerce (ICC) Rules and Guidelines, etc. Though not legally binding, they are widely used as a reference and supplement to national laws and international treaties.

These international instruments collectively set the standards for international contracts, addressing issues of formation, performance, breach, and remedies. They aim to facilitate cross-border trade by providing a consistent and predictable legal framework, thereby reducing legal uncertainties and fostering international commerce.

Nepal's legal journey has mirrored these global shifts, initially grounded in customary laws shaped by local norms and traditions. The introduction of the Muluki Ain in 1854(1910), and its subsequent revision in 1963(2020), marked the first significant codification of Nepalese laws, incorporating both traditional Hindu principles and modern legal concepts. Influenced by the Indian Contract Act of 1872 due to cultural and historical ties, Nepal continued to refine its legal framework. The introduction of the Muluki Civil Code 2074 was a significant step in modernizing Nepal's legal system. The Indian Contract Act has significantly influenced the development of contract law in Nepal, shaping its foundational principles and legal practices.

The Nepalese Contract Act 2056 and the Civil Code 2074 have incorporated many core elements from the Indian legislation, ensuring consistency and coherence in contractual dealings. The doctrines of breach of contract and their corresponding remedies, including compensatory damages, specific performance, and injunctions, reflect a strong alignment with Indian legal standards.

The civil code, 2074 consolidates and updates various aspects of civil law, including contract law. It aims to provide a clear legal basis for contract formation, performance, and remedies for breach. The Civil Code includes provisions that cover essential aspects of contract law such as definitions, obligations of parties, and remedies for breach. This helps in providing a more comprehensive legal framework compared to previous laws.

The Civil Code of 2017 represents a contemporary embodiment of these efforts, integrating comprehensive contract law provisions aligned with international practices. There has been development in the ideas of breach of contract and its remedies and the development of other various clauses in contract law since repeatedly. (The Civil Code, 2074. Chapter 5 section 535-544) This modernization has facilitated Nepal's engagement in global trade by creating a predictable legal environment that aligns with global standards. International instruments like the CISG and the UNIDROIT Principles have directly impacted Nepalese contract law, ensuring harmonization and promoting economic growth through legal certainty.

The Nepalese judiciary has also embraced international jurisprudence, leading to more nuanced interpretations and a sophisticated legal landscape. Consequently, the alignment of Nepalese contract law with international norms has bolstered investor confidence and facilitated smoother commercial transactions, underscoring the pivotal role of global legal evolution in shaping Nepal's domestic legal system and its applicability in fostering a thriving economic environment.

International Case Laws

In early common law, remedies for breach of contract were primarily monetary damages. The goal was to put the injured party in the position they would have been in, had the contract been carried out. This principle is rooted in the (*Hadley & Anor v Baxendale & Ors*, 1854) case, which established the rule for foreseeability in damages. The court held that damages must be reasonably foreseeable at the time the contract was made. This important English contract law case establishes the main rule for deciding how much compensation should be paid for a contract breach. If someone breaks a contract, they have to pay for all the losses that both parties could reasonably have predicted. However, if one party knew something special that the other party didn't, then the breaching party is only responsible for the losses they could have predicted with the knowledge they had. This principle of foreseeability is fundamental in determining the scope of damages in breach of contract cases and has been adopted widely, including in Nepalese contract law.

Damages for breach of Contract are given to compensate for loss of innocent party and not to punish the contract breaker. 'Punitive' or 'exemplary' damages have no place in the law of contract (*Henderson v Merrett Syndicates Ltd*, 1994). It established the possibility of concurrent liability in both tort and contract. Although uncommon in contract law, punitive damages can be awarded in cases involving egregious behavior. The landmark case (*Jarvis v Swans Tours Ltd*, 1972) illustrates this evolution. In this case, Mr. Jarvis was awarded damages not only for financial loss but also for the disappointment and distress caused by the breach, highlighting the court's willingness to consider non-economic harm. It further shows the path for the disputant that you can't get damages for minor issues like annoyance, losing your temper, being upset, or feeling disappointed about something you wanted if it didn't cause you any real physical harm.

The principle of privity has been a cornerstone in contract law, including in Nepal, ensuring that only parties involved in a contract can enforce its terms which was more cleared by the decision in the case of (*Dunlop Pneumatic Tyre Co Ltd v Selfridge & Co Ltd*, 1915) where the court held that an agreement for resale price maintenance was unenforceable as a matter of privity of contract. The case of (*Hong Kong Fir Shipping Co Ltd v Kawasaki Kisen Kaisha Ltd*, 1961) has influenced Nepalese law by encouraging a more flexible approach to remedies for breach of contract, focusing on the breach's consequences rather than rigid classifications. The case of (*Carlill v Carbolic Smoke Ball Co*, 1893) is pivotal in understanding the formation of contracts and has influenced Nepalese law regarding unilateral contracts and the binding nature of advertisements. The Court of Appeal ruled in favor of Mrs. Carlill, deciding that the advertisement constituted a unilateral contract offer from the defendants. By meeting the conditions outlined in the ad, Mrs. Carlill accepted this offer. The court also found that the company's claim of sincerity in the ad meant they couldn't deny their intention to honor the

offer. It ruled that an offer could be made to the public at large, that the ad's language only needed to be reasonably clear to indicate the terms, and that there was valid consideration since Mrs. Carlill had used the balls specified in the advertisement.

These international cases have established crucial principles, including the foreseeability of damages, the requirement for reasonable notice regarding limitation clauses, the binding effect of unilateral offers, the doctrine of privity of contract, and a more adaptable approach to categorizing contract terms. By integrating these principles, Nepal's legal system has advanced to offer more precise, equitable, and predictable remedies for contract breaches, thereby aligning with global standards and practices.

Role of Supreme Court of Nepal

Nepalese courts have been instrumental in interpreting contract law and establishing remedies for breaches. Their judicial decisions increasingly align with international standards, focusing on justice, clarity, and predictability in contractual matters. However, a significant challenge within Nepal's legal system is the efficiency and accessibility of the judicial process. Procedural delays and a backlog of cases often result in prolonged court proceedings, including those involving contract breaches, which can dissuade parties from pursuing legal remedies. There have been proposals to create specialized commercial courts or benches to handle such disputes more swiftly and with greater expertise. Despite these challenges, Nepal has made notable strides with landmark decisions that have substantially advanced and modernized the country's contract law standards.

In the case of (Himalaya Distillery Ltd. V. Shree Distillery Pvt. Ltd, 2068) Shree Distillery failed to supply the agreed quantity, leading to significant financial losses for Himalaya Distillery. The Supreme Court emphasized the importance of compensating for actual losses incurred due to breach of contract. The court awarded damages equivalent to the losses suffered, reinforcing the principle of compensatory damages. The ruling underscored the importance of enforcing contractual terms strictly. It reinforced the idea that parties must adhere to their agreements and those breaches will result in compensatory measures. This has strengthened the overall trust in contractual relationships within the Nepalese business environment. Another pioneer case (Khanal Builders v National Infrastructure Development Corporations, 2054) underscores the critical importance of timely fulfillment of contractual obligations by all parties to prevent project delays. Khanal Builders was contracted to construct a highway, but the project was delayed due to the Corporation's failure to provide necessary site access and approvals on time. The court found the Corporation liable for the breach, awarding damages to Khanal Builders for the delays and additional costs incurred. This ruling highlights the necessity for public and private entities to adhere strictly to their contractual commitments,

reinforcing the need for prompt action and coordination in infrastructure projects within Nepal's legal framework.

Accurately documenting and quantifying losses from a breach ensures fair compensation, supports legal claims, and facilitates efficient dispute resolution. The case of (Nepal Doorsanchar Company Ltd. v Subishu Cable Net Pvt. Ltd., 2073) emphasized the importance of accurately documenting and quantifying losses resulting from a breach, setting a precedent for future cases. This case's decision highlighted the necessity of honoring service agreements and the court's willingness to impose financial penalties for breaches. The case of (Agriculture Development Bank Ltd. v Nepal Clearing House Ltd. , 2075) has emphasized the importance of fair business practices by ensuring that service providers are held accountable for their contractual commitments. This fosters a more trustworthy and competitive business environment, encouraging better compliance and higher service standards.

Under Nepalese legal provision, Section 541 of the National Civil Code, 2074 (Civil Code) authorizes the issuance of injunctive orders. According to Section 541(1), if contract performance becomes unfeasible due to a party engaging in actions or behaviors that contravene the essence of the contract, the aggrieved party may file a complaint with the relevant District Court. The scope of injunctive relief under Section 541 is broad, encompassing situations where the act or conduct is deemed 'contrary to the nature of the contract.' In the Lalan Shah case (Lalan Prasad Shah v District Development Committee, Parsa, 2066) the Supreme Court of Nepal further elucidated this by specifying that, in assessing whether an act or conduct contradicts the contract's nature, courts must consider (a) the terms of the contract and (b) the parties' mutual understanding and intentions.

A recent landmark case (Everest Bank Ltd. v Nepal Chartered Accountants, 2073) has significantly advanced Nepalese contract law by strengthening professional accountability and establishing a legal precedent for addressing professional negligence. This case has resulted in more stringent regulatory frameworks and enhanced oversight within the auditing profession, thereby promoting greater accuracy and integrity in financial reporting. Additionally, it has raised awareness among businesses about their legal rights and the critical importance of due diligence in contractual relationships. As a result, Nepalese contract law is now better aligned with international standards, contributing to a more transparent and reliable business environment.

Earlier to the Everest Bank case, the Supreme Court of Nepal in Gauri Parbati case (Gauri Parbati Nirman Sewa Pvt. Ltd. vs. Kathmandu Metropolitan City, 2065) unfolds as a significant legal saga in the arena of contractual disputes. The court established a clear principle: if one party unilaterally changes the contract's terms without obtaining the other party's consent, the altering party cannot claim that the other party did not come to an

agreement. Such unilateral changes cannot violate the fundamental rights of the other party. The Supreme Court decision sets a robust precedent, highlighting the significance of fairness and reasonableness in contractual relationships. The case underscores the judiciary's pivotal role in upholding justice and equity within the intricate landscape of contractual agreements. In scrutinizing the legality of seizing a bank guarantee, the court emphasizes the need for rational, reasonable, and fair legal provisions, discouraging arbitrary actions that may infringe upon fundamental rights.

In Nepal, contracts executed prior to the introduction of the new law retain their validity and enforceability. Nevertheless, these agreements are now subject to interpretation and analysis in accordance with the provisions of the updated legislation. This implies that while the rights and obligations delineated under the previous legal framework remain effective, any disputes or issues emerging from these contracts will be adjudicated based on the criteria and stipulations of the newly enacted Contract Act, as mandated by the Supreme Court of Nepal in 2069 B.S. (*Education and Sports Ministry V. Nepal Enterprises et al.*, 2069). This approach is standard practice in many jurisdictions to ensure that there is a seamless transition from old to new laws, providing stability and predictability in contractual relationships. It also helps in adapting to evolving legal standards and improving the overall legal framework governing contracts.

A contract of guarantee plays a crucial role in managing the repercussions of a breach of contract by offering a financial safety net for the aggrieved party. This independent financial assurance bolsters trust in commercial transactions, mitigates potential losses, and facilitates the swift resolution of breaches. It highlights the vital role of guarantees in upholding contractual stability and financial security (*Nepal Orient Magnesite Pvt. Ltd. v Debt Recovery Appellate Tribunal and Others*, 2068).

Moreover, through this case, the Supreme Court further elaborated that, in cases of breach, the bank guarantee operates as an autonomous agreement while remaining connected to the original contract obligations. This mechanism ensures that the beneficiary receives prompt compensation, while the surety (bank) retains the right to seek reimbursement from the principal debtor. Thus, it helps preserve the integrity of both contractual and financial commitments.

Fair and honest business practices in contracts build trust and foster long-term relationships, ensuring mutual benefits and legal compliance for all parties involved. They also minimize disputes and enhance the reputation and sustainability of businesses in the market. The decision of the Supreme Court in one of the milestone cases regarding contract dispute (*Pashupati Paints Pvt. Ltd. v. Bhaktapur Brick Factory*, 2077) highlighted the importance of fair and honest business practices. By holding Bhaktapur Brick Factory accountable for their

breach, the ruling encourages other businesses to fulfill their contractual commitments, thus fostering a more trustworthy and competitive business environment. The judgment in *Everest Construction vs. Kathmandu Metropolitan City* emphasized several key principles: the necessity of clear communication between contracting parties, strict adherence to contract terms, and the importance of accountability and transparency from public entities. By ruling in favor of Everest Construction, the court reinforced the need for fair business practices and established a precedent that public entities cannot arbitrarily modify project specifications or delay payments without facing legal consequences.

This ruling fosters confidence among private entities when engaging in contracts with public authorities, as it assures them that the legal system will safeguard their interests. The court's decision reflects a form of judicial activism aimed at defending the rights of private parties against the capricious actions of public officials. This case underscores the judiciary's role in maintaining justice and equity, ensuring that public authorities exercise their power responsibly and do not exploit their positions.

Timely performance of contractual obligations is crucial for economic efficiency, operational continuity, legal compliance, customer satisfaction, and trust-building. Adhering to agreed timelines helps mitigate risks, prevent legal disputes, and ensure smooth business operations. Quality assurance and adherence to technical specifications are also vital for the successful execution of contractual agreements. They play a key role in managing risks, upholding legal and contractual integrity, controlling costs, enhancing market reputation, and ensuring customer satisfaction.

In a legal context, these elements are essential for preventing disputes and providing a solid foundation for defense or claims in case of breaches. The Supreme Court of Nepal has issued significant rulings highlighting the importance of timely performance, quality assurance, and technical compliance in contractual obligations. These decisions reinforce the need for strict adherence to agreed timelines and standards, thereby ensuring reliability and integrity in contractual relationships.

Hence, The Supreme Court of Nepal plays a crucial role in bridging the gap between theoretical remedies provided by law for breaches of contract and practical enforcement by interpreting laws, setting legal precedents, and ensuring that judicial decisions align with contemporary commercial practices, thereby enhancing legal certainty and fairness in contract enforcement.

Conclusion

Understanding what constitutes a breach of contract is crucial for anyone involved in agreements. Recognizing the various types of breaches and the remedies available can significantly improve dispute management and protect your rights. Contracts are central to both

personal and business affairs, making awareness of potential breaches and their consequences essential for maintaining trust and ensuring smooth operations.

In both Western legal traditions and Nepalese law, fundamental aspects of contract formation—such as making an offer, accepting it, providing consideration, and reaching mutual agreement—are well-established. Both systems view a contract as a binding agreement between the parties involved. However, Western legal traditions are heavily influenced by historical sources such as Roman law for civil law systems and English common law for common law systems. Nepalese law, while modernized, is rooted in Hindu legal traditions and the Muluki Ain (Country Code). It has evolved to incorporate elements from both civil and common law systems, reflecting a blend of traditional and contemporary influences.

While the core principles of contract law and remedies for breaches are similar between Western legal traditions and Nepalese law, differences arise from their unique legal histories, sources of law, cultural contexts, and stages of legal development. Nepalese law is continually evolving, merging traditional elements with modern legal principles to create a distinctive system that mirrors the country's societal values and legal heritage.

The recent introduction of the Muluki Civil Code 2074 has marked significant progress in Nepal's legal framework for addressing breaches of contract. Nonetheless, challenges remain in areas such as judicial efficiency, enforcement of judgments, and legal awareness. Enhancing the capacity and efficiency of the judiciary, promoting alternative dispute resolution (ADR) mechanisms, and ensuring robust enforcement of legal decisions are critical for improving the handling of contract breaches in Nepal.

Geographic location, economic status, and legal literacy significantly impact individuals' ability to seek and obtain remedies for contract breaches in Nepal. Addressing these issues requires a multifaceted approach, including expanding access to legal services and infrastructure in rural areas, providing legal aid to financially disadvantaged individuals, and boosting legal literacy through education and awareness campaigns.

Recent improvements in Nepal's legal system reflect ongoing modernization efforts. Enhancing court efficiency, transparency, and reducing corruption can further improve the enforcement of contract remedies. Additionally, initiatives aimed at increasing legal literacy and awareness help individuals and businesses better understand their rights and remedies.

Despite a well-organized legal framework, a gap remains between the theoretical remedies provided by law and their practical implementation. Continuous efforts to enhance legal literacy, strengthen enforcement mechanisms, and address judicial inefficiencies will help bridge this gap, ensuring that remedies for contract breaches are both effective and accessible. The evolution of remedies for breach of contract in Nepal showcases a progressive alignment with international legal principles, driven by legislative reforms and judicial interpretations,

creating a fairer and more predictable legal environment for contractual relationships in the country.

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