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Sample Case Note

A Fully Worked Contract Law Case Note, Annotated

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NOTE TO STUDENTS

These notes are a study aid produced by The Legal Vault. They supplement but do **not** replace your lecture notes, prescribed texts, relevant statutes and legislation, and reading the cases in full. Always verify citations and section numbers against the primary sources before relying on them in assessment.

2025 Edition ♦ University of Botswana LLB

How to Use This Resource

This resource contains a fully written case note on *Kubu Investments (Pty) Ltd v Capital Growth (Pty) Ltd* 2001 (1) BLR 231 (CA) -- a landmark Botswana Court of Appeal decision on repudiation in contract law. The case note follows the five-section structure set out in Resource 8 (How to Write a Case Note).

Each section of the case note is accompanied by an annotation explaining what was written and why. This allows you to see not just the finished product but the thinking behind it.

After reading this model, use Resource 8 (How to Write a Case Note) and the blank case note template to write your own case note on a different contract law case.

STUDY METHOD	*Read the case note once all the way through without reading the annotations. Then read it again, this time reading each annotation carefully. Finally, cover the model and try to write your own case note on the same case from memory.*

MODEL CASE NOTE

University of Botswana | Department of Law | LAW 233: The Law of Contract

Case Note | Word Count: approximately 900 words

1. Introduction

Kubu Investments (Pty) Ltd v Capital Growth (Pty) Ltd 2001 (1) BLR 231 (CA)

In *Kubu Investments (Pty) Ltd v Capital Growth (Pty) Ltd* 2001 (1) BLR 231 (CA), the Court of Appeal of Botswana addressed the requirements for a valid repudiation of a contract and the election available to an innocent party upon repudiation. The case is a leading Botswana authority on one of the most practically important forms of breach of contract, confirming the principles applicable to repudiation and providing authoritative guidance on the consequences that flow from the innocent party's election to accept or reject the repudiation.

ANNOTATION

The introduction is one paragraph. It gives the full citation, identifies the court, states the area of law (repudiation as a form of breach), and says in one sentence why the case matters (leading authority on repudiation and the innocent party's election). No more is needed at this stage.

2. Facts

The appellant, Kubu Investments (Pty) Ltd ("Kubu"), and the respondent, Capital Growth (Pty) Ltd ("Capital Growth"), had concluded a written agreement for the sale of immovable property. Capital Growth was obliged to pay the purchase price in instalments on specified dates. Capital Growth failed to make the required payments and, through its conduct and communications, made it plain that it did not intend to perform its obligations under the agreement.

Kubu accepted Capital Growth's conduct as a repudiation of the contract, cancelled the agreement, and sought damages. Capital Growth contended that its conduct did not amount to a repudiation and that the agreement remained binding.

ANNOTATION

The facts section is two paragraphs. The first identifies the parties and the contract. The second identifies the breach and the dispute. Notice that only legally relevant facts are included -- there is no unnecessary background. The parties are identified clearly and concisely. Latin or legal terms are not needed here -- plain language is best for the facts section.

3. Legal Issue and the Court's Decision

The central issue before the Court of Appeal was twofold: first, whether Capital Growth's conduct and communications constituted a repudiation of the contract; and second, if so, whether Kubu had validly exercised its election to accept the repudiation and cancel the agreement, thereby entitling it to claim damages.

The Court of Appeal held that Capital Growth's conduct did amount to a repudiation of the contract. The court further held that Kubu had validly accepted the repudiation and was entitled to cancel the agreement and claim damages. The appeal was accordingly disposed of in favour of Kubu.

ANNOTATION

The issue is stated as two precise legal questions. Notice "twofold" -- this signals to the reader that there are two issues and prepares them for a two-part analysis. The decision section (second paragraph) is brief and factual -- it states what the court decided and the outcome, without analysis. The analysis comes in section 4.

4. Ratio Decidendi and Obiter Dicta

The ratio decidendi of *Kubu Investments* is that repudiation occurs where one party, by words or conduct, evinces a clear and unequivocal intention not to be bound by the contract or not to perform their contractual obligations. The test is an objective one: whether a reasonable person in the position of the innocent party would have concluded from the repudiating party's words or conduct that they did not intend to perform. A party who fails to make payments when due and communicates, whether expressly or by implication, an intention not to perform satisfies this test.

Upon repudiation, the innocent party has a clear election: they may either accept the repudiation -- bringing the contract to an end and claiming damages -- or they may reject the repudiation and insist on performance, keeping the contract alive. The election must be clear and unequivocal. A party who accepts the repudiation cannot subsequently seek to enforce the original contract, and a party who rejects the repudiation and insists on performance cannot subsequently claim that the contract was cancelled at an earlier date.

The court noted, by way of significant obiter dictum, that where an innocent party elects to keep the contract alive after repudiation, they do so at their own risk: if circumstances subsequently make performance impossible, or if the repudiating party is unable to perform when required, the innocent party may find themselves in a worse position than if they had accepted the repudiation immediately. This observation, while not forming part of the ratio, provides important practical guidance for lawyers advising clients who have been faced with a repudiation.

ANNOTATION

This is the most important section. Three paragraphs: (1) the ratio -- what legal principle the case establishes, stated precisely; (2) the second part of the ratio -- the innocent party's election and its consequences; (3) a significant obiter dictum -- clearly labelled as obiter, so the reader knows it is not binding. Notice that the ratio is tied to the facts of the case (failure to make payments, communication of intention not to perform) rather than stated as a pure abstraction.

5. Significance, Critical Analysis and Conclusion

Kubu Investments is the leading Botswana Court of Appeal authority on repudiation as a form of breach of contract. Prior to this decision, the principles applicable to repudiation in Botswana were derived primarily from South African authority, particularly *Tuckers Land and Development Corporation (Pty) Ltd v Hovis* 1980 (1) SA 446, which established the doctrine of anticipatory breach. *Kubu Investments* confirmed and applied these principles in the Botswana context and provided a definitive statement of the law of repudiation for Botswana practitioners and courts.

The court's adoption of the objective test for repudiation is to be commended. The subjective intention of the repudiating party is, by its nature, difficult to prove. By focusing on what a reasonable person would infer from the party's conduct, the court aligns the law of repudiation with the broader objective approach to contractual consensus established in *SA Railways and Harbours v National Bank of South Africa* 1924 AD 704. This consistency strengthens the coherence of Botswana contract law.

One potential criticism of the decision is that the court did not expressly address the consequences for third-party rights where the innocent party's election to keep the contract alive affects the interests of persons not party to the contract. This gap may require attention in future cases, particularly in the commercial property context where, as in *Kubu Investments* itself, the rights of subsequent purchasers or encumbrancers may be affected by the innocent party's election.

Kubu Investments represents a significant and well-reasoned contribution to the development of Botswana contract law. It provides clear, accessible guidance on the requirements for repudiation and the mechanics of the innocent party's election, and its adoption of the objective test ensures that the law in this area is both principled and practically workable.

ANNOTATION

Section 5 has four paragraphs: (1) the significance of the case -- what it adds to the law and how it relates to earlier authority; (2) a positive critical assessment of the court's reasoning -- the objective test is commended with reasons and related to broader doctrine; (3) a critical observation -- a genuine limitation or gap in the decision, stated fairly; (4) a concluding assessment. Notice that the critical analysis is balanced -- both commendation and criticism are present. This is what distinguishes a good case note from a descriptive one.

How Citations Would Appear as Footnotes

In a formally submitted case note, citations appear as footnotes rather than in the body of the text. Here is how the citations used in this case note would appear in footnote form:

1. Kubu Investments (Pty) Ltd v Capital Growth (Pty) Ltd 2001 (1) BLR 231 (CA).
2. Tuckers Land and Development Corporation (Pty) Ltd v Hovis 1980 (1) SA 446 (A).
3. SA Railways and Harbours v National Bank of South Africa 1924 AD 704 (A).
4. RH Christie, The Law of Contract in South Africa (7th ed, LexisNexis, 2016) 525-531 (discussion of repudiation and the innocent party's election).

NEXT STEP	*Now write your own case note. Use Resource 8 (How to Write a Case Note) for the structure and this model as your quality benchmark. Choose a case from your LAW 233 course outline that you have already read and brief. Aim for 800-1000 words.*

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