

# ICA - 1872

## Unit - 5

### Breach of Contract

- Failure to perform
- his or her obligation



Under Contract

### Anticipatory Breach

- Promisor refuses to perform his promise
- signifies his unwillingness
- Before time of performance


#### Two ways of take place of anticipatory Breach

- Expressly → by word spoken or written
- Impliedly → by the conduct

### Actual Breach

- One party refuses to perform his promise
- Other party to contract obtain right of action in against
- Actual Breach may be committed at
  - (a) when performance is due
  - (b) During performance

## Effect of anticipatory Breach

Promisee is excused from   
further Option

(a) → Treat the contract as rescinded

→ Sue other party for damages immediately

→ without waiting until due date.

(b) → elect not to rescind

→ Treat contract as still operative

→ wait for time of performance

→ hold other party responsible for non-performance

## SUIT FOR DAMAGES

Compensation for loss or damages caused by Breach of contract

→ When contract has been broken

→ Party who suffers by such breach

→ is entitled to receive

→ From party who has broken the contract

→ compensation for any loss caused by him

→ which naturally arose in usual course of thing.

Note - Such compensation is not given for any remote or indirect loss

## Compensation for failure to discharge obligation resembling those created by contract

→ An obligation resembling those created by contract

→ has been incurred and not discharged,

→ Any person injured by failure to discharge

→ is entitled to receive the same compensation from party in default.

## Remedy by way of damages 'OR' kind of damages

**Ordinary** - Suffering party is entitled to receive damages in case of breach of contract from party in default.

**Special** - where party to contract receive notice for special circumstances defaulting party will be liable

- ↳ for natural or direct damages
- ↳ as well as special damages

**Vindictive or Exemplary** - awarded only in two cases -

- (a) Promise to marry - for injury to his or her feeling
- (b) wrongful dishonour by bank - for loss of reputation

**Nominal** - awarded where aggrieved party does not suffer any real damages  
- awarded just to establish right to decree.

## Damages for deterioration caused by delay

- damages can be recovered from carrier - without notice
- Deterioration implies physical damages of good as well
- as loss of special opportunity to sell.

**Pre-fixed** - Sometimes, parties to contract stipulate time of performance

- on breach

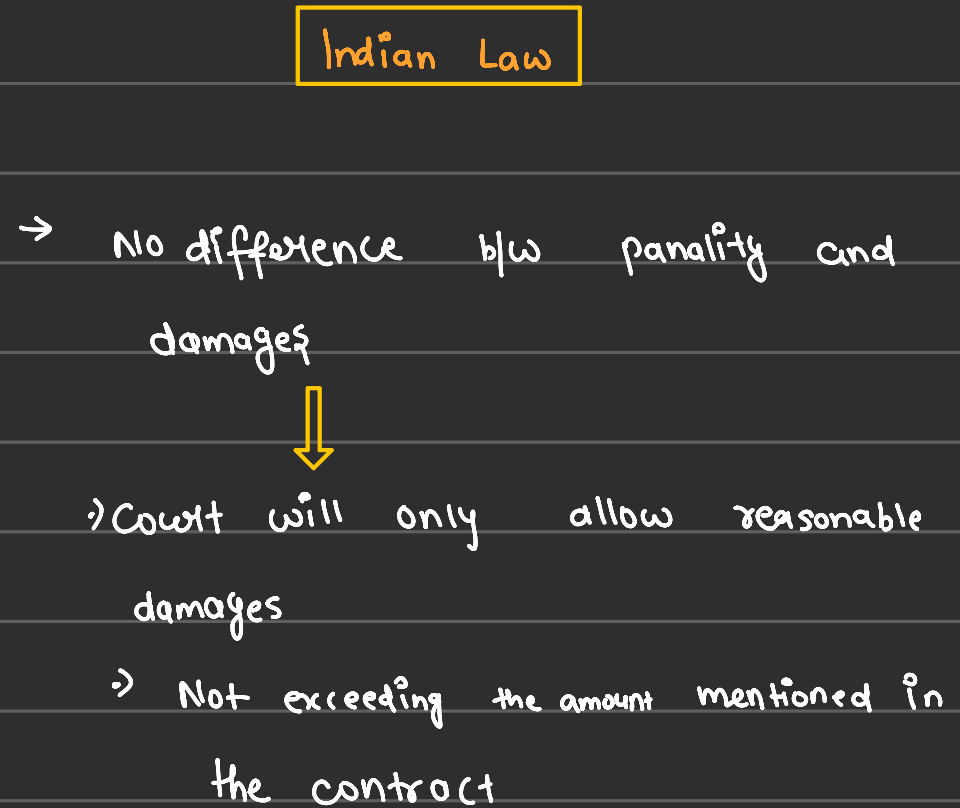
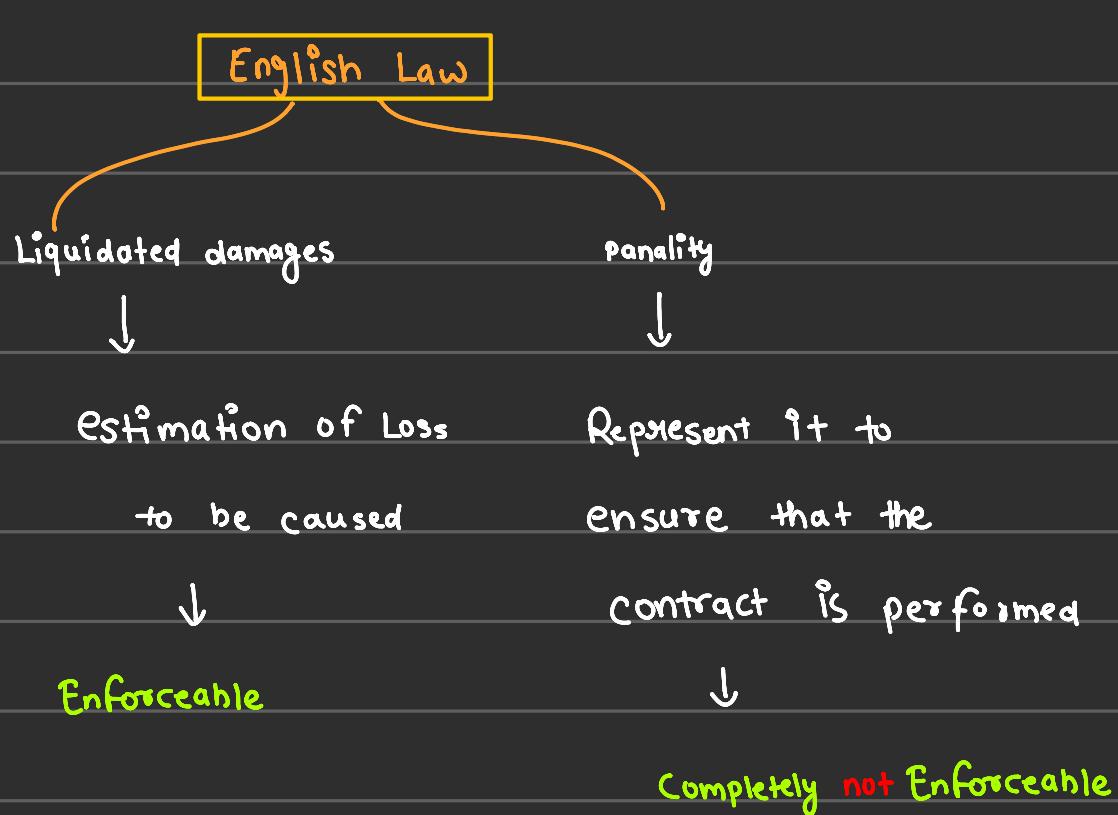
↳ certain amount will be payable to aggrieved party by party in default  
↓

not exceeding the amount so named.

## Penalty and Liquidated damages

Where an agreement, has pre-fixed damages

in case of failure to perform



## Distinction between "Liquidated" damages and "penalty"

Both are payable on occurrence of breach of contract

1. If sum payable is so large, in excess of probable damages → Penalty

2. Sum is expressed to be payable on certain date  
further sum in the event of default being made → Later sum → Penalty
3. expression not final - Court will find  
whether it is liquidated damages 'or' penalty
4. Terrorem for offending party → Penalty  
Genuine pre-estimate of damages → liquidated damages

5.	English Law ↓ makes distinction b/w both	Indian Law ↓ no such distinction
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Other remedies available

1 Rescission of Contract - when contract is broken by one party

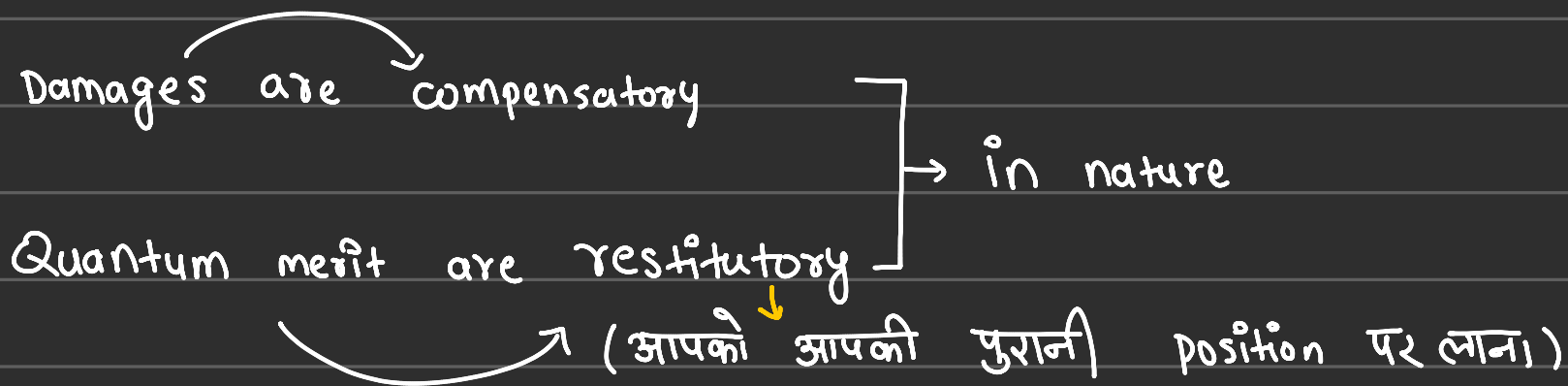
- Other party → Treat the contract as rescinded

- Aggrieved party is entitled to compensation

2 Quantum Meruit - As much as the party doing the service has deserved  
for Application of this doctrine, two conditions must be fulfilled:

→ Only available - if original contract discharged

→ claim brought by party not in default.



## Quantum meruit arises in following cases

- a) agreement → discovered to be void  
contract → becomes void
- b) Something done → without gratuitous intention
- c) Express/implied contract → to render services  
But no agreement to remuneration
- d) One party refuses to perform the contract
- e) Contract is divisible  
party not in default → enjoyed benefit of performance
- f) indivisible contract badly performed  
Other party not in default make deduction for bad work



### 3. Suit for specific performance

- Where damages are not an adequate remedy
- Court may direct for specific performance

### 4. Suit for injunction (stay order)

- Restrain him from doing
- what he promise not to do.

→ Party rightfully rescinding contract, entitled for compensation (Section 75)