

Date \_\_\_/\_\_\_/\_\_\_

## Unit - 5 : Breach of Contract and its Remedies

↳ Breaking of an obligation

### Actual Breach of contract

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→ Party fails or refuses to perform his promise on

1. Due date of performance  
or

2. During course of performance

• Refusal or failure may be express or implied

a) when a party declares his intention of not performing the contract before performance is due by

→ Refusing to perform his promise  
or

→ By his act disabling himself from performing before due date of performance

b) Expressly or impliedly

### Anticipatory Breach of Contract

### Remedies under anticipatory breach

Aggrieved party → party not at fault may

1. Put an end to the contract and treat the anticipatory breach as actual breach

- Promisee is excused from performing or further performance
- Promisee can sue promisor immediately without waiting till date of performance
- Amount of damage = Contract price - Market price

- 2) choose to keep the contract alive till date of performance
- a) Promisor may choose to perform and promisee is bound to accept it.
- b) Contract becomes void if some event happens outside the power of promisor and promisor will be discharged  
→ promisee shall have no right of action against promisor
- c) Amount of damage same as above

### Suit for damages [sec 73]

1. Aggrieved party is entitled to receive compensation for loss which
  - (i) Arose naturally in the usual → (ordinary damage) course of things from such breach
  - (ii) which are the parties knew to → (special damage) be likely result of such breach
2. No compensation for remote loss or indirect loss

### Kinds of Damage

#### 1. Special damage

where

- a party to a contract receives
- affecting the contract
- He will be liable
- not only for natural damages of breach
- but also for special damages

2. Ordinary damage

3. Vindictive or Exemplary damage

Purpose: To punish defendant and not compensation when awarded

a) Breach of promise to marry

b) Wrongful dishonour of cheque

Manner of measuring

- Depends upon severity of shock to the sentiments of aggrieved party.

Rule: - smaller the amount of cheque, larger will be the amount of damage

4. Nominal Damages:-

- plaintiff has proved that there has been a breach of contract but he has not in fact suffered any real damage
- It is awarded just to establish the right for the breach of contract
- The amount may be a rupee or even 10 paise

5. Damage for deterioration caused by delay:-

- a) When goods get deteriorated due to delay damages can be recovered without notice
- b) Deterioration means
  - physical damage
  - loss of special opportunity.

6. Prefixed damages: <sup>Liquidated damage</sup>  
<sub>Penalty</sub>

→ When a sum is named in a contract as amount to be paid in case of breach

→ Aggrieved party

- entitle for reasonable compensation not exceeding the amount (Section 74)

Note: Court will never allow more. But the court may allow less

Exception:- Bond given by a person in public duty shall be liable to pay the whole sum mentioned there

Other remedies:-

1. Rescission of contract

Contract → broken

Other party → may treat contract as rescind

Effect:- Party not in fault is absolved from his obligation and entitled for compensation for any change

2. Quantum Merit

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As much as merited (earned)

General Rule:-

Unless a party performs his performance in full, he cannot claim performance from other party

## Exceptions:-

1. When a person has done some work under a contract and other party is either Repudiate the contract
2. Some unexpected events happens making further performance of contract impossible, then the party who performs the work, can claim remuneration for the work done
2. When and to whom right arises
  - i) Original contract must be discharged by breach/non-performance
  - ii) Right of Quantum merit lies with
- 3) Quantum merit fails i.e no right to sue when -
  - a) Contract indivisible into parts and lumpsum to be paid on completion of total work
  - b) Person claiming compensation is himself guilty
  - c) Work is performed gratuitously i.e no evidence of promise to pay for work done

## Quantum merit arises in following cases:-

- a) When agreement discovered to be void or when a contract becomes void.
- b) Something is done without intention to do so gratuitously
- c) Express or implied contract to render service but there is no agreement as to remuneration.
- d) When one party abandons to perform or refuses to perform
- e) Where a contract is divisible and the party not in fault enjoyed benefit of part performance

f) When an indivisible contract for a lumpsum is completely performed but badly

- The person who has performed the contract can claim the lumpsum but the other party can make a deduction for bad work.

3. Suit for specific performance:  
Where,

- Damages are not an adequate remedy
- In the case of breach of contract
- The court by its own discretion on a suit for specific performance
- Direct the party in breach to carry out his promise according to terms of contract

4. Suit for injunction:-

- When party to a contract negating the terms of a contract
- Court may be issuing injunction order
- Restrain him/her from doing what he/she promised not to do.
- Party right fully rescinding contract is entitled for compensation [sec 75]