

Unit 5 → Breach of Contract & its remedies.

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Date

Breach means failure of a party to perform his or her obligation under a contract. Breach of contract may arise in two ways →

Anticipatory Breach of Contract →

→ Breach of contract which occurs before the time fixed for performance has arrived.

→ When promisor all together refuse to perform and signifies his unwillingness before time of performance.

Two ways →

1) Expressed by words → oral/written.

2) Implied by conduct of parties →

Effect of anticipatory breach of contract →

Promisee is Excused from performance contract and he gets following option →

→ To treat contract as rescinded and sue other parties for Damages.

Or.

→ he may still treat contract as operative & wait for performance till due date. & then hold other party responsible. In such case promisor may also get benefit of supervening impossibility which has effect of discharging contract.

Actual breach of Contract →

Actual breach of Contract may be Committed in following ways →

1 → At the time when performance of contract is due.

2 → During performance of contract.

Suit for damages →

Compensation for loss or damage caused by breach of contract → (Section 73)

→ A party who has suffered by breach of contract is entitled to receive from other party compensation for any loss or damage cause to him which naturally arise in usual course of Business or which party knew at time of entering into Contract.

→ Compensation can't be claimed for any indirect loss.

Kind of Damages →

(i) Ordinary Damages →

→ Party who has suffered from breach of contract is entitled to receive from other party, damages which naturally arise from usual course of business.

→ Damages which were agreed at time of making contract are also enforceable.

→ Indirect loss / Remote damages are not enforceable.

(Case law - Hadley vs. Baxendale)

ii) Special Damages →

→ Where a party to contract gives notice of special circumstances affecting the contract, he will be entitled to get damages arising naturally or also special damages.

(iii) Vindictive or Exemplary damages → (for injury feelings)

Such damages may be awarded in two cases →

→ Breach of promise to marry b/c it injures his / her feelings.

→ If there is wrongful dishonour of cheque by banker than in such case businessman whose credit suffered can claim damages.

iv) Nominal Damages →

→ In such case, no real damage is suffered but it is payable just to establish right to decree.

v) Damages for deterioration caused by delay →

→ In case of deterioration caused to goods by delay due to fault of carrier than in such case damages can be claimed from carrier.

→ Opportunity cost can also be received.

vi) Pre-fixed damages →

When parties to a contract stipulate at the time of formation of contract that on breach a certain amount will be payable as damage.

→ If amount agreed is reasonable estimate of likely loss than it is liquidated damages.

→ If amount estimated is arbitrarily fixed and it is large sum compared to reasonable damages than it is penalty.

Penalty and liquidation → (Section 74)

1) As per English law →

→ Amt fixed will be interpreted either as penalty or liquidated Damages.

→ If amt fixed is genuine loss that will be increased by the party than it is liquidated Damages.

→ Liquidated Damages are irrecoverable.

→ If amt^{fixed} is unreasonable, than such amt can't be recovered.

2) As per Indian law →

→ Courts award only reasonable damage/loss. incurred by party. and it will not exceed sum so mention in contract.

→ Court will award reasonable damage or amt. fixed whichever is lower.

Exception → Where any person gives any bond to central/state govt. for performance of any public duty or act in which public is interested in than in such case he will be liable for full amt. *wholesome*

Other remedies for breach of Contract →

Condition
i) **Rescission of Contract** →

→ When contract is broken by one party other can treat contract as rescinded.

→ In such case, such obligation are discharged and he can claim damages from other parts.

ii) **Quantum Merit** → *voluntary*

→ It means as much as party doing service deserves.

→ Where one party has rendered service to other for which there is understanding regarding payment. but no fixed remuneration is decided.

Claim for Quantum merit arises if following conditions are fulfilled →

→ Agreement or contract is discovered to be void.

→ When something is done without any intention to do so *(gratuitously)* *(voluntary)*

→ Agreement to render service but no fixed remuneration.

→ One party refuses to perform.

→ Where contract is divisible and other party has enjoyed benefit of performance.

→ Where contract is indivisible for lump-sum amount, than whole amount shall be payable but other party can claim deduction for bad work.

(iii) Suit for specific performance →

→ Where damages are not adequate remedies than Court may at its discretion direct party in breach to carry out or promise as per terms of contract.

(iv) Suit for injunction →

→ Court may restrain a party from doing any specific act, such things is known as injunction order.

Partly rightful rescinding contract, entitled to Compensation → (Section 75)

A person who rightfully rescinds a contract is entitled to compensation for any damage which he has sustained through non-fulfillment of contract.