

Mistake (Sec. 20, 21, 22)

Mistake of law

Mistake of Indian case

Mistake of foreign law.

Mistake of fact

Bilateral

(दोनों Parties से गलती होना)

Unilateral

(एक Party से गलती होना)

Mistake as to subject matter

- Quality
- Existence
- Identity
- Title
- Price
- Quantity

Mistake as to possibility of Performance

- Legal
- Physical

Identity of person

Chapter of Written Document

⇒ Bilateral mistake is where both the parties to contract are under a mistake.

⇒ Unilateral mistake is where only one party to contract is under a mistake.

Effect of Mistake - on validity of a contract :->

⇒ Mistake are some unintentional act, omission or error arising from unconsciousness, ignorance or forgetfulness or misplaced confidence.

Unconsciousness ⇒ ह्यान न देना

Ignorance ⇒ नोट अंदाज करना

Two types of Mistake :->

- i) Mistake of law
- ii) Mistake of fact.

- It is essential for the creation of a contract that Both the parties should agree to the same same sense.
- Thus, if two persons enter into a contract each of them thinking about a different subject matter; no contract will arise.
- As a result, a mistake may lead a contract towards voidness.

(i) Mistake of law :->

A mistake of law does not render a contract void as one cannot take excuse of ignore of law of his own country. But if mistake of law is caused through the inducement of another, the contract may be avoided. Mistake of foreign law is

excusable and is treated like a mistake of fact.

(ii) Mistake of fact:→

Where the contracting parties misunderstand each other and are at cross purposes, there is a bilateral or mutual mistake. Where both the parties to an agreement are under a mistake as to a matter of fact, essential to the agreement, there the agreement will be void.

* Legality of object and consideration:→

⇒ The consideration or object of an agreement is lawful unless:→

1. It is forbidden by law.
2. Is of such a nature, if permitted, it would defeat the provision of any law.
3. Is fraudulent
4. Involves injury to the person or property of another.
5. Court regards it as immoral
6. Opposed to public policy.

1. When consideration or object is forbidden by law:→
Acts forbidden by law are those which are punishable under any statute as well as prohibited by legislature.

2. When consideration or object defeats the provision of law:

⇒ "Defeat the provisions of law" must be taken as limited to defeating the intention which the law has expressed.

→ The court looks at the real intention of the parties to an agreement. If the intention of the parties is to defeat the provisions, the court will not enforce it.

3. When it is fraudulent: →

Agreements which are entered into to promote fraud are void. For e.g. agreement for the sale of goods for the purpose of smuggling them out of the country is void.

4. When consideration defeat any rule for the the time being in force in India.

5. Where consideration involves to the person or property of another: →

"Tijney" means criminal or wrongly human. The object is unlawful as it involves injury to person or property of another.

6. When consideration is immoral (अनैतिक)

7. When consideration is opposed to public policy: →

The expression "public policy" can be interpreted either in a wide or in a narrow sense.

In the name of public policy, freedom of contract is restricted by law only for the good for the community. In law, public policy covers certain specified topics such as:-

Trading with an enemy, interference with the course of justice, agreements tending to create monopolies, agreements not to bid at an auction etc.

* Agreements opposed to public policy: →

- i) Trading with enemy
- ii) Stifling Prosecution
- iii) Maintenance and champerty
- iv) Trafficking relating to public offices and titles
- v) Agreements tending to create monopolies.
- vi) Marriage brokerage agreements.
- vii) Interference with the course of justice.
- viii) Interest against obligation.
- ix) Consideration unlawful in part.

* Void Agreements :->

- 1) Made by incompetent parties (Section 11).
- 2) Agreements made under Bilateral mistake of fact (Section 20).
- 3) Agreements the consideration or object of which is unlawful (Section 23).
- 4) Agreements the consideration or object of which is unlawful in parts (Section 24).
- 5) Agreements made without consideration (Section 25).
- 6) Agreement in restraint of marriage (Section 26).
- 7) Agreements in restraint of trade (Section 27).
- 8) Agreement in restraint of legal proceedings (Section 28).
- 9) Agreement the meaning of which is uncertain (Section 29).
- 10) Wagering Agreement (Section 30).
- 11) Agreements to do impossible Acts (Section 56).

Performance of contracts.

\Rightarrow Obligation of Parties to contracts (Section 34)

\rightarrow The parties to a contract must perform their respective promises unless such performance is dispensed with or excused under the provisions of the contract Act or any other law.

\rightarrow Performance of the promise or promises remaining to be performed is the principal and most usual mode of discharge.

\Rightarrow Actual Performance: When the party to a contract has done what he had undertaken to do.

\Rightarrow Offer to Perform / Attempted performance / tender of Performance \Rightarrow

When performance become due the promisor offers to perform his obligation but the promisee refuses to accept the performance.

* Effect of Refusal to accept offer of Performance (Sec 38)

When a promisor has made an offer of Performance to the promisee and the offer has not been accepted then the promisor is not responsible for non-performance nor does he thereby lose his rights under the contract.

⇒ Every such offer must fulfill certain conditions:-

- i) Must be unconditional
- ii) Must be made at a proper time & place.
- iii) If the offer is an offer to deliver anything to the promisee, then the promisee must have a reasonable opportunity of seeing that the thing offered is the thing which the promisor is bound by his promise to deliver.

* Effect of Refusal of party to perform wholly (Section 33)

When a party to a contract has refused to perform or disabled himself from performing his promise in its entirety the promise may put an end to the contract unless he had signified by words or conduct his acquiescence in its continuance.

* By whom A contract may be performed (sec 40, 41 and 42).

⇒ Person by whom promise is to be performed - sec. 40.

1. Promisee himself
2. Agent
3. Legal Representative
4. Third Person
5. Joint Promisars

SUCCESSION: Both benefits & burdens are transferred to legal heir.
[Inherited liability should not exceed from inherited property.]

ASSIGNMENT: Only benefits can be transferred to legal heir.

⇒ **Liability of Joint promisor & Promisee.**

Evolution of joint liabilities (sec. 42.) :-

When two or more persons have made a joint promise, unless a ~~contrary~~ contrary intention appears by the contract all such persons, during their joint life and after the death of any of them, his representative jointly with the survivor or survivors and after the death of last survivor, the representative of all jointly, must fulfill the promise.

Any one of joint promisors may be compelled to Perform - section 43.

When two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel any one or more of such joint promisors to perform the whole of the promise.

Each promisor may compel contribution: → Each of two or more joint promisors may compel every other joint promisor to contribute equally with himself to the performance of the promise, unless a contrary intention appears from the contract.

Sharing of loss by default in contribution: →

If any one

of two or more joint promisors makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares.

Effect of release of one joint promisor - section 44

Where two or more persons have made a joint promise, a release of one of such joint promisors by the promisee does not discharge the other joint promisor or joint promisors, neither does it free the joint promisors so released from responsibility to the other joint promisor or promisors.

Rights of joint Promisees: → When a person has made a promise to two or more persons jointly, then unless a contrary intention appears from the contract, the right to claim performance vests, as between him and them, with them during their joint lives, and after the death of any of them, with the representative of

such deceased person jointly with the survivor or survivors, and after the death of the last survivor, with the representatives of all jointly.

* Time and place for performance of the promise

(i) Time for performance of promise, where no application is to be made and no time is specified - sec 46.

Where, by the contract, a promisor is to perform his promise without application by the promisee, and no time for performance is specified, the engagement must be performed within a reasonable time.

(ii) Time and place for performance of promise, where time is specified and no application to be made - sec 47.

When a promise is to be performed on a certain day, and the promisor has undertaken to perform it without application by the promisee, the promisor may perform it at any time during the usual hours of business, on such day and the place at which the promise ought to be performed.

(iii) Application for performance on certain day to be at proper time and place - sec 48.

When a promise is to be performed on a certain day and the promisor has not undertaken to perform it without application by the promisee, it is the duty of the promisee to apply for performance at a proper place and within the usual hours of business.

iv) Place for the performance of promise, where no application to be made and no place fixed for performance - section 49.

When a promise is to be performed without application by the promisee and no place is fixed for the performance of it, it is the duty of the promisor to apply to the promisee to appoint a reasonable place for the performance of the promise, and to perform it at such a place.

v) Performance in manner or at time prescribed or sanctioned by promisee - sec. 50.

The promise performance of any promise may be made in any such manner, or at any time which the promisee prescribes or sanctions.

* Performance of reciprocal promise.

- i) Promisor not bound to perform, unless reciprocal promise ready and willing to perform - sec 51
- ii) Order of Performance of reciprocal promises - sec 52
- iii) Liability of party preventing event on which the contract is to take effect - sec 53.
- iv) Effect of default as to that promise which should be first performed, in contract consisting of reciprocal promises - sec 54.
- v) Effects of failure to perform at a time fixed in a contract in which time is essential sec 55
 - a) Effect of such failure when time is not essential
 - b) Effect of acceptance of performance at time other than agreed upon.
 - c) Contract cannot be avoided where time is not essential
 - d) Effect of acceptance of performance out of time.
- vi) Agreement to do impossible act.
 - a) Initial Impossibility
 - b) Subsequent Impossibility

Subject: _____

vii) Reciprocal promise to do certain things that are legal, and also some other things that are illegal sec - 57.

viii) 'Alternative promise' one branch being illegal - sec 58

* Appropriation of payments

i) Application of payment where debt to be discharged is indicated sec - 59.

ii) Application of payment where debt to be discharged is not indicated sec - 60.

iii) Application of payment where neither party appropriates sec - 61.

or

Appropriation of payments [59 - 61]

| | | |
|---|---|--|
| <p>① where debt to be discharged is indicated ↓ where debtor gives express indication ↓ Payment to be applied accordingly</p> | <p>② where debt to be discharged is not indicated ↓ creditors may apply at his own discretion to any lawful debt • No application to disputed debts.</p> | <p>③ Application where no party appropriates. ↓ In order of time ↓ whether they are or not barred by limitation.</p> |
|---|---|--|

All points describe in TCAJ module Page No in 1.85.

★ ★ Contracts, which need not be performed - with the consent of Both the parties.

i) Effect of novation, rescission, and alteration of contract
sec. - 62.

- a) Effect of novation.
- b) Effect of rescission
- c) Effect of alteration of contract.

ii) Promisee may waive or remit performance of promise
sec. - 63.

iii) Restoration of Benefit under a voidable contract
sec. - 64.

iv) Obligations of Person who has received Advantage under void Agreement or contract that becomes void. sec. - 65.

v) Communication of rescission. sec. - 66.

vi) Effects of neglect of promisee to afford promisee reasonable facilities for performance. sec. - 67.

Explanation of points on page

No. → 1.86, 1.87

JCAI Module.

★ Discharge of A contract.

(i) Discharge by performance

(a) Actual Performance

(b) Attempted performance.

(ii) Discharge by mutual agreement

(iii) Discharge by impossibility of performance

(a) an unforeseen change in law

(b) the destruction of the subject-matter essential to that performance.

(c) the non-existence or non-occurrence of particular state of things, which was naturally contemplated for performing the contract.

(d) the declaration of a war sec 56.

(iv) Discharge by lapse of time.

(v) Discharge by operation of law.

(vi) Discharge by breach of contract.

(vii) Promisee may waive or remit performance of Promise.

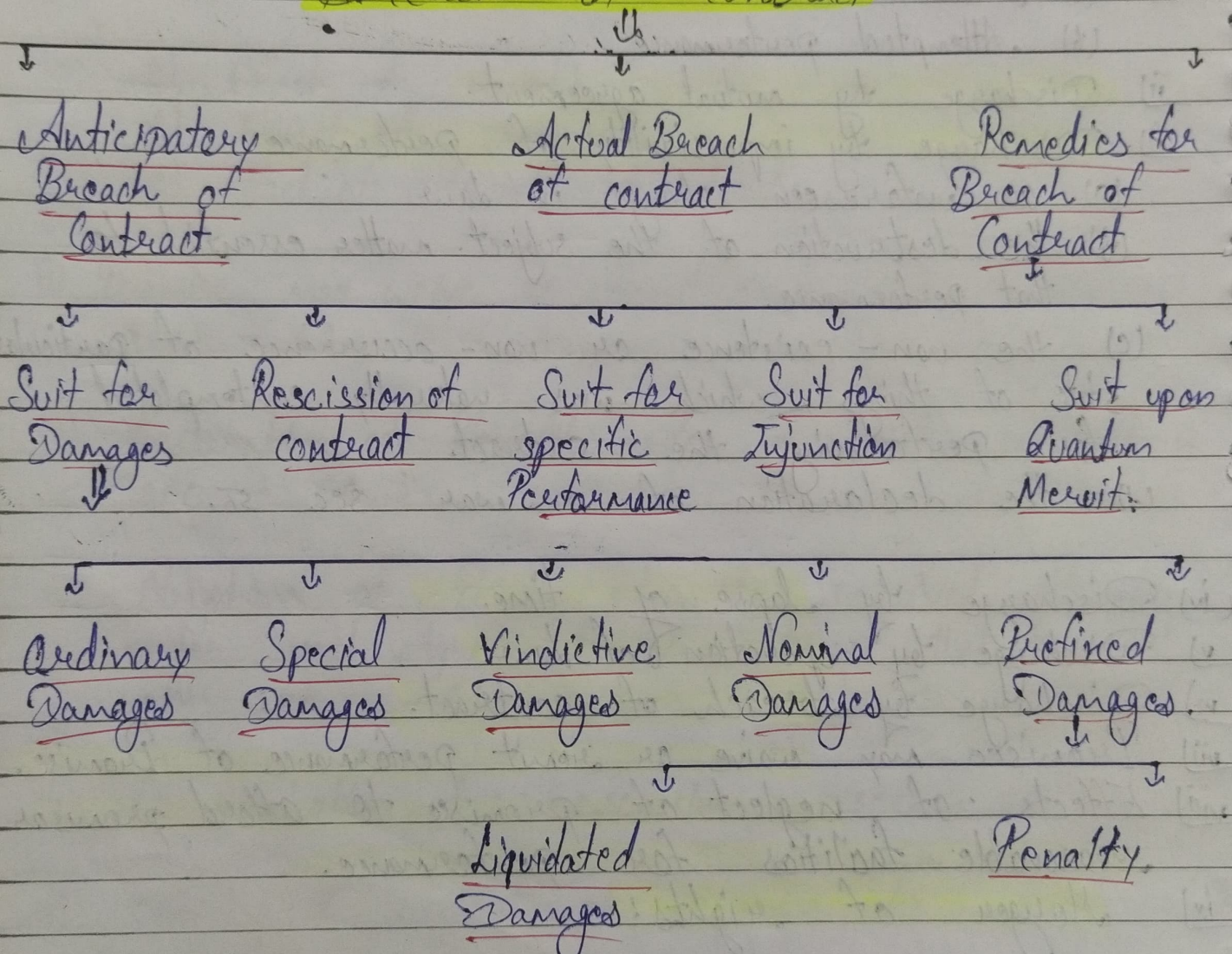
(viii) Effects of neglect of promisee to afford promisor reasonable facilities for performance.

(ix) Merger of rights:

Unit - 5 :->

Breach of contract and its Remedies

Breach of contract



Breach :-> Breach means failure of a party to perform his or her obligation under a contract.

- 1) Actual breach of contract
- 2) Anticipatory breach of contract.

* Anticipatory Breach of contract: →

A breach of contract is a breach of contract occurring before the time fixed for performance has arrived. When the promisor refuses altogether to perform his promise and signifies his unwillingness even before the time for performance has arrived, it is called Anticipatory Breach.

- a) Expressly by words spoken or written
- b) Implicitly by the conduct of one of the parties.

* Actual Breach of contract: →

It is a case of refusal to perform the promise on the scheduled date. The parties to a lawful contract are bound to perform their respective promises. But when one of the parties breaks the contract by refusing to perform his promise, he is said to have committed a breach. The other party to the contract obtains a right of action against the one who has refused to perform his promise.

- a) At the time when the performance of the contract is due.
- b) During the performance of the contract

* Suit for damages :-

a) Compensation for loss or damage caused by breach of contract sec. 73.

b) Compensation for failure to discharge obligation resembling those created by contract.

c) Remedy by way of Damages or kind of Damages.

i) Ordinary damages. Reference case :- Page No. 1.99.

• HADLEY vs. BAXENDALE
• GIBBONS vs. West Minister Bank.

ii) Special damages.

iii) Vindictive or Exemplary damages

iv) Nominal damages

v) Damages for deterioration caused by delay

vi) Pre-fixed damages.

* Penalty and liquidated damages (sec. 74.)

Actual damages तो ही है; जो जमादा Pay करने पर वह Penalty

Distinction between liquidated damages and Penalty

Page No. 1.102
Difference

Besides claiming damages as a remedy for the breach of contract, the following remedies are also available.

i) Rescission of contract :->

When a contract is broken by one party, the other party may treat the contract as rescinded. In such a case he is absolved of all his obligations under the contract and is entitled to compensation for any damages that he might have suffered.

ii) Quantum meruit :->

Where one person has rendered service to another in circumstances which indicate an understanding between them that it is to be paid for although no particular remuneration has been fixed, the law will infer a promise to pay. The object of allowing a claim on quantum meruit is to recompensate the party or person for value of which he has done.

a) It is only available if the original contract has been discharged.

b) The claim must be brought by a party not in default.

iii) Suit for specific Performance :->

where damages are not an adequate remedy in the case of breach of contract, the court may in its discretion on a suit for specific performance direct party in breach, to carry out his promise according to the terms of the contract.

iv) Suit for injunction :->

where a party to a contract is negating the terms of a contract, the court may by issuing an 'injunction orders', restrain him from doing what he promised not to do.

Party rightfully rescinding contract, entitled to compensation (Sec - 75)

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