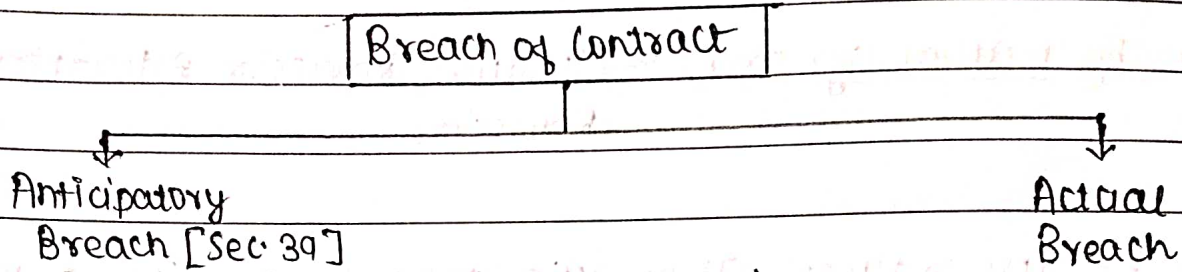


Unit V - Breach of Contract & Its Remedies

* Breach - It means failure of a party to perform his obligation.



1.) Actual Breach

- At the time of the performance of the contract is due.
- During the performance of the contract → one party fails or refuses to perform his obligation by express or implied act.

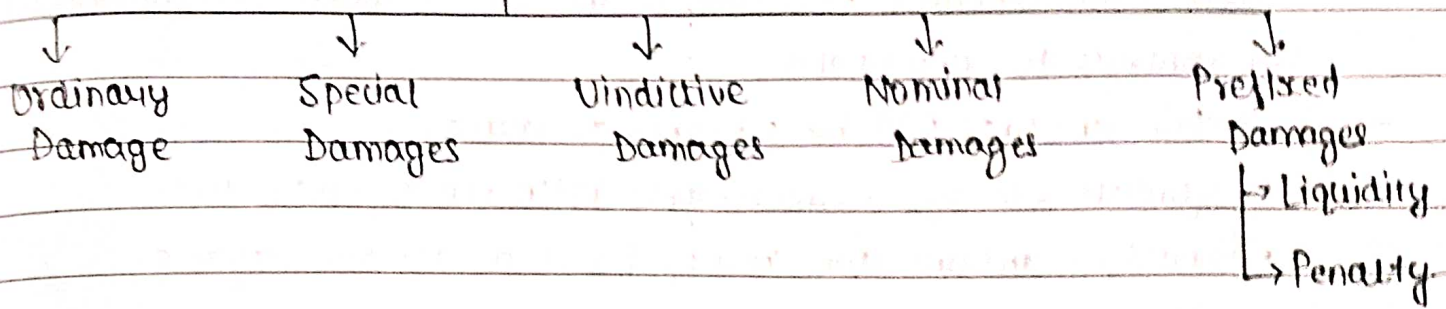
2.) Anticipatory Breach (Sec. 39)

- when promisor refuses to perform his promise
- signifies his unwillingness → even before time of performance arrived
- Ways of Anticipatory Breach
 - ↳ Expressed
 - ↳ Implied

• Effects of Anticipatory Breach :-

- (i) Rescind the contract and sue other party for damages from breach → immediately.
- (ii) Not to rescind the contract and treat still operative → wait for time of performance → and hold other party responsible for the consequences of non-performance
 - Benefit of promisor as well as promisee
 - promisee can take advantage of any supervening impossibility → discharge of contract [NO DAMAGES PAYABLE]

Types of Damages



1.) Nominal Damages

- These damages are awarded → where
 - plaintiff (aggrieved) → proved → there has been breach of contract → but no real damage suffered
 - awarded just to establish → Right to Decree → for Breach of Contract
 - amount may be a rupee or even 10 paise

2.) Ordinary Damages

- when a contract is breached → the party who suffers → is entitled to receive from party who has breached → Compensation for any loss/damage which arise naturally → in usual course of things.
- Such compensation is not given for
 - ↳ Remote loss
 - ↳ Indirect loss

3.) Vindictive or Exemplary Damage [only 2 cases]

- Breach of promise → to marry → It causes injury to feelings.
- Wrongful dishonour by Banker of customer's cheque → It causes loss of credit and reputation of customer

4.) Special Damages

- where a party to contract receives notice → of special circumstance affecting the contract
 - Liable for Damage
 - ↳ Natural damages
 - ↳ Special damages [only Normal profit, not Abnormal]
- loss of

5.1 Pre-fixed Damages

- Parties to contract → decide at the time of contract → on breach of contract by any of them,
- Certain amount will be payable as damage.
 - Liquidate Damage - reasonable estimate of likely loss.
 - Penalty - amount arbitrarily fixed as damage payable.

* Penalty and Liquidated Damages [Sec. 74]

- If a sum is fixed in contract as amount to be paid in case of a breach,
- The aggrieved party is entitled to receive a reasonable compensation [not exceeding the amount so fixed]

English Law

- Sum so fixed may be interpreted as
 - ↳ Liquidate Damage
 - ↳ Penalty
- If sum fixed represents genuine pre-estimate of loss which could be caused by breach → Liquidate Damages
 - Such clause is EFFECTIVE and amount is recoverable.
- But, when sum is fixed unreasonably and used to force the other party to perform the contract → Penalty
 - Such clause is DISREGARDED and injured party cannot recover more than actual loss.

Indian Law

- It makes no distinction b/w Liquidated Damage and Penalty.
- Court awards only reasonable compensation, not exceeding pre-fixed amount.
 - Actual Damage > Fixed amount ⇒ Fixed amount payable
 - Actual Damage < Fixed amount ⇒ Actual damage payable

• Exception of Indian law

- when any person give bond to Central/State Government
- for performance of any public duty or act in which public are interested
- on Breach of contract → he's liable to pay whole sum mentioned / fixed

* Remedies for the Breach of Contract (other than Damages)

(i) Rescission of contract

- when a contract is broken by one party
- other party may consider contract → Rescinded
- and he's not liable for fulfillment of his obligation (absolved)
- He's entitled to compensation for any loss suffered by breach

(ii) Suit for specific performance

- when damages are not adequate remedy in case of Breach,
- court may direct the person who breached the contract, → to carry out his promise according to terms of contract.

(iii) Suit for Injunction

- when a party to contract is negating (avoiding) the terms of contract,
- court by issuing → 'Injunction Order' → restrain/stop him from doing what he promised not to do so.

(iv) Quantum Meruit

- When one person has rendered service to another → in circumstance → showing understanding b/w them → although no remuneration is fixed
- Quantum Meruit → as much as the party doing the service has deserved.
- When party injured by breach → had done part but not all work he is bound → He would be compensated for value of work done.

• Two conditions to be fulfilled :-

- (i) only available if the original contract has been discharged
- (ii) claim must be brought by a party not in default.

• RESTITUTORY NATURE