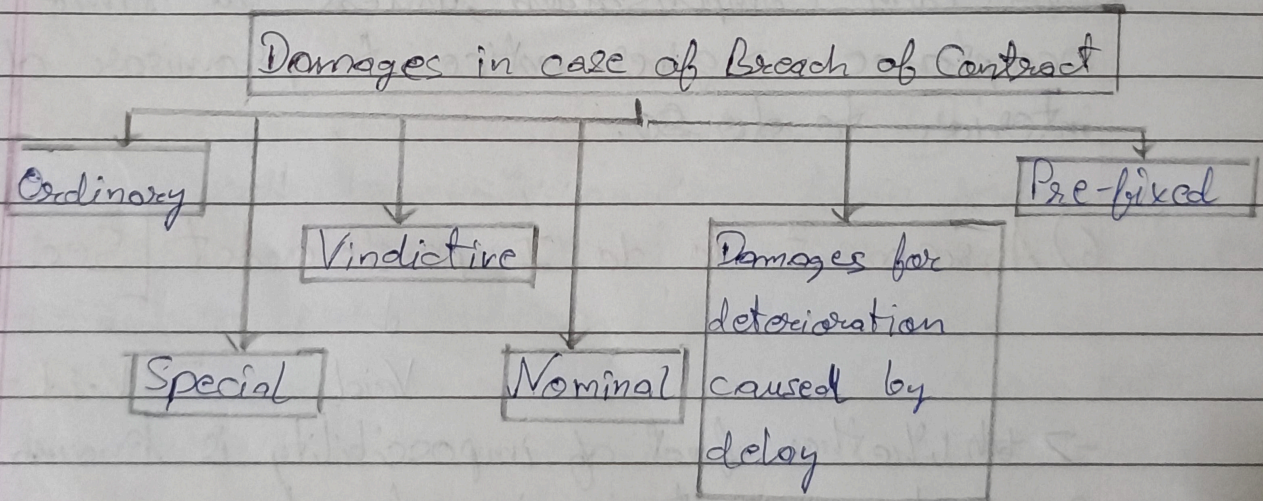


Unit-5 Breach of Contract and its Remedies

\* Anticipatory Breach of Contract :- When the promisor refuses altogether to perform the promise and signifies his unwillingness, even before the time of performance has arrived, it is called Anticipatory Breach.

Actual Breach of Contract may be committed :-  
(a) At the time when the performance of contract is due  
(b) During the performance of the contract - Actual breach of contract also occurs when during the performance of the contract, one party fails or refuses to perform his obligation under it by express or implied act.

\*

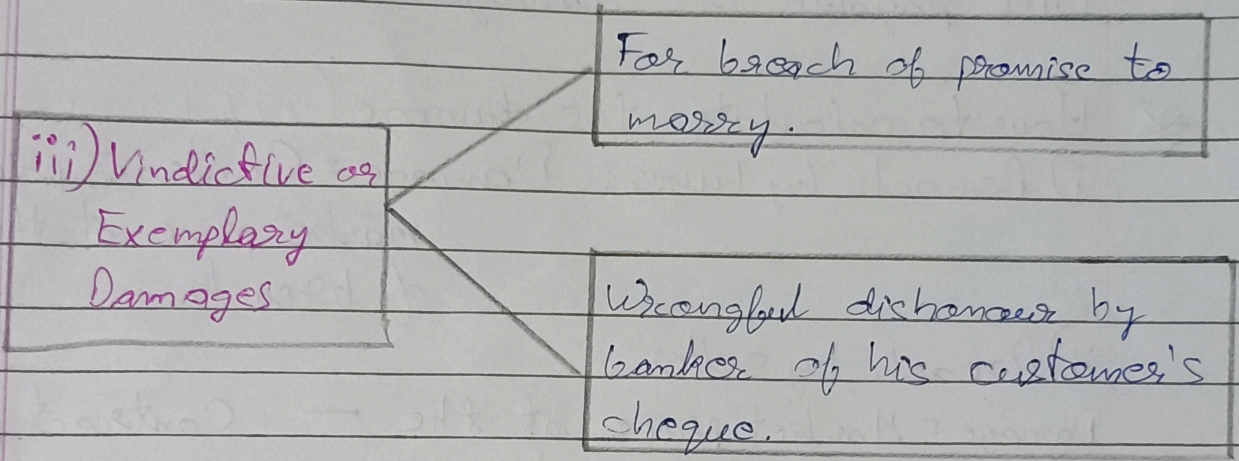


i) General/Ordinary Damages :- Compensation for any loss or damages which naturally arise in usual (normal) course of things (events). Ordinary damages are calculated by measuring the difference between the contract price and market.

(Refer Case - Hadley vs Baxendale)



ii) **Special Damages**:- Where party to a contract receives a notice of special circumstances affecting the contract, he will also liable for special damages.



iv) **Nominal Damages**:- These damages are awarded where the plaintiff (legal action against someone in court of law) has proved that there has been breach of contract but he has not in fact suffered any real damage.

These damages are awarded just to establish right to decree (an order or decision given by one in authority).

v) **Damages for deterioration to goods caused by delay**:- Damages can be recovered from the carrier even without notice. 'Deterioration not only implies physical damages but also loss of special opportunity for sale.



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vi) Pre-fixed damages: Sometimes, parties to a contract stipulate (make condition) at the time of its formation that on a breach of contract by any of them, a certain amount will payable as damages.

\* How to calculate the damage (useful in case study)

i) Breach by buyer:-  $\text{Damage} = \text{Contract price} - \text{market price at the date of breach.}$

ii) Breach by seller:-

$\text{Damage} = \text{Market price at the date of breach} - \text{Contract price}$

\* Remedies for Breach of Contract

1) Rescission of Contract:-

(a) Absolved (discharge) of all his obligations under the contract and

(b) Entitled to compensation for damages that he might have suffered.

2) Suit upon Quantum Meruit:-

i) Quantum Meruit:- "As much as is earned" Or "According to the quantity of work done" When the person has begun the work and before he could complete it, the other party terminates the contract or does something which make it impossible for the other party to complete the contract, he can claim for work done under contract. He may also recover the value of work done when further



performance of contract becomes impossible.

ii) Suit for Quantum Merit arise in mainly three cases :-

(a) Works done and accepted under void contract.

(b) Act done or something delivered non-gratuitously, the person who enjoys the benefit must pay for it.

(c) Divisible Contract - One part performed & refuses to perform other part. Party in default may sue other party who has enjoyed the benefit of past performance.

iii) Suit for specific performance :- where damages are not an adequate remedy in case of breach of contract, the court may in its discretion (decision or judgement) on a suit for specific performance direct party in breach, to carry out of his promise in terms of contract.

iv) Suit for Injunction :- Where a party to a contract is negotiating the terms of contract, the court may be issuing an "injunction order", restrain (stop) him from doing what he promised not to do.