

Unit - 5



Summary notes

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Breach of Contract:-

Breach means failure of a party to perform his or her obligation under a contract

Breach of contract may arise in two ways:-

Actual Breach

Anticipatory Breach

Anticipatory breach of a contract :-

An Anticipatory breach of a contract is a breach of contract occurring before the time fixed for performance has arrived.

Anticipatory breach of a contract may take either of the following two ways:-

Expressly by words spoken or written

Impliedly by the conduct of one of the parties.

Effect of Anticipatory breach:-

The promisee is excused from performance or from further performance. Further he gets an option:-

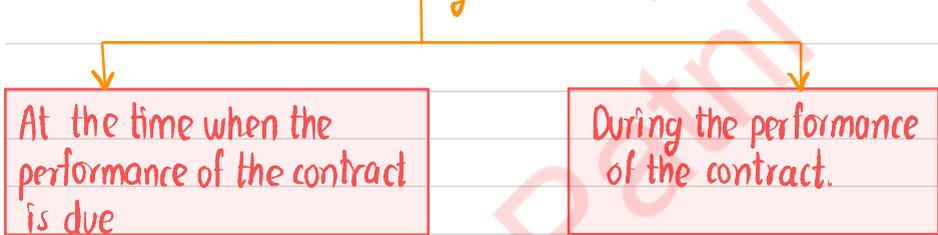
1. To either treat the contract as "rescinded and sue the other party for damages from breach of contract immediately without waiting until the due date of performance; or
2. He may elect not to rescind but to treat the contract as still operative, and wait for the time of performance and then hold the other party responsible for the consequences of non-performance. But in this case, he will keep the contract

alive for the benefit of the other party, as well as his own, and the guilty party, if he so decides on re-consideration may still perform his part of the contract and can also take advantage of any supervening impossibility which may have the effect of discharging the contract.

Actual Breach of Contract :-

In contrast to anticipatory breach, it is a case of refusal to perform the promise on the scheduled date.

Actual breach of contract may be committed :-



REMEDIES FOR BREACH OF CONTRACT :-

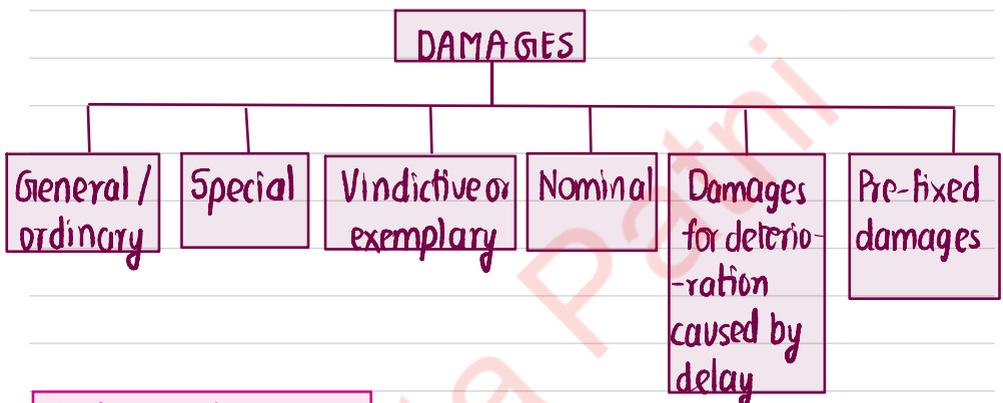
Suit for damages :-

Compensation for loss or damage caused by breach of contract :-

On the breach of the contract, the party who suffers from such a breach is entitled to receive from the party who has broken the contract, compensation for any loss or damage caused by him by breach.

Remedy by way of Damages or kind of Damages.

- Remedy by way of Damages is the most common remedy available to the injured party.
- This entitles the injured party to recover compensation for the loss suffered by it due to the breach of contract, from the party who causes the breach.
- The damages which may be awarded to the injured party may be of the following kinds:-



Ordinary damages:-

- When a contract has been broken, the party who suffers by such a breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach.
- Such compensation is not to be given for any remote and indirect loss or damage sustained by reasons of the breach.

Special damages:-

• Where a contract receives a notice of special circumstances affecting the contract, he will be liable not only for damages arising naturally and directly from the breach but also for special damages.

Vindictive or exemplary damages

These damages may be awarded only in two cases-

- a) for breach of promise to marry because it causes injury to his or her feelings
- b) for wrongful dishonour by a banker for his customer's cheque

Nominal damages:-

- Nominal damages are awarded where the 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 to decree for the breach of contract.

Damages for deterioration caused by delay:-

• In the case of deterioration caused to goods by delay, damages can be recovered from carrier even without notice.

Pre-fixed Damages:-

• Sometimes, parties to a contract stipulate at the time of its formation that on a breach of a contract by any of them, a certain amount will be payable as damage. It may amount to either liquidated damages or a penalty.

PENALTY AND LIQUIDATED DAMAGES.

Indian law makes no distinction between 'penalty' and 'liquidated damages'. Thus Courts in India award only a reasonable compensation not exceeding the sum so mentioned in the contract. If the parties have fixed what the damages will be, the courts will never allow more. But the court may allow less.

Thus, a person complaining of breach of contract will get reasonable compensation and is not entitled to realise anything by way of penalty.

Exception:- Where any person gives any bond to the central or state government for the performance of any public duty or act in which the public are interested, on breach of the condition of any such instrument, he shall be liable to pay the whole sum mentioned therein.

DISTINCTION BETWEEN PENALTY AND LIQUIDATED DAMAGES

- Penalty and liquidated damages have one thing in common that both are payable on occurrence of a breach of contract.
- If the sum payable is so large as to be far in excess of the probable damage on breach, it is certainly a penalty.
- Where a sum is expressed to be payable on a certain date and a further sum in the event of default being made, the latter sum is a penalty because mere delay in payment is unlikely to cause damage.
- The expression used by the parties is not final. The court must find out whether the sum fixed in the contract is in truth a penalty or liquidated damages. If the sum fixed is extravagant or exorbitant

the court will regard it as a penalty even if, it is termed as liquidated damages in the contract

- The essence of a penalty is payment of money stipulated as a terrorem of the offending party. The essence of liquidated damages is a genuine pre-estimate of the damage.

- 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:- As much as the party doing the service has deserved

The claim for Quantum Meruit arises in the following cases:-

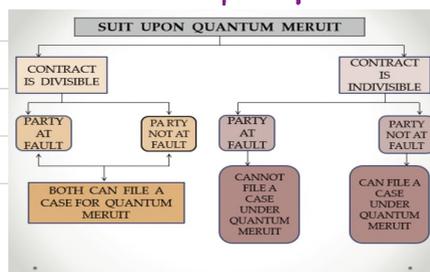
a) When an agreement is discovered to be void or when a contract becomes void.

b) When something is done without any intention to do so gratuitously.

c) When there is an express or implied contract to render services but there is no agreement as to remuneration

d) When one party abandons or refuses to perform the contract.

e) Where a contract is divisible and the party not in default has enjoyed the benefit of part performance



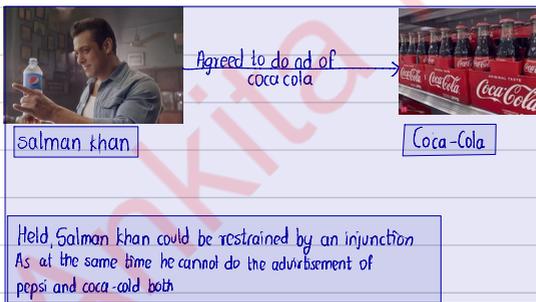
iii] **Suit for specific performance**- Where the damages are not an adequate remedy in the case of breach of contract, the court may in its discretion on a suit for specific performance direct party in breach, to carry out his promise according to the terms of the contract

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 to do

Party rightfully rescinding contract , entitled to compensation

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



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