

**Unit 4**

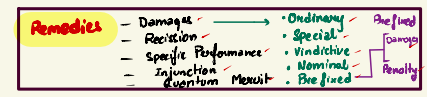
- ① Who is liable for Performance? *Case Study*
- ② Liability of Joint Promisor
- ③ Time & Place of Performance [46-50]
- ④ Reciprocal Promise [51-55]
- ⑤ Appropriation of Payments
- ⑥ Contracts Not to Perform
- ⑦ Discharge of Contract

12 - Case Study  
7 - Q → 4 Unit

# Contract Unit 4 & 5

**Unit 5**

- ① Types of Breach
- ② Remedies of Breach



**Unit 4**

① Who is liable for Performance?  
 37 - Both Promisor & Promisee shall perform the contract unless the contract is discharge.  
 Actual Performance vs Attempted Performance  
 38 - If Promisor offered to perform but Promisee refused → Promisee (discharge) unconditional  
 Promisee is refusing → often is deliver something  
 Promisee should be given opportunity to verify

② Time & Place of Performance?  
 46 - Time X No need to apply before performance X  
 Approach - during business hours (reasonable time)  
 47 - Time ✓ Place ✓ No need to apply X  
 Given → Usual Business hours - Perform (as related to contract)  
 48 - Apply before performance ✓  
 Apply → decide → Place ✓ Time ✓  
 49 - Place X Apply before performance ✓  
 Apply → decide → Reasonable Place  
 50 - Manner ✓ (to work)  
 Performance should be in described manner.

57 - Reciprocal to do something  
 One Contract Partly legal - Void Partly illegal - Void  
 58 - Alternative Promise  
 One Contract on Alt 1 - legal Alternative - Valid Alt 2 - illegal Alternative - Void  
 59 - Debtor instruction creditor for order of settlement - creditor shall comply  
 60 - Debtor silent credit can adjust in order of time - But NOT here banned - NOT Disputed Debt  
 61 - Debtor & creditor X court shall adjust in order of time - time banned ✓

Discharge of Contract  
 ① Performance → Actual / Attempted  
 ② Mutual Agreement → Section 62 (SARFA) / Initial  
 ③ Impossibility Performance → Supervening - also change - changed either (SR) - also (from change)  
 ④ Discharge by lapse of time (time barred → discharge from Payment)  
 ⑤ By Operation of law (Death of Promisor contract impossible personal skill)  
 ⑥ Breach of Contract → damages (Unit 6)  
 ⑦ By Remission (Satisfaction)  
 ⑧ By absence of Reasonable facilities (Section 52)  
 ⑨ Merger of rights - A superior right will replace an inferior right  
 ⑩ Novation → Must → Restituted benefit  
 → Sums being → becomes → Superior

② Rescission of Contract - for Cancellation of Contract.  
 ③ Suit for Quantum Meruit → Amount  
 Quantity of work done → pay me for the amount of work done  
 - void - cannot enter into person owing merit  
 ④ Suit for specific Performance - Award the Right of Performance only with Court.  
 ⑤ Suit for Injunction (Companies Act - Ultra Vires)  
 → English law vs Indian law  
 → Prefixed damages vs Penalty  
 → decided by Court  
 → Penalty / Damages

Contract  
 Act  
 Ende

39 - Continuance  
 Promisee accept continuance of performance where the promisor has failed to discharge the initial performance he cannot deny later.  
 (Promisor is refusing)  
 40 - Personal skill → Promisor himself / Agent / Legal Representative  
 41 - Performance by third Person → the Responsibility of the Promisor → extinguish he cannot hold Promisor liable X  
 42 - Joint Promisors  
 → Mention One Promisor ✓  
 → Each one is liable together ✓  
 → Legal Representative ✓  
 43 - Can Recourse be from Only One Promisor ✓  
 45 - But can recourse be only from one LR X  
 44 - If Promisee elects one Promisor  
 Promisee → Only that Promisor  
 Right to receive contribution from LR

Reciprocal Promise  
 51 - Simultaneous Performance (Last-Come)  
 Promisor is required to perform only when Promisee is willing  
 52 - Order of Performance  
 The Order shall be in such a way as stated in the contract.  
 53 - Prevention of Performance  
 If one party prevents the other party from performing his promise such party can recover compensation from other  
 54 - Effect of default of one party to perform his obligation  
 where a party fails to fulfill his own duty in the contract because of which the other party does not perform the contract  
 55 - Effect of failure to perform within fixed time  
 the other party is discharged  
 56 - Agreement to do impossible Act  
 Initial impossibility - void ab initio  
 (Supervening subsequent impossibility - void)

Contracts Need NOT be Performed  
 62 - Rescission  
 Terms of the contract are changed, old terms are discharged  
 63 - Remission / Waiver of Performance by Promisee, Promisor is discharged  
 64 - Restoration of any benefit under voidable contract  
 Return to rightful owner and the same shall return any consideration received  
 65 - Restitution under a void contract (SARFA 72B)  
 Restore any benefit which arose from such contract  
 66 - Communication of the fact of rescission  
 Offer → Com. Acc → from P → Com. Res → Com.  
 67 - If Promisee fails to provide reasonable facilities to Promisor for performance the Contract is changed

Unit 4 Over  
 Unit 5 Breach  
 Actual Breach → on due date of performance or any time after  
 Anticipatory Breach → before the due date  
 - Immediately Breach  
 - Promisee  
 - Continue and fulfill his end of the promise → see the promisor  
 Remedies  
 ① Damages  
 ② Ordinary damages - Actual loss + Naturally occur  
 ③ Special damages - When they are known to the other party  
 - Reparation for loss  
 ④ Exemplary damages - No actual loss + Changed or a punishment  
 ⑤ Nominal damages - No actual loss + Changed  
 ⑥ Damages for deterioration Caused by delay - wrongful refusal to accept  
 ⑦ Pre-fixed damages - goods or delivery → goods damaged → damages are recoverable

English law vs Indian law  
 Prefixed damages / Penalty  
 decided by Court  
 Penalty / Damages  
 Fixed / Unreasonable  
 Case to case basis differ / justified / actual loss / capital  
 • Kal Agency 11:00pm  
 • 8:30pm All prob solution  
 • 15th test 7:00pm

## All 6 Units

## Over.

A B C Z A B C Z