

	S	M	T	W	T	F	S
APR	1	2	3	4	5	6	7
2018	8	9	10	11	12	13	14
	15	16	17	18	19	20	21
	22	23	24	25	26	27	28
	29	30					

Chapter - 5

Breach of contract and its remedies

* Breach of contract :-

Failure to perform obligation

Breach

Actual

Refuses to perform on scheduled date

i.e

(i) at time when performance of contract is due

(ii) During performance of contract

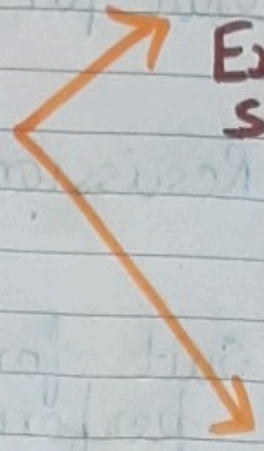
Anticipatory

Occurs before time fixed for performance has arrived

Promisor refuses altogether to perform it & signifies the unwillingness even before time to perform has arrived

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11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

Anticipatory breach is happened either by



Expressly by words spoken or written

Implied by the conduct of one of the parties

Effects of anticipatory breach.

- (i) Either treat contract as rescinded & sue other party for damages immediately
- (ii) May elect to treat the contract still operative
- (iii) Wait for time of performance

then hold other party responsible

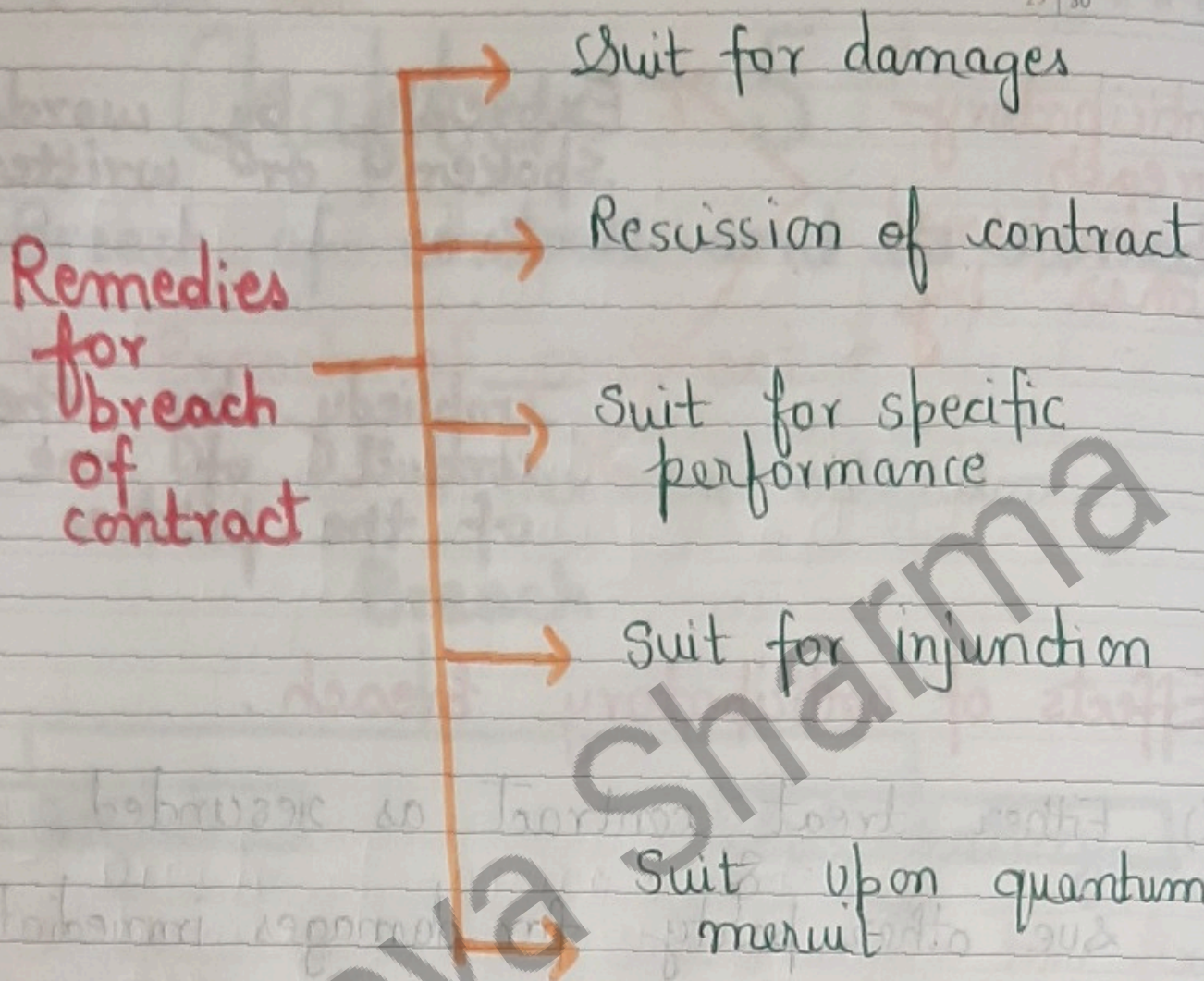
26

SATURDAY

MAY

2018

	S	M	T	W	T	F	S
APR	1	2	3	4	5	6	7
2018	8	9	10	11	12	13	14
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	22	23	24	25	26	27	28
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* Suit for damages :-

1. Compensation for loss or damage caused by breach

(Sec 73)

Aggrieved party entitled to receive compensation for loss / damage which

(i) naturally, arose in usual course

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25	26	27	28	29	30	

of things from such breach,
or
[Ordinary damage]

(ii) the parties knew at time of contract to be likely result breach of it
or

[Special damage]

- With previous notice
- Take reasonable steps to minimise loss.

[Compensation not to be given for remote/indirect loss/damage sustained by reason of breach]

2. Remedy by way of damages or kind of damages :-

(i) Ordinary damages :-

- (i) Naturally arose in usual course [or]
- (ii) parties knew at time of contract.

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	22	23	24	25	26	27	28
	29	30					

(ii) Special damages →

→ Party to contract receives notice of special circumstance affecting contract

then he is liable not only for ordinary damages but also special damages.

(iii) Vindictive or (exp) exemplary damages

- breach of promise to marry
- because it causes injury to his / her feelings
- wrongful dishonour by banker of customer's cheque.

(iv) Nominal damages ÷

- Plaintiff not suffered real damage
- May be rupee or even 10-paise

(v) Damages for deterioration caused by delay ÷

- Damages can be recovered from carrier without notice] Deterioration - Not only physical damage to good] also loss of special opportunity for sale.

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19	20	21	22	23	24	25
26	27	28	29	30		

(vi) Pre fixed damages :-

- Either liquidated damages or penalty

Penalty & liquidated damages :-

Parties may provide for compensation payable in case of failure to perform contract.

(called penalty or liquidated)

Unreasonable

Genuine pre estimate

[Injured party cannot recover more than actual loss courts never allow more, may allow less]

Exceptions → Person gives any bond to Cent. Govt or State govt. for performance of public duty or act in which public interested

→ On breach of such condition - liable to pay whole sum mentioned therein

	S	M	T	W	T	F	S
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	29	30					

Besides claiming damages, following remedies also available :-

1. Rescission of contract :-

Contract is broken by one party } the other party treat the contract as rescinded.

2. Quantum meruit :-

as much as the party doing the service has deserved.

Not 100% (Part of the promise)

Application of this doctrine, two conditions has been fulfilled.

(i) It is only available

original contract has been discharged.

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

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9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29

- (a) Agreement discovered to be void
or
Contract becomes void
- (b) Something done without intention to do so
gratuitously
- (c) Express or implied contract but no agreement
to remuneration.
- (d) One party abandons or refuses to
perform contract
- (e) Contract divisible & party not in default
has enjoyed the benefit of part performance
- (f) Indivisible contract completely performed
but badly other party can debit
for bad work.

(iii) Suit for specific performance

(iv) Suit for injunctions :-

Court may issue injunction orders to
restrain him from doing what he
promised not to do.