

Breach means - ★

- Failure of
- A party ×
- to perform his or her obligation
- under a contract.

Breach of contract may arise in two ways:

1. Actual breach of contract – At the time / day of Performance
2. Anticipatory breach of contract – Before the time / day of Per.

आशंका

★ BREACH OF A CONTRACT :- When ^(one) a party fails or refuses to perform the promise or obligation entirely or shows his/her unwillingness to perform then it is called BREACH of contract

★ Types = SEC. 39 = Anticipatory Breach :-

It is a breach which occurs before the date of performance or when the performance was due. It means when a party entirely refuses to perform before the performance date has arrived. It can be done expressly (spoken/written) or impliedly (conduct)

Actual Breach :-

In actual breach, a party refuses or declines to perform on the date or during the performance on the scheduled date.
means breach happens on the date when performance is due.

can be
express
implied

Anticipatory Breach

EFFECT OF

Option 1

Rescind immediately

+

**Sue for damages
Other remedies**

+

Without waiting

Means

Treat it as Actual Breach

Option 2

Do not rescind the contract

+

Treat it as Operative

+

Wait till Due date

If Performed

No Breach

**Did not
Performed**

**Sue for damages
Other remedies**

**Supervening
Impossibility**

**Void and Can't
claim damages**

★ Concept
★ Building
★ Sheet

Defaulting party = Diljit
Aggrieved party = Anant
DS = 10 CR
SN = 15 CR

Anticipatory

P. due = 12/07
Rejuse = 01/07

Option 1

HOT

01/07

① Immediately
Rescind
Cancel

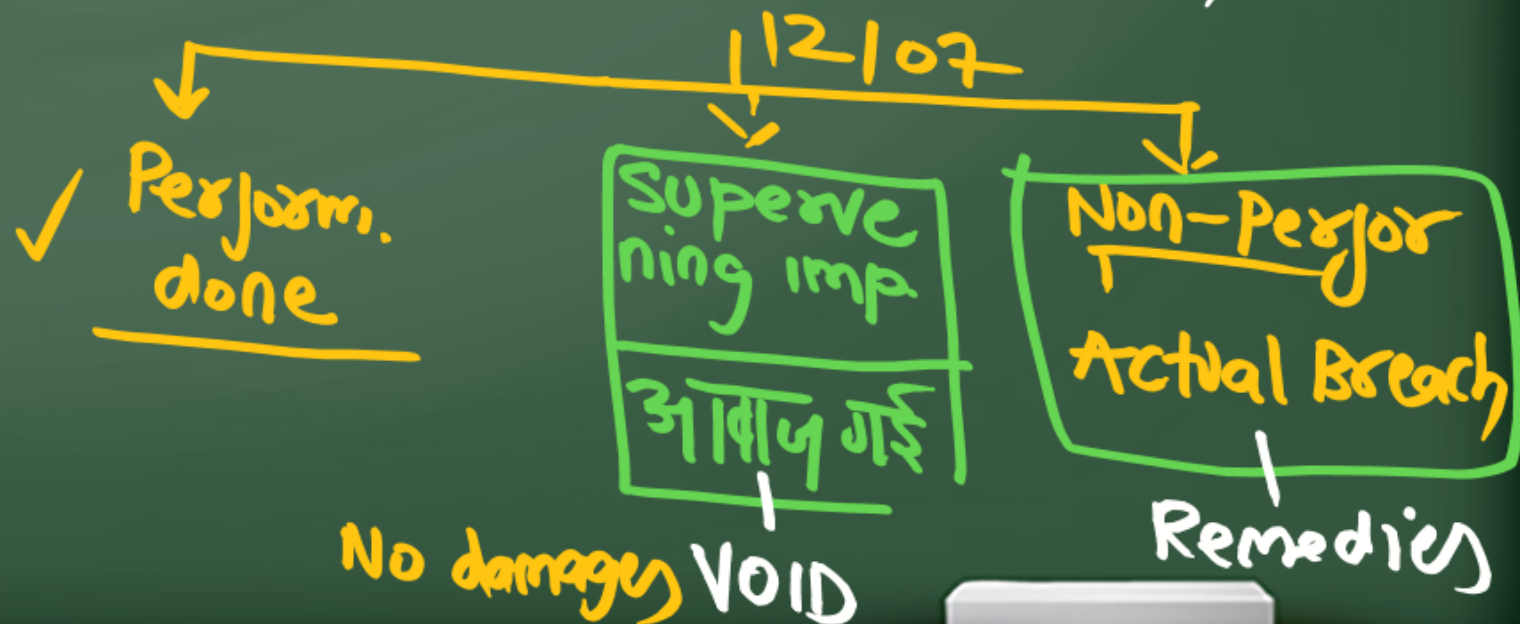
② without waiting for
due date

③ Sue + damages

Option 2 :- Cool

① operative = contract
(चलने दे)
Rescind (X) Cancel (X)

② Due date (संतजार)





Aspect	Anticipatory Breach	Actual Breach
Definition	Breach <u>before</u> performance date	Breach <u>on</u> the due date or <u>during</u> performance
<u>Types</u>	<u>Express</u> and <u>Implied</u>	<u>At</u> Due Date and <u>During</u> Performance
<u>Effect on Promisee</u>	Can <u>sue immediately or wait</u> and hold liable ^① ← ^②	Can <u>take action for breach</u> on the <u>due date</u>
Example	Informing inability to perform in advance	Failing to deliver goods on the agreed date

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- ★
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Actual Breach :-

In actual of Breach, a party refuses or declines to perform on the date or during the performance on the scheduled date. means breach happens on the date when performance is due.

can be
express
implied

★ SECTION 73 :- Suit for Damages :-

★ on the breach of a contract, the aggrieved party who has filed a suit against the defaulting party can claim compensation for any kind of loss or damage occurred due to the breach.

★ Types :- ORDINARY damages :- Any kind of loss/damage which arise naturally in the course of business and are directly related to the breach of contract. It means -
No compensation for indirect or remote loss.

Hadley vs Bexandale

② SPECIAL damage :- When any kind of loss/damage happens which is of special circumstances and it results into loss of profit then such damage can be claimed when it was in the notice/knowledge of the other party. Such damages will be called Special damages

★ (3) Vindictive / Exemplary Damages :- These damages are punitive in nature means punishment oriented. In two cases you can claim

★ → (1) In case of breach of promise of marriage where the other person has injured his/her feelings.

★ → (2) In case of wrongful dishonour of cheque by a banker :- where a businessman / trader has suffered a heavy loss of goodwill or reputation. In Gibbons vs West Minister bank

court proved that even if no pecuniary loss has happened, a party can claim exemplary damages. and a non-trader can also claim if he/she proves that a special damage has occurred.

★ ★ ★ (4) Nominal damages:- Nominal damages are awarded to prove that one party is guilty & has caused a breach of contract. Although the other party has not suffered any kind of real damage but such damage is awarded to establish the fact that the aggrieved has right to recover [Decree] Amount could be as less as 10 paise or a rupee.

(5) Loss for Detention:- When damages occur due to delay by the carrier, party can claim without giving notice for any kind of physical damage or loss of opportunity of sale.

★ SECTION 74 :- PRE Fixed Damages :-

- ★ Any damages which are pre decided beforehand in the
- ★ Contract by the parties in case of any failure, they
- ★ are called Pre fixed damages. They can be interpreted either as liquidated damages or Penalty.

Liquidated damages :- (Reasonable)

These are pre estimated amount which are genuine by nature. This means it is potential loss which can happen if breach takes place. They are valid & recoverable as the motive is to compensate the other.

- ★ Penalty :- Penalty is an excessive amount pre-fixed to terrorize the other party. It is not fairly estimated and unreasonable. The motive is to penalize the breaching party.
- ★ For the difference b/w the two = Rejer dill. ★ sheet

As Per English law :-

English law treats liquidated damages & penalty separately. It means liquidated damages are recoverable but penalty is not because it is unreasonable but anything beyond Actual loss cannot be Recovered.

★ As per Indian law :-

★ Indian law makes no distinction b/w LD & penalty

The courts in India award Reasonable compensation

★ But cannot go beyond any amount stated in contract (Pre-fixed damages). The court will never allow more but it can allow less.

Exception :- When a bond is given by a person to the CG / SG for performing any act which comes under Public duty / For the public then such amount is recoverable and payable even if it is unreasonable (Penalty).

☆ ☆ ☆ = Sheet 1 / diff.



BASIS	Liquidated Damages	Penalty
Definition	A pre-estimated amount agreed upon by the parties to cover potential losses from a breach.	An excessive amount set to coerce performance, not a fair estimate of loss.
Effectiveness	Valid and recoverable if it represents a genuine estimate of loss.	Not enforceable; the injured party can only recover actual loss.
Purpose	To compensate for the breach based on a reasonable forecast of potential damages.	To penalize the breaching party, which is deemed unreasonable.

DIFFERENCE B/W LIQUIDATION DAMAGES AND PENALTY

BASIS	Liquidated Damages	Penalty
Common Feature	Both are payable upon breach of contract.	Both are payable upon breach of contract.
Amount	Reflects a genuine pre-estimate of potential damages.	Excessive amount, far beyond probable damages.
Court's Role	Courts assess if the sum is a reasonable estimate of loss.	Courts will disregard if the sum is extravagant or excessive, even if labeled as liquidated damages.
Essence	A genuine pre-estimate of damage.	A sum to intimidate or coerce the offending party.
Treatment in India	No distinction; courts award actual loss up to the fixed sum.	Courts award reasonable compensation, not exceeding the fixed sum.

★ ★ ★ Sheet 2 ↑ dill.

- Where one person has rendered service to another
- in circumstances which indicate an understanding between them
- that it is to be paid for although no particular remuneration has been fixed,
- the law will infer a promise to pay



Quantum Meruit i.e. as much as the party doing the service has deserved.

Qm is restitutory in nature. A person deserves the amount for the work he has done in the contract. It is implied by nature even if no remuneration was decided in the contract. Motive is to recompensate the other party for the value of work done.

The claim for quantum meruit arises in the following cases:

Bargain's Story

1. **Void Agreement or Void Contract:** When an agreement is found to be void, or a valid contract becomes void later.
2. **Gratuitous Work:** When someone does something without intending to do it for free, they can claim payment.
3. **No Fixed Remuneration:** If services are provided with no clear agreement on payment, the person providing the service can still claim payment.
4. **Contract Abandonment:** When one party refuses to continue or abandons the contract. *घिसा Building अलग 4 floor = 2 floor*
5. **Divisible Contract:** If part of a divisible contract is performed, the party not in breach can enjoy that benefit. *2000 shirt < 1000 ✓
1000 ✗*
6. **Bad Work in an Indivisible Contract:** If a lump-sum contract is completed poorly, the performing party can claim the payment, but the other party may deduct for poor quality. *(-) 10,00,000 - 200,000 (bad) = (8) ✓*

Divisible < ✓ (र) / ✗ (र) | Indivisible eg: studio construction