



LIVE LEARNING CLASSES BOARD OF STUDIES(A), ICAI

CA FOUNDATION TOPIC NAME - INDIAN CONTRACT ACT, 1872, **UNIT 5- BREACH OF CONTRACT & ITS REMEDIES** PAPER 2: BUSINESS LAWS

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Performance of a Contract' means carrying out the obligations.

Types

1. Actual (Sec. 37)

2. Tender

Performance

(Sec. 38): Promisor offers to perform his obligation under the contract at the proper time and place but the promisee refuses to accept the performance.

Condition for a Valid Performance

1. Must be unconditional.
2. At proper time and place.
3. Reasonable opportunity to examine goods.
4. For whole obligation.
5. To the promisee or his duly authorized agent.
However a tender may be made to any one of the joint promisee.
6. Tender must be of exact amount and must be in legal tender.

By Whom –

- 1. Promisor himself**
- 2. Agent** (Where the contract does not involve personal skills)
- 3. Legal Representative** (In case of death of the promisor. However, if contract involves personal skill, it comes to an end with the death of the promisor)
- 4. Third persons** (When a promisee accepts performance of the promise from a third person, he cannot afterward enforce it against the promisor)

Performance of Joint Promises

1. All joint promisors are liable jointly and severally. However Contract may provide otherwise.
2. One has right of contribution from others.
3. If one of the joint promisors is released, he is responsible to the other joint promisor or promisors.

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Time place and manner: As decided otherwise during business hours at business place or residence of promisee.

Performance of Reciprocal Promises: Reciprocal Promise means a promise in return for a promise.

1. Mutual and Dependent- If the promisor, who must perform, fails to perform it, he cannot claim the performance of the reciprocal promise.

2. Mutual and Independent- Each party must perform his promise without waiting for the performance or readiness to perform on the part of the other.

3. Mutual and Concurrent- Promises have to be simultaneously performed.

Note: Reciprocal promises to do things legal and also other things illegal (Sec. 57)- the first set of promises is a contract but second is a void agreement.

Appropriation Of Payment (Adjustment of Payment Against Debt)

Rules 1: Appropriation by Debtor : if accepted, must be applied to that debt.

Rule 2: Appropriation by Creditor: debtor does not intimate, the creditor may apply it at his discretion to any lawful debt including a time-barred debt. (But not to a disputed debt)

Rules 3: Where neither party appropriates: neither party makes any appropriation the payment is to be applied in discharge of the debts in order of time, including time-barred debts. If the debts are equal the payment is to be applied proportionately.

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Discharge of contract means **termination of the contractual relationship** between the parties. **In other words**, a contract is said to be discharged when either of the parties is no more liable to contract.

By Performance	(a) Actual, (b) Tender
By Mutual Consent or Agreement	(a) Novation, (b) Rescission, (c) Alteration, (d) Remission, (e) Waiver, (f) Merger
By Impossibility of Performance	(a) Destruction of subject-matter, (b) Death or disablement for personal service, (c) Subsequent Illegality, (d) Declaration of war, (e) Non-existence of state of things
By Operation of Law	(a) By death, (b) Insolvency, (c) Merger, (d) Unauthorized alternation of terms of a written document
By Breach of Contract	(a) Anticipatory, (b) Actual
By Lapse of Time	

Contracts which need not be performed

1. If the parties mutually agree to substitute the original contract by a new one or to rescind or alter it.
2. If the promisee dispenses with or remits, wholly or in part the performance of the promise made to or extends the time for such performance or accepts any satisfaction for it.
3. If the person, at whose option the contract is voidable, rescinds it.
4. If the promisee neglects or refuses.
5. If it is illegal.

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Indian Contract Act, 1872

Unit -5

Breach of Contract and Its Remedies

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Breach of Contract

Meaning

Failure of a party to perform his or her obligation under a contract

Ways

Breach of contract may arise in two ways:

- Actual breach of contract
- Anticipatory breach of contract

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Breach of Contract

Actual Breach of Contract

Actual breach of contract may be committed-

(a) At the time when the performance of the contract is due.

Example 1: A agrees to deliver 100 bags of sugar to B on 1st Feb, 2012. On the said day, he failed to supply 100 bags of sugar to B. This is actual breach of contract. The breach has been committed by A at the time when the performance becomes 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.



Breach of Contract

Anticipatory Breach of Contract

When a party repudiates it before the time fixed for performance.

Example 2: Where A contracts with B on 15th July, 2020 to supply 10 bales of cotton for a specified sum on 14th August, 2020 and on 30th July informs B, that he will not be able to supply the said cotton on 14th August, 2020, there is an express rejection of the contract.

Consequences of Anticipatory Breach: The promisee may either:

- a) rescind the contract and treat contract as at an end, and at once sue for damages, or
- b) he may elect not to rescind but to treat contract operative and wait for the time of performance and then hold the party liable for the consequences for non – performance.



Breach of Contract

Anticipatory Breach of Contract **Example 3:** X agrees to sell to Y a certain quantity of wheat at Rs. 100/- per quintal to be delivered on the 3rd March. On the 2nd February, X gives notice expressing his unwillingness to sell wheat; and the price of wheat on the date is Rs. 110/- per quintal. If Y repudiates the contract forthwith (which he is entitled to do at his option), he would be able to recover damages @ Rs.10/- per quintal. If instead of taking the action forthwith, he keeps the contract alive till the 3rd March and in the mean time, the price increases to 125/- per quintal on the date. Y would be able to recover damages @ Rs. 25/- per quintal.

If, on the other hand, during the intervening period between 2nd February and 3rd March, private sale of wheat is prohibited by the Government, the contract would become void, and Y would not be able to recover any damages whatever.

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Remedies for Breach of Contract

Suit for Damages

Rescission Of Contract

Suit Upon Quantum Meruit

Suit For Specific Performance

Suit For Injunction



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1. Suit for Damages

Meaning

Monetary compensation awarded to a person.

(a) Ordinary Damages: Ordinary damages are those which naturally arise in the usual course of things from such breach. The measure of ordinary damages is the difference between the contracted price and the market price at the date of the breach.

Example 4: A contracts to deliver 100 tons of oil at Rs.1000 per ton on a future date. On the due date he refuses to deliver. The price on that day is Rs.1100 per ton. The measure of damages is the difference between the market price on the date of the breach and the contract price, i.e. Rs. 10,000.



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1. Suit for Damages

Note: Compensation can not be claimed for any remote or indirect loss or damage by reason of the breach.

Example 5: A railway passengers wife caught cold and fell ill due to her being asked to get down at a place other Than the railway station and she had to walk a long distance in cold night to reach home. In a suit by the plaintiff against the railway company, it was held that damages for the personal inconvenience of the plaintiff alone would be granted, but not for sickness of the plaintiffs' wife.



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1. Suit for Damages

(b) Special damages: Damages other than those arising from the breach of a contract may be recovered if such damages were decided at the time of making the contract. These can be claimed only if the special circumstances which would result in a special loss in case of breach of a contract, are brought to the notice of the other party.

Example 6: A, a builder, contracts to erect a house for B by the 1st of January, in order that B may give possession of it at that time to C to whom B has contracted to let it. A is informed of the contract between B and C. A builds the house so badly that before the 1st January, it falls down and has to be rebuilt by B, who, in consequence, loses the rent which he was to have received from C, and is obliged to make compensation to C for breach of the contract. A must make compensation to B for the cost of rebuilding the house, for the rent lost and for the compensation made to C.

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1. Suit for Damages

(c) Liability to pay vindictive or exemplary damages: These damages may be awarded only in two cases, viz (i) for breach of promise to marry; and (ii) wrongful dishonour by a banker of his customer's cheque.

(d) Liability to pay 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. The amount may be a rupee or even 10 paise.

Example 7: A firm consisting of four partners employed B for a period of two years. After six months two partners retired, the business being carried on by the other two. B declined to be employed under the continuing partners. Held, he was only entitled to nominal damages as he had suffered no loss.

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1. Suit for Damages

(e) 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. The word 'deterioration' not only implies physical damages to the goods but it may also mean loss of special opportunity for sale.

Example 8: A purchased a velvet for making caps for sale during spring season. Due to delay in transit, he was unable to utilize it to benefit during season. Held that the fall in value of cloth arrived after season amounted to deterioration for which A was entitled to recover damages.



Liquidated Damages And Penalty

Liquidated damages represent a sum, fixed or ascertained by the parties in the contract, which is a fair and genuine pre-estimate of the probable loss that the might ensure as a result of the breach, if it takes place.

A **penalty** is a sum named in the contract at the time of its formation, which is disproportionate to the damage likely to accrue as a result of the breach. Court may relief against penalty

Under '**English law**' Liquidated damages are enforceable but penalties cannot be claimed.



Payment of Interest



- (1) A condition for payment of interest in case of default is not in the nature of a penalty, if the interest is reasonable.
- (2) A condition for increased interest from the date of the bond, and not from the date of default, is always in the nature of a penalty, and relief is granted against it.
- (3) A condition in a bond for payment of compound interest on failure to pay simple interest at the same rate as was payable upon the principal is not a penalty.
- (4) A condition in a bond for the payment of compound interest at a rate higher than that of simple interest is a penalty and would be relieved against.



2. 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 become free from all his obligations under the contract and is entitled to compensation for any damages that he might have suffered.

Example 9: A promises B to deliver 50 bags of cement on a certain day. B agrees to pay the amount on receipt of the goods. A failed to deliver the cement on the appointed day. B is discharged from his liability to pay the price.





3. Suit Upon Quantum Meruit

The phrase 'quantum meruit' literally means "as much as is earned" or "according to the quantity of work done". The claim on quantum meruit must be brought by a party who is not at default. However, in certain cases, the party in default may also sue for the work done if the contract is divisible.

Following are the cases in which a claim on quantum meruit may arise:

(a) Where an agreement is discovered to be void: If an agreement is discovered to be void or becomes void, any person who has received any advantage under such agreement or contract, is bound to restore it, or to make it compensation for it to the person from whom he received it.



3. Suit Upon Quantum Meruit

Example 10: A agrees to deliver 100 kgs of rice to B at a price of Rs.40 per kg. The rice were to be delivered in two installments of 50 kgs. each. A delivered the first installment but failed to supply the second due to some unavoidable reasons. B must pay for 50 bags.

(b) Where something is done or delivered without intention to do gratuitously: Where a person does some act or delivers something to another person with the intention of receiving payments for the same (i.e. non-gratuitous act), in such a case, the other person is bound to make payment if he accepts such services or goods, or enjoys their benefit.

Example 11: A, a trader leaves his goods at B's place by mistake. B treats it as his own and use. B is bound to compensate A for it.



3. Suit Upon Quantum Meruit

(c) Where the contract is divisible: Where the contract is divisible and one party has enjoyed the benefit of part performance, then the other party may sue on Quantum Meruit.

Examples 12: X wrongfully revoked Y's (his agent) authority before Y could complete his duties. Held, Y could recover, as a quantum meruit, for the work he had done and the expenses he had incurred in the course of his duties as an agent.



4. Suit For Specific Performance

Where 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.

Specific Performance not granted where:-

- Monetary compensation is an adequate relief,
- Contract is of personal nature, e.g. contract of marry.
- It is not possible for the court to supervise performance of contract, e.g. construction work
- Contract is ultra vires i.e. beyond the objects of company



5. 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 not to do.

Example 13: N, a film star, agreed to act exclusively for a particular producer, for one year. During the year he contracted to act for some other producer. Held, he could be restrained by an injunction.



Example 14: A, a singer, agreed with B to perform at his theatre for two months, on a condition that during that period, she would not perform anywhere. In this case, B could move to the Court for grant of injunction restraining A from performing in other places.

Super Over



Super Over



1. A contract to marry B. Before the agreed date of marriage, A marries C. Here, B is entitled to sue A for _____

- a) Actual Breach in express manner
- b) Anticipatory Breach in express manner
- c) Actual Breach in implied manner
- d) Anticipatory Breach in implied manner



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2. In case of Anticipatory Breach remedies available to aggrieved party are _____

- a) He can wait till due date
- b) He can not claim damages
- c) He has no right at all
- d) None of the above



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3. Remedies open to a person, suffering from breach of contract are _____

- a) Suit for damages
- b) Suit for Quantum Meruit
- c) Suit for Injunction
- d) All of the above



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4. Quantum Meruit means _____

- a) A non-gratuitous promise
- b) As implied promise
- c) As much as earned
- d) As much as paid



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5. Specific Performance may be ordered by the court when _____

- a) The contract is voidable
- b) Damages are an adequate remedy
- c) Damages are not an adequate remedy
- d) Defaulting party is not ready to pay damages



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Super Over



6. N singer contracted with a theatre manager to sing a song. Due to her illness she failed to perform the contract, she received Rs.20000 as advance _____

- a) N must refund Rs.20000
- b) N need not to refund Rs.20000
- c) They must enter into new agreement
- d) None of these



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Remedies for Breach of Contract

1. Rescission of the contract : Termination of contract by promisee when promisor refuses to perform.

2. Suit for damages: Monetary Compensation

Kinds of Damages

1. Ordinary Damages- Equal to actual loss but not for indirect loss.

2. Special Damages- Decided at the time of contract entered.

3. Exemplary Damages- Granted only in case of breach of contract to marry & unjustified dishonour of cheque.

4. Nominal Damages- When there is no loss.

5. Damages for Inconvenience- Granted for physical inconvenience.

6. Liquidated Damages & Penalty- If damages equal to loss then liquidated damages, if more than loss then penalty

7. Payment of Interest- Payment of interest is permissible as per law or usage, if not decided. Court may grant relief, if interest is in the nature of penalty.

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3. Suit for special performance: Where damages are not an adequate remedy, the court may direct the party in breach to carry out his promise according to the terms of the contract.

Not granted where : a) Damages are adequate relief. b) Contract of personal nature. c) Not possible for the Court to supervise the performance. d) The contract is made by a company beyond its object as laid down in its Memorandum of Association.

4. Suit on Quantum Meruit : As much as earned : When a person has done some work under a contract, and the other party repudiated the contract, or some event happens which makes the further performance of the contract impossible, then the party who has performed the work can claim remuneration for the work he has already done.

5. Suit for injunction: (Order of the court) : Where a party does something which he promised not to do, the Court may by issue an order, prohibit him from doing so.

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