



NEETI JUDICIARY FOUNDATION BATCH



ICA

**Breach of Contract &
Remedies**

Lecture-13

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TOPICS

Remedy

73-75

- ① Compensation → Breach of Contract
- ② Specific Performance → (5-8) + (21-24) → SRA 1963
- ③ Injunction → 36-42-SRA + O.39 Cpc
- ④ Suit for Quantum Meruit

1 Breach of contract

2 Remedies

Contracts
Discharged? - to come to end

- 1) Breach of contract ✓
- 2) Performance of contract ✓
- 3) Frustration of contract ✓
- 4) Novation, Rescission, Alteration ✓

- ⑤ Rescission of contract (27-30) SRA
- ⑥ Rectification of contract (26 SRA)
- ⑦ Cancellation of Instruments (31-33 SRA)
- ⑧ Declaratory Decree (34-35 SRA)

MAINS QUESTIONS



Q1. Write a short note on quasi contracts. Explain its effects. 5 marks, 300 words

Ans1. Quasi Contract is not real Contract entered into by parties intentionally. It resembles a contract in which law imposes an obligation on a person to perform an obligation on the ground of equity. Section 68 to Section 72 of the Indian Contract Act, 1872 speaks about "Quasi-Contract or Certain relations resembling those created by contracts.

1. These relations resembles contract
2. It is not real contract or a consensual contract based on the agreement of the parties.
3. It based on the principle of equity. that "A person shall not be allowed to enrich himself unjustly at the expense of another.
4. In the absense of Contract but on the principle of equity, imposes obligation on the party/person such obligation is called Quasi Contractual Obligation.

Quasi-contracts are based on the principle of

"Nemo debet locupletari ex aliena jactura" which means 'No man should grow rich out of another person's loss'.

MAINS QUESTIONS



Q1. Write a short note on quasi contracts. Explain its effects. 5 marks, 300 words

Ans1. Types of quasi-contracts

Section 68:- Necessaries supplied to a person incapable of contracting

Section 69:- Reimbursement of person paying money due by another, in payment of which he is interested.

Section 70:- Obligation of the person enjoying the benefits of a non-gratuitous act

Section 71:- Responsibility of finder of goods

Section 72:- Liability of person to whom money is paid, or thing delivered, by mistake or under coercion.

Effect of Quasi contracts:- *enforceable.*

Quasi contracts holds the same effects as of contracts expressly mentioned in ICA. Basis of Quasi-contract is unjust enrichment. In the case of unjust enrichment, one party derives benefits either by mistake or through the other party's misfortune or loss. Additionally, when an individual enjoys advantages for which he or she has made proper payments or has not worked for it, and which was not intended as a gift, then it is also termed as unjust enrichment. Therefore law states that every such person under quasi contract is liable.

→ Damages - loss/injury
compensation - "original position"

CHAPTER VI OF THE CONSEQUENCES OF BREACH OF CONTRACT

Sec. 73-75

73

BoC

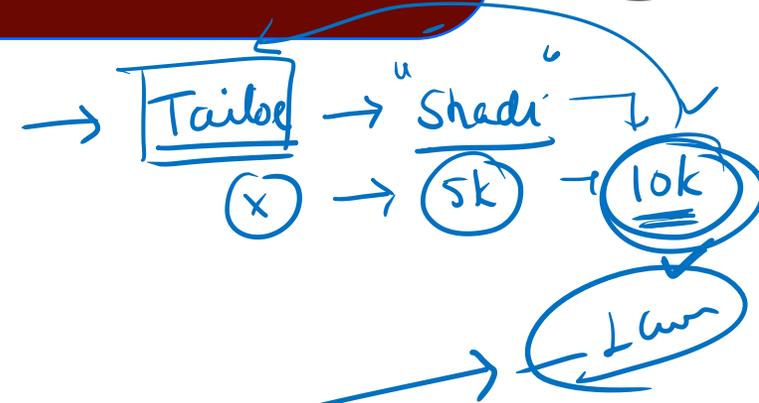
- ✓ - "Compensation"
 - Reasonable
- ⊗ - "Remote losses"



When a contract has been broken, the party who suffers by such 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, or which the parties knew, when they made the contract, to be likely to result from the breach of it.

Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

Compensation for failure to discharge obligation resembling those created by contract.—When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it and had broken his contract.



Quasi contract
68-72
73

H vs B

Explanation.— In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.

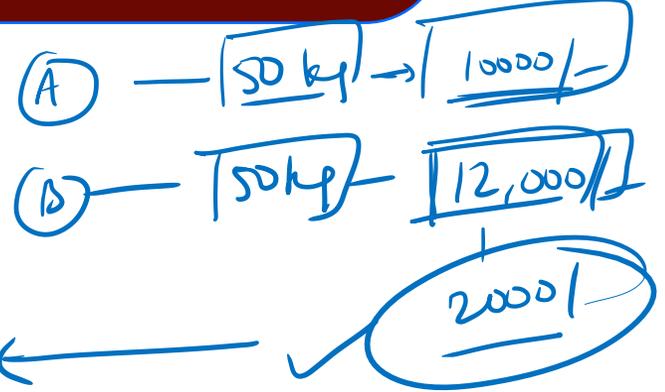
→ • SI
→ •
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112 21 SRA
Power of Court to award compensation in a suit of specific compensation.
WS
08 CPC

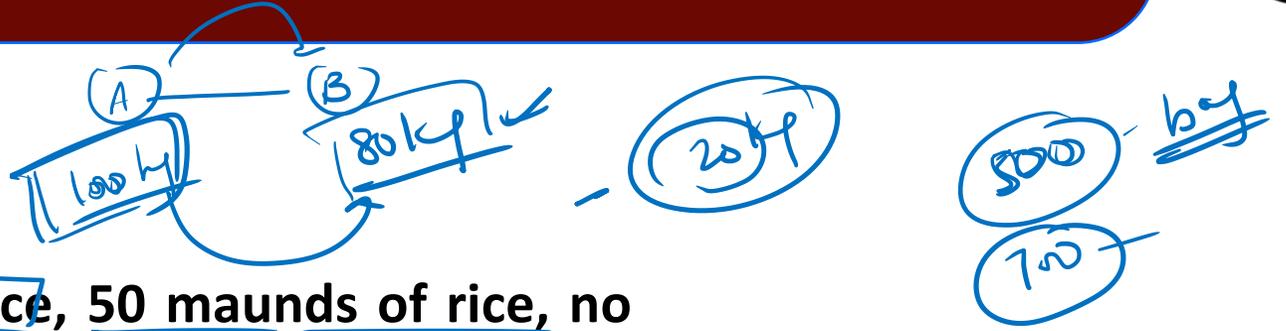
Illustrations

(a) A contracts to sell and deliver 50 maunds of saltpetre to B, at a certain price to be paid on delivery. A breaks his promise. B is entitled to receive from A, by way of compensation, the sum, if any, by which the contract price falls short of the price for which B might have obtained 50 maunds of saltpetre of like quality at the time when the saltpetre ought to have been delivered.

(b) A hires B's ship to go to Bombay, and there take on board, on the first of January, a cargo, which A is to provide, and to bring it to Calcutta, the freight to be paid when earned. B's ship does not go to Bombay, but A has opportunities of procuring suitable conveyance for the cargo upon terms as advantageous as those on which he had chartered the ship. A avails himself of those opportunities, but is put to trouble and expense in doing so. A is entitled to receive compensation from B in respect of such trouble and expense.)

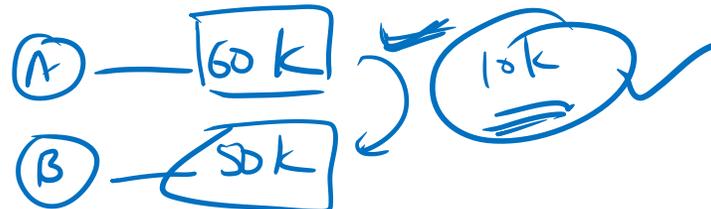


Illustrations

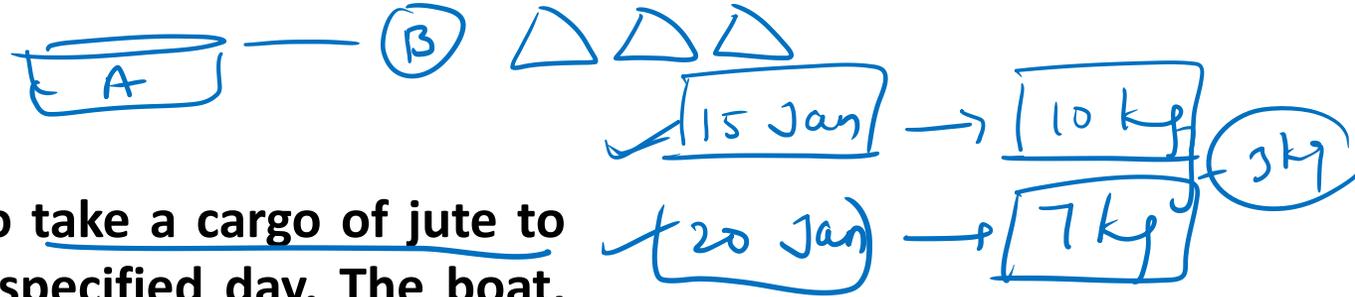


(c) A contracts to buy of B, at a stated price, 50 maunds of rice, no time being fixed for delivery. A afterwards informs B that he will not accept the rice if tendered to him. B is entitled to receive from A, by way of compensation, the amount, if any, by which the contract price exceeds that which B can obtain for the rice at the time when A informs B that he will not accept it.

(d) A contracts to buy B's ship for 60,000 rupees, but breaks his promise. A must pay to B, by way of compensation, the excess, if any, of the contract price over the price which B can obtain for the ship at the time of the breach of promise.



Illustrations



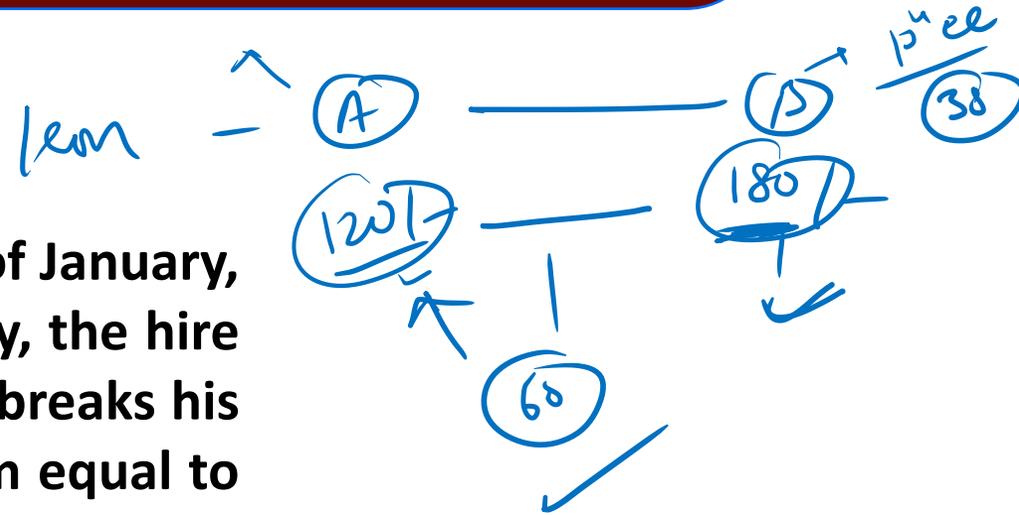
(e) A, the owner of a boat, contracts with B to take a cargo of jute to Mirzapur, for sale at that place, starting on a specified day. The boat, owing to some avoidable cause, does not start at the time appointed, whereby the arrival of the cargo at Mirzapur is delayed beyond the time when it would have arrived if the boat had sailed according to the contract. After that date, and before the arrival of the cargo, the price of jute falls. The measure of the compensation payable to B by A is the difference between the price which B could have obtained for the cargo at Mirzapur at the time when it would have arrived if forwarded in due course, and its market price at the time when it actually arrived.

(f) A contracts to repair B's house in a certain manner, and receives payment in advance. A repairs the house, but not according to contract. B is entitled to recover from A the cost of making the repairs conform to the contract.)

Illustrations

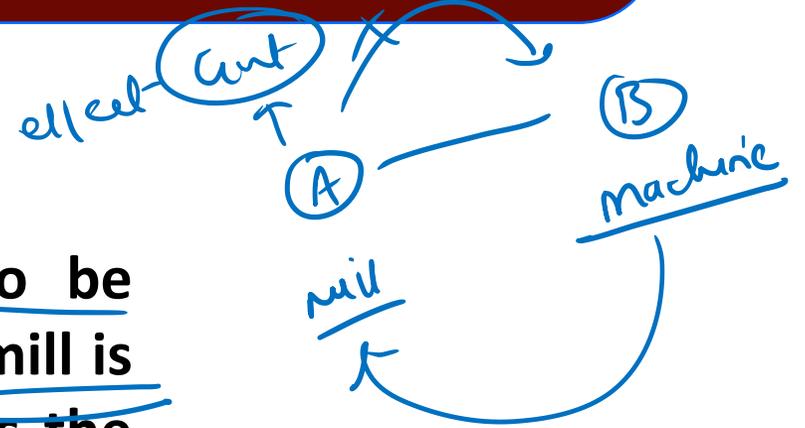
(g) A contracts to let his ship to B for a year, from the first of January, for a certain price. Freights rise, and, on the first of January, the hire obtainable for the ship is higher than the contract price. A breaks his promise. He must pay to B, by way of compensation, a sum equal to the difference between the contract price and the price for which B could hire a similar ship for a year on and from the first of January.

(h) A contracts to supply B with a certain quantity of iron at a fixed price, being a higher price than that for which A could procure and deliver the iron. B wrongfully refuses to receive the iron. B must pay to A, by way of compensation, the difference between the contract price of the iron and the sum for which A could have obtained and delivered it.



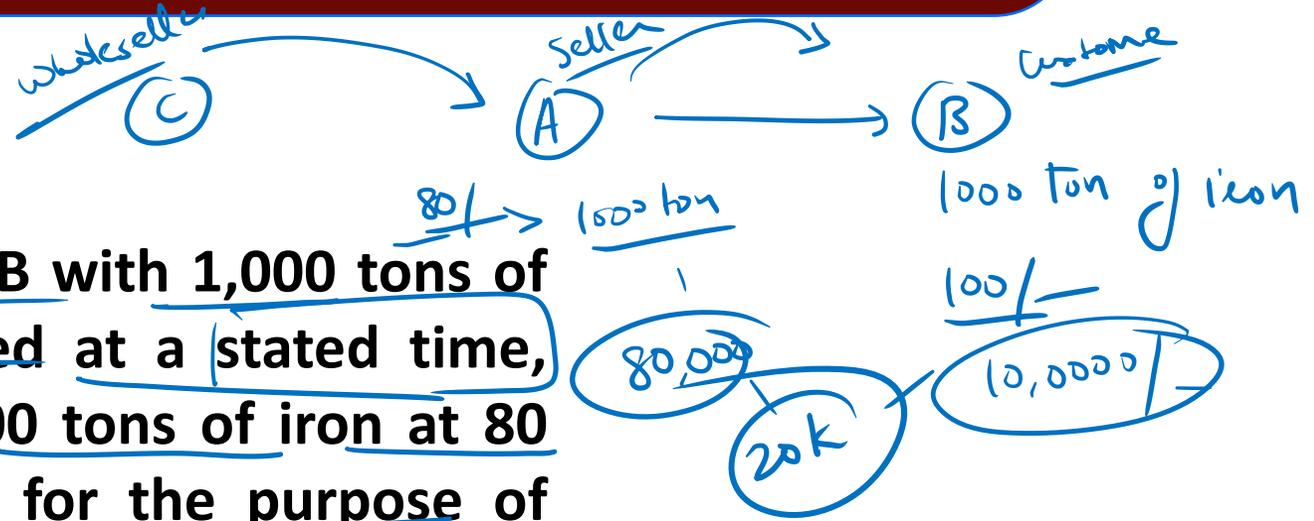
Illustrations

(15) - delay



(i) A delivers to B, a common carrier, a machine, to be conveyed, without delay, to A's mill informing B that his mill is stopped for want of the machine. B unreasonably delays the delivery of the machine, and A, in consequence, loses a profitable contract with the Government. A is entitled to receive from B, by way of compensation, the average amount of profit which would have been made by the working of the mill during the time that delivery of it was delayed, but not the loss sustained through the loss of the Government contract.

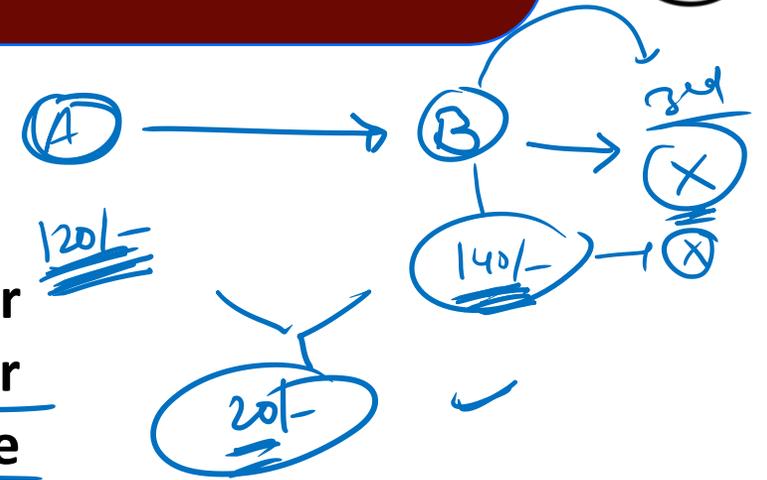
Illustrations



(j) A, having contracted with B to supply B with 1,000 tons of iron at 100 rupees a ton, to be delivered at a stated time, contracts with C for the purchase of 1,000 tons of iron at 80 rupees a ton, telling C that he does so for the purpose of performing his contract with B. C fails to perform his contract with A, who cannot procure other iron, and B, in consequence, rescinds the contract. C must pay to A 20,000 rupees, being the profit which A would have made by the performance of his contract with B.

Illustrations

(k) A contracts with B to make and deliver to B, by a fixed day, for a specified price, a certain piece of machinery. A does not deliver the piece of machinery at the time specified, and in consequence of this, B is obliged to procure another at a higher price than that which he was to have paid to A, and is prevented from performing a contract which B had made with a third person at the time of his contract with A (but which had not been then communicated to A), and is compelled to make compensation for breach of that contract. A must pay to B, by way of compensation, the difference between the contract price of the piece of machinery and the sum paid by B for another, but not the sum paid by B to the third person by way of compensation.

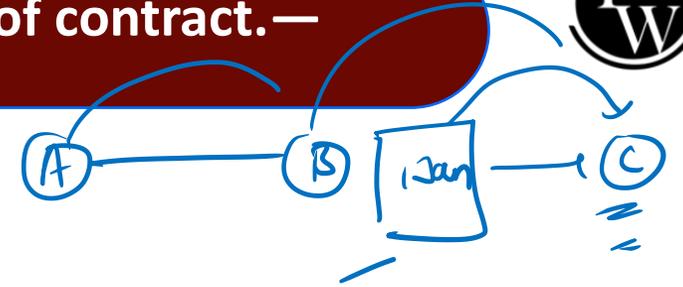


Illustrations

(l) A, a builder, contracts to erect and finish a house by the first 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 first of January, it falls down and has to be re-built 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 the breach of his 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.



(m) A sells certain merchandise to B, warranting it to be of a particular quality, and B, in reliance upon this warranty, sells it to C with a similar warranty. The goods prove to be not according to the warranty, and B becomes liable to pay C a sum of money by way of compensation. B is entitled to be reimbursed this sum by A.

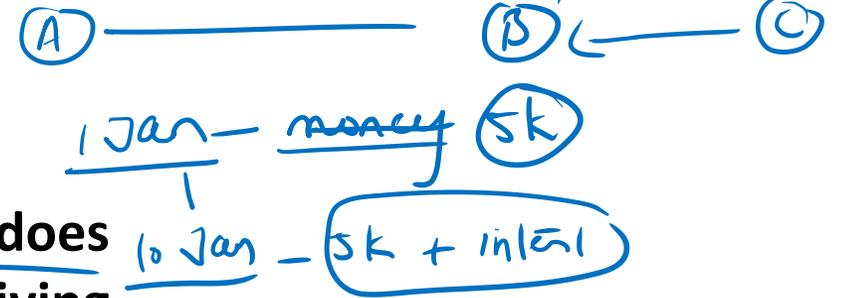


Illustrations

(n) A contracts to pay a sum of money to B on a day specified. A does not pay the money on that day, B, in consequence of not receiving the money on that day, is unable to pay his debts, and is totally ruined. A is not liable to make good to B anything except the principal sum he contracted to pay, together with interest up to the day of payment.



(o) A contracts to deliver 50 maunds of saltpetre to B on the first of January, at a certain price. B afterwards, before the first of January, contracts to sell the saltpetre to C at a price higher than the market price of the first of January. A breaks his promise. In estimating the compensation payable by A to B, the market price of the first of January, and not the profit which would have arisen to B from the sale to C, is to be taken into account.



Illustrations

(p) A contracts to sell and deliver 500 bales of cotton to B on a fixed day. A knows nothing of B's mode of conducting his business. A breaks his promise, and B, having no cotton, is obliged to close his mill. A is not responsible to B for the loss caused to B by the closing of the mill.

A ————— B
500 bales

(q) A contracts to sell and deliver to B, on the first of January, certain cloth which B intends to manufacture into caps of a particular kind, for which there is no demand, except at that season. The cloth is not delivered till after the appointed time, and too late to be used that year in making caps. B is entitled to receive from A, by way of compensation, the difference between the contract price of the cloth and its market price at the time of delivery, but not the profits which he expected to obtain by making caps, nor the expenses which he has been put to in making preparation for the manufacture.

A ————— B
1 Jan Cap
100 mts

Illustrations

(r) A, a ship-owner, contracts with B to convey him from Calcutta to Sydney in A's ship, sailing on the first of January, and B pays to A, by way of deposit, one-half of his passage-money. The ship does not sail on the first of January, and B, after being in consequence detained in Calcutta for some time and thereby put to some expense, proceeds to Sydney in another vessel, and, in consequence, arriving too late in Sydney, loses a sum of money. A is liable to repay to B his deposit, with interest, and the expense to which he is put by his detention in Calcutta, and the excess, if any, of the passage-money paid for the second ship over that agreed upon for the first, but not the sum of money which B lost by arriving in Sydney too late

H.W.

LAW

Sec 74. Compensation for breach of contract where penalty stipulated for.—



When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for.

Explanation.—A stipulation for increased interest from the date of default may be a stipulation by way of penalty.

LD

25k

Sum name

LD

↓

///

Boq

10lac

max ✓

Penalty

forwards

penalty

1 Jan - default
31 Oct - (10) - interest

Exception.—When any person enters into any bail-bond, recognizance or other instrument of the same nature, or, under the provisions of any law, or under the orders of the 2 [Central Government] or of any 3 [State Government], gives any bond for the performance of any public duty or act in which the public are interested, he shall be liable upon breach of the condition of any such instrument, to pay the whole sum mentioned therein.

→ Bond / TIC — Bail

Explanation.—A person who enters into a contract with Government does not necessarily thereby undertake any public duty, or promise to do an act in which the public are interested.

Illustrations

(a) A contracts with B to pay B Rs. 1,000, if he fails to pay B Rs. 500 on a given day. A fails to pay B Rs. 500 on that day. B is entitled to recover from A such compensation, not exceeding Rs. 1,000, as the Court considers reasonable.

(A) ————— (B)
500/- (X)
(P) — 1000/- double

(b) A contracts with B that, if A practises as a surgeon within Calcutta, he will pay B Rs. 5,000. A practises as a surgeon in Calcutta. B is entitled to such compensation; not exceeding Rs. 5,000, as the Court considers reasonable.

(A) ————— (B)
5K

(c) A gives a recognizance binding him in a penalty of Rs. 500 to appear in Court on a certain day. He forfeits his recognizance. He is liable to pay the whole penalty.

exception

LID

BSC

Illustrations

Explanation -

A

B
1000/-

12%

75%

(d) A gives B a bond for the repayment of Rs. 1,000 with interest at 12 per cent. at the end of six months, with a stipulation that, in case of default, interest shall be payable at the rate of 75 per cent. from the date of default. This is a stipulation by way of penalty, and B is only entitled to recover from A such compensation as the Court considers reasonable.

(e) A, who owes money to B a money-lender, undertakes to repay him by delivering to him 10 maunds of grain on a certain date, and stipulates that, in the event of his not delivering the stipulated amount by the stipulated date, he shall be liable to deliver 20 maunds. This is a stipulation by way of penalty, and B is only entitled to reasonable compensation in case of breach.

Illustrations

(f) A undertakes to repay B a loan of Rs. 1,000 by five equal monthly instalments, with a stipulation that in default of payment of any instalment, the whole shall become due. This stipulation is not by way of penalty, and the contract may be enforced according to its terms.

(g) A borrows Rs. 100 from B and gives him a bond for Rs. 200 payable by five yearly instalments of Rs. 40, with a stipulation that, in default of payment of any instalment, the whole shall become due. This is a stipulation by way of penalty.

(A) ← (B)
1000/-
5 Inst

(A) ← (B)
100/-
200/-

Scope of Section 74 of the Indian Contract Act, 1872

Fateh Chand v. Bal Kishan Das

Court stated that it deals with damages divided into two classes of cases:

Firstly, if there is a pre-determination of the amount to be paid in the event of contract breach.

And secondly, where the contract may contain any further penalty stipulation.

74 - what-?

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

Illustration

A, a singer, contracts with B, the manager of a theatre, to sing at his theatre for two nights in every week during the next two months, and B engages to pay her 100 rupees for each night's performance. On the sixth night, A wilfully absents herself from the theatre, and B, in consequence, rescinds the contract. B is entitled to claim compensation for the damage which he has sustained through the non-fulfilment of the contract ✓

64 - Voidable
- Compensation 75
- Benefits - restore

Maula Bux v. Union of India

The Supreme Court held that a claimant may have to provide evidence to prove the actual loss or damage resulting from the breach, if the adjudicating authority believes that compensation can be calculated in accordance with the settled rules in the given facts and circumstances.

Claimant - Onus /
duty
L/D

Common Cause vs. Union of India (1999)

The term "damages" was explained by the Supreme Court as a form of compensation due to a breach, loss or injury caused to the plaintiff

Damage (ग़ाबत)

ग़ाबत

Planche v Colburn 1831

5*

The claimant agreed to write a book on costume and armour for the defendant as part of a series called 'the Juvenile Library'. The agreed contract price was \$100 to be payable on completion. The claimant commenced writing and had completed a great deal of it when the defendant cancelled the series. The defendant refused to pay the claimant despite his undertaking and the fact that the claimant was still willing to complete. The claimant brought an action to enforce payment. Held: The claimant was entitled to recover \$50 because the defendant had prevented the performance.

38 ✓

Hochster v De la Tour (1853)

Applicants for three months from first June 1852 agreed that the defendants Messenger. 11 May in the work on the defendant did not want that rejected his services and wrote the manuscript for compensation. Scored another service contract by the complainant, but not until 4 July start. The plaintiff sued for breach of contract on 22 May Employees of the contract due by 1 Begin in June, when the card is not a breach of contract claims to 22 days

Held: Before the injury occurred in the application until the parties of its intention not to perform the contract if the innocent party would you mind passing. They shall immediately or can choose their continued violation of this Agreement to wait.

Among them immediately or to seek their own contracts before they are waiting for a breach of the law continue to enter into the innocent party to make a choice to make. This can be beneficial or harmful:

Frustration:- Change of circumstances is not the fault of one party performing the contract or a contract for the purpose of those activities where deprivation is probably a contract can be frustrating.

When an agreement, which was binding on the parties to it, ceases to bind them, the contract is said to be discharged.

A contract may be discharged in the following ways:

✓
By Performance

✓
By Breach Of contract

✓
By Mutual Consent

✓
By Impossibility
(Frustration of contract)

Actual Breach (on date)

Anticipatory Breach (before date)

Novation Of contract (New)

Remission of contract (cancel)

Death or Incapacity of a party

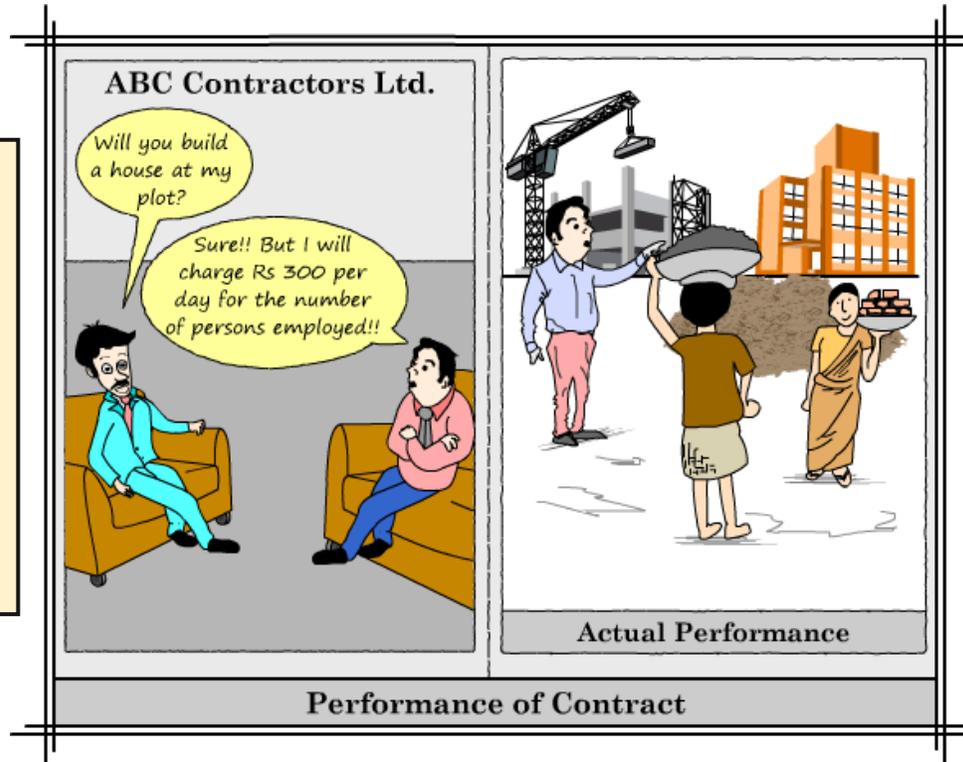
Due to Change of Circumstances

Meaning

Each party to a contract is---
bound to perform his part of the obligation.
After the parties perform their part under the contract, the contract comes to an end.

Explanation

If only one party performs his obligation,
HE ALONE IS DISCHARGED,
though he gets the right of action against the other party who is guilty of breach.

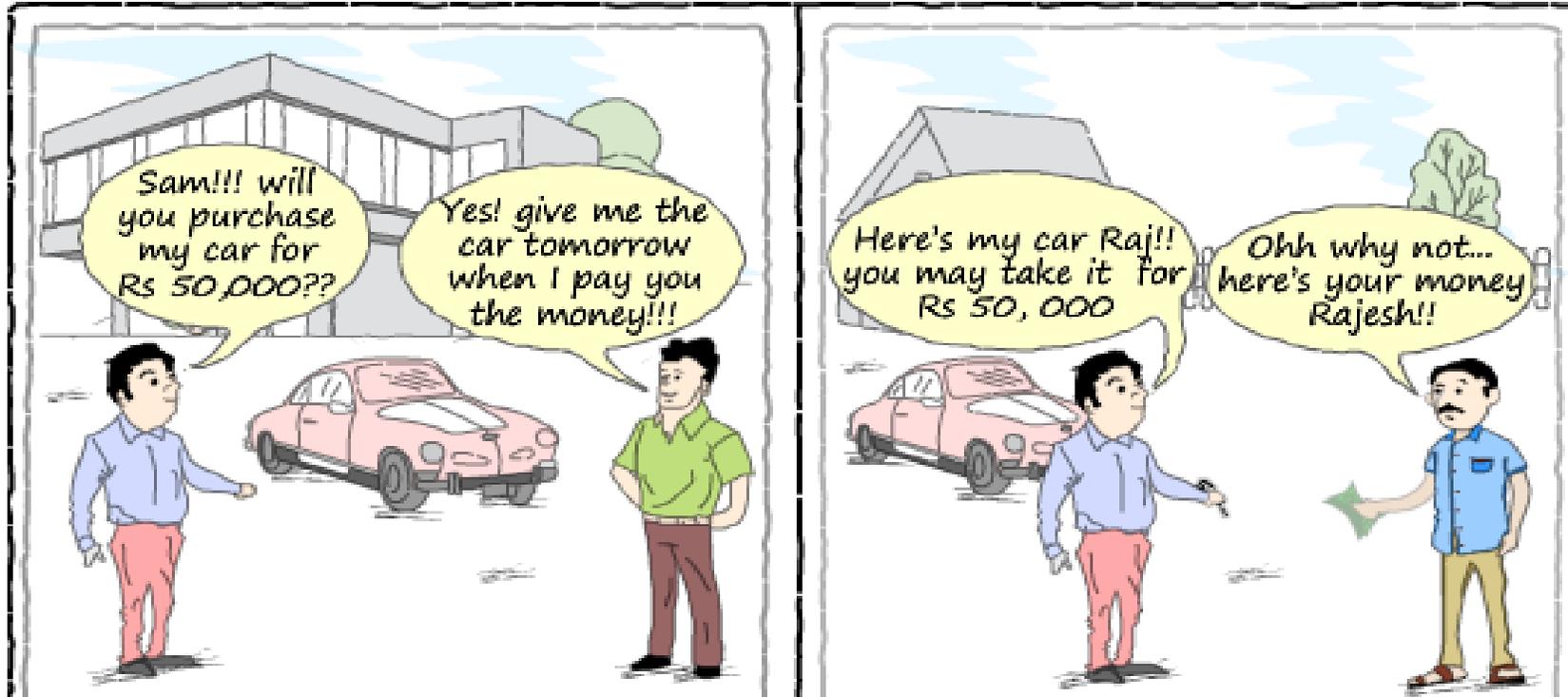


Actual Breach

Non – performance of the contract on the due date of performance.

Anticipatory Breach

Non – performance of the contract before due date of performance has come.



There is a breach of contract by Rajesh as he had contracted to sell his car to Sam but sold the same to Raj

Breach of Contract

Topic

(3) By Mutual Consent of parties

Novation Of contract

Remission of contract

Substitution of an existing contract with a new one

The acceptance of lesser sum than What was contracted for or a Lesser fulfilment of the promise.

1. A owes money to B under a contract. It is agreed between A, B, C that B shall henceforth accept C as his debtor, instead of A, the old debt of A to B is at an end, and new debt from C to B has been contracted.
2. A owes B 5,000 rupees. A pays to B and b accepts, in satisfaction of the whole debt, 2,000 rupees paid at the time and place at which the 5,000 rupees were payable. The whole debt is discharged.

If the performance of a contract becomes impossible, the contract comes to an end and is called a void contract.

A contract that is

- 1. possible of performance and**
- 2. lawful when made,**

but the same becomes impossible or unlawful thereafter due to some supervening event, stands discharged.

Doctrine of Frustration

When performance of the contract becomes impossible, the purpose that the parties have in mind is frustrated. This is known as Doctrine of Frustration.

EXAMPLE:- If A agrees to sell B 100 bushels of corn, A's own crops are destroyed in an accident, A is still contractually obliged to sell B 100 bushels of corn because A can still obtain the corn elsewhere for the sale.

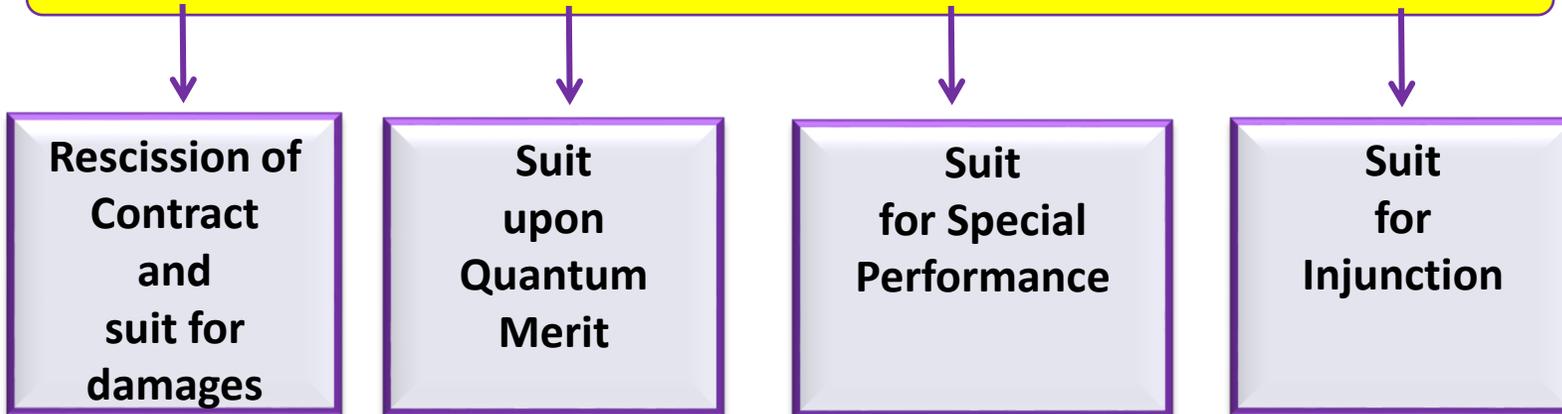
Remedies for breach of contract



Remedies by way of specific performance of Contract and Injunction restraining the other party from making a breach of contract are contained in the Specific Relief Act.

‘Ubi jus ibi remedium’ means--- where there is right, there is remedy

Remedies For Breach of Contract



Rescission of Contract and Suit for Damages



When there is breach of contract-
SUFFERER PARTY

1. Can rescind the contract and
2. Need not have to perform his part of obligation

But in case-

aggrieved party intends to sue the guilty party for damages for breach of contract,

-----he has to file the suit for rescission of contract.

Illustration

A Contracts to supply 200 bags of rice to B for Rs. 9000 on 12 January. If A fails to supply the goods on appointed day, B need not pay the price. B can file the suit to rescind the contract and also suit for damages from A.



In Hadley v. Baxendale the plaintiff mill had been stopped due to the breakage of a crankshaft. The broken shaft had been sent to Greenwich as a pattern for preparing the new one. The defendants, who were common carriers, agreed to carry the broken shaft to Greenwich. The only information given to the carriers was that the article to be carried

was the broken shaft of a mill and the plaintiffs were the millers of that mill. Owing to the defendant's negligence the delivery of the shaft was delayed. Due to this delay the mill remained stopped for a longer time than it would have been, had the shaft been delivered without any delay.

The plaintiffs sued to recover damages for the loss profits arising out of the delay. It was held that it could not be contemplated that the mill would be stopped in the usual course of things, by sending the shaft, as the millers might have another shaft in reserve. Moreover, the plaintiffs to the defendants did not communicate the special circumstances. The plaintiffs were, therefore, not entitled to recover the special loss but only general damages.

Suit upon Quantum Meruit



means

**“As much as is earned” or
“in proportion to the work done”.**

Ordinarily if a person having agreed to do some work or render some services, has done only a part of what he was required to do, he cannot claim anything for what he has done.

Exception to 'Quantum Meruit'

If the incomplete performance of a party is of some value and merit

**then this party to
entitled to
receive remuneration**

In case a contract is completely performed, but the performance is poor

**other party can make a
deduction of the bad
work**

- 1. If A agree to deliver B, 500 bags of cement & when A has already delivered 100 bag, B refuses to accept any further supply, A can recover from B the value of cement which he has already delivered.**

- 2. Akshay, an owner of a magazine engaged Salman to write a book to be published as a series in his magazine. After a few series were published, the publication of the magazine was stopped. It was held that Salman could claim payment on a quantum meruit for the part already published.**

Suit for Specific Performance



means

“The actual carrying out of the contract as agreed”

By filing a suit in court

Under certain circumstances an aggrieved party may file a suit for specific performance, i.e., for a decree by the court directing the defendant to actually perform the promise that he has made.

Such a suit may be filed either instead or in addition to a suit for damages.

Suit for Injunction



Means

“An order of a court restraining a person from doing a particular act”

1. It is a mode of securing the specific performance of the negative terms of the contract.
2. The court may, issue an injunction and restrain him from doing, what he promised not to do.
3. Thus ‘injunction’ is a preventive relief.

A, agreed to sing at B’s theatre for three consecutive months from 21st April and to sing for no one else during that period. Subsequently she contracted to sing at C’s theatre and refused to sing at B’s theatre. On a suit by B, the court refused to order specific performance of her positive engagement to sing at the plaintiff’s theatre, but granted an injunction restraining A from singing elsewhere and awarded damages to B to compensate him from the loss caused by A’s refusal.

Types of Damages

General damages

Damages that naturally arise from the breach of contract

Special damages

Damages arise due to unusual circumstances

Exemplary damages

Damages are awarded as a form of punishment to the guilty party

Nominal damages

Awarded when no actual financial loss has been suffered

Liquidated damages

Fixed sum of damages to be paid in case of a breach

61 →
75 →
39 →
IP → Voidable
15-19A
39
53
55(2)

सत्यमेव जयते

