Unit 5 - Breach of Contract & Remedies

Refer sticky chart

→ **Anticipatory Breach of Contract**

It is a breach of contract occurring before the time fixed for performance has arrived. When the promisor altogether refuses to perform his promisee and signifies his unwillingness to perform contract even before the schedule/due date

→ It may take either of following ways:-
1. Expressly by words ~~or~~ spoken or written
2. Impliedly by conduct of ~~pass~~ one of parties.

According to Section 39 of ICA deals with anticipatory breach and provides as follows, " When a party to a contract ~~ref~~ has refused to perform or disable himself from performing, his promise in its entirely, the promisee may put an end to the contract, unless he has signified, but words or conduct, his acquiescence in its continuance

eg- Where A contracts with B on 15 July, to supply 10 bales of cotton on 14 Aug and on 30 July he said he will not able to supply it (Express breach of Contract)

Where A agrees to sell his white horse to B for ₹50,000/- on 10 Aug, but sell horse to C on 1 Aug (anticipatory breach of contract by impliedly (conduct)

→ **Effect of anticipatory Breach** (actual breach)

1. To either treat contract as rescinded and sue other party for damages from breach of contract without waiting for due date

2. He may elect (choose) not to rescind but to treat contract as still operative and wait for time of due date ~~thresh~~ hold other party responsible for consequences of non-performance

But in this case, ~~if~~ he ~~so~~ ~~decides~~ he will keep contract alive for benefit of other party as well as his own, and the guilty party if he decides on re-consideration may still perform his part of contract & can also take advantage of any

asking judge to reconsider or change court order (after decision issued)

supervening impossibility

at time was entered was capable of performance i.e become subsequent impossible to perform

which may have effect of discharging contract

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→ **Actual Breach** :-

In the contrast of anticipatory breach, it is the refusal of one of the parties to perform his promise on scheduled date. The parties to a lawful contract are bound to perform their respective promises. But when one party breaks the contract by refusing to perform his promise, he is said to ~~be~~ have committed a breach.

In that case, other party to contract obtains a right of action against one who has refused to perform his promise.

→ Actual breach may be committed:-

a) at time ~~of~~ when performance of Contract is due:-
eg - A agrees to ~~sell~~ deliver 10 bags of sugar to B on 1st Feb. On said day, he fails to supply. Breach committed by A at the time when performance becomes due.

b) ~~at~~ During performance of Contract:-
It occurs when during performance of contract, one party fails or refuses to perform his obligation under it by express or implied Act.

Suit for damages

Compensation for Loss/damage caused by breach of Contract

→ When the Contract has been broken, the party who suffers loss or damage by such breach is entitled to receive, from the party who has broken contract, compensation of any loss or damage caused to him, which naturally arises in usual course from such breach or which the parties knew, when they made the contract, to ~~be~~ be likely to result from breach of it.

→ The special damages can claimed only on a previous notice and no compensation is given for any remote and indirect loss.

Types of Damages

- General / Ordinary
- Special
- Vindictive / Exemplary
- Nominal
- damages for deterioration caused by delay
- Pre-fixed

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(1) Ordinary damages:- When the ~~party to a contract~~ contract has been broken, party who suffers by such breach is entitled to receive, from such who has broken the contract, compensation for any loss or damage cause to him thereby, which naturally arose in usual course of events, or which parties already know, when they made the contract, to be likely to result from breach Section 73
(No compensation for remote / indirect loss sustained by reasons of breach)
eg - A agrees to sell to B of rice at ₹5000/bag, after 2 months (delivery). On date of delivery, price rise upto ₹5500/bag.
B can claim ₹500 as ordinary damages arising directly from breach

(2) Special damages:- Where a party already gives notice to another party about the special circumstances ~~arising~~ affecting the contract, then other selling party will be liable for ordinary damages arising naturally and from breach but also special damages.
eg - A delivered a machine to B, to be delivered to A's mill without delay. A also mentioned mill has stopped due to want for machine B unreasonably delayed delivery and in outcome A lost a govt. contract which was not known to B.
→ In this case, A is entitled to receive avg amount of profit (compensation) but he can't recover loss due to govt contract

(3) Vindictive / exemplary damages:-
Only in 2 cases it may be awarded
1, for breach of promise to marry because it causes injury to his / her feelings
2, for wrongful dishonour by banker of his customer's cheque and due to wrongful dishonour to the drawer, it causes loss of credit and reputation of Account holder.
Gibbons vs. West minister Bank
(a) business man whose credit has suffered will get V- damages.

(4) Nominal damages:- are awarded where plaintiff has proved that there has been breach of contract but he has not suffered any real damage, just to establish right to decree (to make realise party ne galt kiya)
It is awarded for breach. The amt. may be a rupee / 10 paise

5) Damages for deterioration caused by delay:-
It caused to goods by delay of delivery, damages can be claimed from carrier even without notice.
The word 'deterioration' not only means physical damages to goods but it also comprises loss of special opportunity for sale.

6) Prefixed damages:- Sometimes parties stipulate, at time of its formation that breach of them by any of them, a certain amt will be payable as damage.
It may amount to either liquidated damages (i.e reasonable estimate of loss in case of breach) or a penalty (amt arbitarily fixed as damages payable)
Section 74 provides if sum is written in contract as the amt to be paid in case of breach, aggrived party is entitled to receive from party at fault not exceeding such sum.

eg- If penalty is ₹1,00,000 and actual loss is 70,000 then only 70,000 can be claimed.
But If loss is 1,50,000 and 1,00,000 shall be recoverable

eg- X promised, a priest to pay ₹10,000 as charity. Priest on X promised incurred certain liabilities to extent of ₹7500. he can only recover ₹7500

Penalty and liquidated damages

Penalty	Liquidated damages
Both are payable on the occurrence of a breach of contract	
1) Sum payable is so large (Larger sum is penalty) more delay in payment exorbitant and is penalty	1, Pre-estimate of damage (essence)
India Law does not make any distinction between Penalty & liquidated damages	
2, essence of penalty is payment of money stipulated as a terrorem of offending party	

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Penalty and Liquidated damages (section 74)

According to Indian Law, it makes no distinction between penalty and liquidated damages. Courts of India only rewards a resonable compensation not exceeding sum mentioned

→ Section 74 lays down if both parties have fixed the damages it will be, court will never allow more, it only allows less.

→ A decree is to be passed only for reasonable compensation not exceeding sum so mentioned.

Exception → Where any person gives any bond to central/state govt. for performance of public duty in which public are interested

Remedies for breach of contract

1. **Recission of Contract**: In the case of breach of contract by one party, the plantiff may treat it as rescinded / discharged (khtm). In such case he is entitled to compensation for any loss or damages suffered due to breach of contract and is absolved / free of all his obligations under contract

eg - A promise B to deliver 10 bags of cement. B agreed later on failed to deliver. B is discharged from liability to pay price.

2. **Quantum Meruit** :- When one person has rendered services for another in any circumstances which indicate an understanding between them that is to be paid for although no remuneration is fixed, the law will promise to pay. "Quantum Meruit" i.e as much as party doing the services has deserved.

It means in simple words whatever you have performed you are required to get compensation for whatever you have [illegible]

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It covers a case where a party injured by breach is authorized to get done party but not all of work which he is bound to do under contract and required to be compensated for the value of work done

→ For application of this doctrine, 2 conditions must be fulfilled:-

1, The original contract must be discharged

2, claim must be brought by a party not at default

Damages are compensatory while Quantum Meruit is Restitutory

Claim arises in such cases:-

a, when an agreement is void from inception period or becomes void

b, when something is done without any intention to do so gratuitously

c, where there is Express/implied contract but no agreement as to remuneration

d, when one party refuses to perform

e, where contract is divisible and party not in default has enjoyed benefit of past performance

f, when an indivisible contract for lumpsum is completely performed but badly person who has performed can claim lumpsum, but other party can make deduction for bad work.

eg - X wrongfully revoked Y's (agent) authority before Y could complete his duties. Held, Y can recover for the work he done & expenses he incurred in course of his duties as an agent

Example

eg
Buyer & seller 10 kg wheat contract
→ He refuse to supply 5 kg. Jitna supply kiya hai utna price can claim

Cake base is ready but other party cancel order then the party NOW which is not at fault can on the basis of Quantum meruit he can sue and can claim damages as much as he has earned

→ Cake is indivisible

⇒ If cake maker says, I am not able to make it then other can sue me

3) **Suit for specific performance:-** In the case of breach, the damages are not only the adequate remedy in contract, the court may in its discretion on a suit for specific performance direct party in breach to carry out his promise acc to terms of contract

4) **Suit for injunction:-** Where a party to a contract is negating the terms of contract, court may pass/issue an injunction order restrain him from doing what he promised not to do

eg- N, a ~~film~~ singer star agreed with B to perform at his theatre 2 months, on a condition that during that period he would not perform anywhere.
B could move to the court for grant of injunction restraining A from performing in other places.

→ Party rightfully rescinding contract, entitled to get compensation (section 75)
A person who rightfully resinds a contract is entitled to compensation for any damage which he has sustained through non-fulfillment of contract.

eg- A, singer, contract with B, to sing song at his theatre for 2 nights every week for next 2 months.
On 6th night, A willfully absents herself from theatre, in consequence, rescinds contract. B is entitled to claim compensation for damage which he has sustained through non-fulfillment of Contract.

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Contingent & Quasi contracts - Unit-6

Revision lines

20/10/23

According to Section 31:-

→ A contract to do or not to do something, If some event, collateral to such contract, does or does not happen."

→ Contract may be absolute or contigent where promisor undertakes to perform the contract in any event without any condition. such as contract of insurance, idemnity, guarantee

eg- A makes contract with B to buy his house if he is able to secure to bank loan

Here main performance of contract is dependent upon happening or non-happening of future uncertain event

→ Collateral event- an event which is neither a performance directly promised as part of Contract, nor the whole consideration for promise." The liability arises only on happening of collateral event

eg - A agrees to transfer his property to B if her wife Ldies

Essentials:-

a, performance would dependent upon happening or non-happening of some event - Condition may be precedent or subsequent

eg- A promises to pay ₹25,000 to B if it rains on next week

b, Collateral event:- The event is neither performance promise nor the consideration

c, Contigent event should not be a mere will of promisor:- event should be contingent in addition to being the will of promisor

eg - If A promises to pay B ₹1,00,000 if it rains on next day and A leave Delhi for Mumbai on day, it is a contingent contract, because going to Mumbai is an event within A' will, but raining is not merely his will

d, Event must be uncertain:- It must be a uncertain event depend upon happening or non-happening of future collateral events..

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Rules Relating to enforcement (Refer PPT e.g Page no. 1.222)

a, **enforcement of contracts contingent on an event happenings:-**
When a contract implies happening of future event, contingent contract cannot be enforced until or unless the future contingent event happens. If the event becomes impossible then contract is void

Section 32 → says, "where a contingent contract to do or not to do anything if an uncertain event happens, it can't be enforced by Law unless or until event has happend. If event becomes impossible, contract becomes impossible."

e.g.- A agrees to sell oats to B if his ship arrives. If ship sinks, the contract becomes impossible & void

b, **enforcement of contracts contingent on an event not happening**

Section 33 says that " where a contingent contract is made to do or not non-happening if an uncertain future event does not happen, it can be enforced only when happening of event becomes impossible and not before

eg- If ships does not return / sinks, contract becomes enforceable only if ↑

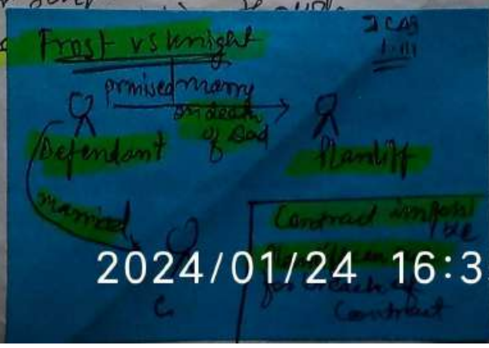
eg Mr Spike already offered A to purchase his house and if A does not purchase Spike will sell it to Mr tom.

c, **Contract would ceases to be enforceable if it is contingent upon Conduct of living person when that person does something to make event impossible to perform :-**

Section 34 → says, " if a contract is contingent upon as how a person will act an unspecified time, the event shall be considered to have become impossible when such person does anything which renders it impossible that he should so act within any definite time or otherwise than under further contingencies"

eg. Where P (father of Deepika) agrees to pay a amount to Rk (Ranbir kapoor) if Rk marries his daughter. D act of In such case Deepika marries Ranbir Singh as event impo... marrying has rendered event impossible if D divorse RS

(frost vs Knight)



enforcement of
d, Contigent contract on happening of event within fixed time,

Section 35 says" where a contingent contract to do or not to do anything if an uncertain happening of event within a fixed time, becomes void, at expiration of time fixed, such event has not happend or if before time event becomes impossible.

eg A promises to B if his ship arrives on or before 10th Jan then he will sell.
If shipes arrives after 10 or sinks at mid date, event becomes impossible and contract void

e, enforcement of Contingent contract on nothappening within time fixed

Section 35 says where a contingent contract to do or not to do something if event cannot happens within time fixed, may be enforced by law when time fixed has expired, and such event has not happend /before time fixed has expired, if it becomes certain that such event will not happen"

eg If A ship doesnot arrive till 10 Jan then he will sell godown wheat to B.
It is enforceable if event ~~happens~~ doesnot happens within time / becomes impossible before fixed time (sinks).

enforcement of
f, Contingent contract on an impossible event:-

Section 36 says," contingent agreement to do or not to do something if ~~event~~ impossible event happens are void, whether impossibility of event is known or not to parties at ~~time~~ the time it is made

eg:- A agrees to pay ₹ 1,00,000 if sun rises in west to B

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Refer sticky note

Quasi Contracts

(law resembles it a contract and imposes Obligation to person to perform it) Revision time?

It is not an actual contract but law resembles (Law enforces them as if they were contracts) it as a contract and created by law under some circumstances. Law imposes certain obligation to such person where no real contract exists.

There is no intention of party to make a contract.

→ They are based on principles of equity, justice & good conscience (Also known as constructive contracts) even there is no acceptance, consent, offer, lawful consideration promised

"A quasi/constructive contract rest upon the maxims, "No man must grow rich out of another person's loss."

(eg) A pays some money/transfer to account by mistake to B. B is bound to return the money

(eg) A fruit parcel delivered under a mistake to R who consumes who thought as for him. R must pay for it.

(Although there is no agreement between R & A)

In such cases law resembles it as Quasi Contract & imposes certain obligation

a)

- Claim for necessaries supplied (Section 68)
- Payment by an interested person (Section 69)
- Obligation of person enjoying benefit of non-gratuitous act (Section 70)
- Responsibility of finder of goods (Section 71)
- Money paid by mistake or under coercion (Sec 72)

a) claim for necessaries supplied to person incapable of contracting

If a person is incapable of entering into contract or anyone whom he is legally bound to support, is supplied by another person with necessaries suited to his condition, the person who has furnished with supplies is entitled to be reimbursed from property of such incapable person

nuksan ki bharpai (claim)

→ To establish his claim supplier must prove not only that goods were supplied to minor or lunatic person but also that they were suitable to his actual requirements in the station of life

(eg) - A supplied with necessary (reimbursed from B's property)

b) Payment by an interested person - Section 69

A person who is interested in payment of money which another is bound by law to pay (any tax etc) and who therefore pays it, is entitled to reimbursed by other (no personal contract) contractually operation by law

eg -

c) obligation of person enjoying benefits of non-gratuitous act - Section 70 says, "where a person lawfully does anything for another person, or delivers anything to him without intending to do so gratuitously and such person enjoys the benefit thereof, latter is bound to pay compensation to former in respect of thing done or delivered.

→ The plaintiff must prove to suit:-
a) that he had done act or had delivered thing lawfully
b) he did not do so gratuitously
c) other person enjoys the benefits

eg - A tradesman, leaves goods by mistake - B treats goods as his own. he is bound to pay by him.

(d) Responsibility of finder of goods :- Section 71 (Refer sticky note

A person who finds goods belonging to another and takes them into his custody is subject to same responsibility as if he were a bailee (Refer sticky note)

Finder of lost good has:- (implies duty of care)
a) to take care of property as man of ordinary prudence would take judgement
b) no right to appropriate goods
c) to restore goods if owner is found

Hollins vs Howler

utilize them with consent of buyer & seller

R (H) picked a diamond in F shop and handed over to keep till owner found.
After some weeks H went to F's shop to get back diamond (F refused to back)
H was entitled to retain goods

(e) Money paid by mistake or under coercion

(Section 72) A person to whom money has been paid or anything delivered by mistake or coercion must return it."

(Every kind of payment of money or delivery of goods for every type of mistake) is recoverable

eg - A payment of municipal tax made under mistaken/misunderstanding in terms of lease can be recovered from municipal authority

Salestax officer vs Kanheiyalal