

UNIT 10

BREACH OF CONTRACT AND ITS REMEDIES

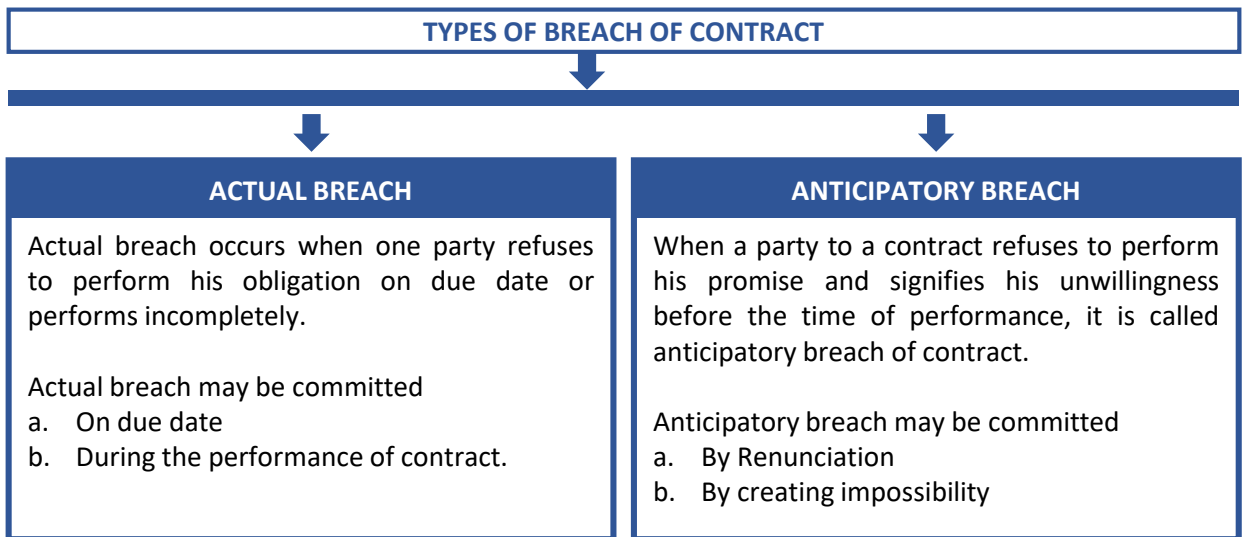
MEANING OF BREACH OF CONTRACT

Breach of contract means failure of a party to perform his or her obligation under a contract.

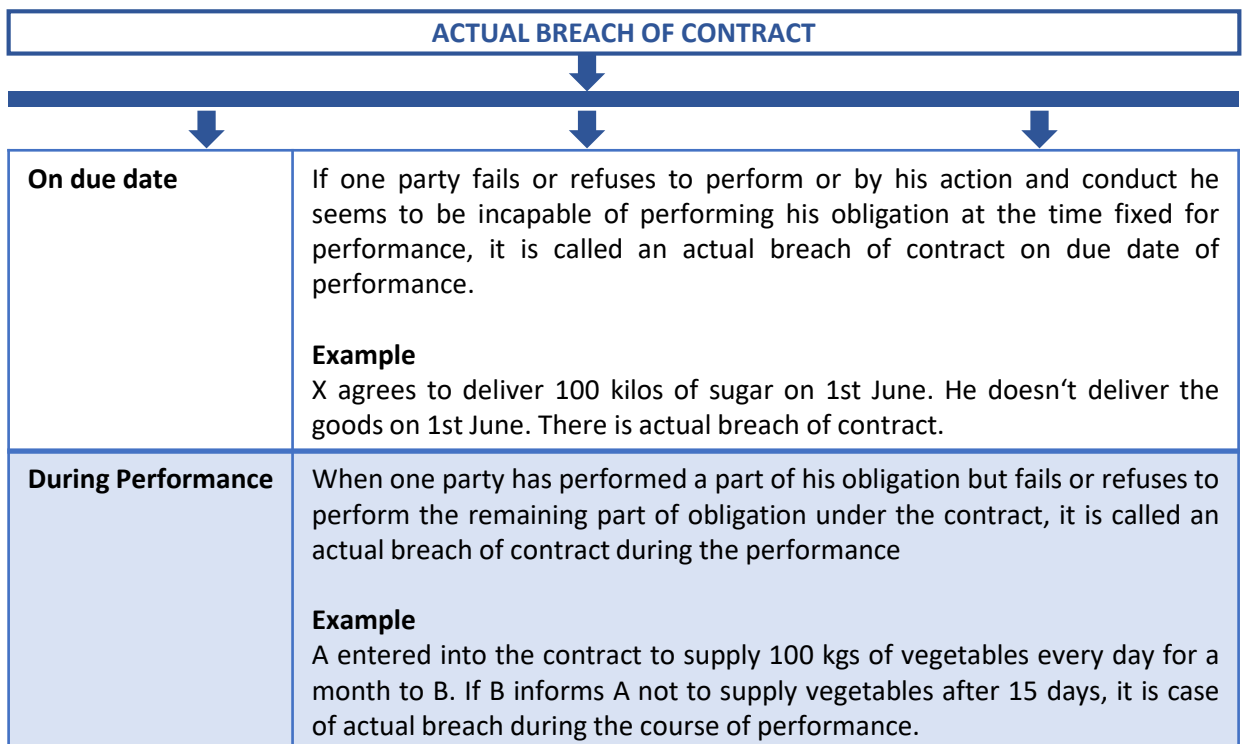
As per **Section 535** of MCCA, breach of contract is deemed to occur in the following cases:

- in case any party to a contract does not fulfil liability under the contract, **or**
- in case any party to a contract gives a notice to the other party that he/she will not perform the work to be performed under the contract, **or**
- in case his/her action or conduct shows that he/she is incapable of performing the work under the contract, he shall be deemed to have breached the contract.

TYPES OF BREACH OF CONTRACT



ACTUAL BREACH



UNIT 10

BREACH OF CONTRACT AND ITS REMEDIES

Effect of Actual Breach

The consequences of actual breach depends upon whether the time was the essence of the contract or not.

- If the time was the essence of contract, contract becomes voidable and the aggrieved party may claim damage or loss due to such breach.
- If the time was not the essence of contract, contract does not become voidable, the other party may accept performance and claim compensation for delayed performance.

ANTICIPATORY BREACH**ANTICIPATORY BREACH OF CONTRACT****By Renunciation**

It occurs when a party to an executory contract renounces his liability under the contract expressly, before the performance is due.

Example

X, a farmer agrees to sell his entire crops of 10 tons of wheat to Y, to be delivered on 20th December. Before this date he gives notice to Y that he is not going to supply the goods. Here, X has committed anticipatory breach of contract by express repudiation.

By creating some impossibility

It occurs when a promisor to an executory contract does certain acts which makes performance of his promise impossible before the time of performance.

Example

X, a farmer agrees to sell his entire crops of 10 tons of wheat to Y, to be delivered on 20th December. Before this date, he sells entire stock to Z. Here, X has committed anticipatory breach of contract by implied repudiation.

Options available to Aggrieved Party

In case of anticipatory breach, the aggrieved party has the following options:

- To rescind the contract and claim damages for breach of contract without waiting until the due date of performance. OR
- To treat the contract as operative and wait till the due date for performance and claim damages if the promise still remains unperformed.

Consequences of treating contract as operative

In case of anticipatory breach, if the aggrieved party treats the contract as operative and waits till the due date for performance, the consequences will be as follows:

- The promisor may perform his promise on or before the due date of performance and the promisee will be bound to accept the performance.
- The promisor may take advantage of the discharge by supervening impossibility arising between the date of breach and the due date of the performance and in such case, the promisee shall lose his right to sue for damages.

CONSEQUENCES OF BREACH

CONSEQUENCES OF BREACH OF CONTRACT

<p>Consequences of Breach</p>	<p>In case a party has breached the contract or in case his/her action or conduct shows that he/she has not basically complied with the contract, the other party shall not be compelled to perform the contract, and may cancel the contract by furnishing a notice thereof to the other party.</p> <p>In case the contract is cancelled, the party making cancellation of contract shall not be obliged to perform the contract.</p>
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UNIT 10

BREACH OF CONTRACT AND ITS REMEDIES

Cancellation in case of a contract having more than two parties

When there are more than two parties or authorities to the contract, it can only be cancelled in the following cases:

- a. when all the parties thereof cancel the contract **or**
- b. when the cancellation is made applying to the all the parties thereof

This is also known as **indivisible nature of the authority** to cancel the contract.

REMEDIES OF BREACH**REMEDIES OF BREACH OF CONTRACT****Meaning**

A remedy is the course of action available to an aggrieved party for the enforcement of a right under a contract.

The remedies are generally in the form of **monetary compensation** and sometimes in the **form of performance** by the defaulting parties where monetary compensation may not be sufficient.

Remedies of Breach of contract

1. Rescission of Contract
2. Suit for Damages
3. Suit for Specific Performance
4. Suit for Injunction
5. Suit for Quantum Meruit

RESCISSION OF CONTRACT**RESCISSION OF CONTRACT****Meaning**

Rescission means cancellation of the contract. In case of breach of contract, the promisee may put an end to the contract. In such a case, the aggrieved party is discharged from all the obligations under the contract and is entitled to claim compensation for the damages which he has sustained because of the non performance.

Example

X agrees to sell his horse to Y for Rs. 1,00,000, on 31st January. On the due date, X refuses to sell his horse. Y, the aggrieved party can cancel or rescind the contract and claim compensation for the damages which he has sustained because of non supply of goods on the due date.

SUIT FOR DAMAGES**SUIT FOR DAMAGES****Meaning**

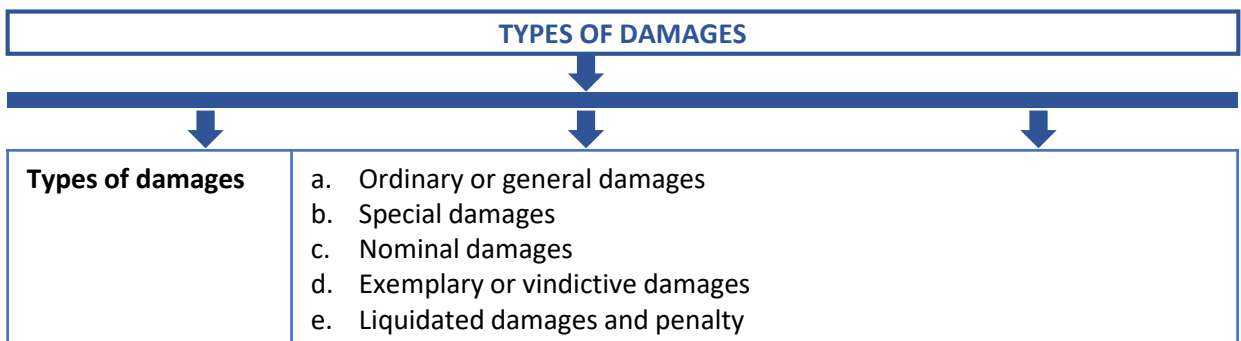
Damages are monetary compensation allowed for loss suffered by aggrieved party due to breach of contract.

UNIT 10

BREACH OF CONTRACT AND ITS REMEDIES

		<p>Damages substitute the loss suffered by the aggrieved party by monetary consideration and puts him in the same situation as he would have been in had the contract been performed.</p> <p>The main object of awarding damages is not to punish the party at fault but to put the aggrieved party in a position in which he would have been if breaching party had performed the contract and to provide compensation to the aggrieved party.</p>
Compensation of actual loss	of	In case a contract has been breached, the aggrieved party may realize from the party who has breached the contract, the actual loss or damage suffered by him/her as a result of such breach of contract of the loss or damage that the contracting parties had anticipated at the time of signing the contract.
Amount compensation mentioned	if	In case the contract provides that any specific amount or compensation shall be paid in the event of breach of contract, the aggrieved party may recover from the other party a reasonable amount not exceeding that amount.
Amount if not mentioned	not	In case the amount of compensation is not mentioned in the contract, the party making a claim for such compensation may realize a reasonable amount in consideration of the direct and actual loss or damage that has resulted from the breach of contract.
Indirect imaginary loss	or	No compensation may be recovered for any indirect or imaginary loss or damage.
Proportionate extension of time period for payment of damages		In case a contract has been signed for completing any work within a specific period, and in case provision has been made for payment of compensation for failure to complete that work within the specific period, the party paying compensation may request for extension of the period for completing the contract in proportion to the amount paid by him/her as compensation.
Other remedies exhausted	legal not	Only by reason of payment of amount of compensation for breach of contract, there shall be no adverse effect to the party in obtaining other legal remedies for the breach of contract.

TYPES OF DAMAGES



UNIT 10

BREACH OF CONTRACT AND ITS REMEDIES

ORDINARY OR GENERAL DAMAGES

ORDINARY OR GENERAL DAMAGES

Meaning	<p>It is the direct loss suffered by the injured party due to breach of contract. They arise naturally and in the ordinary course of events from the breach of contract.</p> <p>Example H owned a mill with a broken shaft. H engaged B to transport the shaft to a location at which it would be repaired and transported back. B delayed and returned the shaft after one week than the agreed time. During the period of delay, H's mill was closed and H suffered loss of profit. H sued B for loss of profit resulting from closure of the mill. It was held that B was not liable for the mill's lost profit. (Hadley v Baxendale[1854])</p>
Measure of Ordinary damages	<p>In a contract for the sale of goods, the measure of ordinary damages is the difference between the contract price and the market price of such goods on the date of breach.</p> <p>Example X agreed to supply 100kg of rice to Y at Rs. 150 per kg on 31st December. Y in turn had agreed to supply the rice to Z at Rs. 200 per kg. X had no notice of the agreement between Y and Z. X did not supply the rice on the due date. The price of rice on 31st December rose to Rs. 175 per kg. Here, X is liable to pay the loss suffered by Y in the ordinary course of event i.e. Rs. 2,500 (25* 100)</p>

SPECIAL DAMAGES

SPECIAL DAMAGES

Meaning	<p>Damages that can be awarded only in special circumstances when the defaulting party is already made aware about the loss to be suffered due to breach of contract.</p> <p>These damages are also known as consequential damages.</p> <p>Example X agreed to supply 100kg of rice to Y at Rs. 150 per kg on 31st December. Y in turn had agreed to supply the rice to Z at Rs. 180 per kg. Y had informed X about his agreement with Z. X did not supply the rice on the due date. The price of rice on 31st December rose to Rs. 175 per kg. Here, X is liable to pay the loss suffered by Y in the ordinary course of event i.e. Rs. 2,500. Additionally, he is also liable to pay special damages of Rs. 500 which arose due to special contract between Y and Z.</p>
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UNIT 10

BREACH OF CONTRACT AND ITS REMEDIES

NOMINAL DAMAGES

NOMINAL DAMAGES

Meaning

Nominal damages are small in amount. They are awarded to the aggrieved party when there is a breach of contract but the loss suffered is not substantial but to make the defaulting party aware about the credibility in the upcoming contracts.

Example

A penalty of Rs 50.

EXEMPLARY OR VINDICTIVE DAMAGE

EXEMPLARY OR VINDICTIVE DAMAGE

Meaning

This damage is paid for the inconvenience or discomfort suffered by the aggrieved party and are in the nature of punishment.

The court may award these damages in case of

- i. A breach of promise to marry, where damages shall be calculated on the basis of mental injury sustained by the aggrieved party.
- ii. Wrongful dishonour of a cheque by a banker. In case of wrongful dishonour of a cheque, the rule is smaller the amount of the cheque, larger will be the amount of damages awarded.

Example

X ordered his bank to stop payment of a particular cheque. However, the bank mistakenly encashed the cheque as a result of which another cheque got dishonoured. X can sue the bank for exemplary or vindictive damage.

LIQUIDATED DAMAGES AND PENALTY

LIQUIDATED DAMAGES AND PENALTY

Meaning

When the parties to a contract at the time of formation of contract, specify a sum which will become payable by the party responsible for breach, such specified sum is called

- i. **Liquidated Damages:** if the specified sum represents a fair and genuine estimate of the damages likely to result due to breach.
- ii. **Penalty:** if the specified sum is disproportionate to the damages likely to result due to breach.

However, here we do not differentiate between liquidated damage and penalty. The court allow only reasonable compensation not exceeding the sum specified in the contract.

UNIT 10

BREACH OF CONTRACT AND ITS REMEDIES

SUIT FOR INJUNCTION

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Meaning	<p>Injunction is an order of the court directing the party to refrain from doing something. An injunction is a preventive relief.</p> <p>As per Section 541 (1), an aggrieved party to the contract may file a complaint in court in case it becomes impossible to execute the contract because any party is about to take any action or behave in a manner contrary to the nature of the contract.</p> <p>It is particularly appropriate in cases of anticipatory breach where damages would not be an adequate relief.</p>
Injunction by Court Section 541(2)	<p>If a complaint is filed by the aggrieved party, the court may issue an appropriate order to any party to immediately stop his/her specific action or conduct in order to settle the dispute resulting from that contract according to the contract or prevailing law.</p> <p>An injunction is a discretionary remedy which courts will only grant if they feel it is just and equitable in the circumstances to do so.</p>
Consequence of non-compliance with injunction order by court	If such order is issued, the aggrieved party may also realize the additional loss or damage resulting from the failure of the other party to comply with such order. Section 541(3)
Example	X agreed to dance at Y's theatre and agreed not to dance anywhere else for 1 year. Afterwards X made a contract with Z to dance and refused to perform the contract with Y. It was held that X could be restrained by injunction. (Lumely Vs Wagner)

RESTITUTION OF CONSIDERATION

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Meaning	The remedy of restitution is based on the principle –restitution in integrum'. It means returning everything to the state as it was before'. The parties to a contract have to return the benefit to each other which were received under the contract.
Restitution can take place in	<ul style="list-style-type: none"> • if a party has already received some amount in cash or goods or any other benefits from the other party as per the contract and • the contract is terminated with the mutual consent of both parties or • it is no longer necessary to perform the contract under this Act or other prevailing laws, or • in case the contract is made void under the law or • becomes void or cancelled under this Act

UNIT 10

BREACH OF CONTRACT AND ITS REMEDIES

	then <ul style="list-style-type: none"> the cash or goods which have to be refunded after adjusting the accounts until the term of the contract expires, shall be refunded.
Consideration paid other than in cash or goods	In case consideration is other services or benefits which is paid otherwise than in cash or goods, then the receiver of such service or benefit shall pay a reasonable amount to the other party.
Recovery of legal expenses	In case consideration is other services or benefits which is paid otherwise than in cash or goods, then the receiver of such service or benefit shall pay a reasonable amount to the other party.

SPECIFIC PERFORMANCE

SPECIFIC PERFORMANCE {SECTION 540}

Meaning	<p>Specific performance means carrying out the performance according to the terms of contract.</p> <p>In case the cash compensation paid in consideration of the actual loss or damage suffered by the aggrieved party as a result of breach of contract is not reasonable or adequate, the aggrieved party may demand the execution of the contract as stipulated specific performance instead of making a claim for compensation.</p> <p>Example</p> <p>X agreed to sell an old painting to Y for Rs 50,000. Subsequently, X refused to sell the painting. Here, Y may file a suit against X for the specific performance of contract.</p>
Circumstances where specific performance shall not be instituted	<p>Notwithstanding anything contained in Sub-section (1), no claims for specific performance shall be instituted in any of the following circumstances;</p> <ol style="list-style-type: none"> In case the amount paid in cash as compensation for breach of contract is adequate; In case the court cannot supervise whether or not the work to be performed under the contract has been actually performed; In case the contract has been signed for providing services relating to personal expertise, skill or knowledge; In case the situation is such that the contract cannot be executed as stipulated; In case the party violating the contract him/herself demands that the contract be executed as stipulated.

UNIT 10

BREACH OF CONTRACT AND ITS REMEDIES

QUANTUM MERUIT

QUANTUM MERUIT {SECTION 539}

Meaning	<p>The term quantum meruit means as much as earned. In other words, it means payment in proportion to the amount of work done.</p> <p>Generally, one can't claim performance from another unless one has performed his obligation in full but in certain cases, a person who has performed some work under a contract can claim remuneration for the work which he has already done.</p> <p>The right to claim on quantum meruit does not arise out of a contract as the right to damages does. The claim for quantum meruit arises only when the original contract is discharged.</p>
Cases in which the claim of Quantum Meruit arise	<p>The various cases in which the claim of quantum meruit arise are discussed below:</p> <ol style="list-style-type: none"> In case of void agreement or contract that becomes void In case of Non gratuitous act In case of Act preventing the completion of contract In case of divisible contract In case of Indivisible contract performed completely but badly
In case of Void agreement or contract that has become void.	<p>When an agreement is discovered to be void or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it, to the person from whom he received it.</p> <p>Example</p> <ul style="list-style-type: none"> A pays B Rs 1000 in consideration of B's promise to marry C, A's daughter. C is dead at the time of the promise. The agreement is void but B must repay A Rs 1000. A contracts with B to deliver to him 250 tons of rice before the 1st of May. A delivers 130 tons only before that day and none after. B retains the 130 tons after the first of May. He is bound to pay A for them.
In case of Non gratuitous act	<p>The obligation to pay arises if the following three conditions are satisfied:</p> <ol style="list-style-type: none"> The thing must have been done or delivered lawfully. The person who has done or delivered the thing must not have intended to do so gratuitously and The person for whom the act is done must have enjoyed the benefit of the act. <p>Example</p> <p>A, a tradesman leaves goods at B's shop by mistake. B treats the goods as his own. He is bound to pay A for them.</p>
In case of act of preventing the completion of contract	<p>If a party does not complete the contract or prevents the other party to complete the contract, the aggrieved party can sue on quantum meruit.</p>

UNIT 10

BREACH OF CONTRACT AND ITS REMEDIES

	<p>Example</p> <p>C an owner of a magazine engaged P to write a book to be published as series in his magazine. After a few series were published, the publication of the magazine was stopped. It was held that P could claim payment on quantum meruit for the part already published.</p>
In case of Divisible Contract	<p>The party at default may sue on a quantum meruit if the following conditions are satisfied:</p> <ol style="list-style-type: none"> If the contract is divisible and If the party not at default has enjoyed benefits of the part performance <p>Example</p> <p>S agreed to construct a house for H for Rs 965 but he abandoned this contract after having done the work worth Rs 333. Afterwards, H got the work completed. It was held that S Could not recover anything for the work done because he was entitled to the payment only on the completion of the work.</p>
In case of Indivisible contract performed completely but badly	<p>The party at default may claim the lump sum less deduction for bad work if the following conditions are satisfied:</p> <ol style="list-style-type: none"> If the contract is indivisible If the contract is for lumpsum If the contract is performed completely and If the contract is performed badly <p>Example</p> <p>X agreed to decorate Y's flat for a lumpsum payment of Rs 20,000. X did the complete work but Y complained of faulty workmanship. It costs Y another Rs 3000 to remedy the defect. It was held that X could recover only Rs 17,000 from Y.</p>

LIMITATIONS {SECTION 503 & 544 }

The aggrieved party under this chapter may file case within two years from the date of arising cause to file case.