

## Remedies for breach of contract

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## INTRODUCTION

### Learning outcomes

The overall objective of the syllabus is to give students an understanding of the legal system and commercial laws; and build a knowledge base of corporate laws.

### Remedies for breach of contract

**LO**                    **On the successful completion of this paper, candidates will be able to demonstrate knowledge of laws relating to remedies for breach of a contract.**

LO 2.12.1            Explain the remedy

LO 2.12.2            Describe the various remedies available in case of breach of a contract

LO 2.12.3            Understand rules relating to amount of damages

LO 2.12.4            Identify and explain different kinds of damages

LO 2.12.5            Understand the remoteness of damages.

### References to Legal Acts

Section number references embedded in the learning materials refer to the following legal acts unless otherwise stated:

Act	Chapters
Contract Act 1872	3-16
Partnership Act 1932	17
Negotiable Instrument Act 1881	18
Companies Act, 2017	19-27
Securities Act 2015	22

# 1 REMEDIES FOR BREACH OF CONTRACT

## Section overview

- Meaning of remedy
- Remedies for breach
- Kinds of damages
- Rules regarding amount of damages
- Remoteness of damages

### 1.1 Meaning of remedy

A remedy can be defined as a manner in which a right is enforced or satisfied by a court when some harm or injury, recognized by society as a wrongful act, is inflicted upon an individual.

Remedies can be categorized into the following types:

- Common law remedies
- Equitable remedies
- Quantum meruit claim

#### Common law remedies

Damages and action for the price are common law remedies and are more frequently sought when a remedy is needed for breach of contract, since they arise as of a right. The object of such a remedy is not to punish the party at fault but to compensate the aggrieved party (pecuniary loss) as far as money can do so.

#### Equitable remedies

Equitable remedies are the court ordered action that directs parties to do or not to do something. In other words, equitable remedies are only appropriate in specialised circumstances e.g. where monetary damages would be inadequate compensation for the breach of an agreement. Specific performance and injunction are equitable remedies.

#### Quantum meruit claim

Quantum meruit claim is categorized as a claim in quasi contract. The aim of such an award is based on an implied agreement to pay for what has been done. Quantum meruit is likely to be sought where one party has already performed part of his obligations and the other party then repudiates the contract. Provided the injured elects to treat the contract as terminated, he may claim a reasonable amount for the work done.

### 1.2 Remedies for breach

Parties to a lawful contract are bound to perform their respective obligations. But when one of the parties refuses to perform his obligations he is said to have committed a breach of the contract.

The various remedies available to an aggrieved party are as follows:

1. Rescission of contract
2. Restitution
3. Damages
4. Specific performance
5. Injunction
6. Quantum meruit

### Rescission of contract

Rescission is the putting an end to a contract. Rescission means a right not to perform your obligation. In case of breach of a 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 damage which he has sustained because of the non-performance of the contract. [Section 39 and 75]



#### Example: Rescission of Contract

A agrees to supply 10 tons of wheat to B on 20th November. B promises to pay for the goods on its receipt. A does not supply the goods on the due date. Here, B is discharged from the liability of paying the price. B is entitled to rescind the contract and to claim compensation for the damage which he has sustained because of non-supply of goods on the due date.

### When is rescission granted?

The court may grant rescission in the following two cases:

- Where the contract is voidable at the option of the aggrieved party
- Where the contract is unlawful for causes not apparent on its face and defendant is more to blame than the plaintiff

### When is rescission not granted?

The court may not grant rescission in the following cases:

- Where the aggrieved party has expressly or impliedly ratified the contract
- Where owing to the change of circumstances, the parties cannot be restored to their original positions
- Where the third party has acted in good faith and for consideration
- Where only part of a contract is sought to be rescinded and such part is not severable from the rest of the contract

### Restitution

It means return of the benefit received by one party to the contract from the other under a void contract. When a contract becomes void it needs not to be performed by either party.



#### Example: Restitution

A pays B Rs. 1,000 in consideration of B's promising to marry C (A's daughter). C is dead at the time of promise. The agreement is void but B must repay A Rs.1,000.

### Damages

Damages are monetary compensation allowed for loss suffered by the aggrieved party due to breach of a contract. The object of awarding damages is not to punish the party at fault but to compensate the aggrieved party (pecuniary loss) as far as money can do so. [Section 73]

### Specific performance

Suit for specific performance is an equitable doctrine that compels a party to execute the agreement according to its terms where monetary damages would be inadequate compensation for the breach of an agreement.

Specific performance is a discretionary remedy, which is allowed only in a limited number of cases some of them are listed below:

- Monetary compensation is not adequate
- Actual damage cannot be ascertain due to non-performance
- It is probable that compensation in money on non-performance cannot be obtained
- There is a contract for the sale of rare commodities
- There is a contract for the sale of land / building / apartment / houses

Following are the cases where suit for specific performance is not maintainable where:

- Monetary compensation are considered as an adequate remedy
- Contract is of personal nature, e.g. contract of services
- Court cannot supervise the performance of the contract e.g. construction of building
- One of the parties is a minor
- Contract is inequitable to either party



#### Example: Specific performance

- A agreed to sell an old painting to B for Rs. 500,000. Subsequently, A refused to sell the painting. Here, B may file suit against A for the specific performance of the contract.
- A agrees to sell two rare Pakistani Handmade carpets to B for Rs. 2 million. In case of breach by A, B may compel A to perform the contract specifically, because there is no standard for ascertaining the actual damages which would be caused by the non-performance by A.

#### Injunction

Suit for injunction is also an equitable remedy demanding courts stay order. Injunction means an order of the court which abstains from wrong doing. Where a party to a contract does something which he promised not to do, the court may issue an order prohibiting him from doing so.

Thus, injunction is a preventive relief. It is particularly appropriate in case of anticipatory breach of contract where damages would not be an adequate relief.



#### Example: Injunction

- A agreed to play cricket for Apple Cricket Club during the contract period of 3 years. During the contract period, A made a contract with Orange Cricket Club and refused to play cricket for Apple Cricket Club. Here, A could be restrained by injunction from doing so.
- X, a film actress, agreed to act exclusively for Y for a year and for no one else. During the year she contracted to act for Z. Here, she could be restrained by injunction from doing so.

#### Quantum meruit

The term Quantum Meruit means “as much as earned or deserved.” In case of breach of contract the application or non-application of the term quantum meruit varies depending upon the terms of the contract. Further, the divisibility or indivisibility of performance of the contract may also be taken into account.

The aim of such an award is based on an implied agreement to pay for what has been done. Quantum Meruit is likely to be sought where one party has already performed part of his obligations and the other party then repudiates the contract. Provided the injured elects to treat the contract as terminated, he may claim a reasonable amount for the work done.

This has been discussed in detail in Chapter 10.



#### Example: Quantum Meruit

- C as owner of a magazine engaged P to write a book to be published by instalments in his magazine. After a few instalments were published, the publication of the magazine was stopped. It was held that P could claim payment for the part already published.
- 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 Rs. 100 for each night's performance. On the sixth night, A wilfully absents herself from the theatre, and B, in consequence rescinds the contract. B must pay A for the five nights on which she had sung.

### 1.3 Kinds of damages

Following are the different kinds of damages:

#### Ordinary Damages

Ordinary damages are those which arise naturally in the usual course of things from the breach itself. These damages can be recovered if the following two conditions are fulfilled: [Section 73]

- The aggrieved party must suffer by breach of contract, and
- The damage must be a direct consequence of the breach of contract



#### Example: Ordinary Damages

On 1st December; X contracted to sell and deliver 50 tons of wheat @ Rs. 8,000 per ton to Y on 1st January. On 20th December y, afterwards, contracted to sell those goods to Z at Rs. 10,000 per ton. X failed to deliver goods on 1st January when the price of the wheat was Rs. 9,500 per ton. Y is entitled to recover Rs. 75,000 [i.e. (Rs. 9,500 - Rs. 8,000) x50]. Y is not entitled to recover Rs. 1,00,000 as profit which would have arisen to Y from the sale to Z because the profit is the indirect consequence of the breach of contract.

#### Special damages

Special damages can be recovered for the loss which the parties [Section 73]

- Knew about
- At the time they made the contract
- As likely to result from such breach of contract

Special damages are due to special losses which are in the reasonable contemplation of the parties at the time of formation of contract.



#### Example: Special Damages

- 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 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 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.
- A delivers to B, a common carrier; a machine to be delivered without delay, to A's mill informing that his mill has stopped for want of the machine. B unreasonably delays the delivery of 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.

#### Exemplary (vindictive) damages

Exemplary (vindictive) damages are those which are awarded with a view to punish the wrong doer and not primarily with an idea of awarding compensation to the injured party. The court may award these damages in case of:

- a breach of promise to marry, where damages shall be calculated on the basis of mental injury sustained by the aggrieved party.
- 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. A trader may recover such damages as wrongful dishonour of cheque shall adversely affect his goodwill but a non-trader whose cheque is wrongfully dishonoured will have to prove the loss of goodwill before claiming such damages.

**Nominal damages**

Nominal damages are awarded where the injured party has sustained damage of a short but not of a substantial nature to be reckoned.

- Where the breach is technical and injured party has no intention of performing his part of the contract
- Where the injured party has not suffered any actual damage or fails to prove that he has
- Where damage is due to the fault of the injured party

**Damages for inconvenience and uneasiness**

If a party has suffered physical inconvenience and discomfort due to breach of contract, that party can recover the damages for such inconvenience and discomfort.

**Example: Damages for inconvenience and uneasiness**

H with his wife and children booked a ticket for a midnight train, to be transported to a particular place where he lived. They were, however, transported to a wrong place and they had to walk several miles on a drizzling night and as a result, his wife caught cold and he had to incur some medical expenses., It was held that he could recover compensation for inconvenience and not for medical expenses for the sickness of his wife because it was very remote consequence.

**Liquidated damages**

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 Liquidated Damages. This amount represents a genuine attempt to work out what the loss would be in the event of such a breach. [Section 74]

**Penalty**

If a contract states that a particular sum is to be paid on breach of the contract and [Section 74]

- that sum is not the genuine pre-estimate of the loss that would be suffered in the event of breach or
- that the sum is disproportionate to the actual loss likely to result due to breach this is penalty clause.
- the court can decrease but not increase the penalty stipulation.

**Stipulation for Interest**

Two parties may agree to give a specific rate of interest in case of breach of contract. [Section 74]

**Forfeiture of Security Deposit (or Earnest Money)**

A clause in a contract which provides for forfeiture of security deposit in the event of failure to perform is in the nature of a penalty. In such cases, the court may award reasonable compensation only but in case where contract is made with the government, in case of breach the government can forfeit the whole amount of the deposit as security. [Section 74]

**1.4 Rules regarding amount of damages**

- The object of awarding damages is not to punish the party at fault
- The injured party is to be placed in the same position as money can do if the contract had been performed
- The aggrieved party can recover actual loss suffered by him arising naturally.
- The fact that damages are difficult to assess does not prevent the injured party from recovering.
- Where no real loss arises nominal damages are awarded.

- If the parties fix any amount as damages in case of breach of contract then the court will allow only reasonable amount.
- It is the duty of the injured party to minimise the damage suffered.

### 1.5 Remoteness of damages

There are some losses which clearly result from the defendant's breach of contract but are considered too remote from the breach for it to be fair to expect the defendant to compensate the claimant for them.



#### **Example: Remoteness of damages**

A taxi driver is booked to take a passenger to the airport in time for a certain flight to Karachi where the passenger expects to complete a deal worth Rs. 1 million. If the taxi driver breaches the contract by arriving late, the taxi firm may be liable for expenses such as any extra cost for getting the next flight but is unlikely to be expected to compensate the passenger for the loss of Rs. 1 million.

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## 2 CHAPTER REVIEW

### Chapter review

Before moving on to the next chapter check that you now know how to:

- Discuss the various remedies available to a party in case of breach of a contract
- Explain the circumstances when rescission is granted by court
- Explain the circumstances when specific performance is granted by court
- Understand the different kinds of damages

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