

B.Com Hons. (Part 2 Paper-4)
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Topic:--Breach Of Contract

BREACH OF CONTRACT

1. Breach Of Contract Occurs When

- Any party to the contract fails to perform his part of the contract
- Any party to the contract makes it impossible for performing is obligation under the contract

2. Breach of contract may occur in two ways

- Anticipatory Breach of Contract
 - A party declares his intention of not performing the contract before the performance is due
- Actual Beach of Contract
 - On Due Date of Performance
 - During the Course f Performance

BREACH OF CONTRACT

- Protection of contractual expectations is the primary purpose of law of contract.
- These expectations are met where parties perform their respective promises, but if any one party fails to perform his obligations and breach the contract, the law provides certain remedies to the promise.

REMEDY

- A legal remedy is a court order that seeks to uphold a person's rights or to redress a breach of the law.
- When one party breaches a contract, the other party may ask a court to provide a remedy for the breach. The court may order the breaching party to pay money to the non-breaching party.

TYPES OF REMEDIES

- SUIT FOR RESCISSION
- SUIT FOR DAMAGES
- SUIT FOR QUANTUM MERUIT
- SUIT FOR SPECIFIC PERFORMANCE
- SUIT FOR AN INJUNCTION

SUIT FOR RESCISSION

- The term Rescission refers to the cancellation of contract.
- In such cases, if one party has broken his contractual relations, the other party may treat the breach as discharge and refuse to perform his part of performance.
- Thus in case of rescission of contract, the aggrieved or injured party is discharged from all his obligations of the contract.

UNDER FOLLOWING CASES THE COURT MAY REFUSE TO GRANT RESCISSION

- The parties cannot be restored to their original positions due to changed circumstances
- The party(s) has acquired rights in good faith and value during subsistence of contract.
- Only a part of the contract is rescinded and this part can't be separated from rest of the contract.
- But if a person rightfully rescinded, he is entitled to compensation for any damage which he has sustained through non fulfilment of the contract by the other party.

EXAMPLES

- **'A'** contracts to supply 10kg of tea leaves for Rs. 8,000 to **'B'** on 15 June. If **'A'** does not supply the tea leaves on the appointed day, **'B'** need not pay the price. **'B'** may treat the contract as rescinded and may sit quietly at home. **'B'** may also file a 'suit for rescission' and claim damages
- A promises B to supply 10 Bags of cement on a certain day. B agrees to pay the price after the receipt of the goods. A does not supply the goods. B is discharged from liability to pay the price

SUIT FOR DAMAGES

- Damages are a monetary compensation allowed to the injured party for the loss or injury suffered by aggrieved party as a result of the breach of contract
- The fundamental principle underlying damages is not punishment but to compensate the aggrieved party for the loss suffered by him in the original position as he would have been.

TYPES OF DAMAGES

- ORDINARY
- SPECIAL
- EXEMPLARY
- NOMINAL DAMAGES.

RULES REGARDING DAMAGES

- The damages must naturally arise in the usual course of things from such breach i.e. the damages must be the proximate or direct consequence of the breach of contract.
- The aggrieved party must have suffered damages by breach of contract.
- Damages are awarded to compensate the loss caused by a party but not to punish the party at default for the breach of contract.
- Amount of damages can be decided at the time of agreement by the mutual consent of both the parties.

EXAMPLES

- Mr. Robin contracts to pay 3 lakh to Mr. Peter on 1st April. Mr. Robin does not pay the money on that day. Mr. Peter unable to pay her debts and suffer a loss. Mr. Robin liable to pay Mr Peter principal amount and also interest on it.
- If the machinery of any factory arrives late and due to this reason one party suffers a loss .

SUIT FOR QUANTUM MERUIT

- It means "AS MUCH AS EARNED" or "in proportion to the work done."
- The phrase 'Quantum Meruit literally means
- When a person has begun the work and before he could complete it, the other party terminates the contract or does something which make it impossible for the other party to complete the contract, he can claim for the work done under the contract so far party.

EXAMPLES

- P agreed to write a volume on ancient armour to be published in a magazine owned by C. For this, P was to receive 100 pounds on completion. When P had completed part of the work, but not the whole, C abandoned the magazine. P was held entitled to get damages for breach of contract and payment quantum meruit for the part already completed.
- A, engages B, a contractor, to build a three storied house. After a part of the house is constructed, A prevents B from working any more. B, the contractor, is entitled to get reasonable compensation for work done under the doctrine of quantum meruit in addition to the damages for breach contract.

SUIT FOR SPECIFIC PERFORMANCE

- Specific performance means the actual carrying out of the contract as agreed.
- 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 of or in addition to a suit for damages.

Cases Which Fall Under Specific Performance

- When the act agreed to be done is such that compensation in money for its non-performance is not an adequate relief.
- When there exists no standard for ascertaining the actual damage caused by the non-performance of the act agreed to be done.
- When it is probable that the compensation in money cannot be got for the non-performance of the act agreed to be done.

Specific Performance Will Not Be Granted Where

- Damages are an adequate remedy
- The contract is not certain, or is inequitable to either party
- The contract is in its nature revocable
- The contract is made by trustees in breach of their trust
- The contract is of a personal nature E.g: contract to marry

EXAMPLES

- A agrees to buy and B agrees to Sell a picture and two China Vases . A may Compel B specifically to perform the Contract for there is no standard for ascertaining the actual damage which would be caused by its non performance.
- Mr. Tipu agrees to sell his house to Mr. Amir, who agrees to purchase. But due to some reasons Mr. Tipu commits breach. At the suit of Mr. Amir court may ask Mr. Tipu to carry out the contract.

SUIT FOR AN INJUNCTION

- 'Injunction' is an order of a court restraining a person from doing a particular act.
- It is a mode of securing the specific performance of the negative terms of the contract.
- To put it differently, where a party is in breach of negative term of the contract (i.e., where he is doing something which he promised not to do) the court may, by issuing an injunction, restrain him from doing, what he promised not to do.

EXAMPLES

- A, a singer contracts with B the Manager of a theatre to Sing at his theatre for one year and to abstain from Singing at other theatres during the theatre. She absents herself, B cannot compel A to sing at his theatre, but he may sue her for an injunction restraining her from Singing at other theatres
- G agreed to take the whole of his supply of electricity from a certain company. The agreement was held to import a negative promise that he would take none from elsewhere. He was, therefore, restrained by an injunction from buying electricity from any other company.

Thank You