



73: Compensation for loss or damage caused by breach of contract — 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.

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.

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.

(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.

(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.

(g) A contracts to let his ship to B for a year, from the first of January, for a certain price. Freight rises, 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.



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(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.

(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.

(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.

(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.

(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.

(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.

(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.

(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

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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.

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.

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 Central Government or of any 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.

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.

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

(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.

(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.

(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.

75: Party rightfully rescinding contract, entitled to compensation — 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



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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.

### What is breach of contract?

We know that the term 'agreement' is defined under section 2(e) as 'reciprocal promises'. Thus, both the parties are subjected to an obligation to do or not to do something. In case any of the parties fails to carry out his agreed obligation or by his act makes it impossible to perform his obligations under the contract, he is said to have committed the breach of that contract. Breach of contract may arise in two ways: (i) anticipatory breach, and (ii) actual breach.

### Anticipatory Breach of Contract

Anticipatory breach of contract occurs when a party repudiates the contract before the time fixed for its performance or when a party by his own act disables himself absolutely from performing the contract.

### Examples

1] A contracts to marry B, Before the agreed date of marriage, he marries C. In this case, A has committed anticipatory breach of contract.

2] A contracts to supply B with certain articles on 1st of August. On July 20, he informs B that he will not be able to supply the goods. A has committed anticipatory breach of contract.

**Section 39** deals with anticipatory breach of contract. It provides when a party to a contract has refused to perform, or disabled

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himself from performing his promise in its entirety, the promisee may put an end to the contract, unless he has signified, by words or by conduct, his acquiescence (willingness) in its continuance. For example, A who is a singer, enters into a contract with B, the manager of a theatre, to sing at his theatre two nights in every week during the next two months. B agrees to pay her 100 rupees for each performance. On the sixth night A wilfully absents herself from the theatre. B is at liberty to put an end to the contract. In this example, if B permits A to sing on the seventh night, B has signified his willingness in the continuance of the contract. He cannot now put an end to it but is entitled to compensation for the damage sustained by him through A's failure to sing on the sixth night.

Reading through the provisions of Section 39 and the aforesaid example, one would have noted that in the event of an anticipatory breach i.e., where a party to a contract refuses to perform his part of the contract before the actual date of performance, the promisee shall have two options: (i) rescind the contract and sue for damages for breach of contract without waiting until the due date for performance, or (ii) may not rescind the contract but treat the contract as operative and wait for the time of performance and then hold the other party liable for the consequences of non-performance. One should note that in case the promisee decides not to rescind the contract, the contract shall remain alive for the benefit of both the parties. But if during the intervening period i.e., the date of breach and the due date of the performance, any event happens that intervenes (e.g., supervening impossibility) for the benefit of the promisor, the promisee shall lose his right to sue for damages.

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For example, A agreed to load a cargo of wheat on B's ship by a specified date. When the ship arrived, A refused to load the cargo, but B did not accept the repudiation and continued to insist on performance. Before the time for loading expired, war broke out, making the performance of the contract illegal. The contract was discharged by frustration, and since B had elected to keep the contract alive, he could not thereafter sue A for damages for the anticipatory breach [**Avery v. Bowden 119 E.R. 647**].

In case of anticipatory breach of contract, the aggrieved party may claim damages either at the time when such a breach is committed or wait till the time when the performance becomes due and claim damages if promise still remains unperformed. However, the amount of damages claimable shall vary in the two cases. This difference can be clarified with the help of an example, X agrees to sell to Y a certain quantity of wheat at Rs. 300 per quintal to be delivered on August 3. On July 2, X gives notice expressing his unwillingness to sell wheat, and the price of wheat on the date is Rs. 400 per quintal. If Mr. Y repudiates the contract forthwith (which he is entitled to do at his option), he would be able to recover damages @ Rs. 100 per quintal which is the difference between market price and the contract price on July 2. If, instead of taking the action forthwith, he keeps the contract alive till August 3, and in the meantime, the price increases to Rs. 500 per quintal. Y would be able to recover damages @ Rs. 200 per quintal.

Actual Breach of Contract

Actual breach of contract may take place in any of the two ways:
(i) breach at the time when the performance of contract is due, or
(ii) breach of contract during the performance of the contract.

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Actual breach of Contract at the time when performance is

due: If a party to contract refuses or fails to perform his part of the contract at the time fixed for performance of that contract, he will be liable for its breach. For Example, A agreed to sell his car to B on July 2. On July 2 A refused to sell his car to B. On A's refusal to sell the car, there is an actual breach of contract. Now the question is whether it should be accepted or whether the promisee can refuse such performance and hold the promisor liable for the breach. The answer depends upon whether time was considered by the parties to be the essence of the contract or not.

In this respect, **Section 55**, lays down, when a party to a contract promises to do a certain thing at or before a specified time, or certain things at or before specified times, and fails to do any such thing at or before the specified time, the contract, or so much of it as has not been performed, becomes voidable at the option of the promisee, if the intention of the parties was that time should be the essence of the contract.

If it was not the intention of the parties that time should be the essence of the contract, the contract does not become voidable by the failure to do such thing at or before the specified time. But the promisee is entitled to compensation from the promisor for any loss occasioned to him by such failure.

If, in case of a contract voidable on account of the promisor's failure to perform his promise at the time agreed, the promisee accepts performance of such promise at any time other than that agreed, the promisee cannot claim compensation for any loss occasioned by the non-performance of the promise at the time agreed unless, at the time of such acceptance, he gives notice to the promisor of his intention to do so.

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For example, A, a singer, contracts with B, the manager of a theatre to sing at his theatre two nights in every week during the next two months, and B agrees 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 contracts. B is entitled to claim compensation for the damage which he has sustained through the non-fulfilment of the contract by A.

According to the aforesaid provisions, if performance beyond the stipulated time is accepted, the promisee must give notice of his intention to claim compensation. If he fails to give such notice, he will be deemed to have waived that right.

Actual breach of contract during the performance of the contract: Actual breach of contract also occurs when during the performance of the contract one party fails or refuses to perform his obligation under the contract. For example, A contracted with a Railway Company to supply it certain quantity of railway chairs at a certain price. The delivery was to be made in instalments. After a few instalments has been supplied, the Railway Company asked A to deliver no more. Held, A could sue for breach of contract [**Cort v. Ambergate etc. and Rly Co. (1851) 117 E.R. 1229**].

What are the remedies for breach of contract?

When a contract is broken by a party, there are several courses of action (remedies) which the other party may pursue. These remedies include:

- 1 Rescission of the contract
- 2 Suit for damage
- 3 Suit for specific performance

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4 Suit for injunction

5 Suit upon quantum meruit

Rescission of the Contract

As you have read section 39 of the Act provides that when a party to a contract has refused to perform, or disabled himself from performing his promise in its entirety, the promisee may put an end to the contract. This is called right of rescission. It means setting aside of the contract. In such a case aggrieved party is discharged from all the obligations under the contract. For example, A promises to supply the furniture for B's new office on a certain day. B promises to pay for the furniture on its receipt. A does not supply the furniture on the agreed date. B is discharged from the liability of paying the price and can rescind the contract.

It should be noted that section 75 of the Indian Contract Act also confers upon a person rightfully rescinding the contract to make a claim for compensation of any loss or damage sustained through the non-fulfilment of the contract. Thus, in the above example B shall not only be entitled to rescind the contract but also to claim compensation for the damage which he has sustained because of the non-supply of furniture by A on the specified date.

Suit for Damages

In the event of breach of contract; the aggrieved party besides rescinding the contract can claim for damages. Damages are monetary compensation allowed for loss suffered by the aggrieved party due to the breach of contract. The object of the court in awarding damages for breach is that the aggrieved party may be put in the financial position which would have existed

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had there been no breach of contract. The law does not punish a party because he has broken a contract but if, by reason of his wrongful act, the other party has suffered any pecuniary (monetary) loss, the court will compel the party in breach to compensate the loss by paying damages to the other party.

In India, the rules relating to damages are based on the judgement in English case of **Hadley v. Baxendale (1854) 156 E.R. 145**. The facts of this case were: H's mill was stopped due to the breakdown of a shaft. He delivered the shaft to B, a common carrier, to be taken to a manufacturer to copy it and make a new one. H had not made it known to B that delay would result in a loss of profits. By some neglect on the part of B, the delivery of the shaft was delayed in transit beyond a reasonable time. Held, B was not liable for loss of profits during the period of delay as the circumstances communicated to B did not show that a delay in the delivery of shaft would entail loss of profits to the mill. The following rule of law was laid down in this case:

'Where two parties have made a contract which one of them has broken, the damages which the other party ought to receive in respect of such breach of contract should be such as may fairly and reasonably be considered either arising naturally i.e., according to the usual course of things, from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties, at the time they made the contract, as the probable result of the breach of it.'

Section 73, of the Indian Contract Act which deals with compensation for loss or damage caused by breach of contract is based on the judgement in the above case. It states that the aggrieved party may claim the damages as follows :

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- a) Such damages which naturally arise in the usual course of things from such breach. This relates to ordinary damages arising in the usual course of things.
- b) Such damages which the parties knew, when they made the contract, to be likely to result from the breach. This relates to special damages.
- c) The aforesaid compensation is not to be given for any remote or indirect loss or damage sustained by reason of the breach, and
- d) Such compensation for damages arising from breach of quasi contract shall be same as in any other contract,

Rules Relating to Different Types of Damages

We may now consider in detail the types of damages and rules relating to them.

1 Ordinary Damages: Ordinary damages are those which naturally arise in the usual course of things from such breach. The measure of ordinary damages is the difference between the contract price and the market price on the date of the breach. If the seller retains the goods after the breach, he cannot recover from the buyer any further loss if the market falls, nor is he liable to have the damages reduced if the market rises. For example, A contracts to deliver 100 bags of rice at Rs. 100 per bag on a future date. On the due date he refuses to deliver. The market price on that day is Rs. 110 per bag. The measure of damages is the difference between the market price on the date of the breach and the contracted price i.e., $Rs. 110 - 100 = Rs. 10$.

One should note that section 73 specifically provides for compensation for any loss or damage which arise naturally in the

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usual course of things from the breach and as such compensation cannot be claimed for any remote indirect loss or damage by reason of the breach. For example, A Railway passenger's wife caught cold and fell ill due to her being asked to get down at a place other than the Railway Station and she had to walk a long distance in drizzling night to reach home. In a suit by the plaintiff against the railway company, it was held that damages for the personal inconvenience of the plaintiff alone would be granted, but not for sickness of the plaintiff's wife because it was very remote consequence [**Hobbs v. London (1875) L.R. 10 Q.B. 111**].

2 Special Damages: Damages other than those arising directly from the breach may be recovered if such damages may reasonably be supposed to have been in contemplation of both the parties as the probable result of the breach of a contract. Such damages are known as 'special damages'. Thus, when there are certain special or extraordinary circumstances present and their existence is communicated to the promisor, the non-performance of the promise entitles the promisee to not only the ordinary damages but also special damages that may result therefrom. For example, A, who is a builder, agrees to erect and finish a house by 1 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 it falls down before 1 January and has to be rebuilt by B. As a consequence, B 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. Here, you should note that the communication of the special circumstances is a pre-requisite to the claim for special

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damages. The case of **Hadley v. Baxendale (1854) 156 E.R. 145** which laid down the rules regarding 'special damages' in England is the most celebrated illustration on the point. The facts of this case have already been discussed.

3 Exemplary/Punitive/Vindictive Damages: Exemplary (also called punitive or vindictive damages), are intended to show the court's strong disapproval of the conduct of the defendant in committing the wrong. They are not proportionate to the actual pecuniary loss sustained by the aggrieved party but are inflicted by way of punishment. These are normally awarded in case of (i) a breach of promise to marry, or (ii) wrongful dishonour of a cheque by a banker. The measure of damages in case of breach of promise to marry is dependent upon the severity of the shock to the sentiments and goodwill of the promisee. 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 and vice versa.

4 Nominal Damages: Nominal damages are awarded in case of breach of contract where there is only a technical violation of the legal right, but no substantial loss is caused thereby. The damages granted in such cases are called nominal because they are very small, say, a rupee. It may be noted that the aggrieved party cannot claim these damages as a matter of right. It is always at the discretion of the court whether or not to award nominal damages.

5 Damages for Deterioration Caused by Delay: In the case of deterioration caused to goods by delay, damages can be recovered from carrier even without notice. The word 'deterioration' implies not only physical damages to the goods but also loss of special opportunity for sale. In the case of **Wilson v.**

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**Lancashire and Yorkshire Railway Co. (1861) 142 E.R. 230**

the plaintiff had bought velvet for making caps for sale during the spring. But, due to delay in transit, he was unable to utilise it for making caps for sale during the season. It was held that the fall in value of the cloth arrived after the season amounted to a deterioration for which the plaintiff was entitled to recover damages without notice.

**6 Damages for Inconvenience and Discomfort:** When a party has suffered physical discomfort and inconvenience as a result of breach of contract, that party can move a suit for claiming compensation. However, according to the general rule, the motive or the manner of breach do not affect the measure of damages.

**Examples**

1) A was wrongfully dismissed in a harsh and humiliating manner by G from his employment. Held, a) A could recover a sum representing his wages for the period of notice and the commission which he would have earned during that period, b) He could not recover anything for his injured feelings or for the loss sustained from the fact that his dismissal made it more difficult for him to obtain employment (**Addis v. Gramophone Co. Ltd. [1909] AC 488 HL**).

2) H, with his wife and children took 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. H was awarded compensation for inconvenience but nothing for the medical expenses of his wife who caught cold, as this consequence was too remote. (**Hobbs v. London & S.W. Rail & Co. (1875) L.R. 10 Q.B. 111**).

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**7 Liquidated Damages and Penalty:** Some time, in order to avoid delay in the assessment and payment of damages, at the time of formation of contract, the parties to a contract mutually agree to stipulate or specify sum, which will become payable by the party guilty of breach. If the specified sum represents a fair and genuine pre-estimate of the damages likely to result due to breach, then it is called liquidated damages. On the other hand, if the sum fixed at the time of formation of contract is disproportionate to the damages likely to occur, the sum is deemed to be a penalty. The amount is so provided to ensure performance of the contract.

Under English law, liquidated damages are enforceable but penalty cannot be claimed. In India, however, there is no such distinction recognised between penalty and liquidated damages. The courts in India allow only 'reasonable compensation' (**section 74**).

**8 Stipulations for interest:** The largest number of cases decided under section 74 relate to stipulation in a contract providing for payment of interest:

**i) Payment of interest in case of default:** A stipulation for payment of interest in case of default is not in the nature of a penalty, if the interest is reasonable. If the court finds that the rate of interest is exorbitant and is penal in character it may grant some relief.

**ii) Payment of interest at higher rate:** Such a stipulation occurring in a contract may be of a twofold character:

**a)** It may either provide for payment of interest at an increased rate from the date of the contract on failure of the debtor to pay

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on the due date the interest or principal or an instalment of principal; or

b) It may provide for payment at a higher rate from the date of default only.

A stipulation for increased interest from the date of the bond, and not from the date of default is always in the nature of a penalty, and relief may be granted to the party. The court may award only reasonable compensation (**Rameswar Prasad Singh v. Rai Sham Kishen (1901) ILR 29 Cal 43**). Thus, where a loan is advanced at 15% p.a. with a stipulation that in case of default in payment of any instalment, interest shall be raised to 20% p.a. Such a stipulation is a penalty and court may award reasonable compensation only.

A stipulation for increased interest from the date of default may be stipulation by way of penalty. When it is so, relief is granted against it. Whether such a stipulation is penal or not depends on the terms of the contract and the circumstances of each case. For example, A gives B a bond for repayment of Rs. 10,000 with interest @ 12% at the end of six months, with a stipulation that in case of default, interest shall be payable @ 75% 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.

iii) **Payment of Compound Interest on Default:** A stipulation in a bond for payment of compound interest on failure to pay simple interest at the same rate as was payable upon the principal is not a penalty. But a stipulation in a bond for the payment of compound interest at a rate higher than that of simple interest is a penalty and the party may be relieved against.

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**9 Forfeiture of 'Earnest Money' or 'Security Deposit':** The amount deposited as security for performance of a contract and the same is supposed to be adjusted against the price on completion of the contract, it is called earnest money. Is a clause in a contract providing for forfeiture of earnest money in the event of failure to perform in the nature of penalty? In a number of judicial decisions, it has been held that such a clause shall be in the nature of a penalty and only reasonable compensation could be claimed. [**Fateh Chand v Balkishan Dass, AIR 1963 SC 1405**].

### **Suit for Specific Performance**

In certain cases of breach of contract, damages may not be considered as an adequate remedy. The aggrieved party may not be interested in monetary compensation. The court may, in such cases, direct the defaulting party to carry out the promise according to the terms of the contract. This is called 'Specific Performance' of the contract.

Specific performance of a contract may, at the discretion of the Court, be enforced where the contract involves the sale of a particular house or some rare article or any other thing for which monetary compensation is not enough because the injured party will not be able to get an exact substitute in the market. For example, A agreed to sell an old painting to B for Rs. 10,000. Subsequently, A refused to sell the painting. Here, B may file a suit against A for the specific performance of the contract.

Specific performance is not granted under the following situations:

- a) When monetary compensation is an adequate relief;

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- b) When the contract is of a personal nature, e.g., a contract to marry, a contract to paint a picture, etc. In such contracts injunction is granted in place of specific performance.
- c) Where it is not possible for the court to supervise the performance of the contract, e.g., a building construction contract.
- d) When the contract is made by a company beyond its powers as laid down in its memorandum of association.
- e) When the contract is inequitable to either party.
- f) Where one of the parties is a minor.

### Suit for Injunction

Where a party is in breach of a negative term of a contract (i.e., where he does something which he promised not to do) the court may by issuing an order, prohibit him from doing so. Such an order issued by court is called an 'injunction'.

### Examples

1 G agreed to buy the whole of the electric energy required for his house from a certain company. He was, therefore, restrained by an injunction from buying electricity from any other person. [**Metropolitan Electric Supply Company v. Ginder [1901] 2 Ch 799**].

2 W agreed to sing at L's theatre, and during a contract period to sing nowhere else. Afterwards, W made contract with Z to sing at another theatre and refused to perform the contract with L. Held, W could be restrained by injunction from singing for Z. [**Lumley v. Wagner (1852) 42 E.R. 687**].

### Suit upon Quantum Meruit

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The phrase 'Quantum Meruit' means 'as much as is merited (earned)'. The normal rule of law is that unless a party has performed his promise in its entirety, he cannot claim performance from the other. To this rule, however, there are certain exceptions on the basis of quantum meruit. When a person has done some work under a contract and the other party repudiates the contract, or some event happens which makes the further performance of the contract impossible, then the party who has already performed the work can claim payment for the work he has already done.

This right of claiming the payment for work already done, before the repudiation of the contract or its further performance becoming impossible is called the right to quantum meruit. For example, X, a writer, was engaged by M who is the editor of a magazine to write a series of twelve articles to be published in the magazine. After X had delivered six articles, the publication of the magazine was discontinued. X is entitled to receive payment for the six articles already written.

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