

**SCHOOL OF STUDIES IN COMMERCE**  
**VIKRAM UNIVERSITY, UJJAIN (M.P.)**

**CLASS:** B.COM (HONS.) 4<sup>TH</sup> SEM (C.B.C.S.)  
**SUBJECT:** LEGAL ENVIRONMENT OF BUSINESS  
**TOPIC:** REMEDIES FOR BREACH OF CONTRACT  
**TEACHER'S NAME:** DR. KAYNAT TAWAR

# REMEDIES FOR BREACH OF CONTRACT

- (I) **ANTICIPATORY BREACH:** - It occurs when the party declares his intention of not performing the contract before the due date of performance.

## Remedies under Anticipatory Breach :-

- (i) Put an end to the contract and treat the anticipatory breach as actual breach of contract. He can rescind the contract and claim damages for breach of contract without waiting until the due date for performance.  
Damage = Market price as on the date of refusal to perform **Less** contract price.

- (ii) He may treat the contract as operative (alive) and wait till the due date for performance and claim damages if the promise still remains unperformed.

Damage = Market price as on the date of performance **Less** contract price.

If during the time the contract remains open, some event happens which makes contract void (supervening impossibility). The promisee shall have no right of action against the promisor.

- (II) **ACTUAL BREACH:** - One party fails or refuses to do his part of the promise on the due date of performance **or** during the course of performance (expressly or impliedly). It is actual breach of contract.

## Remedies under Actual breach of a contract:

In case of breach of a contract, the injured party has one or more of the following remedies:-

**1. Rescission:** – When there is breach of a contract by a party, the injured party may sue to treat the contract as rescinded. He is also absolved of all his obligations under the contract and is entitled to compensation for any damages that he might have suffered.

**2. Quantum meruit:** – A right to sue on a quantum meruit (as much as earned) arises where a contract, partly performed by one party, has become discharged by the breach of the contract by the other party.

**(a) Contract is discovered to be unenforceable:** - If an agreement is discovered to be void or 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.

**(b) No agreement as to remuneration:** - In a contract render services, if there is no express or implied intention to provide remuneration, then the party rendering services can sue upon quantum Meruit for reasonable remuneration.

**(c) Non-gratuitous act:** - When a person lawfully does anything for another person, or delivers anything to him, not intending to do it gratuitously, and the other person enjoys the benefit thereof, the person enjoying the benefit shall compensate the person performing in respect of or restore the thing so done or delivered.

**(d) Abandonment of performance by one party:-** When one party abandons or refuses to perform the contract, there is a breach of contract, aggrieved party is entitled to claim reasonable compensation for what he had done under the contract.

**(e) Divisible Contract:** - (i) Where the contract is divisible, and (ii) one party has enjoyed the benefit of part performance, then the other party may sue on Quantum Meruit.

**(f) Indivisible contract performed badly :-** When an indivisible contract for a lump sum is completely performed, but badly, then the person who has performed, can claim the lump sum less deduction for bad work.

**3. Specific performance:** – For breach of certain contracts, monetary compensation by way of damages may not constitute adequate remedy, the aggrieved party may not be interested in monetary compensation. In these cases the Court may direct the party in breach of a contract to actually carry out the promise, exactly according to the terms of the contract. This is called specific performance of the contract.

Specific Performance is not granted where:-

- (i) Monetary compensation is an adequate relief,
- (ii) Contract is of a personal nature, e.g. a contract to marry.
- (iii) It is not possible for the court to supervise performance of contract, e.g. a Building Construction Contract.
- (iv) Contract is ultra-vires, i.e. made by a company beyond its objects as laid down in Memorandum of Association.

**4. Suit for Injunction:** – Injunction means an order of the Court restraining a person from doing what he promised not to do.

When a party to the contract performs some act what he promised some act not to do, i.e. what he promised to restrain from doing, the other party may approach the court to grant an order of injunction. The court may issue an order of injunction, prohibiting him from doing such act, based on the merits of the case

**5. Damages:** – Damages are monetary compensation awarded to the injured party by Court for the loss or injury suffered by him. The foundation of modern law of damages, both in India and England, is to be found in the judgment in the case of Hadley v. Baxendale, Sec. 73 of the Indian

Contract Act which deals with “compensation for loss or damage caused by breach of contract” is based on the judgment in the case of Hadley v. Baxendale Damages may be of four types:-

**(1) Ordinary damages:** – These are damages which actually arise in the usual course of things from the breach of a contract.

**(2) Special damages:** – Where a party to a contract receives a notice of special circumstances affecting the contract, he will be liable not only for damages arising naturally and directly from the breach but also for special damages.

**(3) Vindictive or exemplary damages :** – These damages are allowed in case of the breach of a **contract to marry or dishonour of a cheque by a banker wrongfully.**

This type of damages may be awarded to the other party taking into consideration the injury caused to his or her feelings. The measure of damages depends upon the severity of shock to the sentiments of the promisee/ aggrieved party. The rule is that “smaller the amount of cheque dishonoured, larger will be the amount of damages”

**(4) Nominal damages:** – Nominal damages are those which are awarded where there is only technical violation of legal right but the aggrieved party has not in fact suffered any real loss by reason of the breach of a contract. Nominal damage may be of very small amount say Rs 1 even 10 paise.

**(5) Damages for deterioration caused by delay:-** When goods get deteriorated due to delay, damages can be recovered from the carrier even without notice. Deterioration implies physical damages to goods and also loss of special opportunity for sale.

**(6) Damages for inconvenience and discomfort :-** where a party to the contract has suffered substantial physical discomfort and inconvenience as a result of Breach of contract, he can file a suit for claiming compensation from the party at fault.

**(7) Liquidated damages and penalty:** – ‘Liquidated damages’ represent a sum, fixed or ascertained by the parties in the contract, which is a fair and genuine pre- estimate of the probable loss that might ensue as a result of the breach.

A ‘penalty’ is a sum named in the contract at the time of its formation, which is disproportionate to the damage i.e very high than the loss that might arise as a result of breach The Courts in India allow only ‘reasonable compensation’.

**(8) Remote Damages :-** Generally this type of damages are not recoverable.