

**Formation of a Contract and the Provisions of Damages for the Breach of it with relevant Case Laws**

**Dr. Roshni Duhan**  
**Department of Laws**  
**B.P. S Women University**  
**Khanpur Kalan, Sonipat**

**Abstract:**

The law of contract lays down the legal rules relating to promises; their formation, their performance, and their enforceability. Explaining the object of the law of contract, Sir William Anson observes; "The law of contract is intended to ensure that what a man has led to expect shall come to pass; that what has been promised to him shall be performed." Anson also said: "The law of contract does not lay down a number of rights and duties which the law will enforce; it consists of rather a number of limiting principles subject to which the parties may create rights and duties for themselves which the law will uphold." Thus, the law shall not lay down absolute rights and liabilities of the contracting parties; rather it shall lay down only the essentials of a valid contract. "The parties to a contract, in a sense, make the law for themselves". Parties have the freedom to settle all the terms of their contract, subject only to the overall control of law that there is no imposition (viz. undue influence, force, etc), that the terms are reasonable and that they are not opposed to public policy. For example, the parties may settle any consideration and the court cannot interfere only because the consideration is inadequate or too small.

**Keywords:** contract, agreement, quantum meruit, liquidated damages, injunction, rescission

**Introduction**

The law of contract in India is contained in the Indian Contract Act, 1872, which extends to the whole of India except the State of Jammu and Kashmir. This Act is based mainly on English Common law consisting of judicial precedents. The Act is not exhaustive as it does not deal with all the branches of the law of contract. There are separate Acts which deal with contracts relating to negotiable instruments, transfer of property, sale of goods, partnership, insurance, etc. Before 1930, the Act also contained provisions relating to contracts of sale of goods and partnership.

To the extent that the Indian Contract Act deals with a particular subject it is exhaustive upon the same and it is not permissible to import the principles of English law dehorn the statutory provisions. The decisions of the English courts possess only a persuasive value<sup>[1]</sup>. Where no statutory provision to the contrary is in existence in the Indian Contract Act, the courts in India have generally been guided by the Common Law of England. Although English Common Law permeates the Indian Contract Act, every new development of the Common Law may not necessarily fit into the scheme and words of our statute then it will be the duty of the courts in India to read the statute naturally and to follow it<sup>[2]</sup>.

**Essentials of a Valid Contract**

Section 2(h) of the Indian Contract Act, 1872, defines the term "contract" as 'an agreement enforceable by law.' As per Sec. 2(e), 'every promise and every set of promises forming consideration for each other' is called an "agreement". An 'agreement' is a promise and a 'promise' is an accepted proposal. Thus, every agreement is made up of a proposal or offer from one side and its acceptance by the other (thus there must be two or more persons; one person cannot enter into an agreement with himself). All agreement is a wider term than a contract. Every contract is an agreement, but every agreement is not a contract. An agreement becomes a contract when the following conditions mentioned in Sec. 2(h), Sec 10 and other sections of the Contract Act are satisfied:

- (1) Offer and acceptance .e. offer from one party and its acceptance by the other.
- (2) Intention to create the legal obligations – discussed below.
- (3) There is some consideration for it i.e. the price for which the promise of the other is bought.
- (4) The parties are competent to contract (a minor or persons disqualified by law e.g. alien enemy or convicts, are incompetent to contract).
- (5) Their consent is free i.e not caused by coercion, undue influence, fraud, misrepresentation or mistake.
- (6) Their object is lawful i.e. not forbidden by law, or opposed to public policy, or fraudulent, etc.
- (7) The agreement mustn't be expressly declared to be void e.g. an agreement in restraint of trade/marriage, agreement by way of wager, etc.
- (8) The terms of the agreement must not be vague or uncertain (Sec 29).
- (9) The agreement must be capable of performance (Sec. 56) – An agreement to do an impossible act is void.
- (10) Legal formalities – A contract may be oral or in writing. But in certain special cases the Act lays down that the agreement, to be valid, must be in writing or/ and registered, viz. an agreement to make a gift must be in writing and registered (Sec. 25). Any other law may also require a contract to be in writing or to be made in the presence of witnesses, or to be registered.

Salmond has rightly observed: "The law of contracts is not the whole law of agreements, nor is it the whole law of obligations. It is the law of those agreements which create obligations, and those obligations, which have their source in agreements." Thus only those agreements are contracts which give rise to legal obligations. The law of contract deals only with the agreements which become contracts and not with all agreements. However, all legal obligations are not contracts; only those legal obligations that arise out of agreements constitute contracts. The following legal obligations are not contracts as they do not arise out of agreement: (1) Civil liability for torts, breaches of trust, etc. (2) Quasi-contract, (3) Judgments of courts (4) Recognizance (an arrested person may be released on his promise to appear in the court and/or to pay a sum of money in the event of non-appearance), (5) Status obligations (husband and wife).

**Leading Case: McGregor v McGregor**<sup>[3]</sup>

In this case, a husband and a wife withdrew their complaints under an agreement by which the husband promised to pay her an allowance and she to refrain from pledging his credit. Held that there is a binding contract. However, in **Balfour v Balfour**<sup>[4]</sup>, a couple went to England on leave. For health reasons the wife has unable to accompany the husband again to Ceylon (Husband's place of work). The husband promised to pay 30pounds per month to his wife as maintenance, but he failed to pay. The husband was held not liable, as there was no intention to create legal relationship. The court observed that arrangements between husband and wife usually do not result in contracts, even though there may be what would constitute consideration for the agreement. The reason being the parties did not intend that they should be attended by legal consequences.

In **Jones v Padavatton**<sup>[5]</sup>, the daughter acting on her mother's promise left her service and gone to another country for education. The mother undertook to foot the expenses. For five long years the daughter could not complete her education. Differences arose between them and the mother stopped the payments. Held, the engagement did result in a contract, but only for a period reasonably sufficient for the daughter to complete the education and the period of five years was more than sufficient for the purpose. The party in breach must make compensation in respect of the direct consequences flowing from the breach and not in respect of loss or damage indirectly or remotely caused; **Pannalal Jankidas v. Mohanlal**<sup>[6]</sup>. A seller who commits breach will be liable to compensate according to the prices at the place of sale and not at destination; Murlidhar **Chiranji Lal v. Harish Chandra Dwarkadas**<sup>[7]</sup>.

If section 73 is considered then it becomes clear that the following elements must be present for deciding about damages:-

1. There is a breach of contract.
2. The party who suffers is entitled to receive compensation.
3. The party who made breach is liable to pay compensation.
4. The compensation is for the loss or damage caused to the aggrieved party.
5. The loss or damage should be such –
  - (a) which naturally arose in the usual course of things from such breach; or
  - (b) which parties knew, when they made the contract, to be likely to result from the breach of it.
6. Such compensation is not to be given for any remote and indirect loss or damage caused because of such breach.
7. If the circumstances existed to reduce loss remedying the damages then they must be kept in view in estimating damages and the damages must be reduced to that extent.

The amount or extent of damages – In case of breach of contract, the aggrieved party is entitled to claim compensation for any loss or damage suffered by him which naturally arose in the usual course of things from such breach. In other words, he can claim damages for loss which is the direct result of such breach. He cannot claim damages for indirect loss which is too remote. Whether any particular loss or damage is direct or remote is a question which is to be decided by the court according to the merits of each case.

(1) The consignment of the plaintiff reached its destination with inordinate delay of about months. The delay was due to the negligence of the Railways. The plaintiff's money remained blocked for this period. The plaintiff was allowed to claim interest on such money by way of damages<sup>[8]</sup>.

(2) In **Mogu Line Ltd. v. Manipal Printers and Publishers (P) Ltd**<sup>[9]</sup>, there was carriage of goods by cargo. But in Bill of lading, weight measures, brand contents quality and value were not mention. Held carrier was not liable to pay damages for the reduction in weight or for different in quality. Hence grant of damages upon this basis was not proper. Further by the discharge of the cargo the responsibility of the carrier was over, hence she or agent were not liable after the discharge of the cargo.

**Special Damages** – A party to a contract can claim special damages from the party in breach, only if at the time of contract he gave notice to the other party that such special damages were likely to result from a breach of contract.

In **Hadley v. Baxendale**<sup>[10]</sup>, the plaintiff was the owner of a mill. He delivered a broken part to the defendant, a carrier for conveying it to a form of repairs. There was considerable delay on the part of the carrier in transmitting the broken part. As a result the mill remained idle for a long time. The plaintiff filed a suit for damages – (1) for the delay in delivery; and (2) for the loss of profits due to the mill not having worked. The court held that the loss of profits being special damage could not be claimed unless the other party had made the contract with the knowledge that such loss was likely to result from breach. The principle of awarding damages for a reasonable period of notice comes into play only when the contact of employment is not for a fixed period<sup>[11]</sup>.

### Assessment of damages

1. Personal inconvenience – Damages may be claimed for personal inconvenience suffered by a party by reason of breach of contract.
2. Mental distress or shock – No damages can be claimed for mental disappointment or mental shock or distress. But there is one exception. A breach of promise to marry is the exception, though no material loss is suffered, the aggrieved party can claim for mental shock and humiliation.

3. Mitigation of Damages – A party who suffers as a result of breach of contract is under a legal duty to try his best to minimize his loss.

A agrees to purchase goods for B. In case of breach from the side A, it is the legal duty of B to minimize the damages by selling the goods, agreed to be purchased by some third party.

### **Remedies for Breach of Contract**

When a party to a contract commits breach of the contract, the aggrieved party is entitled to the undernoted remedies:

- I. Rescission
- II. Suit for specific performance
- III. Suit for an injunction
- IV. Suit for damages

### **I. Rescission**

Where a party to a contract commits a breach thereof, the aggrieved party may treat the breach of contract as discharge and refuse to perform his part of the contract. He may also successfully defend an action for specific performance or non – performance. Section 75 states that “A person who rightfully rescinds a contract is entitled to compensation for any damage which he has sustained through the non – fulfillment of the contract.”

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 100 rupees for each night’s performance. On the sixth night, A willfully absents herself from the theatre and B, in consequence, rescinds the contract. B is entitled to claim compensation for the damage which he sustained through the non – fulfillment of the contract.

### **II. Specific Performance**

The court may in certain cases decree specific performance of a contract in addition to or instead of damages to the aggrieved party. ‘Specific performance’, as the term itself indicates, means the actual implementation of the agreement by both the parties. This remedy is entirely discretionary and will not be applicable in the cases listed below –

1. Where the remedy in monetary terms is adequate
2. Where it would not be possible or practicable for the court to supervise the implementation of the contract, e.g. a building contract.
3. Where the contract involves a personal services.
4. Where one of the parties to a contract is a minor.

Specific performance is usually ordered in the case of purchase of land, or house, purchase of debentures in a company etc. Where the contract involves sale of goods, specific performance would be decreed if the goods are by their nature, rare goods, not easily purchasable in the market. The party seeking specific performance must, however, in his turn perform all the terms of the contract which he is obliged to perform at the time of seeking redress from the court.

### **III. Injunction**

An injunction is a method of enforcing the specific performance of a negative stipulation in the contract. It is an order from the court, the effect of which is to restrain an individual from doing or continuing to do an act against which a complaint has been made. In the context of contracts, this relief is normally given to enforce a negative stipulation in a contract where damages would not be an adequate remedy. The application of the remedy of injunction also covers contracts where there is no actual stipulation, but where one may be inferred. In Metropolitan Electric Supply Co. v. Ginder<sup>[12]</sup>, G agreed to take the whole electric energy required by his premises from the plaintiffs. Held that this was in substance an

agreement not to take energy from any other person and it could be enforced by injunction. However, in a contract where personal services are involved, a clear negative stipulation is required for the issue of an injunction for enforcing specific performance.

#### **Illustration**

W agreed to sing at L's theatre and nowhere else. W in breach of contract with L entered into a contract to sing for Z. Held though W could not be compelled to sing at L's theatre, he could be restrained by injunction from singing for Z.

#### **IV. Damages**

Section 73 lays down the law in this regard. When a contract has been broken, the party 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 party knew, when they made the contract, to be likely to result from the breach of it. Such compensation is not given for any remote and indirect loss or damage sustained by the breach. 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.

#### **Illustration**

A hires B's ship to go to Bombay, and there takes 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.

Damage may be classified as –

- (a) Liquidated damages
- (b) Unliquidated damages

When the parties to a contract agree that a certain sum of money would be payable, in case of breach of contract, such payment of damages is called 'liquidated damages'. In other words, liquidated damages are damages stipulated in the contract itself and payable by the party, who commits a breach thereof. Where the amount of damages is not specified in the contract itself but is left to assessment by courts, such damages are referred to as 'unliquidated damages'. Unliquidated damages may be –

1. Ordinary, general or substantial
2. Special
3. Vindictive, punitive or exemplary
4. Nominal

"If the injured party, when the breach occurs, has already done, part though not all, of what he was bound to do under the contract, he may be entitled to claim the value of what he has done. In that case he has to sue upon a Quantum Meruit".

**Quantum Meruit** may be available only when the following conditions are fulfilled:-

- (1) if the original contract has been discharged.
- (2) The claim must be brought by the party not in default.

The principle of Quantum meruit is rooted in English law under which there were certain procedural advantages in framing an action for compensation for work done. In order to avail of the remedy under Quantum meruit, the original contract, must have been discharged by the defendant in such a way as to entitle the plaintiff to regard himself as discharged from any further performance and he must have elected to do so. The remedy, it may be noted is, however, not available to the party who breaks the contract even though he may have partially performed the obligation. This remedy by way

of quantum meruit is restitutory, that is a recompense for the value of the work done by the plaintiff in order to restore him to the position in which he would have been if the contract had never been entered into. In this regard it is different to a claim from damages which is compensatory remedy aimed at placing the injured party, as near as may be in the position which he would have been in, had the other party performed the contract<sup>[13]</sup>.

In **Patel Engineering Co. Ltd. v. Indian Oil Corporation Ltd**<sup>[14]</sup>, it was held that “Quantum meruit is based on a quasi – contract and arises in a sense on an implied contract and not on any express agreement .....where a party to a contract has wholly or partially performed his obligation he may neglect the contract and sue upon quantum meruit. But while the contract has not been neglected or repudiated and a claim is based upon the terms of the contract, the principle of quantum meruit cannot be invoked.”

### References

1. Satyabrata Ghose v Mugneeram Bangur & Co. AIR 1954 SC 44
2. Bhagwandas v Girdharilal AIR 1966 SC 543
3. (1888) 21 QBD 424
4. (1919) 2 K.B. 571
5. (1969) 2 All ER 616
6. AIR 1951 SC 145; (1950) SCR 979
7. AIR 1962 SC 366;; (1962) 1 SCR 653
8. Union of India v. Steel Stock Holders Syndicate, Poona AIR 1976 SC 879
9. AIR 1991 Ker 183
10. [1854] [EWHC J70](#)
11. S.S. Sherry v. Bharat Nidhi Ltd, AIR 1958 SC 12: (1958) SCR 442.
12. (1901) 2 Ch 799
13. AIR 1971 SC 712 (715-716)
14. AIR 1975 Pat 212 See also Heyman v. Darwins Ltd., 1942 AC 356 at p. 399: (1942) 1 All ER 37 at p: 360)