
UNIT 8 REMEDIES FOR BREACH AND QUASI CONTRACTS

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8.0 OBJECTIVES

After studying this unit, you should be able to:

- explain as to what amounts to a breach of contract
- list the remedies in case of breach of contract
- describe the circumstances under which the various remedies shall be available
- define quasi contracts and describe various types of quasi contracts.

8.1 INTRODUCTION

In Unit 7 you learnt about the performance of a contract by the parties and consequent termination of the contract. What happens, if the parties refuse or fail to perform the agreed obligation? Such a failure or refusal results in what is called as breach of contract. In this unit you will learn about the meaning of breach of contract, kinds of breach of contracts and the remedies available to the other party in case of a breach of contract. You will also learn about the nature and effects of certain transactions called quasi contracts which are not contracts in the strict sense of the term, but generate obligations similar to those created by contracts.

8.2 MEANING OF BREACH OF CONTRACT

As you know, 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. Let us now study these two in detail,

8.2.1 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 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, you 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. You 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. For example, A agreed to load a cargo of wheat on B's ship by a particular date. When the ship arrived, A refused to load the cargo, but B did not accept the refusal and continued to demand the cargo. Before the last date of loading had expired the war broke out, rendering the performance of the contract illegal. The contract has come to an end by frustration and B cannot sue A for damages (Avery v. Bowden).

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 mean time, the price increases to Rs. 500 per quintal. Y would be able to recover damages @ Rs. 200 per quintal.

8.2.2 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. Now let us study about these two separately in detail.

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.

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/Rly Co.**).

8.3 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
- 4 Suit for injunction
- 5 Suit upon quantum meruit

8.3.1 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,

8.3.2 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 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**. 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:

- a) Such damages which naturally arose 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 and 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 dates 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.

You should note that section 73 specifically provides for compensation for any loss or damage which arise naturally in the 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 and S**).

- 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 damages. The case of **Hadley v. Baxendale** 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. Lancashire and Yorkshire Railway Co.** 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.**).
- 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. Pail & Co.**).

- 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 two fold 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 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 (**Rameshwar Pd. Singh v. Rai Sham Kishen**). 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 rate 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.

- 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. (**Mohd. Sultan v. Naina Mohd, M/s Variety Body Builders v. Union of India, Fnteh Chand v. Balkishan Dass**).

8.3.3 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;
- 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.

8.3.4 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**).
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. (**Lumely v. Wagner**).

8.3.5 .Suit upon Quantum Meruit

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. You will study more about quantum meruit later in this unit.

Check Your Progress A

1 What is a breach of contract?

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.....

2 What is an anticipatory breach of contract.?

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3 State whether the following statements are True or False.

- i) Special damages are available as a matter of statutory right.
- ii) Special damages cannot be claimed unless extraordinary circumstances resulting in a special loss were communicated to the promisor.
- iii) Exemplary damages are available only in case of defamation, like wrongful dishonour of a cheque by a bank.
- iv) In India, although liquidated damages are allowed, penalty provision in a contract is void.
- v) The promisee has a right to refuse to accept monetary compensation and insist on specific performance of a contract by the promisor.

4. Fill in the blanks :

- i) The rule on special damages was for the first time laid down in the case of.....
- ii) The measure of ordinary damages is the difference between.....price and the.....price.
- iii) Specific performance of a contract will not be granted where the contract is of a.....
- iv) Quantum Meruit means.....
- v) Actual breach of a contract may take place (a) at the time when performance is due, or (b).....

8.4 QUASI CONTRACTS

There are many situations in which a person may be required to conform to an obligation, although he has neither broken any contract nor committed any tort. For example, A has forgotton certain articles in Bs house. Now B is bound to restore .

them to A. Such obligations are generally described as 'quasi contractual obligations'.

Quasi contracts are based on the principle of equity and justice. It simply states that nobody shall enrich himself unjustly at the expense of another. In fact, a quasi contract is not a contract at all. It is an obligation which the law creates in the absence of any agreement, when the acts of the party or others have placed in the possession of one person, money or its equivalent under such circumstances that in equity and good conscience, he ought not to retain it, and which in justice and fairness belongs to another. He then is placed under an obligation to restore or repay for such a benefit.

8.4.1 Definitions of Quasi Contracts

There is no statutory definition of a quasi contract available either under the English Law or under the Indian Contract Act. Pollock describes quasi contracts as "contracts '**in** law' but not 'in fact', being the subject matter of a fictitious extension of the sphere of the contract to cover obligations which do not in reality fall within it". Sir William Anson, a noted English author points out that "circumstances must occur under any system of law in which it becomes necessary to hold one person to be accountable to another, without any agreement on the part of the former to be so accountable, on the ground that otherwise he would be retaining money or some other benefit which has come into his hands to which the law regards the other person as better entitled, or on the ground that without such **accountability**, the other would unjustly suffer loss. The 'Law of Quasi Contract' exists to provide remedies in circumstances of this kind."

Quasi contracts are also called *implied contracts*, They are implied because they create such obligations which resemble those created by **contracts**. The essentials for the formation of a contract are absent but as outcome resembles those created by a contract they are called quasi contracts. Under English Law, they are also termed as *Constructive Contracts* or *Contracts in Law*, etc. Indian Contract Act terms quasi contracts as *certain relations resembling those created by **cont**-acts* and are found under sections 68 to 72.

8.4.2 Difference Between Quasi Contracts and Contracts

In case of contracts, it is the consent of the party which produce the obligations. But in quasi contracts there is no question of consent, it is the law alone or natural equity which produces obligations. As noted earlier, a quasi contract is based on the ground that a person shall not be allowed to unjustly enrich himself at the expense of another. There is, however, similarity between quasi contract and contracts in case of claims for damages. In case of breach of a quasi contract section 73 of the Indian Contract Act provides for the same remedies (claim for damages) as provided in case of breach of a contract. It reads: *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 has contracted to discharge it and has broken his contract.*

8.4.3 Types of Quasi Contracts

You have studied what is a quasi contract and how it differs from a contract. Now, let us look into various kinds of quasi contracts recognised under the Indian Contract Act. Sections 68 to 72 deal with five types of quasi contractual obligations.

Supply of Necessaries

According to section 68, if a person incapable of contracting (which would include a minor, idiot and lunatic) or anyone whom he is legally bound to support, is supplied by another with 'necessaries' suited to his condition in life such person is entitled to recover the value thereof from the property of such incapable person. You should note that the aforesaid claim for necessaries is based upon 'quasi contractual obligations' because a contract with a person incompetent to contract is void-ab-initio. The following two points must, however, be noted in this regard:

- a) The amount is recoverable only from the property (if any) of the incapable person and not from him personally.

true owner could not be found. After some time, A tendered to B the lawful expenses incurred by him for finding the true owner and asked him to return the diamond to him (A). B refused to do so. **Held** B must return the diamond to A as A was entitled to retain it **against** the whole world, except the true owner (**Hollins v. Fowler**).

- 2 The finder has lien in respect of any sum which may be due to him on account of expenditure incurred by him in respect of the goods (section 168).
- 3 Where the owner has offered a specific reward for the return of goods lost, the finder may sue for such reward, and **may** retain the goods until he receives it (section 168). This right was re-endorsed in the case of **Harbhajan v. Harcharan**.
- 4 The finder may sell the goods in the following circumstances :
 - a) Where the thing **found** is in danger of perishing.
 - b) Where the owner cannot, with reasonable diligence, be found out.
 - c) Where the owner has been found but he refuses to pay the lawful charges of the finder.
 - d) Where the lawful charges of the finder, in respect of the thing found amount to **2/3rd or more** of the **value** of the thing found.

Liability of Person to whom Money is Paid or Thing Delivered by Mistake or Coercion

A person to **whom** money has been paid, or anything delivered by mistake or under coercion, must repay or return it (section 72).

Example

- 1 A and B jointly owe Rs. 100 to C. A alone pays the amount to C. Not knowing this fact, B pays Rs. 100 again to C. Now, C is bound to repay the amount to B.
- 2 A railway company refuses to deliver certain goods to the consignee, except upon the payment of illegal charges. The consigner pays the sum charged in order to obtain the goods. He is entitled to recover so much of the charge as was illegally excessive.

You should note that section 72 is based upon the principle of equitable restitution. A person is under a mistake that money is due when, in fact, it is not due. Such a person when he pays under mistake must be repaid. Money paid under mistake is recoverable whether the mistake be of fact or of law. In the case of **Sales Tax Officer v. Kanhaiya Lal**. The Supreme Court held that section 72 of the Indian Contract Act is wide enough to cover not only a mistake of fact but also a mistake of law. In this case, the levy of sales tax on forward transactions was held to be **ultra vires** by the Allahabad High Court. The respondent, therefore, claimed a refund of the tax paid under mistake of law under section 72. It was held that the respondent was entitled to the refund.

With reference to the word 'coercion' used in this section, it may be **noted** that the word is to be interpreted in its popular sense to mean oppression, extortion or such other means (**Seth Kanhaiya Lal v. National Bank of India**).

8.5 QUANTUM MERUIT

As discussed earlier, the phrase 'quantum meruit' means 'as much as merited' or 'as **much** as earned'. The general rule of law is that unless a person has performed his obligations in full, he cannot claim performance from the other (**Cutter v. Powell**). But, in certain cases, 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 performed the work can **claim** remuneration for the work he has already done. The right to claim on 'quantum meruit' does not arise out of the contract as the right to damages does. It is a claim on the quasi contractual obligations which the law **implies** in the circumstances (**Patel Engg. Co. Ltd. v. Indian Oil Corporation Ltd.**). The action of 'Quantum Meruit' is allowed in Indian Courts **under** section 70 of the Contract Act.

The claim of 'Quantum Meruit' arises in the following cases:

- 1 When a contract is discovered to be unenforceable: When 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. For example, A, a singer, contracts with B, the Manager of a theatre to sing at his theatre for two nights every week during the next two months. and B agrees to pay her Rs. 1,000 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.
- 2 When one party abandons or refuses to perform the contract: Where there is a breach of contract, the aggrieved party is entitled to claim reasonable compensation for what he has done under the contract. For example, C, an 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. Held, P could claim payment on quantum meruit for the part already published. (Blanche v. Colburn). In another case S, a building contractor, agreed to construct a house for H for \$565. He did work to the extent of \$333 and then abandoned the contract. Afterwards, H gets the work completed another person. Then S cannot recover anything for the work done because he was entitled to the payment only on the completion of the work (Sumpter v. Hedges).
- 3 When a Contract is divisible: When a contract is divisible and the party not in default has enjoyed benefit of the part performance, the party in default may sue on a quantum meruit. But if the contract is not divisible, the party in default cannot claim compensation on this basis.
- 4 When an indivisible contract is completely performed but badly : When an indivisible contract for a lump sum is completely performed, but badly, the person who has performed can claim the lump sum less deduction for bad work. For example, A agreed to decorate B's flat for a lump sum of Rs. 10,000. A did the work but B complained of faulty workmanship. It costs B Rs. 2,000 to remedy the defect. A shall be entitled to recover from B Rs. 8,000 (Rs. 10,000—Rs. 2,000) (Hoeing v. Isaac).

Check Your Progress B

- 1 Distinguish between a contract and a quasi contract.
.....
.....
.....
.....
- 2 What do you understand by Quantum Meruit?
.....
.....
.....
.....
- 3 Fill in the blanks :
i) The alternative expression for 'Quasi Contracts' is.....
ii) The property of a minor may be attached for.....supplied to him.
- 4 State whether the followings statements are True or False:
i) Minor's properties may be attached for necessaries supplied to his dependant.
ii) A person cannot recover from another an amount paid under a mistake of law.

- iii) One cannot claim performance from another unless one has carried out his part of the promise in full.
- iv) Finding is keeping.
- v) A finder is the next best owner to the real owner.

8.6 LET US SUM UP

When one of the parties fails or refuses to perform his part of the promise, he is said to have committed a breach of contract. In such a case the other party, called the aggrieved party, has certain remedies. These remedies include: (1) right of rescission (that is right not to perform), (2) right to claim damages (including ordinary damages, special damages, exemplary or vindictive damages, nominal damages, liquidated damages and penalty), (3) suit for specific performance, (4) suit for injunction (stay order), and (5) suit on *Quantum Meruit* basis.

There are certain obligations/rights which are not contractual but they resemble contractual obligations/rights. Law, therefore, on principle of equity, treats them as contracts. Such situations are more commonly known as quasi contracts. Various types of quasi contracts are dealt with under sections 68 to 72 of the Indian Contract Act. These include: (1) claim for necessities supplied to a person incapable of contracting or on his account, (2) reimbursement of person paying money due by another in payment of which he is interested, (3) obligation of person enjoying benefit of non-gratuitous act, (4) responsibility of finder of goods, and (5) liability of person to whom money is paid or thing delivered by mistake or under coercion.

8.7 KEY WORDS

Anticipatory Breach: Breach of a contract before its performance is due.

Damages: Monetary compensation granted to a party by the court in the event of a breach of a contract by the other party.

Exemplary Damage: Damages awarded to create an example.

Frustration: A term used in English Law for the term 'supervening impossibility' in Indian Law.

Injunction: An order of the court prohibiting a person to do a particular act commonly known as 'Stay Order'.

Penalty: The amount of compensation payable in case of breach and stated in the contract.

Punitive: In the nature of punishment.

Quasi Contracts: In the nature of contracts or similar to contracts.

Quantum Meruit: Quantity merited or 'as much as earned'.

Rescission: Right not to perform a contractual obligation.

8.8 ANSWERS TO CHECK YOUR PROGRESS

- A 3 i) False ii) True iii) False iv) False v) False
- 4 i) **Hadley v. Baxendale** ii) Market, contracted iii) personal nature iv) as much as earned v) during the performance of a contract.
- B 3 i) Certain relations resembling those created by contracts.
ii) **Section 68** of the Indian Contract Act.
- 4 i) True ii) False iii) True iv) False v) True.

8.9 TERMINAL QUESTIONS

- 1 What do you understand by anticipatory breach of contract? State the legal position of the parties in such a case.
- 2 What are the rules under the Indian Contract Act for estimating the loss or damage arising from a breach of contract?
- 3 What is 'Breach of Contract'? What remedies are available to an aggrieved party on the breach of a contract?
- 4 "Compensation is not to be given for any remote or indirect loss or damage sustained by reason of the breach of contract". Discuss.
- 5 Explain the terms 'Penalty' and 'Liquidated Damages' clearly indicating the difference between the two.
- 6 What are the quasi-contracts? Enumerate the type of such contracts dealt within the Indian Contract Act.
- 7 Write a short note on 'Quantum Meruit'.

Note : These questions will help you to understand the unit better. Try to write answers for them. But do not submit your answers to the University for evaluation. These are for your practice only.

Some Useful Books

Gulshan, S.S. and G.K. Kapoor. 1989 *Business Law* Wilay Eastern Limited, New Delhi (Chapters 6-10)

Kapoor, N.D. 1988. *Mercantile Law*, Sultan Chand & Sons, New Delhi (Chapters 6-12)

Kuchhal, M.C. 1989. *Mercantile Law*, Vikas Publishing House Private Limited, New Delhi (Chapter 6-12)

Maheshwari, R.P. and Maheshwari, S.N. 1989. *Business Law*, National Publishing House, New Delhi (Chapters 5-12)

Shukla, M.C. 1987. *A Manual of Mercantile Law*, S. Chand & Co., New Delhi (Chapter 1)