**REMEDIES FOR BREACH OF CONTRACT**

A contract is an agreement or promise made between two or more parties that the courts will enforce. In some cases, the agreements and promises made in a contract are not kept by a party or more parties. Therefore, this situation called breach of contract which means failure to keep the promises or agreements of a contract. Breach of contract is a legal cause of action in which a binding agreement is not honored by one or another more of the parties.

Breach of contract may occur in two ways:

● **Anticipatory Breach of Contract**: A party declares his intention of not performing the contract before the performance is due.

● **Actual Breach of Contract**: A party declares his intention of not performing the contract on due date of performance or during the course of performance.

The party committing breach of contract is called the “guilt party” and the other party is called the “injured” or “aggrieved party”.

The Latin maxim *Ubi jus, ibi remedium* denotes “where there is a right, there is a remedy”. So, in case of breach of contract, the aggrieved party would have one or more, remedies against the guilty party.

i. Suit for rescission

ii. Suit for damages

iii. Suit for specific performance

iv. Suit for injunction

v. Suit for quantum meruit

**SUIT FOR DAMAGES**

Remedy by way of damages is the most common remedy available to the injured party. This entitles the injured party to recover compensation for the loss suffered by it due to the breach of contract, from the party who causes the breach.

In ***Addis v. Gramophone Co Ltd 1909***, Lord Atkinson said:

“I have always understood that damages for breach of contract were in the nature of compensation, not punishment.”

The damages which may be awarded to the injured party may be of the following kinds:

1. **Ordinary Damages**

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 know, 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 reasons of the breach. In ***Hadley vs. Baxendale***, The crankshaft broke in the Claimant’s mill. He engaged the services of the Defendant to deliver the crankshaft to the place where it was to be repaired and to subsequently return it after it had been repaired. Due to neglect of the Defendant, the crankshaft was returned 7 days late. The Claimant was unable to use the mill during this time and claimed for loss of profit. The Defendant argued that he was unaware that the mill would have to be closed during the delay and therefore the loss of profit was too remote.

The court held that claimant was entitled only to ordinary damages and defendant was not liable for the loss of profits because the only information given by Claimant to Defendant was that the article to be carried was the broken shaft of a mill and it was not made known to them that the delay would result in loss of profits.

1. **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.

In the case of ***Simpson v. London & North Western Railway Company***, the plaintiff, a manufacturer, used to exhibit his samples of his equipment at agricultural exhibitions. He delivered his samples to the railway company to be exhibited at New Castle. On the occasion he wrote “must reach at New Castle on Monday certain”. On the account of negligence on the part of the railway company, the samples reached only after the exhibition was over. The plaintiff, claimed damages from the railway company for his loss of profits from the exhibition.

The court held that the railway company was liable to pay these damages as it had the knowledge of special circumstances, and must have contemplated that a delay in delivery might result in such loss.

1. **Vindictive or Exemplary damages**

At time breach of contract by one party not only results in monetary loss to the injured party but also subjects him to disappointment and mental agony. In such cases monetary compensation alone cannot provide an appropriate remedy to the sufferings of the injured party. Thus there is a need for vindictive damages.

These may be taken as an exception to the general principle that damages are awarded only for the financial loss caused by breach of contract.

In the case of ***Addies vs Gramophone Co. Ltd.***, the court stated that in three cases mental suffering and pain of the aggrieved party can also be taken into account:

* Unjustified dishonour of a cheque,
* Breach of promise of marriage, and
* Failure of vendor of real estate to make title.

1. **Damage for inconvenience**:-

If party has suffered physical inconvenience, discomfort or mental agony as result of breach of contract, party can recover the damage for such inconvenience.

In ***Farley v Skinner [2001]***, Farley contracted with Skinner for Skinner to survey a potential house for aircraft noise. Skinner concluded that aircraft noise was unlikely. After moving in, Farley discovered that the house was directly under Gatwick airport’s circuit Farley sued Skinner for breach of contract.

In this case, court decided that Farley would be entitled to damages for her injured feelings.

1. **Pre-fixed damages**

Sometimes, parties to a contract stipulate at the time of its formation that on a breach of contract by any of them, a certain amount will be payable as damage. It may amount to;

i. Liquidated damages or

ii. Penalty

Liquidated damages are specific damages that were previously identified by the parties in the contract itself, in the event that the contract is breached. Liquidated damages should be a reasonable estimate of actual damages that might result from a breach. But if specified sum is not proportionate to the damages, it is called penalty.

In ***Dunlop Pneumatic Tyre Co Ltd v New Garage & Motor Co Ltd [1914],*** the claimant, manufactured tyres and distributed them to retailers for resale. The contract between Dunlop and New Garage contained a clause preventing New garage from selling the tyres below list price. The agreement said that, in the event of such a dispute arising, New Garage would pay ‘by way of liquidated damages and not as a penalty’, a sum of £5 per tyre.

The House of Lords held that Dunlop were entitled to enforce the agreement as it was a “genuine pre-estimate” of their potential loss as opposed to being a penalty.

**SUIT FOR RESCISSION**

In contract law, the term rescission refers to the undoing, or unmaking of a contract between parties.

The breach of contract no doubt discharges the contract, but the aggrieved party may sometimes need to approach the court to grant him a formal rescission, i.e. cancellation, of the contract. This will enable him to be free from his own obligations under the contract.

The basic reasons for rescission can be stated as follows:-

1) Innocent or Fraudulent representation; or

2) Mutual mistake; or

3) Lack of capacity to contract; or

4) An impossibility to perform a contract not contemplated by the parties; or

5) Duress; or

6) Undue influence.

A party can rescind a contract because of a breach by another party, but the breach must be so substantial that it defeats the purpose of the contract. One can also rescind a contract by agreement. If all parties to a contract agree to cancel it, they can do so.

Example: A promises B to deliver 50 bags of cement on a certain day. B agrees to pay the amount on receipt of the goods. A failed to deliver the cement on the appointed day. B is discharged from his liability to pay the price.

In the case of ***Long v Lloyd***[[1]](#footnote-2), the claimant purchased a lorry from the defendant. The lorry was advertised in a newspaper which described the lorry as being in exceptional condition. The claimant phoned the defendant to arrange a viewing and was told it was in first class condition. He went to view it the following day and was told it was capable of doing 40 mph and 11 miles to the gallon. The claimant test drove it and found that the speedometer was not working and he had to pull a wire for the accelerator as this was not working also. The claimant still decided to purchase the lorry. On the first journey the claimant noted certain faults with the lorry and contacted the defendant who offered to pay half the repairs. The claimant accepted this. However, on a further journey the lorry broke down completely and the claimant wished to rescind the contract and brought an action against the defendant for innocent misrepresentation.

The court held that by accepting the offer of payment for half the repairs when he became aware of the defects, the defendant had lost his right to rescind as he had affirmed the contract.

In another case between ***Car & Universal Credit v Caldwell*** [[2]](#footnote-3), Mr Caldwell sold his Jaguar car on 12th Jan to a rogue, Norris, who had paid £10 cash deposit and left another car as security and gave a cheque for £965. The following day Mr Caldwell went to cash the cheque and discovered it was fraudulent and the car left as deposit turned out to be stolen. Mr Caldwell reported the incident to the police and used his best endeavours to cooperate with the police to find Norris in order to rescind the contract of sale. He also contacted the Automobile Association to try to locate the car. Norris had acquired a voidabletitle to the car as the contract was induced by fraudulent misrepresentation. Norris sold the car on to a third party on 15th Jan. The court held that Caldwell had successfully rescinded the contract. He had taken all steps possible to demonstrate that he no longer wished to be bound by the contract. He should not be prejudiced by the fact that his endeavors failed to locate Norris.

**SUIT FOR SPECIFIC PERFORMANCE**

Specific performance is an equitable remedy which is provided by the court to enforce the duty of doing what the plaintiff agreed by contract to do, against a defendant. This remedy is granted by way of exception. Thus, this remedy is in contrast with the remedy by way of damages for breach of contract, which gives rise to pecuniary compensation for failure to carry out the terms of the contract. Both the remedies, Damages and specific performance, are available upon breach of obligations by a party to the contract

This is an equitable remedy which is granted at the discretion of the court. So, specific performance is a decree granted by the court to compel a party to perform his contractual obligations. This remedy is usually available where damages are not an adequate relief, e.g., where the subject matter of the contract is unique in nature like Chinese vases in Falcke’s case. In ***Falcke vs. Gray***[[3]](#footnote-4), A lady sold a pair of Chinese vases to an antique dealer for £20 each. Before delivery, she began to have her doubts about the real value of the vases she asked another dealer for a valuation. He offered £200 for the vases. The lady accepted the offer and the second dealer be ordered to hand the Chinese vases over to him.

It was held that the claimant was only entitled to damages. In fact, despite damages not being an adequate remedy, the claimant was not entitled to specific performance because he had not behaved fairly, as he knew that the price of £20 for each vase was grossly inadequate. The lady was not an expert, so the two parties were not on equal footing.

Also, in ***Nutbrown v Thornton (1805),*** the claimant entered a contract to purchase some machinery from the defendant. The defendant, in breach of contract, refused to deliver the machines. The defendant was the only manufacturer of this type of machinery. The claimant bought an action for breach of contract seeking specific performance of the contract.

Held: Specific performance of the contract was granted. Whilst an award of damages would ordinarily be given for non-delivery of goods, damages would be inadequate to compensate the claimant because he would not be able to buy the machines elsewhere.

The court has wide discretionary power to award specific performance and in exercising this discretion, the following factors are taken into account:

i. Delay in asking for the order.

ii. Whether the person seeking performance is ready to perform his part of the Contract.

iii. The difference between the benefit (the order would give to one party) and the cost of performance to the other.

iv. Whether the person against whom the order is sought would suffer hardship in performing.

v. Whether any third party rights would be affected.

vi. Whether the contract lacks adequate consideration (the rule “equity will not assist a volunteer” applies so that specific performance will not be ordered if the contract is for nominal consideration even if it is under seal)

**SUIT FOR INJUNCTION**

Injunction is an order of a court restraining a person from doing particular act. It is a mode of securing the specific performance of the negative terms of the contract. To put it differently, where a party is in breach of negative terms of the contract i.e where he is doing something which he promised not to do, the court may, by issuing an injunction, restrain him from doing, what he promised not to do. Thus, injunction is a preventive relief. It is particularly appropriate in case of anticipatory breach of contract where damages would not be an adequate relief.

Like specific performance, an injunction is an equitable remedy and therefore only granted at the discretion of the court. There are three types:

1. Interlocutory or interim (temporary injunction until a court hearing)

2. Prohibitory (a court order that a party must not do something)

3. Mandatory (an order that a party must do something)

Injunction relief is appropriate to prevent an action, to put a stop on the conduct that violates a person's rights or causes injury. It is important that when you file a lawsuit you may request both money damages and injunctive relief if both are necessary for an appropriate legal remedy. In ***Lumley v Wagner***,[[4]](#footnote-5) the defendant Johanna Wagner, an opera singer, was engaged by the claimant to perform in his theatre for a period of three months. There was a term in the contract preventing her from singing for anyone else for the duration of the contract. She was then approached by the manager of Covent Garden Theatre, Frederick Gye, who offered her more money to sing for him. Theclaimant sought an injunction preventing her from singing at Covent Garden Theatre. The defendant argued that to allow an injunction would in effect amount to specific performance of the contract in circumstances where specific performance would not be available. It was held that the injunction was granted despite it having the effect of forcing the defendant to sing for the claimant.

Note: Injunction usually not granted if its effect is to compel a party to a contract to do something which could not have been made subject to order of specific performance.

**SUIT FOR QUANTUM MERUIT**

Remedy for a breach of contract available to an injured party against the guilty party is to file a suit upon quantum meruit. The phrase quantum meruit literally means “as much as is earned” or “in proportion to the work done.”

A right to use upon quantum meruit usually arises where after part performance of the contract by one party, there is a breach of contract, or the contract is discovered void or becomes void. This remedy may be availed of either without claiming damages (i.e., claiming reasonable compensation only for the work done) or in addition to claiming damages for breach (i.e., claiming reasonable compensation for part performance and damages for the remaining unperformed part).

**Claim for quantum meruit**

The aggrieved party may file a suit upon quantum meruit and may claim payment in proportion to work done or goods supplied in the following cases:

1. *Where work has been done in pursuance of a contract, which has been discharged by the default of the defendant.*

For example, in the case of ***Planche v Colburn [1831],*** Planche agreed to write an article to be published in a magazine owned by Colburn. For this, he was to receive £100 on completion. The claimant commenced writing and had completed a great deal of it when the defendant cancelled the series. The defendant refused to pay the claimant despite his undertaking and the fact that the claimant was still willing to complete. The claimant brought an action to enforce payment. The court held that the claimant was entitled to recover £50 because the defendant had prevented the performance.

1. *Where work has been done in pursuance of a contract which is discovered void or ‘becomes void,’ provided the contract is divisible.*

For example, in the case of ***Craven-Ellis v Canons Ltd.***, the company accepted the services rendered by the plaintiff. It was found that if the plaintiff did not perform the services, the company certainly would have hired some agent to perform those services. Hence, the plaintiff, on the basis of quantum meruit, succeeded in claiming the remuneration from the company for the work done regardless of the fact that he failed to obtain his qualification share within two months.

1. *When something is done without any intention to do so gratuitously although there exists no express agreement between the parties.*

For example, in an Indian case, ***Ram Krishna vs Rangoobed***, where A ploughed the field of B with a tractor to the satisfaction of B in B’s presence, it was held that A was entitled to payment as the work was not intended to be gratuitous and the other party has enjoyed the benefit of the same.

Note: A party who is guilty of breach of contract may also sue for quantum meruit provided both the following conditions are fulfilled:

1. The contract must be divisible, and
2. The other party must have enjoyed the benefit of the part which has been performed, although he had an option of declining it.

For example, in case, ***Sumpter v Hedges***,[[5]](#footnote-6) the claimant agreed to build two houses and stables for the defendant. It was agreed that £565 would be payable on completion.

The claimant commenced performance and then ran out of money and was unable to complete. He had performed just over half of the contract. The defendant completed the work himself. The claimant sought to recover £333 representing the value of the work he had completed. He argued that in completing the work himself, the defendant had thereby accepted partial performance and prevented the claimant from completing the contract. The claimant's action failed. The court held that the defendant had no choice but to accept partial performance as he was left with a half completed house on his land.

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1. [1958] 1 WLR 753 [↑](#footnote-ref-2)
2. [1964] 2 WLR 600 [↑](#footnote-ref-3)
3. [1851] [↑](#footnote-ref-4)
4. (1852) 42 ER 687 [↑](#footnote-ref-5)
5. (1898) 1 QB 673 [↑](#footnote-ref-6)