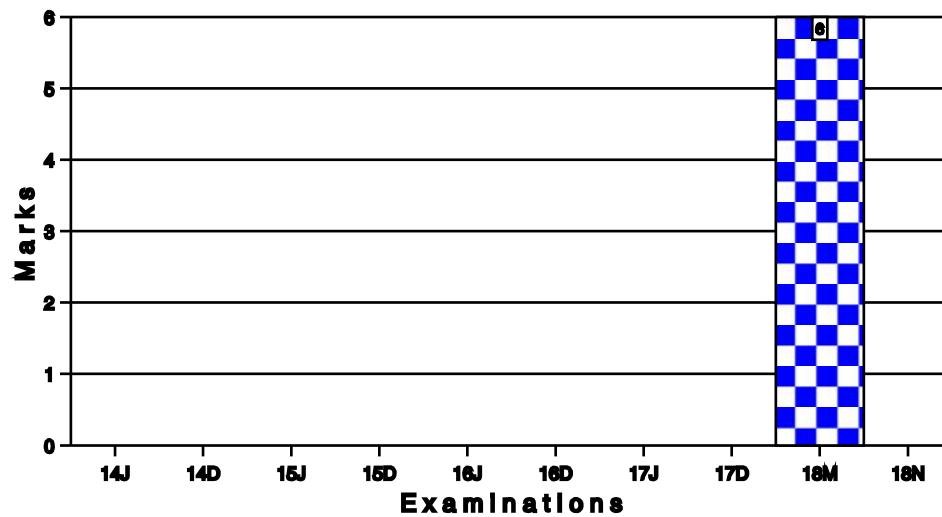


CHAPTER	<h1>The Indian Contract Act, 1872</h1>
<b>1</b>	
Unit: 5	Breach of Contract and its Remedies

Marks of Objective, Short Notes, Distinguish Between, Descriptive & Practical Questions

### Legend



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### SELF STUDY QUESTIONS

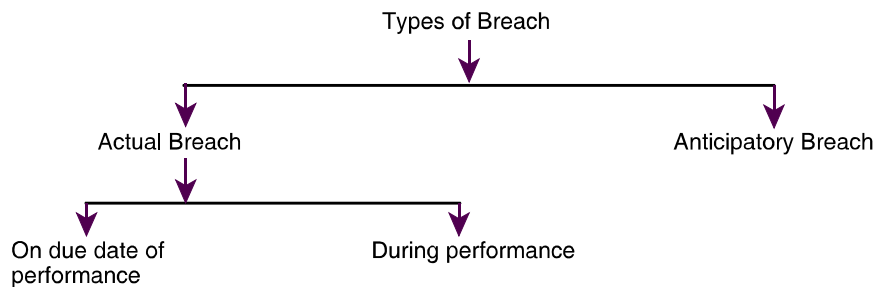
**Q.1: What is Breach of Contract ?**

**Answer:**

- Breach of contract means failure of a party to perform his obligations.
- **Consequences of Breach:**
  - (i) It discharges the aggrieved party from performing his obligations.
  - (ii) The aggrieved party is entitled to proceed against the party at fault.

**Q.2: How Many Types of Breach of Contracts are there ?**

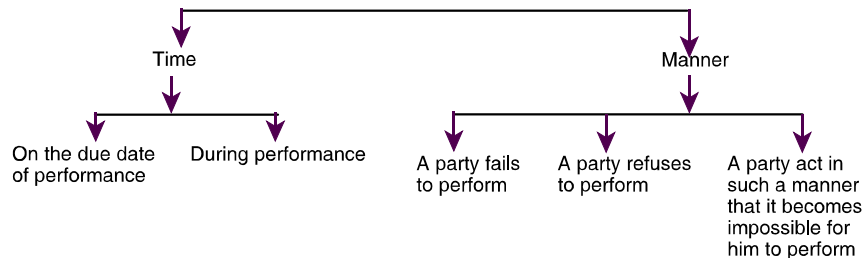
**Answer:**



**Q.3: How Many Types of Actual Breach of Contracts are there ?**

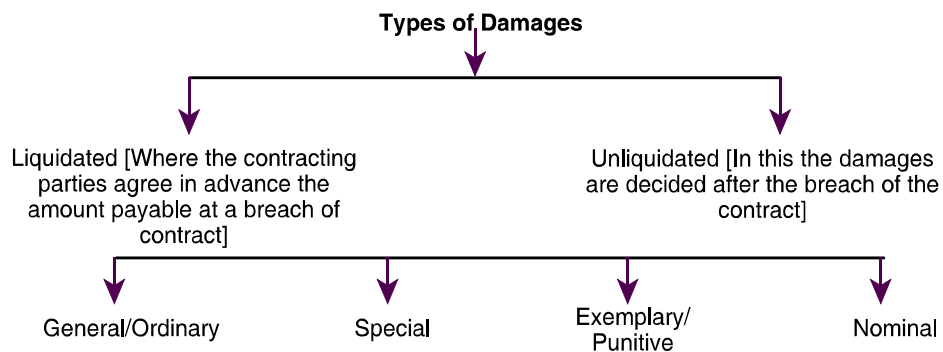
**Answer:**

**Actual Breach of contract:**



**Q.4: Describe the Suit for Damages.****Answer:****Suit for damages:**

- As per Section 73, when a contract is broken, the party at loss or damage from the breach is entitled to receive from the party at fault, compensation for the loss suffered by him.
- The loss or damage should have –
  - (a) arose naturally in the usual course of things from such breach or
  - (b) which the parties know to be the likely result of such breach.
- No compensation for any remote or indirect loss.

**Q.5: What Kind of Damages may be Awarded in Case of Breach of Contract ?****Answer:****(i) General/Ordinary Damages:**

- It helps putting the injured party in the position that he would have been if the contract was performed.
- It refers to the estimated amount of loss actually incurred.
- It applies only to proximate consequences of the breach of contract.

**(ii) Special Damages:**

- It includes those damages other than that arising directly from breach.
- It must be known to parties at the time of entering into contract.

**(iii) Exemplary/Punitive Damages:**

- These are awarded not to compensate the aggrieved party, but as a means of punishment to the defaulting party.
- It is awarded in 2 cases.
  - (a) Breach of contract to marry or promise to marry.
  - (b) Wrong dishonour of a customer's cheque by a banker.

**(iv) Nominal Damages:**

- These are awarded where the plaintiff has proved that there has been a breach of contract but he has not suffered any loss or damage.

**(v) Damages for deterioration caused by delay****(vi) Pre-fixed damages:**

- These damages are fixed at the time of formation of the contract.

**Relevant Case Law:**

Hadley V/s Barendale.

**Facts:**

- (i) X's mill was stopped due to break down of shaft.
- (ii) He delivered the shaft to Y, a common carrier, to be taken to a manufacturer to copy it and make a new one.
- (iii) X did not inform Y that delay would result in loss of profits.
- (iv) Due to Y's neglect, delivery was delayed beyond a reasonable time.

**Decision:** Y was not liable for loss of profits during the delayed period.

**Q.6: What do you understand by Penalty and Liquidated Damages ?****Answer:**

- When parties to a contract, specify a certain sum in the contract which will become payable as a result of breach, such specified sum is known as liquidated damages or penalty.
- Under the English Law,
  - (a) If the amount fixed is a genuine pre-estimate of the loss in case of breach it is liquidated damages and is allowed.

(b) If the amount is fixed without any regard to probable loss, but is only to frighten the party and prevent it from committing any breach, it is a penalty and not allowed.

- In Indian law, there is no difference between the two.

**Relevant Case Law:** Union of India V/s Raman Iron Foundry.

**Q.7: When a Claim for Rescission of contract arises ?**

**Answer:**

- It means right available to aggrieved party to terminate the contract. In this case, the aggrieved party is not required to perform his part of obligation and is entitled to claim compensation for any loss caused to him.

**Q.8: When a Claim for specific performance of the contract arises ?**

**Answer:**

- In certain cases, when the damages are not adequate remedy, the court may direct the party in breach for specific performance of the contract and the promise is carried out as per the terms of the contract.
- Usually granted in contracts connected with land.
- It cannot be granted where -
  - (a) Monetary compensation is an adequate relief.
  - (b) Contract is of personal nature.
  - (c) It is not possible for court to supervise performance of contract.
  - (d) Contract is ultra virus.
  - (e) One of the parties is a minor.

**Q.9: When a Claim for Injunction arises ?**

**Answer:**

- Injunction refers to an order passed by a competent court restraining a person from doing a particular act. Negative term of contract means doing something, which party has promised not to do or reasonable remuneration.
- Thus, where a party to a contract is negotiating the terms of a contract, the court may in its discretion issuing an order to the defendant restrain him from doing what he promised not to do.

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### SHORT PRACTICE QUESTIONS

1. What do you mean by anticipatory Breach of Contract. How does it differ from Actual Breach of contract?
2. What is damages. Explain in brief kinds of damages
3. Differentiate between liquidated damages and penalty.
4. Write Short notes on:
  - (a) Quantum Merit
  - (b) Suit for specific performance
  - (c) Vindictive Damages
  - (d) Suit for injunction.

### PAST YEAR QUESTIONS AND ANSWERS

#### OBJECTIVE QUESTIONS

**2000 - May [1]** State with reasons whether the following statement is True or False:

- (vi) Breach of condition gives rise to a right to repudiate the contract of sale. (2 marks)

**Answer:**

**Correct:** Breach of a condition gives the right to the aggrieved party to repudiate the contract. A condition is a stipulation essential to the main purpose of the contract.

#### SHORT NOTES

**1994 - Nov [7]** Write short note on the following:

- (b) Anticipatory Breach of a Contract.

(5 marks)

**Answer:**

**Anticipatory breach:** When a party to a contract refuses to perform his part of the contract, before the due date of performance, It is known as anticipatory or constructive breach of contract. This may happen in the following two ways :

- (i) **By express renunciation:** Here a party to a contract expressly renounces his obligation under the contract, before the due date of performance. For example, A agrees to deliver a particular horse to B on 1<sup>st</sup> May. Before 1<sup>st</sup> May, (say on 20<sup>th</sup> April), A informs B that he shall not deliver the horse on 1<sup>st</sup> May. This is an express repudiation of the contract.
- (ii) **Implied repudiation:** Here a party by his own act disables himself from performing the contract i.e. he acts in such a manner that it becomes impossible for him to perform his promise. In the example given above, if A sells that very horse to C on 20th April, he breaks the contract by his conduct.

**Rights of the promisee:** In case of anticipatory breach of contract, the promisee has the following rights :

- (i) He may treat the contract as repudiated and sue the other party for damages for the breach of contract without waiting until the due date of performance. In this case the promisee will be absolved from further performance of his promise.
- (ii) He may decide to wait till the due date of performance and then hold the defaulting party liable for consequences of the breach. If the promisee decides to wait till the due date of performance, the contract remains alive for the benefit of both the parties and he runs the following risks :
  1. The party who has previously expressed his intention not to perform the contract may change his mind and perform the contract on the due date of performance. The promisee will be bound to accept this performance.
  2. The party who has previously expressed his intention not to perform the contract may take the advantage of any supervening circumstances which would justify him in declining to complete it.

**1996 - May [7]** Write short note on the following:

(c) Liquidated damages.

(5 marks)

**Answer:**

**Liquidated damages:** Sometimes the parties to a contract, at the time of making the contract agree to the amount of compensation payable in the event of the breach of the contract. The amount of compensation payable, which has been agreed may be either liquidated damages or penalty. A liquidated damage is a fair and genuine covenanted pre-estimate of probable damage for an anticipated breach of contract. If it appears at the time of entering into a contract, the amount of damage likely to follow from a breach was uncertain and the parties, to avoid uncertainty and the expense of proving damages in a court, agreed at the particular amount, that sum would be described as liquidated damages.

Liquidated damages differ from penalty and the difference is maintained in English Law but in India the courts do not observe such distinction and it is left to the courts to decide. This will be evident from Section 74 of the Indian Contract Act, 1872.

**1997 - May [7]** Write short note on the following:

(c) Quantum Meruit:

(5 marks)

**Answer:**

**Quantum Meruit:** The phrase 'quantum meruit' literally means "as much as is earned" or according to the quantity of work done." When a person has begun the work and before he could complete it, the other party terminates the contract or does something which make it impossible for the other party to complete the contract, he can claim for the work done under the contract. He may also recover the value of the work done where the further performance of the contract becomes impossible. The claim on quantum meruit must be brought by a party who is not in default. However, in certain cases, the party in default may also sue for the work done if the contract is divisible. Following are the cases in which a claim on quantum meruit may arise:

- (i) Where the work has been done and accepted under a contract which is subsequently discovered to be void, in such a case, the person who has performed the part of the contract is entitled to recover the amount



for the work done and the party, who receives and accepts the benefit under such contract, must make compensation to the other party. (Section 65).

- (ii) Where, a person does some act or delivers something to another person with the intention of receiving payments for the same (i.e. non-gratuitous act), in such a case, the other person is bound to make payment if he accepts such services or goods, or enjoys their benefit (Section 70).
- (iii) The compensation for the work done may be recovered on the basis of quantum meruit. Where the contract is divisible and a party performs part of the contract and refuses to perform the remaining part, in such a case, the party in default may sue the other party who has enjoyed the benefits of the part performance

**1998 - Nov [7]** Write short note on the following:

(c) Anticipatory breach of contract

(5 marks)

**Answer:**

**Anticipatory breach of contract:** Section 39 of the Indian Contract Act, 1972 deals with what is known in English Law as anticipatory breach of contract. A breach of contract may take place before the time fixed after performance of the contract has arrived. Thus, if a promisor by his own act disables himself from performing his promise or refuses to perform his part of the contract, the other party is entitled to treat the contract as at an end and to sue him for damages for breach of contract without waiting until the time fixed for performance and without further performing his part of the contract. Where party to contract refuses to perform his part of the contract before the actual time arrives, the law gives the promisee an option whereby he may either-

- (a) elect to rescind and may then although the time for the performance has not yet received, treat the contract as at an end and at once sue for the damages, or
- (b) he may elect not to rescind but to treat the contracts still operative and wait for the time of performance and then hold the other party responsible for all the consequences of non-performance.

**1999 - May [7]** Write short note on the following:

(a) Quantum Meruit: (5 marks)

**Answer:**

*Please Refer 1997 - May [7] (c) on page no. 1206*

**2002 - May [7]** Write short note on the following:

(b) Vindictive and Nominal damages (5 marks)

**Answer:**

Damages for the breach of a contract are given by way of compensation for loss suffered, and not by way of punishment for wrong inflicted. Vindictive damages have no place in the law of contract because they are punitive by nature. But in case of (a) breach of a promise to marry, and (b) dishonour of a cheque by a banker wrongfully when he possesses sufficient funds to the credit of the customer, the court may award vindictive damages.

Whereas is nominal damages where the injured party has not in fact suffered any loss by reasons of the breach of a contract, the damages recoverable by him are nominal. These damages merely acknowledge that the plaintiff has proved his case and won.

**2002 - Nov [2]** Write short note on the following:

(c) Remedies available to an aggrieved party on the breach of contract. (5 marks)

**Answer:**

**Following are the remedies available to an aggrieved party on breach of contract.**

- (i) Suit for damages.
- (ii) **Recession of contract by the other party:** When a contract is broken by one party, the other party may treat the contract as rescinded. In such a case he is absolved of all his obligations under the contract and is entitled to compensation for any damages that he might have suffered.
- (iii) **Suit upon Quantum Meruit:** The phrase 'quantum meruit' literally means "as much as is, earned" or "according to the quantity of work done". When a person has begun the work and before he could complete it, the other party terminates the contract or does something,

which make it impossible for the other party to complete the contract, he can claim for the work done under the contract. He may also recover the value of the work done where further performance of the contract becomes impossible. The claim of quantum meruit must be brought by a party who is not in default.

- (iv) **Suit for specific performance:** Where damages are not an adequate remedy in the case of breach of contract, the court may be at its discretion on a suit for specific performance direct a party in breach, to carry out his promise according to the terms of the contract.
- (v) **Suit for injunction:** Where a party to a contract is negotiating the terms of a contract, the court may be issuing an 'injunction order' restrain him from doing what he promised not to do.

**2002 - Nov [7]** Write short note on the following:

(c) Anticipatory breach of contract

(5 marks)

**Answer:**

*Please Refer 1998 - Nov [7] (c) on page no. 1207*

### DISTINGUISH BETWEEN

**1995 - May [4]** (b) Distinguish between:

(ii) 'Liquidated damages' and 'Penalty'.

(5 marks)

**Answer:**

**Liquidated damages and penalty:** Liquidated damages and penalty are applicable to determine the extent of damages in case of breach of contract both in England and in India. Still there exist some difference between these two which are as follows:

- (i) Liquidated damages are the amount assessed on the basis of actual or probable loss by both the parties payable in the event of breach. While in case of penalty it is not based on actual or probable loss. Penalty is provided to prevent a party from committing a breach.
- (ii) Liquidated damage is imposed by way of compensation but penalty is imposed by way of punishment.

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- (iii) Courts in England usually allow 'liquidated damages' without any regard to the actual loss sustained and treat penalty clause as invalid. But Section 74 of the Contract Act, 1872 in India does not recognise any difference between these two terms. Here the courts are required to allow reasonable compensation so as to cover the actual loss sustained, not exceeding the amount so mentioned in the contract.

**1998 - Nov [6]** (b) Distinguish between:

- (i) 'Liquidated damages' and 'Penalty'. (5 marks)

**Answer:**

*Please Refer 1995 - May [4] (b) (ii) on page no. 1209*

**2000 - Nov [4]** (b) Distinguish between:

- (ii) 'Liquidated damages' and 'Penalty'. (5 marks)

**Answer:**

*Please Refer 1995 - May [4] (b) (ii) on page no. 1209*

## DESCRIPTIVE QUESTIONS

**1996 - Nov [5]** Comment the following:

- (b) What is an anticipatory Breach of Contract? (5 marks)

**Answer:**

**Anticipatory breach of contract:** An anticipatory breach of contract is a breach of contract occurring before the time fixed for performance has arrived. When the promisor refuses altogether to perform his promise and signifies his unwillingness even the time for performance has arrived, it is called Anticipatory Breach. The law in this regard has very well summed up in *Frost v. Knight and Hochster v. Dela Tour*.

Anticipatory breach of a contract may take either of the following two ways:

- (a) Expressly by words spoken or written, and  
(b) Impliedly by the conduct of one of the parties.

When A contracts with B on 15<sup>th</sup> July, 1995 to supply 10 bales of cotton for a specified sum on 14<sup>th</sup> August, 1995 and on 30<sup>th</sup> July informs B, that he will not be able to supply the said cotton on 14<sup>th</sup> August, 1995, there is an express rejection of the contract. Where A agrees to sell his white horse to

B for ₹ 5,000/- on 10<sup>th</sup> August, 1995, but he sell this horse to C on 1<sup>st</sup> of August, 1995, the anticipatory breach has occurred by the conduct of the promisor.

Section 39 of the Indian Contract Act deals with anticipatory breach of contract and provides as follows: "When a party to a contract has refused to perform, or disable himself from performing, his promise in its entirety, the promisee may put an end to the contract, unless he has signified, but words or conduct, his acquiescence in its continuance."

**Effect of anticipatory breach:** The promisee is excused from performance or from further performance. Further he gets an option:

1. To either treat the contract as rescinded and sue the other party for damages from breach of contract immediately without waiting until the due date of performance,' or
2. He may elect not to rescind but to treat the contract as still operative, and wait for the time of performance and then hold the other party responsible for the consequences of non-performance. But in this case, he will keep the contract alive for the benefit of the other party as well as his own, and the guilty party, if he so decides on reconsideration, may still perform his part of the contract and can also take advantage of any supervening impossibility which may have the effect of discharging the contract.

**1997 - Nov [6]** Comment the following:

- (a) What kinds of damages may be awarded in case of breach of the contract under the law of contract? (10 marks)

**Answer:**

**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. Sections 73 to 75 of the Contract Act incorporate the provisions in this regard. The damages which may be awarded to the injured party may be of the following kinds:

- (i) **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 cause 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. [Section 73 of the Contract Act and the rule in Hadley vs. Baxendale (1854) IEx. 341].

- (ii) **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.
- (iii) **Vindictive or exemplary damages:** These damages may be awarded only in two cases:
  - (a) for breach of promise to marry because it causes injury to his or her feelings; and
  - (b) for wrongful dishonour by a banker of his customer's cheque because in this case the injury due to wrongful dishonour to the drawer of cheque is so heavy that it causes loss of credit and reputation to him. A business man whose credit has suffered will get exemplary damages even if he has sustained no pecuniary loss. But a non-trader can not get heavy damages in the like circumstances, unless the damages are alleged and proved as special damages. [Gibbons vs. West Minister Bank (1939) 2 K.B. 882].
- (iv) **Nominal damages:** Nominal damages are awarded where the plaintiff has proved that there has been a breach of contract but he has not in fact suffered any real damage and the injury is nominal.

**1999 - May [2]** Comment the following:

- (c) Remote and indirect losses are not recoverable. (5 marks)

**Answer:**

Section 73 of the Indian Contract Act, (1872 deals with the compensation for loss or damages caused by breach of contract: In this relation, the basic rule is that damages must not be too remote. The remote damages and indirect losses are those which are either far away in time or widely separated from

usual course of things of contract. They are in the nature of distant indirect losses. They are not reasonably foreseeable by a normally reasonable man. The Supreme Court has ruled that remote or indirect loss or damages sustained by reason of the breach will not entitle the party to any compensation (*Karsands (v) Saran Engineering Co., AIR 1965 SC 1981*). Thus, the person who has committed the breach is liable for reasonably foreseeable losses, those that a normally prudent person would have had reason to foresee as probable consequences of future breach. A defaulting person is not liable for those damages which are not reasonably foreseeable. Thus remote damages are not recoverable. Non fulfilment of emotional expectations due to non-performance of a contract is a kind of remote damage being widely separated from the usual things of the contract.

**1999 - Nov [2]** Explain briefly of the following:

- (i) What remedies are available to an aggrieved party on the breach of contract? (5 marks)

**Answer:**

**Remedies for breach of contracts:** When a contract is broken, the injured party becomes entitled to any one or more of the following reliefs:

- (a) **Rescission of the contract:** with the result that the injured party is freed from all his obligations under the contract.
- (b) **Suit for damages:** Damages are monetary compensation awarded to the injured party by Court for loss or injury suffered by him. Section 73 of the Indian Contract Act, 1872 has laid down the rules as to how the amount of compensation is to be determined. Damages may be nominal or ordinary or special or exemplary damages or damages for deterioration caused by delay.
- (c) **Suit upon Quantum Meruit:** A right to sue on a quantum meruit (as much as earned) arises when a contract performed by one party, has become discharged by the breach of contract by the other party. It is based on implied promise arising from acceptance of benefit by the party.
- (d) **Suit for specific performance contract:** Where damages are not an adequate remedy in the case of breach of contract, the court may in its discretion on a suit for specific performance direct the party in breach, to carry out his promise according to the terms of the contract,

- (e) **Suit for an injunction:** Where a party to a contract is negotiating the terms of a contract, the court may by issuing an 'injunction order' restrain him from doing what he promised not to do.

**2000 - May [2]** Comment the following:

- (ii) Damages are "Compensatory" and "Not Penal". (5 marks)

**Answer:**

Damages (ordinary or special) are given by way of compensation for loss suffered and not by way of punishment for wrong inflicted. The fundamental basis of awarding damages is compensation for pecuniary loss which naturally flows from the breach of contract. The object is to put the injured party in the same position, so far as money can do it, as if he had not been injured.

Hence, vindictive or exemplary or exemplary damages have no place in the law of contract because they are punitive by nature. But in case of breach of a promise to marry and dishonour of a cheque by a banker wrongfully even when sufficient funds are there to the credit of customers account, the court may award exemplary damages.

**2000 - May [5]** Comment the following:

- (iii) What is meant by Anticipatory Breach of a contract? (5 marks)

**Answer:**

**Anticipatory breach of contract:** An anticipatory breach of contract is a breach of contract occurring before the time fixed for performance has arrived. When the promisor refuses altogether to perform his promise and signifies his unwillingness even before the time for performance has arrived, it is called Anticipatory Breach. The law in this regard has very well summed up in *Frost vs. Knight and Hochster vs. De La Tour*.

Anticipatory breach of a contract may take either of the following two ways:

- (a) Expressly by words spoken or written, and  
(b) Impliedly by the conduct of one of the parties.

Where A contracts with B on 15<sup>th</sup> July, 1999 to supply 10 bales of cotton for a specified sum on 14<sup>th</sup> August, 1999 and on 30<sup>th</sup> July informs B, that he will not be able to supply the said cotton on 14<sup>th</sup> August, 1999, there is an express rejection of the contract.



Where A agrees to sell his white horse to B for ₹ 5,000/- on 10<sup>th</sup> August, 1995, but he sells this horse to C on 1<sup>st</sup> August, 1995, the anticipatory breach has occurred by the conduct of the promisor.

Section 39 of the Indian Contract Act deals with anticipatory breach of contract and provides as follows: "When a party to a contract has refused to perform, or disable himself from performing, his promise in its entirety, the promisee may put an end to the contract, unless he has signified, by words or conduct, his acquiescence in its continuance."

**Effect of anticipatory breach:** The promisee is excused from performance or from further performance. Further he gets an option:

1. to either treat the contract as rescinded and sue the other party for damages from breach of contract immediately without waiting until the due date of performance, or
2. he may elect not to rescind but to treat the contract as still operative, and wait for the time of performance and then hold the other party responsible for the consequences of non-performance. But in this case, he will keep the contract alive for the benefit of the other party as well as his own, and the guilty party, if he so decides on re-consideration, may still perform his part of the contract and can also take advantage of any supervening impossibility which may have the effect of discharging the contract.

**2001 - Nov [5]** Comment the following:

(b) When a claim for Quantum Meruit arises?

(5 marks)

**Answer:**

A claim for quantum meruit shall arise under the following circumstances:

1. When the contract is discovered to be unenforceable (Section 65, Indian Contract Act, 1872) i.e. when the agreement is discovered to be void or becomes void, any person receiving benefit under such an agreement or contract is bound to restore it.
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.
3. When a contract is divisible, and the party in default, has enjoyed the part performance, the party in default may sue on quantum meruit.

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4. When an indivisible contract for lump sum is performed but badly, the person who has performed can claim the lump sum less deduction for bad workmanship.

### PRACTICAL QUESTIONS

**2018 - May [3]** (c) M Ltd., contract with Shanti Traders to make and deliver certain machinery to them by 30.6.2017 for ₹ 11.50 lakhs. Due to labour strike, M Ltd. could not manufacture and deliver the machinery to Shanti Traders. Later, Shanti Traders procured the machinery from another manufacturer for ₹ 12.75 lakhs. Due to this Shanti Traders was also prevented from performing a contract which it had made with Zenith Traders at the time of their contract with M Ltd. and were compelled to pay compensation for breach of contract. Advise Shanti Traders the amount of compensation which it can claim from M Ltd., referring to the legal provisions of the Indian Contract Act, 1872. (6 marks)

**Answer:**

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 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 or indirect loss or damage sustained by reasons of the breach.

In the given case, Shanti Traders suffered a loss ₹ 1.25 lakhs (12.75 – 11.50) due to breach of contract by M Ltd. This naturally arose in the usual course of things. Shanti Traders also had to pay penalty to Zenith Traders for breach of contract, which should be considered as indirect loss or remote loss for which M Ltd. cannot be held responsible.

Therefore, Shanti Traders can claim an amount of ₹ 1.25 lakh from M Ltd. and nothing beyond.