

appropriated/applied in discharge of each of these debts proportionately. [First interest then principle]

QUASI CONTRACT [Sec. 68 to 72]

A Quasi-contract is not a contract at all because one or the other essentials for the formation of a contract are absent. The term “Quasi” is a Latin word, which means “*as if*” or “*Similarly*”. It means *seemingly, apparently, but not really*.

Chapter V containing **Sections 68 to 72** of the Indian Contract Act lays down provisions relating to Quasi Contracts although this term has not been used as such rather these transactions have been recognised as “***Certain relations resembling those created by contracts***”. These are contracts implied in law as implied contracts. It means a contract which lacks one or more of the essentials of a contract. Quasi contract are declared by law as valid contracts on the basis of principles of equity and ***the doctrine of unjust enrichment*** i.e. ***no person shall be allowed to enrich himself unjustly at the expense/cost of another & the legal obligations of parties remains the same as that in a contract***. This concept was propounded in the case of ***Moses v. Mc Furlong*** by ***Lord Mansfield***.

Nature of Quasi contracts

- ⇒ A quasi contract does not arise from any formal agreement but is imposed by law.
- ⇒ Every quasi contract is based upon the principle of equity and good conscience.
- ⇒ A quasi contract is always a right to money and generally though not always to a liquidated sum of money.
- ⇒ A suit for its breach may be filed in the same way as in case of a complete contract.
- ⇒ The right granted to a party under a quasi contract is not available to him against the whole world but against particular person(s) only.
- ⇒ A suit for breach of a quasi contract may be filed in the same way as in case of an ordinary contract
- ⇒ Although there is no express or implied contract between the parties under a quasi contracts yet they are put in the same position as if there is a contract between them.

PROVISIONS RELATING TO VARIOUS QUASI CONTRACTS ARE CONTAINED UNDER SECTIONS 68 TO SEC 72 OF CONTRACT ACT, 1872

1. Sec. 68: Supply of necessaries to a person not competent to contract

If a person, incapable of entering into a contract, or anyone whom he is legally bound to support, is supplied by another person, with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.

Only the property of the incapable person is liable for reimbursement, not the person himself for the obvious reason that he is incompetent to contract. Where he doesn't own any property, nothing shall be payable. There is no definition of the term 'necessaries'. What constitutes necessaries is a question of fact and depends upon the facts and circumstances of the case. Moreover, what is luxury to one person may be a necessity to another.

Example: A supplies B, a lunatic, with necessaries suitable to his condition in life. A is entitled to be reimbursed from B's property.

Landmark case: Nash v. Inmann (1908)

Khangul v. Lakhha

2. **Sec. 69: Reimbursement i.e. right to recover money paid for another person.**

Payment by a person who is interested in such payment is recoverable as an equitable right. A person, who is interested in the payment of money and pays such money, which another is bound by law to pay, is entitled to be reimbursed by the other.

3. **Sec. 70: Obligation of person enjoying benefit of non-gratuitous act.**

Where a person, lawfully does anything for another person, or delivers anything to him; not intending to do so gratuitously, and such other person enjoys the benefits thereof then he is bound to make compensation to the other in respect of, or to restore the thing so done or delivered.

Example 1: A, a tradesman, leaves goods at B's house by mistake. B treats the goods as his own. He is bound to pay A for them.

Example 2: A saves B's property from fire. A is not entitled to compensation from B, if the circumstances show that he intended to act gratuitously.

Section 70 corresponds to what in England is called "**Actions for Quantum Meruit**" which means '**as much as is deserved**'.

4. **Sec. 71: Responsibility of finder of goods.**

A person who finds goods belonging to another and takes them into custody, is subject to the same responsibility as that of a bailee i.e. duty to take reasonable care of the goods, duty not to use the goods for his own purpose, duty not to mix the goods with own goods, right to recover reasonable expenses, reward, or even to sell the goods lawfully.

Finder's right to sell: Under Sec. 169, the finder of goods has the power to sell them when-

- a) The owner of the goods cannot with reasonable diligence be found, or he refuses, upon demand, to pay the lawful charges of the finder, and
- b) Either the thing found is in danger of perishing or of losing the greater part of its value, or, in case the goods are not of perishable nature, but the lawful charges of the finder, in respect of the thing found, amount to two-thirds of its value.

5. **Sec.72: Money paid under a mistake or coercion.**

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

Compensation for failure to discharge obligation created by quasi contract [Section 73]

When an obligation created by quasi contract is not discharged the injured party is entitled to relive the same compensation from the party in default as if such person had, contracted to discharge is and broken his contract.

DISCHARGE OF CONTRACT

Discharge of a contract means termination of the contractual relations between the parties to a contract. When the rights and obligations arising out of a contract are extinguished, the contract is said to be discharged or terminated. Simply put, when both the parties are legally discharged or relaxed

from performing their part of the promises in a particular contract, the contract is said to have been discharged.

A contract may be discharged by any of the following ways:

- By performance– Actual or Attempted.
- By mutual consent or agreement.
- By subsequent or supervening impossibility or illegality.
- By lapse of time.
- By operation of law.
- By breach of contract.

I. **DISCHARGE BY PERFORMANCE**- Performance of a contract is the most popular manner of discharge of a contract. The performance may be either actual performance or attempted performance.

- Actual performance**: When each party fulfils his obligations arising out of the contract within the time and in a manner prescribed, it is called the actual performance and the contract comes to an end.
- Attempted performance or Tender**: When the promisor offers to perform his obligation, but is unable to do so because the promisee does not accept the performance, it is called “Attempted Performance” or “tender”. Thus tender is not actual performance but is only an offer to perform the obligation under the contract. **A valid tender of performance is equivalent to performance.**

II. **DISCHARGE BY MUTUAL CONSENT OR AGREEMENT (SEC. 62)**- A contract is created by means of an agreement, it may also be discharged by another agreement between the same parties.

- Novation**: “Novation” occurs when a new contract is substituted for an existing contract, either between the same parties or between different parties, the consideration mutually being the discharge of the old contract.” If the parties are same, then small changes in the terms of contract is called “alteration” and not “novation”. For being “Novation”, the changes must be of significant nature.
- Alteration**: It means that change of one or more of the material terms of a contract. A material alteration is one which alters the legal effect of the contract. e.g. change in the amount of money, change in the rate of interest etc. Note that a material alteration made in a contract by one party without the consent of the other will make the whole contract void and no person can maintain an action upon it.
- Rescission**: A contract may be discharged before the date of performance, by agreement between the parties to the effect that it shall no longer bind them. Such an agreement amounts to “Rescission” or cancellation of the contract, the consideration being the abandonment by the respective parties of their rights under the contract. If there is non-performance of a contract by both the parties for a long time without complaint, it amounts to an implied rescission (Note: In rescission, the existing contract is cancelled by mutual consent without substituting a new contract in its place.)
- Remission**: It is defined as “Acceptance of lesser amount than what was contracted for or a lesser fulfillment of the promise made.”

- v. **Waiver:** It means deliberate giving up of a right which a party is entitled to under a contract whereupon the other party to the contract is released from his obligation.

III. DISCHARGE BY SUBSEQUENT OR SUPERVENING IMPOSSIBILITY OR ILLEGALITY

- i. **Impossibility at the time of contract (Initial impossibility)** - If you contract for something impossible, the agreement is void ab initio.
- ii. **Subsequent impossibility [Sec. 56, Para 2]** - If impossibility is found out after the contract is made, then the contract becomes void from such date. Sec. 2(j) defines a void contract as "A contract to do an act which, after making the contract, becomes impossible or unlawful, becomes void when the act becomes impossible or unlawful."

Sec. 56 is what actually incorporates "**Doctrine of frustration.**" In England, before 1863, subsequent impossibility of performance was not a defence. The doctrine evolved in the case of **Taylor v. Caldwell (1863)**. In this case, subject matter of the case was a music hall. The defendant agreed to let out the music hall to the plaintiff on specified dates for the purpose of entertainment. The hall was destroyed by fire prior to those dates. The plaintiff, however, sued for damages for breach of the contract. The defendant pleaded that the supervening impossibility discharged him from the contract. This defence was successful and the suit was dismissed. This doctrine was embodied in Para 2 of Sec. 56. In certain circumstances the parties to a contract are discharged from performance of the obligations when there is a supervening impossibility. The contract is then said to be frustrated.

Landmark cases: 1. **Krell v. Henry {Coronation Procession Case}**
2. **Satyabrat Ghosh v. Mungneeram Bangur & Co. (1954)**

A contract is discharged by supervening impossibility in the following cases:

- ✓ Destruction of the subject-matter
- ✓ Death or personal incapacity
- ✓ Declaration of war
- ✓ Change of law
- ✓ Non-existence or non-occurrence of a particular state of things necessary for the performance.

Cases when the contract is not discharged on the ground of supervening impossibility:

- ✓ Difficulty of performance
- ✓ Commercial impossibility
- ✓ Default of a third party
- ✓ Strikes, lockouts and civil disturbances
- ✓ Partial impossibility.

- IV. **DISCHARGE BY LAPSE OF TIME:** In some circumstances, the lapse of time may also discharge the contracts, e.g. the period of limitation for simple contracts is three years the under Limitation Act and therefore on default by a debtor, if the creditor does not file a suit of recovery against him within three years of default, the debt becomes time barred and the creditor will not get the help of the law. This in effect discharges the contract. Also where time is of essence, if the contract is not performed on time, the contract comes to an end, and the party not at fault need not perform his obligation and may sue the other party for damages.

- V. **DISCHARGE BY OPERATION OF LAW:** A contract is discharged by operation of law in the following cases-
- i. **Death:** Sometimes, a contract is of a personal nature and involves personal skills etc. of promisor. In such cases, the contract is discharged on the death of the promisor.
 - ii. **Insolvency:** When a person is adjudged as insolvent then he is released from his all liabilities in current order of adjudication. His rights (Assets) and liabilities are transferred to the official assignee or official receiver, as the case may be.
 - iii. **Merger of rights:** When an inferior right accruing to a party in a contract merges into a superior right accruing to the same party, then the contract conferring inferior right is discharged. For example, A took a land on lease from B. Subsequently, A purchases that land. A becomes owner of the land and ownership rights being superior to rights of a lessee, the earlier contract of lease stands terminated.
 - iv. **Loss of evidence of contract:** Where the evidence of the existence of the contract is lost or vanished, the contract is discharged. For example, document of contract is lost or destroyed and no other evidence is available, the contract is discharged.
- VI. **DISCHARGE BY BREACH OF CONTRACT:** A contract is sometimes discharged, by its breach generally if any party to the contract refuses or fails to perform his part of the contract or by his act makes it impossible to perform his obligations under the contract. A breach of contract may occur in the following two ways-
- a) **Anticipatory breach of contract (Sec. 39):** Anticipatory breach of contract occurs when the party declares his intention of not performing the contract before the performance is due.
 - b) **Actual breach:** Actual breach occurs in the following two ways-
 - i. On due date of performance
 - ii. During the course of performance

Consequence of breach of contract: The aggrieved party (i.e. the party not at fault) is discharged from his obligation and gets rights to proceed against the party as fault.

REMEDIES FOR BREACH OF CONTRACT

Remedy means course of action available to an aggrieved party when other party breaches the contract. **Chapter VI** of Contract Act with **Sec. 73 to 75** deals with the consequences of breach of a contract. When a contract is breached, the injured party is entitled to one or more of the following remedies-

- ⇒ Suit for specific performance of the contract
- ⇒ Rescission of the contract

- ⇒ Suit for damages
- ⇒ Suit upon quantum merit
- ⇒ Suit for injunction

1. **SUIT FOR SPECIFIC PERFORMANCE:** The suit for specific performance is regulated by the Specific Relief Act, 1963. Specific performance means the actual carrying out of the contract as agreed. The Court may grant specific performance where it is just and equitable to do. Specific Performance may be granted under the following grounds-

- i. Where actual damages arising from breach is not measurable.
- ii. Where monetary compensation is not adequate remedy.

The Court cannot grant the remedy of specific performance in the following situations-

- i. Where monetary compensation is an adequate relief
- ii. Where the Court cannot supervise the actual execution of the work
- iii. Where the Contract is for personal services
- iv. Where the Contract is not enforceable by either party against the other.
- v. Where contract is inequitable to either party.
- vi. Where contract made by company beyond its power. (ultravires)

2. **RESCISSION OF CONTRACT [Sec. 39]:** Rescission means a right not to perform an obligation. In such cases, the injured/aggrieved party is discharged from all the obligations under the contract and can either rescind the contract and file a suit claiming compensation for the damage which he has sustained because of the non-performance of the contract.

3. **SUIT FOR DAMAGES:** Damages are a monetary compensation allowed to the injured party for the loss suffered by him in a breach of contract. There are four kinds of damages under the Indian Contract Act of 1872. The aggrieved party of the contract is entitled for monetary compensation when the contract is breached.

The objective of awarding damages is not to punish the party at fault but to make good the financial loss suffered by the aggrieved party due to the breach of contract as also to put the aggrieved/injured party in a position in which he would have been had there been performance and not breach. The aggrieved/injured party must be able to prove the actual loss or no damages will be awarded.

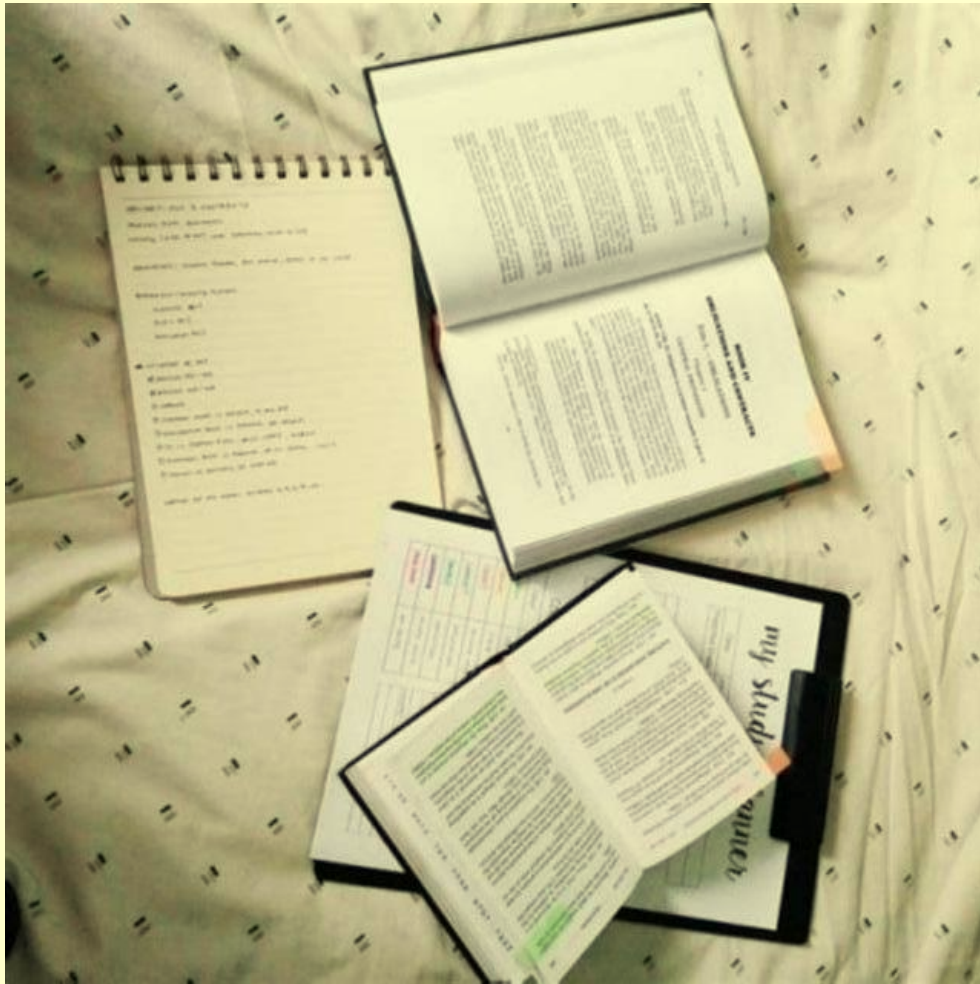
In India, the rules relating to damages are based on the judgment in English case of **Hadley v. Buxendale (1854)**. **Section 73** of the Indian Contract Act which deals with compensation for loss or damage caused by breach of contract is based on the judgment of this case. It states that the aggrieved party may claim the damages as follows-

- ⇒ 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.
- ⇒ Such damages which the parties knew, when they made the contract, to be likely to result from the breach. This relates to special damages.
- ⇒ The aforesaid compensation is not to be given for any remote or indirect loss or damage sustained by reason of the breach.

Damages can be of four kinds-

- **Ordinary or General Damages**
- **Special Damages**
- **Exemplary, Punitive or Vindictive Damages**
- **Nominal Damages**
- **Liquidated damages and penalty**

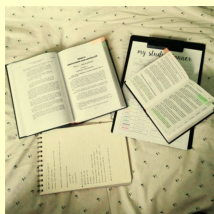
- (a) **Ordinary damages** are restrained to the "**direct or proximate consequences**" of the breach of a contract. The remote and indirect losses, which are not natural and possible consequence of the breach of contract, cannot be taken into account.
- (b) **Special Damages** can be claimed only if special circumstances which would result in a special loss in case of breach of contract are brought to the notice of the party. These damages arise on account of the special or unnatural circumstances affecting the plaintiff. The special circumstances which are mentioned above are the circumstances at the time when the contract is entered into. Subsequent knowledge of special circumstances will not create any special liability.
- (c) **Exemplary or punitive damages** are awarded with a view to punish the guilty party for the breach. The exemplary damages have no place in the law of contract since the object of the damages is to compensate the loss suffered by the injured party in case of a breach. However, Exemplary or Punitive damages are awarded to the following exemptions.
- Breach of a contract to marry
 - Dishonour of a cheque by a banker when there are sufficient funds to the credit of the customer.
- (d) **Nominal damages** are awarded when there is no significant loss suffered by the plaintiff. It is awarded for namesake to establish the right of the injured party.
- (e) **Suit for Quantum Meruit**: The term "Quantum Meruit" is derived from a Latin phrase which means "what one has earned". The injured party can file a suit upon quantum meruit and may claim payment in proportion to work done or goods supplied. **Sections 65 to 70** deal with the provisions relating to suit for Quantum Merit.
- (f) **Suit for injunction**: Injunction is an order of the Court restraining a person from doing a particular act. Where the defendant is doing something which he is promised not to do, then the injured party will get a right to file a suit for injunction. Injunction basically means stay order granted by court. This order prohibits a person to do particular act. Where there is breach of contract by one party and order of specific performance is not granted by court, injunction may be granted.



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UNIT V: SPECIFIC RELIEF ACT

- ⇒ Specific performance of contract
- ⇒ Contracts that can be specifically enforced and that can't be specifically enforced
- ⇒ Persons against whom specific enforcement can be ordered
- ⇒ Rescission and cancellation
- ⇒ Injunctions- temporary, perpetual, mandatory, obligatory
- ⇒ Declaratory decree
- ⇒ Discretion and powers of court

"The law ought to assure me everything which is mine, without forcing me to accept equivalents, although I have no particular objection to them."

-- **Bentham**

The Specific Relief Act provides for specific reliefs. The expression 'Specific Relief' means a relief in specie. Specific relief means relief of certain species, i.e. an exact or particular, a named, fixed or determined relief. The term is generally understood and providing relief of a specific kind rather than a general relief or damages or compensation. It is a remedy which aims at the exact fulfilment of an obligation or specific performance of the contract. Specific Relief Act explains and enunciates the various reliefs which can be granted under this provisions, provides the law with respect to them. Specific Relief Act, 1963 extends to the whole of India, except the State of Jammu and Kashmir. The Specific Relief Act deals only with certain kinds of equitable reliefs and these are-

- ⇒ **Recovery of possession of property**
- ⇒ **Specific performance of contracts**
- ⇒ **Rectification of instruments**
- ⇒ **Rescission of contracts**
- ⇒ **Cancellation of instruments**
- ⇒ **Declaratory decrees**
- ⇒ **Injunctions**

RECOVERY OF POSSESSION OF PROPERTY

Recovery of possession is dealt with in Sections 5 to 8 of the Specific Relief Act. Section 5 and 6 deals with the immovable property and Section 7 and 8 deals with the movable property.

Section 5 - Recovery of specific immovable property

Section 5 of the Specific Relief Act deals with the recovery of specific immovable property- "A person entitled to the possession of specific immovable property may recover it in the manner provided by the Code of Civil Procedure, 1908."

The section in simple words provides that any person who is a lawful owner of an immovable property, can get the possession of such property by due course of law. It means that when a person is entitled to the possession of specific immovable property he can recover the same by filing the suit as per provisions of Civil Procedure Code, 1908. He may file a suit for ejection on the strength of his title and can get a decree for ejection on the basis of title within 12 years of the date of dispossession. There are three types of actions which can be brought in law for the recovery of specific immovable property:

- ⇒ *a suit based on title by ownership;*
- ⇒ *a suit based on possessory title; and*
- ⇒ *a suit based merely on the previous possession of the plaintiff, where he has been dispossessed without his consent, otherwise than in due course of law.*

The last remedy is provided in **Section 6** of the Specific Relief Act. The suits of the first two types can be filed under the provisions of the Civil Procedure Code. The word '**entitled to possession**' means having a legal right to title to possession on the basis of ownership of which the claimant has been dispossessed. Plaintiff must show that he had possession before the alleged trespasser got possession.

Section 6- Suit by person dispossessed of immovable property

- 1) If any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may be set up in such suit.
- 2) No suit under this section shall be brought-
 - a. After the expiry of six months from the date of dispossession; or
 - b. Against the Government.
- 3) No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed.
- 4) Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof.

The main object of Section 6 is to discourage forcible dispossession on the principle that disputed rights are to be decided by due process of law and no one should be allowed to take law into his own hands, however good his title may be.

Section 6 provide summary and speedy remedy through the medium of Civil Court for the restoration of possession to a party dispossessed by another, within 6 months of its dispossession, leaving them to fight out the question of their respective titles in a competent Court.

Requisites of Section 6-

1. **Judicial possession of the plaintiff at the time of dispossession:** The plaintiff must establish his judicial possession at the time of dispossession. Judicial possession is not equivalent to lawful possession. If a person has the possession of property as a fact and once he becomes settled as such, it is enough for the purpose of relief under Section 6, irrespective of his being without any right to the same or mere trespasser.
2. **Dispossession of the plaintiff without his consent otherwise than in due course of law:** For the application of this section the dispossession must be without the consent of plaintiff or against the process of and operation of law invoked by the ordinary method of Civil Court.
3. **The suit must be instituted within 6 months from the date of dispossession:** Section 6 prescribes its own period of limitation as 6 months for suits to be filed there under.
4. **Dispossession must be of 'immovable property':** The expression 'immovable property' means only such properties of which physical possession can be given under the Act and it does not cover incorporeal rights, since the incorporeal rights are not rights of which possession can be taken and delivered to the claimant.
5. **Dispossession has not been made by the Government, but by any other person.**