

QUASI CONTRACT

Section 68 to Section 72 of the Indian Contract Act, 1872 speaks about "Quasi-Contract or Certain relations resembling those created by contracts. These relations resembling contract are known as contract implied in law or a quasi-contract. It is not real contract or as it is called, a consensual contract based on the agreement of the parties. These obligations come into existence by a fiction of law.

Meaning and Definition of Quasi-Contract -

Quasi Contract is based on the principle of equity. that "A person shall not be allowed to enrich himself unjustly at the expense of another. It means one should not accept or receive any benefit unjustly.

In the absence of Contract but on the principle of equity, imposes obligation on the party/person such obligation is called Quasi Contractual Obligation. It is same to a real contract between the Parties.

The term Quasi Contract is derived from the Roman Law "***Obligatio quasi ex contractu***". Quasi Contract is not real Contract entered into by parties intentionally. It resembles a contract in which law imposes an obligation on a person to perform an obligation on the ground of equity.

According to **Salmond**, " There are certain obligations which are not in truth contractual in the sense of resting on agreement, but which the law treats as if they were."

Example -

XYZ leaves his wristwatch at ABC's house by mistake. here ABC has Quasi-contractual obligation to return it to XYZ.

Note - Generally, In a contract, obligations are created on the parties out of an agreement but In these type of contracts (quasi-contracts) obligations are created on the parties without any agreement.

Kinds of Quasi Contracts -

Section 68 to Section 72 of the Indian Contract Act, 1872 deals with Five Kinds of Quasi-Contract which are as follows -

1) Claim for necessities supplied to person incapable of contracting, or on his account (Section 68) -

" If a person, incapable of entering into a contract, or anyone whom he is legally bound to support, is supplied by another person with necessities 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.

Illustrations -

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

(b) A supplies the wife and children of B, a lunatic, with necessaries suitable to their condition in life. A is entitled to be reimbursed from B's property.

2) Reimbursement of person paying money due by another, in payment of which he is interested (Section 69) -

Page | 2

A person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other.

Illustration

B holds land in Bengal, on a lease granted by A, the zamindar. The revenue payable by A to the Government being in arrear, his land is advertised for sale by the Government. Under the revenue law, the consequence of such sale will be the annulment of B's lease. B to prevent the sale and the consequent annulment of his own lease pays the Government the sum due from A. A is bound to make good to B the amount so paid.

3) Obligation of person enjoying benefit of non-gratuitous act (Section 70). -

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

4) Responsibility of finder of goods (Section 71) -

A person who finds goods belonging to another, and takes them into his custody, is subject to the same responsibility as a bailee.

5) Liability of person to whom money is paid, or thing delivered, by mistake or under coercion (Section 72) -

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

Illustrations -

(a) A and B jointly owe 100 rupees to C, A alone pays the amount to C, and B, not knowing this fact, pays 100 rupees over again to C. C is bound to repay the amount to B.

(b) A railway company refuses to deliver up certain goods to the consignee except upon the payment of an illegal charge for carriage. The consignee pays the sum charged in order to obtain the goods. He is entitled to recover so much of the charge as was illegal and excessive.

BREACH OF CONTRACT

1) Introduction:

Breach of Contract means "non-observance of a contractual obligation", or failure to perform the Contract. And remedy means a relief/solution or redressal to identify the loss or damage suffered by the other party.

2) Where is a right, there is a remedy:

A right would be no value if there were no remedy to enforce that right in the court of law, in the event of its infringement or breach of contract. A remedy is the means given by law for the enforcement of a right. When either of the parties breaches the contract, it gives the right to the other party to sue him for a remedy.

3) Remedies For Breach of Contract:

When a Contract is broken, the aggrieved party (the party who is not in breach) has one or more of the following remedies -

- (1) Rescission of the Contract
- (2) Suit for Damages
- (3) Suit upon Quantum Meruit
- (4) Suit for Specific Performance
- (5) Suit for Injunction

1) Rescission -

Where there is a breach of contract the aggrieved party may sue treat the contract as rescinded and refuse further performance. In such case, he is absolved of all his obligations under the contract.

Example - A promises to B to supply 5 bags of sugar on a certain Day. B agrees to pay the price after the receipt of the goods. A does not supply the goods. B is discharged from liability to pay the price.

The Court may grant rescission-

- (a) where the contract is voidable by the plaintiff; or
- (b) where the contract is unlawful for causes not apparent on its face and the defendant is more to blame than the plaintiff.

The Court may also refuse to rescind the Contract -

- (a) Where the plaintiff has expressed or impliedly ratified the contract; or
- (b) Where owing to the change of circumstances (not being due to any act of the dependent himself), the parties cannot be restored to their original position; or
- (c) Where third parties have, during the subsistence of the contract, acquired rights in good faith and for value; or
- (d) Where only part of the contract is sought to be rescinded and such part is not a severable from the rest of the contract (Section 27 Specific Relief Act 1963).

Consequence of rescission of voidable contract -

According to Section 64 of the Indian Contract Act 1872, when a person at whose option a contract is voidable rescinds it, the other party thereto need to perform any promise therein contained in which he is the promisor. The party rescinding a voidable contract shall if he have received any benefit thereunder from another party to such contract restore such benefit, so far as may be, to the person from whom it was

received. But if A person who rightfully rescinds a contract is entitled to consideration for any damage which he has sustained through the no fulfillment of the contract. (Section 75 of I.C.A 1872)

(2) Suit for Damages -

The term "**damage**" is different from the term "**damages**". Damage means injury and damages means monetary compensation for the loss suffered by the aggrieved party in a breach of contract. The object of awarding damages for the breach of a contract is to put the injured party in the same financial position as if the contract had been performed. For example - in the position in which he would have been had there been performance and not breach.

Hadley V. Baxendale (1854) 9 Ex 341

In this case, the Plaintiff's Flour mill was stopped by the breakdown of a crankshaft. He delivered the crankshaft to Defendant, a common carrier, to be taken to a manufacturer to copy it and make a new. Plaintiff did not know to Defendant that delay would result in a loss of profits. By some neglect on the part Defendant, the delivery of the shaft was delayed in transit beyond a reasonable time (so that the mill was idle for a longer period than otherwise would have been the case had there been no breach of the contract of carrying).

The House of Lord Held that the defendant was not liable for the loss of profit accrued during the period of closure since the plaintiff did not disclose the defendant that the mill was closed for want of the Crankshaft. If the plaintiff would have informed that the work disclosed for want of crankshaft, the defendant could have made alternative arrangements for quick transportation of the crankshaft.

Alderson, B. Observed in this case as follows:

"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 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."

Principle Laid Down :

"Compensation for loss or damage caused by breach of contract" is based on the judgment of the above case.

The rule in Hadley V. Baxendale :

When a contract has been broken, the injured party is entitled to -

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 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) Such 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 a quasi-contract shall be same as in any other contract.

Kinds of Damages -

Damages may be classified under the following heads namely -

a) Ordinary Damages -

It is also known as General damages or substantial damages. Ordinary damages are damages which actually arise in the usual course of things from the breach of a contract. Ordinary damages depend "on the knowledge which the parties are presumed to possess". for example, in Hadley V. Baxendale (1854), the only circumstances communicated by the plaintiffs defendants at the time of the contract were that the article to be carried was the broken shaft of a mill and that the plaintiffs were the Millers of that mill. Since the defendants had only this knowledge plaintiffs we are entitled to recover only the general damages from the breach of the contract.

b) Special Damages -

Special damages are awarded to the plaintiff in special circumstances for sustaining loss as a breach of the contract. Special damages may be successfully claimed only when they "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."

c) Nominal Damages -

Nominal damages simply means "very small". Where the injured party has not suffered any loss by reason of the breach of contract, the court may award very nominal sum as damages.

d) Exemplary Damages -

Exemplary damages are also known as positive or vindicated or compensatory or retributive damages. These Damages are allowed in case of breach of marriage or dishonor of a cheque by banker wrongfully.

e) Liquidated Damages -

If the amount of damages, in the event of the breach is determined by parties at the time of entering into the contract, they are called "liquidated damages" for example non-payment, against promissory note.

Liquidated damages represent a sum, fixed or ascertained by the parties in the contract, which is a fair and genuine pre-estimate of the probable loss that might ensue as a result of the breach. A penalty is a sum named in the contract at the time of its formation, which is disproportionate to the damages likely to accrue as a result of the breach. The courts in India allow only 'reasonable compensation'.

(3) Suit upon Quantum Meruit :

The phrase 'Quantum Meruit' means "as much as earned". A right to sue on a quantum meruit arise where a contract partly performed by one party, has become discharged by the breach of the contract

by the other party. The right is founded on an implied promise by the other party arising from the acceptance of a benefit by that party.

(4) Suit for Specific Performance :

"Specific performance" means actual carrying out of the promise. In certain cases, the Court may direct the party in breach of contract for the actual carrying out of the promise, exactly according to the terms of the contract. This is called specific performance of the contract.

(5) Suit for Injunction :

An Injunction is an order of the Court of Justice directing the defendant to do some positive act or restraining the commission or continuance of some Prohibitory Act (causing injury or loss to the plaintiff).