Fundamentals of Contract Law-II

2.4.11 Aviation Contracts and Tenders

Things to be covered

- Free consent
- Discharge of contract
- Remedies for breach

Sec 14 Free consent defined

Consent is said to be free when it is not caused by--

(1) coercion, as defined in section 15, or

(2) undue influence, as defined in section 16, or

(3) fraud, as defined in section 17, or

(4) misrepresentation, as defined in section 18, or

(5) mistake, subject to the provisions of sections 20, 21 and 22.

What sort of consent is covered by this section?

Consent is said to be so caused when it would not have been given but for the existence of such coercion, undue influence, fraud, misrepresentation or mistake.

What is coercion?

Sec 15 Coercion defined

Coercion is the committing, or threatening to commit, any act forbidden by the Indian Penal Code (45 of 1860) or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

Key ingredients from this section

committing, or threatening to commit, any act forbidden by the Indian Penal Code

unlawful detaining, or threatening to detain, any property

Parties?- "any person whatever" have been advisedly used by the legislature to indicate that the act need not be to the prejudice of the person entering into the Contract.

the words " to the prejudice of any person whatever," which are separated by a comma from the previous word "property" relate both to the committing or threatening to commit an act forbidden by the Penal Code and to the unlawful detaining or threatening to detain property.

Undue Influence- Sec 16

What do understand the difference b/w coercion and undue influence?

Mahboob Khab v Hakim Abdul Rahim- “Undue influence is said to be a subtle species of fraud whereby mastery is obtained over the mind of the victim, by insidious approaches and seductive artifices.”

When can you say that one party is dominating the will of other party?

Some guidance in Sec 16(2)

No precisely defined law setting

Tough question- whether an instrument is the product of one’s own folly or undue influence of another?

Facts and circumstances of the case is crucial. Following case proves this.

Henry Williams and Others v James Bayley (1866)

- Bayley's son took promissory notes with his father's signature to the bank. He forged the signature and this was done without the father's knowledge.
- This was done many times and he was not caught until one time when the promissory note was dishonoured.
- When the bank manager discovered the forgery, son did not deny it.
- Bank asked the father to mortgage his house to pay them and to avoid son's prosecution.
- The father mortgaged the house.
- Later, the father approached the court questioning the validity of the mortgage.

House of Lords

Decision: Agreement is invalid

Lord Chelmsford- The negotiation proceeded upon an understanding that the agreement give security for the promissory notes would relieve the son from consequences of his criminal act and the fears of the father were stimulated and operated on to an extent to deprive him of free agency, and to extort an agreement from him for the benefit of the bankers.

Mapping of cases under Sec 16 (2)

Section 17 Fraud Defined

- "Fraud" means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto of his agent, or to induce him to enter into the contract:—

(1) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;

(2) the active concealment of a fact by one having knowledge or belief of the fact;

(3) a promise made without any intention of performing it;

(4) any other act fitted to deceive;

(5) any such act or omission as the law specially declares to be fraudulent.

Explanation.—Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech.

the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;

- English position is followed: Derry v Peek (1889)
- A company released a prospectus where it was stated that the company was authorized by a special Act of Parliament to run trams powered by steam rather than by horses.
- But this authority to use steam should be approved by the Board of Trade.
- The Company considered that approval from Board is a formality.
- But the Board later refused.
- The individual who purchased shares in the company upon relying on the statement brought a claim for fraud.

- Issue: Whether the statement made by the defendant in the prospectus was fraudulent or simply incorrect?

- Lord Herschell stated that:

“Fraud is proved when it is shown that a false representation has been made-

(1) Knowingly, or

(2) Without belief in its truth, or

(3) Recklessly careless whether it is true or false”

On the facts of the case

- Applying this on the facts of the case, the court held that the company was not guilty of fraud.

- Reasoning: They honestly believed that once Parliament had authorized the use of steam, the consent of the Board was practically concluded.

- Ratio- The person making a false representation is not guilty of fraud if he honestly believes in its truth.

the active concealment of a fact by one having knowledge or belief of the fact;

- Ningawwa v Byrappa Shiddappa Hireknrabar(1968)
- Husband told the wife that he is mortgaging two of her lands for his debt but in reality he mortgaged four lands.
- Court: This is an act done with the intention of deceiving her.

- What is active concealment?
- What will be opposite of it?

- A sells, by auction, to B, a horse which A knows to be unsound. A says nothing to B about the horse’s unsoundness.
- Active concealment or passive concealment?

- A was silent in the above case. Can that silence be considered as fraud?
- General position: Mere silence is not fraud
- Shri Krishnan v Kurukshetra University (1976)
- A candidate who knew he was short of attendance did not mention it in exam form.
- Court: This is not fraud as it was the duty of the University to scrutinize forms and call for verification in case of doubts.
- If there was a column in the exam form to select out of two options (yes/no) if the candidate possessed sufficient attendance, then?
- Misdeclaration will lead to cancellation of examination form

- So general position is mere silence is not fraud. So when can silence become fraud?
- Duty to speak- evident from illustration

- Examples where the duty to speak was held and it was not held

Where it was held:

- Application for health insurance and life insurance
- After crashing the bike in the morning, taking bike insurance in the evening

- Insurance contracts are also called contracts of good faith

Where it was not held

- Haji Ahmad Yarkhan v Abdul Gani Khan (1937)

- An engagement party was organized. Subsequently, the groom discovered that bride suffers from epileptic fits and filed a case to recover the party expenses.

- Court: Cannot recover the expenses as there is no duty to speak
- Reasoning: The law does not impose a general duty on anyone to expose the blemishes of female relations to others even to the persons contemplating marriage with such female.

Sometimes silence can be equated with speech

- B says to A—"If you do not deny it, I shall assume that the horse is sound." A says nothing. Here, As silence is equivalent to speech.

18. "Misrepresentation" defined.—

"Misrepresentation" means and includes—

(1) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;

(2) any breach of duty which, without an intent to deceive, gains an advantage of the person committing it, or any one claiming under him, by misleading another to his prejudice, or to the prejudice of any one claiming under him;

(3) causing, however innocently, a party to an agreement, to make a mistake as to the substance of the thing which is the subject of the agreement.

Positive assertion

- You assert something to be true but in reality it is not true.

- Illustration: A chartered a ship from B. B stated that ship was not more than 2800 tonnage register. In reality, registered tonnage was more than 3000 tonnes.
- Is the contract voidable for misrepresentation?
- Ans: Yes

Misrepresentation v Fraud

- Some elements are common
  - Contract voidable
  - False representation
  - Consent should be based on false representation
  - Ordinary diligence is a common factor
- Fraud is an intentional wrong, but misrepresentation is innocent
- In case of misrepresentation, the person making is believes it to be true but not in fraud.
- In fraud, apart from voidable contract, there may be damages in tort as well
- Only in case of fraud by silence, the defence of ordinary diligence can be taken as opposed to all cases of misrepresentation [sec 19]

Section 19- Voidability of agreements without free consent.

- When consent to an agreement is caused by coercion, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused.
- A party to a contract whose consent was caused by fraud or misrepresentation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if the representations made had been true.

- Exception.—If such consent was caused by misrepresentation or by silence, fraudulent within the meaning of section 17, the contract, nevertheless, is not voidable, if the party whose consent was so caused had the means of discovering the truth with ordinary diligence.

- *Explanation*.—A fraud or misrepresentation which did not cause the consent to a contract of the party on whom such fraud was practised, or to whom such misrepresentation was made, does not render a contract voidable.

Answer these:

(a) A, intending to deceive B, falsely represents that five hundred maunds of indigo are made annually at As factory, and thereby induces B to buy the factory. Is the contract voidable? If yes, at whose option.

(b) A, by a misrepresentation, leads B erroneously to believe that, five hundred maunds of indigo are made annually at A’s factory. B examines the accounts of the factory, which show that only four hundred maunds of indigo have been made. After this B buys the factory. The contract is not voidable on account of A’s misrepresentation.

Ans: Because of Explanation to Sec 19

Section 19 A-Power to set aside contract induced by undue influence

When consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused.

Any such contract may be set aside either absolutely or, if the party who was entitled to avoid it has received any benefit thereunder, upon such terms and conditions as to the Court may seem just.

Mistake

- The law will not aid anyone to evade consequences on the plea that there was a mistake.
- At the same time, mistakes may happen so the law says that is the mistake is so fundamental, then the mistake will render the contract void.
- Sec 20- If the mistake relates to a fact that is essential to agreement, then the agreement is void.
- Ingredients of Sec 20- must be mistake of both parties, must be a mistake of fact, fact must be essential to agreement
- This is based on Sec 13 which says that consent is agreeing on the same thing in the same sense.
- Sec 22 says that unilateral mistake of fact will not render the contract voidable.
- Mistake of law is no excuse. Mistake as to other country’s law will be considered as mistake of fact.

Discharge of a contract

- When there is a valid contract, it creates certain obligations on all the parties and when the parties fulfill their obligations, the contract comes to an end.
- Thus, discharge of a contract means that the parties are no longer liable to perform obligations under the contract.
- Sometimes, even without the performance of obligations, there may be discharge of a contract.

Discharge of Contract

- By performance
- By consent or agreement
- By impossibility of performance
- By lapse of time
- By breach of contract

Discharge by performance

- This is the most obvious way of discharge of a contract.
- Sec 37-Obligation of parties to contracts.- The parties to a contract must either perform, or offer to perform, their respective promises, unless such performance is dispensed with or excused under the provisions of this Act, or of any other law. Promises bind the representatives of the promisors in case of the death of such promisors before performance, unless a contrary intention appears from the contract.
- Sec 37 covers actual performance as well as attempted performance.

Offer of Performance

Sec 38- Effect of refusal to accept offer of performance.

Where a promisor has made an offer of performance to the promisee, and the offer has not been accepted, the promisor is not responsible for non-performance, nor does he thereby lose his rights under the contract.

Every such offer must fulfil the following conditions:—

(1) it must be unconditional;

(2) it must be made at a proper time and place, and under such circumstances that the person to whom it is made may have a reasonable opportunity of ascertaining that the person by whom it is made is able and willing there and then to do the whole of what he is bound by his promise to do;

(3) if the offer is an offer to deliver anything to the promisee, the promisee must have a reasonable opportunity of seeing that the thing offered is the thing which the promisor is bound by his promise to deliver.

An offer to one of several joint promisees has the same legal consequences as an offer to all of them.

Summary of Sec 38

- In case of an attempted performance or tender of performance, the person who is bound to perform a promise has been ready and willing to perform and has offered to perform his promise unconditionally at proper time and place but other party does not accept performance.
- Example- Contract amount is Rs 50000. A person cannot say that he will pay Rs. 30000 now. This is not an unconditional offer of performance.
- Consequence- If the tender of performance is rejected by the other party, it excuses the promisor from performance and he still retains his rights under the contract.

Discharge by consent or agreement

- It is also called as discharge by modification.
- Essence- since the contract is formed through mutual consent, it can be modified through mutual consent.
- Relevant sections- Secs 62 and 63.
- How can the discharge by consent be done?- Novation, Remission, Alteration, Accord and Satisfaction.
- Sec 62- Effect of novation, recission and alteration of contract- If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed.

Novation

- Novation can be of two ways-
  - Change of parties
  - Substitution of a new contract in place of the old.

- Change of Parties- A owes money to B under a contract. It is agreed between A, B and C that B shall thenceforth accept C as his debtor instead of A. The old debt of A to B is at an end, and a new debt from C to B has been contracted.

- Substitution of new contract- Nagendra Kumar Brigeraj Singh v Hindustan Salts (2001)
- In this case, the petitioner was appointed in response to an advertisement but placed at a lower scale than that mentioned in the advertisement. He accepted the lower pay scale but later sued for the advertised scale.
- Court- He cannot be allowed to claim advertised scale as the principle of novation applied and the appointment and acceptance at the lower scale substituted the original proposed scale.
- Substitution of new contract cannot happen after there has been a breach of original contract.
- This was clarified in Manohur Koyal v Thakur Das Naskar (1888). The Plaintiff sued to recover the sum of Rs. 1173 due on a bond. After the due date was lapsed, the plaintiff agreed to accept Rs. 400 in cash and a new bond for Rs.700 payable by installments. But the defendant neither gave Rs. 400 nor the bond. The Plaintiff brought the case under the old bond.
- Calcutta HC- there was discharge of original contract and this discharge was not by novation but by breach.

Alteration

- There is no doubt that parties with mutual consent can alter the contract.
- There cannot be unilateral alteration to the contract.
- If the alteration goes to the very root of the contract, the old contract gets substituted and discharged.
- What goes to the root of the contract? Material alteration.
- Privy Council in Nathu Lal v Gomti Kuar (1940) held that: “A material alteration is one which varies the rights, liabilities or legal position of the parties as ascertained by the deed in its original state, or otherwise varies the legal effect of the instrument as originally expressed”.

Recission

- Recission is a remedy that allows an innocent party to a contract to cancel a voidable contract if the party decides not to affirm it.
- Generally, recission of contract is done when the consent is vitiated on account of fraud or undue influence. But it has also been used instead of termination of contract in cases of breach of contract also.
- Sec 64 talks about consequences of recission of voidable contract- If a contract is voidable, the other party need not perform the obligations and the party rescinding the contract must restore the benefits derived under it.

Remission

- Remission is the acceptance of a lesser sum than what was contracted. Basically, accepting the lesser fulfillment of the promise made.
- Sec 63- Promisee may dispense with or remit performance of promise.
- English position is different than Indian position.
- English case- Foakes v Beer (1883)- Beer gave loan to Dr Foakes and when the same was not repaid, Beer received a judgment in her favour. Later Beer and Foakes entered into an agreement where Beer stated that she will not enforce the judgment and Foakes stated that a six monthly payments of E250 will be paid. Foakes made regular payment and that amount only satisfied the judgment debt but not the interest on the debt. Beer filed a case.
- House of Lords- Beer’s promise of not enforcing judgment is not binding as there was no consideration.
- In India, Supreme Court of India in Kapurchand Godha v Mir Nawab Himayatalikhan Azamjah applied Sec 63. In this case, amount due was 27 lakhs and the creditor accepted 20 lakhs in full satisfaction but later sued for the balance. S.K. Das J. held that Sec 63 will be applicable and the creditor cannot sue for the balance. In India, discharge is assumed as consideration.

Waiver

- Waiver means intentional relinquishment of a right which a person is entitled to.
- If a party waives his/her right under the contract, the other party is released from the contractual obligations.
- Charles Rickards Ltd v Oppenheim- Contract was to supply a chassis and to build a car on it. Time was of essence for the contract. Since he was not an expert, the bodywork was entrusted to a third person who was to take instructions from the buyer directly. There were some delays but the buyer liberally extended time. Later, the buyer sent a notice that if the car is not delivered within 4 weeks, he will be unable to accept it. The car was delivered after 3 months and he refused the delivery.
- Issue- Whether the buyer waived time as essence when he extended the delivery late and can he revive it with a later notice?
- Court- Buyer had the right to make time as the essence of the contract again by giving reasonable notice and that the notice given by him was reasonable. He had rightfully rescinded the contract and was entitled to damages for breach.

Accord and Satisfaction

- After a breach, when there is an agreement between the parties where some consideration other than the legal remedy is to be accepted by the party not in fault.
- When there is a settlement of all their existing disputes by an arrangement, it is well-known in common law pleading as accord and satisfaction.
- Sec 63 also provides for this where the party who has a right to demand performance may accept any other satisfaction which he thinks fit instead of the performance of the promise made to him.

Discharge by impossibility of performance

Sec 56. **Agreement to do impossible act.—**An agreement to do an act impossible act in itself is void.

Contract to do an act afterwards becoming impossible or unlawful.—A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.

Compensation for loss through non-performance of act known to be impossible or unlawful.—

Where one person has promised to do something which he knew, or, with reasonable diligence, might have known, and which the promisee did not know, to be impossible or unlawful, such promisor must make compensation to such promisee for any loss which such promisee sustains through the nonperformance of the promise.

Summary

- Agreement to do impossible act is void

- Ex- A agrees with B to discover treasure by magic.

- Subsequent impossibility or unlawful- void
  - A and B contract to marry each other. Before the time fixed for the marriage, A goes mad. The contract becomes void
  - A contracts to take in cargo for B at a foreign port. A's Government afterwards declares war against the country in which the port is situated. The contract becomes void when war is declared.
  - A contracts to act at a theatre for six months in consideration of a sum paid in advance by B. On several occasions A is too ill to act. The contract to act on those occasions becomes void.

Compensation for loss

- Impossibility or unlawfulness is known to one party (or with reasonable diligence will know) and the other party doesn’t- compensation for loss

- Ex- A contracts to marry B, being already married to C, and being forbidden by the law to which he is subject to practice polygamy, A must make compensation to B for the loss caused to her by the non-performance of his promise.

Doctrine of frustration

- Doctrine of frustration refers to the discharge of contract by an impossibility of performance arising after the contract was made.

Answer these:

- One party took an estate on lease from another party but was dispossessed from it by alien enemies for some time. So he did not pay the rent for the dispossessed time.
- Plaintiff sued for that rent.

- Should the defendant pay rent for that time or not?

- Ans: This case, Paradine v Jane was decided in 1647 and the court said that the defendant was liable to pay.

- Court’s primary duty is to enforce contract and there was a contractual liability and he has to pay the rent.

- In its own words- “when the party by his own contract creates a duty, he is bound to make it good, if he may, notwithstanding any accident by tract; though the land be surrounded or gained by the seas, or made barren by wildfire, yet the lessor will have his whole rent.”

- Then force majeure clause in a contract was included by the parties.

- But later courts started accepting that contract can be discharged by impossibility of performance even without force majure clause.

Taylor v Caldwell (1863)

- Defendants agreed to let the plaintiffs use their music hall for concert.
- Before the first day of concert, the hall was burnt down.
- Plaintiffs sued them for compensation.
- There was no force majeure clause

- Court ruled in favour of defendants and stated that contract depended on the existence of the music hall.

In its own words

“subject to an implied condition that the parties shall be excused in case, before breach, performance becomes impossible from the perishing of the thing without default of the contractor”

Krell v Henry (1903)

- A contract between the plaintiff and defendant was made on 20 June 1902 where the defendant agreed to hire a flat in Pall Mall for two days- 26 and 27 June 1902 when the coronation processions of King Edward VII would pass along the Pall Mall.
- The flat had a balcony overlooking the street and would have an excellent view of the procession.
- The contract did not specifically mention that if the flat is hired for coronation purpose or any other purpose.
- A part of rent was also paid in advance.
- But coronation was cancelled as King Edward fell ill.
- Defendant did not pay the rest of the amount.
- Both parties recognized that coronation procession was the real object of the contract.

Defendant’s letter to the plaintiff

“I am in receipt of yours of the 18th instant, inclosing form of agreement for the suite of chambers on the third floor at 56A, Pall Mall, which I have agreed to take for the two days, the 26th and 27th instant, for the sum of 75l. For reasons given you I cannot enter into the agreement, but as arranged over the telephone I inclose herewith cheque for 25l. as deposit, and will thank you to confirm to me that I shall have the entire use of these rooms during the days (not the nights) of the 26th and 27th instant. You may rely that every care will be taken of the premises and their contents. On the 24th inst. I will pay the balance, viz., 50l., to complete the 75l. agreed upon.”

Plaintiff’s reply

“I am in receipt of your letter of to-day's date inclosing cheque for 25l. deposit on your agreeing to take Mr. Krell's chambers on the third floor at 56A, Pall Mall for the two days, the 26th and 27th June, and I confirm the agreement that you are to have the entire use of these rooms during the days (but not the nights), the balance, 50l., to be paid to me on Tuesday next the 24th instant.”

Issue

- Whether the defendant should pay the rest of the amount even when the procession did not take place?

Decision

- The court applied Taylor v Caldwell and stated that the foundation of the contract was the taking place of the procession.
- The court looked as three things to identify the coronation procession as the foundation of the contract:
  - The room was let out specifically the purpose was for viewing of the coronation and it was not a regular letting of the room
  - The room can be used only during the day and not the night
  - The claimant was not in the business of renting out his room regularly and he had done this only now.

- Since the procession did not take place, the plaintiff is not entitled to recover the balance of the rent.

Things to note:

- With Krell’s decision- it was not only physical impossibility, but failure of object was also included for discharging the performance of a contract.

- Taylor’s case- Physical impossibility
- Krell’s case- failure of object

Can commercial hardship be included in Sec 56?

- If there was a contract between A and B but an event happens which does not render the performance impossible but rather onerous, can Sec 56 be applicable?

- Tsakiorglou & Co Ltd v Noblee & Thorl GmbH (1962)-
- There was a contract to ship goods (300 tonnes of Sudan groundnuts) from Sudan to Hamburg through customary route of Suez Canal. But the Canal was closed following the Anglo-French war with Egypt and was not reopened until few months later. The goods could have been transported through Cape of Good Hope although it is a longer route. But the goods were not shipped through Cape of Good Hope
- With the closing of Suez Canal, did this contract cease to operate?

- Appellant- Shipping through Suez was an implied term as it is the customary or usual route.
- Court- This only made the performance more onerous but not impossible.

Indian position on commercial hardship

- Sachindra Nath v Gopal Chandra (1949)
- The defendant took a restaurant from the plaintiff at a higher rent because the British Troops were stationed there.
- There was a clause in the contract which stated that “this agreement will remain in force so long as British troops will remain in this town”
- Eventually British troops left the town and will not come back.
- Should the defendant still pay the high rent?

Decision

- Although it was possible that the defendant would not have paid such a high rent if he was not expecting to derive high profits from the British troops, this is not enough to make out a case of frustration.

- Thus, with this case, commercial hardship not frustration is also applied in India.

Parshotam Das v Municipal Committee, Batala (1949)

- Municipal Committee leased out certain tonga stands to the Plaintiff for Rs. 5000
- But no tonga driver used that stand. Consequently, the plaintiff did not earn anything.
- He sued for refund of the money.

- Can he get his money back under Sec 56?

Court

“[T]he plaintiff obtained the lease and the committee granted the same to him on the assumption that the tonga stands would be used by drivers and the plaintiff would recover fees from them, but for reasons which both sides could not help the drivers did not use the stands, the doctrine of frustration applied with full force.”

Rejection of Parshotam Das

- The Supreme Court in Dhru Dev Chand v Harmohinder Singh stated that Parshotam decision was not a good law and that Sec 56 is exhaustive.

- Alopi Parshad & Sons Ltd v Union of India (1960)- The court stated that in any contract when it is being executed, number of events will happen which they did not anticipate at all like abnormal rise and fall in prices etc. Just because this happens, it doesn't mean that they can get rid of what they bargained. Only on facts, if the circumstances were fundamentally different from when they entered into contract, the contract ceases to bind.

Things to note

- In Parshotam case, it could have been drafted as contingent contract with the tonga drivers using the stand as contingency.
- There is a distinction between Sec 32 and Sec 56

- Since commercial hardship will not attract Sec 56, it is better to include contingencies.

Mapping of cases by Avtar Singh

Case Name	What was held to be commercial hardship and not frustration
Sahas Karam v Nath Mal (1951)	Contract for sale of grain made more difficult by govt restrictions on sale and storage imposed subsequently
District Board, South Kanara v G. Santhappa Naik (1925)	A right to collect tolls at ghat but govt prohibited traffic of foodgrains over bridge resulting in loss to the plaintiff
Karl Ettlinger v Chagandas & Co (1915)	The increase in shipping rates in a contract for supply of ship
Sankaran v District Board, Malabar (1934)	Temporary suspension of traffic owing to breakdown
Govindbhai Gordhanbhai Patel v Gulam Abbas Mulla Allibai (1977)	Requiring state's permission for transfer and there was a contract for sale of land
State of Kerala v Paily Chandy (1984)	Workers of toddy shop going on strike after the contractor obtained it through auction
MTU Asia Pte Ltd v Brightside-who Hup (1989)	In a contract for supply of machinery, the failure of the source from which the supplier sub-contracted to purchase

Grounds of frustration

- So by now it is clear that commercial hardships cannot be a ground for frustration, then what can be the grounds for frustration?

Destruction of subject matter

- So if the subject matter of the contract is destructed, obviously there is frustration.
- Can you give me an example of a case where this was the ground of frustration? Ans: Taylor v Caldwell
- Another case- Howell v Coupland (1876)
- The plaintiff and defendant agreed for the sale of 200 tonnes of potatoes.
- As per the contract, the defendant’s land should be used for growing the required potatoes.
- Accordingly, the defendant planted potatoes on his property
- But the crop was attacked by a disease, so the final output was only 80 tonnes of potatoes.
- The plaintiff took delivery of 80 tonnes and brought an action for non-delivery of the rest.

- Issue- Is the defendant liable for the breach of contract?

- Decision: Taylor’s decision was followed- The unexpected potato disease reduced the harvest and therefore defendant could not deliver the contracted quantity. The court looked at the fact that the plaintiff was happy to take delivery of the harvested quantity and decided that there was frustration of the contract.

Reasoning:

Mellish LJ-

“Suppose the potatoes had been fully grown at the time of the contract, and afterwards the disease had come and destroyed them; according to the authorities it is clear that the performance would have been excused; and I cannot think it makes any difference that the potatoes were not then in existence … Here there was an agreement to sell and buy two hundred tons out of a crop to be grown on a specific land, that it is an agreement to sell what may be called specific things; therefore neither party is liable if the performance becomes impossible.”

Indian position

- It is same as that of English law for the destruction of subject matter.

- V.L Narasu v PSV Iyer (1953)
- There was a contract to exhibit a film at a theatre.
- But when there was heavy rain, one of the walls of the theatre collapsed. It killed three people.
- Therefore, the licence was cancelled until reconstruction to the satisfaction of the chief engineer is done.
- The movie was not shown and by the time the reconstruction happens, the film may have lost its appeal.
- Court- The theatre owner has no liability.

Change of circumstances

- The circumstances changed that the performance of contract becomes impossible to perform in the manner and the time contemplated under the original contract.
- This is the ground where the court will determine, if the contract is impossible to perform or mere commercial hardship.

Alopi Parshad & Sons Ltd v UoI (1960)

- The Plaintiffs was the agent of the government in purchasing ghee for the army personnel.
- Their payment was based on different items of work involved.
- When WWII happened, rates soared.
- The agents demanded revision of rates but nothing happened.
- But they kept supplying.
- Govt terminated the contract in 1945.
- Plaintiffs filed a suit for enhanced rates.
- Court- The right of the agents was only to receive the remuneration under the terms of the contract.

Non-Occurrence of contemplated event

- The performance of the contract may still be possible but because of an event not occurring, the value of performance may be diminished.

- For instance, Krell’s case.

Herne Bay Steam Boat Co v Hutton (1903)

- The Royal Naval Review was supposed to take place in Spithead on 28 June 1902.
- The Defendant wanted to take passengers from Herne Bay for viewing the naval review and also for a day's cruise around the fleet.
- For this purpose, the defendant entered into a contract with plaintiff for chartering plaintiff's steamship Cynthis on 28 and 29 June 1902.
- The defendant paid the deposit and rental fee.
- On 25th June 1902, the Royal Naval Review was cancelled.
- So the ship was useless to the defendant.
- The plaintiff contacted the defendant and told him that the ship was ready and demanded a payment.
- The plaintiff did not receive any reply.
- They used the ship for different purpose and made profits.
- But the plaintiffs sued the defendant to recover the balance subtracting the profits they made on those two days.

- Issue- Whether the plaintiff is entitled to recover the balance amount even when the Royal Naval Review was cancelled?

- Court held that the defendant had the venture of carrying passengers and one day cruise and therefore it was his risk alone and secondly, the taking place of the royal naval review was not the only basis of the contract and since there was no destruction of the subject matter, the plaintiffs are entitled to recover the rent arrears.

Reasoning

Vaughan Willams LJ held

“I see nothing that makes this contract differ from a case where, for instance, a person has engaged a brake to take himself and a party to Epsom to see the races there, but for some reason or other, such as the spread of an infectious disease, the races are postponed. In such a case it could not be said that he should be relieved of his bargain. So in the present case it is sufficient to say that the happening of the naval review was not the foundation of the contract”.

Reasoning

- Stirling LJ held:

“It is said that, by reason of the reference in the contract to the "naval review", the existence of the review formed the basis of the contract, and that as the review failed to take place the parties became discharged from the further performance of the contract, in accordance with the doctrine of Taylor v Caldwell. I am unable to arrive at that conclusion. It seems to me that the reference in the contract to the naval review is easily explained; it was inserted in order to define more exactly the nature of the voyage, and I am unable to treat it as being such a reference as to constitute the naval review the foundation of the contract so as to entitle either party to the benefit of the doctrine in Taylor v. Caldwell. I come to this conclusion the more readily because the object of the voyage is not limited to the naval review, but also extends to a cruise round the fleet. The fleet was there, and passengers might have been found willing to go round it. It is true that in the event which happened the object of the voyage became limited, but, in my opinion, that was the risk of the defendant whose venture the taking the passengers was.”

Things to note

- The same exact judges who decided Krell v Henry also decided this case- Romer LJ, Vaughan Williams LJ, Stirling LJ.
- The material fact that differed in this case was that the contract was not for the sole purpose of somebody viewing the naval review.
- In Krell, both defendant and plaintiff were concerned about the coronation procession but in Herne Bay case only the defendant was concerned about the royal naval review as the plaintiffs were only giving the ship for hire.

Death or incapacity of party

- This point doesn’t need any explanation.

- Robinson v Davison (1871)
- There was a contract between the plaintiff and the defendant (as the agent of his wife) that she should play the piano at a concert on a specified day.
- On that day, she was unable to perform because of her illness.
- The contract did not contain any specific terms as to what should be done in case of being too ill to perform.
- Plaintiff brought an action against the defendant for breach of contract.

Decision

- The court held that wife’s illness and the consequent incapacity excused her and that the contract was in its nature not absolute but conditional upon her being well enough to perform.

- Bramwell stated that in holding that the illness of the defendant incapacitated her from performing the agreement the court was not really engrafting a new term upon an express contract. It was not that the obligation was absolute in the original agreement and a new condition was subsequently added to it the whole question was whether the original contract was absolute or conditional and having regard to the terms of the bargain, it must be held to be conditional.

Reasoning

“The whole contract is based on the assumption of the continuance of life, and on the conditions which existed at the time. That assumption is made by both; it is really the foundation of the contract. It does not require close reasoning to prove that if the foundation fails, the whole contract must fail. Here the foundation was wanting for there was on Mrs Davison’s part an entire and total incapacity to do the thing contracted for.”

Intervention of war

- There can war like situations which may discharge the contract by frustration.
- But the court will determine the extent of difficulty.
- Tsakiorglou & Co Ltd v Noblee & Thorl GmbH (1962)

- So if there were more than one ways of performing the contract and the war only cuts one of them off, the parties should still perform the contract.

Discharge by lapse of time

- The Limitation Act provides time limit within which one party to whom the performance is owed should bring a case against the non-performing party.
- When the limitation period is over and the case is not filed, the person to whom the performance is owed is barred from making a claim and the non-performing party is discharged from his liability to perform the obligations.

Discharge by Breach

- What is anticipatory breach?
- Basically, when one party indicates that he cannot perform the contract even before he needs to perform it.

- Where can you find this provision in ICA?

Sec 39- Effect of refusal of party to perform promise wholly.

- 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 conduct, his acquiescence in its continuance.

- Who does he refer to in this section?

Illustrations

- (a) A, 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, and B engages to pay her 100 rupees for each night's performance. On the sixth night A wilfully absents herself from the theatre. B is at liberty to put an end to the contract.
- (b) A, a singer, enters into a contract with B, the manager of a theatre, to sing at his theatre two night' in every week during the next two months, and B engages to pay her at the rate of 100 rupees for each night. On the sixth night, A wilfully absents herself. With the assent of B, A sings on the seventh night. B has signified his acquiescence in the continuance of the contract, and 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.

Hochester v De La Tour (1853)

- De La Tour concluded an agreement to employ Mr. Hochster to travel with him in Europe on 1 June 1852.
- A month before the travel, on 11 May 1852, he writes to him that his services are no longer required.
- So the plaintiff brings an action for breach before 1 June 1852, that is on 22 May 1852.

- Defendant’s argument-There is no breach as the day of performance is still due

Issue

- whether a party’s refusal to perform the agreement amounts to actionable breach before the date was due to commence?

Decision

- Defendant’s argument was rejected.

- Lord Campbell CJ-

“It cannot be laid down as universal rule that, where by agreement an act is to be done at a future date, no action can be brought for a breach of the agreement till the day for doing the act has arrived.”

Summary- action can be taken even before the due date- so anticipatory breach

- Can there be an anticipatory breach of contingent contract?

- Same rule applies to contingent contract and an immediate action for breach will lie irrespective of happening or non happening of contingent event.

Frost v Knight (1872)

- The defendant promised to marry the plaintiff after the death of his father.
- But even when his father was alive, he broke of the engagement and announced his intent not to marry the plaintiff on his father's death.
- The plaintiff brought a suit even when the father was alive.

- What is the contingent event here?
- Can an action for breach lie before the contingency happens?

Decision

- Hachester decision was applied.
- Lord Cockburn CJ explained why such action can lie immediately:

“ the damages consequent on non-performance being assessed at the earliest moment, many of the injurious effects of such non-performance being assessed may possibly be averted or mitigated … To hold that the aggrieved party must wait until the time fixed for marrying shall have arrived would have the effect of aggravating the injury, by preventing the party from forming any other union, and by reason of advancing age rendering the probability of such a union constantly less”

- So it is clear that in case of anticipatory breach, the innocent party need not wait until the date of performance but can bring a suit before as well.

- So what if the innocent party chooses to wait for the date of performance in the contract even if the other party conveys that he may not perform the contract.

Consequences of aggrieved party waiting for performance

- There is no bar for the aggrieved party to wait for the performance.
- He/she can do so.
- But if he chooses to wait for the performance, then he keeps the contract alive even for the other party’s benefit.

- Why?- Because when he keeps the contract alive, then he is enabling the other party either to complete the contract irrespective of his previous repudiation or either he can take advantage of supervening impossibility which can justify him declining to complete it.

Party repudiating may choose to perform

- In Fercometal SARL v Mediterranean Shipping Co. (1989)

- A Charterer entered into an agreement with a ship owner for a vessel called Simona.
- Ship owner was supposed to get the vessel ready for loading by 9 July 1982 as per the contract. Meanwhile, the charterer gave a notice t end the contract prematurely.
- But the ship owner did not accept the repudiation.
- Accordingly, the owner gave a notice of readiness on 8 July 1982.
- But in reality, the vessel was not ready even with the notice of readiness.
- Can the charterer bring an action for breach?

Decision

- In the case of wrongful repudiation by one party, the non-repudiating party has the option of either accepting the repudiation or affirming the contract by continuing to fulfil their obligations. If the innocent party affirms the contract, he must continue to tender performance thereof.
- On the facts, after the charterer's wrongful repudiation, the vessel owners affirmed the continuance of the contract, yet failed to fulfil their obligations by tendering the vessel ready to load on time.
- As the owners continued to affirm the existence of the contract and failed to tender the ready vessel on 9 July, the charterers are able to exercise their contractual right of termination under the existing contractual clause with no damages.

Discharge by supervening impossibility

- If the innocent party wants to keep the contract alive and a supervening impossibility happens, then the party who earlier repudiated the contract may still take advantage of the supervening impossibility.

- Avery v Bowden (1855)
- There was a charterparty agreement.
- It provided that the ship that was chartered should proceed to Odessa and take a cargo from Charterer’s agent within 45 days.
- Accordingly, the ship arrived at Odessa.

- The agent did not provide the cargo. He then asked the ship to go away.
- Inspite of this, the ship remained at Odessa and waited for cargo.
- Please note that the innocent party could have repudiated the contract but did not elect to do so.
- Before the expiry of 45 days, a war broke out which rendered the performance illegal.
- The plaintiff brought an action.

Decision

- Court held that the contract ended by frustration and not by breach.

- Reasoning- When the agent did not give cargo and asked the ship to go away, the captain could have accepted the renunciation and he would have had a right to maintain an action on the charterparty to recover damages equal to the loss he had sustained from breach of the contract on the part of the defendant. But he insisted upon having cargo to the fulfillment of charterparty agreement. Thus the contract was still open when the war intervened.

Actual breach

- Can you guess what is meant by actual breach?

- Actual breach means a breach by non-performance or refusal to discharge the contractual obligations at the time when it is due as per the contract.

- This is also covered in Sec 39.

- The only difference between anticipatory breach and actual breach is…..

- When the breach happens- before the due time of performance or not.

- Now for actual breach- the whole conduct of the party has to be assessed objectively.

- Now refusal to perform an obligation that goes to the whole root of the contract is different from minor irregularity in the performance of the contract.

- Does Sec 39 talk about minor irregularity or very root of the contract?
- This is something that the court examines.
- It is explained clearly in this case.
- Maple Flock Co Ltd v Universal Furniture Products (Wembley) Ltd (1971)
- But why is it significant to examine if it is fundamental breach or minor irregularity?
- Repudiation of contract is there when the non-performance affects the very root of the contract and the innocent party can immediately bring an action.

Maple Flock Co Ltd v Universal Furniture Products (Wembley) Ltd (1971)

- There was a contract for supply of 100 tons of flock of Government standard to be delivered in instalments.
- First fifteen deliveries happened.
- But in the sixteenth delivery the standard of flock was below the government standard.
- The buyer rejected this delivery and treated the contract as repudiated.
- Can the contract be repudiated for this?

Decision

- The court held that the seller’s conduct did not show an intention to throw away the contract and therefore, the buyer should have to be content with damages for defective goods.

Reasoning:

- Lord Hewart CJ stated that:

“With the help of these authorities we deduce that the main tests to be considered… are, first the ratio quantitatively which the breach bears to the contract as a whole, and secondly, the degree of probability or improbability that such a breach will be repeated. On the first point the delivery complained of amounts to no more than 1 [and half] tons out of a contract for 100 tons. On the second point, our conclusion is that the chance of the breach made both before and after the instalment objected to; we hold that it cannot reasonably be inferred that similar breaches would occur in regard to subsequent deliveries.”

Ratio in M.P Mines Ltd v Rai Bahadur Shriram Durga Prasad (P) Ltd (1972)

Indian Supreme Court held-

“that to constitute repudiation, a breach of contract must go to the root of the contract … This constitutes the test even where there are recurring breaches- producing different results according to the degree of non-compliance… Notice that a breach is likely to occur or recur cannot, of course, be treated as being a repudiation unless it would have that effect when it did occur or recur.”

What about partial failure, can it go to the very root?

- Even if there is only partial failure in performing contractual obligations, the court will still examine it as a question of fact if it goes to the very root of the contract.

- Juggilal Kamlapat v Pratapmal Rameshwar (1978)
- plaintiff entered into a contract with respondents to sell diverse quantities of B. Twill.
- Through another contract certain amount of Hessian goods were to be sold.
- These contracts were standard contracts of Indian Jute Mills Association.

- Both contracts had following clause:

“Payment to be made in cash in exchange for Delivery Orders on Sellers, or for Railway Receipts or for Dock's Receipts or for Mate's Receipts (Which Dock's or Mate's Receipts are to be handed by a Dock or Ship’s Officer to the Seller's representatives”

- The goods were to be delivered in the months of April, May and June.
- April and May quotas were delivered.
- Plaintiff gave the defendant “Pucca Delivery orders” on different mills.
- What is pucca delivery orders- basically the mills are not bound to recognise any transferee except the original buyer.
- After April and May quotas, for the rest of the delivery, the seller asked certain mills to take the delivery directly to the buyer.
- Finally, the products reached the buyer through several middlemen and the terms of payment of mills were different from the original contract.
- The buyer refused to accept the orders.

- Plaintiff initiated a suit that pucca delivery orders were valid by virtue of trade, custom and usage of the jute trade in Calcutta.
- The Defendant contended that they were not delivery orders only and thus invalid. The defendant also contested the existence of such trade custom or usage.
- The court summarised the issue in following words:

"The crux of the whole matter was whether the plaintiff had carried out what it had undertaken and tendered the delivery notes in respect of the contracts. The respondent did not bargain for delivery orders containing reservations or conditions entitling the mills or suppliers to refuse delivery to the holder of the delivery order, unless the defendants complied with such other and additional terms or conditions as the suppliers imposed."

Decision

- The court stated that no alleged custom could modify the requirement of law as to what a document of title is or what a particular delivery order means.

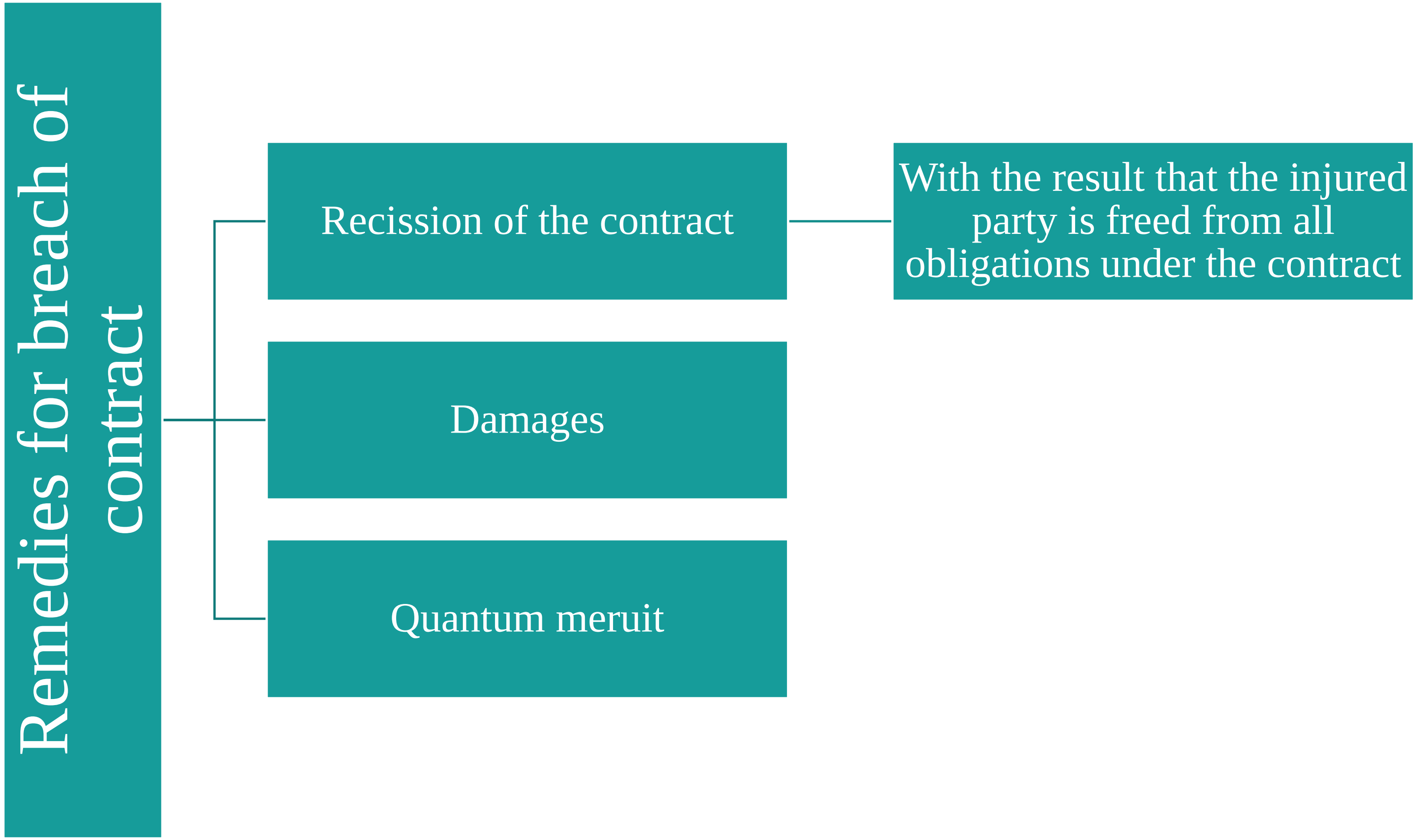
- The Court further held that alleged custom cannot contravene the express terms of the agreement or render the operation of statutory provisions as invalid.
- A delivery order is a document of title under Section 2(4) of Sale of Goods Act.

Decision

- The defendant cannot be compelled to pay damages for alleged breach of contract when the delivery order was not what they contracted for.

- Thus, the sellers were in breach of the contract.

Remedies for breach of contract



Recission

- We have already discussed recission.
- When one party breaches the contract, the other party may treat the breach as discharge and refuse to perform his part of the contract.
- Sec 75 entitles him to compensation for any damage he may have sustained through the non-fulfillment of the contract.

Damages

Hadley v Baxendale (1860)

- Plaintiffs were the occupiers of the City Stream Mills in Gloucester and where carrying on the business of cleaning corn, grounding corn into meal and dressed the same into flour, sharps and bran.
- To carry this activity, they had a steam engine but the crank shaft of the steam engine was broken.
- As a result, the engine was not working and their business was affected.
- They wanted the a new crank shaft made.
- Accordingly, they contacted Messers Joyce & Co for making a new shaft.

- In order to make the new shaft, Joyce needed the broken shaft to be given to them at Greenwich so they can ensure that the new shaft will fit the other parts of the enginee.
- So the plaintiffs contacted the defendants who carried on business of common carriers of goods under the name “Pickford & Co”.
- As per the contract between the plaintiffs and the defendants, they had to carry the broken shaft from Glocester to Greenwich
- The plaintiffs alleged that the defendants stated that within the second day from when the plaintiffs hand it over to them, they promised to convey the shaft.

- But the defendants did not deliver the shaft to Messers Joyce & Co on the second day.
- In fact, they neglected to do the delivery even after seven days had passes after the shaft had been delivered to the defendants.

- Plaintiffs contention was that there was an delay of five days which prevented the defendant in carrying out the their business.
- Thus, as a result, they were unable to supply flour to their customers and was even forced to buy flour from others to supply their customers.
- Thus, they lost the profits which otherwise they would have got and also they incurred payment of wages during that period.

- The plaintiffs stated that defendants were liable to pay E 300 as damages for failing to deliver the shaft within a reasonable time.
- With regard to the contention of timeline, the defendant denied.
- The plaintiffs stated that a servant of them was sent to defendant’s office and told the defendant’s clerk that the mill has stopped and requested that the shaft must be sent immediately.
- To which, the defendant’s clerk stated that any day if they send the shaft by 12 o clock, the following day it will be delivered at Greenwich.
- Then the plaintiffs took the shaft on 14 May before noon and paid Rs E24 for the carriage services.

- On the facts of the case, the delivery of shaft at Greenwich was delayed by some neglect and as a consequence, the plaintiffs did get the new shaft only several days later than otherwise it would have taken.
- The defendant was ready to pay only E25 as against the claim of E300 and that amount was deposited with the court.
- Defendant’s contention was that the damages claimed are too remote.
- Jury found a verdict of another E25 to be paid by the defendant in addition to the amount deposited in the court.

- Defendants obtained misdirection in judge’s framing of charges for the jury.
- So the judgment we will studying is regarding this.
- Judge Alderson B did examine the defendant’s contentions.
- So before he went to decide the case, he generally discussed as to what the general should be.

- At the outset he stated that it is the job of the judge to explicitly state the rules and direct the jury to be governed by such rules when they estimate the damages.

- He then stated that when two parties have made a contract and one party broke them, the other party is entitled to damages. But what sort of damages?
- The judge stated that the damages should be fairly and reasonably be considered arising naturally.
- What do we mean by naturally?- according to usual course of things from such contract itself or such as may reasonably be supposed to have been in the contemplation of both parties at the time the contract was made as the probable result of the breach of it.

- If not usual course of things, if there were special circumstances under which the contract was made and the same was communicated by the plaintiffs to the defendant.
- Therefore, the special circumstances should be known to both parties.

- How should damages be calculated?

“The damages resulting from the breach of such a contract which they would reasonably contemplate would be the amount of injury which would ordinarily follow from a breach of contract under the special circumstances so known and communicated.”

- How should damages be calculated if the special circumstances are not known or communicated?

“if these special circumstances were wholly unknown to the party breaking the contract, he at the most, could only be supposed to have had in his contemplation the amount of injury which would arise generally, and in the great multitude of cases not affected by any special circumstances, for such a breach of contract.”

- If the special circumstances are known to the parties, then the breach of contract by special terms should result in such damages otherwise it would be very unjust to deprive them.

- Thus, these principles should be communicated to the jury to guide them in estimating the damages arising out of any breach of contract.

On the facts of the case

“We find that the only circumstances here communicated by the plaintiffs to the defendants at the time the contract was made were that the article to be carried was the broken shaft of a mill and that the plaintiffs were the millers of that mill.”

Does this circumstances show reasonably that the profits of the mill must be stopped by an unreasonable delay in the delivery of the broken shaft by the carrier to the third person?

- What if the plaintiffs had another shaft in their possession which will be used until this is not in use?
- Or if some other parts of the engine is not working when the delivery of shaft is taking place, still the same result will happen. What result? Loss of business.

Decision

“Here it is true that the shaft was actually sent back to serve as a model for a new one, that the want of a new was the only cause of the stoppage of the mill, and that the loss of profit really arose from not sending down the new shaft in proper time, and that this arose from the delay in delivering the broken one to serve as a model. But it is obvious that, in the great multitude of cases of millers sending off broken shafts to third persons by a carrier under ordinary circumstances, such consequences would not, in all probability, have occurred, and these special circumstances were here never communicated by the plaintiffs to the defendants.”

Decision

“It follows, therefore, that the loss of profits here cannot reasonably be considered such a consequence of the breach of contract as could have been fairly and reasonably contemplated by both the parties when they made this contract. For such loss would neither have flowed naturally from the breach of this contract in the great multitude of such cases occurring under ordinary circumstances, nor were the special circumstances, which, perhaps, would have made it a reasonable and natural consequence of such breach of contract, communicated to or known by the defendants. The Judge ought, therefore, to have told the jury that, upon the facts then before them, they ought not to take the loss of profits into consideration at all in estimating the damages. There must, therefore, be a new trial in this case.”

Sec 73 Compensation for loss or damage caused by breach of contract.

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 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.

Compensation for failure to discharge obligation resembling those created by contract. 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 had contracted to discharge it and had broken his contract.

Summary

- Compensation will not be given for remote or indirect loss or damage sustained by breach.
- Compensation is recoverable for loss or damage- naturally arose in the usual course of things or which the parties knew

- Explanation: In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.

Liquidated damages and Penalty

- English position
- Courts draw a distinction between liquidated damages and penalty?

- What is liquidated damages?

- What is penalty?

- For both LD and penalty- common factor is that a certain sum is mentioned in the contract which is to be paid in case of a breach.

- LD- is the amount which is fair or genuine pre-estimate of the probable loss
- But a penalty- is a sum that is disproportionate to the damages likely to arise as a result of the breach

What is the utility of making this distinction?

- English law does not interfere with LD. If the courts determine that the amount stipulated is LD, then the entire amount is recoverable.
- But if the court determines that it is penalty, it may calculate damages according to the ordinary principles.

- But not in all cases, the courts refuse to acknowledge the penalty clause.
- Diplock LJ- “The court should not be astute to descry a penalty clause in every provision of a contract which stipulates a sum to be payable by one party to the other in the event of a breach by the former”

Quantum Meruit

- It simply means as much he has earned.
- Suit for quantum meruit means suing for the value of so much as is done.
- For example, if there was a contract for supply of 100 kgs of rice in installments and after the delivery of 5 kgs, if the other party informs him that he does not require any more rice, then the injured party can sue for the value of 5 kg rice. This will be called as suit for quantum meruit.

Thank you