Q 1. Explain the doctirine of frustration with important cases

ANS 1. The doctrine of frustration

When the performance of the contract becomes impossible, the purpose which the parties have in mind is frustrated. If the performance becomes impossible, because of a supervening event, the promisor is excused from the performance of the contract. This is known as doctrine of frustration under English law, and is covered by Section 56 of the Indian Contract Act. The basis of the doctrine of frustration was explained by Mukherjea, J. In the Supreme Court decision of Satyabrata Ghose v. Mugneeram? in the following words3 :

"The essential idea upon which the doctrine (of frustration) is based is that of impossibility of performance of the contract; in fact impossibility and frustration are often used as interchangeable expressions. The changed circumstances make the performance of the contract impossible and the parties are absolved from the further performance of it as they did not promise to perform an impossibility.... The doctrine of frustration is really an aspect or part of the law of discharge of contract by reason of supervening impossibility or illegality of the act agreed to be done and hence comes within the purview of Section 56 of the Contract

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1. A.I.R. 1986. Delhi 158

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In Alluri Narayana Murthy Raju v. District Collector, Vishakhapatnam, the petitioners under a contract were granted leasehold rights for lifting the sand in a river in Maddi Gram Panchayat, of Vishakhapatnam district. The

residents of the village prevented him from carrying on quarry operations on the ground that it would lead to depletion of the ground water affecting the irrigation channels. The villagers were undeterred even by registration of criminal case against them and also by grant of injunction by civil Court. The conclusion inevitable from the uncontroverted facts was that on account of the events that had taken place subsequent to entering into the contract, which were beyond the control of the parties to the contract, rendering the performance of the contract impossible, the Andhra Pradesh High Court held that the second limb of Section 56 of the Contract Act, 1872 was squarely attracted and, therefore, the doctrine of frustration envisaged by the said provision was applied to all fours of the contract

Therefore where performance is rendered by intervention of law invalid, or the subject-matter assumed by the parties to continue to exist is destroyed, or a state of thing assumed to be the foundation of the contract fails, or does not happen, or where the performance is to be rendered personally and the person dies or is disabled, the contract stands discharged.?

"Doctrine of frustration" not applicable

The petitioner Housing Board had entered into contract with contractor for water proofing work of houses. Petitioner had knowledge that said houses where work was to be executed were in possession of allottees. Held, that mere denial by the allottees to allow work to be performed would not be such an impossibility as

(Death or incapacity of a party?

When the nature of the contract requires the personal performance of the contract by a particular person, the contract is deemed to be conditional upon the continued life or good health of the person so that it is possible for him to perform the contract.

Thus, in case of contract based on personal skill or confidence of the parties, the death of a party in such a case, puts an end to the contract, and, therefore, the representatives cannot be made liable to perform such a contract. For example, A promises to paint a picture for B by a certain day at a certain price. A dies before the day. The contract cannot be enforced either by A's representative or by B.4

In Robinson v. Davisons, the defendant's wife, who was an eminent piano player, promised to play piano at a concert on a particular day. She was unable to give her performance due to illness. It was held that the performance of the contract depended on the continued good health of the defendant's wife and the contract was discharged due to her illness. The

defendant could not be made liable to pay compensation for the non-performance of the contract.

Frustration by Virtue of Legislation

Where, a law promulgated after the contract is made, makes the performance of the agreement impossible, the agreement becomes void.

In Rozan Mian v. Tahera Begum, an agreement was entered into between the plaintiff and the defendant on 3-12-1973 for sale and purchase of Thika Tenancy. The agreement having not been carried out, the plaintiff filed a suit for specific performance of agreement for sale on 7-2-1974. During the pendency of the suit, the Calcutta Thika Tenancy (Acquisition and Regulation) Act, 1981, amending the Calcutta Thika Tenancy Act, 1949, was promulgated. Section 6 of this Act read with Section 4 prohibited the transfer of Thika Tenancy rendering the performance of the agreement to sell impossible and hence void. The Apex Court ruled that by virtue of the 1981 Act, the land under the landlord had been vested in the State and the

| Thika Tenancy under the landlord became the Thika Tenant under the State.

The Apex Court further ruled that the plea that rights accrued by an agreement entered into under the earlier Act still subsisted was not tenable. Referring to the provisions of Section 56 of the Contract Act, 1872, the Court said that the agreement to sell had become impossible of performance.

Frustration due to change of circumstances

The doctrine of frustration has been extended to those cases, where there was no physical impossibility of performance of the contract, but because of the change in circumstances the adventure was frustrated, or by the literal performance of the contract the main object of the contract could not be fulfilled. The case of Krell v. Henry2 explains the point. In this case, the defendant agreed to hire the plaintiff's flat for June 26 and 27, 1902, the days on which the coronation procession of Edward VII was to pass along a particular road. The defendant's purpose for hiring the flat on the specified dates was to have a view of the coronation procession. The defendant paid some amount by way of rent in advance and promised to pay the balance subsequently. Due to the King's illness, the procession was cancelled. On the defendant's refusing to pay the balance of the agreed rent, the plaintiff sued him for the same. It was observed that viewing of the procession was the foundation of the contract, and by the cancellation of the procession, the purpose of the contract could no longer be achieved, and as such, the parties were discharged from performing their further obligations.

Consequently, the plaintiff was held not entitled to recover the balance of the agreed rent.

Position in India

In India also, impossibility does not mean merely physical impossibility to perform the contract, it also includes situations where the performance of the contract may not be literally impossible, but because of changed circumstances, the performance would not fulfil the object which the parties had in mind.

In Arti Sukhdev Kashyap v. Daya Kishore Arora), it has been held that merely because performance has to be delayed, it does not mean frustration of the contract. In this case, there was allotment of

same was was held that since tine frustrated.

plot by the Development Authority with the condition that permission for sale could not be granted before the expiry of 10 years. Permission for sale was requested earlier than that and the same was refused as there were no exceptional circumstances for the same. It was held that since there was possibility of sale after 10 years, the contract had not been frustrated.

In another decision of the Supreme Court, Sushila Devi v. Hari Singh, it was again pointed out that it was incorrect to say that Section 56 of the Indian Contract Act applied to the cases of physical impossibility only. In its view, Section 56 covers those cases also where the performance becomes impracticable or useless having regard to the object and purpose of the contract.

In Sushila Devi's case, A agreed to give her lands to B on lease for a period of three years. Under the agreement, the lessee (B) was personally responsible to take possession of the lands. The lands were situated in Gujranwalla. On the partition of the country on 15th August, 1947, Tehsil Gujranwalla went to Pakistan, and both A and B migrated to India. B could not take possession of land. B had deposited Rs. 34,000 with A as a security of the rent. He sued A to recover back this amount plus Rs. 2,000 as damages, on the ground that the agreement to lease had become frustrated as because of changed circumstances, it was no more possible for B either to obtain the possession of the land himself, or to go to Pakistan and collect the rent from the cultivators. The plaintiff's contention was upheld and it was held that because of the supervening events, the agreement to lease had become impossible of performance. "

In Har Prasad Chaubey v. Union of India, the appellant was the highest bidder for slack coal belonging to the respondents' railways. The appellant made full payment for the same. When he applied for the wagons for

transporting the coal to Ferozabad, the same was refused by the Coal Commissioner on the ground that the coal was meant to be consumed locally only. No such condition existed when the auction of the coal was made. The appellant then filed a suit for the refund of the amount paid by him and also interest on the amount on the ground that the contract had become frustrated after the permission to transport the coal was refused. Appellant's claim was accepted and he was allowed the refund of money. The reason for the decision was that the refusal of the Coal Commissioner to allow the movement of the coal to Ferozabad, in spite of the fact that no such condition was there at the time of auction, had frustrated the contract.

Q 2. Explain the remedies available to aparty to a contract in case of break of contract

ANS 2. REMEDIES FOR BREACH OF CONTRACT

SYNOPSIS Damages. Remoteness of damage. Measure of Damages. Duty to mitigate the loss. Liquidated damages and penalty. Quantum Meruit.)

When one of the parties makes a breach of contract, the following remedies are available to the other party :

1. Damages : Remedy by way of damages is the most common remedy available to the injured party. This entitles the injured party to recover compensation for the loss suffered by him due to the breach of contract, from the party who causes the breach. Sections 73 to 75 incorporate the provisions in this regard.

2. Quantum Meruit : When the injured party has performed a part of his obligation under the contract before the breach of contract has occurred, he is entitled to recover the value of what he has done, under this remedy.

3. Specific Performance and injunction : Sometimes a party to the contract instead of recovering damages for the breach of contract may have recourse to the alternative remedy of specific performance of the contract, or an injunction restraining the other party from making a breach of the contract. Provisions regarding these remedies are contained in the Specific Relief Act, 1963.

The first two remedies stated above are being discussed in some detail, below.)

1. DAMAGES Section 73 of the Indian Contract Act, 1872, makes the following provision regarding the right of the injured party to recover compensation for the loss or damage which is caused to him by the breach of contract.

"73. Compensation for loss or damage caused by breach of

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contract.—When a contract lias been broken, the party who suffers by such brench 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 froni such breachi, or which the parties knew, when they ninde 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 las contracts to discharge it and had broken his contract. 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."

The Section has been explained with the help of the following illustrations :-- (a) A contracts to sell and deliver 50 maunds of saltpetre to B, at

a certain price to be paid on delivery. A breaks liis promise. B is entitled to receive from A, by way of comperisation, the sum, if any, by which the contract price falls short of the price for which B might have obtained 50 maunds of saltpetre of like quality at the time when the saltpetre ought to leave been

delivered (b) A hires B's ship to go to Bombay, and there take on board, on

the first of January, a cargo which A is to provide and to bring it to Calcutta, the freight to be paid when earned. B's ship does not go to Bonibay, but A las opportunities of procuring suitable conveyance for the cargo upon terms as advantageous as those on which he had chartered the ship. A avails himself of those opportunities, but is put to trouble and expense in doing so. A is entitled to receive compensation from B in respect of such

trouble and expense. (c) A contracts to buy from B, at a stated price, 50 maunds of rice,

no time being fixed for delivery. A afterwards informis B that he will not accept the rice if tendered to him. B is entitled to receive from A by way of compensation, the arount, if any, by which the contract price exceeds that which B can obtain for the rice at the time when A informs that he will not accept it.)

1 (d) A contracts to buy B's ship for 60,000 rupees, but breaks his

promise. A must pay to B, by way of compensation, the excess, if any, of the contract price over the price which B can obtain

for the ship at the time of the breach of promise. (e) A, the owner of a boat, contracts with B to take a cargo of jute

to Mirzapur, for sale at that place, starting on a specified day. The boat, owing to some avoidable cause does not start at the time appointed, whereby the arrival of the cargo at Mirzapur is delayed beyond the time

when it would have arrived if the boat had sailed according to the contract. After that date, and before tlie arrival of the cargo, the price of jute falls. The measure of the compensation payable to B by A is the difference between the price which B could have obtained for the cargo at Mirzapur at the time when it would liave arrived if forwarded in due

course, and its market price at the time when it actually arrived. (A contracts to repair B's house in a certain manner, and receives

payment in advance. A repairs the house, but not according to the contract. B is entitled to recover from A the cost of making

the repairs conform to the contract. (8) A contracts to let his ship to B for a year from the first January,

for a certain price. Freights rise, and on the first of January, the hire obtainable for the ship is higher than the contract price. A breaks his promise. He must pay to B, by way of compensation, a sum equal to the difference between the contract price and the price for which B could hire a similar ship for a

year on and from the first of January. (h) A contracts to supply B with a certain quantity of iron at a

fixed price, being a higher price than that for which A could procure and deliver the iron. B wrongfully refuses to receive the iron. B must pay to A, by way of compensation, the difference between the contract price of the iron and the sum for which

A could have obtained and delivered it. (i) A delivers to B, a common carrier, a machine, to be conveyed, 'Twithout delay, to A's niill, informing B that his mill is stopped

for want of the nuachine. B unreasonably delays the delivery of machine, and A, in consequence, loses, a profitable contract with the Government. A is entitled to receive from B, by way of compensation, the average aniount of profit, which would have been made by the working of the mill during the time that delivery of it was delayed, but not Hie loss sustained through the loss of the Government contract,

1. Remoteness of Damage

The following statement of Alderson B, in the case of Hadley v. Baxendalel is considered to be the basis of the law to determine whether the damage is the proximate or the remote consequence of the breach of contract :

"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 the 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 the parties, at the time they made the contract, as the probable

result of the breach of it."

The provision contained in Section 73 (para 1) is similar to rule contained in the above stated judgment in Hadley v. Baxendale.

The rule in Hadley v. Baxendale consists of two parts. On the breach of a contract such damages can be recovered :

(1) as may fairly and reasonably be considered arising

naturally, i.e., according to the usual course of things from

such breach; or, (2) as may reasonably be supposed to have been in the

contemplation of both the parties at the time they made

the contract. In either case, it is necessary that the resulting damage is the probable result of the breach of contract.?)

The principle stated in the two branches of the rule is virtually the rule of "reasonable foresight". The liability of the party making the breach of contract depends on the knowledge, imputed or actual, of the loss likely to arise in case of breach of contract. The first

CONTRACT r branch of the rule allows damages for the loss arising naturally, i.e.,

in the usual course of things from the breach. The parties are deemed to know about the likelihood of such loss. The second branch of the rule deals with the recovery of more loss which results from the special circumstances of the case. Such loss is recoverable, if the possibility of the same was actually within the knowledge of the parties, particularly who makes a breach of the contract, at the time of making of the contract.

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(1) First branch of the rule in Hadley v. Baxendale : Damage arising in the usual course of things

Under this branch of the rule, compensation can be claimed for any loss or damage that arose in usual course of things from the breach of contract. If the loss is one which does not arise in the usual course of things but is special loss arising out of special circumstances, then the situation would be covered by the second branch of the rule. In that case the loss can be claimed if the same was in the contemplation of both the parties at the time of making of the contract.

In Hadley v. Baxendale, the facts were as under :

The plaintiff's mill had been stopped due to the breakage of a crankshaft. The broken shaft had to be sent to the makers at Greenwich as a pattern for preparing the new one. The defendants, who were common carriers, agreed to carry the broken shaft to Greenwich. The only information given to the carriers was that the article to be carried was the broken shaft of a mill and the plaintiffs were the millers of that mill.? Owing to the defendants' negligence, the delivery of the shaft was delayed. Due to this delay, the mill remained stopped for a longer time than it would have been, had the shaft been delivered at Greenwich without any delay. The plaintiffs brought an action to recover damages for the loss of profits arising out of the delay.

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2. Measure of Damages

After it has been established that a certain consequence of the breach of contract is proximate and not remote and the plaintiff deserves to be compensated for the same, the next question which arises is : What is the measure of damages, for the same, or in other words, the problem is of the assessment of compensation for the breach of contract.

Damages are compensatory in nature. The object of awarding damages to the aggrieved party is to put him in the same position in which he would have been if the contract had been performed. Damages are, therefore, assessed on that basis.) If a party takes

1. (1953) Ch. 770. at n 720. 1108912

2. QUANTUM MERUIT Ordinarily, if a person, having agreed to do some work or render some services, has done only a part of what he was required to do, he cannot claim anything for what he has done. When a person agrees to complete some work for a lump sum, non-completion of the work does not entitle him to any remuneration even for the part of the work done. But the law recognizes an important exception to this rule by way of an action for 'Quantum Meruit'. Under this action, if A and B have entered into a contract, and A, who has already performed a part of the contract, is then prevented by B from performing the rest of his obligation under the contract, A can recover from B reasonable remuneration for whatever

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the work dot entitle him to

Sufferance of Damages

A person is entitled to receive compensation in terms of money only if he has actually suffered damages or loss on account of breach of contract by the other party and not otherwise. Sufferance of damage or loss is held to be an essential pre-condition for the award of compensation by way of damages.

It thus follows that compensation cannot be awarded where no loss or damage has been suffered at all.)

A five-Judge Bench of the Apex Court in Fateh Chand v. Balkrishnan Dass, while dealing with the interpreting of the provisions of Section 74, held that where a contract contained a stipulation by way of penalty, the Court would have jurisdiction to award such sum only as it considered reasonable but not exceeding

the amount specified in the contract by way of compensation.

Section 74,' the Court said merely dispensed with the proof of "actual loss or damage" but it did not justify the award of compensation, when as a consequence of breach of contract no legal injury had been caused. This was provided the Court said, because compensation for breach of contract was awarded to make good only the loss or damage which arose in the natural course of things and not otherwise.

Q 3. Exlain the illustrate various modes in which a contract may be dischargeg

(a) "A" as a tradesman leave goods at "B" house by mistake "b" tracks the goods as mistake What are "A" rights

(b) "X" saves "y" property from fire intending to do so gratuitously sbssectuently the claims compensation from "y" on the grant that "y" anjoyed the benefit of "x" act can "x" succeed?

ANS 3. DISCHARGE OF CONTRACT

SYNOPSIS Discharge by performance. Discharge by breach of contract. Discharge by impossibility of performance. The doctrine of Frustration. Discharge by Agreement or Novation. Remission of performance.

When an agreement, which was binding on the parties to it, ceases to bind them, the contract is said to be discharged. A contract may be discharged in the following ways

(1) By Performance of the contract

(2) By Breach of the contract

(3) By Impossibility of performance

(4) By Agreement and Novation

(1) Discharge by performance

Each party to a contract is bound to perform his part of the obligation. After the parties have made due performance of the contract, their liability under the contract comes to an end. In such a case, the contract is said to be discharged by performance. In regard to such a discharged contract, nothing remains-neither any right to see performance nor any obligation to perform. In short, there cannot be any dispute. Various rules of performance of the contract have been discussed in the previous Chapter.2

(2) Discharge by Breach of Contract

When a party having a duty to perform a contract fails to do that, or does an act whereby the performance of the contract by him becomes impossible, or he refuses to perform the contract, there is said to be a breach of contract on his part. On the breach of contract

3) Discharge by impossibility of performance

the performance of a contract is impossible, the same is void,

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both in India and England.

| Section 56, deals with this question. The first paragraph of Section 56 provides that an agreement to do an act impossible in itself is void. The second paragraph provides that a contract to do an act, which becomes unenforceable, if the act becomes :

(a) impossible; or

(b) for reason of some event which the promiser could not prevent. This Section also provides that it becomes so unenforceable when the act becomes impossible or unlawful. The first paragraph represents the same law as in England. The second paragraph has the effect of turning into a general rule, the limited exceptions under the English law. The Act lays down positive rules of law on question which English and American Courts have of late more and more tended to regard as matters of construction, depending on the true intention of the parties.)

1. Initial Impossibility Section 56 says:

"An agreement to do an act impossible in itself is void".

The object of making any contract is that the parties to it would perform their respective promises. If a contract is impossible of being performed, the parties to it will never be able to fulfil their object, and hence such an agreement is void. For example, A agrees with B to discover treasure by magic. The performance of the agreement being impossible, the agreement is void. Similarly, an agreement to bring a dead man to life is also void.

Section 56 is based on the maxim, "les non cogit ad impossibilia" which means "the law does not compel a man to do what he cannot possibly perform.")

Impossibility here means not only physical impossibility, but also legal impossibility. If there is no possibility of the performance of the contract because it would be unlawful to do that, the agreement is void. Such cases also fall under Section 23 which declares that every agreement of which the object or consideration is unlawful is void. For example, A contracts to marry B, being already married to C, and being forbidden by the law to which he is subject to practise polygamy. The arrangement by A to marry B is void.

Sometimes, the fact that the performance of the contract is impossible or unlawful may be within the knowledge of the promisor, but the promisee may not be knowing about the same,

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..) 2. Subsequent Impossibility The performance of the contract may be possible when the contract is entered into but because of some event, the performance may subsequently become impossible or unlawful. Section 56 (para 2) makes the following provision regarding the validity of such contracts :

"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.")

| The doctrine of frustration - When the performance of the contract becomes impossible, the purpose which the parties have in mind is frustrated. If the performance becomes impossible, because of a supervening event, the promisor is excused from the performance of the contract. This is known as doctrine of frustration under English law, and is covered by Section 56 of the Indian Contract Act. The basis of the doctrine of frustration was explained by Mukherjea, J. In the Supreme Court decision of Satyabrata Ghose v. Mugneeram? in the following words3 :

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**** 12) Discharge by Agreement and Novation (Section 4

Sections 62 and 63 deal with contracts in which the obligation of the parties to it may end by the consent of the parties. Novation

Novation means substitution of an existing contract with a new one. When, by an agreement between the parties to a contract, a new contract replaces an existing one, the already existing contract is thereby discharged, and in its place the obligation of the parties in respect of the new contract comes into existence. Section 62 contains the following provision in this regard :)

Remission of performance (Section 63)

Section 63 enables the promisee to agree to dispense with or remit performance of promise. The Section reads as under :

"63. Promisee may dispense with or remit performance of promise.-Every promisee niay dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance, or may accept instead of it any satisfaction which he thinks fit.")

Illustrations (a) A promises to paint a picture for B. B afterwards forbids

Anna

him to do so. A is no longer bound to perform the promise.

(b) A owes B 5,000 rupees. A pays to B and B accepts, in satisfaction of the whole debt, 2,000 rupees paid at the time and place at which 5,000 rupees were payable. The whole debt is discharged.

"Fixed date" for performance V Thus, this was a situation where the original agreement of 10.3.1994 had a "fixed date" for performance, but by the subsequent letter of 18.6.1995 the defendants made a request for postponing the performance to a future day without fixing any further date for performance. This was accepted by the plaintiffs by their act of

Discharge by Neglect

Section 67 says that the promisor is excused of performing his part of the contract if the promisee either neglects or refuses to afford the promisor reasonable facilities for the performance of his promise. But where the obligation on the part of the promisee is not a condition precedent for the promisor to perform his part, he is not excused by virtue of Section 67.