



Legal and Ethical issues in Business

Unit I Introduction to Business Law



Definition of Business Law

- Business law also known as commercial or corporate law is the branch of the legal system that governs the rights, conduct, and relations of individuals and businesses engaged in commerce, trade, and sales.
- It establishes the legal framework for how businesses are created, operated, and dissolved.

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- Business law is essential because it maintains market order, provides legal certainty for investments, and creates a fair environment for both merchants and consumers.
 - By setting clear standards, it helps businesses avoid disputes and protects all stakeholders from fraud and financial loss.

Scope of Business Law

- The scope of business law is extensive and covers various aspects of business operations:
- **1. Business Formation and Structure**
- Governs the creation and regulation of business entities, such as sole proprietorships, partnerships, corporations, and LLCs.
- Establishes rules for ownership, governance, and operations.
- **2. Contracts and Commercial Transactions**
- Covers legal principles related to the creation, enforcement, and interpretation of contracts.
- Includes laws concerning the sale of goods, services, and property transfers.

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- **3. Intellectual Property**
 - Protects innovations, creative works, and trademarks to encourage creativity and innovation.
 - **4. Employment and Labor Laws**
 - Regulates employer-employee relations, including wages, working conditions, and dispute resolution.
 - **5. Consumer Protection**
 - Ensures businesses do not engage in deceptive or fraudulent practices that harm consumers.
 - **6. Taxation**
 - Addresses taxation at federal, state, and local levels, including compliance and international tax considerations.

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- **7. Dispute Resolution**
 - Covers methods like litigation, mediation, arbitration, and negotiation for resolving disputes.
 - **8. International Business Law**
 - Deals with complexities of conducting business across borders, including international trade laws and treaties.
 - **9. Bankruptcy Law**
 - Provides a framework for resolving insolvency and financial obligations.
 - **10. Environmental Regulations**
 - Ensures businesses comply with sustainability and environmental protection standards.
 - Business law is a dynamic field that adapts to economic changes, technological advancements, and international trends, ensuring a fair and competitive business environment.

Importance of Business law

- Business law is essential because it establishes rules, protections, and frameworks that ensure businesses operate fairly and responsibly. Ignoring business law can lead to costly disputes, fines, or even business failure.
- **I. Protects Businesses from Legal Issues**
- Business law helps you identify and mitigate legal risks before they escalate. From contract disputes to employment issues, understanding the law helps you stay proactive.
- **Example:** A supplier who breaches a delivery agreement can be held accountable through contract law, saving your business from potential losses.

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- **2. Ensures Compliance with Regulations**
 - Every industry has specific laws and regulations. Business law ensures you understand and meet these requirements, avoiding fines or penalties.
 - **Example:** A construction company must adhere to safety regulations. Violations can lead to legal actions and shutdowns.
 - **3. Safeguards Intellectual Property**
 - Your business's ideas, products, and brand identity are valuable assets. Business law helps protect them from theft or misuse.
 - **Example:** Registering your brand name as a trademark prevents competitors from using it to confuse your customers.

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- **4. Provides a Framework for Dispute Resolution**
 - When disputes arise, business law offers methods like mediation, arbitration, and litigation to resolve conflicts without harming your business.
 - **Example:** A partnership dispute can be settled through arbitration instead of a costly and lengthy court process.

The Indian Contract Act, 1872

- The Indian Contract Act, 1872[1] prescribes the law relating to contracts in India and is the key act regulating Indian contract law.
- The Act is based on the principles of English Common Law. It is applicable to all the states of India.
- It determines the circumstances in which promises made by the parties to a contract shall be legally binding.
- Under Section 2(h), the Indian Contract Act defines a contract as an agreement which is enforceable by law.
- The Act as enacted originally had 266 Sections,

Definition of a Contract

- Indian Contract Act frames and validates the contracts or agreements between various parties. Contract Act is one of the central laws that regulate and oversee all the business wherever there is a case of a deal or an agreement.
- The Indian Contract Act, 1872 defines the term “Contract” under its section 2 (h) as “**An agreement enforceable by law**”. In other words, we can say that a contract is anything that is an agreement and enforceable by the law of the land.

What is Agreement?

- In section 2 (e), the Act defines the term agreement as “every promise and every set of promises, forming the consideration for each other”.
- In other words, an agreement is an accepted promise, accepted by all the parties involved in the agreement or affected by it.
- Agreement = Offer + Acceptance.

What is Promise?

- According to Section 2(B) of the Indian Contract Act, 1872, when the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise.
- signifies his assent thereto . – means that **the person in point one accepts or agrees with the proposal after having fully understood it.**

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- **Definition Of Proposal (Offer)**
 - According to Section 2(A) of the Indian Contracts Act, 1872, when one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal.

Enforceable by law:

- Law enforcement means the implementation of law. Government is responsible for enforcement.
- Now let us try to understand this aspect of the definition as is present in the Act. Suppose you agree to sell a bike for 30,000 bucks with a friend. Can you have a contract for this?
- Well if you follow the steps in the previous section, you will argue that once you and your friend agree on the promise, it becomes an agreement. But in order to be a contract as per the definition of the Act, the agreement has to be legally enforceable.
- So for that you and your friend should be make written document which will be enforceable by law in future if you two have any arguments or dispute.

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- So a contract is a legal document that gives the party's special rights (defined by the contract itself) and also obligations that are introduced, defined, and agreed upon by all the parties of the contract.
 - Contract = Accepted Proposal
(Agreement) + Enforceable by law
(defined within the law)



Classification of Contract

According to validity:

- Valid contract,
- voidable contract,
- void contract,
- IL-legal contract,
- unenforceable contract.

According to formation:

- Express contract,
- Implied contract,
- Quasi contract.

According to performance:

- Executed contract,
- Executory contract,
- Unilateral and bilateral contracts.

I. On the Basis of the validity

- **I. Valid Contract**
- An agreement which fulfils all the essentials prescribed by law on the basis of its creation. For example S offers to sell his car for Rs.2,00,000 to T.T agrees to buy it. It is a Valid Contract.
- **2.Void Contract (2(j))**
- A contract which ceases to be enforceable by law. A contract which does not satisfy any of the essential elements of a valid contract is said to be Void. For example A contract between drug dealers to buy and sell drugs is a void contract.

- **3.Voidable Contract 2(i)**

- An agreement which is enforceable by law at the option of one or more parties but not at the option of the other or others is a voidable contract. This is the result of coercion, undue influence, fraud and misrepresentation.

- **4. Illegal Contract**

- It is a contract which is forbidden by law. All illegal agreements are Void but all void agreements or contracts are not necessarily illegal. Contract that is immoral or opposed to public policy are illegal in nature.

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- Unlike illegal agreements there is no punishment to the parties to a void agreement.
 - Illegal agreements are void from the very beginning but sometimes valid contracts may subsequently become void.
 - **5. Unenforceable Contract**
 - Where a contract is unenforceable because of some technical defect i.e. absence in writing barred by imitation etc. If the parties perform the contract it will be valid, but the court will not compel them if they do not write conditions properly.

II. On the Basis of the Formation

- **I. Express Contract**

- A contract made by word spoken or written. According to Section. 9, in so far as the proposal or acceptance of any promise is made in words, the promise is said to be express. For example P says to Q 'will you buy my bicycle for Rs. 1,000?' Q says to P "Yes".

- **2. Implied Contract**

- The implied contract is one, which is not expressly written but understood by the conduct of parties. Where the proposal or acceptance of any promise is made otherwise than in words, the promise is said to be implied. For example A gets into a public bus, there is an implied contract that he will pay the bus fare.

- **3. Quasi Contract**

- It is a contract created by law. Actually, there is no contract. It is based on the principle that “a person shall not be allowed to enrich himself unjustly at the expense of the other”. In other words it is an obligation of one party to another imposed by law independent of an agreement between the parties.
- Let's say you pay for a pizza to be delivered. If that pizza is delivered to another house, and someone else enjoys your three-topping special, a quasi contract could be initiated. Now, the pizzeria could be court ordered to reimburse you for the amount you paid for that pie.

- **4. Tacit Contract**

- A contract is said to be tacit when it has to be inferred from the conduct of the parties. For example obtaining cash through automatic teller machine, sale by fall of hammer of an auction sale.

III. On the Basis of Performance

- **I. Executed Contract**

- A contract in which both the parties have fulfilled their obligations under the contract. For example X contracts to buy a car from Y by paying cash, Y instantly delivers his car.

- **2. Executory Contract**

- A contract in which both the parties are yet to fulfill their obligations, it is said to be an executory contract. For example A agrees to buy B's cycle by promising to pay cash on 15th June. B agrees to deliver the cycle on 20th June.

- **3. Unilateral Contract**

- A unilateral contract is a one sided contract in which only one party has performed his promise or obligation, the other party has to perform his promise or obligation.
- For example X promises to pay Y a sum of Rs. 10,000 for the goods to be delivered by Y. X paid the money and Y is yet to deliver the goods.

- **4. Bilateral Contract**

- A contract in which both the parties commit to perform their respective promises is called a bilateral contract. For example R offers to sell his fiat car to S for Rs. 10,00,000 on acceptance of R's offer by S, there is a promise by R to Sell the car and there is a promise by S to purchase the car, there are two promises.

Essentials of a Valid Contract

Two Parties

Two Parties
• Offeror
• Offeree

Intention to create legal relationship

Intention to create legal binding

Fulfillment of legal formalities

Fulfillment of requirements by other Law

Certainty of meaning

clear and specific meaning of contract, no vague terms

Possibility of performance

Performance of contract must be possible

Agreement

Contract must have an agreement

Free Consent

Agreeing on same thing with same sense

Competency of the parties

On the basis of
- Age (18 years)
- Sound mind
- Not disqualified by Law

Lawful consideration

The consideration must not be against public policy or to harm someone etc.

Legal Object

The object or purpose must also be legal.

Not expressly declared to be void

Not declared as void or illegal by law

What is a Consideration?

- Consideration is the price of the contract and it can be right, interest or responsibility etc.
- According to section 2(d) of the Indian Contract Act “when at the desire of the promisor, promisee or any other person has done or abstained from doing or does or abstains from doing or promises to do or to abstain from doing something, such act or abstinence, or promise is called a consideration for the promise.”

Example:

- A offers to sell his car to B for a sum of ` 1,00,000. B accepts the offer. In this contract,
- A is the promisor and it is his desire to sell his car for ` 1,00,000
- B is the promisee and on the desire of A he is purchasing the car for ` 1,00,000.
- The consideration for A's promise, is a sum of ` 1,00,000 while consideration for B's promise is the car.

Capacity to Contract:

- According to Section 11, *“Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind and is not disqualified from contracting by any law to which he is subject.”*
- we have three main aspects:
- Attaining the age of majority
- Being of sound mind
- Not disqualified from entering into a contract by any law that he is subject to

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- I] Attaining the Age of Majority
 - According to the Indian Majority Act, 1875, the age of majority in India is defined as 18 years. For the purpose of entering into a contract, even a day less than this age disqualifies the person from being a party to the contract. Any person, domiciled in India, who has not attained the age of 18 years is termed as a minor.

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- **A Contract made with a Minor is Void**
 - Since any person less than 18 years of age does not have the capacity to contract, any agreement made with a minor is void ab-initio (from the beginning).
 - Example, Peter is 17 years and 6 months old. He needs some money to go on vacation with his friends. He approached a moneylender and borrows Rs 25,000. As security, he signs some papers mortgaging his laptop and motorcycle. Six months later, when he attains the age of majority, he files a suit declaring that the mortgage executed by him when he was a minor is void and should be cancelled. The Court agrees and relieves Peter of all liability to repay the loan.

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- **2] Person of Sound Mind**
 - According to Section 12 of the Indian Contract Act, 1872, for the purpose of entering into a contract, a person is said to be of sound mind if he is capable of understanding the contract and being able to assess its effects upon his interests.
 - It is important to note that a person who is usually of an unsound mind, but occasionally of a sound mind, can enter a contract when he is of sound mind. No person can enter a contract when he is of unsound mind, even if he is so temporarily. A contract made by a person of an unsound mind is void.

- **3] Disqualified Persons**

- Apart from minors and people with unsound minds, there are other people who cannot enter into a contract. i.e. do not have the capacity to contract. The reasons for disqualification can include, political status, legal status, etc. Some such persons are foreign sovereigns and ambassadors, alien enemy, convicts, insolvents, etc.

Discharge of a contract,

- A contract is said to be discharged when the object or obligations is fulfilled, the liability of either party under the contract comes to an end.
- In other words discharge of contract means “termination of the contractual relationship between the parties”.
- This is why the rights and duties in terms of contractual obligations were set up, when the parties originally entered into the contract. There are various modes of discharge of contract like either in positive way i.e., by performance or in negative way i.e., by breach[1].

Mode of discharge of a contract

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graph TD; A[Mode of discharge of a contract] --> B[By performance]; A --> C[By impossibility of performance]; A --> D[By lapse of time]; A --> E[By breach of a contract]; B --> F["By mutual agreement<br/>(By implied consent)"]; B --> G[By operation of law]; F --> H["1. Novation - Sec 62<br/>2. Rescission - Sec 62<br/>3. Alteration - Sec 62<br/>4. Remission - Sec 63<br/>5. Waiver<br/>6. Merger"]; G --> I["1. Death<br/>2. Merger<br/>3. Insolvency<br/>4. Unauthorized alteration"]; E --> J["• Actual<br/>• Anticipatory"];
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By performance

- Actual
- Attempted

By impossibility of performance

By lapse of time

By breach of a contract

- Actual
- Anticipatory

By mutual agreement (By implied consent)

1. Novation - Sec 62
2. Rescission - Sec 62
3. Alteration - Sec 62
4. Remission - Sec 63
5. Waiver
6. Merger

By operation of law

1. Death
2. Merger
3. Insolvency
4. Unauthorized alteration

Discharge by performance

- When the respective parties of the contract perform their shares of the promises, it is said to be the contract is discharged. It is called as natural mode of discharge.
- **Performance may be:**
- ***Actual Performance:*** Under the contract, when all the parties to a contract do what they had agreed for, it is known as actual performance.
- ***Attempted Performance(tender or offer of performance):*** When the promisor attempts to perform his promise, the promisee refuses to accept the same, it is known as tender or attempted performance.

Discharge by agreement or consent

- Section 62 of the Indian contract, 1872 provides that “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” under the heading- Effect of novation, rescission and alteration of contract[2].
- There are six types through which discharge of contract through agreement or consent could take place .

Novation

- When the parties to a contract agree to substitute the existing contract with a new contract, that is called novation[3].
- In the well known case of *Scarf v. Jardine*[4], the meaning and effect of novation are explained by Lord Selborne.
- **Hence novation is of two kinds, namely:**
- A novation involving change of parties.
- A novation involving substitution of a new contract in place of the old.

Alteration

- When one or more of the terms of the contract is/are altered by mutual consent of the parties to the contract, is called as alteration of a contract[5]. In the case of ***United India Insurance Co. Ltd v. M.K.J. Corporation***[6], it was held that even in good faith also in terms of the contract, no material alteration can be made by a party without the consent of the other.
- In ***Kalianna Gounder v. Palani Gounder***[7], the Supreme Court considered the meaning of the expression “material alteration”.

- **Rescission**

- When all or some of the terms of the contract are canceled, that is known as rescission of a contract.
- example of rescission is the three-day right of rescission, in which a borrower refinancing a loan has extra time to reconsider the decision. The “clock” on the rescission process begins “ticking” the moment the contract is signed by the borrower. The borrower must affirm the decision to exercise the right of rescission by midnight of the third day after signing the contract.
- If the borrower decides to cancel, she or he must inform the lender. Once the contract is rescinded, the lender must refund any fees associated with the contract that were paid by the borrower, such as closing costs, inspection fees, points, or origination fees. Once this is complete, the contract is then null and void.

- **Remission**
- Section 63 of the Indian Contract Act, 1872 talks about the discharge of a contract by remission. It means the acceptance of lesser sum than what was due from the promisor or acceptance of a lesser fulfillment of the promise made.
- According to sec. 63 a party may:
 - (a) Dispense with or remit performance wholly or in part; or
 - (b) Extend the time for performance ; or
 - (c) Accept any other satisfaction instead of performance
- For such a release or promise there is no need for consideration or new agreement.
- *Example* : A owes B INR 5,000. A pays to B and B accepts in full satisfaction for the whole debt INR 2,000. The old debt is discharged.

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- ***Waiver***
 - Waiver means the abandonment of a right. A party to a contract may relinquish (waive) his rights under the contract. Thereupon the other party is released from his obligations. For example, waiver of farmers bank loan by the Government. In such a case the banks gives up its claim on the loan.
 - ***Merger***
 - When an existing inferior right of a party, in respect of a subject matter merges into a newly acquired superior right of the same person, in respect of the same subject matter, then the previous contract conferring the inferior right stands discharged by way of merger.

Discharge by impossibility of performance

- ***Initial Impossibility:*** As per section 56 of the Indian Contract Act, 1872 “An agreement to do impossible act is void ab-initio.” It means agreement which is obviously impossible cannot be binding[10].
- ***Subsequent Impossibility:*** A contract sometimes becomes impossible or unlawful and as a result void when capable to be performed after formation.

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- Subsequent impossibility may occur in many ways, some of which are explained
 - **(i) *Destruction of the subject matter of contract***
 - On the destruction of the subject matter, a contract is discharged and no party is liable to perform.
 - **(ii) *Change of Law***
 - The performance of a contract may become unlawful by a subsequent change of law. In such cases, the original contract becomes void

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- **(iii) *Non-concurrence of circumstances***
 - When a contract is entered into on the basis of the continued existence of a certain state of things, the contract is discharged if the state of things change.
 - Illustration: A & B contract to marry each other. Before the time fixed for the marriage, A goes mad. The contract becomes void.
 - **(iv) *Death or incapacity for personal services***
 - Where the personal qualification of a party is the basis of the contract the contract is discharged in cases of death or personal incapacity.

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- **(v) Failure of ultimate purpose of contracts :**
 - Where the circumstances surrounding a contract change. Such that they result in a failure of defeat of the ultimate purpose of contract, for which it had been performed, then the contract stands discharged.
 - **(vi) Outbreak of war**
 - A contract entered into during war with an alien enemy is void *ab initio*. A contract entered into before the war commenced, between citizens of countries subsequently at war, generally becomes void.

Discharge by lapse of time

- Specified period for performance of a contract prescribed by The Limitation Act, 1963. If the contract is not performed and no legal action is taken by the promisee within the period of limitation, the contract is discharged and he is deprived of his remedy at law.

Discharge by operation of law

- A contract can be discharged by operation of law which includes insolvency or death, of the promisor and also merger, judgement of court.
- **(a) Death:** In contracts involving personal skill or ability, death terminates the contract. In other cases, the rights and liabilities pass on to the legal representatives of the dead man.
- **(b) Insolvency:** When a person is adjudged insolvent, he is discharged from all liabilities incurred prior to his adjudication. Upon insolvency, the rights and liabilities of the insolvent are, with certain exceptions, transferred to an officer of the court, known as the Official Assignee/Receiver.
- **(c) Merger:** Means coinciding and meeting of inferior and superior right in one and the same person. In such a case, inferior right available to a party under the contract will automatically vanish.

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- **(d) *Lapse of time:*** Contracts may be terminated by lapse of time. In civil suits the obligations and liabilities in contracts are barred by limitation. The provisions of law are stated in the Limitation Act. For example, money suits should be filed within 3 years. Otherwise they become time barred.
 - **(e) *Unauthorised material alteration:*** If the terms of a contract is materially altered by a party to the contract without the consent of the other parties, the contract is discharged and cannot be enforced any more.

Discharge by breach of a contract

- Breach of contract means failure to perform contractual obligation by either of the parties without any lawful excuse, the contract discharged because it is a ground for discharge of a contract.
- ***Hence breach is of two kinds, namely:***
- ***Actual Breach:*** It refers to the failure to perform contractual obligation when performance is due and during the performance of the contract. In the case of an actual breach, the promisee retains his right of action for damages.
- ***Anticipatory Breach:*** It takes place before the date of actual performance. In anticipatory breach, the promisee cannot file a suit for damages and even it discharges the promisor also from performing his part of the contract. It may take place in two ways: Expressly by words and Implied by the conduct.

Remedies for Breach of Contract

- When a promise or agreement is broken by any of the parties we call it a breach of contract. So when either of the parties does not keep their end of the agreement or does not fulfil their obligation as per the terms of the contract, it is a breach of contract. There are a few remedies for breach of contract available to the wronged party.

5 usual Remedies for Breach of Contract



Recession of Contract



Suit for damages



Suit upon quantum meruit



Suit for injunction



Suit for specific performance of contract

- **Recession of Contract**
- The recession of the contract means the cancellation of the contract. When either of the party of the contract has been failed to fulfil the obligations of the contract, then the other party has the right to cancel the contract and he can refuse to perform his obligation which was mentioned in the contract. According to section 75, the party who rescinds has the right to receive damages or compensation for that.
- **For example**, A promises B to buy his goods on 3rd January at the price of 3000, but B failed to deliver the goods on the specified date. Now, A has the right to cancel the contract because B has not fulfilled his obligation.

- **Suit for Damages**
- It is mentioned in section 73 of the contract act that if a party experiences a loss by breach of another party, they have the right to take compensation for the damages from the breached party. The party has the right to sue for damages.
- **For example,** A makes a contract with B to sell his goods at the price of 1000. But at the time of selling, A fails to sell them at the cost of 1000. Here B has the right to sue him for the loss.

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- **Liquidated Damages:** Sometimes the parties to a contract will agree to the amount payable in case of a breach. This is known as liquidated damages.
 - **Unliquidated Damages:** Here the amount payable due to the breach of contract is assessed by the courts or any appropriate authorities.

- **Suit upon quantum meruit**
- The Quantum Meruit means is as much as he has deserved. this is one of the best remedies for breach of contract. This occurs when one party is prevented by finishing his full work as mentioned in the contract, then the party has the right to claim the charges of the work which was done by him till now.
- **Quantum meruit example**, Ravi promises Mohit to buy his 1000 goods in installments up to 24th January. But, on 21st January, Ravi refuses to take the last instalment and at that time, Mohit has sent him 900 goods. Now, Mohit can claim the money for 900 goods that were sent by him to Ravi.

- **Suit for Injunction**

- It is a decree of the court where the court restricts the party to do any specific work for a certain period of time which is not mentioned in the contract. In this decree, the court may stop the party to do anything wrong which was not mentioned in the contract made between both parties.
- Example: A producer makes a contract with a film star that he has to work for one year only with him or he cannot work with another producer for one year. But after 6 months, the film star started working with another producer, it will be considered a breach of contract and now, the 1st producer has the remedy to take the decree of injunction from the court to stop the film star to do work with another producer.

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- **Sue for Specific Performance**
 - This means the party in breach will actually have to carry out his duties according to the contract. In certain cases, the courts may insist that the party carry out the agreement.
 - So if any of the parties fails to perform the contract, the court may order them to do so. This is a decree of specific performance and is granted instead of damages.
 - For example, A decided to buy a parcel of land from B. B then refuses to sell. The courts can order B to perform his duties under the contract and sell the land to A.