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FACULTY OF JURIDICAL SCIENCES

E- CONTENT

COURSE: BBALLB-Vth Sem

SUBJECT: EQUITY AND TRUST

SUBJECT CODE: BBL 506

NAME OF FACULTY: DR. ANKUR SRIVASTAVA

Lecture-28





LECTURE-28

SPECIFIC PERFORMANCE:

Now, we will consider another equitable remedy—specific performance. The equitable doctrine of specific performance is particularly important in the realm of the law of contract. The exercise of the jurisdiction to grant the remedy dates back to the reign of Edward IV. See Story on Equity (3rd ed.) p.305. It may be stated that the development of the remedy by the Chancery Court is, perhaps, one of the earliest forays made by the court in its bid to provide a better and more remedial justice where the remedy provided at

common law was found defective or inadequate.

Nature of the Remedy:

There is no right, either at law or in equity, which permits a party to a contract to breach the contract, though the power to do so is not so much denied. However, whenever this power is exercised or resorted to by a contracting party, the attendant consequences at law may be different from those in equity if it is a contract in which specific performance is the appropriate remedy.

At common law contract is a 'personal agreement' between two parties, and because of the personal nature and character of the relationship thus evolved, in the eyes of the common law, either of the contracting parties may unilaterally decide to breach the contract. The only remedy provided at common

law, for such course of conduct is payment of damages by the guilty party to the innocent party. Whether damages are adequate for the wrongful act is not within the consideration of the common law.

On the contrary Courts of Equity deemed such a course in many instances inadequate for the purposes of justice; and, considering it a violation of moral and equitable duties, they did not hesitate to interpose, and require from the conscience of the offending party a strict performance of what he could not, without manifest wrong or fraud, refuse. Therefore, the position in equity is that the court, in the exercise of its equitable jurisdiction, will in certain circumstances compel parties to a contract freely entered into, to perform their obligations according to the terms of the contract and to respect the sanctity of the contractual relationship created by their acts. If equity had not

interfered in this way, it would have been possible in many cases for parties to a contract to buy off their duties under the contract to the detriment of innocent parties.

Thus, specific performance is an order of the court by which a party to a contract is compelled to specifically fulfil his obligations in accordance with the terms of the contract. As will be seen below, the remedy 'shows the extent of the power of equity to assist the common law, limited only by canons of common sense and the practical limitations on the power to oversee and administer specific performance decrees.' Per Lord Upjohn in **Beswick v. Beswick** (1967) 2 All E.R. 1197 at 1220.

The Question of Damages:

Courts of equity do not profess to decree specific performance of contracts of every description. It is only where the legal remedy is inadequate or defective that it becomes necessary for Courts of Equity to interfere. See **Flint v. Brandon** (1803) 8 Ves 159. Thus, the equitable remedy of specific performance was invented to meet cases where the ordinary remedy by an action for damages is not an adequate compensation for breach of contract.

In **Greene v. West Cheshire Rly. Co.** (1871) L.R. 13 Eq. 44, the court decreed specific performance of an agreement although it was clear that the plaintiff had a concurrent remedy in damages. In **Hutton v. Watling**

(1948) Ch. 26, Jenkins J. observed that the jurisdiction to grant specific performance of a contract for the sale of land is to be founded not on the equitable interest in the land which the contract is regarded as conferring upon the purchaser, but on the simple ground that damages will not afford an adequate remedy.

There are certain classes of contracts which by statute, must be in writing otherwise, such contracts are unenforceable and, therefore, no action for damages will lie at law for a breach of such contracts. But in equity, specific performance of such contracts may be granted provided there is sufficient act of part performance. Similarly, stipulation as to time in contracts provides another illustration where the common law will recognize the right of a party to repudiate a contract or claim damages for its breach, but, on the contrary, equity may grant specific

performance of the same contract in favour of the other party to the contract. At common law, time is of the essence of the contract. If a party to a contract fails to perform his obligation under the contract within the time stipulated in the contract, the other party is entitled to repudiate the contract or claim damages; but in equity, time is not of essence of the contract and equity may grant specific performance of the contract in favour of the party against whom an action for damages may lie at law.

Thus a guilty party at law may, in certain circumstances, be entitled to specific performance in equity.

MCQs

- 1. The equitable doctrine of specific performance is particularly important in the realm of the law of contract. The exercise of the jurisdiction to grant**

the remedy dates back to the reign of Edward IV.

- i. True**
- ii. False**
- iii. Cannot say**
- iv. None of these**

2. A guilty party at law may, in certain circumstances, be entitled to specific performance in equity.

- i. True**
- ii. False**
- iii. Cannot say**
- iv. None of these**

3. In *Greene v. West Cheshire Rly. Co.* (1871) L.R. 13 Eq. 44, the court decreed specific performance of an agreement although it was clear that the plaintiff had a concurrent remedy in damages.

- i. True**
- ii. False**

- iii. Cannot say
- iv. None of these

4. The equitable remedy of specific performance was invented to meet cases where the ordinary remedy by an action for damages is not an adequate compensation for breach of contract.

- i. True
- ii. False
- iii. Cannot say
- iv. None of these

5. In Hutton v. Watling (1948) Ch. 26, Jenkins J. observed that the jurisdiction to grant specific performance of a contract for the sale of land is to be founded not on the equitable interest in the land which the contract is regarded as conferring upon the purchaser, but on the simple ground that damages will not afford an adequate remedy.

- i.** True
- ii.** False
- iii.** Cannot say
- iv.** None of these
