



Advanced Contracts, Tendering and Public Procurement
Anuja Shah
Centre for Environmental law, Education, Rresearch and Advocacy
National Law School of India University
Part 02
Liquidated Damages in Government Contracts

(Refer Slide Time 00:16)



THE ROLE OF LIQUIDATED CLAUSES- GOVERNMENT CONTRACTS

- Incorporation of Liquidated damages in Government Contracts is by the way of 'Forfeiture clauses' - *the party claiming compensation must prove the loss suffered by him*
- Maula Bux v. Union of India, AIR 1970 SC 1955**
Facts of the case: The appellant contracted to supply food to military headquarters, but persistently defaulted in making the delivery, his contract was rescinded, and the deposit money was forfeited.
- Judgment by the SC:** The plaintiff was guilty of the breach of Contract. Considerable inconvenience was caused to the military authorities because of the failure on the part of the plaintiff to supply the food-stuff contracted to be supplied. 'Since there was **no proof** of actual loss or damage, the liquidated damages were not provided.'



We will now be discussing some of the landmark judgments on liquidated damages vis-a-vis government contracts. Incorporation of liquidated damages and government contracts is by way of forfeiture clauses. Proof of actual loss or damage is *sin qua non* or a pre-requisite. If you submit the proof of loss, we will give you liquidated damages is something that the Supreme Court follows.

So let us look at our first case Maula Bux versus Union of India, I will give you the brief facts of this case. Maula Bux entered a contract with the Government of India in February 1947, where he was supposed to supply potatoes at military headquarters, UP. So malabux deposited rupees ten thousand as security for the due performance of the contract.

Now, again in March 1947, he entered another contract with the Government of India where he was supposed to supply poultry eggs and fish at the military headquarters, UP. Again, he deposited rupees eight thousand five hundred as security for the new performance of the contract. So, eighteen thousand five hundred rupees in total were deposited by Maula Bux as security for due performance.

However, he failed to supply potatoes, poultry eggs, and fish at the military headquarters at UP, which is why the government had to rescind both contracts. The first contract was rescinded in November 1947 and the other contract was rescinded in December 1947 and ultimately government forfeited the deposited money of eighteen thousand five hundred rupees.

Maula Bux filed a case against the government of India and the major issue was whether the amount given up by the government of India comes under actual damage or loss. Supreme Court gave a very interesting judgment; it held Maula Bux guilty of breach of contract. Of course, there was a breach of contract and considerable inconvenience was caused to the government of India because Maula Bux failed to supply food items that was a time of emergency given that it was 1947, so a reasonable amount of inconvenience was caused in this case.

However, Supreme Court had a different explanation; Supreme Court said where is the proof of actual loss or damage. Can the government submit the proof or evidence of actual loss and damage, if yes, we are ready to provide liquidated damages otherwise we cannot provide liquidated damages. The government of India failed to provide proof of actual loss or damage which is why liquidated damages were not provided in this case.

I told you proof of loss is extremely essential if you are claiming liquidated damages. Precisely something that was followed by the Supreme Court of India. Now another question that is constantly barging the minds of courts and arbitrators is whether the amount of liquidated damages provided under the contract can be reduced proportionately depending on the quantum of work till the date of occurrence of the breach.

If you look at it from a layman's perspective, it is true, wherever it is possible to prove the actual damages the parties claiming liquidated damages will have to prove the losses suffered by it and confine its claim only to that limit and not the full amount of agreed liquidated damages.


However, it would not be correct to state that the provisions of liquidated damages would get proportionately reduced depending upon the quantum of performance achieved till the date of the breach, because if such is the case then you will have to rewrite the entire contract and rewriting the contract which has already been stipulated is not allowed under the Indian law.

If the contract is formed you cannot rewrite that contract that is not allowed and even more this concept goes contrary to the basic idea of providing liquidated damages. If you want damages only for the loss that you have incurred then you can go for ordinary damages, what is the purpose behind providing liquidated damages?

Multiple damages are provided and every damage has its essence; it has its significance, which cannot be waived off, and should not be violated. So, the Supreme Court has said that no matter what whatever pre-estimated damage has been jot down in your contract will be awarded in case of breach of contract to the aggrieved party.

So, we have understood two major things, one is you have to stick to the liquidated damage clause that is provided in your contract and the other is if you want to claim liquidated damages you have to present the proof of actual loss and damage or evidence of actual loss and damage. Now let us understand whether time is the essence of liquidated damages or not, can it change the mindset of the Supreme Court in avoiding liquidated damages?

(Refer Slide Time 07:32)



SHIFT FROM THE PREVIOUS RULINGS

The unforeseen Shift- **Oil & Natural Gas Corporation Limited v. Saw Pipes Limited (2003) 5 SCC 705**- Construction Contract makes it impossible to ascertain the loss.

Facts of the Case: ONGC entered into a contract with Saw Pipes Limited for purchase of casing pipes, the delivery of which had to be completed by the respondent within a specified time, failing which liquidated damages would be payable. Due to delay in supplying saw pipes, the bills were cleared only after deducting liquidated damages.

Judgement by the SC: In every case of breach of contract, the person aggrieved by the breach was not lead the evidence to prove actual loss or damage suffered by him. The requirement of proving loss is fact specific and varies depending on the nature of the contract.



Let us take a look at it. So, before we head towards Oil and Natural Gas Corporation Limited versus Saw Pipes Limited, let me share a contemporary issue that was raised in a court of law. We have discussed how liquidated damages are granted in case of delay and termination of a contract, but a very interesting issue was raised in 2021 on whether liquidated damages be granted in the circumstances where a contract has been terminated by the person who is claiming for liquidated damages.

Let me give you an example, say there are two parties A and B who have entered a contract, where B has awarded a contract for the construction of a shopping mall to A. Now imagine if the construction is substantially delayed by A, is there a fair chance that B might terminate the contract, yes no. Let us go with yes. So, if B terminates the contract can B have a valid claim for liquidated damages even though B has terminated the contract?

Now see in such situations there are usually three possibilities. The first is liquidated damages will not be granted at all, the second possibility is liquidated damages are available for the delay during the period before the termination of the contract and not after the termination of the contract, and the third possibility is liquidated damages are available both for the period before and after the termination of the contract, so these are the usual three possibilities.

Now court was also in dilemma, it did not know what to do, how to avoid damages, or how to calculate, so they thought of referring to the United Kingdom judgments. There are two landmark judgments, one is the triple point and the other is PBS Inarco. Courts have laid down two important things in these two judgments, the first point is the language of the liquidated damages clause is extremely important.

Courts said it is very crucial to understand what has been written in the liquidated damages clause to ascertain whether liquidated damages can be awarded to the aggrieved party or not; courts usually emphasize a lot on language because the legal profession itself is about language, it is about punctuation marks, so language is very crucial and from the language, it can be extracted that whether liquidated damages clauses require the completion of a contract or not.

Because usually liquidated damages are unlikely to be awarded whenever there is a delay, so whether the liquidated damages clause is demanding the completion of the contract or not. Now again it is dependent on the language so basically, it is about the words that are mentioned in the clauses, the punctuation marks that are used in the clauses, and only after that, it can be ascertained whether liquidated damages are to be awarded or not.

It is good, as we can see the progression because now courts have started passing their judgments based on facts and circumstances of the case and they are not following any traditional method that has been laid down, they are emphasizing a lot on the facts and

language that has been penned down in that clause. Having said that let us move towards ONGC versus Saw Pipes Limited.

I am sure in this case you will be able to witness an unforeseen change, unforeseen shift I would say and I am sure that you may stimulate rethinking in the manner of operation of liquidated damages clauses in most of the contracts. So, before we head toward the judgment of the Supreme Court, let us quickly understand the facts of this case.

ONGC had floated a tender for the purchase of an aggregate quantity of 393297 meters of seeming steel pipes. On completion of the tender process, 4 purchase orders for varying quantities aggregating to 393297 meters were issued in favor of Saw Pipes Limited. In terms of the purchase order delivery was to commence within 16 weeks and was to be completed in 40 weeks or earlier from the date of the purchase order.

This is very important. It had to commence within 16 weeks and had to be completed in 40 weeks. Now there was a very important clause I would say there were two important clauses in the contract between ONGC and Saw Pipes Limited and the best part is these clauses applied to all the four purchase orders which were issued in the name of Saw Pipes Limited.

Now in clause number nine also there were two sub-clauses. Clause 9A typically states that the date and time of delivery is the essence of the supply and delivery must be completed not later than the date stipulated or specified. It was laid down in clause 9A that date and time of delivery is of utmost importance, it is the essence. Clause 9B stated that even when an extension in the delivery period is granted such acceptance of extension would not mean that the purchaser cannot claim liquidated damages.

Say, if ONGC is granting an extension of the delivery period that does not mean that ONGC cannot claim for liquidated damages; it is possible only and only if ONGC decides to waive off the liquidated damages clause it is the discretion of ONGC.

So, in a very intelligent way, this contract was drafted, these two clauses are very important. On one hand, they are saying that date and time are of the essence but on the other hand they are also saying that see we have the authority to grant an extension, but it does not mean that you will not face the repercussions, you will have to face the repercussions and repercussion is nothing but liquidated damages.

Now this matter was taken to the arbitral tribunal; the arbitral tribunal said in our opinion, time is not of the essence, why is it not of the essence is because in clause 9B you have written that you will give an extension. If you have mentioned that an extension can, be granted, hence, time is not of the essence, and if time is not of the essence there is no breach of contract. If there is no breach of contract no liquidated damages can be awarded.

So, the arbitral tribunal held the judgment against ONGC and stated we cannot provide liquidated damages. An appeal was made to the High Court, the High Court had a different view altogether and it was quite surprising because the High Court held its judgment in favor of ONGC and stated that ONGC did not prove the loss or damage suffered.

It stated that ONGC was not required to prove the losses suffered before recovering the damages, which was essential for claiming damages that you must provide proof of actual loss or damage was completely waived off by the High Court. The matter then went to the Supreme Court and I would like to state the obiter dicta from the Supreme Court judgment; Supreme Court upheld the judgment of the High Court and stated that proof of actual loss or damage is not required at all.


It suggested that courts should read Section 73 and 74 of the Indian Contract Act 1872 together because if it is read together, it will give you a clear idea that whenever there is a breach of contract the aggrieved party or the plaintiff is not required to prove the actual loss or damage; he or she is not required to submit the evidence of actual loss or damage.

This is an interesting shift. If you look at *Maula Bux's* judgment, the Supreme Court said we agree that there is a breach of contract because he failed to supply potatoes and eggs, and fish, but the Supreme Court asked the government of India where is the proof of actual loss or damage, those were unprecedented times 1947, in those times also Supreme Court was asking for proof.

In *GAIL India limited* case it was clearly stated that time is of the essence but Supreme Court said where is the proof. So, in both cases, Supreme Court demanded evidence, but in this case, suddenly, the Supreme Court stated that there is no need for evidence, if there is a breach of contract, we will provide you liquidated damages.

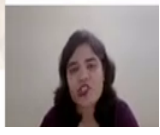
There is one more judgment it is the recent one from 2015. I think it is very important to interpret that judgment and understand the opinion of the Supreme Court. Has Supreme Court been on the same pace, has it gone up, or has it gone down?


(Refer Slide Time 20:33)




CURRENT LEGAL POSITION OF LIQUIDATED DAMAGES

- Legal position of Liquidated Damages as a result of Judicial Interpretation – **Kailash Nath Associates v. Delhi Development authority, 2015 4 SCC 136.**
- **Facts of the Case:** Kailash Nath who was declared a successful bidder by the DDA in pursuance of an auction proceedings had deposited 25% of the bid amount as earnest money. However, without putting the petitioner to notice that it has to deposit the balance 75% of the bid within a certain stipulated time, the respondent had cancelled the allotment of petitioner and forfeited the 25% earnest money.
- Judgement by the SC: Like Section 73 and 75 of Contract Act, 1872, compensation is payable for breach of contract under Section 74, only where damage or loss is caused by such breach. Damage or loss caused is a '*sin qua non*' for the applicability of Section 74.





	Fateh Chand (1963)	Maula Bux (1969)	Saw Pipes (2005)	Kailash Nath (2015)
Relevant clause	"... the vendor shall have to get the sale (deed) registered by the 1 st of June, 1949. If, on account of any reason, the vendor fails to get the said sale-deed registered by the 1 st June, 1949, then this sum of Rs. 25,000 ... shall be deemed to be forfeited ..."	"In case of such recession, my/our security deposit or such portion thereof as the officer sanctioning the contract shall consider fit or adequate shall stand forfeited ..."	"Recovery from the contractor as agreed ... liquidated damages ... a sum equivalent to 1% ... of the contract price of the whole unit for such delay or party thereof ... which the contractor has failed to deliver within the period fixed for delivery ..."	"In case of default, breach or non-compliance of any of the terms and conditions of the auction or misrepresentation by the bidder and/or intending purchaser, the earnest money shall be forfeited"
Whether the party who is required to pay LD under the contract has breached the contract	Yes	Yes	Yes	No
Whether the nature of the breach is such that the party aggrieved can prove actual loss	Yes	Yes	No	Yes
Whether the party aggrieved has proved actual loss	No	No	No	No
Whether Court awarded LD to	No	No	Yes	No



So let us head towards the last case of this presentation this is Kailash Nath Associates versus Delhi Development Authority, judgment from 2015. In this case, Kailash Nath was declared as a successful bidder by the Delhi Development Authority in one of the auction proceedings that was undertaken for plot number 2, Bikaji Kama Place, District Center New Delhi.

After the proceedings were finished Kailash Nath Associates deposited 25 percent of money as the earnest money. After some time, Delhi Development Authority changed its mind and

without sending a prior notice to Kailash Nath Associates that they must pay 75 percent of the remaining money within a stipulated period of time, canceled the allotment of Kailash Nath Associates and forfeited 25 of the earnest money.

Now Supreme Court in this case had held that in sections 73 and 75 of the Indian Contract Act 1872, compensation is awarded for the breach of contract under section 74 only when damage or loss is caused under that breach. Again, Indian oil corporation limited judgment is brought into this frame, Supreme Court laid down that damage or loss is *sin qua non*, very essential for the applicability of damages.

So, if you look at the exact interpretation that was laid down by Supreme Court in this case you will come up with 4 to 5 different points that were jotted down by the Supreme Court of India. It says that a party is entitled to nothing beyond a reasonable compensation under the liquidated damages clauses and the stipulated amount is merely the upper limit that can be awarded. The Supreme Court was very firm that we will not provide anything beyond reasonable compensation, so they were not in favor of unjust enrichment.

The second point is that the Supreme Court had laid down is liquidated damages can be covered only in the cases where actual loss has been incurred or suffered and not otherwise. The law here is guarding both the punishment and profit as the motivations for liquidated damages. The third point that the court said is that in ordinary cases, the claimant must prove such kinds of losses through evidence; in the previous judgment of *Maula Bux* also, it was held that evidence is essential.

It is only in rare and exceptional circumstances when there are a lot of difficulties or where there is an absolute impossibility to prove the damages, we were talking about construction contracts, the construction of a bridge where it is extremely difficult or almost impossible to prove the damages. In such cases, if there is no evidence that is not an issue, but otherwise evidence must be provided no matter what, and the last point that Supreme Court had laid down was reasonable compensation has to be determined as per the settled contract law.

What is settled contract law? Principles that are enshrined in section 73 have to be taken into consideration. So here also the Supreme Court said that sections 73 and 74 are to be taken into consideration together. If you look at Malaysian law, they are also following what India has been following till now, I did mention the *Cavendish* approach.

What did the Cavendish approach talk about? It simply talked about the reasonable compensation within the meaning of section 74 of the Indian Contract Act and they also believe that it is very essential because unjust enrichment just cannot be given to any of the aggrieved party or a plaintiff. So, if you look at Malaysian law and Indian law, they are quite in consonance with each other.

Moving forward I would like to show a table that will give you a brief idea as to what was held in all these cases. So here we have Maula Bux's case, we have Saw Pipes's case and we have Kailash Nath's case. Here you can see the options whether the party who is required to pay liquidated damages under the contract has breached the contract, yes.

In all three cases, it was held by the Supreme Court of India that we are agreeing that there is a breach of contract, we are not denying the fact. The second question is whether the nature of the breach is such that the party aggrieved can prove actual loss, was it possible for the parties? So, if you talk about the Maula Bux case the Supreme Court stated yes parties could show the actual loss somehow that was not submitted.

In the Saw Pipes case, the Supreme Court stated that it is impossible in such construction contracts to prove the actual loss and therefore proof of law should not be made mandatory. Again, in Kailash Nath's case, it was held that yes, it is possible and it must be proved by the government. The third question is whether the aggrieved party has proved the actual loss or not.

So, in all three judgments, the actual loss was proved by the parties neither in Maula Bux nor in Saw Pipes nor Kailash Nath's case, and the last question is whether the court had awarded liquidated damages or not. In Maula Bux, though there was a breach of contract, since the liquidated damages proof was not awarded, liquidated damages were not awarded.

Again, in Saw Pipes, the proof was not given but the court said no there is no requirement of proof and therefore liquidated damages were provided, in the Kailash Nath case again the proof was not given and so liquidated damages were also not awarded to the parties. So even if you have not understood the case laws and if you find some sort of complexity in those case laws this table will give you a brief overview of what was held in the Supreme Court.

We have not discussed the Fateh Chand case but again the situation of this case is very similar to what was laid down in Maula Bux and Kailash Nath case.

(Refer Slide Time 28:49)



JUDICIAL INTERPRETATION OF SECTION 74 AFTER PLETHORA OF LANDMARK JUDGEMENTS

- Enactment of a uniform principle by Indian Legislature is applicable to all stipulations naming amounts to be paid in case of breach
- Measure of damages in two classes of cases : Sum awarded in case of Breach or Penalty
- Jurisdiction of Court to award compensation in case of breach of contract is unqualified when compensation is reasonable.
- Duty not to enforce the penalty clause but only to award reasonable compensation is statutorily imposed upon courts.
- Reasonable compensation will be fixed on well-known principles that are applicable to the law of contract, which is to be found inter alia in Section 73 of the Contract Act.
- When there is a breach of contract, the party who commits the breach does not eo instant incur any pecuniary obligation





- Since Section 74 awards reasonable compensation for damage or loss caused by a breach of contract, damage or loss caused is a sine qua non for the applicability of the Section.
- The words in Section 74 “whether or not actual loss or damage is proved to have been caused thereby” should not mislead to think that actual loss is not necessary.
- Terms of the contract are required to be taken into consideration before arriving at the conclusion whether the party claiming damages is entitled to the same.
- If the terms are clear and unambiguous stipulating the liquidated damages in case of the breach of the contract, party who has committed the breach is required to pay such compensation and that is what is provided in Section 73 of the Contract Act.



Now that we have gone through all four judgments of the Supreme Court, let us understand the legal position of liquidated damages in terms of the interpretation of section 74 of the Indian Contract Act. This interpretation is done by the Supreme Court of India, so the legal position can be summarized as the Indian legislature has enacted a uniform principle applicable to all the stipulations naming the amount to be paid in case of breach of contract.

Section 74 deals with the measure of damages only in two major situations. The first is where the contract names a sum to be paid in case of breach of contract and the second is where the contract contains any other stipulation by the way of penalty, but in both cases, one thing is

for sure it must be a reasonable compensation. If it is not reasonable it will not be allowed by the courts.

Usually, the jurisdiction of courts is limited; they have no right to interfere in between if the liquidated damages clause or penalty clauses are already mentioned in the contract. However, if the Supreme Court feels that it is not reasonable and that it has led to unjust enrichment of the aggrieved party Supreme Court has a right to pitch in. So basically, that ceiling limit has to be followed otherwise Supreme Court has a right to interfere.

Supreme Court has laid down as mentioned under section 74 that it is a duty not to enforce penalty clause but only to award reasonable compensation, and it falls under the duty. So, in all situations and cases where there is a stipulation in a penalty for forfeiture of an amount deposited, under the terms of the contract which expressly provides for forfeiture, the court has jurisdiction to award such sum as it considers reasonable.

It should not exceed the amount of reasonable compensation that the court has to decide. Another thing that we have noticed in the ONGC case is sections 73 and 74 must be read together. Supreme Court had laid down that damages will be awarded if there is a breach of contract and if the damage has been incurred and there is no need for the aggrieved party to provide proof of loss. This was laid down only in ONGC cases; this is nothing but the interpretations that we have received so far so that we can understand the actual position of liquidated damages and the current scenario. So, we are just jotting down the interpretations that we have received in all these case laws. Moving further, reasonable compensation will be fixed on the well-known principles that apply to the law of contract and it must align with section 73 of the Indian Contract Act.

The most important thing that we have understood and that we have extracted from the interpretation is whenever there is a breach of contract the party who commits the breach does not have an instant pecuniary obligation, nor does the party who has suffered the breach become entitled to damages or compensation or any sort of debt that he is supposed to receive from the other party.

The only right which the party aggrieved by the breach of contract has is to sue for damages, so before asking for compensation or damages the party must file a suit for damages and after that decision has been taken, it cannot be taken in a very haphazard manner. The primary thing that we have learned is that section 74 of the Indian Contract Act awards reasonable

compensation for the loss or damage incurred by the breach of contract, loss or damage incurred, as it clearly states that loss or damages are sine qua non for applicability of section 74 of the Indian Contract Act.

The plaintiffs, the aggrieved party must prove the actual loss or damage suffered by them. Certain words of section 74 state whether actual loss or damage is proved to have been incurred or caused thereby. This statement should not mislead us into thinking that actual loss is not necessary, liquidated damages can be provided. The above-referred words in section 74 are limited to those cases where it is very difficult or almost impossible to prove the monetary loss that has been incurred by the party.

So, if the party can prove the monetary loss, it is extremely important to prove the actual loss or damage that has been incurred. In certain contracts there are certain situations or certain contracts where it is almost impossible for the courts to assess the compensation arising out of the breach and if the compensation contemplated is not by the way of penalty or if it is unreasonable, the courts can award the same if it is a genuine pre-estimate by the parties as a measure of reasonable compensation.

It means that at times courts might think that the penalty or whatever is written in the contract is unreasonable, it is high and this should not be given to the aggrieved party, at the same time, when it is getting very difficult for the courts to assess the amount of compensation that needs to be given, then courts should award that penalty even if it feels that it is unreasonable, because it has been decided between the parties.

It is a genuine pre-estimate that whenever there is a breach this amount should be given as reasonable compensation and courts will have to follow that. The courts need to understand that the terms of the contract and the same must be taken into consideration for determining the award of compensation that is to be given to the parties, whatever is written down in the clauses, sub-clauses, and terms of the contract that must be taken into consideration.

So, these are the certain outcomes or learnings that we have got from the interpretation of section 74 of the Indian Contract Act. These were certain understandings that were applied by Supreme Court in the four major landmark judgments and even in the other judgments. Now we should head towards the concluding part and let us see the position of liquidated damages right now and how can it be improved, and what measures should be taken to improve the present condition of liquidated damages.

(Refer Slide Time 37:08)



WAY FORWARD

- Need to shift from Common Law Approach to Civil Law Approach
- Judicial interpretation of Section 74 that some loss/damage needs to be shown to claim liquidated damages needs to be done away with.
- Bring the law at par with **UNIDROIT** which does not impose any such requirement.
- Necessity to amend Section 74 on certain grounds.
- Such modifications must resonate with the objectives and changes brought by the Specific Relief (Amendment) Act, 2018.



So let us head towards the last segment of this presentation, I am sure after a thorough analysis of case laws, theoretical underpinnings, and comparative analysis of liquidated damages you also have certain thoughts, certain suggestions that need to be incorporated for strengthened contractual enforcement. In my opinion, I have certain points which I would like to state. First and foremost, the legal position on liquidated damages needs to be shifted from the common law approach to the civil law approach.

Right now, we are following a common law approach, so if we shift to civil law approach there is going to be strengthened contractual enforcement and it will save a lot of time and cost along with providing us stability and predictability of the legal proceedings because at present how liquidated damages are being incorporated is manifestly unreasonable.

So, to make it more reasonable, and to save a lot of time and money we need to shift to the civil law approach. If you look at the judicial interpretation of section 74 of the Indian Contract Act there is a need to bring the Indian position of law at par with international instruments. See, for example, UNIDROIT. UNIDROIT does not make it mandatory for the aggrieved party to submit proof or evidence of loss or damage for receiving liquidated damages.

This is one thing that we can adapt in our Indian position in our Indian law as well. For those who do not know what UNIDROIT is; UNIDROIT was established in the year 1926 and it is nothing but an independent intergovernmental body or organization that has its seat in Rome. So, the purpose is basically to study the needs and methods for modernizing, harmonizing,

and coordinating private and especially commercial laws between the states and groups of states.

And, to formulate a lot of uniform laws, instruments rules, and other policies to attain the objectives. So, this is the major task of UNIDROIT, so the only thing that we need to incorporate and need to adapt in our system is to remove the mandate of submitting proof for evidence of loss and damage. There are certain words in section 74 that needs to be changed in such a way that it focuses more on genuine pre-estimated losses.

It focuses more on the clauses that are already mentioned in the contract or maybe a mandate to mention liquidated clauses in the contract or something along the same line should be added or modified in section 74 of the Indian Contract Act 1872. I would also suggest that you read the Specific relief amendment act 2018.

So right now, if we look at the current position of liquidated damages and penalty clauses certain modifications must be made in a way that resonates with the objectives and changes which are already brought in Specific Relief Amendment Act 2018. Now I would like to ask a very simple question to you, this is not a part of your examination or a part of your assignment this is a simple question from my end and you must solve it say for example, there is one cricketer from a country B.

Let us consider the name of that cricketer as A, he is from country B and he has entered into a contract with India that wants A to play in team C. So A is the name of that cricketer, he is an international cricketer, B is the country from where he belongs and C is the team where he is going to play, it is Indian origin.

Now a contract is made for a period of three years they said this contract is for three years we will be paying you five crores for being a part of the Indian Premier League that is team C. Now there is a contractual provision in that contract which states that in the event of unjust dismissal by the team, A will be awarded compensation of rupees 25 crores.

Now within six months, A was removed, there was unjust dismissal and he was removed. The contract was for three years. In the meantime, A was hired by another company D that offered 10 crore rupees to A, is A liable to receive rupees 25 crores or not? Can 25 crores be awarded as compensation to A, even though A has already been hired by the company or team D?

This is my question; I would be glad if you could answer this question. I hope the session was informative and I hope you have understood what I was trying to convey through this session. If you have any doubts you can always reach out to us via our official email id. Thank you so much for being patient and I wish nothing, but the best for each one of you. So, good luck with your assignments and your exams and for everything that you are going to achieve in the future. Thank you very much.