BLOGS

CLAT PG QUICK REVISION NOTES (QRN): CONTRACT LAW

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These Quick Revision Notes (QRN) are structured to cover Contract Law comprehensively for CLAT PG, connecting statutory provisions, landmark Supreme Court judgments, legal principles, exceptions and important distinctions.

PART I - INTRODUCTION AND FORMATION OF CONTRACT

1. Nature, Meaning and Essentials of a Valid Contract

Indian Contract Act, 1872

- Enacted on 25 April 1872 and brought into force on 1 September 1872.
- Section 2(h): A contract is an agreement enforceable by law.
- Section 2(e): Every promise and every set of promises forming consideration for each other is an agreement.
- Section 2(b): When the person to whom a proposal is made signifies their assent, the proposal is accepted. An accepted proposal becomes a promise.
- Section 2(a): Proposal means expressing willingness to do or abstain from doing something with a view to obtaining another person's assent.

Fundamental distinction:

Term	Meaning
Proposal	Expression of willingness to obtain assent
Promise	Accepted proposal
Agreement	Promise or set of promises forming consideration for each other
Contract	Agreement enforceable by law

Void agreement	Not enforceable by law
Voidable contract	Enforceable at the option of one or more parties, but not at the option of the others
Void contract	A contract which ceases to be enforceable by law

Section 10 - What constitutes a valid contract?

An agreement becomes a contract when it satisfies the following requirements:

- Offer and valid acceptance.
- Intention to create legal relations.
- Lawful consideration.
- Competency of parties.
- Free consent.
- Lawful object.
- Agreement must not be expressly declared void.
- Compliance with applicable legal formalities, wherever required.

Section 10 does not expressly list intention to create legal relations as a separate phrase. It is a requirement developed through general principles of contract law.

- ***Balfour v. Balfour (1919):*** Domestic arrangements between spouses ordinarily do not create an intention to enter into legally enforceable contracts.
- ***Carlill v. Carbolic Smoke Ball Co.:*** A sufficiently definite advertisement can constitute a general offer when it demonstrates an intention to be legally bound.

Basics of Valid Contract under the Indian Contract Act, 1872

2. Offer or Proposal

- Section 2(a) - Definition of proposal

- Section 3 - Communication of proposal, acceptance and revocation
- Section 4 - When communication is complete
- Section 5 - Revocation of proposals and acceptances
- Section 6 - Modes of revocation

Essentials of a valid offer:

- It must demonstrate willingness to do or abstain from doing something.
- It must be made with a view to obtaining the other party's assent.
- Its terms must be sufficiently certain.
- It must be communicated to the offeree.
- It must not merely invite negotiations.
- The offeror must intend to create legal consequences upon acceptance.

Types of offers:

- **Express offer**: Made through spoken or written words.
- **Implied offer:** Inferred from conduct or circumstances.
- **Specific offer:** Made to a particular person.
- **General offer:** Made to the public at large.
- **Cross-offer**: Identical offers made by two parties to each other without knowledge of the other's offer. They do not constitute acceptance.
- **Counter-offer:** An offer made in response to an earlier offer, proposing different terms. It generally amounts to rejection of the original offer.
- **Standing offer:** An offer which remains open for acceptance over a specified period, often through successive orders.
- ***Carlill v. Carbolic Smoke Ball Co.:*** General offers can be accepted through performance of the stipulated conditions.
- ***Lalman Shukla v. Gauri Dutt:*** A person cannot accept an offer without knowledge of its existence.
- ***Harvey v. Facey:*** Merely stating the lowest price at which one is willing to sell does not necessarily constitute an offer.

- ***Hyde v. Wrench:*** A counter-offer destroys the original offer.
- ***Felthouse v. Bindley:*** Silence cannot ordinarily be imposed as acceptance.

3. Communication and Revocation of Offer and Acceptance

Section 4 - Completion of communication

This provision is particularly important for distinguishing postal communication from instantaneous communication.

Communication	When complete?
Proposal	When it comes to the knowledge of the person to whom it is made
Acceptance against proposer	When acceptance is put into transmission beyond the acceptor's control
Acceptance against acceptor	When it comes to the knowledge of the proposer
Revocation against the person making it	When dispatched beyond their control
Revocation against the person receiving it	When it comes to their knowledge

Section 5: An offer may be revoked before communication of its acceptance is complete against the proposer, but not afterwards.

Section 6 - An offer is revoked by:

1. Communication of notice of revocation.
2. Lapse of prescribed or reasonable time.
3. Failure to fulfil a condition precedent.
4. Death or insanity of the proposer, if the acceptor comes to know of it before acceptance.

Bhagwandas Goverdhandas Kedia v. Girdharilal Parshottamdas & Co.

- Concerned formation of a contract through telephone communication.
- The Supreme Court distinguished instantaneous communication from postal acceptance.

- In instantaneous communication, acceptance must be received by the offeror; the contract is ordinarily concluded where acceptance is received.

Do not automatically apply the postal rule to telephone or other instantaneous communication.

4. Acceptance of an Offer

- Section 2(b) - Acceptance
- Section 7 - Acceptance must be absolute
- Section 8 - Acceptance by performing conditions or receiving consideration
- Section 9 - Express and implied promises

Rules of valid acceptance:

1. Acceptance must be **absolute and unqualified.**
2. It must **correspond with the terms of the offer.**
3. It **must be communicated, unless the offer expressly or impliedly permits acceptance by conduct.**
4. It must be **made in the prescribed manner, where specified.**
5. It must **be made while the offer remains open.**
6. It must be **made with knowledge of the offer.**

- Section 7: Acceptance must be absolute and unqualified.
- Section 8: Performance of the conditions of a proposal or acceptance of consideration offered with a proposal amounts to acceptance.
- Section 9: Promises may be express or implied.
- ***Carlill v. Carbolic Smoke Ball Co.:*** Performance can amount to acceptance of a general offer.
- ***Lalman Shukla v. Gauri Dutt***: Knowledge of the offer is essential.
- ***Felthouse v. Bindley:*** Silence is not ordinarily acceptance.

5. Consideration

- Section 2(d) - Definition of consideration

- Section 23 - Lawful consideration and object
- Section 25 - Agreement without consideration is void, subject to exceptions

Consideration is something done, abstained from, or promised at the desire of the promisor.

Essential elements:

1. It must move at the desire of the promisor.
2. It may move from the promisee or any other person.
3. It may be past, present or future.
4. It must be real and not illusory.
5. It must be lawful.
6. It need not be adequate, provided consent is freely given.

Indian position: Unlike English law, consideration in India may move from the promisee or any other person. However, *this does not mean that a stranger to the contract can automatically sue.*

Section 25 - Exceptions to the rule that an agreement without consideration is void:

1. **Agreement made out of natural love and affection:**

- Must be in writing.
- Must be registered.
- Must be between parties standing in near relation to each other.

2. **Promise to compensate for past voluntary services:**

- A person voluntarily does something for the promisor.
- The promisor subsequently promises to compensate them.

3. **Promise to pay a time-barred debt:**

- Must be in writing.
- Must be signed by the debtor or their authorised agent.
- Must relate to a debt which could have been enforced but for limitation.

4. **Completed gifts are not invalid merely because they lack consideration.**

5. **Inadequacy of consideration does not automatically make an agreement void**, but may be relevant in determining whether consent was freely given.

- ***Durga Prasad v. Baldeo:*** Consideration must move at the desire of the promisor.
- ***Chinnaya v. Ramaya:*** Consideration may move from a third person.
- ***Kedarnath Bhattacharji v. Gorie Mohamed:*** A promise to subscribe to a charitable fund became enforceable when liability was incurred on the faith of the subscription.
- ***Abdul Aziz v. Masum Ali:*** A mere promise to subscribe, without consideration or liability incurred, was unenforceable.

6. Doctrine of Privity of Contract

Only parties to a contract can ordinarily enforce rights and obligations arising from that contract. A third party, even if intended to benefit from the agreement, generally cannot sue.

Distinguish two doctrines:

- **Privity of consideration:** Who must provide consideration?
- **Privity of contract:** Who can enforce the contractual obligation?

Indian position:

- Under Section 2(d), consideration may move from the promisee or any other person.
- However, a stranger to a contract ordinarily cannot sue upon it.

1. ***Tweddle v. Atkinson (1861):*** A person who was not a party to an agreement could not enforce the promise made for his benefit.
2. ***Dunlop Pneumatic Tyre Co. Ltd. v. Selfridge & Co. Ltd. (1915):*** A stranger to the contract cannot sue for its breach.
3. ***Jamna Das v. Ram Autar Pande (1911):*** A mortgagee could not enforce a personal promise made by the purchaser to pay the mortgage debt when the mortgagee was not a party to that promise.
4. ***M.C. Chacko v. State Bank of Travancore (1969):*** The Supreme Court reaffirmed the doctrine of privity of contract.

Exceptions to privity of contract:

1. Beneficiary under a trust.
2. Family arrangements and marriage settlements.
3. Acknowledgment or estoppel.
4. Assignment of contractual rights.
5. Agency: A principal may enforce contracts entered into by an authorised agent.
6. Covenants running with land, where applicable.

Privity of Contracts: Why Strangers Can't Cash In on Your Deal.

7. Capacity to Contract

Section 11 - Who is competent to contract?

A person is competent to contract if they:

1. Have attained the age of majority.
2. Are of sound mind.
3. Are not disqualified from contracting by any law applicable to them.

Section 12 - Soundness of mind

A person is of sound mind for making a contract if, at the time of entering into it, they are capable of:

- Understanding the contract.
- Forming a rational judgment about its effect upon their interests.

A person usually of unsound mind may contract during a lucid interval. A person usually of sound mind cannot contract during a period of temporary incapacity.

A. Minor's agreement

Mohori Bibee v. Dharmodas Ghose (1903)

- A minor mortgaged his property to secure a loan.

- The lender's agent knew that the borrower was a minor.
- The Privy Council held that an agreement with a minor is void ab initio.
- A minor's agreement is not merely voidable; it is void from the beginning.

Legal consequences of a minor's agreement:

1. **No personal contractual liability** can ordinarily be imposed on the minor.
2. **A minor cannot ratify an agreement upon attaining majority;** a fresh contract supported by fresh consideration is required.
3. **The doctrine of estoppel cannot ordinarily be used to make a minor** liable on an otherwise void agreement.
4. **A minor may be a beneficiary under a contract.**
5. **Under Section 68, necessaries supplied to a minor can be reimbursed from the minor's property.**
6. **A minor can act as an agent under Section 184,** but cannot be held personally responsible to the principal under the ordinary rules of agency.
7. **A minor can be admitted to the benefits of partnership under Section 30 of the Indian Partnership Act, 1932,** subject to its conditions.

- ***Mohori Bibee v. Dharmodas Ghose*:** Minor's agreement is void ab initio.
- ***Srikakulam Subrahmanyam v. Kurra Subba Rao (1948)*:** A guardian may enter into a contract on behalf of a minor where it is within the guardian's authority and for the minor's benefit.
- ***Leslie v. Sheill (1914)*:** A minor cannot be made indirectly liable for a contractual loan by disguising the claim as restitution.

B. Persons of unsound mind

- Section 12 determines contractual capacity at the time of contracting.
- A person incapable of understanding the contract or forming a rational judgment cannot enter into a valid contract at that time.
- A person experiencing a temporary lucid interval can contract during that interval.

C. Persons disqualified by law

Examples include:

- **Alien enemies**, during the relevant period of hostilities.
- **Foreign sovereigns and diplomats**, subject to applicable law and immunities.
- **Convicts**, subject to statutory restrictions.
- **Insolvents**, regarding property vested in the insolvency administration, subject to applicable insolvency law.
- **Corporations acting beyond their legal capacity or statutory powers.**

8. Free Consent

- Section 13 - Consent
- Section 14 - Free consent

Section 13: **Two or more persons consent when they agree upon the same thing in the same sense (consensus ad idem).**

Section 14: **Consent is free when it is not caused by:**

1. Coercion.
2. Undue influence.
3. Fraud.
4. Misrepresentation.
5. Mistake, subject to Sections 20, 21 and 22.

A. Coercion - Section 15

Coercion involves committing or threatening to commit an act forbidden by the Indian Penal Code (now BNS), or unlawfully detaining or threatening to detain property, to the prejudice of any person, with the intention of causing someone to enter into an agreement.

Important elements:

- An unlawful act or threat.
- Unlawful detention of property or threat thereof.
- Intention to cause a person to enter into an agreement.

- The coercion need not necessarily be directed against the contracting party.
- ***Ranganayakamma v. Alwar Setti (1889)*:** Preventing a widow from removing her husband's dead body for cremation until she consented to an adoption amounted to coercion.
- ***Chikkam Ammiraju v. Chikkam Seshamma (1917)*:** Threatening suicide was treated as coercion under the then applicable interpretation of Section 15.

Under Section 19, a contract caused by coercion is voidable at the option of the party whose consent was so obtained.

B. Undue Influence - Section 16

Undue influence occurs when:

1. One party is in a position to dominate the will of another.
2. That position is used to obtain an unfair advantage.

Examples of relationships involving potential dominance:

- Parent and child.
- Doctor and patient.
- Guardian and ward.
- Spiritual adviser and disciple.
- Trustee and beneficiary.

These relationships do not automatically establish undue influence; the statutory requirements must be satisfied.

Section 16(2): A person is deemed to be in a position to dominate another's will where:

- They hold real or apparent authority over the other.
- They stand in a fiduciary relationship.
- They contract with a person whose mental capacity is affected by age, illness or mental or bodily distress.

Section 16(3): Where a person in a position to dominate the will of another enters into a transaction that appears unconscionable, the burden of proving that the contract was not induced by undue influence may shift to the dominant party.

Important cases:

- Raghunath Prasad v. Sarju Prasad (1924): Established the three-stage approach: determine dominance, examine its use, and assess whether an unfair advantage was obtained.
- Subhas Chandra Das Mushib v. Ganga Prosad Das Mushib (1967): Explained the requirements for establishing undue influence and the shifting of the burden of proof.

Effect: Section 19A allows the court to set aside a contract induced by undue influence, either absolutely or upon appropriate terms.

C. Fraud - Section 17

Fraud includes:

1. Suggestion of a fact which is untrue by someone who does not believe it to be true.
2. Active concealment of a fact by someone having knowledge or belief of that fact.
3. A promise made without any intention of performing it.
4. Any other act fitted to deceive.
5. Any act or omission specially declared fraudulent by law.

Important distinction: Mere silence as to facts likely to affect a person's willingness to contract does not ordinarily amount to fraud.

However, silence becomes fraud where:

- There is a duty to speak.
- Silence is equivalent to speech.
- The circumstances create a duty of disclosure.

Case law:

- Derry v. Peek (1889): Fraudulent misrepresentation involves knowledge of falsity, absence of honest belief in truth, or recklessness as to truth.
- Ningawwa v. Byrappa (1968): Distinguished fraud concerning the character of a document from fraud concerning its contents.

D. Misrepresentation - Section 18

Misrepresentation includes:

1. An incorrect positive assertion made by someone who believes it to be true, though it is not justified by the information available.
2. A breach of duty which, without an intention to deceive, gains an advantage by misleading another.
3. Innocently causing a party to make a mistake regarding the substance of the subject matter.

Effect: Under Section 19, the contract is generally voidable at the option of the party whose consent was caused by misrepresentation.

E. Mistake - Sections 20, 21 and 22

Provision	Rule
Section 20	Bilateral mistake of an essential fact makes the agreement void
Section 21	Mistake of Indian law does not make a contract voidable; foreign law is treated as a question of fact
Section 22	Unilateral mistake of fact does not ordinarily make a contract voidable

Section 20: Both parties must be mistaken about a matter of fact essential to the agreement.

Examples:

- Mistake regarding existence of the subject matter.
- Mistake regarding identity of the subject matter.
- Mistake concerning the fundamental nature of the transaction.

Tarsem Singh v. Sukhminder Singh (1998): The Supreme Court considered mutual mistake under Section 20 and the effect of a fundamental mistake regarding the subject matter of the agreement.

Factor	Coercion	Undue influence	Fraud	Misrepresentation

Nature	Unlawful pressure	Dominating another's will	Intentional deception	Innocent false representation
Intention to deceive	Not essential	Not essential	Present	Absent
Main provision	S.15	S.16	S.17	S.18
Effect	Voidable	Voidable	Voidable	Voidable

Landmark Cases on the Indian Contract Act - Part 1: Formation, Capacity and Free Consent.

PART II - VOID AGREEMENTS AND CONTINGENT CONTRACTS

9. Lawful Object and Consideration - Section 23

Consideration or object is unlawful when:

1. It is forbidden by law.
2. It defeats the provisions of any law.
3. It is fraudulent.
4. It involves injury to the person or property of another.
5. The court regards it as immoral.
6. It is opposed to public policy.

An agreement with an unlawful object or consideration is void.

Gherulal Parakh v. Mahadeodas Maiya (1959)

- Concerned wagering agreements and public policy.
- The Supreme Court held that wagering agreements are void under Section 30.

- However, wagering agreements are not necessarily illegal under Section 23.
- A collateral transaction is not automatically void merely because it relates to a wagering agreement.

10. Agreements Expressly Declared Void

The following provisions are particularly important:

Section	Subject	Legal effect
Section 24	Agreement where consideration or object is partly unlawful	Void in circumstances covered by the section
Section 25	Agreement without consideration	Void, subject to exceptions
Section 26	Restraint of marriage	Void, except restraint on marriage of a minor
Section 27	Restraint of trade	Void to that extent, subject to statutory exception
Section 28	Restraint of legal proceedings	Void to the extent prohibited
Section 29	Uncertainty	Void if meaning is not certain or capable of being made certain
Section 30	Wagering agreements	Void
Section 36	Agreement contingent on impossible event	Void

A. Restraint of Marriage - Section 26

Every agreement in restraint of the marriage of any person, other than a minor, is void.

B. Restraint of Trade - Section 27

Every agreement by which anyone is restrained from exercising a lawful profession, trade or business is void to that extent.

Exception: An agreement not to carry on a similar business after selling the goodwill of a business is valid if the statutory conditions are fulfilled.

- ***Niranjan Shankar Golikari v. Century Spinning (1967)*:** A negative covenant operating during the subsistence of an employment contract may be enforceable if reasonable and not unconscionable.
- ***Superintendence Company of India v. Krishan Murgai (1981)*:** Post-employment restraints are generally void under Section 27.
- ***Gujarat Bottling Co. Ltd. v. Coca Cola Co. (1995)*:** A negative stipulation during the subsistence of a commercial agreement is not necessarily a restraint of trade prohibited by Section 27.

C. Restraint of Legal Proceedings - Section 28

Agreements are void to the extent that they:

- Absolutely restrict a party from enforcing contractual rights through ordinary legal proceedings.
- Unlawfully limit the time within which contractual rights may be enforced.
- Extinguish contractual rights or discharge liability after a specified period so as to restrict enforcement, subject to statutory exceptions.

D. Uncertainty - Section 29

An agreement whose meaning is neither certain nor capable of being made certain is void.

Example: A agrees to sell B either rice, wheat or sugar at an unspecified price, with no means of determining the subject matter or price.

E. Wagering Agreements - Section 30

A wagering agreement is an agreement in which parties have reciprocal chances of winning or losing money or money's worth depending upon an uncertain event, without any genuine interest in the event apart from the stake.

Essential features:

1. There must be an uncertain event.
2. Each party must stand to win or lose.
3. Neither party must have control over the outcome.
4. The parties must have no genuine interest in the event other than the stake.

Consequences:

- Wagering agreements are void.
- Winnings cannot ordinarily be recovered through a suit.
- Collateral transactions are not automatically illegal under the central Act.
- ***Gherulal Parakh v. Mahadeodas Maiya (1959)*:** Wagering agreements are void but not necessarily illegal.
- ***State of Bombay v. R.M.D. Chamarbaugwala (1957)*:** Considered the distinction between gambling activities and competitions involving substantial skill.

*The statutory treatment of **horse-racing prize subscriptions is addressed in the proviso to Section 30.** Also, state gambling legislation may alter the applicable position.*

11. Contingent Contracts

Sections 31-36

A contingent contract is a contract to do or not to do something if some event collateral to the contract happens or does not happen.

Section-wise revision:

Section	Principle
31	Definition of contingent contract
32	Enforcement on happening of an uncertain event
33	Enforcement when an event not happening becomes certain
34	Event depending on future conduct of a living person

35	Event happening or not happening within fixed time
36	Agreement contingent on impossible event is void

Example: A promises to pay B ₹10 lakh if B's house is destroyed by fire.

The contract is contingent upon an uncertain event collateral to the contract.

Distinguish contingent contract and wagering agreement:

Contingent contract	**Wagering agreement**
Section 31	Section 30
Valid if statutory conditions are satisfied	Void
Parties have a genuine interest in performance	Parties' interest is generally limited to winning or losing
Event is collateral	Uncertain event determines the stake
May be enforceable upon occurrence of the event	Not enforceable

12. Performance of Contracts

Relevant provisions: Sections 37-67

Performance is the normal mode of discharge of contractual obligations.

Section 37: Parties must perform or offer to perform their respective promises unless performance is dispensed with or excused under the Act or another law.

Provisions:

- Section 38: Effect of refusal to accept a valid offer of performance.
- Section 39: Effect of refusal to perform a promise wholly.
- Section 40: Person by whom promise is to be performed.
- Section 41: Acceptance of performance from a third person.
- Section 42: Devolution of joint liabilities.

- Section 43: Any one of joint promisors may be compelled to perform the whole promise.
- Section 44: Effect of release of one joint promisor.
- Section 46: Time for performance where no time is specified.
- Section 47: Time and place where time is specified.
- Section 48: Application for performance on a particular day.
- Section 50: Performance in manner or at time prescribed by promisee.
- Section 51: Reciprocal promises to be performed simultaneously.
- Section 52: Order of performance of reciprocal promises.
- Section 53: Liability of party preventing the event on which contract is to take effect.
- Section 54: Effect of default in performing the promise which should be performed first.
- Section 55: Effect of failure to perform at a fixed time.
- Section 60: Application of payment where debt to be discharged is not indicated.
- Section 62: Novation, rescission and alteration.
- Section 63: Promisee may dispense with or remit performance.
- Section 64: Consequences of rescission of a voidable contract.
- Section 65: Obligation of person who has received advantage under void agreement or contract that becomes void.
- Section 67: Effect of neglect of promisee to afford reasonable facilities for performance.

Important concepts:

A. Tender or offer of performance - Section 38

Where a promisor makes a valid offer of performance and the promisee refuses to accept it, the promisor is not responsible for non-performance and does not lose their rights under the contract.

A valid tender must:

- Be unconditional.
- Be made at a proper time and place.
- Give the promisee a reasonable opportunity to inspect the performance.
- Be made to the proper person.

B. Reciprocal promises - Sections 51-54

Where parties make reciprocal promises, the sequence and conditions of performance become important.

- **Simultaneous promises:** Neither party needs to perform unless the other is ready and willing.
- **Sequential promises:** The party required to perform first must perform before demanding performance from the other.
- **Prevention:** A party cannot rely on non-performance where their own conduct prevented performance.

C. Time as the essence of contract - Section 55

Where time is intended to be essential and a party fails to perform within the stipulated period, the contract becomes voidable at the option of the promisee.

Where time is not intended to be essential, the promisee is entitled to compensation for loss caused by delay.

Hind Construction Contractors v. State of Maharashtra (1979): Whether time is the essence of a contract depends upon the intention of the parties, gathered from the contract and surrounding circumstances.

13. Discharge of Contracts

A contract may be discharged through:

1. Performance.
2. Mutual agreement.
3. Impossibility or frustration.
4. Operation of law.
5. Breach of contract.
6. Lapse of limitation, affecting the remedy.

A. Discharge by mutual agreement

- Section 62: Novation, rescission and alteration.
- Section 63: Remission or dispensation of performance.

- Section 64: Consequences of rescinding a voidable contract.
- Section 65: Restitution where an agreement is discovered to be void or a contract becomes void.

Novation: Substitution of a new contract for an existing contract, with the consent of the parties.

Rescission: Cancellation of the contract.

Alteration: Change in the terms of the original contract by agreement.

Remission: Promisee accepts lesser performance or dispenses with performance.

B. Discharge by impossibility or frustration - Section 56

Section 56 covers:

1. An agreement to do an act impossible in itself, which is void.
2. A contract which becomes impossible or unlawful after formation, which becomes void when the act becomes impossible or unlawful.
3. Compensation for loss where the promisor knew or should have known of the impossibility or unlawfulness, but the promisee did not.

Doctrine of frustration: When an unforeseen event destroys the foundation of a contract, making performance impossible or unlawful, the contract may stand discharged.

Mere commercial hardship, increased expense or inconvenience does not automatically amount to frustration.

1. ***Satyabrata Ghose v. Mugneeram Bangur & Co. (1954):*** Impossibility under Section 56 is not confined to literal physical impossibility; practical impossibility may also be covered. Frustration operates under Indian statutory law.
2. ***Naihati Jute Mills Ltd. v. Khyaliram Jagannath (1968):*** Mere difficulty or commercial inconvenience does not constitute frustration.
3. ***Boothalinga Agencies v. V.T.C. Poriaswami Nadar (1969):*** Subsequent statutory prohibition can render performance unlawful and frustrate a contract.
4. ***Energy Watchdog v. Central Electricity Regulatory Commission (2017):*** A rise in the cost of procuring imported coal did not automatically frustrate power purchase agreements. Express force majeure clauses are governed by Section 32, whereas frustration outside the

contract is considered under Section 56.

5. ***Alopi Parshad & Sons Ltd. v. Union of India (1960)*:** A contract is not frustrated merely because performance becomes more onerous or expensive.
6. ***Taylor v. Caldwell (1863)*:** Destruction of the essential subject matter without fault can discharge a contract under the English doctrine of frustration.
7. ***Krell v. Henry (1903)*:** Frustration of the common foundation or purpose of a contract.

C. Discharge by breach

A breach occurs when a party refuses or fails to fulfil contractual obligations.

Two types:

- Actual breach: Failure to perform when performance becomes due.
- Anticipatory breach: Refusal or disabling conduct before the date of performance.

Section 39: Where a party refuses to perform or disables themselves from performing their promise wholly, the promisee may put an end to the contract unless they have signified acquiescence in its continuance.

The innocent party may elect to treat the contract as subsisting, subject to the statutory rules and subsequent events.

Landmark Cases on the Indian Contract Act - Part 2: Void Agreements, Frustration and Discharge.

PART III - BREACH OF CONTRACT AND REMEDIES

14. Breach of Contract

Breach occurs when a party fails or refuses to perform a contractual obligation without lawful justification.

Types of breach:

A. Actual breach

- Occurs on the date performance becomes due.
- A party fails or refuses to fulfil contractual obligations.

B. Anticipatory breach

- Occurs before the date fixed for performance.
- A party expressly refuses to perform or acts in a manner that makes performance impossible.
- Section 39 - Refusal to perform promise wholly.

***Hochster v. De La Tour (1853)*:** The innocent party can sue for anticipatory breach before the actual date of performance.

15. Damages for Breach of Contract

The primary objective of contractual damages is to compensate the injured party for the loss suffered due to breach and, as far as money can do so, place them in the position they would have occupied had the contract been performed.

Section	Principle
73	Compensation for loss or damage caused by breach
74	Compensation where penalty or liquidated damages are stipulated
75	Compensation to a party rightfully rescinding a contract

A. Section 73 - Compensation for loss or damage

A party suffering from breach is entitled to compensation for:

1. Losses which naturally arise in the usual course of things from the breach.
2. Losses which the parties knew, when making the contract, were likely to result from the breach.

Remoteness of damages: Remote and indirect losses are not recoverable.

Hadley v. Baxendale (1854)

- The plaintiffs operated a mill whose crankshaft had broken.
- The defendants delayed transporting the shaft required for manufacturing a replacement.
- The mill remained closed for additional days.
- The plaintiffs claimed loss of profits.
- The court refused to award the loss because the defendants had not been informed that the mill would remain shut.

Two-limb test:

1. Damages arising naturally in the usual course of things.
2. Special damages which were within the reasonable contemplation of both parties at the time of contracting.

- ***Murlidhar Chiranjilal v. Harishchandra Dwarkadas (1962)*:** Damages should ordinarily be assessed with reference to the market price at the place and time of delivery; special losses must satisfy the remoteness principle.
- ***Victoria Laundry v. Newman Industries (1949)*:** Ordinary lost profits may be recoverable where foreseeable, but unusual or extraordinary profits require knowledge of special circumstances.

B. Section 74 - Liquidated damages and penalty

Where a contract specifies an amount payable in case of breach, or contains a stipulation by way of penalty, the injured party is entitled to reasonable compensation not exceeding the amount stipulated.

- The amount mentioned in the contract is the maximum limit, not an automatic entitlement.
- The court awards reasonable compensation.
- Actual loss is relevant.
- Where loss is difficult or impossible to quantify, a genuine pre-estimate may be considered.
- A party cannot automatically recover the stipulated amount merely because the contract labels it liquidated damages.

1. Fateh Chand v. Balkishan Das (1963):

- Section 74 applies to stipulated sums and penalties.

- The court must award reasonable compensation.
- The contractual amount is only the upper limit.

2. Maula Bux v. Union of India (1969):

- Where actual loss can be calculated, proof of loss is generally required.
- Forfeiture of security deposits may attract Section 74.

3. ONGC Ltd. v. Saw Pipes Ltd. (2003):

- The Supreme Court recognised enforcement of genuine pre-estimated damages where loss is difficult to quantify.
- Compensation must still be reasonable and consistent with Section 74.

4. Kailash Nath Associates v. Delhi Development Authority (2015):

- Damage or loss is a sine qua non for compensation under Section 74.
- Where loss can be proved, it should ordinarily be proved.
- The mere existence of a forfeiture clause does not justify automatic forfeiture.

C. Section 75 - Compensation after rightful rescission

A person who rightfully rescinds a contract is entitled to compensation for damage sustained through non-fulfilment of the contract.

16. Types of Remedies for Breach of Contract

1. Damages

Monetary compensation for loss suffered due to breach.

Types commonly discussed:

- Ordinary or general damages.
- Special damages.
- Nominal damages.
- Exemplary damages, exceptionally.
- Liquidated damages, subject to Section 74.

2. Specific Performance

An order directing the defaulting party to perform the contractual obligation.

Governed by the Specific Relief Act, 1963, particularly Sections 10 onwards, as amended in 2018.

3. Injunction

A court order restraining a party from performing a particular act or, in appropriate cases, requiring an act to be performed.

Governed by the Specific Relief Act, 1963.

4. Rescission

Cancellation of the contract and restoration of parties, as far as possible, to their original positions.

5. Quantum Meruit

Literally, as much as earned.

A party may claim reasonable remuneration for work already performed where the law recognises such a claim.

Important: Quantum meruit is not automatically available whenever a contract is breached. The circumstances and statutory basis must be examined.

- Section 65 - Restitution.
- Section 70 - Non-gratuitous acts.
- Section 75 - Compensation after rightful rescission.

Notes on Breach of Contract: Types, Effects and Remedies.

PART IV - QUASI-CONTRACTS

17. Quasi-Contracts: Sections 68-72

Quasi-contracts are obligations imposed by law to prevent unjust enrichment.

They are not actual contracts **because there is no conventional offer, acceptance or meeting of minds.**

No person should be unjustly enriched at the expense of another ***A quasi-contractual obligation arises by operation of law, not through the agreement of parties.***

Five categories under the Indian Contract Act

1. **Section 68 - Necessaries supplied to a person incapable of contracting**

Where necessaries suited to the condition in life of a person incapable of contracting, or someone whom they are legally bound to support, are supplied, the supplier is entitled to reimbursement from that person's property.

Examples:

- Food.
- Clothing.
- Medical treatment.
- Essential accommodation.
- Other genuine necessities.

The minor or person of unsound mind is not personally liable. Reimbursement is available from their property.

2. Section 69 - Payment by an interested person

A person who is interested in the payment of money which another is legally bound to pay, and who therefore pays it, is entitled to reimbursement.

Example: A tenant pays the landlord's outstanding municipal dues to prevent the property from being sold for recovery.

Essential requirements:

- The other person must be legally bound to pay.
- The claimant must have an interest in making the payment.
- The claimant must actually pay the amount.

3. Section 70 - Non-gratuitous acts

Where a person lawfully does something for another or delivers something to another:

1. The act or delivery must be lawful.
2. It must not be intended to be gratuitous.
3. The other person must enjoy the benefit.

The beneficiary must compensate the person who performed the act or delivered the goods.

***State of West Bengal v. B.K. Mondal & Sons (1962)*:**

- The contractor constructed certain works for the government.
- The works were accepted and enjoyed by the government.
- The Supreme Court held that compensation could be claimed under Section 70.
- A valid formal contract under Article 299 of the Constitution was absent, but the requirements of Section 70 were independently satisfied.

4. Section 71 - Finder of goods

A person who finds goods belonging to another and takes them into custody has the same responsibility as a bailee.

Duties include:

- Taking reasonable care.
- Not misappropriating the goods.
- Making reasonable efforts to locate the true owner.
- Returning the goods to the rightful owner.

5. Section 72 - Money paid or goods delivered by mistake or coercion

A person to whom money has been paid, or anything delivered, by mistake or under coercion must repay or return it.

Examples:

- Duplicate payment of an invoice.
- Payment of a tax under a mistake of law or fact, subject to applicable constitutional and statutory limitations.

- Goods delivered to the wrong person.

***Sales Tax Officer, Banaras v. Kanhaiya Lal Mukundlal Saraf (1958)*:**

- The Supreme Court interpreted Section 72 broadly.
- The expression mistake includes mistake of law as well as mistake of fact.
- Money paid under a mistake of law could be recovered, subject to applicable legal limitations.
- **Fibrosa Spolka Akcyjna v. Fairbairn Lawson (1943):** Recognised restitution where a contract became frustrated and the basis for payment failed.
- ***Moses v. Macferlan (1760):*** An early English authority on restitution and unjust enrichment.

Quantum Meruit

Quantum meruit means reasonable remuneration for services rendered.

It may arise:

1. Where a contract is discovered to be void.
2. Where a contract becomes void.
3. Where one party prevents the other from completing performance.
4. Where a divisible contract has been partly performed and the circumstances permit payment.
5. Where a person lawfully provides non-gratuitous services and the requirements of Section 70 are fulfilled.

Quasi-Contracts: The Silent Chapter That Trips Up Every CLAT PG Aspirant.

PART V - SPECIAL CONTRACTS

18. Contract of Indemnity

Section 124 - Definition

A contract by which one party promises to save the other from loss caused by the conduct of the promisor himself or by the conduct of any other person.

Parties:

- **Indemnifier:** Person who promises to compensate.
- **Indemnity-holder:** Person protected against loss.

Example: A promises to compensate B for any loss suffered by B due to a specified third-party claim.

Section 125 - Rights of indemnity-holder

The indemnity-holder is entitled to recover:

1. Damages which they may be compelled to pay in a suit concerning a matter covered by the indemnity.
2. Costs incurred in bringing or defending such proceedings, subject to the statutory conditions.
3. Sums paid under a compromise, subject to the statutory conditions.

The indemnity-holder must act within the scope of the indemnity and prudently.

Gajanan Moreshwar Parelkar v. Moreshwar Madan Mantri (1942)

- The Bombay High Court recognised that the **indemnity-holder need not always wait until actual payment is made.**
- Where liability has become absolute, the indemnity-holder may seek relief to protect themselves against that liability.

19. Contract of Guarantee

Section 126 - Definition

A contract of guarantee is a contract to perform the promise or discharge the liability of a third person in case of their default.

Three parties:

1. **Surety:** Person giving the guarantee.
2. **Principal debtor:** Person whose default is guaranteed.

3. **Creditor:** Person to whom the guarantee is given.

Three contractual relationships:

- Between creditor and principal debtor.
- Between creditor and surety.
- Between principal debtor and surety.

Section-wise important provisions:

Section	Principle
126	Definition of guarantee
127	Consideration for guarantee
128	Surety's liability is co-extensive with principal debtor
129	Continuing guarantee
130	Revocation of continuing guarantee
131	Revocation by death of surety
133	Variance in terms of contract
134	Discharge by release or discharge of principal debtor
135	Composition, giving time or promise not to sue
137	Mere forbearance does not discharge surety
139	Impairment of surety's remedy
140	Rights of surety upon payment
141	Surety's right to benefit of securities
142	Guarantee obtained by misrepresentation
143	Guarantee obtained by concealment
144	Conditional guarantee

145	Implied promise to indemnify surety
146	Co-sureties equally liable
147	Co-sureties liable in different sums

A. Nature of surety's liability - Section 128

The **liability of the surety is co-extensive with that of the principal debtor** unless the contract provides otherwise.

This means the creditor can ordinarily proceed directly against the surety without first exhausting remedies against the principal debtor.

Bank of Bihar Ltd. v. Damodar Prasad (1969)

- The Supreme Court held that the **creditor is not required to exhaust remedies against the principal debtor before proceeding against the surety.**
- The surety's liability arises upon default, subject to the guarantee's terms.

B. Continuing guarantee - Section 129

A guarantee which extends to a series of transactions is called a continuing guarantee.

Example: A guarantees payment for all goods supplied by B to C over a specified period.

C. Revocation - Sections 130 and 131

- Section 130: A continuing guarantee may be revoked by notice regarding future transactions.
- Section 131: Death of the surety operates as revocation of a continuing guarantee for future transactions, unless there is a contract to the contrary.

D. Discharge of surety

A surety may be discharged by:

- **Material variance** without consent - Section 133.
- **Release of principal debtor -** Section 134.
- **Composition,** giving time or agreement not to sue - Section 135.
- **Impairment of surety's eventual remedy** - Section 139.
- **Loss of security** - Section 141.

Exception: *Mere delay or forbearance by the creditor to sue the principal debtor does not discharge the surety under Section 137.*

E. Rights of surety

1. Right of subrogation - Section 140.
2. Right to benefit of securities - Section 141.
3. Right of indemnity against principal debtor - Section 145.
4. Right of contribution against co-sureties - Sections 146–147.

- ***State Bank of India v. Indexport Registered (1992)*:** The creditor can proceed against the guarantor without necessarily first proceeding against the principal debtor.
- ***Industrial Investment Bank of India Ltd. v. Biswanath Jhunjhunwala (2009)*:** Reaffirmed the co-extensive nature of surety liability.
- ***Lalit Kumar Jain v. Union of India (2021)***: Approval of a resolution plan in relation to a corporate debtor does not, by itself, discharge the personal guarantor.

20. Indemnity vs Guarantee

Basis	Indemnity	Guarantee
Provision	Sections 124-125	Sections 126-147
Parties	Two	Three
Liability	Primary	Secondary in the sense that it arises upon default
Purpose	Protection against loss	Security for another's obligation
Contracts	Generally one contractual relationship	Three connected contractual relationships
Trigger	Covered loss/liability	Default of principal debtor
Right after payment	As provided by contract and applicable law	Subrogation under Section 140

Contract of Guarantee and Indemnity under the Indian Contract Act.

21. Bailment

Section 148 - Definition

Bailment is the delivery of goods by one person to another for a specific purpose, upon a contract that the goods shall be returned or disposed of according to the directions of the person delivering them once the purpose is accomplished.

Parties:

- **Bailor:** Person delivering goods.
- **Bailee:** Person receiving goods.

Essential elements:

1. Delivery of possession of movable goods.
2. Delivery for a particular purpose.
3. Contract, express or implied.
4. Obligation to return or dispose of goods according to directions.
5. Ownership remains with the bailor; possession transfers to the bailee.

Section	Principle
148	Definition of bailment
149	Delivery to bailee
150	Bailor's duty to disclose faults
151	Bailee's standard of care
152	Bailee's liability where reasonable care is exercised
153	Termination by inconsistent act

154	Liability for unauthorised use
160	Return of goods
161	Bailee's responsibility for failure to return
170	Particular lien
171	General lien

A. Duties of bailor

- Disclose known material defects - Section 150.
- Bear necessary expenses in gratuitous bailment - Section 158.
- Indemnify the bailee for losses arising from defective title or other applicable liabilities.

B. Duties of bailee

- Take reasonable care - Section 151.
- Avoid unauthorised use - Section 154.
- Not mix goods without consent - Sections 155-157.
- Return goods upon completion - Section 160.
- Deliver any increase or profit from the goods - Section 163.

Section 152: A bailee is not responsible for loss, destruction or deterioration if they have taken the degree of care required under Section 151, unless there is a special contract imposing greater responsibility.

C. Rights of bailee

- Right to recover necessary expenses.
- Right to compensation for premature termination in certain gratuitous bailments.
- Right to particular lien under Section 170.
- Right to general lien under Section 171, for specified classes of bailees.

D. Particular lien vs general lien

Particular lien	General lien

Section 170	Section 171
Retention for charges relating to particular goods	Retention for general balance of account
Available to bailee who has rendered services involving labour or skill	Available to specified categories, subject to contract
Limited to particular goods	Wider right of retention

State of Gujarat v. Memon Mahomed Haji Hasam (1967)

The **Supreme Court recognised that the obligations of a bailee may arise even in circumstances where goods are taken into custody under legal authority**, and emphasised the duty of reasonable care.

22. Pledge

Section 172 - Definition

Pledge is the bailment of goods as security for payment of a debt or performance of a promise.

Parties:

- Pawnor: Person who pledges goods.
- Pawnee: Person who receives goods as security.

Essential elements:

1. Delivery of possession of goods.
2. Goods must be delivered as security.
3. There must be a debt or promise.
4. Ownership generally remains with the pawnor.
5. Pawnee receives a special interest in the pledged goods.

Section	Principle
172	Definition of pledge
173	Pawnee's right of retainer

174	Pawnee cannot retain goods for another debt, subject to contract
175	Pawnee's right to extraordinary expenses
176	Pawnee's rights upon default
177	Pawnor's right to redeem
178	Pledge by mercantile agent
178A	Pledge by person in possession under voidable contract
179	Pledge where pawnor has limited interest
180	Suit by bailor or bailee against wrongdoer
181	Apportionment of relief or compensation

Section 176 - Rights of pawnee upon default

If the pawnor defaults:

1. Pawnee may sue the pawnor for the debt and retain the goods as collateral security.
2. Pawnee may sell the pledged goods after giving reasonable notice of sale.
3. If sale proceeds are insufficient, the pawnor remains liable for the balance.
4. If sale proceeds exceed the debt, the surplus must be returned to the pawnor.

Section 177 - Right to redeem

The pawnor may redeem the pledged goods at any time before actual sale, even after default, by paying the debt and expenses arising from default.

- ***Lallan Prasad v. Rahmat Ali (1967)*:** A pawnee must be able to return the pledged goods when the pawnor redeems them; the pawnee cannot retain the goods and simultaneously obtain a decree for the debt in circumstances where such retention defeats the pawnor's rights.
- ***Bank of Bihar v. State of Bihar (1971)*:** A pawnee has a special property in pledged goods and a preferential right over them, subject to applicable law.
- ***Morvi Mercantile Bank Ltd. v. Union of India (1965)*:** Examined the rights of a pledgee in relation to railway receipts representing goods.

Pledge by a non-owner - important exceptions:

- **Section 178:** Mercantile agent in possession with the owner's consent, acting in the ordinary course of business and with the pawnee acting in good faith without notice of lack of authority.
- **Section 178A:** Person in possession under a voidable contract, before rescission, subject to statutory conditions.
- **Section 179:** Person having only a limited interest can pledge to the extent of that interest.

23. Bailment vs Pledge

Basis	Bailment	Pledge
Provision	Section 148	Section 172
Purpose	Specific purpose	Security for debt or promise
Parties	Bailor and bailee	Pawnor and pawnee
Right of sale	No general right of sale	Pawnee may sell after reasonable notice
Relationship	General category	Special type of bailment
Possession	Transferred	Transferred
Ownership	Remains with bailor	Remains with pawnor

Bailment and Pledge under the Indian Contract Act, 1872.

PART VI - AGENCY

24. Contract of Agency

Sections 182-238

Agency is a relationship in which one person acts on behalf of another and creates legal relations between the principal and third parties.

Section 182 - Definition

- **Agent:** A person employed to do an act for another or to represent another in dealings with third persons.
- **Principal:** Person for whom the act is done or who is represented.

Features:

1. Agency creates a representative relationship.
2. The agent acts on behalf of the principal.
3. Consideration is not necessary to create agency.
4. The principal must be competent to contract.
5. An agent need not necessarily be competent to contract personally.

Section 185: No consideration is necessary to create an agency.

A. Creation of Agency

Provision	Principle
182	Definition of agent and principal
183	Who may employ an agent
184	Who may be an agent
185	No consideration necessary
186	Authority may be express or implied
187	Express and implied authority
188	Extent of agent's authority
189	Agent's authority in emergency

Modes of creating agency:

1. **Express agency**: Created through spoken or written words.
2. **Implied agency**: Inferred from conduct or circumstances.

3. **Agency by necessity**: Created in exceptional emergency situations.
4. **Agency by estoppel:** Principal's conduct creates an appearance of authority on which a third party reasonably relies.
5. **Agency by ratification:** Principal subsequently approves an act done without prior authority.

B. Agency by Ratification - Sections 196-200

Section 196: **Where an act is done by one person on behalf of another without authority,** the latter may elect to ratify or disown it.

Conditions:

- The act must **have been done on behalf of the principal.**
- The principal must **have existed and had capacity at the relevant time.**
- The principal must **have knowledge of material facts.**
- **Ratification must relate to the whole transaction.**
- **Ratification cannot be used to injure third-party rights.**

Section 200: Ratification cannot be used to subject a third person to damages or terminate their rights or interests.

C. Duties of an Agent

Section	Duty
211	Follow principal's directions
212	Exercise reasonable skill and diligence
213	Render proper accounts
214	Communicate with principal
215	Principal's right to repudiate self-dealing
216	Principal's right to benefit from agent's dealings
218	Pay sums received for principal

D. Rights of an Agent

- Section 217: Right to retain sums due.
- Section 219: Right to remuneration.
- Section 220: Agent not entitled to remuneration for business misconduct.
- Section 221: Right of lien over principal's property in appropriate circumstances.
- Section 222: Right to indemnity for lawful acts.
- Section 223: Indemnity for acts done in good faith.
- Section 225: Compensation for injury caused by principal's neglect.

E. Principal's Liability for Acts of Agent

Sections 226-238

- Section 226: Contracts entered into through an authorised agent have the same legal consequences as if entered into by the principal.
- Section 227: Principal bound where agent exceeds authority but the authorised part can be separated.
- Section 228: Principal not bound where authorised and unauthorised parts cannot be separated.
- Section 229: Notice given to an agent may operate as notice to the principal in relevant circumstances.
- Section 230: Agent is generally not personally liable on contracts entered into on behalf of the principal, subject to exceptions.
- Section 231: Rights of parties where agent contracts without disclosing the principal's existence.
- Section 232: Performance where the existence of the principal is disclosed before completion.
- Section 233: Right of third party to proceed against agent or principal in relevant cases.
- Section 234: Consequences of inducing belief that either agent or principal alone will be held liable.
- Section 235: Liability of pretended agent.
- Section 236: Pretended agent cannot demand performance.

- Section 237: Liability of principal where agent creates an appearance of authority.
- Section 238: Misrepresentation or fraud by agent affects agreements in the same manner as if committed by the principal in the relevant circumstances.

F. Termination of Agency - Sections 201–210

Agency terminates through:

1. Revocation by principal.
2. Renunciation by agent.
3. Completion of the business of agency.
4. Death or insanity of principal or agent.
5. Insolvency of principal, subject to applicable law.
6. Expiry of the agreed period.
7. Destruction of the subject matter, where applicable.

- Section 202: Agency coupled with interest cannot ordinarily be terminated to the prejudice of that interest.
- Section 203: Principal may revoke authority before it has been exercised so as to bind the principal, subject to Section 202.
- Section 204: Revocation cannot affect acts already done.
- Section 205: Compensation for premature revocation or renunciation in specified circumstances.
- Section 206: Reasonable notice of revocation or renunciation.
- Section 207: Revocation or renunciation may be express or implied.
- Section 208: Termination takes effect against agent and third parties when it becomes known to them.
- Section 209: Agent's duty upon principal's death or insanity.
- Section 210: Termination of sub-agent's authority.

***Chairman, LIC v. Rajiv Kumar Bhasker (2005)*:** The Supreme Court examined agency principles in the context of insurance transactions and the role of an employer acting as an intermediary for payment of premiums.

Agency under the Indian Contract Act, 1872: Complete Guide for CLAT PG.